Sweden[1]

IHF FOCUS: anti-terrorism legislation; rule of law and fair trial; torture, ill-treatment and police misconduct; right to privacy; intolerance, xenophobia, racial discrimination and hate speech; asylum seekers.

While Sweden has traditionally had a relatively good human rights record, over the last decades there have been significant violations of international human rights standards and of national legislation.

In 2003, the fight against international terrorism continued to be high on the political agenda. In the middle of the year, the new Act on Criminal Responsibility for Terrorist Crimes entered into force. One case was tried under the new law, but all charges regarding terrorism were dismissed by the court.

The European Committee for the Prevention of Torture (CPT) visited Sweden during the year and presented its report in the summer. The Swedish government, however, did not permit publication of the report and thus the findings of the CPT remained unknown throughout 2003. Respect for human rights in the country was also considered by international and regional human rights bodies such as the UN Human Rights Committee, the UN Committee against Torture (CAT), the European Court of Human Rights (ECtHR) and the European Social Committee.

Throughout the year measures aimed at improving police efficiency in combating crime were put forward or introduced. The above-mentioned Act on Criminal Responsibility for Terrorist Crimes, among other things, increased the right to use secret surveillance, and the European Arrest Warrant dismisses the principle of double criminalization before extradition.[2] The escalating threat from international and organized crime was given as one reason for the need to improve efficiency within crime fighting police units. The Swedish police continued to engage in different kinds of secret surveillance, although this practice inherently involved serious violations of the right to personal integrity. In 2003 there were a number of suggestions, some of which were realized, to increase the use of both covert and public surveillance techniques.

The rights of refugees and immigrants remained under threat in Sweden in 2003, after Swedish extradition policy was stepped up following the events of 11 September 2001. The Swedish government continued to purport the efficiency of a diplomatic assurance from Egypt regarding the protection of the human rights of eight asylum-seekers, two of whom were deported in December 2001. Sweden claimed no harm was or is being done to the two deportees despite detailed information to the contrary from both the men and their relatives. In this respect, Sweden provided an example of the failure to respect human rights in the war on terrorism.

Legislation

Anti-Terrorism Legislation

In July 2003 the Act on Criminal Responsibility for Terrorist Crimes entered into force.[3] The legislation classified certain crimes as terrorism, such as murder or kidnapping when they are intentionally committed by an individual against one or more countries, their institutions or their citizens, with the aim of intimidating and seriously altering or destroying political, economic or social

[1] Based on the *Annual Report 2003* of the Swedish Helsinki Committee.
[2] New law ratifying the European Arrest Warrant, No. SFS 2003:1156 with associated regulations 2003:1178 and 2003:1179.
[3] Law No. 2003:418

structures. The new legislation also imposed strict punishments on those who were convicted under its provisions.

The Swedish Helsinki Committee (SHC) addressed an appeal to the Swedish government in which it raised its concerns regarding the legislation. The SHC noted that the definition of terrorist crimes provided for in the legislation was unclear. The question of how to draw the line between politically motivated violence and terrorism was not addressed either by the preceding EU Framework Decision on Combating Terrorism or by Swedish legislation.

European Arrest Warrant

Upon entry into force of the Act on Criminal Responsibility for Terrorist Crimes, the SHC emphasized that new legislation must be read in conjunction with the EU Framework Decision on a European Arrest Warrant, which became law in Sweden as of 1 January 2004. While the European Arrest Warrant is one step towards a greater harmonization within the EU of the fight against organized crime, the SHC stated, it should also be kept in mind that the rights of the individuals suspected of crimes must also be protected. The legal changes that were introduced rapidly following the 11 September 2002 attacks have tended to address individual, albeit extremely serious, incidents but have lacked in-depth analyses and many of them are highly questionable from the viewpoint of individual rights.[4]

The biggest difference between the extradition procedures that existed before the beginning of 2004 in the EU and the new surrender procedures pursuant to the arrest warrant is that the requirement of double criminalization has been abandoned. While the former Swedish provisions on extradition were based on the principle that a person could only be extradited to another country to be prosecuted for a crime if that crime was also considered to be a reprehensible act in Sweden, the European Arrest Warrant is based on the principle of mutual recognition of member states' legal systems.

In practice, however, the criminal justice systems of the European states are not based on the same legal tradition and there is no consensus in Europe regarding what constitutes a reprehensible act. For example, acts such as concealing a refugee or having an abortion are crimes in some EU states and unthinkable to criminalize in others. Nor are even the minimum levels of legally protected rights for the suspect always respected in all EU countries. The SHC also maintained that it might be possible to accept the idea of a European Arrest Warrant if there would be a definition or a list of offenses that are eligible for surrendering suspects to another state under that warrant. However, such a list has been deemed as unnecessary and the principle of mutuality must in the near future embrace all offences. Most importantly, the SCH stated that the principle of mutuality could be accepted would there been a real possibility for an executing state to challenge a demand for surrender. Now the states can only refuse to surrender due to purely formal obstacles: there is no provision to refuse to surrender a person on suspicion that his or her legal rights will not be protected in the receiving country. The SHC also deplored the fact that the European Arrest Warrant makes it possible to surrender children and young people between the ages of 15 and 18 for prosecution or execution of the sentence.

As of January 2004, when the EU Framework Decision on a European Arrest Warrant entered into force in Sweden, a number of EU states had not yet ratified or implemented it. Since the Arrest Warrant supersedes all bilateral agreements of extradition within the EU, a vacuum appeared where Sweden suddenly found it did not have valid bilateral extradition agreements with a number of states.

[4] See *Alternative Report* to *the UN Human Rights Committee*, 2002. It is the opinion of SHC that a harmonization of criminal law within the EU should have been preceded by rules safeguarding individual rights in a criminal proceeding. The European Commission's Green paper on "Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union," which was presented in February 2003, made this clear. The Commission found that there were areas that were in immediate need of improvement. See Green Paper, pages 13 ff.

Rule of Law and Fair Trial

A few weeks after the 11 September 2001 attacks on the United States, the UN Security Council adopted a resolution calling on UN member states to use every means available to combat international terrorism. This resolution (No. 1373) included a demand not to harbor terrorists and to freeze financial assets of persons or entities suspected of terrorism or those supporting terrorism.

This, however, was not the first time such a demand was put forward by the Security Council. Already in 2000 the UN Security Council Committee on Afghanistan presented a list of persons and organizations believed to be associated with Osama Bin Laden or the Al-Qaida terrorist network. This was updated in November 2001 and was later implemented by the EU Commission, making the list applicable as law in every EU member state. Three Swedish citizens were on the 2001 list and only a few days after the list had been considered by the EU Commission, their assets were frozen. Over one million Swedish kronor (€108,784) belonging to the Bank Al Barrakat in Sweden was also frozen. This money was going to be transferred from Somalis living in Sweden to relatives in Somalia.

In July 2002, two of the three Swedish citizens were taken off the list of terrorists, but only after submitting answers to a questionnaire to the US authorities. The third Swedish citizen was still on the list throughout 2003. For more than two years he has not been able to work or travel and has been unable to prove his innocence in a court of law.

The SHC concluded that in freezing the assets of the three men, the Swedish government acted in violation of basic human rights as protected by Swedish law and international instruments. The three men were named and penalized without an opportunity to be heard, without a chance to defend themselves or their reputations and in effect without having committed a crime.

Ill-Treatment and Police Misconduct

Over the years Sweden has been criticized by international human rights bodies as well as national human rights NGOs for the fact that there has been no independent body to investigate police misconduct. The fact that very few cases of suspected police brutality have ended up in court and that there has been no transparency in the investigative process represents one of the reasons why the Swedish police lack confidence in the public eye.

This situation was obvious after the demonstrations during the EU Summit in Gothenburg 2001 when only a handful of the allegations of police brutality resulted in any charges (and then only for misconduct) whereas hundreds of civilians were tried and sentenced to harsh punishments for rioting. The government had asked for, and in 2003 received, a report on how to improve the monitoring of police investigations and how allegations of police brutality should be investigated. The report, however, concluded that even though there was a need for greater transparency in cases concerning police misconduct, there was no need for external investigations. It suggested that the police board appoint two laymen able to monitor investigations.[5] No bill had been presented in accordance with the suggestions by the end of 2003.

One of the suggestions of the Gothenburg Commission after thoroughly examining the riots and the police brutalities during the EU Summit in 2001 was to make anonymous demonstrations illegal by prohibiting demonstrators from wearing masks.[6] This would make it possible for the police to identify demonstrators committing or suspected of having committed a crime. The SHC regarded this proposal as unconstitutional and in violation of the right to freedom of assembly. The SHC reminded the government that restrictions to the right of freedom of assembly can only be made if this

[5] Report No. SOU 2003:41
[6] Report No. SOU 2002:122

is in accordance with law and if this is require for reasons of national security or public safety, or for protection of public health and the rights and freedoms of others.[7]

Right to Privacy

The government included in Bill No. 2002/2003:74 the establishment of a public counsel in court decisions regarding secret surveillance. The counsel will look after the interests of the suspect when there is a request by the police to use secret wire-tapping and secret camera-surveillance. This suggestion had been put forward several times before and had then been rejected by a number of instances. The SHC has criticized the establishment of a public counsel, since it does not offer any real improvement for the right to private life for the individual. The counsel will only have to rely on information from the police and prosecutor and there is still no possibility of redress for surveillance that was uncalled for.[8] The bill also does not include the (unconditional) right for the individual to be informed about the surveillance once it is concluded.

Following criticism by e.g. the CPT it has also been suggested that whoever is legally forced to remain in the custody of a crime investigating authority, for what ever purpose, shall always be entitled to legal representation. This has only been a legal right of a suspect, never witnesses or victims. This proposal, discussed in a parliamentary report,[9] however, was not presented as a bill as of the end of 2003.

Secret Surveillance

In 2003 Swedish law allowed the police, under certain circumstances, to use secret surveillance techniques during pre-trial investigations. Methods provided for by law included secret wiretapping, wire-surveillance and camera surveillance.[10] Sometimes the Swedish police employed methods not prescribed by law, such as surveillance through the use of body microphones.[11] The police could obtain a court order to use secret surveillance on the basis of a prosecutor's application. The Swedish courts authorized almost all prosecutors' applications and there were only very few instances where applications were declined.

According to the government's annual report presented in November 2003 the use of secret surveillance increased considerably in 2002.[12] Secret wiretapping was permitted in 533 cases. Only two requests were turned down by a court. Three-hundred-sixty-seven cases concerned drug trafficking or other drug related, serious crimes. Other pre-trial investigations that were considered to require wire-tapping concerned suspected murders, armed robberies or other serious crimes such as

[7] In 2001 the SHC presented a report, entitled *The Gothenburg Riots and the Law – Remarks from a Human Rights Perspective,* where it raised concerns that serious human rights violations had taken place during the EU Summit. For a summary see also the *IHF Annual Report for 2002*.

[8] According to the government, the conclusions made in the report of the Commission on the Security Services (SOU 2002:87) were one reason for establishing a public counsel in hearings concerning secret surveillance.

[9] *Ökad effektivitet och rättssäkerhet I brottsbekämpningen* (Strengthening legal rights of the individual while improving the efficiency of crime fighting), SOU 2003:74.

[10] Secret wire-tapping was regulated in the Criminal Procedure Code 27:18 and was defined as the secret interception of communication (written or oral) between two or more people via a telephone or fax etc. Secret wire surveillance was regulated in the Criminal Procedure Code 27:19 and was defined as the hindrance of the use of a telephone (or fax, etc.) or secretly finding out how many messages are produced from and sent to one or more specific telephone numbers and when these take place. Secret camera-surveillance was regulated in paragraph 1 of the Law of Secret Camera Surveillance and was defined as the use of hidden remotely controlled cameras in order to observe people.

[11] See the SHC report, *Buggning och Hemlig Kameraövervakning - Statliga Tvångsingrepp i Privatlive*t, 2000.

[12] Governmental report to the parliament in 2003 (*Regeringens skrivelse 2003/2004:36*). The report, however, did not contain figures concerning the use of secret surveillance in 2003, since these numbers would not be compiled until the end of the following year. The 2003/2004 report thus presents figures for 2002.

trafficking or sexual exploitation of minors. The time-period for surveillance varied from one day to eleven months.

Almost every request by the police to use secret wire-tapping was accompanied by a request to use wire-surveillance. According to the report, 549 demands for wire-surveillance were admitted. As with wire-tapping, most requests concerned drug related crimes. Wire-surveillance was requested in a considerably higher number of criminal investigations in 2002 than during the past five years, in 2001 the number was just below 400.

Permission to use secret camera-surveillance was given in 33 cases. On average, secret camera-surveillance was used for 29 days. In 66% of all cases, it was said to have been of importance for the investigation. In a few cases it was important for solving other crimes than those intended. However, statistics also showed that more than 50% of the admitted wire-tapping and wire-surveillance never presented any evidence that could be used to solve the cases.

In all cases of covert surveillance, the individual was never informed of the use. Not even when the surveillance had ended. Thus the individual was not informed of the prosecutor's application or the court's decision, nor offered any possibility to claim redress for the violation of his human right to privacy. The lack of legal remedies, for example, the possibility to test the legality of a decision to use secret surveillance violated the European Convention on Human Rights (ECHR).[13]

The SHC has on several occasions questioned the reliability of statistics on the use of secret surveillance and stated that there are good reasons to believe that the real percentage is in fact a lot higher than those officially presented. The SHC concluded that the authorities' right to interfere in the private life of citizens, as allowed in certain instances by Swedish legislation, continued to lack both the necessary legality and transparency. The SHC has called for an independent assessment of the necessity and effectiveness of secret surveillance methods used in Sweden.

Expanded Use of Secret Surveillance

Just before Christmas 2002 the Commission on Security Services presented the findings of its investigation into the constitutional activities conducted by the Swedish security police from 1945 to the present day, or in short, how the police has dealt with individuals or groups whose activities may threat national security. In its report,[14] the commission concluded that massive illegal and unconstitutional surveillance had taken place in particular during the "cold war" era. Tens of thousands of Swedes were labeled and considered a threat to society, illegally registered and many of them put under surveillance, often on very loose charges or low degree of suspicion. Even today, the commission report concludes that there is reason to suspect that such control over citizens continues to occur but now the police target groups such as right or left wing extremists instead of communists.

The findings, of over 3,000 pages, have, however, not resulted in any new legislation or bills aiming at substantially improving the monitoring or control over use of secret methods by the police and prosecutors. It was unclear what further conclusions the government has drawn from the report by the commission.

Fear of an influx of organized and international crime was given as the reason for suggestions and proposals made by the government to increase the use of surveillance technology and paving the way to introduce forced measures that had earlier been questioned, such as bugging.

[13] See e.g. the case *Klass and others v. West Germa*ny, 6 September 1978, A28..7
[14] SOU 2002:87 "Rikets säkerhet och den personliga integriteten. De svenska säkerhetstjänsternas författningsskyddade verksamhet sedan år 1945"

Bill 2002/2003:74, approved by the Swedish parliament in 2003, made it possible to use secret measures in pre-trial investigations for a vast number of new crimes.[15] The new law on Criminal Responsibility for Terrorist Crimes also makes it possible for the police to ask for and receive permission to use secret surveillance for criminal behavior/acts that—without subjective intent—normally would not be regarded as serious enough for such investigative methods. The SHC emphasized that it is the intent, the purpose of the crime, that distinguishes acts of terrorism from "regular" crimes. However, at the stage of investigation, it will hardly be possible to have any realistic idea as to whether the suspect will be even prosecuted, let alone convicted, of a terrorist crime, instead of, e.g. illegal use of weapons or vandalism. In 2003 the parliament also ratified an EU convention on mutual legal assistance in criminal investigations. Once the convention enters into force the Swedish police will be able to use secret wire-tapping in pre-trial investigations in all member states—and vice versa.

Surveillance methods mentioned above (wire-tapping, wire-surveillance and secret camera-surveillance) were regulated by law, but there were a number of measures used by the police not prescribed by law. The lack of clear regulations has been criticized by SHC as not being in accordance with the ECHR. In a 2003 report requested by the government it was suggested that the use of superfluous information from secret surveillance such as phone tapping should be allowed to be used both as evidence in a court of law and also to prevent new crimes.[16] Although this was already the case in 2003, the use of information picked up during surveillance but unrelated to the actual crime that originally permitted surveillance was used without clear legal provisions.

Those secret measures which the report proposed should be explicitly legalized also included the use of hidden body microphones and equipment for determining a suspect's whereabouts. These proposals had, however, only to a very small extent been accompanied by discussions on how to secure fundamental rights of the individual when forced secret measures are imposed. There has been no real analysis as to the proportionality or necessity of these measures, instead the suggestions represented a mere codification, and thus an approval, of working methods used for years within the police. It remains to be seen if the government will pass a bill to parliament for approval of these suggestions.

A perhaps overly positive attitude towards technology as a crime investigating and crime preventing tool was prominent in Sweden during 2003. Individuals were bereaved of their right to private life and personal integrity for the sake of crime fighting even when these methods were yet to be proved sufficiently effective. For example, SHC criticized a proposal made by the government to increase the use of public camera surveillance and in a report backed up its position by proving that not only is this kind of surveillance often used in an unregulated manner, but the instances to monitor the use did not have sufficient means to perform their duties.

Intolerance, Xenophobia, Racial Discrimination and Hate Speech

Sweden has ratified the International Convention on the Elimination of all forms of Racial Discrimination but has yet to sign or ratify Optional Protocol No. 12 to the ECHR, which establishes a general prohibition against all forms of discrimination.

Sweden did not have a comprehensive legal prohibition against discrimination, which could have been evoked before a court—something that article 27 of the International Covenant on Civil and Political Rights calls for. There were, however, a number of different pieces of legislation covering discrimination in society, mainly relating to the workplace. One of the most extensive prohibitions

[15] Bill No. 2002/2003:74. Previously regulations stated that secret measures could only be imposed on an individual when the crime that was being investigated could result in *at least* two years imprisonment. Under the proposed bill, it is sufficient that the possible sentence for the crime is two years imprisonment .
[16] Report No. SOU 2003:74

against discrimination was in the Penal Code.[17] However, even if many complaints of unlawful discrimination were filed with the police, very few ended up in court. By the end of 2003, the Office of the Prosecutor General presented statistics of complaints of illegal discrimination that had been filed between January and November 2003. Out of 177 complaints, only one resulted in any charges. The failure of the law to effectively combat discrimination was due to the rules of evidence and burden of proof needed in a criminal procedure. It was simply too difficult to prove that illegal discrimination had actually taken place.

According to the Swedish Instrument of Government, changes to the Swedish Constitution can only occur if the Swedish parliament decides on the issue twice with an election between decisions. Before the 2002 elections, many decisions were taken regarding the revision of the rules concerning freedom of speech on the Internet. The amendments decided upon came into force on 1 January 2003. The old laws only granted automatic constitutional protection (in the form of a publication permit) of the right to freedom of expression to the editorial office of a printed periodical or radio program, to those involved in the professional production of technical recordings, or to news agencies transmitting on the Internet. Swedish laws only held one designated person responsible for crimes involved in mass media publication and because of this the number of people to whom constitutionally guaranteed protection was granted was strictly limited.

The recent legislative amendments make it possible for anyone to get a publication permit, thereby ensuring the protection of their Internet site under the Fundamental Law on the Freedom of Expression. In 2003 the SHC noted its concern regarding the effect of these amendments. It pointed out that persons with questionable racist or xenophobic motives could now obtain a permit and place a "dummy" as publisher, thereby avoiding legal responsibility for the content of publications. Despite the fact that many of the organizations asked to consider the amendments advised against the change, the proposition was approved and the legislation adopted.

Racial Agitation

In 2003 Sweden continued to be one of the world's largest producers of White Power music and racist and xenophobic web sites. At the same time a large number of hate crimes continued to be reported to the police. Although not flawless, the most efficient weapon to fight racist propaganda was the 1948 provision criminalizing agitation against an ethnic group. The provision was included in the Penal Code (chapter16, section 8), in the constitutional Freedom of the Press Act (chapter 7, section 4) and the Fundamental Law on the Freedom of Expression (chapter 5, section1). Due to difficulties in dealing with racist crimes on the Internet, in 2002 the Swedish government revised the Fundamental Law on the Freedom of Expression. The new legislation, however, failed to take into account the need to retain a balance between freedom of expression and hate speech.

The crime of racial agitation can be committed in different ways, e.g. through printed or technical media such as newspapers or compact discs, or through oral statements or by publicly carrying racist symbols such as the swastika. The prosecutor general handled the latter cases. However, if the crime was committed in printed or electronic media, the constitutional laws, with a specific procedural order, had to be applied. These laws prescribed that only the chancellor of justice can open preliminary investigations and prosecute. A certain chain of responsibility was specified where, for example, a publisher was fully responsible for any criminal content in a newspaper. Also, court proceedings were carried out with the participation of a jury consisting of nine elected members.

Between January and September, the Prosecutor's Office had to deal with 240 cases of racial agitation, prohibited in chapter 16, section 8 of the Penal Code. Fifty-five allegations ended in a trial and 180 were dismissed. Five cases were considered to be misdemeanors.

[17] Chapter 16, section 9 "unlawful discrimination."

From 1997 to 2001, approximately 600 reports of hate speech in the media were forwarded to the chancellor of justice, but only nine cases were tried in a court. In comparison, approximately 1,800 reports were filed with the Office of the Prosecutor General and 373 cases were tried in court. These figures show that there is a considerable difference between racial agitation in established media and orally expressed racial hatred.

The SHC compared international human rights law with national law and practice concerning hate speech and freedom of expression. In November 2003 the findings were published in the report *Hate Speech – the Conflict Between Hate Propaganda and Freedom of Expression.* The report focused on all reports sent to the chancellor of justice during the abovementioned period. One important conclusion that could be drawn from the investigation is that the chancellor of justice did not act in as many cases as he was legally able to do, and that not enough cases were brought before court.

The main reason for this was said to be found in the structure of the Freedom of the Press Act, especially in chapter 1, section 4. According to the chancellor of justice, this provision gave him wide discretionary power to decide whether to prosecute or not. However, the SHC concluded that the mentioned paragraph has been interpreted too extensively and that more cases ought to have been tried in court. Another reason for the low number of court cases was the statute of limitations; a pre-trial investigation indictment had to be initiated within six months or one year depending on the type of media.

As a direct effect of so few indictments, Sweden was not in compliance with international requirements as, for example, stipulated in article 4 of the International Convention on the Elimination of all forms of Racial Discrimination. The article explicitly requires member states to criminalize the forming or participation in an organization based on racist ideas. There was no such prohibition in Swedish law. Instead, the Swedish government regarded the ban of hate speech as sufficient to prevent such organizations from functioning. The SHC concluded that this view required available legislation to be fully implemented and enforced.

During 2003 Muslims and Jews, in particular, encountered an increase in xenophobia. A report produced in 2003 by the Jewish community in Sweden purported that anti-Semitism was growing not only in Europe but also in Sweden. According to the Swedish security police, on the other hand, there was a minor decrease in anti-Semitic crimes during the first six months of 2003. Hate crimes however generally increased, as had been the case for almost every year since the early 90s, and there was also an increase in crimes connected to the White Power Movement. Interviews conducted by the Integration Board in 2003 also showed that the Muslim population experienced increased islamaphobia, in particular as a result of the 11 September attacks. Hidden racism or institutional discrimination was however still the prevailing obstacle for newly arrived immigrants.

Asylum Seekers and Immigrants

Protection of Asylum Seekers

Swedish legislation concerning the expulsion or deportation of foreign citizens explicitly forbade the enforcement of deportation decisions where the individual would be at risk of torture or capital punishment in the state to which they were returned. According to the European Court of Human Rights, the principle of *non-refoulement* is absolute—there are no circumstances, not even national security, that can be weighed against the principle (derived from the prohibition against torture). In the past the CAT, however, has criticized Sweden for nine separate violations of the principle of *non-refoulemen*t. In 2003, CAT continued to receive new complaints related to this problem. Although cases before CAT in 2003 did not result in any criticism against the government, there were still many concerns regarding the government's determination to respect the principle of *non-refoulement*.

- One concern pertains the decision to expel two Egyptian nationals in December 2001, allegedly suspected of terrorism and of posing a threat to national security. The men were deported to Egypt in spite of the fact that Sweden was aware of the substantial risk both men faced on arrival (torture and imprisonment). To avoid violating its international human rights obligations, the government tried to mitigate the risk of torture by negotiating a diplomatic assurance with the Egyptian authorities. This stated that the rights of asylum seekers (who had left Egypt already in 1991) would be protected by the Egyptian Constitution and law. Both men were, however, immediately imprisoned by security forces on arrival. During 2003 reports from human rights NGOs in Egypt, Sweden and internationally continued to criticize the *refoulement* of the two men. There was also great concern about the risk of deportation of the wife of one of the men and their five children, who were not suspected of any crime or of being a threat to national security.

The decision by the government to expel the men—as well as the wife and the five children—was criticized by the UN Human Rights Committee, the CAT and a number of NGOs, including the SHC. The Human Rights Committee asked for a follow up report from the government which was presented in 2003, and the committee continues to purport the cases. Human rights NGOs were convinced that the men were tortured and maltreated, that they still had not received a fair trial and that their human rights were not being respected. In October 2003, one of the men was released after having spent almost two years in detention, but he was still "under suspicion" according to the Egyptian authorities and was not able to travel outside his county—not even to Cairo. The other man was still in prison and had not received a new trial where he could have proved his innocence. Both of them described how they had been tortured in prison, not only to counsels and relatives but also to the Swedish ambassador and a special representative from the Ministry for Foreign Affairs in Stockholm.

The information, however, did not result in Sweden accusing Egypt of violating human rights, or Sweden improving its monitoring of the diplomatic assurance, but was instead ignored and considered untrustworthy. By the end of 2003, there had been no requests for private meetings with the two men or for a demand to have them examined by a physician—something that ought to have been a minimum demand. Sweden did not have a follow-up plan to the agreement with Egypt in place when the men were expelled, and when such a plan was constructed, it did not abide by international standards. Both men turned to international monitoring bodies to have the decision to expel tried against the prohibition against torture and the right to a fair trial, but the cases had not been examined by the end of in 2003.

The decision to expel the men—and the wife and five children—was taken by the Swedish government. There was no right to appeal and no court hearing before the decision. The men were expelled the very same day the decision was taken, not giving them a chance to turn to any international body before being deported. The government could use this provision of the Aliens Act because it considered the men to be a threat to national security. However, neither the men nor their Swedish counsels were provided with any information as to the nature of the allegation. The confidentiality in so-called security cases remained extremely strict and could almost never be questioned.

The same situation applied, for example, in cases were a non-national was deported according to the Special Control of Aliens Act. All powers to assess if there was a threat stayed with the government and the security. Both of these provisions were repeatedly criticized by e.g. the SHC as not being in accordance with law and security of persons. Complete transparency for the individual may not be possible to achieve but an improvement is necessary, the SHC stated.