



**ECRI REPORT  
ON SWEDEN**  
**(fourth monitoring cycle)**

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

**The following report was drawn up by ECRI under its own and full responsibility. It covers the situation up to 22 March 2012 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.**



## EXECUTIVE SUMMARY

**Since the publication of ECRI's third report on Sweden on 14 June 2005, progress has been made in a number of areas covered by the report.**

The Sami people have been recognised at constitutional level since 1 January 2011.

A new Discrimination Act which extends the protection against discrimination came into force on 1 January 2009. The new Equality Ombudsman is responsible for supervising compliance with this Act and has a role in preventing discrimination and promoting equal rights and opportunities. Despite overall cuts in the funding granted to them by the State, anti-discrimination bureaus continue to be active at the local level.

The various authorities involved in enforcing the criminal law provisions against racism have taken a number of steps to train and raise awareness amongst all those working in this field and to improve the application of the relevant provisions. The use by the National Council for Crime Prevention of a broader definition of racist and xenophobic incidents has also improved its ability to monitor this type of incident.

The government has adopted measures to curb extremist phenomena and has put in place policies to combat various forms of racism and racial discrimination, including antisemitism and Islamophobia. It continues to fund the Living History Forum; it has appointed a Special Rapporteur on Xenophobia and Intolerance and launched a website to refute the most common myths and negative stereotypes relating inter alia to groups covered by ECRI's mandate. In Malmö, the local authorities have set up a Forum for Dialogue to promote mutual understanding between the Jewish and Muslim communities and take joint action to combat intolerance.

A law on labour market entry of newly arrived immigrants was passed in 2010, and includes a range of measures designed to offer recently arrived immigrants the opportunity to participate more actively in working life and the life of society in general. A programme has been introduced to promote equality in primary and secondary education and measures aimed at increasing teachers' ability to curb and forestall discrimination and harassment of pupils have been taken. In the field of health, the possibility of extending access to subsidised health care is now under consideration in order to provide better cover for certain groups covered by ECRI's mandate.

A new Aliens Act has been passed, establishing new procedures and avenues of appeal in immigration and asylum cases. This reform appears to have substantially reduced the length of proceedings in asylum cases. The definitions of complementary protection and of refugees have been extended and the proportion of cases in which international protection is granted has increased. The Act provides that the freedom of aliens should not be limited more than is necessary in each individual case; supervision must therefore be preferred to detention wherever possible. Proposals aimed at resolving some problems in the access of asylum-seeking children to education are being examined, as is the follow-up to be given to a judgment of the Migration Court of Appeal concerning access to family reunification. Proceedings in national security cases have also been revised.

Within the National Police Board, a unit distinct from the regional police authorities, responsible for handling complaints of police misconduct, was set up in January 2011. In addition, thanks to several schemes introduced from 2006 onwards, the proportion of persons with an immigrant background employed by the police has risen.

**ECRI welcomes these positive developments in Sweden. However, despite the progress made, there are still some points of concern.**

Obstacles exist when it comes to bringing to court cases of agitation against a national or ethnic group committed through the press or broadcast media, such as the dual screening of such cases by the Chancellor of Justice and the jury and the fact that victims cannot bring a private action if the Chancellor of Justice decides not to prosecute, and very few prosecutions are currently brought in such cases – a situation which could result in denial of access to justice. There are also some gaps in the criminal law provisions against racism and racial discrimination and the fact that only a small proportion of incidents reported result in prosecution or sentencing increases victims' tendency not to report offences. This may help to perpetuate racism and racial discrimination.

Positive action is not generally accepted in Sweden with regard to discrimination based on ethnicity and religion, which slows down improvement in the situation of vulnerable groups. Neither segregation nor discrimination based on language are expressly covered by the Discrimination Act.

Although a large number of complaints of discrimination based on ethnic origin or religion are reported to the Equality Ombudsman each year, only around ten result in lawsuits. The recent instability at the head of this still young institution, of which the Ombudsman is appointed by the government, has also not served to consolidate it.

Xenophobic and islamophobic parties have gained ground over the past few years. Anti-Muslim political discourse has become more widespread and the tone has hardened. Online racism has continued to grow exponentially and antisemitic and islamophobic comment, including by some members of Parliament, have proliferated. Jews and Muslims wearing visible signs of their faith are targets of antisemitic and islamophobic incidents and there have also been repeated attacks against mosques and synagogues. Afro-Swedes also continue to suffer acts of racism and racist insults and remarks. A number of racist incidents reported to the police involve an element of violence, including a series of violent attacks in Malmö perpetrated against persons with an immigrant background between late 2009 and October 2010.

*De facto* residential segregation still exists in Sweden and its effects are compounded by discrimination in the housing market that particularly affects Roma, Muslims, Afro-Swedes and asylum seekers. This phenomenon also contributes to educational inequality: according to civil society, educational segregation is on the increase and gaps between schools are widening. Pupils with an immigrant background still perform less well at school than those without and are sometimes victims of racist bullying and harassment, which are not always correctly handled by school principals. Discrimination also persists on the labour market, affecting not only new entrants but also immigrants who have been settled in Sweden for a number of years. Some groups of non-citizens also find themselves in a particularly vulnerable situation with regard to health.

Roma continue to face discrimination in all fields of daily life; they continue to be marginalised and are particularly disadvantaged socially and economically. The mutual lack of trust between Roma and the majority population also makes it harder to adopt measures intended to resolve the problems encountered.

Problems relating to land rights and land use continue to have an adverse effect on the Sami, who face problems regarding effective participation in decisions affecting them, including with respect to mining and wind-power development projects that would threaten their traditional way of life. These problems make it harder for the Sami to assert their rights as an indigenous people and contribute to keeping them in a disadvantaged situation.



In the field of asylum law, some problems remain to be resolved as regards the quality of decisions at first instance, refusal of entry and non-refoulement. Returns to some countries reportedly do not always take account of the risks facing individuals due to their ethnicity or religious beliefs. The requirement that persons wishing to qualify for family reunification produce identity papers also places a disproportionate burden on natives of some countries in which the situation makes the issuance of such papers virtually impossible. It seems that the problem of disappearances of unaccompanied children has also not been solved.

In the absence of accurate data on manifestations of racial discrimination and on the overall situation of groups coming under ECRI's mandate in various fields, it is moreover difficult to have an objective discussion regarding the need (or not) to take positive measures and on the form that any such action should take.

**In this report, ECRI asks the Swedish authorities to take further measures in a number of areas and makes a range of recommendations, including the following.**

ECRI recommends that the Swedish authorities amend the Instrument of Government and the legislative provisions in force in to provide expressly for the possibility of adopting positive action measures to promote equality in all fields of life.

ECRI recommends that the authorities strengthen the legislative provisions against racism and racial discrimination and continue their efforts to improve the application of these provisions. It recommends that the authorities reduce the existing obstacles to court proceedings in cases of agitation against a national or ethnic group committed via the press or the broadcast media.

ECRI recommends that the authorities increase their support to local initiatives to strengthen action to tackle racial discrimination, including through long-term funding of such initiatives. It also recommends that they step up their efforts to combat racist forms of expression on the Internet.

ECRI recommends that the Swedish authorities adopt a plan of action to address *de facto* residential segregation in Sweden as a matter of urgency. This plan should include practical measures to be taken by the relevant stakeholders, a budget and adequate resources to achieve the goals set. It should also enlist local authorities to play an active part in addressing *de facto* residential segregation. The action plan's impact in practice should be evaluated regularly.\*

ECRI recommends that the authorities take a series of measures to combat discrimination in access to housing and to employment, to combat racist bullying and harassment in schools and to resolve the difficulties faced by certain groups covered by ECRI's mandate in access to health care.

For persons living in Sweden without a residence permit and who have never sought asylum or requested a residence permit, ECRI recommends that the Swedish authorities lift the exclusion from free medical care currently applying to children, pregnant women and persons with acute conditions or suffering from serious infectious diseases.\*

ECRI recommends that the authorities step up their efforts to combat the prejudice and stereotyping faced by Roma, to transcend the mutual distrust between Roma and the majority population and to put an end to the discrimination suffered by Roma in access to social rights.

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\* The recommendations in this paragraph will be subject to interim follow-up by ECRI no later than two years after publication of this report.

ECRI recommends that the authorities strengthen their efforts to combat Islamophobia and antisemitism.

ECRI recommends that the authorities take a series of measures to improve the quality of first-instance decisions in asylum cases, to ensure that no one is forcibly returned in contravention of the principle of non-refoulement or of Article 3 ECHR and to avoid disappearances of unaccompanied children.

ECRI encourages the Swedish authorities to implement measures as soon as possible to resolve all family reunification problems arising due to difficulties in obtaining identity papers in the country of origin.\*

ECRI encourages the authorities to continue their efforts to recruit into the police members of groups covered by ECRI's mandate. It recommends that they establish an independent body entrusted with carrying out investigations of alleged police misconduct and that they carefully monitor developments with regard to misconduct by public order guards and privately employed watchmen.

ECRI also recommends that the authorities improve their system for monitoring the situation of groups coming under ECRI's mandate.

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\* The recommendations in this paragraph will be subject to interim follow-up by ECRI no later than two years after publication of this report.

## FINDINGS AND RECOMMENDATIONS

### I. Existence and application of legal provisions

#### International legal instruments

1. In its third report, ECRI recommended that Sweden ratify Protocol No. 12 to the European Convention on Human Rights (ECHR). The Swedish authorities have stated that they do not intend to ratify this instrument in the immediate future. However, according to the authorities,<sup>1</sup> it might be of interest, in a longer-term perspective, to investigate the possibility of extending Swedish non-discrimination legislation to encompass a general prohibition against discrimination, taking the human rights principle of equal dignity and rights as its starting point.
2. ECRI notes that Sweden recognises the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals alleging violations by the State of rights set out in the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Sweden is also a party to the Optional Protocol to the International Covenant on Civil and Political Rights; consequently, any person under Swedish jurisdiction can submit a communication to the Human Rights Committee relating to the principles of non-discrimination and equality before the law. In ECRI's view, ratifying Protocol No. 12 to the European Convention on Human Rights should thus be seen as a further step presenting no problems in principle. ECRI also notes that the effect of Protocol No. 12 is not to add to the number of non-discrimination grounds within the jurisdiction of the European Court of Human Rights but to broaden the scope of the prohibition of discrimination beyond the enjoyment of the rights and freedoms laid down in the ECHR.<sup>2</sup>
3. ECRI strongly recommends that Sweden ratify Protocol No. 12 to the European Convention on Human Rights.
4. In its third report, ECRI recommended that Sweden ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, International Labour Organisation (ILO) Convention No. 169 concerning indigenous and tribal peoples and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
5. ECRI notes with interest that the Swedish government is planning to study the scope of legislative amendments required by ratification of the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. ECRI encourages the authorities to complete this study and expedite any legislative changes needed as well as ratification of the Convention on Cybercrime, which is a prerequisite for ratifying its additional protocol. In this respect, ECRI stresses that this protocol directly concerns an aspect of the fight against racism and intolerance that is of growing importance.
6. As regards ILO Convention No. 169, the authorities have stated that they are continuing to study the matter of its ratification but that this will not be possible

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<sup>1</sup> Betänkande *Ett starkare skydd mot diskriminering* (Government Bill *Stronger Protection Against Discrimination*), 2007/08:95.

<sup>2</sup> See Explanatory Report, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, §§ 22-30.

until they have clarified the legal consequences of such a step. According to the authorities, this is a complex matter but they are continuing to work on it. ECRI considers that this question essentially comes under the Framework Convention for the Protection of National Minorities, to which Sweden is a party, and notes in this context that the Advisory Committee on the Framework Convention will shortly be preparing its third opinion on Sweden.

7. The authorities have said that ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is no longer on the agenda. They argue, on the one hand, that the Global Commission on International Migration pointed out in 2005 that most of the rights set out in this Convention were already enshrined in other international instruments and, on the other, that a certain number of states have already indicated that they do not intend to ratify this instrument. ECRI notes that this convention not only brings together rights enshrined in other international instruments but also contains new provisions relating, for example, to promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families. It may also facilitate protection of individuals belonging to groups covered by ECRI's mandate and help promote a rights-based approach to migration<sup>3</sup> as well as, ultimately, reducing illegal migration.
8. ECRI again recommends that Sweden ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

### **Constitutional provisions and other basic provisions**

9. In its third report, ECRI recommended that the Swedish authorities ensure that the Instrument of Government provides individuals with adequate protection against racial discrimination<sup>4</sup> and stressed that the Constitution may provide that exceptions to the principle of equal treatment may be established by law, provided that they do not constitute discrimination.
10. Over the past five years, the text of the Instrument of Government has been reviewed in its entirety and substantively revised.<sup>5</sup> Under these constitutional amendments, which came into force on 1 January 2011, the word 'race' has been systematically removed from the text; in the current wording of Chapter 2, Article 12 of the Instrument of Government: 'No act of law or other provision may imply the unfavourable treatment of anyone because they belong to a minority group by reason of ethnic origin, colour, or other similar circumstances or on account of their sexual orientation.' The authorities have indicated that removal of the term 'race' reflects the idea that human beings belong to a single race, and they have also stressed that there is no legal justification for separating human beings into their so-called 'races'. According to the authorities, prohibition of discrimination based on ethnic origin could cover

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<sup>3</sup> See Global Commission on International Migration, *Migration in an interconnected world: New directions for action* (Report of the Global Commission on International Migration), Switzerland, 2005, pp. 56-58.

<sup>4</sup> In ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, (direct) 'racial discrimination' is taken to mean any differential treatment based on a ground such as 'race', colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

<sup>5</sup> Ex-Article 15 of Chapter 2 of the Constitution (in force until 31 December 2010) prohibited any act of law or other provision from entailing discrimination against any Swedish citizen on the grounds of race, colour or ethnic origin; foreigners enjoyed the same protection under ex-Article 22 of the same chapter.

discrimination on grounds of language, but the courts have yet to confirm (or disprove) this assumption.

11. In ECRI's view, the Constitution must enshrine the right of individuals to be free from all discrimination based not only on 'race', colour and national or ethnic origin but also language, religion and nationality. As it has already had occasion to emphasise, ECRI itself rejects theories based on the existence of different 'races' but nevertheless employs the term in order to avoid leaving those persons who are generally and erroneously perceived as belonging to 'another race' without legal protection.<sup>6</sup> If the choice has been made to remove all reference to discrimination on grounds of 'race', it is all the more important to ensure that the full range of other possible grounds of racial discrimination are clearly set out in the relevant constitutional and statutory provisions. ECRI notes in this context that different treatment on these grounds would be discrimination only if it had no objective or reasonable justification.
12. ECRI again recommends that the Swedish authorities ensure that the Instrument of Government provides individuals with adequate protection against all racial discrimination. It recommends in particular that they study any new case-law concerning Article 12 of Chapter 2 of the Instrument of Government to determine whether this provision may need to be amended to cover grounds of discrimination coming under ECRI's mandate but not specifically listed: language, religion and nationality, although ECRI notes that the Discrimination Act covers some of these criteria.
13. ECRI notes that, outside the fields of gender equality and civilian or military service, the Instrument of Government still makes no provision for special measures to guarantee the enjoyment and exercise of human rights and fundamental freedoms in conditions of equality. This has not prevented the 'active measures' previously provided for in the employment field but restricted to gender equality from now being extended to some other grounds of discrimination covered by the new Discrimination Act in the fields of employment and education;<sup>7</sup> however, ECRI regrets that the idea of positive action (by which it means temporary measures to prevent or compensate for disadvantages suffered by certain groups or ensure that they participate fully in the various fields of life) is not widely accepted in Sweden, which slows down improvement in the situation of vulnerable groups.
14. ECRI recommends that the Swedish authorities amend the Instrument of Government to enshrine the possibility of taking temporary special measures with respect to certain groups to guarantee them enjoyment and exercise of their human rights and fundamental freedoms in conditions of equality.
15. ECRI welcomes the entry into force on 1 January 2011 of constitutional amendments recognising the Sami as a people and hopes that this step forward will make it easier to resolve the practical problems faced by the Sami in the exercise of their rights as an indigenous people.<sup>8</sup>
- *Fundamental Law on Freedom of Expression and Freedom of the Press Act*
16. As ECRI noted in its third report, Sweden has two constitutional laws regulating freedom of expression in the media: first, the Fundamental Law on Freedom of Expression, which applies to broadcast media such as radio, television and to

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<sup>6</sup> See ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

<sup>7</sup> See below, Civil and administrative law provisions against racial discrimination.

<sup>8</sup> See below, Vulnerable groups – Sami.

recordings of sound, images and text, and second the Freedom of the Press Act, which applies to printed material. It should however be noted that as regards Internet communications, these laws only apply to websites operated by certain mass media undertakings and websites that have been granted a certificate of constitutional protection. Both laws are expressly designed to ensure freedom of expression and contain provisions<sup>9</sup> specifying that when agitation is pursued against a national or ethnic group<sup>10</sup> through media covered by these constitutional laws, prosecution is a matter not for the public prosecutor but solely for the Chancellor of Justice<sup>11</sup> – the only authority with the power to launch an investigation in such cases.

17. In its third report, ECRI found that there was limited enforcement of these provisions and recommended that the Swedish authorities ensure that dissemination of hate speech through these means of communication is effectively countered. ECRI regrets that nothing has changed since this report: very few prosecutions are currently brought for hate speech in the broadcast media or the press.
18. The authorities have indicated that the considerable difference between the number of cases reported to the Chancellor of Justice and the number prosecuted by him is due partly to the fact that the vast majority of cases reported are a matter for the public prosecutor. However, ECRI notes that other factors also come into play, even when the Chancellor of Justice considers a case to come within his jurisdiction. According to the principle of mandatory prosecution, the Chancellor of Justice has to bring a prosecution if he or she believes that an offence coming within his or her jurisdiction has been committed but when studying the issue also has an obligation<sup>12</sup> to take due account of the goals pursued by protecting freedom of the press. Although this approach is similar to the way in which the European Court of Human Rights interprets Article 10 ECHR, ECRI is concerned that it is not possible to bring private proceedings if the Chancellor of Justice decides not to prosecute in a case of agitation against a national or ethnic group falling within his or her competence.<sup>13</sup> ECRI notes in this context the publication in 2009 by one of Sweden's major dailies of an opinion piece by the leader of the Sweden Democrats headed 'Muslims are our greatest foreign threat'. The decision of the Chancellor of Justice in this case to reject an application from an NGO for the opening of a preliminary investigation effectively put an end to any possibility of court proceedings.
19. Furthermore, even in the rare cases where the Chancellor of Justice deems it necessary to prosecute, the court cannot consider the case without prior permission from the jury. This group of nine persons, which is empowered to rule both on substance and on points of law, is appointed by a political

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<sup>9</sup> See Freedom of the Press Act, Chapter VII, sections 4 and 6 and Fundamental Law on Freedom of Expression, Chapter V, section 1.

<sup>10</sup> See below, Criminal law provisions against racism and racial discrimination.

<sup>11</sup> The Chancellor of Justice is an official with no political responsibilities, appointed by the government, and whose office constitutes an independent authority. The role includes acting as ombudsman for the civil service, representing the government in court proceedings, particularly those relating to damages, and ensuring that freedom of the press and media is not infringed.

<sup>12</sup> Under Chapter VII, section 4 of the Freedom of the Press Act and Chapter V, section 1 of the Fundamental Law on Freedom of Expression.

<sup>13</sup> The authorities have indicated that as a general rule, a person who considers that he or she has been a victim of a breach of the above Fundamental Laws can bring a private action if the Chancellor of Justice decides not to prosecute. However, the criminal provision on agitation against a national or ethnical group protects groups as such, not individual group members. Therefore, an individual does not have standing to bring a private action in such cases if the Chancellor of Justice decides not to prosecute.

authority<sup>14</sup> and is not required to give reasons for its decisions; moreover, if it finds that there is no case to answer, the case has to be dropped, with no possibility of appeal. ECRI notes that this arrangement limits the legal options for combating racism in public discourse. Thus, when the Chancellor of Justice initiated proceedings following the publication in 2010 by the leader of small populist party of a poster showing the prophet Mohammed naked with a very young wife, also naked, bearing the words *'He is 53 and she is 9. Do we want this sort of marriage in Scania?'* the jury found that this was not an offence, thus putting a permanent end to court proceedings without the court having to rule on the matter.

20. ECRI notes that freedom of expression and the right to be protected from racism and racial discrimination are complementary rather than conflicting rights and that one of the main challenges in this field is to ensure balanced enforcement of the provisions punishing incitement to racial hatred. It further notes that there are other methods of combating racist discourse – starting with a firm and systematic stand on the part of political leaders against any expression of racist attitudes. It is nevertheless concerned by the obstacles existing in Sweden when it comes to bringing to court cases of agitation against a national or ethnic group committed via the press or broadcast media. ECRI is well aware of the extreme importance attached by the European Court of Human Rights to freedom of expression in the media and for politicians, as set out in Article 10 ECHR. It notes, however, that in cases of clear incitement to racial hatred and discrimination, the Court has emphasised that interference with the perpetrator's freedom of expression can be justified in the light of a compelling social need to prevent disorder and protect the rights of others and provided, of course, that the nature and extent of the penalties imposed are proportionate.<sup>15</sup> ECRI underlines the importance of not depriving the basic prohibitions on hate speech of all meaning by applying the provisions too restrictively. It also stresses the importance of impartiality of justice and is concerned by the fact that the members of the jury required to determine whether or not an offence has been committed in alleged cases of agitation against a national or ethnic group in the press or broadcast media are appointed by political authorities. This lessens the confidence of persons belonging to groups covered by ECRI's mandate in the objectivity and impartiality of the jury's assessment. The problem is compounded by the fact that the Chancellor of Justice (acting as public prosecutor) cannot appeal against juries' decisions to end proceedings and that victims cannot bring a private action if the Chancellor of Justice decides not to prosecute – situations which could result in denial of access to justice. ECRI notes with interest in this context that in 2003, the Government set up a review committee to examine questions concerning freedom of the press and freedom of expression in other media, and hopes that this committee will soon be able to complete its work.
21. ECRI recommends that the Swedish authorities reduce existing obstacles to court proceedings in Sweden in cases of agitation against a national or ethnic group committed via the press or broadcast media. In this respect it recommends in particular that consideration be given to allowing a complainant to bring a private action if the Chancellor of Justice decides not to prosecute a case and allowing the Chancellor of Justice to appeal against a jury's decision that there is no case to answer.

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<sup>14</sup> The members of the jury are appointed for a four-year period either by the municipal council or by the county council.

<sup>15</sup> See, for example, *Féret v. Belgium*, application no. 15615/07, judgment of 16/7/2009, final on 10/12/2009, and *Le Pen v. France*, application no. 18788/09, decision of 20/4/2010, as well as the judgments cited therein.

- *Citizenship Act*

22. In its third report, ECRI encouraged the Swedish authorities to continue their efforts to inform non-nationals about the requirements for acquiring Swedish citizenship and to investigate the reasons why few children who fulfilled the residency requirements took up Swedish citizenship. ECRI notes with interest that the Swedish Migration Board provides multilingual information on its website about applying for and losing Swedish citizenship and offers an online application form.<sup>16</sup> As regards naturalisation notifications for children, 695 were received in 2009, 879 in 2010 and 986 in 2011. According to the authorities, the relatively low number of notifications may be explained by the fact that parents opt for naturalisation at the same time to ensure that the whole family has the same nationality (or nationalities). The authorities have also indicated that they have appointed a committee to review various aspects of the Citizenship Act of 2001, including the citizenship of children, with reference to ECRI's recommendation.

### **Criminal law provisions against racism and racial discrimination**

- *Content*

23. As ECRI has already noted in previous reports, the Swedish Penal Code (Chapter 16, Article 8) prohibits 'agitation against a national or ethnic group' on grounds of 'race', colour, national or ethnic origin or religious belief, thus prohibiting dissemination of racist statements or communications not only in public but also within organisations. 'Unlawful discrimination' is also prohibited (Chapter 16, Article 9), that is, any discrimination by a person in the conduct of his or her business, or when organising a public assembly or gathering, against another person on grounds of 'race', colour, national or ethnic origin, religious belief or sexual orientation. Chapter 29, Article 2(7) of the Penal Code also provides that racist motivation is to be considered an aggravating circumstance.
24. In its third report, ECRI recommended that the Swedish authorities introduce legislation providing for the possibility of dissolution of organisations that promoted racism and penalising the creation and leadership of such a group, support for it and participation in its activities. The Swedish authorities have again stressed that existing provisions concerning racial agitation, racial discrimination and racially aggravated offences on the one hand and preparation of, participation in, aiding and abetting of and conspiracy to commit offences, on the other, ensure that racist organisations cannot act without breaking the law. ECRI recalls the importance of preventive action with regard to racism and racial discrimination and activities aimed at promoting or inciting them. It stresses that it is vital to take action as swiftly as possible against organisations inciting racism and racial discrimination; this is why criminalising the establishment of these organisations and any participation in their activities is so important.
25. ECRI reiterates its recommendation to the Swedish authorities to introduce criminal provisions penalising the creation or leadership of a grouping which promotes racism, support for such a grouping and participation in its activities.
26. ECRI notes that under General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, all grounds such as 'race', colour, language, religion, nationality and national or ethnic origin should be covered by criminal law to combat racism and racial discrimination. However, the grounds of language and nationality are not expressly taken into

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<sup>16</sup> [www.migrationsverket.se](http://www.migrationsverket.se)



account for the offences referred to above. According to the information available to ECRI, it would seem, however, that in practice, the interpretation of the term “national origin” in the case-law of the Swedish courts may allow the criterion of nationality to be taken into account.

27. ECRI considers that the law should also penalise the following acts when committed intentionally: the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes.<sup>17</sup> The law should also provide that legal entities are held criminally liable for the racist offences set out in this Recommendation. However, according to ECRI’s information, the criminal liability of legal entities provided for by Chapter 36, Article 7 of the Penal Code only concerns offences committed in the exercise of an enterprise’s business activities. Other offences committed by legal entities are not subject to criminal liability.

28. ECRI recommends that the Swedish authorities amend Articles 8 and 9 of Chapter 16 of the Penal Code, together with Article 2(7) of Chapter 29, to include language among the grounds to be taken into account for racist offences.

29. ECRI further recommends that the Swedish authorities amend their relevant criminal legislation in order, on the one hand, to penalise, when committed intentionally, public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes and, on the other, to provide that legal persons are held criminally liable for all racist offences set out in ECRI’s General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination – and not only for those offences committed in the exercise of business activities.

- *Application*

30. In its third report, ECRI recommended that the authorities ensure that: 1) all the criminal law provisions concerning racism and racial discrimination are thoroughly applied, 2) the police, prosecution service and judges are made well aware of the need to counter all these offences seriously, and 3) all those working within the criminal justice system are properly trained to this end.

31. Since ECRI’s third report, the various authorities involved in enforcing the criminal law provisions concerning racism have taken steps to train and raise awareness among all those working in this field and to improve the application of the relevant provisions. Thus to facilitate reporting of hate-motivated offences, the police have set up a free phone number in Stockholm for offences of this sort. In order to identify and monitor hate-motivated offences more effectively, a new compulsory field has been added to the police database. A database containing information on hate-motivated offences can also be accessed on the prosecution service intranet and is regularly updated. In Malmö, the police have set up a hate-motivated offences working party, which is working on identifying and monitoring these offences better, training police officers to work more effectively on these cases and ultimately improving the application in practice of aggravating circumstances. A research project into how better to evaluate the authorities’ handling of hate-motivated offences is also under way and its report is expected in October 2012.

32. In order to help investigate these offences more effectively, the National Police Board has produced a handbook to encourage police officers to assist victims from the outset of investigations. The prosecution service has also prepared a

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<sup>17</sup> ECRI’s General Policy Recommendation No. 7: National legislation to combat racism and racial discrimination, paragraph 18e).

handbook providing guidance for public prosecutors for preliminary investigations of cases of agitation against a national or ethnic group, with the aim of establishing standard practice in such cases.

33. As regards training, the National Police Board has increased police training on hate-motivated offences subsequent to a 2010 evaluation. It has worked to raise police officers' awareness of hate-motivated offences and of the conduct required in such cases and to train them to identify these cases more effectively. The National Courts Administration, for its part, organised three training sessions in 2007 on the theme of hate-motivated offences in Sweden. The Judicial Training Academy – the main body responsible for the training of judges – deals with discrimination and consideration of hate motives in its criminal law course on sentencing.
34. ECRI welcomes these initiatives, which it considers relevant and useful. It notes, however, that a number of sources have claimed that few hate-motivated offences are reported, in part because the victims feel unable to rely on action being taken by the police or judiciary; indeed, only a small percentage of offences reported are subsequently taken to court.
35. ECRI encourages the Swedish authorities to use training and awareness-raising measures in their continuing efforts to ensure that criminal law provisions concerning racism and racial discrimination are properly applied by everyone in the criminal justice system (police, prosecution service and judges). It recommends that the authorities step up their efforts to increase confidence in the police by persons belonging to groups covered by ECRI's mandate.
36. ECRI notes that collection of official statistics on racist or xenophobic offences (according to the categories used in Sweden) has since 2006 been the responsibility of the National Council for Crime Prevention. The authorities have indicated that at present there is no general definition of hate crime and that the use of the indicator designed to allow the collection of data in this regard varies between the authorities. Data-collection based on the indicator alone is therefore not currently possible. Accordingly, the National Council for Crime Prevention collects data through a three-pronged collection process based on an electronic search for pre-established keywords, a detailed study of relevant police reports and a study of all police reports on hate speech and unlawful discrimination, before studying the hate-crime-indicated police reports that have not already been detected in the previous stages of the collection process.
37. ECRI notes with interest that, from 2008, the use by the National Council for Crime Prevention of a broader definition of racist and xenophobic incidents (according to their terminology) has markedly improved the Council's ability to monitor this type of incident. For 2004-2007 the number of hate-motivated incidents recorded varied between roughly 3 000 and 3 500 a year. When the definition for the relevant incidents was extended, 5 895 hate-motivated incidents were reported to the police in 2008, 5 797 in 2009 and 5 139 in 2010. The 2010 figure represents a drop of over 10% on the previous two years. Still in 2010, and taking the breakdown used in Sweden, of the hate-motivated incidents reported to the police 3 786 (74%) were motivated by xenophobia or racism, 272 (5%) by Islamophobia, 161 (3%) by antisemitism and 119 (2%) by other anti-religious sentiments.<sup>18</sup> Civil society has previously stressed that some facets of racist offences were not apparent from the statistics (Afrophobic and anti-Roma offences). However, since 2008, detailed statistics on Afrophobic

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<sup>18</sup> The remaining 16% were motivated by homophobia or transphobia.

and anti-Roma offences have been published.<sup>19</sup> Civil society has also pointed out that that racist offences overall are virtually absent from academic research on hate-motivated offences, even though approximately 75% of these offences have a racist or xenophobic motivation.

38. ECRI welcomes the steps taken by the National Council for Crime Prevention to identify hate-motivated incidents and offences more effectively, even if there still seem to be some shortcomings which might allow some offences to pass undetected. Furthermore, it seems that the fact that only a small proportion of the incidents reported result in prosecution<sup>20</sup> or sentencing increases the victims' tendency not to report offences.
39. ECRI recommends that the Swedish authorities continue their efforts to improve monitoring of racist offences by working, amongst other things, to strengthen further the system of recording and monitoring racist incidents and to increase confidence in the police by members of groups covered by ECRI's mandate. It draws the authorities' attention to its General Policy Recommendation No. 11: Combating racism and racial discrimination in policing, which suggests a range of measures that the authorities could take to this end.

### **Civil and administrative law provisions against racial discrimination**

#### *- Content*

40. In its third report, ECRI recommended that the Swedish authorities take measures to tackle the exploitation of racism and xenophobia in politics and in particular consider enacting legislation to withdraw public financing from organisations that promoted racism, xenophobia and antisemitism.
41. ECRI notes that measures have been introduced to ensure that organisations violating democratic values are not publicly funded and that, if it is found that an organisation is not complying with its obligations in this field, it will be required to reimburse public support received. Since the adoption of a new government policy in 2009, all funding mechanisms also have a condition whereby only organisations that respect a certain number of principles, including prohibition of discrimination, qualify for public support. However, it seems these provisions apply only to non-profit associations and not to political parties. ECRI further recalls that, as provided for in its General Policy Recommendation No. 7, the law should provide for the possibility of dissolution of organisations which promote racism.
42. ECRI reiterates its recommendation to the Swedish authorities to enact legislation making it possible to withdraw public financing from parties promoting racism and disband organisations promoting racism. It here draws the authorities' attention to the relevant provisions of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.
43. In its third report, ECRI recommended that the authorities extend anti-discrimination legislation to all levels of education, provide by law for the possibility of adopting positive measures to promote equality of persons in all fields of life irrespective of their racial and ethnic origin, place public authorities

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<sup>19</sup> Indeed, according to figures forwarded by the Swedish authorities to the ODIHR, 145 anti-Roma offences were committed in 2010. See OSCE-ODIHR, Hate Crimes in the OSCE Region: Incidents and Responses: Annual Report for 2010, Warsaw, November 2011, p. 55.

<sup>20</sup> According to ODIHR figures, 292 cases of hate-motivated offences led to prosecution in 2008, 450 in 2009 and 440 in 2010. See OSCE-ODIHR, Hate Crimes in the OSCE Region: Incidents and Responses: Annual Report for 2010, Warsaw, November 2011, p. 27. No figures are provided for cases sentenced.

under a statutory duty to promote equality and prevent discrimination in carrying out their functions, and provide for effective, proportionate and dissuasive sanctions for cases of discrimination.

44. A new Discrimination Act (2008:567) came into force in Sweden on 1 January 2009. It prohibits discrimination on grounds of sex, transgender identity or expression, ethnicity, religion or other beliefs, disability, sexual orientation or age. The Act covers prohibition of discrimination in the following fields: employment; education; policies relating to the labour market and employment services not under public contract; business start-up and management; professional recognition; membership of certain organisations; goods, services and housing; meetings and public events; medical care; social services; social insurance; unemployment insurance; student grants; military and civilian service; and public employment. All workers are protected by law, whatever their status (permanent contract, fixed-term contract or trainees). The Act introduces some new protection, including a general prohibition on discrimination in the public sector. This prohibition is fully applicable to the field of education. ECRI is also pleased to note that the awards that can be made to victims of racial discrimination as defined by the Act have also increased under this law; the Act has deliberately rejected the term 'damages' (associated with relatively small sums in Sweden) in favour of the term 'discrimination compensation' in order to encourage the courts to make larger awards to victims of discrimination and to strengthen the law's deterrent effect. Lastly, ECRI notes with interest that under Chapter 6, section 3 of the Discrimination Act, if a person who considers that he or she has been discriminated against can demonstrate circumstances suggesting the existence of discrimination, the burden of proof shifts to the defendant to show that discrimination has not occurred.
45. Segregation is not specified as a form of discrimination prohibited by law. Nor does the Discrimination Act expressly prohibit discrimination on grounds of language or nationality. According to the information available to ECRI, it would seem, however, that in practice, the interpretation of the term "national origin" in the case-law of the Swedish courts may allow the criterion of nationality to be taken into account.
46. ECRI recommends that the Swedish authorities extend the grounds set out in the new Discrimination Act (2008:567) expressly to cover discrimination based on language. It further recommends that they specifically prohibit segregation in this law.
47. Pursuant to Chapter 6, section 2 of the Discrimination Act (and provided that the individual is not bringing an action on his or her own behalf<sup>21</sup>), an action on behalf of a victim of discrimination can be brought by the Equality Ombudsman, a relevant non-profit association or an employees' organisation; under the third paragraph of the same section, where an employees' organisation has the right to bring an action on behalf of the victim<sup>22</sup> the Ombudsman or an association may bring an action only if the employees' organisation does not do so.
48. ECRI is aware that the leading role assigned to employees' organisations in cases of discrimination in the field of employment is the result of a political compromise reached at the time when the Discrimination Act was passed. It stresses, however, that this outcome creates inequalities between members of

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<sup>21</sup> See second paragraph of section 10 of the same chapter.

<sup>22</sup> That is, in cases covered by Chapter 4, section 5 of the Labour Disputes (Judicial Procedure) Act (1974:371), when the victim in a labour dispute is a member of an employees' organisation.

employees' organisations (who have to turn first to their organisation, whether or not they trust it to play this specific role) and non-members (free from the outset to choose their own counsel). A number of ECRI's interlocutors pointed out the flaws in this system for victims of discrimination, finding that it lacked clarity and was ineffective inasmuch as it had the effect of delaying or even terminating proceedings if an employees' organisation refused to handle a case and the victim was unaware that the matter could be taken further with another defender, and that, consequently, it risked sapping victims' confidence in these new legal arrangements.

49. ECRI shares this analysis and notes that it is not based on the welcome fact that employees' organisations are able to defend victims of discrimination in the workplace (which is obviously one of their responsibilities) but solely on the restrictive nature of the new arrangement. It notes that in practice, where an employees' organisation, the Ombudsman or a non-profit association brings an action as a party on behalf of an individual in Sweden, it covers all the legal costs involved. It further notes that non-governmental organisations usually lack the resources to take many cases to court and that for strategic reasons, the Ombudsman's efforts in the field of litigation focus on a limited number of cases<sup>23</sup>.
50. ECRI recommends that the Swedish authorities amend Chapter 6, section 2, paragraph 3 of the Discrimination Act to put on an equal footing all persons qualified to provide legal assistance to victims of discrimination and represent them, in particular by removing the requirement for victims of workplace discrimination belonging to an employees' organisation to consult this organisation first, to the exclusion of other possible defenders.
51. ECRI also notes that under the Discrimination Act, positive action is not generally accepted with regard to ethnicity and religion. The only provisions relating to 'active measures' are in the fields of employment and education. Employers are thus required to take active measures to make the workplace more inclusive, especially for persons of different religions and ethnicities. These measures are general, covering groups rather than specific individuals, and supplement the gender equality measures that existed in the old law. Education providers are also required to take active measures to promote equal rights and opportunities for pupils and students, regardless of gender, ethnicity, religion or other beliefs, disability or sexual orientation.
52. ECRI welcomes the extension of active measures to make the workplace more inclusive not only in terms of gender equality but also, amongst other things, for persons of different ethnic origins and religions. It notes, however, that other grounds of racial discrimination such as nationality and language are not expressly taken into account. It also regrets that the principle of positive action is not generally accepted in Sweden. It emphasises that positive action is certainly not an exception as regards prohibition of discrimination but, on the contrary, is part and parcel of action to tackle this phenomenon. While positive action does imply different treatment of individuals according to whether or not they belong to certain groups, the measures in question are not likely to constitute discrimination since they must be objectively justified – that is, they must pursue a legitimate aim (in this case remedying discrimination), be proportionate to this aim and remain in place no longer than is necessary to achieve this aim. Consequently, positive action must be regarded not as an exception to the principle of non-discrimination but rather as an essential tool that is very much part of the arsenal of measures available to combat racial discrimination.

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<sup>23</sup> See further below.

53. ECRI reiterates its recommendation that the Swedish authorities provide by law for the possibility of adopting positive measures to promote equality of persons in all fields of life irrespective of colour, language, religion, nationality or national or ethnic origin.

54. ECRI is pleased to note that under the new Act both public and private employers are required to promote equality in the workplace. However, it regrets that the public authorities' obligation to promote equality is confined to their role as employers, since, in ECRI's view, the law should also place public authorities under a duty to promote equality and prevent discrimination in carrying out their functions<sup>24</sup> as well as to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination.<sup>25</sup> ECRI notes with interest in this context that since 2006 the thirty largest public authorities have had to include a non-discrimination clause in public procurement contracts for over SEK 750 000 (approximately EUR 84 000); it encourages the Swedish authorities to introduce similar measures for other public authorities.

55. ECRI again recommends that public authorities be placed under a statutory duty to promote equality in carrying out their functions.

- *Application*

56. In its third report, ECRI recommended that the Swedish authorities closely monitor the application of anti-discrimination legislation and take all the necessary measures to improve its application.

57. The new Discrimination Act has been in force for almost three years. The Swedish authorities have stated that victims of discrimination have been able to receive larger amounts of compensation owing to the entry into force of this law; however, ECRI notes that there are still very few court decisions based on the new Act, since, despite the fact that a large number of complaints of discrimination based on religion or ethnic origin are reported to the Ombudsman every year (about 900), only ten or so result in lawsuits. Admittedly, the victims may in some cases find it worth reaching a friendly settlement, particularly in cases of workplace discrimination, when the employer concerned may sometimes be willing to make a fairly prompt offer of compensation that suits the complainant. However, such settlements do not always help raise awareness of the provisions of the Discrimination Act as the discrimination aspect of the case often vanishes from friendly settlements, which then simply reflect wrongdoing on the employer's part. The Office of the Ombudsman has further emphasised that there is not always sufficient evidence to demonstrate that discrimination has occurred. Moreover, although the Office has funds for legal expenses, it is not materially possible for it to bring an action in every case brought to its attention, and it is therefore obliged to make strategic choices and select the cases that are likely to have the greatest impact. Apart from the possibility of increasing the resources provided for the Ombudsman,<sup>26</sup> ECRI notes in this context that one way of remedying this situation would be to extend

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<sup>24</sup> In this respect, ECRI notes that the prohibition on "unlawful discrimination" that applies to persons in the conduct of their affairs under Chapter 16, section 9, paragraph 1 of the Penal Code (see above, Criminal law provisions against racism and racial discrimination – Content) also applies to persons employed in public service or having a public duty under paragraph 2 of the same section.

<sup>25</sup> See paragraphs 8 and 9 of ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, as well as paragraph 27 of the Recommendation's explanatory memorandum.

<sup>26</sup> The question of the Ombudsman's human and financial resources is considered below: see Anti-discrimination bodies and other institutions.

options for NGOs to take discrimination cases to court and to support them more in this role.

58. Moreover, it seems that the new burden-of-proof rules have not yet been properly understood by some courts, which makes it even harder to obtain a finding of racial discrimination.
59. ECRI recommends that the Swedish authorities take measures to facilitate representation of victims of discrimination by non-governmental organisations, in particular by providing them with additional funding for this purpose.
60. ECRI recommends that the Swedish authorities take immediate steps to provide initial and in-service training on the new Discrimination Act (2008:567) for all judges likely to sit in racial discrimination cases.

### **Anti-discrimination bodies and other institutions**

61. In its third report, ECRI recommended that the Swedish authorities ensure that the areas of work carried out by different institutions at central level on issues of discrimination were clearly defined so as to maximise their effectiveness. Since then, a number of bodies that used to exist have been disbanded or replaced. The following review takes account of this new institutional landscape.
- *Equality Ombudsman (Diskrimineringsombudsmannen)*
62. In its third report, ECRI recommended that, in connection with their review of the mechanisms to ensure oversight of anti-discrimination legislation, the Swedish authorities take into account ECRI's General Policy Recommendations No. 2 and No. 7. It further recommended that they continue to ensure that the Ombudsman against Ethnic Discrimination was given all the necessary resources to carry out all the work covered by its mandate effectively.
63. Since this report, the four Ombudsman institutions that used to exist in Sweden (responsible for combating discrimination on grounds of ethnic origin, gender, disability and sexual orientation respectively) have been disbanded and a new institution has been created: the Equality Ombudsman (DO). The latter, whose terms of reference are laid down in the Discrimination Act and the Act concerning the Equality Ombudsman, is responsible, amongst other things, for supervising compliance with the Discrimination Act;<sup>27</sup> the Equality Ombudsman's terms of reference thus cover all the forms of discrimination set out in this Act (and no others), that is, discrimination based on sex, transgender identity or expression, ethnicity, religion or other beliefs, disability, sexual orientation and age.<sup>28</sup> The DO can bring a court action on behalf of victims of discrimination who consent to this, and parties to whom the DO sends a request for information are legally obliged to reply.<sup>29</sup> The DO also has the task of working to prevent the forms of discrimination covered by its terms of reference, promoting equal rights and opportunities, providing advice and other support to victims of discrimination, maintaining contact with various national stakeholders (government agencies, enterprises, individuals and organisations), following international developments and having contacts with international organisations, following research work, proposing legislative amendments and other anti-discrimination measures to the government, and initiating other

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<sup>27</sup> See Chapter 4, section 1 of the Discrimination Act (2008:567), which came into force on 1 January 2009; see also the Act concerning the Equality Ombudsman (2008:568).

<sup>28</sup> See above, Civil and administrative law provisions against racial discrimination.

<sup>29</sup> See Chapter 4, section 3 of the Discrimination Act (2008:567), which came into force on 1 January 2009.

appropriate measures.<sup>30</sup> The DO can also draw up surveys, reports and independent recommendations. The budget allocated to the DO is equivalent to the total budget of the four bodies that it has replaced.

64. ECRI notes that some of the fields coming under the DO are ones in which its staff (now numbering roughly one hundred) already have extensive expertise as they were covered by the earlier institutions, whereas others are new. Moreover, each of the four former institutions had its own approach and its own conception of its role. Setting up a single institution has therefore meant cultivating new skills within that institution and developing not only appropriate methods of working but also a new identity that is strong, independent and capable of fostering unity. ECRI notes that in the course of 2011 three separate individuals will have held the post of Equality Ombudsman, which is unlikely to help consolidate this still relatively young institution. ECRI very much hopes that the situation will stabilise quickly and that the quality of the DO's work will not suffer. ECRI further notes, with regard to the independence of the DO, that this is a government-appointed post; the term of office is usually six years but can be terminated unilaterally by the government while in progress, as happened in 2011.
65. In 2009, the DO received 2 715 complaints of discrimination, of which 766 (28%) were on grounds of ethnicity; in 2010, 2 892 complaints were received, of which 761 (26%) were on grounds of ethnicity. Disability was the only field with a higher number of complaints (over 900 a year). For discrimination based on religion or beliefs 101 complaints were received in 2009 (3.7%) and 64 in 2010 (2.2%).<sup>31</sup> As regards the handling of these complaints, ECRI notes that, mainly for material reasons arising out of the need to combat discrimination on a number of fronts at the same time and from a long-term perspective, the DO is obliged to make choices regarding cases to be taken to court, focusing on cases which seem to raise questions of principle. While ECRI considers that the Ombudsman's role in preventing discrimination and promoting equal rights and opportunities is vital, it considers it equally important that victims have access to appropriate remedies and notes that court decisions can also contribute to prevention in the future.
66. ECRI recommends that the Swedish authorities ensure that the Equality Ombudsman has all the human and financial resources needed to perform the whole range of tasks covered by its terms of reference.
- *Other anti-racist bodies in receipt of government funding*
67. The Centre against Racism, which is largely state-funded and was just beginning its work when ECRI's third report was being written, continues to operate as an umbrella organisation for numerous associations. This body is politically and religiously independent, with a base of over one hundred non-governmental organisations working in the field of racial discrimination, and has as its main tasks to gather, develop and disseminate knowledge of racism and racial discrimination and contribute to shaping public opinion on these issues. It is currently also responsible for coordinating Swedish organisations belonging to the European Network Against Racism (ENAR).
68. As for the local anti-discrimination bureaux, ECRI's third report welcomed the additional funds made available to them. These bureaux, established on the initiative of local non-governmental organisations and largely funded by the Swedish National Board for Youth Affairs, continue to offer advice and

<sup>30</sup> See Act concerning the Equality Ombudsman (2008:568), which came into force on 1 January 2009.

<sup>31</sup> Diskrimineringsombudsmannen, DO 2010: statistik över individärenden, 22/02/2011.



assistance to victims of discrimination. However, the funding for these bureaus, which totalled SEK 13.5m in 2008 and SEK 14m in 2009, dropped to SEK 10m in 2010. While a new bureau was able to open in Malmö in 2011, others have had to close over the past few years for lack of adequate funds and yet others are dependent on local-authority support to continue their work. ECRI welcomes the work of these bureaus, which are often the first port of call for victims of racial discrimination and allow approaches tailored to different local situations, particularly with regard to prevention and awareness-raising. It nevertheless stresses that combating discrimination is a permanent task, which, if it is to be effective in the long term, requires long-term funding.

69. ECRI recommends that the Swedish authorities continue and increase support for local initiatives to strengthen action to tackle racial discrimination. In particular it recommends that they improve access to funding – especially long-term funding – for local anti-discrimination bureaus.

- *Special Rapporteur on Xenophobia and Intolerance*

70. In May 2011, the government appointed a special rapporteur to study ways of strengthening current efforts to combat xenophobia and intolerance and identify shortcomings to be more effectively countered in future. The rapporteur will work with a group of experts consisting of, among others, legal experts, psychologists and sociologists. His report will be delivered in autumn 2012.

71. ECRI notes with interest that the special rapporteur intends to focus on dialogue when carrying out his task and that his approach will take account of the wide variety and the complexity of factors that can fuel xenophobia and intolerance. It further notes with interest that the study aims to exploit the full range of existing knowledge about xenophobia and intolerance in Sweden and encourage adoption of an effective and comprehensive approach to combating these phenomena. It hopes that the special rapporteur's terms of reference<sup>32</sup> will leave him sufficient scope to make recommendations for action in all fields that he feels to be relevant.

## **II. Racism in public discourse**

### **Exploitation of racism in politics**

72. In its third report, ECRI noted with concern that, at the 2002 municipal elections, the Sweden Democrats saw an almost fourfold increase on the electoral support obtained in 1998 and had consequently won a number of seats in municipal councils. Since then, in the September 2010 general election, the Sweden Democrats polled 5.7% and won twenty seats. The party campaigned on an anti-immigration programme; it has also criticised Islam by depicting it as incompatible with Swedish values. In an opinion piece published in a leading Swedish daily in October 2009, the party leader described the increase in Sweden's Muslim population as the 'greatest foreign threat to Sweden since the Second World War'. Other parties working at local level have also expressed anti-Muslim sentiments.

73. ECRI is very concerned by this evolution in Sweden's political landscape. It emphasises that politicians must resist the temptation to take a negative approach to issues affecting persons belonging to groups covered by ECRI's mandate and must, on the contrary, take a stand against all forms of racism. It recalls the principles set out in the Charter of European Parties for a Non-Racist Society and in ECRI's Declaration on the Use of Racist, Antisemitic and Xenophobic Elements in Political Discourse, which can be used by politicians

<sup>32</sup> See Cabinet decisions, Dir. 2011:39, 5 May 2011.

as benchmarks for a responsible attitude in political discourse. While the appointment of a special rapporteur on xenophobia and intolerance<sup>33</sup> is a positive step and should provide a better understanding of the factors that have allowed xenophobic and Islamophobic parties to gain ground in Sweden over the past few years, stronger measures could already be taken to combat exploitation of racism and xenophobia in politics. ECRI refers in this connexion to the recommendations already made elsewhere in this report.<sup>34</sup>

### **Extremist racist movements**

74. In its third report, ECRI recommended that the Swedish authorities intensify their efforts to counter the White Power movement and devote particular efforts to countering the production and dissemination of hate music.
75. In 2008-2009 the National Council for Crime Prevention and the Swedish Security Services carried out a joint study into extremism in Sweden. The findings show that white supremacist circles in Sweden are not large (covering only about a hundred people) but their members are very active. One of the goals of the action plan introduced by the authorities to combat these phenomena is to strengthen individuals' ability to resist. Various other initiatives have also been taken, aimed, for example, at helping individuals to leave extremist racist movements. The authorities have also referred to the March 2011 launching of a pilot scheme to set up teams comprising representatives of all the government agencies that could contribute to strengthening preventive action in this field. There has also been a focus on strengthening dialogue between the police and leaders of different groups, including groups seeking to organise public demonstrations and those that they might target, so to increase the sense of security and trust of society as a whole. Efforts have also been devoted to ensuring effective co-operation between the security services and the police, including internationally, to combat these movements. ECRI welcomes these measures and encourages the authorities to pursue them. It notes, however, that the number of racist incidents inspired by the White Power ideology remains high and is far in excess of the number of people identified as active in those circles. Although it may be noted with satisfaction that the number of such incidents reported to the police dropped from 667 in 2008 to 421 in 2010, ECRI strongly encourages the authorities to continue their efforts to curb this phenomenon. In this connection it refers them to its above recommendations on the application of criminal law.

### **Production and dissemination of hate music**

76. According to the authorities, there have been few complaints over the past few years concerning production and dissemination of music infringing the prohibition on agitation against a national or ethnic group. Whatever the circumstances, such acts are in breach of the Fundamental Law on Freedom of Expression,<sup>35</sup> and their perpetrators are liable to a penalty ranging from a simple fine to a four-year prison sentence in serious cases. The law applies not only to radio and television but also to sound recordings; however, if it is the content of the material that is in issue, the law does not allow the authorities to take action before the music has actually been disseminated. ECRI refers the Swedish

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<sup>33</sup> See above, Existence and application of legal provisions – Anti-discrimination bodies and other institutions – Special Rapporteur on Xenophobia and Intolerance.

<sup>34</sup> See above, Existence and application of legal provisions – Civil and administrative law provisions against racial discrimination – Content.

<sup>35</sup> See above, Existence and application of legal provisions – Constitutional provisions and other basic provisions – Fundamental Law on Freedom of Expression and Freedom of the Press Act.

authorities to its above recommendations concerning the content and application of the Fundamental Law on Freedom of Expression.

### **Internet and media**

77. In its third report, ECRI recommended that the Swedish authorities ensure that racial agitation committed through the Internet is prosecuted and punished.
78. ECRI is concerned by the fact that online racism has continued to grow exponentially since then. Most racist websites contain expressions of antisemitism (typically characterising Jews as being involved in global conspiracies) or Islamophobia (seeing Muslims as invaders threatening Europe). To these may be added online forums where racist comments are becoming more common.<sup>36</sup>
79. In late August 2011 a number of leading daily newspapers took steps to limit racist comments appearing on their websites. This was done either by screening comments more carefully before publishing them, in order to allow readers to discuss social questions without racist comments being posted, or by removing the factor of anonymity by obliging persons posting comments to identify themselves with their full e-mail address or through their Facebook profile. While it is still too early to evaluate the impact of these measures in the long term, ECRI notes with interest that analysts observed a marked change in the tone of discussion in the first few weeks following their introduction.
80. The authorities have pointed out that many initiatives taken to improve enforcement of criminal law provisions also apply to dissemination of racist discourse through the Internet. However, Internet offences are often harder to prove, and new methods have to be developed to gather the necessary evidence. ECRI welcomes the fact that in 2011 the police also undertook mapping of racist websites in order to improve the effectiveness of their surveillance.
81. ECRI recommends that the Swedish authorities continue and step up their efforts to combat racist forms of expression on the Internet. It invites them to ensure that anybody publishing racist comments on the Internet is prosecuted and encourages them to promote initiatives that have already proved useful in combating racist, xenophobic and antisemitic activities on the Internet.

### **Climate of opinion**

82. As mentioned above, over the past few years xenophobia and Islamophobia have gained ground in Swedish politics. Civil society reports that expressions of contempt that would have been condemned a few years ago are now accepted. This shift towards normalisation of intolerant discourse, and even hate speech, may be linked in part to the electoral success of the Sweden Democrats but also to the increase in hate speech on the Internet. It is young people who not only make the most use of the Internet but are also most likely to lack objectivity and a critical attitude with regard to what they are reading; the danger is that they will absorb intolerance and hate speech without having the wherewithal to dissect and combat it.
83. At the same time, the removal of the term 'race' from a number of legal provisions concerning discrimination, although justified in theory,<sup>37</sup> seems to go

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<sup>36</sup> See, for example, Forum för levande historia (Living History Forum), Antisemitism och islamofobi – utbredning, orsaker och preventivt arbete ('Antisemitism and Islamophobia: Extent, causes and prevention'), Uppdrag från Arbetsmarknadsdepartementet A2011/1622/DISK, Stockholm, 2011.

<sup>37</sup> See above, Existence and application of legal provisions – Constitutional provisions and other basic provisions.

hand in hand with a waning of the awareness of racism as a phenomenon that exists in Swedish society. Yet Afrophobia, antisemitism, anti-Gypsyism and Islamophobia are all phenomena which still exist in Sweden, of which not only the discriminatory effects but also the substance must be combated.

84. ECRI refers in this connexion to the recommendations elsewhere in this report regarding education and awareness-raising as to the need to combat racism, xenophobia and intolerance. It notes with interest that the increase in xenophobic speech has not gone unchallenged. For example, several thousand people took part in a number of rallies after the autumn 2010 general election to demonstrate against racism and in favour of tolerance, while in December 2011 the Minister for Integration launched a website ([regeringen.se/tolerans](http://regeringen.se/tolerans)) to refute the most common myths and negative stereotypes relating to immigrants, refugees, national and ethnic minorities and religious minorities in Sweden.

### III. Racist violence

85. In its third report, ECRI recommended that the Swedish authorities ensure a firm response to racial violence and harassment, including enforcement of the relevant criminal law provisions.
86. According to figures provided by the authorities, 735 of the incidents reported to the police in 2010 where a xenophobic or racist hate motive was detected involved an element of violence (deadly violence, physical assault, and violence against a public servant). This was slightly lower than the percentages for 2009 and 2008 (22% and 21% respectively). ECRI refers in this connexion to the recommendations made elsewhere in this report concerning monitoring of racist incidents and offences.<sup>38</sup>
87. ECRI is deeply concerned by a series of violent attacks in Malmö perpetrated against persons with an immigrant background between late 2009 and October 2010 and resulting in both minor and serious casualties, including some deaths. The only apparent motive for these attacks is racist. A man was arrested and remanded in custody in November 2010 and has been indicted for murder and several counts of attempted murder; an investigation is under way. ECRI strongly hopes that this investigation will bring the truth to light about any racist aspects of the attacks in question.

### IV. Discrimination in various fields

#### Housing

88. In its third report, ECRI encouraged the Swedish authorities in their efforts to address *de facto* residential segregation and recommended that, along with measures to improve the living conditions of persons living in areas predominantly inhabited by persons of immigrant origin, the Swedish authorities consider measures to actually desegregate these areas.
89. ECRI notes with concern that *de facto* residential segregation still exists in Sweden. The authorities acknowledge the existence of this problem but have pointed out that local authorities have exclusive control of urban planning in Sweden and that there is very little central government can do to address the phenomenon of segregation. It is therefore endeavouring to lessen the impact of *de facto* residential segregation by signing agreements with local authorities wishing to work jointly to develop the areas concerned and combat exclusion. To date, agreements have been signed with 21 out of Sweden's 290 local

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<sup>38</sup> See above, Existence and application of legal provisions – Criminal law provisions against racism and racial discrimination.

authorities. According to the authorities, the problem is not a shortage of housing but rather the fact that in certain areas there is a high concentration of vulnerable groups – in particular the poorest people, who live in the suburbs in blocks of flats built in the 1960s and 1970s to meet the housing shortage at the time but which are now undesirable.<sup>39</sup>

90. ECRI further notes that a study by the Equality Ombudsman (DO) delivered to the government in 2010 and based on discrimination testing on grounds of sex, ethnicity, beliefs, disability and sexual orientation showed that there was discrimination in housing, especially on the rented housing market, which particularly affected persons with an immigrant background.<sup>40</sup> The authorities have pointed out that the population of segregated areas does change, since once people move up the social ladder they are able to leave. However, leaving these areas is by definition difficult for people facing discrimination in access to housing. It seems that Roma, Muslims, Afro-Swedes and asylum seekers are particularly affected by such discrimination. Some civil-society stakeholders have drawn attention in this context to the fact that legislation in this field is inadequate; others, however, point to a recent case taken to court by the Equality Ombudsman on behalf of a refugee family being charged excessive rent by their landlord, who was found to have breached the law. Action by the Equality Ombudsman similarly made it possible for two friendly settlements to be reached in 2010 between Roma suffering housing discrimination and parties refusing to sell or rent them a flat because of their ethnic origin. While the fact that discrimination was established in these cases is encouraging, it seems that they reflect a situation encountered in particular by persons of non-Swedish origin.
91. ECRI emphasises that segregation is a particularly serious form of discrimination and considers it necessary to step up efforts to address this phenomenon in Sweden. It stresses in this respect that local government autonomy is no justification for allowing *de facto* segregation to continue. It further emphasises that, to conquer this phenomenon, discrimination in access to housing outside segregated areas must also be effectively addressed. Taken together, these efforts should also result in better social integration in Sweden.
92. ECRI recommends that the Swedish authorities adopt a plan of action to address *de facto* residential segregation in Sweden as a matter of urgency. This plan should include practical measures to be taken by the relevant stakeholders, a budget and adequate resources to achieve the goals set. It should also enlist local authorities to play an active part in addressing *de facto* residential segregation. The action plan's impact in practice should be evaluated regularly.
93. ECRI further recommends that the Swedish authorities step up their efforts to combat other forms of housing discrimination. Measures could include information campaigns, targeting on the one hand those suffering discrimination, to inform them of their rights and the remedies if their rights are infringed, and on the other property owners, to make them aware of their legal obligations. It would also be useful to study the effectiveness of current legal provisions relating to housing discrimination, particularly in the light of existing research and case-law.

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<sup>39</sup> Sweden has no system of social housing specifically for low-income groups.

<sup>40</sup> As explained below (see Monitoring of racism and racial discrimination), the Swedish authorities do not collect official statistics on individuals' ethnic origin but do use nationality and country of birth as proxies.

## Employment

94. In its third report, ECRI reiterated its recommendation that legislation allow for positive measures and recommended that the Swedish authorities consider taking such measures in the employment field. ECRI also recommended that the authorities take measures to ensure that employers and trade unions took an active role in the promotion of ethnic diversity and in combating discrimination in their daily practice and invited the Swedish authorities to ensure resources and coordination to monitor the implementation of the duty of employers to adopt and implement ethnic diversity plans. It also recommended the incorporation of anti-discrimination clauses in public procurement agreements. These questions have already been considered elsewhere in this report.<sup>41</sup> ECRI notes however with interest in this context that the Ombudsman has recently set up a unit for active measures with a mandate in relation to working life as well as education, and hopes that this unit will be able to make a substantive contribution to promoting active measures in these fields.
95. In its third report, ECRI further recommended that the Swedish authorities devote priority attention to improving the position of persons of immigrant background in the labour market. It recommended that continued attention be paid to initiatives to better equip, where necessary, these persons with the skills needed to access the Swedish labour market.
96. According to the authorities, one of the primary objectives of Swedish integration policy is to increase the employment rate for foreign-born persons and facilitate job access for recent immigrants to Sweden. ECRI notes with interest that in order to allow new arrivals the option of becoming independent and playing a more active part in working life and society at large, a law on labour market entry of newly arrived immigrants was passed in 2010. The Swedish Public Employment Service is now responsible for coordinating introductory measures, replacing local government in this role. The Public Employment Service is now required to prepare a personal integration plan, for and with the migrant concerned. This takes account of the immigrant's educational background and job experience and must include Swedish-language and civics courses as well as pre-employment activities. An integration benefit has been introduced for recently arrived immigrants who actively take part in introductory measures; the aim is to encourage recipients to work whilst pursuing these activities. Integration guides (*Etableringslotsar*) have been published in various languages to provide new arrivals with advice on the labour market. Immigrants can also call on the services of businesses and organisations for guidance and for assistance with extending their networks of contacts and support in seeking employment; moreover, 'step-in' jobs (*instegsjobb*), combined with Swedish-language courses, may be offered to recently arrived immigrants. The state subsidises 75% of the labour cost for the employer. Newly arrived immigrants are also entitled to a personal mentor responsible for helping them to find work. The government has allocated over SEK 900m (90m euros) to this new system.
97. ECRI welcomes these measures to facilitate access for new entrants on the Swedish labour market. It encourages the authorities to pursue these efforts by providing all the necessary tools for these new entrants. It notes, however, that discrimination persists on the labour market, affecting not only new entrants but also immigrants who have been settled in Sweden for a number of years. According to research cited by the European Union Agency for Fundamental Rights, in Sweden, non-EU migrants have an employment rate which is

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<sup>41</sup> See above, Existence and application of legal provisions – Civil and administrative law provisions against racial discrimination.

19.7 percentage points lower than that of native Swedes, and the percentage of foreign-born workers overqualified for their jobs is still markedly higher than the percentage of overqualified native-born workers: 19% as against 8%.<sup>42</sup> Moreover, according to civil society, Roma and Muslims continue to be particularly vulnerable to discrimination in access to employment.

98. ECRI recommends that the Swedish authorities step up their efforts to combat employers' prejudices and the resulting discrimination, particularly in access to employment. It recommends in particular that they conduct an information campaign to raise awareness among employers of their responsibilities under the Discrimination Act and of the positive impact that diversity can have in the workplace.

## Education

99. In its third report, ECRI made a number of recommendations to the Swedish authorities aimed at combating all forms of discrimination in the field of education, in particular addressing the problems faced by children of immigrant origin in the enjoyment of their right to education on a basis of equality with other children. It recommended that the authorities 1) ensure that national education standards in the fields covered by ECRI's mandate are thoroughly implemented in schools throughout Sweden; 2) set specific targets and indicators to measure progress towards the achievement of equality of students irrespective of racial or ethnic origin; 3) continue their efforts to improve the achievement of students attending schools in segregated areas whilst giving more consideration to measures to de-segregate schools, including measures aimed at de-segregating residential areas; and 4) continue and intensify their efforts to address racist bullying and offensive treatment in schools.
100. The authorities have pointed to an extensive programme introduced to improve general standards and increase equality in primary and secondary education. They indicate that it should have a particularly positive impact on underprivileged pupils living in poor or segregated areas or whose parents are unable to help them with their studies. The authorities have stressed that children and teenagers of immigrant background are over-represented in the groups likely to benefit most from this programme. The programme comprises a range of measures, including free access to preschool education (up to 525 hours per year for children from the age of 3), funding for extra maths tuition and improving reading and writing skills, and establishment of a schools inspectorate. According to the information provided by the authorities, progress towards equality is measured by three indicators: the proportion of pupils reaching third-year targets in primary school, the proportion of pupils able to progress to upper secondary school, and the proportion of pupils able to enter higher education. All these data are broken down by area of origin: Swedish-born children of Swedish-born parents, Swedish-born children of foreign-born parents, children born in another Nordic country, children born in another EU or EEA country, and children born in a third country. Figures for access to upper secondary school are also broken down by age of arrival in Sweden (before or after the age of 7). The National Agency for Education also collects and publishes data on preschool activities, crèches, and schools and further education for adults; these data may be broken down, among other methods, by country of birth, number of years lived in Sweden, or place of residence.

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<sup>42</sup> See European Union Agency for Fundamental Rights (FRA), *Migrants, minorities and employment: Exclusion and discrimination in the 27 Member States of the European Union: Update 2003-2008*, Luxembourg, Publications Office of the European Union, 2011, pp. 29 and 41.

101. The authorities have stated that in order to respond to persistent bad academic performance in some urban areas, they decided to introduce a system of targeted appropriations for the 2012-2014 period, totalling SEK 20m and intended to support access to compulsory education in these areas. The project aims at developing and testing methods for improving schools in urban areas with less favourable socioeconomic conditions. In addition, given the high degree of decentralisation in the school system and the consequent risks of disparity, a schools inspectorate has been in operation since 2003. It aims to reduce educational inequalities by assessing whether and how schools are working to offset factors that could result in poor academic performance.
102. ECRI welcomes these measures. It notes, however, that pupils with an immigrant background still perform less well at school than pupils without, a phenomenon not explained solely by these pupils' disadvantaged socio-economic background.<sup>43</sup> According to civil society, educational segregation is on the increase, and gaps between schools are widening. Moreover, although the authorities emphasise that the number of pupils who feel that they have been exposed to bullying or harassment at school is low (6%) and has been stable for the last 20 years,<sup>44</sup> the Equality Ombudsman has received numerous complaints about discrimination in the field of education, of which roughly half are based on ethnic origin and others on religion; these complaints often concern discrimination, bullying and harassment by other students and turn on some school principals' inability to manage and resolve questions of discrimination and harassment at school. While the authorities have pointed out that the new training programmes for teachers require the latter to demonstrate an ability to curb and forestall discrimination and harassment concerning pupils, it is too soon to judge the impact of this measure. ECRI also notes that in June 2011, the Government gave the National Agency for Education an assignment to undertake a renewed effort to strengthen values in schools and work against discrimination and degrading treatment. The National Agency is to compile and disseminate the best practices in this field and provide education for teachers.
103. ECRI recalls that children's future prospects depend in part on the standard of education to which they have access and that any racial discrimination that they may face in this field can have serious repercussions, particularly for their access to employment. It notes that *de facto* residential segregation contributes to educational inequality and refers to its recommendations above for addressing this phenomenon. It strongly encourages the Swedish authorities to monitor closely the impact in practice of measures already taken to reduce observed disparities between the performance of pupils with an immigrant background and that of the rest of the population and in particular to continue and step up those measures which have proved most effective.
104. ECRI recommends that the Swedish authorities step up their efforts to prevent and combat racial harassment and bullying at school. It draws their attention to Part II, paragraph 1 of its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education, which proposes a range of measures that could be taken in this field.

## Health

105. ECRI notes that the rules for access to health care vary according to the immigration status of the person concerned. County councils are required to provide emergency medical care (care which cannot be deferred) to anybody needing it, whatever their immigration status. However, adult migrants in an

<sup>43</sup> OECD, PISA in Focus, 2011/11 (December).

<sup>44</sup> National Agency for Education, *Attityder till skolan 2009 Skolverket: Rapport 344:2010*



irregular situation must cover all their medical expenses in Sweden, even for emergency treatment. Somewhat more favourable provisions govern healthcare access for adult asylum seekers, since they have access free of charge to emergency care, pre- and post-natal care, family planning and abortion. They must, however, pay a contribution towards some of these services.

106. As regards children, those of both accepted and rejected asylum seekers, as well as accepted (or rejected) unaccompanied child asylum seekers, have the same rights as children who have Swedish nationality or permission to reside in Sweden, namely access free of charge to all health care. However, cover for rejected child asylum seekers is based solely on an agreement signed between central government and the counties in 2000 and has no statutory foundation. Moreover, unaccompanied children and children of parents without residence permits who have not applied for asylum do not have access to free care but must pay the full cost; in addition, by law they are entitled to receive only emergency care.
107. ECRI is concerned about this situation, which leaves some groups of non-citizens in a particularly vulnerable situation with regard to health. Persons living in Sweden without a residence permit and who have never sought asylum or requested a residence permit – including some categories of children, pregnant women and persons with acute conditions or suffering from serious infectious diseases – are statutorily deprived of access to free health care even if they do not have the necessary financial resources. According to a study of undocumented immigrants carried out in 2010, over two thirds of their number had decided not to seek medical care in the twelve months prior to the survey, either because it was too expensive or for fear of being refused access to care or reported to the authorities. This situation is all the more worrying as the people without residence permits who fall into these categories are often in poor health. ECRI notes with interest that under the framework agreement on Swedish immigration policy signed by the government and the Green Party in March 2011, the possibility of extending access to subsidised health care is now under consideration in order to provide better cover for both accepted and rejected asylum seekers and undocumented immigrants.
108. For persons living in Sweden without a residence permit and who have never sought asylum or requested a residence permit, ECRI recommends that the Swedish authorities lift the exclusion from free medical care currently applying to children, pregnant women and persons with acute conditions or suffering from serious infectious diseases.
109. ECRI further recommends that the Swedish authorities ensure that the law prohibits all staff working in medical centres from disclosing to the immigration services information that may allow identification of anybody seeking medical care in such a centre.

## **V. Vulnerable groups**

### **Roma**

110. In its third report, ECRI recommended that the Swedish authorities pursue and intensify steps to improve the situation of Roma in Sweden and combat and prevent racism and racial discrimination against them. It emphasised the need to promote an active role and participation of Roma/Gypsy communities in the decision-making process, through national, regional and local consultative mechanisms, based on the idea of partnership on an equal footing.
111. As noted elsewhere in this report, Roma continue to face discrimination in all fields of daily life. Cases have been reported of owners refusing to sell or let

flats to Roma families, Roma children suffering bullying or even harassment at school because of prejudice against them, and suppliers of goods or services refusing to serve them, insulting them or requiring them to justify their presence in public spaces. Harassment by the police has also been reported. ECRI regrets that Roma continue to be marginalised in this way and are particularly disadvantaged socially and economically. The school drop-out rate for Roma children is high, and this, combined with the prejudice and discrimination that they face in the field of employment, has also led to a high unemployment rate.

112. The Swedish government has stated that the prejudice and discrimination suffered by Roma is a cause of concern to it,<sup>45</sup> and in 2007 it set up a Delegation for Roma Issues consisting of civil servants and Roma representatives and responsible for collecting and analysing information on the current situation and putting forward proposals to improve it. The Delegation delivered its final report to the government in 2010. ECRI notes that amongst other problems faced by Roma, the report highlights a mutual lack of trust between Roma and the majority population and the Roma's withdrawal into their own community because of their history. ECRI stresses that this is particularly damaging to Roma, since it makes it harder to adopt measures jointly, undermines Roma confidence in the effectiveness of measures taken by the authorities (even if they have been consulted) and tends to create a certain resentment among the majority population regarding efforts to improve the situation of Roma. ECRI notes with interest that, in response to these circumstances, a new information centre has been set up in Malmö to provide information for and about Roma. It works actively with Roma, in a climate of trust, to help them develop skills that they have been unable to acquire at school or in the workplace and thus determine their own future rather than just being subjected to it.
113. ECRI also notes with interest the information provided by the authorities according to which, on 16 February 2012, the government adopted a National Strategy for Roma Inclusion 2012-2032 which includes inter alia long-term objectives, a system for monitoring the access of Roma to fundamental rights and a pilot project on Roma inclusion to be carried out in five municipalities. ECRI welcomes the adoption of this strategy, although it notes that it has not been able to analyse it in detail. It also notes that according to some Roma representatives, some important points for them have not been taken into account despite the consultations that were held. ECRI hopes that the consultations currently under way on the contents of the strategy will enable a result which all interested parties can fully support to be achieved.
114. ECRI recommends that the Swedish authorities redouble their efforts to combat the prejudice and stereotyping faced by Roma. It draws the authorities' attention to its General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma, especially paragraphs 8, 15 and 16.
115. ECRI strongly encourages the Swedish authorities to continue and extend their initiatives to promote better knowledge of Roma among the population, improve Roma's confidence in themselves and transcend the mutual distrust between Roma and the majority population, in particular by training mediators, including from the Roma community. It encourages the authorities to adopt a holistic and cross-cutting approach in this context.

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<sup>45</sup> United Nations, General Assembly, Human Rights Council, Working Group on the Universal Periodic Review, Eighth session, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Sweden, 22 February 2010, A/HRC/WG.6/8/SWE/1, § 86.

116. ECRI invites the authorities to base their efforts to end discrimination suffered by Roma in access to social rights such as education, employment and housing on the measures set out in General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma, especially paragraphs 4, 5 and 6.

## **Sami**

117. In its third report, ECRI recommended that the Swedish authorities continue to work to solve the issues around Sami land rights and that they enhance the participation and influence of the Sami in decision-making in matters concerning them generally, and particularly on land use in their traditional areas.

118. ECRI has already welcomed the Constitution's recognition of the Sami as a people.<sup>46</sup> It now emphasises the importance of ensuring that this recognition has an impact in practice, since, despite the measures already taken in their favour, the Sami continue to face difficulties in fully enjoying the rights that arise from their status as an indigenous people. ECRI is particularly concerned about the problems relating to land rights and land use, which are continuing to have an adverse effect on the Sami, in part because it is difficult for them to provide the evidence necessary to give effect to their rights due to the specific nature of the relationship of this indigenous people with the land that they have traditionally used and occupied. ECRI further notes with concern that the Sami have complained of discriminatory rules with regard to protection of their herds and that they face problems regarding effective participation in decisions affecting them, including with respect to mining and wind-power development projects that would threaten their traditional way of life and planning permission processes for building on reindeer grazing lands. It notes that these problems make it harder for the Sami to assert their rights as an indigenous people and contribute to keeping them in a disadvantaged situation.<sup>47</sup> ECRI notes that these questions will be considered by the Advisory Committee on the Framework Convention for the Protection of National Minorities, which will shortly be preparing its third opinion on Sweden.

## **Muslims**

119. In its third report, ECRI recommended that the Swedish authorities take steps to effectively combat and prevent racism and discrimination towards Muslims and do their utmost to avoid any measures taken to help persons at risk of honour-related violence resulting in generalisations and stereotypes concerning the members of the Muslim communities.

120. The authorities have pointed out that many measures taken to address racism in general also serve to counter Islamophobia. The government provides financial support for a number of organisations and initiatives combating various forms of racism and intolerance, including Islamophobia. It also commissioned the Living History Forum to conduct a study into antisemitism and Islamophobia with particular reference to the various ways in which they were expressed and

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<sup>46</sup> See above, Existence and application of legal provisions – Constitutional provisions and other basic provisions.

<sup>47</sup> See also, among other sources: Ombudsman against Ethnic Discrimination, Discrimination of the Sami: the rights of the Sami from a discrimination perspective, DO:s rapportserie 2008:1 eng; United Nations, General Assembly, Human Rights Council, Eighteenth session, Report of the Special Rapporteur on the rights of indigenous people, James Anaya, The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland, 6 June 2011, A/HRC/18/35/Add.2; United Nations, Human Rights Committee, Consideration of reports submitted by states parties under Article 40 of the International Covenant on Civil and Political Rights, Concluding observations of the Human Rights Committee, Sweden, 7 May 2009, CCPR/C/SWE/CO/6, para. 21.

the effectiveness of measures taken to address them.<sup>48</sup> The government has also introduced action plans, based on both Swedish and international law, to combat various forms of violence and domestic oppression;<sup>49</sup> according to the authorities, these plans focus on the wants of the individual and the need to protect women, men, girls and boys from physical injury regardless of religion or culture.

121. Whilst acknowledging these initiatives, ECRI notes that the situation of Muslims in Sweden has not improved over the past few years. Anti-Muslim political discourse has become more widespread and the tone has hardened. Some researchers have found that four out of five media reports about Muslims are negative. On the Internet, comments calling Muslims ‘invaders’ of Europe and inciting violence against them have proliferated, and some members of Parliament have made comments on their blogs to the effect that use of violence against Muslim immigrants is inevitable. Identifiable Muslims – for example women wearing veils – are a target for Islamophobic incidents, and there have also been repeated attacks on mosques. The number of incidents reported to the police with an identified islamophobic motive was 252 in 2006, 206 in 2007, 272 in 2008, 194 in 2009 and 272 in 2010.<sup>50</sup> Muslims have also mentioned discrimination in access to employment and at work as well as in access to housing. In early 2011, the Minister for Integration wrote an opinion piece in a leading daily stressing that it was unacceptable to hold an entire group responsible for the actions of a single individual and pointing out Swedish citizens’ responsibility to combat prejudice and Islamophobia. However, the stereotypes linking Muslims to terrorism are still prevalent, which is reported to have adversely affected police conduct towards them.

122. ECRI recommends that the Swedish authorities step up their efforts to combat Islamophobia, with particular attention to hate speech on the Internet. It again draws their attention to its General Policy Recommendation No. 5 on combating intolerance and discrimination against Muslims, which proposes a range of measures that the authorities can take to this end.

### **Afro-Swedes<sup>51</sup>**

123. As ECRI already noted in its third report, Afro-Swedes continue to suffer acts of racism and discrimination in everyday life. They are the object of racist insults in public places and racist remarks in the workplace; Afro-Swedish women also suffer sexual harassment as a result of stereotyping, while Afro-Swedish Muslims, particularly Somalis, face twofold discrimination on account of both their colour or ethnicity and their religious beliefs. Afro-Swedes are also victims of racist offences: in 2008, of the some 5 900 hate-motivated offences reported to the police, 760 (13%) were due to Afrophobia.<sup>52</sup>

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<sup>48</sup> Study published in 2011: Forum för levande historia (Living History Forum), Antisemitism och islamofobi – utbredning, orsaker och preventivt arbete (‘Antisemitism and Islamophobia: Extent, causes and prevention’), Uppdrag från Arbetsmarknadsdepartementet A2011/1622/DISK, Stockholm, 2011.

<sup>49</sup> Action plan to combat men’s violence against women, violence and oppression in the name of honour, and violence in same-sex relations (Government Communication 2007/08:39); Action plan to prevent and hinder young people from marrying against their will (Government Communication 2009/10:229).

<sup>50</sup> Figures provided by the National Council for Crime Prevention. Also see above, Existence and application of legal provisions – Criminal law provisions against racism and racial discrimination – Application.

<sup>51</sup> This is a common term in Sweden for the country’s black population.

<sup>52</sup> Brå, Hate crimes 2008: Reports to the police where the motivation for crime includes ethnic background, religious faith, sexual orientation, or transgender identity or expression (English summary of Brå report No. 2009:10), Stockholm, 2009. More recent figures for specifically Afrophobic incidents are not available.

124. ECRI has taken note of a case in which students at Lund University held a mock African slave auction. The president of the Afrosvenskarnas Riksförbund (National Afro-Swedish Association) reported this to the police, after which a local artist made posters showing the complainant with a chain round his neck and the words 'our negro slave has run away'. The poster was put up in several public places in Lund. ECRI notes with interest that the person who displayed these posters was subsequently found convicted of agitation against an ethnic group and handed down a suspended sentence and ordered to pay a fine. ECRI hopes that the inquiry into the mock African slave auction will also get to the bottom of what happened in the first part of the events.
125. Some sources have stated that, regarding access to social rights, Afro-Swedes are often substantially overqualified for their jobs or are paid less than their colleagues doing the same work. In the health field, the ignorance and prejudices of some doctors discourage some women from seeking the care that they need. Afro-Swedish representatives have pointed out that policies are in place to combat racism and racial discrimination in Sweden but they are not enforced and penalties are seldom imposed in specific cases. This leaves victims with no redress and also helps to perpetuate the situation.
126. ECRI has already made a range of recommendations on applying current civil and criminal law provisions concerning acts of racism and racial discrimination as well as the need to make the general public more aware of how necessary it is to combat these phenomena. It wishes to stress the importance of implementing these recommendations in order to remedy the problems that Afro-Swedes are facing.

### **Migrants, refugees and asylum seekers**

#### *- Examination of asylum claims*

127. In its third report, ECRI recommended that the Swedish authorities carry out the planned reform to give the administrative courts responsibility for examining asylum appeals, ensure that these courts benefit from existing expertise in this field, and maintain the possibility of having a claim re-examined in the light of evolving circumstances.
128. Since then, a new Aliens Act (2005:716) has been passed, establishing a new system of immigration and asylum procedures and appeals. Under the current system, it is the Swedish Migration Board, an administrative authority, which is the first instance for applications concerning asylum, work and residence permits, family reunification and naturalisation. It also has the power to examine whether expulsion orders can be executed and take decisions concerning detention of asylum seekers and is responsible for actual reception of asylum seekers. Decisions of the Swedish Migration Board can be challenged in one of the three migration courts in Stockholm, Göteborg and Malmö. The third and last instance is the Migration Court of Appeal, if it grants leave to appeal.<sup>53</sup> ECRI is pleased to note that many members of these new courts have been recruited from the staff of the former Aliens Appeals Board, allowing existing expertise to be transferred to the new authorities.
129. ECRI notes that since the Swedish Migration Board's introduction in 2009 of a new system for processing asylum claims, the average processing time for a first-instance application has fallen from one year to 4½ months. This reform

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<sup>53</sup> For further information on the role of the Migration Court of Appeal, see United Nations, General Assembly, Human Rights Council, Working Group on the Universal Periodic Review, Eighth session, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Sweden, 22 February 2010, A/HRC/WG.6/8/SWE/1, § 89

seems to have corrected one of the main weaknesses of the asylum system in Sweden (lengthy procedures), a fact that ECRI welcomes. However, ECRI stresses that it is equally important to pay heed to the quality of decisions taken. A number of sources claim that there have been quality problems at first instance, including asylum seekers' access to legal aid, an excessive burden of proof requiring documentary evidence which asylum seekers often do not possess, insufficient recourse by both lawyers and Board members to reliable and neutral information about the situation in the asylum seekers' countries of origin, inadequate knowledge of torture, including the difficulties that victims of torture and ill-treatment have in bearing witness to it, and shortcomings in the legal analysis on which decisions are based. The new working methods do not seem to have solved these problems.

130. ECRI notes with interest that in 2009 UNHCR, in co-operation with the Swedish Migration Board, launched a quality assurance project to evaluate the quality of the Board's decisions in the field of international protection. Their joint report was delivered in autumn 2011; it found that substantial improvements had been made over the past few years and contained a series of recommendations for remedying remaining weaknesses in the system. These recommendations included, for example, increasing contact between asylum seekers and their legal representatives, improving the standard of legal aid provided to asylum seekers, clarifying the Board's role in conducting inquiries and ensuring smoother conduct of hearings. ECRI also notes that in the context of the framework agreement of 3 March 2011 between the Government and the Green Party concerning migration policy, the Government made a series of decisions on 15 March 2012: it established the terms of reference for an independent inquiry regarding the formulation of decisions and judgments within the field of migration, instructed the Swedish Migration Board to facilitate access via its database to relevant international decisions and ordered the Swedish Agency for Public Management to evaluate the procedures by which the Swedish Migration Board appoints public (legal) counsel in asylum and migration cases.
131. ECRI strongly encourages the Swedish authorities to take prompt action on the above-mentioned recommendations from the UNHCR quality assurance project and to introduce appropriate training for lawyers and members of the Swedish Migration Board to ensure the highest level of reliability of asylum decisions taken at first instance.
132. As regards re-examination of claims in the light of changed circumstances in the applicant's country of origin, ECRI notes that the Swedish authorities favour prompt return of rejected asylum seekers. This question is therefore considered below in the section on 'Refusal of entry and non-refoulement'.
  - *Status granted to persons in need of international protection*
133. In its third report, ECRI recommended that the Swedish authorities ensure that full refugee status is granted to persons entitled to it.
134. The Aliens Act (2005:716) has extended the definition of refugees (to include women fleeing violence) and also the definition of complementary protection (to cover individuals seeking to escape a situation of widespread violence). The incorporation into Swedish law of the European Union's Qualification Directive (2004/83/EC) and Procedures Directive (2005/85/EC) with effect from 1 January 2010 has resulted in the introduction, together with the concepts of 'refugee' and 'complementary protection' already present in Swedish law, of the concept of 'subsidiary protection' as defined in the Qualification Directive. According to ECRI's information, the proportion of applicants granted

international protection is now approximately 40% (compared with roughly 20% in 2002 and 2003) and the proportion given full refugee status is approximately 8% (as against 1% in 2002 and 2.3% in 2003).<sup>54</sup>

- *Refusal of entry and non-refoulement*

135. In its third report, ECRI recommended that the Swedish authorities ensure that no one is forcibly returned to his or her country of origin in contravention of the principle of non-refoulement and Article 3 of the ECHR and that they review the provisions regulating the accelerated asylum procedure, particularly as regards the possibility of filing appeals with suspensive effect on expulsion orders.
136. ECRI notes that enforcement of refusal-of-entry and expulsion orders<sup>55</sup> is governed mainly by Chapter 12 of the Aliens Act, whose first three sections concern impediments to the enforcement of refusal of entry and expulsion. Under section 1 of this chapter, an alien can in no circumstances be returned (pursuant to a refusal-of-entry order) or expelled to a country where he or she would be in danger of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment. It is also prohibited to return or expel an alien to a country where he or she would not be protected from being sent on to another country in which he or she would be in such danger. Similar provisions apply under section 2 of Chapter 12 to aliens at risk of persecution in the receiving country or another country to which they might subsequently be transferred. However, exceptions are made in the following two cases: on the one hand, for an alien having shown by committing an exceptionally serious offence that public order and security would be seriously jeopardised by allowing him or her to remain in Sweden – this is not applicable, however, if the persecution that the alien would face in the receiving country would threaten the life of that alien or otherwise be of a particularly severe nature; on the other hand, for an alien having endangered national security and of whom there is reason to believe that he or she would continue to conduct such activities as long as he or she remained in the country, and where it is not possible to send the alien to any other country. Moreover, under Chapter 12, section 3, beneficiaries of complementary or subsidiary protection owing to armed conflict or natural or environmental disasters cannot be returned or expelled to their countries of origin unless there are exceptional grounds for doing so. Lastly, under section 12 of Chapter 12 of the Aliens Act, if a competent international body requests suspension of enforcement of a refusal-of-entry or expulsion order, a stay of enforcement must be ordered unless there are exceptional grounds for not doing so.
137. In the majority of cases an alien can be returned or expelled only once the refusal-of-entry or expulsion order has become final. Provision is also made for two exceptions regarding final refusal-of-entry or expulsion orders: under Chapter 12, sections 18 and 19 of the Aliens Act, the Swedish Migration Board can grant a temporary or permanent residence permit on medical grounds or if, because of new circumstances, new grounds for international protection may apply to the non-national concerned.
138. ECRI notes with interest the various provisions for guaranteeing non-refoulement and preventing expulsion or refusal of entry when this would be in contravention of Article 3 ECHR. However, it wishes to point out that a refusal-of-entry order can be enforced immediately (without waiting for it to become

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<sup>54</sup> See ECRI's third report, § 58.

<sup>55</sup> It should be noted that a person's physical entry into Swedish territory does not mean that that person has been 'admitted' in the legal sense. Thus a decision on refusal of entry may be delivered up to three months after an individual's physical entry into Swedish territory (see Aliens Act, Chapter 8, section 5).

final) if it concerns an asylum seeker whose application the Swedish Migration Board finds to be manifestly ill-founded. Moreover, in order to be entitled to a re-examination under the above-mentioned section 19, an alien must show that he or she could not have invoked these new circumstances earlier or that he or she had a valid excuse for not doing so. A number of NGOs claim that sections 18 and 19 of the Aliens Act are applied restrictively, and given the problems observed with regard to examination of asylum claims at first instance<sup>56</sup> – particularly concerning assessment of risks to asylum seekers in their countries of origin and the inadequate knowledge of torture – ECRI is concerned about the application of these provisions in specific cases. It further notes that in two recent judgments, the European Court of Human Rights found that the enforcement of deportation orders for asylum seekers (one from Iran and one from Afghanistan) was in violation of Article 3 ECHR.<sup>57</sup> Moreover, it notes that asylum seekers have been returned to Iraq; according to ECRI's information, although they are based on individual decisions in each case, such returns do not always take account of the risks facing individuals who are targets of violence because of their ethnicity or religious beliefs. ECRI has also been informed that asylum claims by Roma from Serbia are often found to be manifestly ill-founded, although they may be justified in some cases.

139. ECRI recommends that the Swedish authorities study closely the actual application of current legal provisions concerning refusal of entry and expulsion of non-nationals and that they amend these provisions, specify their scope and/or provide better training for those responsible for enforcing them to the full extent needed to ensure that nobody is forcibly returned in contravention of the principle of non-refoulement and Article 3 of the European Convention on Human Rights.

- *Detention of asylum seekers*

140. In its third report, ECRI recommended that the Swedish authorities ensure that asylum seekers are only detained when it was absolutely necessary, that alternative means of supervision are used instead whenever possible and that asylum seekers are not detained in criminal detention facilities.

141. ECRI notes that the Aliens Act specifies (in Chapter 1, section 8) that the freedom of aliens should not be limited more than is necessary in each individual case. Supervision – that is, the requirement that an alien report regularly to the police or Swedish Migration Board, which may be coupled with confiscation of the passport or other identity papers – must therefore, according to the authorities, be preferred to detention whenever possible.<sup>58</sup> For adults, the maximum detention period is 48 hours when the alien's entitlement to remain in Sweden is being investigated, two weeks in the majority of cases, and two months pending enforcement of a refusal-of-entry or expulsion order. Children can be detained only if there is no alternative, for a maximum period of 72 hours, which can be renewed only once.

142. A commission of inquiry set up to examine current rules and practice delivered its report (SOU 2011:17) in February 2011. This report contained a range of proposals, including mandatory judicial review of any decision to place an alien in detention and placing fewer alien detainees in prisons and more in centres

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<sup>56</sup> See above, Examination of asylum claims.

<sup>57</sup> See *R.C. v. Sweden*, application no. 41827/07, judgment of 9 March 2010, final on 9 June 2010; *N. v. Sweden*, application no. 23505/09, judgment of 20 July 2010, final on 20 October 2010.

<sup>58</sup> For a description of supervision measures in Sweden, see European Union Agency for Fundamental Rights (FRA), *Detention of third-country nationals in return procedures: Thematic Report, Conference Edition*, Vienna, September 2010, Chapter 5, p. 75.



run by the immigration services whilst improving security in some detention facilities. At the time of writing, the authorities were in the process of studying responses from a consultation subsequent to publication of the report. ECRI notes that, according to civil society, while some of the commission's proposals are positive, others, such as the proposal to allow detention centre staff to handcuff detainees, would tend to make detention centres more like prisons. ECRI recalls that in the immigration field, under Article 5 ECHR, no one shall be deprived of his or her liberty save in the case of the lawful arrest or detention of a person to prevent his or her effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition; anyone thus deprived of his or her liberty must also be entitled to take court proceedings as provided for in Article 5.4 ECHR. Furthermore, under the European Prison Rules, persons detained under immigration procedures should not be held in prison.

143. ECRI recommends that the Swedish authorities take prompt action on the above-mentioned recommendations of the commission of inquiry on detention of non-nationals. In general, it again recommends that they ensure that asylum seekers are not detained in criminal detention facilities.

- *Minors*

144. In its third report, ECRI recommended that the Swedish authorities continue and intensify their efforts to ensure that asylum seekers' right to education is respected in practice. It encouraged them to ensure that children without legal status are not deprived of the right to education. ECRI notes that all child asylum seekers are entitled to education in Sweden but that it is not compulsory for them and not all of them receive it in practice. A commission of inquiry found in 2010 that access to education ought to be extended not only to child asylum seekers but also to undocumented children and children who had been refused asylum, if their presence on Swedish territory was other than very temporary.<sup>59</sup> ECRI notes with interest that specific proposals for implementing this recommendation have been made by the government and Green Party in a framework agreement on Swedish immigration policy. These proposals should be implemented from 2012. ECRI encourages the Swedish authorities not to delay in introducing specific measures allowing all children, including undocumented children and children who have been refused asylum, to have access to education.

145. In its third report, ECRI recommended that the Swedish authorities extend the competences of legal custodians of unaccompanied children in order to take better care of the children's needs and, in particular, avoid disappearances. Some sources indicate that the problem of disappearances has still not been solved because, among other reasons, no authority is willing to assume responsibility for this issue. ECRI emphasises the special vulnerability of unaccompanied children and the need to take full account of their specific needs.

146. ECRI strongly recommends that the Swedish authorities step up their efforts to avoid disappearances of unaccompanied children. In this respect it particularly recommends that they ensure that an authority is clearly designated as being responsible for each unaccompanied child.

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<sup>59</sup> Concerning the importance of education for child asylum seekers, whether or not they are eventually granted permission to remain, see in particular, European Union Agency for Fundamental Rights (FRA), Separated, asylum-seeking children in European Union Member States: Comparative Report, Luxembourg, Publications Office of the European Union, November 2010, pp. 50-60.

- *Family reunification*

147. Some problems have been reported regarding the obligation on persons wishing to qualify for family reunification to produce identity papers. This places a disproportionate burden on natives of particular countries, such as Somalia, since the situation there makes the issue of such papers virtually impossible. The proportion of successful applications for family reunification apparently dropped by 16% in 2010 because of the requirement to produce a national passport. ECRI notes with interest that the government and Green Party have, in their March 2011 framework agreement on Swedish immigration policy, recognised the need to resolve this problem. According to the press, proposals to remedy the situation were put forward in September 2011 and should be implemented from 2012. Since then, a decision by the Migration Court of Appeal has also stated that the rules on proof of identity for family reunification applications must be construed so as to allow persons whose direct family relationship (parent-child) has been proved by a DNA test to qualify for family reunification even if the identity of the applicant for a residence permit in Sweden has not been established.<sup>60</sup> ECRI notes this decision with interest whilst observing that it can only resolve cases in which the applicant has access to DNA tests and the parties concerned are directly related (parent-child), whereas wider options for family reunification are provided for by law. Broader measures must therefore be adopted in order to prevent any indirect racial discrimination against nationals of the countries concerned.

148. ECRI encourages the Swedish authorities to implement measures as soon as possible to resolve all family reunification problems arising due to difficulties in obtaining identity papers in the country of origin.

- *Special Control of Aliens Act*

149. In its third report, ECRI recommended that the Swedish authorities ensure that proceedings leading to expulsions are surrounded by appropriate safeguards, including a right to appeal before a judicial instance, and that the authorities keep under review the provisions of the Special Control of Aliens Act to ensure that they do not discriminate against non-citizens. It further recommended that the Swedish authorities abrogate any such discriminatory legislation and introduce all necessary legal and policy changes in order to ensure that Articles 3 and 13 of the ECHR were respected with regard to persons considered to raise concerns of national security.

150. ECRI notes that deportation proceedings have been revised, with effect from 1 January 2010, when the Qualification Directive and Procedures Directive were transposed into national law. According to information supplied by the authorities, all cases under the Aliens Act considered to affect national security are now handled under procedures that are essentially the same as the other procedures laid down in the Aliens Act. Under this Act, 'security cases' are cases in which the Swedish Security Service, for reasons relating to national security or otherwise bearing on public security, recommends that an alien be refused entry or expelled, that an alien's application for a residence permit be rejected, that an alien's residence permit be withdrawn or that an alien be refused a travel document. In cases where an alien has applied for a residence permit, refugee status or a travel document and the security services have applied for his or her expulsion under the Special Control of Aliens Act, both applications are considered together, as provided for in the Special Control of Aliens Act. The authorities indicate that the provisions of the Special Control of

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<sup>60</sup> Migration Court of Appeal, decision of 18 January 2012.

Aliens Act are seldom applied, however, and have been enforced in only one case since 2008.

151. ECRI welcomes this development whilst noting that further amendments to the Aliens Act and the Special Control of Aliens Act are under consideration in connection with incorporation of the Returns Directive into national law.

## **VI. Antisemitism**

152. In its third report, ECRI recommended that the Swedish authorities continue and intensify their efforts to counter all manifestations of antisemitism, including antisemitic propaganda disseminated through the Internet.
153. According to figures published by the National Council for Crime Prevention, between 2004 and 2010 the number of incidents reported to the police with an identified antisemitic motive each year varied between 111 and 161, although there was a spike of 250 in 2009, probably linked to events in Gaza. Depending on the year, between 37% and 61% of these offences were committed against individuals. At the time of writing, the figures for 2011 were not yet available but could reasonably be expected to show another sharp increase.<sup>61</sup> Official figures cover only those offences reported to the police where the motive was identified as antisemitic; civil society points out that the actual number of offences committed is likely to be much higher.
154. Antisemitic prejudice and stereotyping seems to exist well beyond extreme right-wing circles in Sweden: according to a 2010 survey by the Living History Forum, about 20% of lower and upper secondary-school pupils had a negative view of Jews, while a 2005 poll had already found that between 15% and 16% of adults thought that Jews had too much power in the world. Antisemitic websites also depict Jews as hatching global conspiracies.
155. ECRI notes with particular concern the situation of the Jewish community in Malmö, and particularly the repeated attacks on individuals wearing visible symbols of their religion: the rabbi has been the victim of constant antisemitic harassment for a number of years, insults are regularly hurled at Jews going to the synagogue, and Jewish children suffer antisemitic bullying at school. In addition, numerous cases of material damage to Jewish property have been reported.<sup>62</sup> According to representatives of the community, some Jewish families have left Malmö because of the number of antisemitic incidents and because they did not feel they were sufficiently supported by the mayor of the city.
156. The authorities have taken a number of measures to tackle all these phenomena. In the field of physical safety, the police is working with the national Council of Jewish Communities in Sweden to respond appropriately with regard to the protection needs of synagogues and Jewish schools and specific events as well as to make Jewish communities aware of the need to report antisemitic incidents. In order to combat prejudice and stereotyping, the Living History Forum is working to promote tolerance and increase young people's awareness of the history of the Shoah; in 2011 it also published a study into the extent, causes and prevention of antisemitism and Islamophobia.<sup>63</sup> In 2010 the local authorities in Malmö set up a Forum for

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<sup>61</sup> In Malmö, the number of antisemitic offences reported in the first half of 2011 was roughly the same as the figure for the whole of 2010.

<sup>62</sup> Also see above, Racial violence.

<sup>63</sup> Forum för levande historia (Living History Forum), Antisemitism och islamofobi – utbredning, orsaker och preventivt arbete ('Antisemitism and Islamophobia: Extent, causes and prevention'), Uppdrag från Arbetsmarknadsdepartementet A2011/1622/DISK, Stockholm, 2011.

Dialogue bringing together members of the Jewish and Muslim communities and local-government representatives to promote mutual understanding and take joint action to combat intolerance. ECRI welcomes these measures whilst stressing that they have not yet succeeded in curbing antisemitism in Sweden.

157. ECRI recommends that the Swedish authorities continue and step up current efforts to counter all manifestations of antisemitism, with particular attention to the situation in Malmö. It again draws their attention to its General Policy Recommendation No. 9, which proposes a range of measures that the authorities could take to combat antisemitism.

## **VII. Conduct of law enforcement officials**

158. In its third report, ECRI recommended that the Swedish authorities establish an independent body entrusted with carrying out investigations of alleged police misconduct. The authorities have conducted various studies into the advisability of setting up this body. Since January 2011, a unit that is distinct from the regional police authorities has existed within the National Police Board. It is responsible for handling complaints of police misconduct and criminal complaints against the police. Any complaints concerning criminal offences must be forwarded immediately to the public prosecutor.

159. ECRI notes these changes with interest – in particular the decision to centralise this unit in order to increase its independence from the 21 local police authorities. It also notes that in the framework of a government inquiry on the organisation of the police that is currently under way, it is proposed that this unit remain within the police, while granting it a more autonomous status, for example by giving it a separate budgetary appropriation and by transferring the power to appoint its head to the Government. ECRI stresses, however, that experience has shown that victims of police misconduct lack confidence in internal police mechanisms and usually think twice about making complaints to institutions that work closely with the police on a daily basis, such as the prosecution service. It is for this reason that ECRI considers it necessary to establish a system allowing victims of racist conduct to complain with complete confidence to an independent body whose main task is to oversee the work of the police. It also notes with concern that a number of racist incidents within the police have been reported since ECRI's third report, in particular concerning Afro-Swedes, Roma and Muslims.

160. ECRI again recommends that the Swedish authorities establish an independent body entrusted with carrying out investigations of alleged police misconduct, including acts of racism or racial discrimination.

161. In its third report, ECRI recommended that the Swedish authorities intensify their efforts to ensure that the police reflects through its officers the diversity of Swedish society. Since then, several schemes have been introduced – in Stockholm, Göteborg and Malmö, for example – to increase recruitment of members of categories under-represented in the police, including persons with an immigrant background. These schemes cover a number of elements: advertising campaigns on television and in the press, meetings with target groups, and, for applicants with all the skills officially required to join the police, recognition of knowledge of foreign cultures and languages as an asset. A 2009 scheme offered short-term jobs in the police to 120 people, including women and persons with an immigrant background, with the aim of both increasing their interest in this profession and better equipping them to undergo training at the Police Academy; 69 of those who took part are now employed by the police. ECRI welcomes these schemes and notes with interest that between 2006 and 2010 the percentage of persons with an immigrant background employed by the

police rose from 3.9% to 5.1% for those on active police duty and from 8.8% to 11.3% for those in administrative roles.

162. ECRI encourages the Swedish authorities to continue their efforts to recruit into the police members of groups covered by ECRI's mandate and also encourages the authorities to ensure that such persons enjoy equal career opportunities.

163. In its third report, ECRI recommended that further attention be paid to the problem of misconduct of public order guards and watchmen employed by private security companies<sup>64</sup> towards members of groups covered by ECRI's mandate. It notes that watchmen and public order guards are trained by the police, which in 2010 strengthened training on unlawful discrimination as defined by Swedish law and changed conflict-management training to put the emphasis on communication rather than force as a tool of self-protection. According to the authorities, although there have been complaints of misconduct since 2005, none has resulted in prosecution or dismissal.

164. ECRI recommends that the authorities carefully monitor developments with regard to misconduct not only by public order guards but also by privately employed watchmen towards members of groups covered by ECRI's mandate and continue to improve training for watchmen and public order guards if this proves necessary to prevent racial discrimination. It further recommends that they promptly investigate every alleged case of a watchmen or public order guard ill-treating a member of a group covered by ECRI's mandate and ensure that offenders are brought to court.

### **VIII. Monitoring racism and racial discrimination**

165. In its third report, ECRI recommended that the Swedish authorities improve their racial-discrimination monitoring systems by collecting relevant information broken down according to categories such as religion, language, nationality and national or ethnic origin and ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group.

166. ECRI regrets that the authorities have until now maintained their position that, apart from gathering data on individuals' nationality and country of birth, which presents no problems, Sweden will not collect official statistics on individuals' ethnic origin, since it considers that there is no method of doing so that is both morally acceptable and scientifically reliable. The Swedish authorities also stress that the law prohibits processing of personal data revealing 'race', ethnic origin, religion or beliefs, and sexual orientation. The reference to 'race' as an item of information that might be revealed by data collection leaves ECRI somewhat puzzled given the rejection of this concept in the Constitution.<sup>65</sup> ECRI further notes that despite their position on ethnic data collection the authorities have over the past few years been able to carry out a number of studies into the situation of different national minorities regarding discrimination in the fields of health and education, for example. To conduct these studies, it was necessary to identify individuals belonging to the minorities concerned and, given the

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<sup>64</sup> Although they are not police officers, public order guards are appointed and trained by the police to carry out public order functions and are sometimes employed by security companies. Watchmen are recruited by private companies to perform security duties.

<sup>65</sup> See above, Existence and application of legal provisions – Constitutional provisions and other basic provisions.

groups recognised as national minorities in Sweden,<sup>66</sup> this could not be done by means of nationality or country of origin since a high percentage of individuals belonging to national minorities in Sweden have Swedish nationality and were born in Sweden.

167. ECRI emphasises that monitoring ought to include collection of more accurate data on manifestations of racial discrimination and the overall situation of groups coming under ECRI's mandate in various fields, which would make it possible to highlight forms of racial discrimination as and when they occur. Data ought also to be collected on the impact in practice of measures taken to address racial discrimination. ECRI points out in this context that while data broken down by nationality and country of birth can help to determine more accurately the situation of some groups coming under ECRI's mandate, these data cannot be used to assess the situation of other groups which may be suffering racial discrimination. Yet in the absence of such information it is difficult or even impossible to have an objective discussion regarding the need (or not) to take positive measures and the form that any such action should take. In ECRI's view, the entry into force of the new Discrimination Act – which includes provisions requiring employers and education providers to take active measures to promote equality in the workplace and in education respectively – offers a unique opportunity to introduce requirements for monitoring manifestations of racial discrimination. This new information would supplement the increasingly detailed data on the response of the police and public prosecution service to racist offences. ECRI notes with satisfaction in this context that in December 2011, the Government instructed the Equality Ombudsman to conduct a feasibility study on methods that could be used in Sweden to identify the living conditions of the population, inter alia in order to enable separate reporting with regard to the grounds of discrimination in the Discrimination Act (2008:567) that are not currently reported in official statistics. The Office of the Equality Ombudsman is to take account in this study of practices existing in other countries as well as methods used by international organisations, and is to consult with a reference group that should be representative of the different parts of the population concerned.

168. ECRI reiterates its recommendation that the Swedish authorities improve their system for monitoring the situation of groups coming under ECRI's mandate by collecting relevant information in various fields, broken down into categories such as religion, language, nationality and national or ethnic origin and ensure that this is done in all cases with due regard to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. The data collection system for racism and racial discrimination should also take into account the gender dimension, particularly in terms of possible double or multiple discrimination.

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<sup>66</sup> In its declaration in the instrument of ratification of the Framework Convention for the Protection of National Minorities, Sweden states that the national minorities in Sweden are Sami, Swedish Finns, Tornedalers, Roma and Jews.

## RECOMMENDATIONS FOR INTERIM FOLLOW-UP

ECRI is asking the Swedish authorities to implement the following three recommendations as a matter of priority:

- ECRI recommends that the Swedish authorities adopt a plan of action to address *de facto* residential segregation in Sweden as a matter of urgency. This plan should include practical measures to be taken by the relevant stakeholders, a budget and adequate resources to achieve the goals set. It should also enlist local authorities to play an active part in addressing *de facto* residential segregation. The action plan's impact in practice should be evaluated regularly.
- For persons living in Sweden without a residence permit and who have never sought asylum or requested a residence permit, ECRI recommends that the Swedish authorities lift the exclusion from free medical care currently applying to children, pregnant women and persons with acute conditions or suffering from serious infectious diseases.
- ECRI encourages the Swedish authorities to implement measures as soon as possible to resolve all family reunification problems arising due to difficulties in obtaining identity papers in the country of origin.

ECRI will carry out interim follow-up for these three recommendations no later than two years after publication of this report.





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## **APPENDIX: GOVERNMENT'S VIEWPOINT**

**The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Sweden**

ECRI, in accordance with its country-by-country procedure, engaged in confidential dialogue with the authorities of Sweden on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, in line with ECRI's standard practice, could only take into account developments up until 22 March 2012, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.



### **Paragraphs 23-25**

As Sweden has previously stressed, although Swedish criminal provisions do not include an explicit prohibition of racist organisations, they do prohibit racist activities, including activities of racist organisations. For a fuller account of the relevant provisions, Sweden would like to refer the Commission to its observations in respect of the third report.

### **Paragraphs 27 and 29**

While deeply committed to combatting all forms of racism and intolerance and to respecting its international obligations in this field, Sweden is also committed to upholding its longstanding and strong constitutional traditions as regards the freedom of expression.

In this context, it can be added that in 2011 the United Nations Human Rights Committee adopted a new General Comment on article 19, concerning the freedoms of opinion and expression, of the International Covenant on Civil and Political Rights. According to the General Comment, laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on States parties in relation to the respect for freedom of opinion and expression. The Covenant does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events. Restrictions on the right of freedom of opinion should never be imposed and, with regard to freedom of expression, they should not go beyond what is permitted in paragraph 3 or required under article 20 (General Comment No. 34, paragraph 49).

That said, it should be pointed out that Sweden has criminal provisions in place to deal with the most dangerous instances of conduct mentioned in the recommendation in paragraph 29. According to the European Union Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, Member States shall criminalise conduct of essentially the same nature as that mentioned in the recommendation, but may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting. In fulfilling its obligations under the Framework Decision, Sweden relies in particular on the provision concerning agitation against a national or ethnic group (Chapter 16, Article 8 of the Penal Code), inciting rebellion (Chapter 16, Article 5) and unlawful threat (Chapter 4, Article 5).





