



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Consideration of reports submitted by States parties
under article 19 of the Convention**

**Follow-up responses of Sweden to the concluding observations of the
Committee against Torture (CAT/C/SWE/CO/5)***

[11 June 2009]

* In accordance with the information transmitted to State parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Government of Sweden's response to the recommendations of the Committee against Torture

1. The Committee against Torture has requested the Swedish Government to provide its response to the recommendations contained in paragraphs 11, 13, 16 and 17 (CAT/C/SWE/CO/5). The Swedish Government is pleased to hereby provide its response.

Response to the recommendation contained in paragraph 11 of the concluding observations (CAT/C/SWE/CO/5)

Fundamental safeguards

2. Sweden would like to present the framework governing the right to public defence counsel. The basic rule laid down in Chapter 21, Section 1 of the Code of Judicial Procedure (*rättegångsbalken*) is that the suspect has a right to conduct his own case. In preparing and conducting his defence, the suspect may be assisted by a defence counsel (Chapter 21, Section 3 of the Code of Judicial Procedure). This right is unconditional and applies regardless of the nature of the alleged offence.

3. It is laid down in Chapter 23, Section 18 of the Code of Judicial Procedure that when a preliminary investigation has advanced so far that a person is reasonably suspected of having committed the offence, he or she shall, when questioned, be notified of this suspicion. Chapter 24, Section 9 of the Code of Judicial Procedure provides that when a person is apprehended or arrested he or she shall be informed of the offence for which he is suspected and the grounds for the deprivation of his liberty. Moreover, it follows from Section 12 of the Decree on Preliminary Investigations (*förundersökningskungörelsen* 1947:948) that when a person is reasonably suspected of having committed an offence he or she shall be notified of his right to a defence counsel during the preliminary investigation and the conditions under which a public defence counsel may be appointed.

4. If a public defence counsel is to be appointed for the suspect pursuant to Chapter 21, Section 3a, the leader of the investigation is under a duty to notify this to the court (Chap. 23, Section 5 of the Code of Judicial Procedure).

5. A public defence counsel shall be appointed by the court without delay. The public defence counsel can in general receive reasonable compensation from public funds for work done before he or she was appointed if it was a basic condition that he or she would be appointed as public defence counsel and a request for the appointment is made within a reasonable time after the work was initiated (see decisions by the Swedish Supreme Court, NJA 1959 p. 12, and a Court of Appeal, RH 2004:85).

6. The right to a defence counsel coincides with the formal notification of suspicion under Chapter 23, Section 18 of the Code of Judicial Procedure (see decision by the Swedish Supreme Court, NJA 2001 p. 344). As reasonable suspicion is a prerequisite for apprehension or arrest, the apprehended or arrested person shall, in accordance with Section 12 of the Decree on Preliminary Investigations, be informed of his right to a defence counsel during the preliminary investigation and the conditions under which a public defence counsel may be appointed (see *Fitger, Rättegångsbalken*, p. 24: 38b). A suspect does not necessarily have to be arrested for a public defence counsel to be appointed for him.

7. In a report (*Justitieombudsmännens ämbetsberättelse* 1964, p. 106 ff.), the Parliamentary Ombudsman (*Justitieombudsmannen*) has stated that notification of suspicion fulfils an important legal function. This notification provides the suspect with several legal safeguards. Omission to notify a person who, by an objective assessment,

should be considered to be under reasonable suspicion must be regarded as improper (see *Underrättsförfarandet enligt nya rättegångsbalken*, published by the Board on Procedural Issues [*Processnämnden*] 1947, p. 255, and Ekelöf, *Rättegång V*, 6th ed, p. 109).

8. Sweden asserts that the framework contains sufficient safeguards to ensure that a person receives information about the conditions under which a public defence counsel may be appointed as soon as he or she is considered to be under reasonable suspicion. From this point the suspect can request that a public defence counsel be appointed. It is normally at this point that the suspect has reason to fear that his or her interests may be encroached on. It should, however, be emphasised that even before this point – as a result of the amendments that entered into force on 1 April 2008 – everyone has a right to have counsel present when being questioned by the police (Chap. 23, Section 10 of the Code of Judicial Procedure). In light of the above, Sweden maintains that the framework ensures that suspects enjoy a right to public defence counsel at as early a stage as is reasonable.

9. Prison and remand prison inmates have the same right to health and medical care as any other citizen in the country. Since it is safer to bring a doctor to a correctional facility or prison than to allow the inmates to travel to the nearest medical centre/hospital, the Swedish Prison and Probation Service has chosen to employ its own nurses and use its own consulting physicians. This primarily means general physicians, but since such a large percentage of inmates have various kinds of mental disorders or addictions, a number of psychiatrists are also needed.

10. All detainees are screened upon arrival in a remand prison. The screening form includes health questions such as current use of medication, diseases etc. This routine is used in order to enable the staff to spot serious illness or risk of suicide etc, and to provide the detainee with medical treatment as soon as possible.

11. If a detainee requests to see a physician it is the employed nurse that makes a preliminary examination to determine the nature of the medical problem and the urgency of the matter. Thereafter it is for the physician to determine whether specialist care is needed. However, all staff undergoes training in relation to certain cases of emergencies. All staff is expected to be able to assess whether transport with ambulances is necessary.

12. During 2008 the Swedish Prison and Probation Service has taken many and extensive measures to improve suicide prevention and measures to deal with acute illnesses seen in prison inmates. Several million Swedish kronor have been allocated to suicide prevention efforts. For example, over 4000 employees have participated in an extra, one-day training programme covering issues related to suicide and acute physical illnesses. The result of the measures is that the number of suicides were reduced by more than half compared to 2007. During the first five months of 2009 only one suicide has occurred.

13. The information sheet listing the rights of persons deprived of their liberty by the police was finalised and made available to the police authorities during December 2008 and has been translated into 40 languages. The National Police Board is currently working on making the information sheet available in Persian and Kurdish. The English-language version of the information sheet is attached to this report for reference.

Response to the recommendation contained in paragraph 13 of the concluding observations

Non-refoulement; the case of Mr Ahmed Agiza and Mr Mohammed Alzery

14. The Government has already provided the Committee against Torture with information concerning follow-up measures in respect of Mr Agiza, inter alia, in submissions dated 25 May 2007, 5 October 2007 and 16 December 2008. Furthermore, the Government has provided the Human Rights Committee (HRC) with information

concerning follow-up measures in respect of Mr Alzery, inter alia, in submissions dated 14 March 2007 and 18 September 2007. A general reference is made to these submissions.

15. On 1 March 2007 (in respect of Mr Alzery) and on 16 May 2007 (in respect of Mr Agiza), the Swedish Government decided to repeal the decision of the former Government of 2001 in view of the violations of Mr Agiza's and Mr Alzery's human rights as established by the Committee against Torture and the Human Rights Committee. The Government referred Mr Agiza's and Mr Alzery's requests for a residence permit to the Migration Board, which on 10 May 2007 (in respect of Mr Alzery) and 9 October 2007 (in respect of Mr Agiza) rejected the applications. Both Mr Agiza and Mr Alzery currently have appeals pending against the Migration Board's decisions. The Government will decide in the matter as a last instance, since the case still is regarded as a security case under the Aliens Act. There are still some questions to be addressed before the Government can make a decision.

16. In the Government's above-mentioned decisions in 2007, Mr Agiza's and Mr Alzery's claims for compensation were referred to the Chancellor of Justice. Mr Alzery received SEK 3 160 000 in a settlement reached on 2 July 2008 between him and the Chancellor of Justice on behalf of the Swedish Government and Mr Agiza received SEK 3 097 920 in a settlement reached on 19 September 2008 between him and the Chancellor of Justice on behalf of the Swedish Government.

17. As indicated in the Government's latest communications to the Committee against Torture and the Human Rights Committee in these cases, the Committees will be provided with more detailed information about the follow up of the Committees' views, adopted on 20 May 2005 and 25 October 2006, as soon as the Government has made its decision on the appeals lodged by Mr Agiza and Mr Alzery regarding the residence permit issues.

18. Under the Swedish Constitution, the public prosecutors are, like administrative authorities, independent in relation to the Government. The Government is not allowed to instruct these authorities in their assessment of an individual case. The Government is therefore not in a position to request that the "prosecuting authorities" institute criminal investigations in the cases of Mohammed Alzery and Ahmed Agiza.

19. Swedish prosecutors are under an absolute obligation to prosecute. This means that a prosecutor, unless it is otherwise provided for by law, must institute court proceedings in respect of all offences that fall under public prosecution and where the prosecutor on objective grounds is able to foresee that sentence by a general court will be passed.

20. This obligation is coupled with a corresponding duty – likewise absolute – to start a preliminary investigation. This, in turn, means that in principle there is an obligation to initiate a preliminary investigation as soon as there is reason to believe that an offence under public prosecution has been committed.

21. Public prosecutors on different levels have looked at the question whether a criminal investigation should be initiated in the cases of Mr Agiza and Mr Alzery. Both a district prosecutor and a Prosecutor-Director have decided not to initiate a preliminary investigation. Even the Parliamentary Ombudsman has decided not to institute a criminal investigation in these cases. The Prosecutor-General has decided not to resume the preliminary investigation.

22. Sweden has not participated in any form of what is referred to as extraordinary renditions.

23. The expulsions of Mr Agiza and Mr Alzery in 2001 have been heavily criticized by Swedish national institutions. The Standing Committee on the Constitution has criticized the Swedish Government for the decisions to expel the two men, accepting the diplomatic assurances from Egyptian authorities. The Parliamentary Ombudsman has scrutinized the

enforcement of the expulsions and has expressed very serious criticism regarding how the officials from the Swedish Security Service acted when the two men were expelled from Sweden. Further investigations have not been deemed necessary.

24. Regarding the issue of preventing similar violations in the future, the Government refers to its sixth periodic report to the Human Rights Committee and the new procedure for security cases according to the Aliens Act and the Act concerning special control in respect of aliens.

25. The National Swedish Police Board has issued guidelines regarding effectuation of expulsion orders. The guidelines underline the alien's right to receive a humane and dignified treatment during the enforcement of an expulsion order.

26. Furthermore, chapter 12, section 1 of the Swedish Aliens Act stipulates that the refusal of entry and expulsion of an alien may never be enforced to a country where there is fair reason to assume that

- The alien would be in danger there of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment or
- The alien is not protected in the country from being sent on to a country in which the alien would be in such danger.

Response to the recommendation contained in paragraph 16 of the concluding observations

Imposition of restrictions on remand prisoners

27. With regard to the committee's observations concerning restrictions, it is important to point out that, from an international point of view, relatively few people are detained while awaiting trial in Sweden. A number of those detained with restrictions would not be detained at all if there was no ground for restrictions. Sweden also has relatively short detention periods.

28. Nevertheless, the prosecutor has an obligation to limit as far as possible the restrictions on contacts with the outside world to which a detained person is subject. Restrictions should only be used when and for as long as they are necessary.

29. Under Swedish law, the prosecutor's decision on specific restrictions can be examined by a district court, if the detained person requests it. He or she has the possibility to make such a request as early as at the first detention hearing. It is also possible for the detainee to make such a request at a later stage.

30. A study concerning time spent in pretrial detention is recounted in a 1997 report from the National Courts Administration (*Anhållande och häktning – en utvärdering av 1996 års ändring av fristerna vid anhållande och häktning, DV rapport 1997:6*). The report is based on available statistics and a study of cases from the courts conducted by the National Courts Administration. In addition, surveys were undertaken among prosecution authorities, courts and lawyers. According to the report, the average time spent in pretrial detention (counted from the person's apprehension until sentencing in the first instance) was 24 days. In 80 per cent of cases, the time spent in pretrial detention was six weeks or less. According to the Prosecution Authority, there is no reason to believe that the situation has changed markedly since that study. It could also be noted that it is very rare that a person who is in detention after a judgment in the first instance is subject to restrictions.

31. A few examples of the legal safeguards relating to the imposition of restrictions include the following: In the context of each fortnightly review of the continuation of remand custody, the court should consider the necessity of continuing to impose restrictions

as a separate item (a permit for restrictions lapses if the court does not allow an extension of the permit in conjunction with the court ordering that a person shall remain in detention). Another example is the principle of proportionality (applicable to the use of coercive measures according to Swedish law); restrictions are only to be applied when the reasons for them outweigh the consequent intrusion or other detriment to the suspect or another adverse interest. According to another basic principle, restrictions, as well as other coercive measures, should be lifted as soon as the grounds for them no longer exist. There is also an obligation for the prosecutor to document the reasons for decisions on restrictions and these are to be presented to the detainee, as long as this is not detrimental to the investigation. A court decision to give a prosecutor general permission to decide on restrictions must always contain information on how to appeal against the decision.

32. The task of deciding on specific restrictions, after having obtained general permission from a court, is assigned to an individual prosecutor. In the same way as a judge, the prosecutor has a responsibility, and ultimately a criminal liability, to follow the regulations and instructions in this field. The prosecutor's independence is limited by the possibility for a superior prosecutor (the Prosecutor-General, a director of public prosecution or a deputy director of public prosecution) to reassess a prosecutor's decision. The Prosecutor-General has the overall responsibility for overseeing that the prosecutor's application of the rules fulfils fundamental requirements of legality and consistency.

33. A proposal to the effect that the court always should decide on specific restrictions and that such a decision should be subject to appeal is still under consideration in the Ministry of Justice. According to the current timetable, the Government intends to present a bill to the Riksdag in the autumn of 2009.

34. The treatment of detained persons is regulated by the Act on the Treatment of Persons Arrested or Remanded in Custody. To avoid isolation and other negative consequences of longer periods spent in a remand prison, the Act contains regulations on such matters as social support, the possibility to associate with other remand prisoners and opportunities for physical activities. The Act states that, as far as possible, remand prisoners are to be offered some form of work or occupation during their time on remand.

35. The remand prisoner is normally allowed to associate with other detainees during daytime and have access to television, newspapers and other distractions in his room. These activities can in certain cases be restricted by a court decision, along with the remand prisoner's possibilities to maintain contact with the outside world through letters, telephone calls and visits. The Prison and Probation Service is currently reviewing its routines in order to be able to let detainees associate with one another during daytime.

36. Even in cases when a prisoner's contact with other prisoners is restricted by a court decision, the remand prison can arrange work, education and physical activities on an individual basis.

37. Concerning statistical information, the Government is pleased to be able to provide the Committee with some relevant statistical information as follows.¹ In 2008, 11,245 persons were detained in Sweden. This is approximately 5 per cent of all suspected persons during 2008 (227,624). Court decisions to place restrictions on detainees were affirmed in 7,303 cases, equivalent to 65 per cent of the detainees. It should be noted that the prosecutor may refrain from placing restrictions on detainees although prior permission has been granted by the court.

¹ Åklagarmyndighetens årsredovisning 2008, pp. 40-41 (Swedish Prosecution Authority Annual Report 2008 – in Swedish only).

38. The statistical data reveal certain regional variations regarding permissions for restrictions. It is believed, but not confirmed, that such variations are due the fact cases at the various prosecutorial chambers vary over time, but also vary structurally. Evidence to the latter is that the international prosecutor chambers receive permissions for restrictions in 93-95 per cent of cases, whereas at several other chambers where the percentage of permissions for restrictions is considerably lower (less than 50 per cent), the majority of cases are mainly related to less serious crimes.

39. Currently work is ongoing to improve the quality in the prosecutors' implementation of the regulatory framework regarding restrictions with the view to limit the use of restrictions to cases where it is absolutely necessary.

Response to the recommendation contained in paragraph 17 of the concluding observations

Coercive measures, incl. physical restraints and isolation

40. The Government has appointed a committee, which at present is reviewing the Swedish legislation on compulsory mental care and forensic mental care. The committee is reviewing the legislation as a whole, i.e. including the regulation concerning physical restraints and solitary confinement. The committee is supposed to report their result on 1 June t 2010.

41. Furthermore the Government has commissioned the National Board of Health and Welfare to develop their work on statistics and follow-ups within the area of psychiatric care, as well the compulsory as the voluntary care.
