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REPORT
on the Free Movement of Workers in Sweden in 2007

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Introduction

This report deals with Sweden and the free movement of workers in the European Union (EU) during the year 2007. The report focuses on the application of Council Regulation 1612/68 and issues related to Directive 2004/38 and more within the framework of the EC Treaty, Article 39.[1] Legal amendments in Swedish law will be in focus concerning the right to enter and stay in Sweden, access to employment and equal treatment.

The report also deals with equal treatment and access to work, matters concerning family members in connection with workers from other Member States, the relationship between Regulation 1612/68 and Regulation 1408/71 concerning social security and more.[2] Further, we will follow up recent case law from the ECJ, EU enlargement issues will be illuminated and statistical figures concerning the free movement of workers will be accounted for.

Amendments in Swedish national legislation and judicial practice are dealt with as well as draft legislation and judicial practice. Further, we will particularly comment on the access to employment in the public sector. Published literature in 2007, articles in periodicals etc. on the matters dealt with are listed.[3]

Special attention will also 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, and the same position has been taken by Sweden concerning the new Member States in year 2007: Rumania and Bulgaria.

The most significant amendment in Swedish law concerning the free movement of workers in year 2007 has been the transposition of Directive 2005/36/EC.[4] Amendments have been made in law, ordinances and State authorities' statutes concerning most regulated professions in Sweden (see Chapter II).

Concerning procedural matters it is the Migration Board that deals with applications for right of residence etc. Appeals against decisions taken by the Migration Board should in the first phase be dealt with in any of the three Immigration Courts, and the Supreme Immigration Court is the final legal instance for appeal.

(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.)

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

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

3 The following juridical periodicals have been examined systematically: Svensk Juristtidning (SvJT), Juridisk Tidskrift (JT), Svensk skattetidning, Skattenytt, Ny juridik, Europarättslig Tidskrift (ERT), Från riksdag och departement, Lag & avtal, Arbetsmarknad och arbetsliv and Förvaltningsrättslig tidskrift. In the periodicals listed recent case law from the European Court of Justice is regularly presented.

4 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications. OJ L 255, 30.9.2005. (See also corrigendum to the Directive; OJ L 271 , 16/10/2007, pp. 18-19.) Concerning year 2007 as a year characterized by low activity regarding the free movement of workers, compare Government's communication 2007/08:85 Berättelse om verksamheten i Europeiska unionen under 2007.

Chapter I
Entry, Residence, Departure

1. ENTRY

In principle foreigners should show a passport before entering Swedish territory (the Aliens Act ch. 2 § 1). Concerning EEA citizens (and Swiss citizens) and their family members, an identity card should be accepted for entry and stay in Sweden (the Aliens Ordinance Ch. 2 § 17; compare the Directive 2004/38, article 5.1).

Restrictions on the right to enter Sweden could be imposed referring to public order or security. Concerning refused entry referring to health there are in general no such regulations in Swedish law, even if there is a regulation also referring to public health in the Aliens Ordinance that makes it possible to refuse entry for a third-country national that is living in another Member State and applies for residence permit in order to work temporary in Sweden (the Ordinance ch. 4 § 7).

A sending away decision should not be taken based on the fact that the EU citizen or his or her family members cannot show a passport or identity card, if the identity could be confirmed in any other way (compare the Directive 2004/38, article 5.4). A person who is a family member should have a possibility to show his or her identity in another way. Further, the family member cannot be refused entry if the EU citizen can prove his or her identity and the relationship and if the person concerned is not a threat to public order, security or health.[5]

There is no requirement for *visa* for EU citizens having a residence card (uppehållskort). (See the Aliens Ordinance ch. 3 §1.15.) (Further, concerning family members that are not EU citizens, see Chapter V.)

Concerning visas, the visa rules of the Schengen Agreement should 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 and stay in Sweden for three months without a visa.[6] The calculation of the three months period is in accordance with the Schengen Convention.

2. RESIDENCE

The right of residence in accordance with Directive 2004/38 is regulated in the Aliens Act ch. 3a which was introduced referring to the Directive.[7]

The term right of residence was introduced in the Aliens Act ch. 3a § 1 in 2006. The term right of residence means a right for EU citizens and their family members to stay in Sweden for more than three months without a residence permit.[8] The right of residence

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5 Government's proposition 2005/06:77 Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och varaktigt bosatta tredjelandsmedborgares ställning, p. 66, explicitly referring to Case C-459/99 *Mrax*

6 A full list of countries where there are no visa requirements can be found in the Aliens Ordinance ch. 3 § 1 (amendment in 2006). See also Official report SOU 2005:49 Unionsmedborgares rörlighet inom EU, p. 89.

7 Government's proposition 2005/06:77.

8 Introduced through Act 2006:219. Government's proposition 2005/06:77, p. 70 ff.

should be granted immediately if the requirements are fulfilled and should remain for as long as the requirements are fulfilled.

In the Aliens Act ch. 3a §§ 3 and 4 there are further specifications of the categories embraced by the right of residence.[9] They are workers, self-employees, job seekers having a real chance to get a job, students or other persons having sufficient means for maintenance for themselves and family members, and, further, a health insurance also covering accompanying family members.

An EU citizen with a right of residence should register at the Migration Board if he or she has the intention to stay in Sweden for more than three months (the Aliens Act ch. 3a § 10). However, from the Aliens Act ch. 3a § 10 it follows that the obligation to register does not embrace job seekers, even if the stay is more than three months.[10]

As stated above the possibility of expelling a person that does not correspond to the requirement to have sufficient means for staying in Sweden should not apply to EEA citizens (the Aliens Act ch. 8 § 2; compare the Directive 2004/38, article 6.1). However, in accordance with the Directive a Member State might expel a person if he or she becomes "an unreasonable burden on the social assistance system" (article 14.1).[11]

Later on the Aliens Act ch. 8 § 2 was amended meaning that an EU citizen who has not been qualified for a right of residence – which means that the stay is less than three months – could be expelled if he or she is an unreasonable burden to the social system.[12]

However, there is an exception for workers, self-employees, those in search of work as well as family members of those categories. In the coming practice regarding job seekers a key issue is the criteria for being a job seeker since the definition in the Directive also embraces that the person should have a chance to get a job (compare the Directive article 14.4b). (During the year 2007 this matter has not been dealt with in the legal practice.)

A foreigner with a right of residence should have this right as long as the preconditions are fulfilled. Otherwise or if the foreigner will not be granted a residence permit, the foreigner could be expelled referring to the Aliens Act ch. 8 § 7.[13]

An EU citizen and his or her family members (if they are third-country nationals; see also Chapter V) should be granted a *permanent right of residence* after five years stay without interruption (the Aliens Act ch. 3a §§ 6 and 7). However, temporary stay abroad up to six months or military service for a longer period should not influence the calculation of the five-year period (§ 8).

Further, temporary stay abroad up to twelve months for studies or vocational training, maternity and childbirth, serious illness, posting of the worker or any other particular reason, should not be considered as a break of the five-year period.[14]

The Migration Board is in charge of issuing the documents giving proof of the right of residence (the Aliens Ordinance ch. 3a §§ 7–10). A foreigner that applies for a right of residence should show a passport or identity card and documents showing his or her status as a worker etc., and that he or she has sufficient means and a health insurance. Concerning family members they must show proof of the relationship. If the application is for a permanent

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9 Government's proposition 2005/06:77, p. 70 ff.

10 Government's proposition 2005/06:77, p. 110.

11 Compare the Official report SOU 2005:34 Socialtjänsten och den fria rörligheten, presented in 2005 referring to, among others, the *Collins* Case C-138/02.

12 Government's proposition 2005/06:77, pp. 72 f.; compare pp. 193 ff.

13 Concerning the use of the terms expulsion and turning away (or rejection or turn back), see Government's proposition 2005/06:77, p. 74 ff.

14 Further specifications are presented in the Aliens Ordinance ch. 3a §§ 5 and 6.

right of residence the applicant must show proof of the length of the stay and – if relevant – proof of the relationship. (Further, concerning family members, see also Chapter V.)

3. DEPARTURE

The possibility to *expel* a person that does not correspond to the requirement to have sufficient means for staying in Sweden should not apply to EEA citizens (compare the Directive 2004/38, article 6.1). Neither should a family member that is not an EU citizen him or herself be turned away referring to insufficient means.[15]

A foreigner that has a right of residence may be expelled from Sweden referring to public order or security (the Aliens Act ch. 8 § 7a).[16] If the foreigner has a permanent right of residence there must be particular reasons for such a decision, and if the foreigner has children in Sweden or has been staying in Sweden for the last ten years, he or she may be expelled only if the measure is absolutely necessary for public security. (EU citizens cannot be expelled referring to the health criteria.)[17]

4. REMEDIES

A decision of a police authority on refusal-of-entry may be appealed to the Migration Board (the Aliens Act ch. 14 § 2). A decision taken by the Migration Board may be appealed to a migration court, if the decision entails, for instance, a rejection of an application for a visa or withdrawal of a visa from a foreigner who is a family member of an EEA national, though not an EEA national him- or herself (the Aliens Act ch. 14 § 3). In general, a decision of a migration court is appealed to the Migration Court of Appeal (the Aliens Act ch. 16 § 9).

A foreigner who is entitled to appeal against a refusal-of-entry (or expulsion) order can declare that he or she will refrain from appealing against that part of the order or judgment; i.e. declaration of acceptance, that cannot be withdrawn (the Aliens Act ch. 15 §§ 1 and 3).

When a police authority has made a refusal-of-entry order or has enforced a refusal-of-entry or expulsion order referring to the Aliens Act ch. 8, the Migration Board should immediately be informed (the Aliens Ordinance ch. 7 §§ 2 and 3). Further, there are regulations concerning information between State authorities when decisions on refusal-of-entry etc. have been taken by the Migration Board or a migration court (see for instance the Aliens Ordinance ch. 7 § 4).

Texts in force

- Utlänningslagen (2005:716), the Aliens Act.[18]
- Utlänningsförordningen (2006:97), the Aliens Ordinance.[19]
- Passlagen (1978:302), the Passport Act.

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15 Government's proposition 2005/06:77, pp. 61 and 64.

16 Government's proposition 2005/06:77, p. 76.

17 Government's proposition 2005/06:77, p. 78.

18 The new Aliens Act came into force on March 31, 2006, replacing the former Aliens Act 1989:529. Government's proposition 2004/05:170 Ny instans- och processordning i utlännings- och medborgarskapsärenden.

19 The Aliens Ordinance came into force on April 30, 2006, replacing the former Aliens Ordinance 1989:547.

- Lagen om särskild utlänningskontroll (1991:572), the Act on special control of foreigners.

Draft legislation, circulars, etc.

In 2007 a public investigation presented a proposal meaning that persons that are not Swedish citizens but have the right to settle in Sweden should be entitled to get an identity card issued by the Swedish state.[20] The introducing of such an identity card will for instance facilitate for persons belonging to the target group to open a bank account in a Swedish bank. Further, a precondition for the right to obtain the suggested identity card should be that the person is registered in Sweden.

Judicial practice

In the year 2007 the Migration Supreme Court took 62 final decisions.[21] Most cases are dealing with third-country nationals and many cases deal with procedural matters of general interest. However, there are a couple of cases that are relevant in a free movement of persons perspective.

A third-country national that is a relative to an EES citizen should show a valid passport in order to confirm a right to residence. Further, such a person should have the right to confirm his right to residence before a decision concerning expulsion is taken (The Migration Supreme Court Case UM991-07).[22]

When a foreigner applies for a residence permit and refers to a connection to a Swedish citizen, and if this Swedish citizen is not settled in Sweden, there should be a requirement meaning that the Swedish citizen must have expressed a concrete intention to settle in Sweden in the near future (Migration Supreme Court Case UM356-07).

Miscellaneous (administrative practices, etc.)

Nothing to report.[23]

Recent legal literature

Diesen, C., et al, *Prövning av migrationsärenden. Bevis 8*, Stockholm: Norstedts 2007.

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20 Official report SOU 2007:100 Id-kort för folkbokförda i Sverige.

21 The judicial practice concerning these matters are available at http://www.rattsinfosok.dom.se/lagrummet/index.jsp.

22 Compare Case UM2261-07 referring to Directive 2004/38/EC, article 31; a decision on expulsion should be preceded by an investigation concerning if the foreigner is entitled to residence.

23 In 2007 the Migration Board has issued seven new regulations or amendments of previous regulation for the Board's dealing with migration matters. However, none of these regulations are concerning EU and free movement of workers matters.

Chapter II
Access to Employment

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

For certain posts in the public sector, especially in the Swedish State, Swedish citizenship is required (see Chapter IV). In the private sector nationality requirements can be upheld only if the employment is regulated by the Security protection Act (Säkerhetsskyddslagen 1996:627). This is the case if the work is subject to certain restrictions referring to the need of security protection, i.e. protection against espionage, sabotage and other crimes that might threaten State security.

However, the most important restrictions for access to employment – in the private as well as in the public sector – are the rules making access dependent on authorisation and/or the possession of a certain diploma, showing that the applicant has the necessary professional qualifications (see section 3 below).

Concerning the right to assistance from employment agencies, there are no restrictions regarding EU citizens and other categories taking advantage of the right to free movement (compare Regulation 1612/68). The starting point for the employment agency is the "customer's" need, i.e. the employer recruiting employees, and the agency does not primarily consider the rationality or the nationality of the person in search of work.

2. LANGUAGE REQUIREMENT (IN PRINCIPLE RELATING TO THE PRIVATE SECTOR)

The EC position on language requirements is that they must be proportionate, i.e. they must not go beyond what is necessary to perform the actual work. Sufficient knowledge in the Swedish language is a prerequisite for employment as a teacher for an indefinite term in public schools. However exceptions are made for applicants with Swedish, Danish, Faeroese, Icelandic or Norwegian as their mother tongue (see also Chapter IV, section 1.2).

In the private sector language requirements are not regulated by law. However, they can be used as a requirement for access or promotion by a private employer on condition that they do not interfere with Swedish discrimination law or Community law.

3. RECOGNITION OF DIPLOMAS (INCLUDING THE ACADEMIC DIPLOMAS) AND INITIATIVES TO TRANSPOSE THE DIRECTIVE 2005/36/EC

The Swedish Instrument of Government (ch. 2 § 20) reads:

> Restrictions affecting the right to trade or practice a profession may be introduced only in order to protect pressing public interests and never solely in order to further the economic interests of a particular person or enterprise.

The quote concerning the protection of the freedom of establishment explains in part why there are comparatively few regulated professions in Sweden. Another explanation is that

restrictions to the right to trade or practice a profession, as a general rule, have to be based on law.[24]

As regards the regulated professions, the basic professional qualification requirements are in general laid down in law, while the more detailed rules are further developed in governmental ordinances and regulations adopted by administrative authorities under the Government. These authorities also perform the functions of "competent authorities" in the meaning of Directive 2005/36/EC. The health-care sector, where the bulk of regulated professions is found, may serve as an example. (Regarding the health-care sector, see also Chapter IV, section 1.2 concerning language requirements.)

In order to get an authorization to practice one of the 21 professions listed in ch. 3 § 2 of the Act (1998:531) on Professional Activity in Health and Medical Services (lag om yrkesverksamhet på hälso- och sjukvårdens område), the applicant must hold a specific diploma.[25] This provision is complemented by the Ordinance on Professional Activity in Health and Medical Services[26] which, *inter alia*, contains rules on professional training and, further, by more detailed regulations adopted by the National Board of Health and Welfare. These regulations are published in the Board's statute-book (Socialstyrelsens författningssamling, SOSFS).

Like its precursors Directive 2005/36/EC on the recognition of professional qualifications has been implemented through amendments to existing legislation regulating access to the regulated professions. In the health-care area, amendments have been made to the above mentioned governmental ordinance.[27] Further, in year 2007 the National Board of Health and Welfare issued a new regulation on the matter.[28]

Modifications have also been made in laws, governmental ordinances and regulations concerning the access to the other regulated professions covered by Directive 2005/36/EC. The professions concerned are lawyers,[29] authorized interpreters, authorized translators,[30] fire-protection supervisors,[31] electricians,[32] real estate agents,[33] teachers in public schools,[34] driving instructors,[35] veterinary surgeons,[36] and security guards.[37]

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24 See Government's proposition 1993/94:117 Inkorporering av Europakonventionen och andra fri och rättighetsfrågor, p. 21.

25 The listed professions are audionom (audionom), pharmacist (apotekare), occupational therapist (arbetsterapeuter), midwife (barnmorska), biomedical analysts (biomedicinsk analytiker), dietitian (dietist), chiropractor (kiropraktor), speech therapist (logoped), doctor (läkare), naprapath (naprapat), optician (optiker), orthopaedist engineer (ortopedingenjör), psychologist (psykolog), psychotherapist (psykoterapeut), dispenser (receptarie), X-ray nurse (röntgensjuksköterska), physiotherapist (sjukgymnast), hospital physicists (sjukhusfysiker), nurse (sjuksköterska), dental hygienist (tandhygienist) and dentist (tandläkare).

26 Förordning (1998:1531) om yrkesverksamhet på hälso- och sjukvårdens område.

27 Förordning (1998:1531) om yrkesverksamhet på hälso- och sjukvårdens område, ch. 7 §§ 5, 8, 9, 10, 11, 13, 14, 15 and 16, and further Ch. 7 §§ 10 a, 11a and 11b.

28 The National Board's of Health and Welfare SOSFS 2007:23 (reference to the the statute-book).

29 The Code of Judicial Procedure (Rättegångsbalken), ch. 8 § 2; The statutes for the Swedish bar association (Sveriges advokatsamfund) § 3, amended in accordance with the Government's decision, see SFS 2007:05.

30 Förordning (1985:613) om auktorisation av tolkar och översättare, 4 § .

31 Förordning (2003:789) om skydd mot olyckor; SRVFS 2007:3, ch. 3 §§ 10 and 11 §§.

32 Elinstallatörsförordningen (1990:806); ELSÄK-FS 2007:2, § 9.

33 Fastighetsmäklarlagen (1995:400) §§ 6, Fastighetsmäklarförordningen (1995:1028) 9 and 10 §§; KAMFS 2005:3, FMN 2005:1.

34 The School Act (1985:1100) ch. 2 § 4, Förordning (1999:1421) om behörighetsbevis för lärare; HSVFS 2007:7.

35 Lag (1998:493) om trafikskolor § 4, Förordning (1998:978) om trafikskolor § 10, VVFS 2007:304.

36 Lag (1994:844) om behörighet att utöva veterinäryrket §§ 1–3, Förordning (1994:845) om behörighet att utöva veterinäryrket m.m. §§ 1 and 2; SJVFS 2003:35 and SJVFS 2007:68.

At the end of 2007 Sweden has notified the Commission about the measures taken in order to implement the directive as regards all the regulated professions except for real estate agents and security guards. The measures necessary to adjust these two professions to the new directive have been presented in a governmental memorandum.[38]

Texts in force

Laws

- Regeringsformen (1974:152), the Instrument of Government.
- Lag (1994:260) om offentlig anställning, the Act on Public Employment.
- Lag (998:531) om yrkesverksamhet på hälso- och sjukvårdens område, the Act on Professional Activity in Health and Medical Services.
- Rättegångsbalken (1942:740), the Code of Judicial Procedure.
- Lag (2003:778) om skydd mot olyckor.
- Skollagen (1985:1100), the School Act.
- Lag (1994:844) om behörighet att utöva veterinäryrket, the Act on the qualifications for the veterinarian profession.
- Lag (1998:493) om trafikskolor, the Act on driving schools.

Ordinances

- Förordning (1998:1513) om yrkesverksamhet på hälso- och sjukvårdens område, the Ordinance on Professional Activity in Health and Medical Services.
- Förordning (2007:1121) med instruktion för Elsäkerhetsverket.
- Förordning (1999:1421) om behörighetsbevis för lärare med utländsk utbildning.
- Förordning (2003:7) med instruktion för Högskoleverket.
- Elinstallatörsförordningen (1990:806).
- Förordning (1997:652) med instruktion för Vägverket.
- Förordning (1985:613) om auktorisation av tolkar och översättare.
- Förordning (1998:978) om trafikskolor.
- Förordning (2003:789) om skydd mot olyckor.
- Förordning (1994:845) om behörighet att utöva veterinäryrket.
- Förordning (1994:2035) om vissa skyldigheter för myndigheter vid ett medlemskap i Europeiska unionen.

Regulations issued by state authorities (the authorities' statute-books)

- Socialstyrelsens författningssamling (SOSFS) 2004.10 (M).
- Socialstyrelsens författningssamling (SOSFS) 2007:23.
- Statens Räddningsverks författningssamling (SRVFS) 2007:3; 2007:686.
- Elsäkerhetsverkets föreskrifter (Elsäk-FS) 2007:2.
- Högskoleverkets författningssamling (HSVFS) 2007:7.

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37 Lag (1974:119) om bevakningsföretag § 1; Förordning (1989:149) om bevakningsföretag § 6; RPSFS 2006:15 – FAP 579-2.

38 Official report Erkännande av yrkeskvalifikationer för fastighetsmäklare och väktare – genomförande av ett EG-direktiv. JU2007/9676/PO,L2.

- Vägverkets författningssamling (VVFS) 2007:307.
- Statens jordbruksverks författningssamling (SJVFS) 2007:35; 2007:68.
- Advokatsamfundets stadgar.

Draft legislation, circulars, etc.

In May 2007 a public investigation presented an official report concerning the implementation of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.[39] The directive, which should have been implemented not later than 29 June 2008, regulates inter alia, approval, continuing education and mutual recognition of auditors and audit firms. The same month another public investigation was presented, and the proposal from the committee was that a new act on voluntary authorisation on patent attorneys should be introduced.[40] In accordance with the proposal, the act – that must be taken by the Riksdag – should include provisions stating that a person who has been authorised is subject to professional secrecy regarding information received from his clients.

Worth mentioning is also a committee report from November 2007 which proposes new rules for recognition of professional qualifications in the health-care sector with respect to third-country nationals.[41] The aim of the proposed legislation is to make the best use of immigrants with an academic degree in order to enhance welfare and reduce unemployment.

Judicial practice

As regards access to employment (or rather professional training) the ECJ Case C-40/05 *Lyyski* should be mentioned. The case concerned a Swedish citizen resident in Finland who worked in a Swedish-speaking senior school in Åbo (Finland). Mr Lyyski applied for a course as part of the special teacher training programme (STT) at Umeå University in Sweden. The SST programme had been launched by the Swedish Government with the view to train a greater number of teachers in the light of the fact that, on the one hand, the number of students was significantly increasing and, on the second hand, that many teachers were about to retire.

However, the application was rejected since – according to the University's interpretation of the SST regulation – the applicant had to be employed at a Swedish school where he could complete the practical part of the course. Mr Lyyski appealed to the Board of Appeals for Higher Education against the decision. The Board asked the ECJ whether the requirement of employment in a Swedish school could be considered justified and proportional.

The ECJ settled the case referring to Article 39 of the Treaty. It ruled that Community law does not preclude national legislation which organizes, on a provisional basis, training courses intended in the short term to meet the need for qualified teachers in a State from requiring candidates to be employed in a school in that State. However, the manner in which that legislation is applied must not lead to the exclusion, as a matter of principle, of all applications made by teachers who are not employed in such a school without prior individual assessment of the merits of those applications.

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39 Official report SOU 2007: 56 Revisionsutskott m.m. Genomförande av 2006 års revisorsdirektiv.

40 Official report SOU 2007:27 Auktorisation av patentombud.

41 Official report Ds 2007:45 Vägen till svensk legitimation för personer med hälso- och sjukvårdsutbildning från tredje land.

According to the ECJ, an assessment should be made in the light, inter alia, of the aptitude of the person concerned and the possibility of monitoring the practical part of the training received or possibly of exempting that person from it. The Board of Appeals for Higher Education subsequently found the university's decision contrary to Community law and remitted the case for a new decision.

Recent legal literature

Ingmanson, S., Erkännande av yrkeskvalifikationer inom EU – det svenska perspektivet, in Edström, Ö. (ed.), *Svensk rätt i EU*, Iustus Förlag, Uppsala 2007,pp. 199–224.

Ingmanson, S., Migrerande studenter: välfärdsturister eller framtidsbyggare?, *Europarättslig Tidskrift (ERT)*, 2007, p. 241–274.

Roberts, K. & Lindahl, K., Comment to case C-40/05 Lyyski, *Europarättslig Tidskrift (ERT)*, 2007, pp. 480–482.

Chapter III
Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS, SOCIAL AND TAX ADVANTAGES (DIRECT, INDIRECT DISCRIMINATION)

Working conditions

From the Instrument of Government follows that public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the private person (ch. 1 § 2). The public institutions shall also combat discrimination of persons on grounds of, inter alia, national or ethnic origin and linguistic affiliation (ch. 1 § 3). The more detailed rules on discrimination, which also can be invoked against private employers and rules in collective agreements, are laid down in different legal acts. However, these acts do not role out discrimination on grounds of (EU) nationality as regards working conditions and social and tax advantages. In this case the direct effective provisions of Regulation 1612/68 should apply.

Social and tax advantages

According to Article 7.2 of Regulation 1612/68 migrating workers shall enjoy the same social and tax advantages as workers from the host Member State. Since this article has direct effect there is no specific national legislation intended to implement it.

Another central Community rule on the subject is Article 24 of Directive 2004/38/EC, according to which migrating workers and members of their families shall enjoy equal treatment with nationals of the host state. However, the host state shall not be obliged to confer entitlement to social assistance during the first three months of the stay, an exception that has no counterpart in Swedish law.

Concerning the right to social assistance the Social Protection Act makes no difference between Swedish nationals and nationals from other Member States.[42] The decisive criterion is that the person seeking social assistance is lawfully resident in Sweden. Nationals from other Member States with the status of Community workers and members of their families should also enjoy equal treatment as regards student grants and student loans.[43]

As regards tax advantages, two recent judgments from the ECJ form the background to a governmental proposal on new rules concerning tax deductions and tax exemptions for payments to pensions founds established in other Member States (see also the section below concerning Draft legislation).[44]

2. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS?

Nothing to report.

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42 The Social Services Act (2001.453), ch. 4 § 1.

43 The Study loan Act (1999:1395), ch. 1 §§ 4 and 5.

44 The ECJ cases referred to is Case C-150/04 *Commission v. Denmark* and Case C-522/04 *Commission v. Belgium*.

3. SPECIFIC ISSUES: FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES), SPORTSMEN/SPORTSWOMEN, MARITIME SECTOR, RESEARCHERS, ARTISTS

Frontier workers

In Scandinavia there is a long tradition of free movement of workers with families and the Nordic countries have developed a far going co-operation establishing an open Nordic labour market.[45] Today the Nordic labour market is regulatory dominated by Community law.

The most significant development today is relying on the Öresund bridge between Malmö and Copenhagen. In the southern part of Sweden cross border working between these cities has developed very fast, and in the region around 10,000 persons are regularly commuting between Sweden and Denmark as frontier workers. Ninety percent of those frontier workers are living in the Skåne province and are commuting to Copenhagen.[46]

Many – especially Danish citizens – have also moved to their neighbouring country Sweden, but they still work in Denmark commuting from Sweden. In the year 2005 around 3,500 Danish settled in Sweden. The main reasons – beyond the Öresund bridge – are lower living costs including cheaper houses in Sweden.[47]

In October 29, 2003, the Danish and Swedish Governments signed an agreement on certain tax matters. The agreement should facilitate commuting between the two Member States in the Öresund region. In the main the agreement concerns frontier workers commuting between Sweden and Denmark. Tax reductions for travelling between the countries for work should be granted even in Denmark. Workers and commuters moving between the countries should be granted tax reduction for pension insurances paid in the other country.

Further, in accordance with the agreement income should – as previously – be subject to taxation in the country where the work is done. Concerning compensation, the state where the work is performed should pay an amount for the levelling out tax income between Sweden and Denmark. Considering the commuting patterns, for 2007 Sweden was estimated to receive around 270 million SEK from Denmark, and the money should be transmitted to Swedish local communities and county councils in the area.

The Öresund committee (Öresundskomitteen) is an organised political platform for the development of further integration, strengthening the infrastructure, accessibility and integration through culture and more. Many projects of co-operation have been conducted between Denmark and Sweden and there is an ongoing economical integration within the region. Further, the committee has published a number of reports concerning, for instance, regional statistics, residence market, commuting and future perspectives.[48]

The labour market in the region embraces in the main the Danish Copenhagen area and the Malmö area in Sweden. In both countries also the surrounding local municipalities and

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45 See Kruse, *Den gemensamma nordiska arbetsmarknaden och EU*, Köpenhamn 1997.

46 The figures are very roughly estimated, see Öresundspendlarna, Öresundsbro konsortiet & Öresundskommittén, January 2006, available at http://www.oresundskomiteen.dk/regionen-i-siffror/se/publikationer/pendlereSV.pdf For more statistical figures concerning commuting between Denmark and Sweden, see http://www.oresundskomiteen.dk/neobuilder.php?id=20041012163232640000056251.

47 For further details, see the report *Bro, bostad, bil och kärlek – ökar flyttströmmen från Danmark till Skåne* (published by Malmö stad, Migrationsverket, Region Skåne, Skatteverket, Öresundskomitteen, February 2006) available at http://www.oresundskomiteen.dk/regionen-i-siffror/se/publikationer/bro_bil_bostad_karlek.pdf.

48 See http://www.oresundskomiteen.dk/regionen-i-siffror/se/html/00_03.html.

area representatives are participating. From Sweden especially Helsingborg, Lund and Landskrona municipalities and Region Skåne have great interest in future developments, and for instance the national employment offices in both countries provide information on employments and information concerning taxes, social security, double settling and more.

In year 2007 the Danish and Swedish Governments have also decided to appoint a working group that should investigate the possibilities to increased measures on information and guidance. The group should also analyse the possibilities to increased co-operation on matters concerning cross border commuting.[49] Further, there is a need to analyse better co-operation in matters concerning employment agencies, unemployment insurance and social security.

Beyond the mentioned intense work in the Öresund region, cross border working and living is subject to more general dealing. In year 2007 the Swedish Minister for Nordic co-operation took the initiative to public hearings in Malmö, Eda local community (close to the Norwegian border) and Haparanda-Torneå (close to the Finnish border) in order to investigate local opinions on how to develop cross border movement between Sweden and the neighbouring states.[50]

The development of co-operation between the neighbour states has also joined financial support from the EU. According to information from the Government Sweden will be granted 232 million Euro for developing projects within the framework of the European territorial collaboration during the period 2007–2013. [51]

Sportsmen/sportswomen

The starting point in Swedish law is that professional athletes are considered either to be workers or self-employed persons, and that the same rules should apply to them as to other economically active persons. However, beside this the sporting associations on the national level apply their own rules and practices.

Rules on the composition of teams of professional players have been adopted by the sporting associations for basketball, ice-hockey, football and volleyball.[52] From the statutes it follows that no restrictions as regards the number of players from other Member States exist. However, the number of players from third countries can be restricted. According to the Football Association's competition statutes, an unlimited number of players from other Member States could be on the players list in teams playing on top-level. A foreigner from any other country outside the EU should be treated as an EU-national, if he or she has been staying in Sweden for at least three years. Otherwise, regarding players from third countries, there should be not more than three players on the players list.

Further, at the Sweden Football Association's Representative Assembly in December 2006 the organisation took a decision regarding "home ground players". On a player list with

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49 A declaration from the Swedish Ministers in charge of labour market and social security, May 9, 2007. Information is available on the Government's website: http://www.regeringen.se/sb/d/8566/a/82192.

50 The Government's website http://www.regeringen.se/sb/d/2712/a/14891 (October 10, 2007).

51 The Government's website http://www.regeringen.se/sb/d/2712/a/14891 (October 10, 2007).

52 See Ch. 3 § 4 of the Swedish Basketball Associations' Competition statutes http://www.basket.se/files/%7BCD68A21C-76BE-435C-852C-F8BD664BCA2C%7D.pdf; Ch. 4 § 3 of the Swedish Hockey Associations' Competition statutes http://www.swehockey.se/files/%7B7730BAB7-E55F-419A-BE65-82BE9A5FF8FB%7D.pdf; the Swedish Football Associations' Competition statutes http://www.svenskfotboll.se/files/%7B4CECF608-8F81-4A90-B0FD-9A56443C8254%7D.pdf and § 140 of the Swedish Volleyball Associations' Competition statutes http://www.volleyboll.se/t3.aspx?p=713659 .

16 players in a team, at least 7 players should have been registered in a Swedish football club for at least three years, during the period when the individual player was between the age of 15 and 21 years (the Football Association's statutes ch. 4 § 5).

According to representatives of the above mentioned sporting associations a professional player, at the termination of the contract, is free to go to another club even if no transfer fee is paid by the transferring club.[53] However, as regards young football players the Swedish Football Association has decided to observe UEFA's recommendations "Investing in the Local Training of Players". The aim of the UEFA 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 the UEFA recommendations is that the football clubs do not invest in the training of young players. Instead rich clubs can recruit already trained players from other clubs and pay the price for the recruitment. Concerning reimbursement for the training and education of young players (between the age of 12 and 21 years), the Swedish Football Association's competition statutes regulate that when a young player signs a professional contract as a professional player, the new club should pay a fee in accordance with the statutes § 17.4. For instance if the player is 18 years old the fee is 100,000 SEK (around 10,600 Euros).

Researchers /artists

As is the case with professional athletes the starting point in Swedish law is that artists, dependent on the facts of the case, are considered being either employed or self-employed, and that the same rules as for Swedish artists should apply.

Concerning taxes, artists having their residence outside Sweden there is a certain Act (1991:591) on a special income tax for non-resident artists, athletes and others (Lagen om särskild inkomstskatt för utomlands bosatta artister, idrottsmän m.fl.). The act embraces both nature and legal persons domiciled or resident outside Sweden (§ 3). The taxable income includes cash payments or other remuneration for artistic or sporting activities, performed in Sweden (or on board a Swedish vessel) (§§ 7 and 8).

The assigner or organizer who makes taxable payment to an artist etc. shall deduct, account for and pay the tax. The rate of tax is 15 percent of the taxable income (§ 9). The accounting and payment of tax shall be made not later than the 12th of the month following the month in which the taxable income was paid out (§ 14).[54] If the accounting is not given on time the Swedish Tax Agency shall levy a delay charge (§ 23).

Concerning discrimination and artists as regards wage and working conditions; according to representatives for the Artists Union in Sweden they haven't heard about cases where artists from other Member States have been discriminated against.

As regards researchers a committee report on the implementation of Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research was presented in October 2007.[55]

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53 See also §§ 135 of the Swedish Volleyball Associations' Competition statutes, ch. 3 §§ 7 and 8 of the Swedish Basketball Associations' Competition statutes, ch. 4 §§ 6 and 7 of the Swedish Hockey Associations' Competition.

54 As to January not later than the 17th.

55 Official report SOU 2006:93 Gästforskare – nya regler för inresa, vistelse och arbete. (A Government's proposition on the subject was submitted to the Riksdag on March 14, 2008; Government's proposition

Referring to the Lisbon and Barcelona strategies and the establishment of the European Research Area (ERA), an Official report was presented in year 2007.[56] The investigation committee presented a proposal on a new legal structure for academic employment and career at the Swedish universities. Further, as an important background for the suggestions, the committee has observed the Commission's recommendation on a Charter for Researchers and a Code of Conduct for the Recruitment of Researchers (2005/51/EC).

4. RELATIONSHIP BETWEEN REGULATION 1408/71 AND ARTICLE 39 AND REGULATION 1612/68

Traditionally, the granting of Swedish (and Nordic) social benefits has depended on where a person has his or her 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 (1999:799) was taken, the situation was clarified.[57] Hence, some social benefits or social security are now related to where a person has his residence and other social benefits are based on work.

Thereby also the application of Regulation 1408/71 and the relationship to Regulation 1612/68 at the application of Swedish national law were better clarified. 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 benefits that should be granted to a person based on residence are listed in the Social Security Act ch. 3 §§ 1 and 2, and benefits that should be granted to a person based on work are listed in § 4 and 5.)

The State authority in charge of the application of Regulation 1408/71 is the Swedish Social Insurance Agency (Försäkringskassan). In an instruction issued by the former Swedish 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.[58]

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 of equal treatment.

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 standard of living, although it shall be individualized.

Unemployment benefit is an important part of the social security system. 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 unemployment benefit in Sweden there are certain prerequisites that must be fulfilled.

2007/08:74 Genomförande av EG-direktivet om ett särskilt förfarande för tredjelandsmedborgares inresa och vistelse i forskningssyfte.)

56 Official report SOU 2007:98 Karriär för kvalitet.

57 Government's proposition 1998/99:119 Socialförsäkringens personkrets.

58 Riksförsäkringsverket, *Tillämplig lagstiftning, EU, socialförsäkringskonventioner, m.m.* Vägledning 2004:11, Stockholm 2004, p. 35 ff.

Following from an amendment in 2007 in accordance with the Act § 12, the applicant for unemployment benefit (unemployment benefit from the income loss insurance) should have been working for at least 6 months and at least 80 hours per month — during a twelve month period immediately before he or she was unemployed, or the applicant should have been working for at least 480 hours during a continuous period of 6 months and at least for 50 hours during each of these months. 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.

As shown above concerning the unemployment benefits, there are also different *qualification periods* that are required for the access to many other social benefits. For instance, in order to have a State pension you must have lived in Sweden for at least three years.

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.
- Studiestödslagen (1999:1395), the Study Loan Act.

Draft legislation, circulars, etc.

In a proposal referred to the Council on Legislation for consideration in December 2007 the Government advices new rules in order to adapt Swedish tax legislation to the ECJ judgment in Cases C-150/04 *Commission v. Denmark* and C-522/04 *Commission v. Belgium*. The Government is expected to give a final proposal on the subject at the beginning of 2008. From the judgments follow that a system for life assurance and pensions under which tax deductions and tax exemptions for payments are granted only for payments under contracts entered into with pension institutions established in one Member State, whereas no such tax relief is granted for payments made under contracts entered into with pension institutions established in other Member States contravene Articles 39, 43, 49 and 50 EC.

In the Government's proposal in 2007 for the state budget concerning 2008, a certain child-care allowance was suggested to be voluntary introduced by the local authorities. In December 2007 a working group – appointed by the Ministry of health and social affairs – presented a proposal in an official report on how to introduce the child-care allowance in Sweden in year 2008.[59] The working group analysed the suggested allowance and the connection to Regulations 1408/71 and 1612/68.[60] To look upon the allowance as not being a family benefit was considered illogical and difficult to handle considering other Member States' dealing with corresponding social benefits. The alternative to look upon the allowance as a benefit falling only under 1612/68 would mean that the benefit should be paid to a worker that is permanently working in a local municipality that have introduced the benefit (the introduction of the new child-care allowance is suggested to be a matter for local authorities), even if the worker's family is settled and registered in another Member State.

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59 Socialdepartementet (the Ministry of health and social affairs), Vårdnadsbidrag. Familjepolitisk reform. Socialdepartementet, S2007/10526/SF. (Later on in March 18, 2008, a proposition was presented: Government's proposition 2007/08:91 Vårdnadsbidrag – familjepolitisk reform.)

60 Socialdepartementet (the Ministry of health and social affairs), Vårdnadsbidrag. Familjepolitisk reform. Socialdepartementet, S2007/10526/SF, pp. 122 f.

The working group's conclusion was that the suggested child-care-allowance should be considered to be both a family benefit referring to 1408/71 and a social benefit referring to 1612/68.[61] The group's conclusion was explicitly drawn after referring to the practice from the ECJ, among other Case C-212/05 *Hartmann* (concerning the German child-care allowance) and C-213/05 *Geven* (concerning the scope of the non-discrimination principle in Regulation 1612/68, article 7.2).[62]

Judicial practice

In two judgments the Supreme Administrative Court took the decision that holder of a Marie-Curie scholarship should be embraced by the right to benefit based on work regulated in the Social Security Act. The Court meant that the two researchers were active on the same conditions as other researchers at the university. Hence, they were considered to perform work within the framework of the Social Security Act (Supreme Administrative Court, Cases 2905-05, 3951-04, both judgments in 2007-01-10).

A Swedish woman had been working in Germany. Then she returned to Sweden and gave birth to a child and draw parental benefit from Germany. When she started working again in Sweden, the matter was how the income should be calculated. The Administrative court of appeal in Stockholm took the decision that her calculated income for sickness benefit in Sweden should be based on her income in Germany when she returned to Sweden (Administrative court of appeal in Stockholm, Case 2260-06, judgment in 2007-05-07).

Miscellaneous (administrative practices, etc.)

The Swedish Social Insurance Agency is in charge of matters concerning social security. For example, the office issues the Swedish EU card. The card certifies that the holder is embraced by the Swedish health insurance. The card should normally be issued within 10 days after application (information published 2007-07-01).

(General information on social security in Sweden is provided by the Ministry of Social Affairs and the Swedish Social Insurance Agency.[63])

Recent legal literature

Dahlberg, L., *Två domar från EG-domstolen rörande vårdbidrag*, *Ny Juridik* no. 4:07, p. 40-46. (Comments on C-212/05 *Hartmann* and C-213/05 *Geven*).

Bexhed, J.-M., Ytterligare ett steg mot paneuropeiska pensioner – EG-domstolens dom den 30 januari 2007 i mål C-150/04 Kommissionen mot Konungariket Danmark, *Europarättslig Tidskrift (ERT)*, 2007, p. 877-882**.**

Calleman, C., EG-arbetsrättens personkrets – exemplet anställda i hushåll, in Edström, Ö. (editor) *Svensk rätt i EU*, Uppsala: Iustus Förlag 2007, p. 117-133.

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61 Socialdepartementet (the Ministry of health and social affairs), Vårdnadsbidrag. Familjepolitisk reform. Socialdepartementet, S2007/10526/SF, pp. 122. Available at: http://www.regeringen.se/content/1/c6/02/63/79/de516093.pdf.

62 Further cases referred to were Case C-85/96 *Martinez Sala*, Case C-333/00 *Maaheimo* and the EFTA Court Case E-3/05 (*child-care allowance in Norway*).

63 For a general overwiev, see *http://www.regeringen.se/content/1/c6/07/94/47/510779fa.pdf* and for more specific information, see http://www.forsakringskassan.se/sprak/eng/.

Löfwall, K., Avtalspension vid övergång av verksamhet, in Edström, Ö. (ed.), *Svensk rätt i EU*, Uppsala: Iustus Förlag 2007, p. 99-115.

Wennberg, L., Svensk socialrätt under påverkan från Europa – ett historiskt perspektiv på rätten till ekonomiskt bistånd, in Edström, Ö. (ed.), *Svensk rätt i EU*, Uppsala: Iustus Förlag 2007, p. 271-294.

Chapter IV
Employment in the Public Sector

1. ACCESS TO PUBLIC SECTOR

Nationality condition for access to positions in the public sector

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, when the employment is in the exercising authority there is a restriction on the right to equal treatment regarding employment in the public sector in accordance with Article 39.4 of the EC Treaty.[64] Hence, in Sweden citizenship is prescribed as a condition for certain employments in the State.

Further, 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, we have also dealt with these matters above in Chapter II. 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 other 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 for positions that are of significance to State security. Further, there are many public functions (for instance committees with elected representatives exercising public authority), 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 the position as head of authority that is directly under the Riksdag and positions at the Government offices directly under the Government. 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 the year 2000 an Official report was presented dealing with the requirements for Swedish citizenship for employment and more in the public sector.[65] According to the inves-

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64 See Nyström, *EU och arbetsrätten*, Stockholm 2002, p. 162 ff.

65 Official report SOU 2000:106 Medborgarskapskrav i svensk lagstiftning. See also Sandesjö, H. & Björk, K., *Nya medborgarskapslagen med kommentarer*, Stockholm 2005. A complete follow up made by the reporter in February 2006 of the regulations stipulating requirements for Swedish citizenship for employments in the public sector showed that, compared with the situation in the year 2000, most requirements for Swedish citizenship still were present. However, for two positions amendments had been made – in comparison with the state of affairs in the year 2000 – meaning that the requirements for Swedish citizenship for obtaining certain positions had been abolished for positions as Clerks in a court of appeal (överrättsnotarie) and Clerks in an administrative court of appeal (kammarrättsaspirant).

tigation committee the guiding principle should be the right to equal right and liabilities for persons residing in Sweden irrespective of citizenship. However, the judgment 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 2008 there are still many demands for Swedish citizenship, for instance concerning employments as law clerks at the district courts (tingsrätter).[66] Also at the Swedish enforcement service (kronofogdemyndigheten) there is still a demand for Swedish citizenship for the access to many positions such as Head of the enforcement district, Inspector at the enforcement service and Assistant at the enforcement service.[67]

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 Swedish citizenship requirements are most frequent for positions in the public sector in the following areas:

- The Riksdag (for instance positions as 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).[68]

However, concerning the position as a lawyer acting in the courts there is no requirement for Swedish citizenship.[69]

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 such commissions are not to be considered as employments and, hence, I will not go deeper into the matter.[70]

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

67 See Förordning (1988:784) med instruktion för exekutionsväsendet 3 ch. § 20. ("Endast den som är svensk medborgare får anställas som regionkronodirektör, chefskronofogde, kronofogde, biträdande kronofogde, kronofogdeaspirant, kronokommissarie, kronoinspektör eller kronoassistent.")

68 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 on 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 §).

69 The Swedish Code of procedure ch. 8 § 2 was amended in year 2002 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. Further, at the same time some other requirements for Swedish citizenship were abolished. (Government's proposition 1998/99:108 Advokaters etableringsrätt.)

70 The amendments were made 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

Nationality conditions for access to the posts of captains and first officers of ships.

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.[71] 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.

The texts in force regarding these matters in Sweden are found in the Vessel Safety Ordination (Fartygssäkerhetsförordningen 2003:438) and further regulations are promulgated by the Swedish Maritime Administration (Sjöfartsverket).[72] In 2006 an amendment was made meaning that the commander-in-chief should be an EEA citizen and, further, he should be more than 20 years of age (the Vessel Safety Ordinance Ch. 4 § 2).[73] The amended regulation came into force on June 15, 2007. Regarding ship commanders from other Member States the applicant must show proof of a certain education on knowledge in adequate Swedish regulations.[74]

Finally, in 2006 a public investigation was appointed in order to investigate if there should be a certain certificate on qualification for a position as a pilot (lots) to guide ships on the sea. In an official report the investigation has presented a proposal meaning that a certain certificate on qualification for a position as a pilot (lots) should be introduced, and that the amendment – that must be taken by the Riksdag – should come into force in 2009.[75]

Language requirement

Appointments for employment in the public sector should be ruled by objectivity. In accordance with the Constitution and the Act on public employment (§ 4) merit and competence should be decisive, but competence should be the most important criterion. The required merits and skills are defined by the employer for each position before recruitment, and requirements should be based on the post subject to the recruitment procedure.

A request for language skills should basically be based on the qualifications necessary for the employment. Considering the Act on public employment § 4, good language skills – and especially in Swedish – could in practice be a very important qualification when the recruitment is made if skills in Swedish language is considered to be important for the performance of the work.

For access to some employments knowledge of the Swedish language is a formal requirement. For a position as a teacher in schools the requirement for a certain proof of competence will be issued only if the applicant has "the knowledge in Swedish language that is

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ekonominämnder enligt lagen (1952:167) om allmänningsskogar i Norrland och Dalarna tas bort (dealing with members in boards for common land forests in Northern Sweden).

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

72 See Sjöfartsverkets författningssamling 2000:01 Sjöfartsverkets föreskrifter och allmänna råd om utbildning och behörigheter för sjöpersonal (The 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).

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

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

75 Official report SOU 2007:106 Lotsa rätt! (presented in January 8, 2008).

necessary".[76] However, the regulation should only apply when the applicant has another mother language than Swedish, Danish, Faeroese, Icelandic or Norwegian.

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 (1994:845) 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.

However, for access to most regulated professions within healthcare there are no absolute requirements for the Swedish language, but regarding language the following information – which means that language competence could be an important qualification to consider – is provided by the Swedish National Board of Health and Welfare (see also Chapter II, section 2 concerning language requirements).[77]

> "Basic medical training within the EU/EEA or Switzerland
> Information about language and legislation
> ….
> When the National Board of Health and Welfare is applying Community law, as transposed in national legislation, the degree of automatic and unconditional recognition is considerable in order to facilitate free movement of professionals. No knowledge of the Swedish language or national legislation are required for recognition. However, this is not to be interpreted as a possibility to practise in other languages. The patients must 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.
> There are a variety of language courses available in different institutions on different levels. Further information about these courses could be obtained from the Employment Agencies in each municipality. Another possibility is to approach a possible Employer and explore the local opportunities. Hopefully, the employer is in a position to assist health professionals in this respect in order to be able to offer employment.
> There are no special courses available to migrants regarding the national legislation that should be known to health professionals. Instead, written information will accompany the licence to practise (legitimation) containing references to the relevant literature."

Recruitment procedures

Concerning the *Burbaud Case C-285/01* from the ECJ the French "concours system" was tried regarding access to training followed by access to a post.[78] 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.[79]

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76 The School Act 1985:1100, ch. 2 § 4b.

77 Compare SOSFS 2007:23 [M] Socialstyrelsens föreskrifter om erkännande av yrkeskvalifikationer inom hälso- och sjukvården, issued by the National Board of Health and Welfare in December 2007, but came into force in January 2008. The quotation is available at http://www.socialstyrelsen.se/Amnesord/utbildning_o_kompetens/legitimationer/Eusprakforfatteng.htm (2008-03-11).

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

79 Concerning the Swedish policy it can be noticed that in the *Burbaud* case the Commission, France, Italy, Sweden and the applicant made comments on the case before the final decision taken by the ECJ. The Swedish State argued that the French position on the matter was contrary to EC law. See also Government's communication Regeringens skrivelse 2003/04:60 Berättelse om verksamheten i Europeiska unionen under 2003, p. 308.

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 "concours systems" are used for recruitment. (In 2007 a public investigation presented a proposal meaning that a kind of "trainee" system should be introduced for the education for a position as a judge.[80])

Recognition of diplomas

Several of the regulated professions enumerated in Chapter II can be exercised both in the private and public sector, e.g. doctors. However, the same professional qualification requirements and the same rules of recognition apply in both cases.

Recognition of professional experience for access to the public sector

The right to equal treatment for employment in the public sector should be secured through the regulations referred to above (see section 1.2 concerning language requirements). Beyond that the equal treatment principle is founded on Regulation 1612/68 and EC law should apply. Further, there is discrimination law which means that the employer should treat for instance applicants for different positions equal independent of sex, disability, ethnic background etc.

2. EQUALITY OF TREATMENT

Recognition of professional experience for the purpose of determining the professional advantages

The recognition of professional experience for fixing wage levels etc. in employments is mainly regulated through individual employment agreements, normally concluded within the framework of collective agreements. Following from the Ordinance (1976:1021) on State collective agreements (§ 1), the State employer should apply the same collective agreement terms to all employees at the public authorities independent of their affiliation to the trade union that is part in the collective agreement (in practice that means that nationality is not a criterion that could make any difference). Hence, especially in the public sector the same criteria should apply when fixing wages and other benefits in connection with the employees' positions, independent of the individual employee's nationality. (In principle, but for other reasons, the same effect will occur on other labour market sectors.)

Further, within the framework of the collective agreement the individual employee and the employer can make an individual adjustment, which means that there is a scope for individual negotiations on wage levels. However, the employer should apply the same criteria independent of nationality or any other factor that may be considered as non-pertinent for the matter. The trade unions follow even the result from such negotiations on the individual level since the result may not be contrary to the collective agreement in the sector, and possible irrelevant wage differences that this kind of individual agreement might lead to, could be subject to collective bargaining.

[80] Official report Ds 2007:11 En mer öppen domarutbildning.

Texts in force

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

Chapter V
Members of the Family

1. RESIDENCE RIGHTS

The term family member of an EU citizen or his or her husband/wife/cohabitant is defined in the Aliens Act ch. 3a § 2 and means "an alien who accompanies an EEA national to Sweden or joins an EEA national in Sweden and who is

- the spouse or cohabiting partner of the EEA national,
- a direct descendent of the EEA national or of his or her spouse or cohabiting partner, if the descendent is dependent on either of them for means of support or is under 21 years of age or
- a direct ascendant of the EEA national or of his or her spouse or cohabiting partner, if the relative is dependent on either of them for means of support. [81]

If the family member of an EU citizen that has a right to residence is a third-country national, the family member should apply for a *residence card* in line with Directive 2004/38/EC; (see the Aliens Act ch. 3a § 10).[82] The residence card should be issued by the Swedish Migration Board. However, the regulation on residence card should not apply to citizens or family members if the citizen is Norwegian, Finnish or Danish or EU citizens that are job seekers.

From 2006 family members of an EU citizen that are not EU citizens themselves must show a passport since the new Directive 2004/38 does not stipulate that a family member that is a third-country national is entitled to enter Sweden by showing an identity card.[83] Hence, the regulation on this matter was sharpened at the transposition of the Directive. A motive was the risk that false identity documents could be used when entering Sweden.[84]

As stated in Chapter I, section 2, an EU citizen and his or her family members (if the latter are third-country nationals, see also Chapter I, section 2) should be granted a *permanent right of residence* after five years stay without interruption (the Aliens Act ch. 3a §§ 6 and 7).[85]

There is no requirement for *visa* for family members to EU citizens that are not EU citizens themselves beyond what follows from Regulation 539/2001 (see the Aliens Ordinance Ch. 3 § 1.15 and Ordinance 2006:262; compare the Directive article 5.2). If there should be a demand for visa for family members of an EU citizen, the administrative procedure should be speeded up.[86]

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81 The categories "spouse or cohabiting partner" includes registered partner. This follows from ch. 3 § 1 in the Act (1994:117) on registered partnership. Amendment in 2005 through SFS2005:447. The term "registered partner" means a married partner as well as a cohabitant (which is not a requirement from the Directive); see Government's proposition 2005/06:77, pp. 71 and 183. See also Government's proposition 2004/05:137 Assisterad befruktning och föräldraskap.

82 See also Government's proposition 2005/06:77, p. 117 f. and p. 119.

83 See Government's proposition 2005/06:77, p. 63.

84 Government's proposition 2005/06:77, p. 64. Before 2006 family members that were not EU citizens themselves could enter Sweden by showing an identity card (compare the former Directive 68/360).

85 See Government's proposition 2005/06:77, pp. 48 f. and 119.

86 Government's proposition 2005/06:77, p. 65.

EU citizens and their family members have a right to stay in Sweden for three months if they have the documents that have to be shown when they enter Sweden (compare the Directive article 6). A crucial issue concerning family members from third countries is how the three months period is calculated. Concerning a third-country national the period was earlier calculated from the date the person entered the Schengen territory independent of which country the foreigner entered. Hence, in 2006 an amendment was made meaning that if the third-country national is a family member of an EU citizen, the calculation of the three months period should be made equal to the EU citizen.[87]

Following from an amendment referring to the Directive 2004/38/EC, article 5.3, a note (or stamp) should not be made in an EU citizen's family member's passport, if the family member is a third-country national and has a residence card.[88]

In *Case C-109/01 Akrich* from the ECJ the question was if a third-country national from Morocco that was married to a female EU citizen, should have a right to residence in the UK independent of if the EU citizen had been using her right to free movement and was established in another Member State. Further, the third-country national had been married to the EU citizen when he was staying in the UK unlawfully and he was deported to the other Member State where his spouse was established. Later on he applied to the UK authorities for leave to enter the UK as a spouse of his wife settled in the UK.

In accordance with the Aliens Act ch. 3a § 2 family members to an EU citizen should be entitled to residence even if the family members are third-country nationals. Even if a similar situation as in *Akrich* has not been tried by the Swedish courts, the reporter's conclusion is that in such a situation Swedish law is not contrary to Community law. Also the fact that the European Convention on Human Rights should apply as law in Sweden including the right to respect for family life, which is referred to in *Akrich*, leads to the same conclusion.

2. ACCESS TO WORK

Concerning family members the transposition of Directive 2004/38, article 23, into Swedish law means that family members of an EU citizen – and independent of the family members' nationality – are excepted from the work permit requirements (see the Aliens Act ch. 2 § 8 and the Aliens Ordinance ch. 5 § 1; amended in 2006).

A prerequisite is that the foreigner has been granted a right of residence. The exception also means that a family member of an EU citizen has the right to activity as self-employed.

In comparison with previous legislation on the matter the amendment meant that the circle of family members that is excepted from the work permit requirement has been increased.[89]

3. ACCESS TO EDUCATION AND STUDY GRANTS

Before Directive 2004/38/EC, the right to equal treatment in the main embraced workers and self-employees as well as their family members. These categories have already before been entitled to Swedish study loans in accordance with the Study Loan Act (1999:1395).

The equal treatment principle expressed in the Directive, article 24, means that EU citizens from other Member States (and their family members that are not EU citizens them-

87 Government's proposition 2005/06:77, p. 70.

88 Government's proposition 2005/06:77, p. 68.

89 Compare Government's proposition 2005/06:77, p. 126.

selves), having a permanent residence right, shall enjoy equal treatment with the nationals of the host Member State. However, the Directive admits that the right to study loan could be restricted if the person does not have a permanent right of residence.

Only foreign citizens with a permanent right of residence independent of nationality, who can derive rights from EC law concerning social benefits, should be equal to Swedish citizens regarding the right to study loans (see the Study Loan Act ch. 1 § 4–6).[90] A reason for the restriction is that the Swedish study loan system is considered to be generous looked upon in an international perspective.

However, already before a foreigner is granted a permanent right of residence he or she could be entitled to study loans in accordance with the rules that apply to all foreign citizens (see also below concerning administrative practice).

4. OTHER ISSUES CONCERNING EQUAL TREATMENT (SOCIAL AND TAX ADVANTAGES)

See above, Chapter III, section 2 concerning Social and Tax advantages.

Texts in force

- Utlänningslagen (2005:716), the Aliens Act.
- Utlänningsförordningen (2006:97), the Aliens Ordinance.
- Passlagen (1978:302), the Passport Act.
- Lagen om särskild utlänningskontroll (1991:572), Act on special control of foreigners.
- Studiestödslagen (1999:1395), the Study Loan Act.

Judicial practice

In a case referring to family reunification, a spouse having a temporary residence permit in Sweden was considered to be a connected person (anknytningsperson), even if it has not been claimed in the judicial proceedings that the person had a well-founded chance to be granted a permanent residence permit in Sweden (Case UM116-07).

Miscellaneous (administrative practices, etc.)

Concerning the right to study loans for foreigners having a “strong connection to Sweden” there has been some indistinctness. In the administrative practice from the national authority for handling the Swedish financial aid for students (CSN), to have a “strong connection to Sweden” means that the foreigner should have stayed or worked in Sweden for the last two years, and these requirements are considered to be in conformity with the ECJ practice.[91]

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90 This follows from an amendment that came into force on July 1, 2006. Government’s proposition 2005/06:134 Utbildnings- och kulturdepartementets promemoria 2005-11-22. Amendment through Act 2006:654.

91 Lokrantz Bernitz, H., *Unionsmedborgarskapet och dess inverkan på den fria rörligheten för personer*. SIEP rapport 2006:7, Stockholm 2006, p. 56.

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Hansson, L., EU, Sverige och inkomstskatten – Florians kamp för att få skatta som en vanlig Svensson, in Edström, Ö. (ed.), *Svensk rätt i EU*, Iustus Förlag, Uppsala 2007, p. 135-150.

Ingmanson, S., Migrerande studenter: välfärdsturister eller framtidsbyggare?, *Europarättslig Tidskrift (ERT)*, 2007, p. 241–274.

Chapter VI
Relevance/Influence/Follow up of Recent Court of Justice Judgments

In the following certain legal practice from the ECJ is dealt with.

C-212/05 Hartmann concerning the German child-care allowance. A German working in Germany but settled in Austria claimed that it was indirect discrimination to refuse his Austrian spouse child-care allowance because she was living in Austria. In Sweden there is a proposal to introduce a child-care allowance (see Chapter III, section 4), and as stated above the proposal means that the benefit should be embraced both by Regulation 1612/68 and 1408/71.[92] In principle this should mean that a Swedish child-care allowance will be co-ordinated with the corresponding benefit in other Member States.

C-213/05 Geven was concerning the scope of the non-discrimination principle in Regulation 1612/68, article 7.2, and a Dutchman's right to the German child-care allowance when he was working in Germany less than 15 hours per week without being settled in Germany. The ECJ stated that a demand for being settled in Germany was discriminatory, but concerning frontier workers the requirement was proportionate. The basic problem is similar to the problem in the Hartmann case. Referring to these cases the public investigation presenting the proposal for a coming Swedish child-care allowance has dealt with the matter (see Chapter III, section 4), and the committee has noted that it is important to open up for a possibility to make an exception from a strict application of settlement requirements.

Case *C-287/05 Hendrix* is about a Dutch frontier worker who worked and lived in the Netherlands. While continuing to work in the Netherlands, he transferred his residence to Belgium. Before his removal he was entitled under Dutch legislation to a benefit for handicapped people which is listed in Annex IIa of Regulation 1408/71 as a non-exportable special non-contributory benefit. Therefore, once Mr Hendrix had left the country, the Dutch competent institution stopped paying that benefit applying the said provisions of Regulation 1408/71. However, as Mr Hendrix continued to be active as a worker in the Netherlands, the ECJ was asked whether the withdrawal of the benefit is not contrary to Article 39 or Article 18 EC Treaty.

The ECJ stated that Article 39 EC and Article 7 of Regulation 1612/68 must be interpreted as not precluding national legislation, meaning that a special non-contributory benefit listed in Annex IIa to Regulation No 1408/71 may be granted only to persons who are resident in the national territory. However, implementation of that legislation must not entail an infringement of the rights of a person in a situation such as that of the applicant in the main proceedings which goes beyond what is required to achieve the legitimate objective pursued by the national legislation.

The corresponding benefit in Swedish law is the disablement allowance (handikappersättning), and this benefit is listed in the Social security Act (1999:799) as a benefit based on residence (ch. 3 § 2, point 12).[93] Hence, a preliminary conclusion is that in accordance with Swedish law the disablement allowance should not be paid if, for instance, a frontier

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92 Socialdepartementet (the Ministry of health and social affairs), Vårdnadsbidrag. Familjepolitisk reform. Socialdepartementet, S2007/10526/SF.

93 See also Lag (1998:703) om handikappersättning och vårdbidrag regulating the disablement allowance.

worker living and working in Sweden was moving to Denmark for residence but continued to work in Sweden.

Case C-1/05 Jia. The case concerned the interpretation of Article 43 of the Treaty and Directive 73/148/EEC. A Chinese mother to a Chinese national who lived in Sweden with his German wife (self-employed) applied for a for a residence permit, on the basis that she was related to a national of a Member State. The Swedish Migration Board rejected her application on the ground that there was insufficient proof of the situation of financial dependence.

The ECJ found that the word "dependent" in Article 1.1 d of Directive 73/148/EEC means that members of the family of a Community national established in another Member State need the material support in order to meet their essential needs in the State of origin or the State from which they have come at the time when the application is made.

The ECJ also stated that proof of the need for material support may be adduced by any appropriate means. However, a mere undertaking from the Community national or his or her spouse to support the family members concerned need, is not to be regarded as establishing the existence of real dependence. From the fact of the case follows that the Migration Board's interpretation of the word "dependent" in national legislation (the Aliens Act ch. 3a § 2) is within the boundaries of the Court's judgment.

Case C-291/05 Eind. The case concerned a Dutch national who worked in England where he subsequently was joined by his daughter who arrived direct from Surinam. When they both went back to the Netherlands his Surinamese daughter applied for a residence permit. However, according to the Dutch authorities she could not be granted a residence permit on the basis of her status as a member of the family of a Community national. Although her father had worked in another Member State, he had since his return not been engaged in an effective and genuine economic activity. He could therefore no longer be regarded as a Community national for the purposes of EC law.

From the Court's judgment follows that when a migrant worker returns to his home country after being employed in another Member State, a third-country national who is a member of his family has a right under Article 10(1)(a) of Regulation 1612/68 to reside in the Member State of which the worker is a national. That is so even if the former worker does not carry on any effective and genuine economic activity in his home country.

The fact that a third-country national did not, before residing in the Member State where the worker was employed, have a right under national law to reside in the Member State of which the worker is a national, has no bearing on the determination of that national's right to reside in the latter State. In Swedish migration law no rules exist that prevent an effective application of Article 10(1)(a) of Regulation 1612/68 in line with the Courts interpretation of that article in the *Eind* case. However, a factual situation on which the Dutch authorities decided the case has yet not been tried before a Swedish migration court (or by the Migration Board).

Case C-97/05 Gattoussi. The case concerned the interpretation of Article 64.1 of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States and the Republic of Tunisia. The German authorities had granted a Tunisian worker a residence permit valid for three years, while at the same time he had been granted a work permit of indefinite duration.

From the case follows that if the host Member State has previously granted a migrant worker specific rights in relation to employment which are more extensive than the rights of residence conferred on him by that State, it cannot then reopen the question of that worker's

situation on grounds unrelated to the protection of a legitimate national interest such as public policy, public security or public health.

It is uncertain if the situation can arise at all when applying Swedish law. Therefore the reporter finds it difficult to give an opinion on the position of Swedish law on this point.

Chapter VII
Policies, Texts and/or Practices of a General Nature with Repercussions on Free Movement of Workers

In 2007 there are seven different acts on discrimination in Swedish law. In 2006 a committee suggested them to be replaced by a single new act against discrimination, and later on the Government has presented a proposal for a new Discrimination Act.[94] The new act should apply not only to working life (including recruitment situations) but also to membership in trade unions and other idealistic associations, the access to education, services and places to live, social security including unemployment benefits, health-care services, study loans, public employment and more.[95]

Recent legal literature

Edström, Ö. (ed.), *Svensk rätt i EU*, Iustus Förlag, Uppsala 2007.

94 The Government's proposal was presented in January 24, 2008, in a referral to the Riksdag's standing committee for law matters; Ett starkare skydd mot diskriminering. The previous proposal from the investigation committee was presented in Official report SOU 2006:22 En sammanhållen diskrimineringslagstiftning.

95 Further, in a memorandum from the Ministry of Labour there is a proposal to a new composition of the Swedish Labour Court when the Court is dealing with discrimination matters, see the Ministry of Labour, Memorandum. Ändrad sammansättning i Arbetsdomstolen i diskrimineringstvister – kompletterande överväganden och förslag till SOU 2006:22 En sammanhållen diskrimineringslagstiftning. (The memorandum was presented in March 13 , 2008.)

Chapter VIII
EU Enlargement

TRANSITIONAL ARRANGEMENTS REGARDING MEMBER STATES WHO JOINED THE EU IN 2004 AND 2007

In 2003 the Swedish Riksdag approved the Government proposition to ratify the Treaty on the enlargement of the EU.[96] In 2004 the Swedish Riksdag did not approve the former 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 (except for Malta and Cyprus).[97] However, it was stated that the development concerning the immigration from the new Members 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.[98]

The position taken by the Riksdag in 2004 not to introduce certain transitional rules for citizens from the new Member States has not been changed in 2006 before the affiliation of Rumania and Bulgaria to the EU on January 1, 2007.[99] Since 2004 the debate on the matter has decreased and has still in 2007 been very low-voiced concerning workers being employed by a Swedish employer. Obviously, a reason for the non-appearance of a debate is that the immigration from the new Member States has been low and the social benefit costs have not increased in an unreasonable manner.[100]

Free movement of services and the Enlargement. Concerning the free movement of workers the priority in the Swedish debate has been the free movement derived from the EC Treaty, article 49, and the free movement of services. The very extensive debate in Sweden in 2005 and 2006 as well as in 2007, concerning the enlargement and the new Member States has focused on the free movement of services and the posted workers' wages.[101]

A starting point for the debate was a case before the Labour Court in 2004 (Labour Court *Cases AD 2004 no. 111* and *2005 no. 49*). (See the ECJ *Case C-341/05 Laval un Partneri.)* In a preliminary ruling the ECJ has confirmed that right in a conflict between a contractor from Latvia and Swedish trade unions. This standpoint follows from the Court's rejection of the Swedish law on the matter, giving national trade unions the right to industrial action in order to establish a collective agreement to apply in Sweden, even if the foreign employer already is bound by a collective agreement concluded in another Member State.[102]

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

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

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

99 See Government's proposition 2005/06:106 Bulgariens och Rumäniens anslutning till Europeiska unionen.

100 For an general overview concerning transitional rules in Member States, see http://ec.europa.eu/employment_social/free_movement/enlargement_en.htm

101 For an analysis of the debate, see 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*, Oxford: Hart Publishing 2006, p. 129-156.

102 In the Swedish Labour Court *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 to the ECJ in *Case C-341/05 Laval un Partneri* 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

Referring to the free movement of services in the EU the Government in 2005 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 subcontractors are engaged on the Swedish labour market, and in 2007 the final report from the investigation was presented.[103]

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. Concerning the Swedish position in the Laval case, see the Government's written communication in the Laval Case, available on http://www.tco.se/c96e7989-a9a2-41de-9512-06f732e482d6.fodoc.

103 Official report SOU 2007:43 Bättre arbetsmiljöregler II. (See also Official report 2006:44 Bättre arbetsmiljöregler I.)

Chapter IX
Statistics

Statistics on Immigration from other Member States in 2007 (12 months).[104]
(Referring to the EEA Agreement.) Nordic countries not included.

Nationality	Workers	Self-employed	Provider/ reciever services	Students	Relatives	Suff. Means	Total
Austria	77	5	7	131	52	11	283
Belgium	56	2	0	55	36	11	160
France	301	3	11	395	139	39	888
Germany	1190	52	30	900	834	372	3378
Greece	177	2	4	51	49	24	307
Ireland	66	1	2	9	20	3	101
Italy	172	3	2	199	76	35	487
Luxembourg	0	0	0	0	0	0	0
Netherlands	246	65	7	150	373	140	981
Portugal	57	2	2	21	33	4	119
Spain	153	0	6	283	67	23	532
UK	373	21	23	94	216	89	816
Total "old" MS	**2868**	**156**	**94**	**2288**	**1895**	**751**	**8052**
New MS in 2004:							
Czeck Republic	84	3	33	65	39	8	232
Cyprus	11	0	0	3	0	1	15
Estonia	127	3	0	41	78	9	258
Hungary	293	10	17	27	148	14	509
Latvia	134	1	4	26	69	15	249
Lithuania	430	19	2	76	178	10	715
Malta	0	0	0	0	0	0	0
Polen	3103	196	87	160	2077	96	5719
Slovakia	104	0	10	15	24	6	159
Slovenia	11	0	1	16	10	3	41
Total new MS 2004	**4297**	**232**	**154**	**429**	**2623**	**162**	**7897**
New MS in 2007:							
Bulgaria	315	20	3	57	97	22	514
Romania	705	32	3	45	321	70	1176
Total new MS 2007	**1020**	**52**	**6**	**102**	**418**	**92**	**1690**
Others	4	1	0	6	4	1	**16**
Total	**8189**	**441**	**254**	**2825**	**4940**	**1006**	**17655**

Source: Swedish Migration Board (January 24, 2008).

The number of EU citizens coming to Sweden as workers, self-employees, students and more has increased from 6,040 persons in the year 1994 to more than 17,000 persons in the year 2007. However, almost half of the increase is referring to immigration from the New Member States in 2004 and 2007.

[104] As to the statistical trend for 1994–2006, see http://www.migrationsverket.se/pdffiler/statistik/tabe8.pdf.

Chapter X
Miscellaneous

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The Aliens Ordinance (2006:97); in force at April 30, 2006:
http://www.sweden.gov.se/sb/d/5805/a/75618;jsessionid=aVxlo2sM-Ep- (in English)
The official Swedish website to different Acts, Government's propositions, the State authorities' statute books, judicial practice and more (in Swedish although some information is translated into English):
http://62.95.69.15/sfs/sfst_form2.html (search form in Swedish)
The Swedish Migration Board, official website with information, statistics on migration and more:
http://www.migrationsverket.se/english.jsp (in English)
http://www.migrationsverket.se/ (in Swedish)
The National Courts Administration, official website link to guiding judicial decisions in Swedish courts:
http://www.rattsinfosok.dom.se/lagrummet/index.jsp (in Swedish)
Acts and more links concerning migration (the NGO Immigrant Institutet):
http://www.immi.se/lagar/ (in Swedish)
The Swedish Migration Board, Statistical figures concerning year 2007, is including gender statistics:
http://www.migrationsverket.se/pdffiler/statistik/statistik_6_2007.pdf
The Swedish Migration Board, Statistical figures for the period 1994–2006:
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