

Sweden

REPORT
on the Free Movement of Workers
in Sweden in 2005

Rapporteur: Prof. Örjan Edström
Umeå University

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Introduction

This report deals with Sweden and the free movement of workers in the European Union (EU) during the year 2005. The report 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within the framework of the EC Treaty, Article 39.¹ However, the Directive 68/360 is among the regulations that have been replaced by Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the EU.²

In accordance with the Directive 2004/38, article 40, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2006. Hence, special attention will be paid to proposals referring to the Directive 2004/38.

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 and more cases from the European Court of Justice.

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, draft legal initiatives and suggestions for amendments. Published literature in 2005, articles in periodicals etc. on the matters dealt with is listed.⁴

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 in 2004. 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. Until March 2006 an appeal against the decision taken by the Migration Board should be handed in to the Aliens Board (Utlänningsnämnden, UN).⁵ However, in March 31, 2006, a new Aliens Act was in force and an amended legal procedure was introduced.⁶ The new legal procedure means that appeals against decisions taken by the Migration Board should be dealt with in three Immigration Courts. The Aliens Board ceased to exist and the new established Supreme Immigration Court should take the final decisions on appeals.

(Concerning the term EU/EEA citizens used in the report; referring to the agreement between the EU and Switzerland this term in general also should embrace Swiss citizens.)

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.

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. In the periodicals listed recent case law from the European Court of Justice is presented regularly.

5 Concerning judicial practice in 2005, only two cases referring to the EEA Agreement have been decided by the Aliens Board.

6 Government's proposition. 2004/05:170 Ny instans- och processordning i utlännings- och medborgarskapsärenden.

Chapter I

Entry, residence, departure

Entry

Texts in force

- Utlänningslagen (1989:529; UtlL), (the Aliens Act).⁷
- Passlagen (1978:302), (the Passport Act).
- Utlänningsförordningen (1989:547), (the Aliens Ordinance).

In order to enter Sweden citizens of the EU/EEA States and their immediate families need a valid passport or an identity card showing their country of citizenship.

Family members to an EU citizen are

- Husband/wife.
- Registered partner.⁸
- Children under 21 or older children who are financially dependent on their parents.
- Parents who are financially dependent on children living in Sweden.

Regarding students the following relatives are considered as family members:

- Husband/wife.
- Children under 21 or older children who are financially dependent on their parents.

Concerning visas, the Schengen Agreement's visa rules apply in Sweden. If a visa is obtained in another EU/EEA country it should be valid also in Sweden. However, in exceptional cases there are restrictions concerning this. From many countries there are no requirements for visa and, hence, citizens from these states can enter/stay in Sweden for three months without a visa.⁹ The calculation of the three months period is in accordance with the Schengen Convention.

For family members that are third-country nationals, there is no requirement for visa beyond what is stipulated in Council Regulation 539/2001.¹⁰ Hence, some foreigners should show visa when they are passing the outer borders of the Member States in accordance with the Regulation.

Concerning relatives who require a visa to enter Sweden, they should apply at a Swedish embassy or consulate before travelling to Sweden. Relatives of EU/EEA citizens do not have to pay any charge for a visa application.

Draft legislation

Regarding the implementation of Directive 2004/38 a public investigation was presented in 2005.¹¹ Main issues considered by the committee were the registration of union citizens, the residence cards, amendments in law or ordinance and – regarding EU/EEA citizens – if the regulations should be placed in a certain law or if the regulation should continue to be a part of the general law/ordinance concerning foreigners.

7 The new Aliens Act that was in force on March 31, 2006, is the Aliens Act (2005:716).

8 The including of this category follows from ch. 3 § 1 in the Act (1994:117) on registered partnership. Amendment in 2005 through SFS2005:447, Government's proposition 2004/05:137 Assisterad befruktning och föräldraskap.

9 A full list of countries where there are no visa requirements is found in the Aliens Act ch. § 3 and the Aliens Ordinance ch. 2 § 4. See SOU 2005:49 Unionsmedborgares rörlighet inom EU, p. 89.

10 Council Regulation (EC) No. 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. The countries listed in the Regulation 539/2001, articles 1 and 2, are the same countries that are listed in the Aliens Ordinance ch. 2 § 4 (concerning visa requirements for staying more than three months). Compare the Official report SOU 2005:49, p. 89.

11 Official report SOU 2005:49 Unionsmedborgares rörlighet inom EU.

Concerning the right for an EU citizen's family members that are not EU/EEA citizens, the committee suggests that it should be possible to require a passport for entering Sweden. The situation in 2005 was that also an identity card could be used, referring to the former Directive 68/360.

However, in accordance with the new Directive 2004/38 it should be possible to request a passport when a family member wants to enter Sweden. Hence, the suggestion from the committee is to stipulate a passport requirement for family members in accordance with the principal rule in the Aliens Act ch. 1 § 2.¹² One motive is to reduce the risk for incorrect use of identity documents, and it is suggested that the Aliens Ordinance should be amended.

In the Official report 2005:49 a suggestion is presented meaning that a visa should not be required for a third-country national – including a family member – that shows a residence card.¹³ Further, a stamp in the family member's identity papers should not be made if the foreigner shows a residence card.¹⁴

In the Government's proposition 2004/05:170 concerning the introduction of the new Aliens Act in 2006, the Government refers to the public investigation mentioned (Official report SOU 2005:49), but regarding the transposition of Directive 2004/38/EC no suggestions are explicitly made in the proposition.¹⁵ However, amendments of the new Aliens Act (2005:716) and the Aliens Ordinance (the latter to be amended by the Government) referring to Directive 2004/38 have been presented in February 2006 concerning the transposition of Directive 2004/38, and in the main the Government follows the recommendations from the committee presented in the Official report.¹⁶

Residence

Texts in force

- Utlänningslagen (1989:529), (the Aliens Act).¹⁷
- Passlagen (1978:302), (the Passport Act).
- Utlänningsförordningen (1989:547), (the Aliens Ordinance).

A citizen of an EU/EEA State who is a worker, self-employee or able to support himself in some other way will be granted a residence permit for up to five years, and the permit can be renewed (Aliens Ordinance ch. 3 § 5a). The applicant must show proof of his status as a worker, self-employee etc. in Sweden.

EU/EEA citizens that have ceased their activities have the right to stay in Sweden.¹⁸ The regulation also should apply if the activity has ceased because of illness, accident or involuntarily unemployment.

Even retired persons have the right to stay, and he or she must be able to show that his or her savings or income corresponds to the Swedish guaranteed pension of 6,850 SEK per month.

Concerning stay for shorter periods in Sweden, an EU/EES citizen has the right to stay in Sweden for three months without a valid residence permit (1:4 UtIL). This right also embraces family members that are not EU citizens (UtIL 1:4). For staying longer than three months the foreigner should apply for a residence permit.

All EU/EEA citizens, children included, have to apply individually for residence permit. Concerning children, the application must be approved by the child's guardian. EU/EEA citizens and their immediate family members may be granted residence permits even after they have entered Swedish territory.

12 Official report SOU 2005:49, p. 87.

13 Official report SOU 2005:49, p. 89.

14 Official report SOU 2005:49 p. 88; amendment of the Aliens Ordinance ch. 5 § 6.

15 See Government's proposition 2004/05:170 Ny instans- och processordning i utlännings- och medborgarskapsärenden, p. 180.

16 Government's proposition 2005/06:77 Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och om varaktigt bosatta tredjelandsmedborgares ställning.

17 The new Aliens Act that was in force at 31 March 31, 2006, is the Aliens Act (2005:716).

18 Concerning workers, see Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State.

Some other categories of EU/EEA citizens are entitled to residence permits in accordance with the Aliens Ordinance ch. 3 § 5a. Family members to the EU/EEA citizen are entitled to residence permit in accordance with the Aliens Ordinance ch. § 5b. Normally a residence permit should be granted for five years (also see above).

Regarding who is considered to be a family member the same definition as stated above should apply (see “Entry”). Parents and children over 21 must enclose documentation proving that they are dependent on one another.

Concerning family members the residence permit will be issued for the same period as for the relative to whom the person refers. Further, family members to an EU/EEA citizen will be granted a residence permit independent of the family member’s nationality, and he or she is exempted from the requirement to possess a work permit in order to work in Sweden.

Further, a student will be granted a residence permit for the period of study.

Draft legislation

As stated above, a public investigation concerning the transposition of implementation of Directive 2004/38 and the free movement of union citizens was presented in 2005 (Official report SOU 2005:49), and amendments of the Aliens Act has been suggested by the committee. A foreigner that is a citizen of an EU/EEA State should have a right to residence in accordance with the Aliens Ordinance for more than three months without a residence permit.

Further, an amendment of the Aliens Ordinance ch. 3 § 5a is suggested regarding the right to residence permit for workers etc. who are EU/EEA citizens. Hence, the categories embraced by the regulation are suggested to be granted a certain residence right. This right should explicitly also apply to providers of services and job seekers having a real prospect to get a job.

Also family members to an EU/EEA citizen referring to the Aliens Ordinance ch. 3 § 5a, should have the right to residence in accordance with a suggested amendment of the Ordinance ch. 3 § 5b. Finally, a family member who is an EU/EEA citizen should have a remaining right to residence, if the person that was the base for the residence permit should leave Sweden or pass away, if there is a divorce, if a marriage is declared nullified, if a registered partnership has ceased, and if the family member fulfils the requirements stipulated in ch. 3 § 5a. (Regarding the definition of a family member – see above!).

Further, the committee suggests that an EU/EEA citizen should have the right to a *permanent right to residence after five years of continuous legal stay*, and the same entitlement should be granted to members of the family.

The committee also suggests that an EU/EEA citizen who is a worker or a self-employed and has ceased his activity should be granted a permanent right to residence, even if the stay has not been for a five year period, if the citizen has been working for the preceding twelve months and he has been continuously residing in Sweden for three years, and is at least 61 years old or – concerning a worker – has received an early retirement pension. The same should apply if the citizen cannot work because of accident in work after continuous stay in Sweden etc.¹⁹

Further, the committee suggests that a permanent right to residence should be revoked if a person having such a right leaves Sweden for a continuous period of two years.

Amendments of the Aliens Act were suggested stipulating that the requirement that the foreigner should have sufficient means for his own maintenance should not apply to EU/EEA citizens.²⁰

Concerning the calculation of the period a family member to an EU/EEA citizen should have the right to stay in Sweden without a residence permit, the committee suggests that the same rules as are applied to union citizens should apply to family members.²¹

The committee suggests that EU/EEA citizens using their right to residence in Sweden should register not later than three months from the arrival when their intention is to stay in Sweden (suggested amendment in the Aliens Act ch. 5). In connection with the registration a proof on the right to residence should be issued. If the foreigner is entitled to a permanent right to residence, a proof on that

19 Official report SOU 2005:49, p. 54.

20 Official report SOU 2005:49, p. 84.

21 Official report SOU 2005:49, p. 98.

status should be issued. Further, the right to a permanent right to residence should be equal to the right to residence in connection with the granting of a Swedish citizenship.

The request to register should not embrace family members who are third-country nationals. However, in line with the Directive the committee suggests that a residence card should be issued, and if a permanent right to residence is granted a permanent residence card should be issued.

In the first hand the Swedish Migration Board is suggested to be the authority in charge for registration, and in the second hand it should be the National Swedish Tax Board.

(As stated above, in February 2006, the Government presented a proposition before the Riksdag concerning the transposition of Directive 2004/38.²²)

Judicial practice

In *Case UN 478-05* the Aliens Board decided to grant a Pakistani woman and her six children a temporary residence permit referring to her husband who was a French citizen residing in Sweden but working in Denmark. Hence, the husband's residence permit had been granted since he had sufficient means from his income in Denmark. The question was if he had sufficient means also for the providing of his spouse and children. According to the Migration Board the spouse and children should be considered as family members, but the husband's income was too low and then the Board did not approve the application for residence permit. Further, the child allowances should not be included when the family's monthly income was calculated. However, the Aliens Board considered that the husband had an extra employment and income. Further, it was not obvious that the children allowances should not be included in the calculation of the family income.

In *Case UN 480-05* the Aliens Board took the decision to hand over a case to the Migration Board. A Latvian citizen with two children had been granted a temporary residence permit in 2001. Since the connection to her husband in Sweden ceased, the Migration Board took the decision not to grant the persons a continued residence permit. However, referring to a new connection with a man in Sweden and a new employment, the woman applied for residence permit and after the EU enlargement she was also a union citizen. Hence, in that situation an application for a residence permit should be dealt with and it can be approved, even if the application is made when the foreigner already is staying in Sweden. This conclusion embraces both applications referring to EC law or Swedish national law on the matter, and the same should apply if the applicant is a family member to a citizen from a Member State etc.

Departure

Texts in force

- Utlänningslagen (1989:529), (the Aliens Act).²³
- Passlagen (1978:302), (the Passport Act).
- Utlänningsförordningen (1989:547), (the Aliens Ordinance).

In accordance with Swedish law a foreigner can be turned away or expelled for different reasons (see the Aliens Act ch. 4 §§ 1–9). For instance, a foreigner can be turned away if he cannot show passport (if there is such a requirement) or an identity card, if a residence permit no longer is valid or if the foreigner has committed certain criminal activities. Further, a decision on expulsion can be taken referring to State security, criminal activities, if terrorist activity is to be feared etc.²⁴ Decisions on turning away or expulsion can also be taken referring to public order, security or health.

22 Government's proposition 2005/06:77 Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och om varaktigt bosatta tredjelandsmedborgares ställning.

23 The new Aliens Act that was in force on March 31, 2006, is the Aliens Act (2005:716).

24 See the Act (1991:572) on particular control of foreigners.

Draft legislation

In this section I will focus on Swedish law and decisions on turning away and expulsion in relation to the free movement within the EU/EEA and in particular matters relevant to the transposing of Directive 2004/38/EC.

Concerning departure and the transposition of Directive 2004/38 there is again reason to refer to the public investigation concerning the free movement of union citizens presented in 2005.²⁵ The investigation noted that expulsion of EU/EEA citizens no longer should be possible referring to the fact that the person has insufficient means for maintenance, or if the person cannot show a passport or an identity card, if he can give proof on his identity and citizenship in another way.²⁶ (Amendments concerning expulsion are suggested referring to the Aliens Act ch. 4.)

Hence, the committee suggests that the Swedish regulations concerning expulsion should be more restricted in line with the Directive, but in certain circumstances expulsion should be possible if the foreigner is a burden to the social security system. Further, if the foreigner does not fulfil the requirements to be granted a right to residence he should be expelled.²⁷

Regarding expulsion referring to public order and security, the committee suggests that new regulations concerning serving (*delgivning*) should be introduced to apply if a decision means that the person's right to free movement will be restricted, and such a decision should not be executed before one month has passed. Further, the foreigner's personal circumstances should be considered and "particular reasons" should be present in order to execute a decision on expulsion, and also "urgent consideration to public security" should be present.

The committee also put emphasis on the guarantees to secure the rule of law protected by the Directive, and such guarantees are also set up by the committee, although these matters in main are dealt with in the Government's proposition 2004/05:170 concerning the introduction of the new Aliens Act in 2006.

25 Official report SOU 2005:49 Unionsmedborgares rörlighet inom EU.

26 Official report SOU 2005:49, p. 17.

27 Official report SOU 2005:49, p. 17.

Chapter II

Access to employment

Texts in force

- Regeringsformen (1974:152), (the Instrument of Government).
- Lag (1994:260) om offentlig anställning, (the Act on public employment).
- Lag (1998:531) om yrkesverksamhet på hälso- och sjukvårdens område, (the Act on professional activity in health and public medical service).
- Högskolelagen (1992:1434), (the University Act).

In a free movement perspective equal treatment in access to employment is important, and regarding this matter there is reason to focus on the recognition of diplomas on professional qualifications in regulated professions. In Sweden most regulated professions are found in activities such as health care. In the main health care is organised in the public sector, but there are also many private enterprises practising health care. (The requirements dealt with also embrace public employment; hence, these matters are also analysed in Chapter IV Employment in the public sector.)

In 2005 there were 17 professions in Swedish health care which have been regulated since 1998.²⁸ Hence, for the following occupational groups there are demands on certification, which means that there is a demand on a specified education: pharmacist (apotekare), occupational therapist (arbetsterapeut), midwife (barnmorska), chiropractor (kiropraktor), speech therapist (logoped), doctor (läkare), naprapath (naprapat), optician (optiker), psychologist (psykolog), psychotherapist (psykoterapeut), dispenser (receptarie), physiotherapist (sjukgymnast), hospital physicists (sjukhusfysiker), nurse (sjuksköterska), dental hygienist (tandhygienist) and dentist (tandläkare).²⁹ Further, there are regulations on European doctors, the approval of exams from foreign countries etc.³⁰

In 2006 another four professions will be regulated in accordance with the Riksdag's approval of a Government proposition on demands on certification concerning the following professions: audiologist (audiolog), biomedical analysts (biomedicinsk analytiker), dietitian (dietist) and orthopaedist engineer (ortopedingenjör).³¹ The new requirements will enter into force on April 1, 2006. Further, the following occupational groups – where there already are demands on certification – will have their professional titles protected in 2006: optician, chiropractor and naprapath.³²

In the Government's proposition there are references to the regulations concerning mutual recognition of diplomas in EC law, and EC law on these matters is a strong motive for the amendment.³³

In accordance with the main rule, a person having a professional diploma from another Member State (EEA och Switzerland) should have the right to exercise his profession in Sweden.³⁴ For access to most professions there are no absolute requirements for Swedish language, but regarding language the following information is provided by the National Board of Health and Welfare:

“No knowledge of the Swedish language or national legislation is required for recognition. However, this is not to be interpreted as a possibility to practise in other languages. The patients must

28 Government proposition 1997/98:109 Yrkesverksamhet på hälso- och sjukvårdens område.

29 Lag (1998:531) om yrkesverksamhet på hälso- och sjukvårdens område (ch. 3 § 2).

30 Lag (1998:531) om yrkesverksamhet på hälso- och sjukvårdens område (ch. 3 § 8).

31 Government's proposition 2005/06:43 Legitimation och skyddad yrkestitel.

32 Government's proposition 2005/06:43.

33 Government's proposition 2005/06:43, p. 17. For further comments on the recognition of diplomas etc. in the EU, see Ingmanson *Erkännande av yrkeskvalifikationer inom EU*. Skrifter från juridiska institutionen vid Umeå universitet No. 11/2005, Umeå 2005.

34 See the administrative regulation from the National Board of Health and Welfare: SOSFS 2004:4 (M) Socialstyrelsens föreskrifter om ändring i föreskrifterna (SOSFS 2003:4) om ömsesidigt erkännande av yrkesbehörighet inom hälso- och sjukvården. Further, see SOSFS 2004:10 (M) Socialstyrelsens föreskrifter om villkorslöst erkännande av behörighetsbevis för viss hälso- och sjukvårdspersonal med utbildning från annat EES-land. (SOSFS is the National Board's of Health and Welfare statute-book.)

be entitled to be able to communicate with the professionals and the migrant must acquire the language knowledge necessary for performing his/her professional activities in Sweden.”³⁵

Concerning the regulation of professions, another example is the veterinary profession, which in Sweden is generally regulated in the Act (1994:844) on the competence for exercising the veterinary profession. In the Ordinance (1994:85) on the competence for exercising the veterinary profession 1 §, it is stipulated that a foreign veterinary has to complete his education concerning Swedish law and the Swedish language on a basic level.

In order to facilitate the *mutual recognition of higher education diplomas* between Member States and especially to make Swedish higher education more attractive to foreign students, the Government in 2005 presented a proposition with suggestions in line with the Bologna process that was introduced in 1988.³⁶ The higher education structure and the diplomas from higher education should be amended into a three step model with a basic level (a bachelor degree; in practice around the three first years in an educational programme), an advanced level (leading to a master exam) and a doctoral level. Basically, these matters are regulated in the University Act (1992:1434).

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.³⁷ First, a precondition is that employees in such positions in fact are exercising authority and that the dealing with such activities is regular. Secondly, these kinds 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 and fishing boats. The texts in force regarding these matters are promulgated by the Swedish Maritime Administration (Sjöfartsverket).³⁸ The commander-in-chief should be a Swedish citizen and, further, he should be more than 20 years old (the Vessel Safety Regulation; fartygssäkerhetsföreskriften 2003:438 Chapter 4 § 1). Concerning commanders on fishing-boats, the Vessel Safety Regulation ch. 4 § 1 could be questioned in the light of the judicial practice from the ECJ.³⁹

However, in 2005 the regulation from the Maritime Administration has been amended. A foreign certificate on competence should be recognized by the Swedish authority for a period not longer than five years.⁴⁰ Regarding commanders from other Member States the applicant must show a proof on a certain education on knowledge in adequate Swedish regulations.⁴¹ Further, in accordance with attachment no. 23 to SJÖFS 2000:1 (reprinted 2005:5) the commander must be educated on the Swedish Merchant Shipping Act (Sjömanslagen), the Work Environment Act and more.

Concerning *the Burbaud Case C-285/01* from the ECJ the French “concour system” was tried regarding access to training followed by access to a post.⁴² 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 are no such positions in Sweden where “concour systems” are used for recruitment. Concerning the Swedish policy it can be noticed that in the Burbaud case the

35 http://www.sos.se/hs/bu/EU/eng_sprak_forf.htm (website February 20, 2006). A practical aspect is that the patient’s log book should be written in Swedish, see the National Board of Health and Welfare’s statute statute-book SOSFS 1993:20 (M).

36 Government proposition 2004/05:162 Ny värld – ny högskola.

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

38 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, reprinted in 2005:5), including amendments referring to Council Directive 94/58/EC on the minimum level of training of seafarers (and amendments following Directive 98/35/EC).

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

40 Sjöfartsverkets föreskrifter och allmänna råd SJÖFS 2005:12 om ändring i SJÖFS 2001:1 om utbildning och behörigheter för sjöpersonal.

41 See SJÖFS 2005:33 amending SJÖFS 2000:1 om utbildning och behörigheter för sjöpersonal ch. 1 § 6.4.

42 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.

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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.⁴³

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

Chapter III

Equality of treatment on the basis of nationality

Texts in force

- Regeringsformen 1974:152 (The Instrument of Government) (see also Chapter IV).
- Discrimination law (see Chapter VII).

The Instrument of Government stipulates that public authority should be exercised with “respect for all human beings’ equal value” (ch. 1 § 2), and the public sphere should counteract all discrimination based on “national or ethnical origin” and more. Further, for instance Regulation 1612/68 is of course directly applicable and there are different regulations in order to secure equal treatment. Restrictions are founded in law and regarding the public sector these matters are dealt with in the present report Chapter IV, and in Chapters VI and VIII there are analysis on the restriction of certain welfare entitlements.

In Swedish law there is a ban on discrimination referring to different grounds (see Chapter IV and Chapter VII). In discrimination law references to “nationality” are not made although references to ethnical origin are frequent.⁴⁴

Concerning access to employment there are regulations on nationality made in the Act (1994:260) on public employment (for certain positions) and for instance in the Vessel Safety Regulation (captains on certain vessels). For further details, see Chapters II, IV and especially Chapter VI. For employment there may also be education requirements concerning for instance Swedish regulations for the activity concerned, even though such requirements does not mean that there is a condition on nationality.

In 2005 the Government suggested that *the State wage guarantee at a bankruptcy* should embrace employees in enterprises from all Member States, and amendments were suggested in the Act (1992:497) on wage guarantee (lönegarantilagen).⁴⁵ A prerequisite is that the work in the main is performed in Sweden, and the amendment, which came into force in October 2005, refers to Directive 2002/74/EC.⁴⁶

In 2005 the *working hours law* concerning truck-drivers (heavy long-distance lorries) was amended. The weekly working hours should not exceed 48 hours and for a week the working hour should not exceed the maximum of 60 hours.⁴⁷ The law that refers to Directive 2002/15/EC should also apply to foreign drivers on the Swedish roads as well as Swedish drivers on the roads in other States (independent of the law in the actual state). The amended law came into force on July 1, 2005. In practice most Swedish collective agreements on these matters are stricter in comparison to the minimum regulations stipulated in Directive 2002/15/EC.

In a Government’s proposition presented in 2005 it was suggested that Swedish seamen employed by European ship-owners should be exempted from Swedish *taxes* if they work outside Sweden for at least six months per year.⁴⁸ The amendment means that ship-owners from other Member States from January 1, 2006, should be treated in the same way as Swedish ship-owners in these respects. (The amendment follows from a critical note from the European Commission.)

Finally, in accordance with a Government’s proposition in 2005 employers should have the same right to make *tax reductions* when the employer, referring to a collective agreement on occupational

44 See for instance the Act (2003:307) on ban on discrimination (§ 1) and the Act (1999:130) on measures to counteract ethnic discrimination in working life (§ 1).

45 Government’s proposition 2004/05:128 Lönegaranti vid gränsöverskridande situationer. (Amendments through SFS 2005:681.)

46 Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer.

47 Government’s proposition 2004/05:132 Arbetstid vid vägtransporter, referring to Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities.

48 Government’s proposition 2005/06:21 Förändring i sexmånadersregeln för sjömän, m.m.

(or service), deposits money to a foreign pension institutes as if the money was deposited to a Swedish institute.⁴⁹

Recent legal literature

Ingmanson, S., *Erkännande av yrkeskvalifikationer inom EU*. Skrifter från juridiska institutionen vid Umeå universitet No 11/2005, Umeå 2005. (Dissertation 330 pp.)

Rehnberg, U., Varför skulle de svenska pensionsförsäkringarna vara oförenliga med EG-fördraget?, in *SkatteNytt* 2005, pp. 641–649.

Schmidt, N., Pensionsbeskattningen och EU – en uppföljning, in *Svensk Skattetidning* 2005, pp. 27–39.

49 Government's proposition 2005/06:22 Skattefrågor med anledning av tjänstepensionsdirektivet, referring to Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision. Official Journal L 235 , 23/09/2003 P. 0010 – 0021.

Chapter IV Employment in the public sector

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).

Concerning nationality condition for access to employment in the public sector there are some basic regulations. 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.⁵⁰ Hence, citizenship is prescribed as a condition for certain employments in the Swedish State.

For many positions in the public sector there are different qualification requirements. Since many activities could be organised both in the public sector and the private sector, I have dealt with these matters also in Chapter II (Access to employment); see above! Concerning for instance the health care sector the employer could be a public institution or a private firm; and in addition to that a person exercising a certain profession could be self-employed.

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.

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 head of authority that is directly under the Riksdag and the Government offices directly under the Government can be mentioned. However, a position as a judge within the judicial system is nowadays not exclusively reserved for Swedish citizens since it is possible for an experienced lawyer to obtain a position as a judge.

In year 2000 an Official report was presented dealing with the existing requirements for Swedish citizenship for employment and more in the public sector.⁵¹ The investigation committee laid proposals of breaking up the restrictions concerning foreigners' right to employment (and public functions). 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. Also public activities that interfere with the citizens' legal relations should still be reserved for Swedish citizens.

In March 2006 there are still many demands for Swedish citizenship, for instance concerning employments as law clerks at the district courts (tingsrätter).⁵² Also at the Swedish enforcement service (kronofogdemyndigheten) there is still (in March 2006) a demand for Swedish citizenship for the

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

51 Official report SOU 2000:106 Medborgarskapskrav i svensk lagstiftning. See also Sandesjö, H. & Björk, K., *Nya medborgarskapslagen med kommentarer*, Norstedts förlag, Stockholm 2005.

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

access to many positions such as Head of the enforcement district (kronofogde), Inspector at the enforcement service and Assistant at the enforcement service.⁵³

A common denominator for these positions is that the officials are exercising authority towards the citizens. 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 prosecutors etc. with some exceptions).
- 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).⁵⁴

Before writing the present report I made a follow-up in February 2006 of the regulations stipulating a requirement for Swedish citizenship dealt with in the Official report presented in year 2000. My examination shows that most requirements for Swedish citizenship still are present. However, for two positions amendments have been made meaning that the requirements for Swedish citizenship for obtaining certain positions have been abolished:

- Clerks in a court of appeal (överrättsnotarie) and
- Clerks in an administrative court of appeal (kammarrättsaspirant).

However, a position as a clerk in a court of appeal or a clerk in administrative court of appeal is usually the starting point for a career within the judicial system, and since there are requirements for Swedish citizenship for obtaining a position as a reporting clerk (fiskal) it may not be tempting for a foreigner to apply for a position as a clerk at the courts.

A reason for these differences regarding the requirements for Swedish citizenship could be that a reporting clerk fulfils particular duties as a judge. More precisely, a clerk does not exercise public authority by taking decisions, since a clerk only makes the presentation of reports before the court. However, concerning the position as a lawyer acting in the courts there is no requirement for Swedish citizenship.⁵⁵

Beyond these amendments there have also been amendments concerning the requirements for Swedish citizenship to become an elected representative in certain commissions and committees, but

53 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.")

54 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 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 reasons, 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 §).

55 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 came into force on July 1, 2002. Already before this amendment the Code of procedure had been amended in line with the Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 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, 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 were 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 häradsallmänningar samt allmänningsstyrelser och ekonominnämnder enligt lagen (1952:167) om allmänningsskogar i Norrland och Dalarna tas bort (dealing with members in boards for common land forests in Northern Sweden).

such commissions are not to be considered as employments and, hence, I will not go deeper into the matter.

Finally, in general it is considered to be more difficult to make a career in the Swedish State administration. In 2005 an examination was presented showing that immigrants and minorities comparatively are underrepresented among the employees in the State administration.⁵⁶ In 2001 around five percent of the employees in the public service were immigrants (born in another country) compared with the immigrants' share of the total population, which in the same year was around 12 percent.⁵⁷

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. (See also Chapter II: Access to employment.)

For employment in the *public medical service* in a regulated profession a person must fulfil certain requirements (also dealt with in Chapter II Access to employment, since the same regulations should apply also to the private sector). 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.⁵⁸ 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 practice on basis of training in an EEA country other than Sweden or in Switzerland".⁵⁹

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.⁶⁰ 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 to further analysis.

Firstly, the regulation in SOSFS 2003:4 § 5 could be questioned referring to Case C-110/01 *Malika Tennah-Durez*.⁶¹ 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 must not mainly have been gone through in a Member State (compare the Swedish regulation). Secondly, the Swedish regulation could be questioned referring to Case C-238/98 *Hocsman*⁶² 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.

Recent legal literature

Sandesjö, H. & Björk, K., *Nya medborgarskapslagen med kommentarer*, Norstedts förlag, Stockholm 2005.

56 Official report Ds 2005:12 Makten och mångfalden. Eliter och etnicitet i Sverige. (Report from the Ministry of Justice.)

57 Official report Ds 2005:12 Makten och mångfalden, p. 139.

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

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

60 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).

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

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

Chapter V Members of the family

Texts in force

- Utlänningslagen (1989:529; UtlL), (the Aliens Act).⁶³
- Utlänningsförordningen (1989:547), (the Aliens Ordinance).

Family members to an EU citizen are

- Husband/wife.
- Registered partner.⁶⁴
- Children under 21 or older children who are financially dependent on their parents.
- Parents who are financially dependent on children living in Sweden.

Regarding *students* the following relatives are considered as family members to a student:

- Husband/wife.
- Children under 21 or older children who are financially dependent on their parents.

In the main legal matters concerning members of the family are dealt with above in Chapter I, especially in connection with the analyses on matters in connection with “entry” and “residence”.

Judicial practice

Case UN 478-05 (a Pakistani woman and her children); the case is referred to in Chapter I, section “Residence”.

Case UN 480-05 (a Latvian citizen with two children); the case is referred to in Chapter I, section “Residence”.

63 The new Aliens Act that was in force on March 31, 2006, is the Aliens Act (2005:716).

64 The including of this category follows from ch. 3 § 1 in the Act (1994:117) on registered partnership. Amendment in 2005 through SFS2005:447, Government’s proposition 2004/05:137 Assisterad befruktning och föräldraskap.

Chapter VI

Follow-up of recent Court of Justice judgements

In 2005 an Official report was presented dealing with *Case C-138/02 Collins* and *Case C-456/02 Trojani* and more.⁶⁵ The intention from the beginning 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.⁶⁶ 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.

Concerning the *Trojani* case the situation in some respects is similar to the situation in the *Collins* case in the comments above and also this case was dealt with by the committee.⁶⁷ In *Trojani* the ECJ stated that a union citizen staying in another Member State as a worker should have some entitlements. In the case the right to social assistance up to a subsistence level (minimex) in Belgium was tried and a crucial issue was if *Trojani* could be considered as a worker. Further, the Court stated that a union citizen already referring to the EC Treaty, Article 18.1, has a right to stay in another Member State, although he must have sufficient means for his living, but that this circumstance not automatically means that he is not embraced by the right to equal treatment in accordance with the EC Treaty, Article 12. However, a precondition is that the person has been granted a residence permit or otherwise is legally staying in the country.⁶⁸

In the Official report presented in 2005 the committee makes an analysis of the social entitlements in the light of EC law.⁶⁹ 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 (2001:453) 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 should be possible to restrict this social entitlement, but only for certain categories, the committee argues.

Following this, concerning EU/EEA citizens 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 ch. 4 § 1 during the first three months. However, if there is an emergency situation on the person should be entitled to assistance.

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 three months to a citizen from another Member State who is staying in the State.⁷⁰

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.

65 Official report SOU 2005:34 Socialtjänsten och den fria rörligheten.

66 Compare the 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).

67 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, pp. 666–671.

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

69 Official report SOU 2005:34 Socialtjänsten och den fria rörligheten.

70 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).

A crucial question concerning *job seekers* 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.⁷¹

If a union citizen is a job-seeker, he or she should not be entitled to social assistance during the period he or she is looking for a job (compare Directive 2004/38, Article 24.2).⁷² 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 a right to equal treatment regarding social benefits.⁷³ Exceptions from the rule should also be made in case of emergency.⁷⁴

The committee’s suggestions were presented in April 2005, but in 2005 there were no further initiatives from the Government. However, in 2006 the Government presented a proposition regarding the transposition of Directive 2004/38/EC.⁷⁵ Regarding the right to social assistance the Government refers to the Official report (SOU 2005:34), but concerning equal treatment it is only stated that the Government’s Office is dealing with the matter.⁷⁶

In Case C-258/04 *Ioannidis* the ECJ ruled that it is contrary to the Treaty, Article 39, for a Member State to refuse to grant a tideover allowance (“arbetslöshetsunderstöd” in Swedish) to a national of another Member State seeking his first employment, and who is not the dependent child of a migrant worker residing in the Member State granting the allowance, on the sole ground that he completed his secondary education in another Member State.⁷⁷

Concerning former *students* and the right to unemployment benefit on the basic level, there are certain regulations to apply following from the Act 1997:238 on unemployment insurance (Lag 1997:238 om arbetslöshetsförsäkring) § 18. The applicant should have been at the labour market’s disposal for at least 90 days within a period of 10 months when he has finished a fulltime education of at least one year. The education should have been recognised for the right to study loan and the applicant should not be less than 20 years old. (Concerning unemployment benefits, see also below, Chapter X on social security.)

Further, in accordance with § 19 an applicant that has been subject to certain measures within a particular “activity guarantee” (aktivitetsgarantin), but has left the “guarantee activity” for an educational programme for at least one year, should be entitled to unemployment benefit. The education must be recognised for the right to study loan.

Since the requirements for receiving unemployment benefits after finishing an education is not dependent of whether the education is finished in Sweden, and study loans can be granted also for studies in other States, the situation dealt with in the *Ioannidis* case in general should not occur.

However, the prerequisite that the foreign education should be recognized for Swedish study loans in accordance with the Study loan Act (1999:1395) indirectly could be discussed. For instance, the Study loan Act stipulates that in order to be entitled to study loan the student must not be more than 54 years old (ch. 3 § 3 in force at July 1, 2006; before that date the restriction was 50 years old). Hence, if the student is more than 54/50 years old the studies abroad will not be qualifying for unemployment benefit referring to the Unemployment benefit insurance Act § 18. On the other hand, the restrictions should apply independent of the applicant’s citizenship within the EU.

The *Ioannidis* case has been discussed at the the Board for Unemployment Benefit (Inspektionen för arbetslöshetsförsäkringen; IAF). The IAF experts consider the Swedish regulation to be in con-

71 Case C-292/89 *The Queen v Immigration Appeal Tribunal*, ex parte Gustaff Desiderius Antonissen 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.

72 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).

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

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

75 Government’s proposition 2005/06:77 *Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och om varaktigt bosatta tredjelandsmedborgares ställning*.

76 Government’s proposition 2005/06:77 *Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och om varaktigt bosatta tredjelandsmedborgares ställning*, pp. 126 f.

77 Further, concerning the situation in the *Ioannidis* case, there is also reason to observe Case C-138/02 *Collins* and Case C-224/98 *D’Hoop*.

formity with EC law, even though IAF is open for a discussion concerning situations that could occur because of the application of the Study loan Act. Further, the IAF's standpoint is that the unemployment benefit for former students is a benefit under the Regulation 1408/71, which means that the benefit is exportable.

In *Case C-232/01 van Lent* a Belgian citizen had been stopped on a Belgian highway.⁷⁸ He was driving a car which was registered in Luxembourg and owned by a rental firm in that country. Van Lent who had his resident in Putte, Belgium, was not allowed to drive the car in Belgium. The employer's firm was not situated in Belgium. In the present case the ECJ stated that "Article 39 EC precludes national rules of a Member State, such as those in the present case, which prohibit a worker who is domiciled in that Member State from using on its territory a vehicle registered in another neighbouring Member State, belonging to a leasing company established in that second Member State, and made available to the worker by his employer who is also established in the second Member State".

In Sweden the regulations on the matter are found in the Act (2001:558) on road traffic register (Lag 2001:558 om vägtrafikregister), especially 12–15 §§. In accordance with 12 § a vehicle should be registered in Sweden, but referring to 14 § there is an exception to that rule if the vehicle is used in "international road traffic". The prerequisites are that the vehicle is owned by a citizen (or a company) that in the main has his or its residence in another country, and that the vehicle is "temporarily" used in Sweden. Further, the regulation does not apply to vehicles registered in Denmark, Norway or Finland (15 §).

Experts on the National Road Administration (Vägverket) claim that "temporarily" means not longer than one year (the same rule explicitly applies to vehicles from the other Nordic countries; see 15 §). Hence, after one year the vehicle must be registered if it is used in "international road traffic". Further, regarding the time-limit it is the owner's intention that should be the basis for the decision whether the vehicle should be registered or not.

The van Lent case has been considered by experts at the National Road Administration, and it is possible that a similar situation could occur in Sweden, for instance when Danish citizens living in Denmark – but working in Sweden – drive their vehicles registered in Denmark on roads in Sweden for more than one year. In such cases it is not obviously clear if the driving in Sweden is "temporary", and, further, if a new 12 months period starts when the vehicle has temporarily been outside Sweden.

In *Case C-464/02 the European Commission v Denmark* the ECJ tried the Danish regulation that did not allow employees who are employed in a neighbouring Member State and resident in Denmark to use for business or private purposes a company vehicle registered in that neighbouring Member State where the undertaking of their employer is established.⁷⁹ That was the situation in particular when the company vehicle, which was registered in another Member State in which their employer had its registered office or principal establishment, only subject to the condition that the work in the foreign undertaking was their main employment and that tax is paid for that purpose. The ECJ found the Danish law and administrative practice to be contrary to the EC Treaty, article 39.

In a Swedish context there is again reason to refer to the Act (2001:558) on road traffic register, especially 12–15 §§. If the vehicle is used in "international road traffic" the car does not have to be registered in Sweden. Further, the vehicle should be owned by a citizen or a company that in the main has his or its residence in another country, and the vehicle should be "temporarily" used in Sweden. In accordance with the Act, a vehicle (including a connected trailer) registered in Denmark, Finland or Norway, should not be embraced by the register requirement to register if the vehicle is used not more than one year. Hence, in principle a situation similar to the situation in the case dealing with the Danish law also could occur in Sweden if the period when the vehicle is used is going beyond a 12 months period.

Further, in accordance with the Motor-vehicle tax Act (1988:327) a vehicle that is registered in Sweden should be subject to motor-vehicle tax (6 §). If the vehicle is used abroad the tax should be paid back for the days that the vehicle has been used outside Sweden (69 §). Hence, the period for

78 Case C-232/01 Judgment of the Court (Fifth Chamber) of 2 October 2003. Criminal proceedings against Hans van Lent. Reference for a preliminary ruling: Politie rechtbank te Mechelen - Belgium.

79 <http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-464%2F02&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100>

which tax should be paid back is not standardized in the way which Directive 83/182/EEC, article 4.2, indicates.⁸⁰ Further, it follows from the Swedish law that a vehicle that does not have to be registered referring to the 12 months rule should be exempted from taxation for the period when it is not registered.

Concerning the *sport sector* the UEFA recommendations “Investing in the Local Training of Players”, approved by UEFA in February 2005, have been discussed by the Swedish Football Association at the Representative Assembly that was held on December 3, 2005. The aim of the recommendations is to secure the development and training of young players in football clubs “in order to safeguard the future of our sport”. The problem behind 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 local football clubs are informed. The UEFA proposal has been subject to discussions within the Swedish Football Association and at the Representative Assembly in December 2005. However, the decision was to wait and see the final recommendation from UEFA. Such a UEFA recommendation will also depend on the UEFA’s deliberations on the matter with the European Commission. In order to make any new regulations binding for the clubs who are members of the football association a new decision at the coming Representative Assembly to be held in December 2006 is necessary.

80 Council Directive 83/182/EEC on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another.

Chapter VII

Policies, texts and/or practices of a general nature

Texts in force

- 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 deltid arbetande 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).
- Utlänningslagen (1989:529) och nya Utlänningslagen (2005:716), (the Aliens Act and the new Aliens Act).
- Lag (2006:67) om förbud mot diskriminering och annan kränkande behandling av barn och elever (the Act on ban on discrimination and outrage treatment of children and pupils).

Most amendments in discrimination law in the light of EC law have been made before the year 2004. 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 2000/43.⁸¹ Following the amendments suggested, sex has been introduced as a category that could be the basis for discrimination that is forbidden in all areas that are embraced by Directive 2000/43.⁸² Hence, sex discrimination will also be explicitly forbidden in sectors of society outside working life (public service, health care, occupational practice, membership entitlements in trade unions etc.)⁸³ Further, the committee deals with age discrimination and equal treatment (compare Directive 2000/78⁸⁴). The Riksdag approved the amendments referred to, and the amendments of discrimination law came into force on July 1, 2005.

In March, 2005, an Official report (SOU 2005:15⁸⁵) was presented dealing with the transposition of Directive 2003/109/EC on long-term residents and Directive 2003/86/EC on family reunification.⁸⁶ Concerning the Directive on long-term residents amendments of the Aliens Act (1989:529) was suggested, although the new Aliens Act (2005:716) enters into force on March 31, 2006 (see introduc-

81 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.

82 Government's proposition 2004/05:147 Ett utvidgat skydd mot könsdiskriminering.

83 In 2005 also a number of Official reports have been presented concerning different aspects of discrimination in society, for instance SOU 2005:112 Demokrati på svenska? Om strukturell diskriminering och politiskt deltagande, SOU 2005:69 Sverige inifrån – Röster om etnisk diskriminering, SOU 2005:56 Det blågula glastaket – strukturell diskriminering i Sverige and SOU 2005:41 Bortom Vi och Dom – Teoretiska reflektioner om makt, integration och strukturell diskriminering. In the main the discrimination issue is dealt with concerning third-country nationals' situation.

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

85 Official report SOU 2005:15 Familjeåterförening och fri rörlighet för tredjelandsmedborgare.

86 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents and Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

tion). Anyway, in February 2006 a Government's proposition was presented and the amendments were in line with the proposal presented in the previous Official report.⁸⁷

In order to be granted a long-term residence the third-country national should show ability to provide for himself and the family members. Stable and regular means for maintenance is required, and in principle a health insurance covering all risks. However, in practice there should be no request for a health insurance. The reason is that Swedish social security to a large extent is based on residence, and a long-term resident has the right to such benefits (for instance health care that is financed by taxes, child allowance, parents' allowance on a basic level etc.).

In principle a long-term resident should be entitled to benefits that do not presuppose a control of the person's income. Further, Regulation 1408/71 should apply concerning certain benefits. The Migration Board will be in charge for issuing further regulations concerning the foreigner's ability to provide for himself. In principle, entitlements should be equal to a person granted a permanent residence permit, but the third-country national is also entitled to settle down in another Member State. The entitlements also embrace family members in connection with such a third-country national having a long-term resident status.

In 2005 a public investigation suggested that the long waiting periods for dealing with residence permit applications referring to a connection to a person in Sweden should be cut down.⁸⁸ In practice the suggestion concerns third-country nationals. The waiting period in 2005 was between five to 14 months. It is suggested that the demand for a compulsory oral interview with the applicant should be abolished since mostly all documentation already shows that there is a stable relationship between the parties. Hence, a more flexible application of the law is recommended.

Finally, a new Act on ban on discrimination and outrage treatment of children and pupils was suggested by the Government in 2005.⁸⁹ The new act refers to Directive 2000/43/EC on equal treatment and will come into force on April 1, 2006. It should apply to education and other activities embraced by the Swedish School Act.

87 Government's proposition 2005/06:77 Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och om varaktigt bosatta tredjelandsmedborgares ställning.

88 Official report SOU 2005:14 Effektivare handläggning av anknytningsärenden.

89 Government's proposition 2005/06:38 Trygghet, respekt och ansvar – om förbud mot diskriminering och annan kränkande behandling av barn och elever.

Chapter VIII EU enlargement

In 2003 the Swedish Riksdag approved the Government proposition to ratify the Treaty on the enlargement of the EU.⁹⁰ In 2004 the Swedish Riksdag did not approve the Government's suggestion to introduce – for the first two years after the affiliation of the new Member States – certain transition rules for citizens from these States (with the exception for Malta and Cyprus).⁹¹ However, it was stated that the development concerning the immigration from the new Member States should be observed, and a list of measures to be taken in order to follow up the migration from the new Member States was presented by the Government.⁹²

In 2005 the position taken by the Riksdag not to introduce certain transitional rules for citizens from the new Member States has not been changed, and the debate on the matter has apparently decreased. Obviously, a reason is that the statistics on immigration and free movement of persons in 2005 show that the fear expressed in the previous debate, that the immigration from the new Member States would be of considerable proportions, has not been verified (see below!).

Referring to the Swedish social insurance office around 900,000 SEK (around 94,000 Euros) were paid as family benefits to citizens from the new Member States during the period May to December 2004. Around 160,000 SEK (around 16,700 Euros) were paid to citizens from new Member States still having their family members residing in the state of origin.⁹³

Hence, there has not been any great strain on Sweden's welfare system and the welfare costs for citizens from new Member States have been reasonable. In fact, comparatively the number of immigrating relatives referring to a worker, student etc. from a Member State is larger from the "old" Member States.

In 2005 the total number of immigrants from other EU Member States was 18,069 persons, and almost around half of the migrants were nationals from the new Member States in 2004 (see statistics below!). From "old" Member States German citizens are most frequent and from new Member States Polish citizens are the largest number of immigrants.⁹⁴

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. Further, the investigation should also consider the consequences of labour immigration from the new Member States.

In an Official report in 2005 it is suggested that EU citizens should *not* be entitled to social benefits, if it is not a situation of emergency.⁹⁵ However, this restriction should not apply to EU citizens who are workers, involuntary unemployed persons, self-employees or the family members within these categories. The aim of the restriction rule is to put restrictions on the right to social benefits in accordance with the Social Services Act (2001:453) for the period that they seek job in Sweden, and that period could normally be expected to be six months. (For further details regarding the Official report on these matters, see Chapter V and the follow up of the *Collins* case and more.)

The debate in Sweden in 2005 as well as the year before, concerning the enlargement and the new Member States has focused on the free movement of services and the posted workers' wages. Within the building trade there have been many conflicts when contractors from for instance Poland and Latvia have concluded contracts on the Swedish market. Swedish trade unions have declared in-

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

91 Government's communication Regeringens skrivelse 2003/04:119 Särskilda regler under en övergångsperiod för arbetstagare från nya medlemsstater enligt anslutningsfördraget.

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

93 Figures from the Swedish social insurance office presented by Riksdag & Department no. 15/2004, p. 10.

94 Figures presented in December 2004 showed that during the period May 3 – November 7, 2004, 3,197 citizens from the new Member States applied for residence permit referring to employment in Sweden. Compared with the same period in 2003 the increase was around 74 percent. See Government's communication Regeringens skrivelse 2004/05:47 Migration och asylpolitik.

95 Official report SOU 2005:34 Socialtjänsten och den fria rörligheten.

dustrial 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 (1976:580) § 42 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. Later on in *Case 2005 no. 49* (the Laval case) on the same matter, the Labour Court decided to ask the ECJ for a preliminary ruling.

The questions raised by the Labour Court were in principle (1) if it is in accordance with the EC Treaty (the free movement of services and discrimination on grounds of nationality) and the Directive 96/71/EC on the posting of workers, for a trade union to take industrial action in order to make the employer sign a collective agreement, when there are no explicit regulations in Swedish law on the application of working and employment conditions in collective agreements, and (2) if the EC Treaty and the Directive 96/71/EC constitute an obstacle for a trade union to take industrial action in order to make the employer sign a collective agreement, even if the employer already is bound by a collective agreement, although the work in question is not under Swedish law.⁹⁶

Referring to the free movement of services in the EU the Government in 2005 has assigned an ongoing public investigation concerning the Work environment Act (1977:1160; Arbetsmiljölagen) to work out suggestions concerning a reinforced work environment protection, when contractors or sub-contractors are engaged on the Swedish labour market.⁹⁷

96 The extensive debate in Sweden on the case is analysed in Edström, The free movement of services in conflict with Swedish industrial relations model – or was it the other way around? in Nils Wahl & Per Cramér, *Swedish Studies in European Law, Volume 1, 2006*. Hart Publishing, Oxford 2006 (forthcoming; to be published). Concerning the Laval case, see for instance also Maier, L., Tjänstedirektivet, social dumping och de nationella arbetsmarknadssystemen, in *Europarättslig tidskrift*, Volume 8, 2005, pp. 729–750 och Sigeman, T., Fri rörlighet för tjänster, in *Europarättslig tidskrift*, Volume 8, 2005, pp. 465–495.

97 Kommittéedirektiv Committee directions 2005:114 Tilläggsdirektiv till Utredningen om arbetsmiljölagen (N 2004:11).

Chapter IX Statistics

The following table shows the statistical figures on migration from EU Member States to Sweden in 2005 (Nordic countries not included). The figures show the granting of residence permit to a person for the first time.

Statistics on Immigration in 2005 (12 months). SWEDEN
STATISTICS ON GRANTED RESIDENCE PERMITS TO PERSONS FROM EU MEMBER STATES IN 2005 (Referring to the EEA Agreement)
(Granted residence permits)

<i>Nationality</i>	<i>Workers</i>	<i>Self-employed</i>	<i>Provider/reciever services</i>	<i>Students</i>	<i>Relatives</i>	<i>Total</i>
Austria	88	8	8	145	40	289
Belgium	49	1	7	89	42	188
France	267	4	48	608	172	1099
Germany	1250	80	117	1177	1029	3653
Greece	172	7	5	87	69	340
Ireland	64	0	4	19	17	104
Italy	177	5	20	214	72	488
Luxembourg	0	1	0	3	1	5
Netherlands	229	63	22	185	398	897
Portugal	52	1	3	42	28	126
Spain	141	5	24	355	86	611
UK	412	22	57	117	295	903
Total "old" MS	2901	197	315	3041	2249	8703
<i>New MS in 2005 Jan-July:</i>						
Czeck Republic	92	5	90	119	28	334
Cyprus	5	1	0	4	1	11
Estonia	318	12	14	91	83	518
Hungary	196	13	31	52	135	427
Latvia	207	8	18	75	72	380
Lithuania	756	27	13	129	249	1174
Malta	2	2	1	2	3	10
Polen	2809	251	194	281	1496	5031
Slovakia	73	1	46	28	35	183
Slovenia	15	1	1	34	13	64
Total new MS	4473	321	408	815	2115	8132
Others	40	1	15	130	1048	1234
						0
Total	7414	519	738	3986	5412	18069

Source: Swedish Migration Board (February 2006)⁹⁸

(For further details regarding immigration from all countries [except the Nordic countries], see *Appendix*).

98 See http://www.migrationsverket.se/pdf/inter/statistik/statistik_5_2005.pdf

Chapter X Social security

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).

Traditionally, the granting of Swedish (and Nordic) social benefits has been depending 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 Social Security Act mentioned above was taken, the situation was better clarified.⁹⁹ 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 can be foreseen to be clearer following from the new Social Security Act. The reason is the 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.

The State authority in charge of the application of Regulation 1408/71 is the Swedish Social Insurance Agency (Försäkringskassan). Comments on the application of regulations concerning benefits based on work or residence have been published in instructions issued by the former Swedish National Insurance Board (Riksförsäkringsverket).¹⁰⁰ In an instruction issued by the National Insurance Board in 2004 – and now applied by the Social Insurance Agency – there is a general and very short comment on the classification on social benefits in relationship to Regulation 1408/71 and Regulation 1612/68.¹⁰¹ Basically the Regulation 1612/68 embraces workers and their family members, and the right to equal treatment regarding social benefits referring to 1612/68, for instance housing allowance, implies that the worker is residing in Sweden.

Hence, 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 ch. 3 §§ 1 and 2):

- Health care (sjukvård).
- Parent's allowance, basic level (föräldrapenning på lägstanivå och grundnivå).
- Prolonged child allowance (förlängt barnbidrag).
- Disablement benefits (handikappersättning).
- Support for having a car (disabled people).
- Adoption allowance (bidrag vid adoption av utländska barn).
- Special additional pension benefit (to State pension), when taking care of a sick or disabled child (särskilt pensionstillägg vid vård av sjukt eller handikappat barn).
- Assistance allowance (assistansersättning).
- Housing allowance (bostadsbidrag).
- State pension (including early retirement pension [förtidspension]), survivor's pension (efterlevandepension). State pension is depending on how many years you have been living in Sweden.

99 The Government proposition 1998/99:119 Socialförsäkringens personkrets was presented before the Riksdag in May, 1999.

100 See Riksförsäkringsverket, *Tillämplig lagstiftning, EU, socialförsäkringskonventioner, m.m.* Vägledning 2004:11, Stockholm 2004 and Riksförsäkringsverket, *Försäkrad i Sverige genom bosättning eller arbete.* Vägledning 2002:2, Stockholm 2002. The instructions are available on the website <http://www.forsakringskassan.se/press/publikationer/vagledningar/index.php>.

101 Riksförsäkringsverket, *Tillämplig lagstiftning, EU, socialförsäkringskonventioner, m.m.* Vägledning 2004:11, Stockholm 2004, pp. 35 f. (In the instruction there is an explicit reference to the Regulation 1612/68, article 7.)

For a full pension the requirement is 40 years of living in Sweden. (The basic requirement is 3 years.)

- Additional pension benefit (pensionstillskott).
- Housing supplementary allowance for pensioners (bostadstillägg för pensionärer).
- Maintenance benefits (underhållsstöd).
- Guarantee pension (statlig garantipension).
- Rehabilitation (referring to the Act 1962:381 on public insurance ch. 22).
- Handicap allowance and Care allowance (handikappersättning och vårdbidrag).
- Allowance for elderly (älderförsörjningsstöd) more than 65 years of age.

In order to be entitled to the following social entitlements, 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, beyond the basic guarantee level.
- Temporary parents' allowance (for instance if the child is sick).
- Supplementary pension as early retirement pension and survivor's pension (depending on the number of years you have been working; each year in work bring you pension points).
- Rehabilitation and rehabilitation benefit (for industrial injury).

Further, a person working in Sweden is also comprised by

- The industrial injury insurance (arbetsskadeförsäkring).
- Compensation for taking care of a member of the family (närståendevård).
- Income based old-age pension.

Unemployment benefit is an important part of the social security. Basically the Swedish unemployment insurance consists of a basic insurance level and income reduction based level (the Act 1997:238 on unemployment insurance §§ 6 and 7; Lag om arbetslöshetsförsäkring). In order to be entitled to the unemployment benefit in Sweden there are certain prerequisites that must be fulfilled. In accordance with the Act § 12, the applicant should have been a registered member of the unemployment benefit fund for at least twelve months, and during the last twelve months he should have been working (including sickness period, holidays and more) for at least 70 hours per month during at least six months within the latest twelve months period.¹⁰² In accordance with the Act § 3 a person must fulfil the stipulated requirements to be entitled to benefits, if nothing else follows from Regulation 1408/71. (Concerning unemployment benefits and students, see Chapter VI above.)

As shown above concerning the unemployment benefit there are 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 been living 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.)

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.¹⁰³ Hence, the national pension system consists of

102 An alternative is that the applicant has been working for at least 450 hours during a six months period (and at least has been working at least 45 hours per month).

103 Government proposition 97/98:151 Inkomstgrundad ålderspension, m.m. In accordance with the former pension system a basic pension (folkpension) was awarded to all residents. There was also a general additional pension (allmän tilläggspension, ATP) amounting to 60 percent of previous earnings to an upper limit

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

A person might have *additional pensions* as 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 employees are covered by one of these collective pension systems and that is a reason for why there are almost no special company schemes.¹⁰⁴

Regarding pensions referring to a collective agreement, an employer should have the same right to make tax reductions when the employer, referring to a collective agreement on occupational (or service), deposits money to a foreign pension institutes as if the money was deposited to a Swedish institute.¹⁰⁵ (See also Chapter III above!)

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. Individuals born in 1954 or later will have their entire pension from the new system. People born in 1938–1953 will partly have their pension 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 guaranteed pension is awarded only to those who have not obtained an earning-based pension that amounts to the guaranteed level (6,850 SEK per month). 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.¹⁰⁶ 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).

Recent legal literature

Paju, Jaan, Free Movement of Persons within the European Community – Cross-Border Access to Public Benefits, A. Pieter van der Mei, in *Europarättslig tidskrift*, Volume 8, 2005, pp. 195–198. (Book review.)

Vahlne Westerhäll, L., *Den svenska socialförsäkringen efter EU-inträdet*, in Ahlberg, Kerstin (editor), "Tio år med EU - effekter på arbetsrätt, partsrelationer, arbetsmarknad och social trygghet", *Arbetsliv i omvandling 2005:5*, Arbetslivsinstitutet, Stockholm 2005, pp. 113–140.

and the level was also linked to a price index. The qualifying time for full additional pension was thirty years and the amount was based on “the best 15 years”.

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

105 Government’s proposition 2005/06:22 Skattefrågor med anledning av tjänstepensionsdirektivet.

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

Chapter XI

Establishment, provision of services, students

Text in force

- Utlänningsförordningen (1989:547), (the Aliens Ordinance) ch. 3.

Establishment

An EU/EEA citizen who wants to establish himself in Sweden must show a proof on his status, for instance by showing a so called F-demand note (F-skattesedel) issued by the Swedish tax authority. A person who fulfils the requirement should be granted a residence permit for a five year period. If the self-employed should become a pensioner during the five year period he or she normally should have a right to stay in Sweden after three years (two years if the reason is a lasting inability to work) and if the person has been working for the last 12 months.

Students. In order to be granted a residence permit as a student the applicant must present a proof of an appointment to an education and that he or she will study in Sweden. Further, the student must show that he or she will provide for him or herself. The residence permit will be granted for the education period. If the education will last longer than one year, the residence permit can be renewed after one year. Further, the applicant must show proof that he or she has a health insurance valid in Sweden. The student has the right to work during the study period.

In an Official report in 2005 it was stated that around a quarter of the foreigners from certain third-countries that have been granted a residence permit for higher education in Sweden never register themselves at a university or other higher education.¹⁰⁷ The Migration Board means that it could be a way to get round the regulations on immigration within the Schengen States. Among the foreign students that register themselves at universities around 60 percent have been qualified for point in the higher education system. An amendment is suggested meaning that the residence permit should be revoked for a person that has been granted residence permit for studies but do not register in higher education.

Provision of services

A provider of services (or a receiver of services) must show a proof of his or her status, for instance by showing a certificate or an agreement. The certificate etc. should show the kind of services that will be provided (or received) and the time period. A residence permit will be granted for the period that the services will be provided (or received).

In 2005 an Official report suggested that women from other Member States should have the right to abortion in Sweden without presenting any particular reasons for the operation.¹⁰⁸ The only condition should be that the woman's sickness insurance in her State of origin will pay for the measure taken. The amendment means that abortion is looked upon as any other nursing activity.

Concerning the Laval case (Swedish Labour Court Case 2005 no. 49) there was an extensive debate in 2005 regarding the application of the Swedish trade unions' right to collective action when a foreign service providing firm from Latvia was posting workers in Sweden.¹⁰⁹ (See also above Chapter VIII.)

107 Official report Ds 2005:36 Genomförande av EG-direktivet om uppehållstillstånd för studier. (The Ministry of Foreign Affairs.)

108 Official report SOU 2005:90 Abort i Sverige.

109 See Lag & avtal, 2005.

Recent legal literature

Edström, Ö., The free movement of services in conflict with Swedish industrial relations model – or was it the other way around? in Nils Wahl & Per Cramér, *Swedish Studies in European Law, Volume 1, 2006*. Hart Publishing, Oxford 2006. (Around 30 pp. To be published in 2006.)

Lag och avtal (annual volume 2005; a periodical on labour law; in 2005 an extensive debate on the Laval case was published).

Maier, L., Tjänstedirektivet, social dumping och de nationella arbetsmarknadssystemen, in *Euro-parättslig tidskrift*, Volume 8, 2005, pp. 729–750.

Sigeman, T., Fri rörlighet för tjänster, in *Europarättslig tidskrift*, Volume 8, 2005, pp. 465–495.

Chapter XII Miscellaneous

The conference on the theme “ten years with EU”, organized by the Swedish Working Life Institute (Arbetslivsinstitutet), was held in Stockholm in January 2005.

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- Government proposition 1997/98:109 *Yrkesverksamhet på hälso- och sjukvårdens område*.
- Government proposition 1997/98:151 *Inkomstgrundad ålderspension, m.m.*
- Government proposition 1998/99:119 *Socialförsäkringens personkrets*.
- Government’s proposition 2004/05:137 *Assisterad befruktning och föräldraskap*.
- Government’s proposition 2004/05:170 *Ny instans- och processordning i utlännings- och medborgarskapsärenden*.
- Government’s proposition 2005/06:43 *Legitimation och skyddad yrkestitel*.
- Government proposition 2004/05:162 *Ny värld – ny högskola*.
- Government’s proposition 2005/06:77 *Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och om varaktigt bosatta tredjelandsmedborgares ställning*.
- Ingmanson, S., *Erkännande av yrkeskvalifikationer inom EU*. Skrifter från juridiska institutionen vid Umeå universitet No 11/2005, Umeå 2005. (Dissertation 330 pp.)
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