

SWEDISH AND FOREIGN CRIMES IN THE SWEDISH CRIMINAL JUSTICE SYSTEM

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1. Introductory remarks

In 1864 the first modern Penal Code (hereafter PC 1864) was issued in Sweden and became effective in 1865. A century later a new Criminal Code (hereafter CC) was adopted in 1962 and came into force in 1965. The CC has since 1965 been partially revised but has retained the same structure. The period from 1865 to the present day has seen the emergence of a totally new society in Sweden, and these increasingly rapid changes have caused the legislator problems in ensuring that the reform of the law keeps pace.

The 19th century began with military tragedies, political upheavals and, at the same time, optimism for the future. The war with Russia ended in 1809 with the loss of the eastern part of the realm, Finland. In the same year a *coup d'état* took place and was soon followed by the invitation of the French marshal Bernadotte (1763–1845) to become heir to the throne and, in 1818, King of Sweden under the name Carl XIV Johan. With little difficulty Norway was separated from Denmark in 1814 by the Kiel peace treaty and forced to join Sweden in a union which lasted up to 1905.

In the initial enthusiasm following the peaceful revolution, the Executive and the Legislature hoped to renew the whole Swedish legislation collected in the Codes of 1734, with a new set of codes. The Cinque Codes of France inspired Sweden to join those nations engaged in plans for modern legislation. The first and lasting result of this ambitious undertaking was presented half a century later and became the PC 1864. The loss of Finland was bitterly felt and the union with Norway was a burden to both countries. Being a rural country with a fast growing

population and slowly developing industry Sweden became a poor country with rapidly increasing emigration, mainly to the United States. When the PC 1864 came into force, Sweden was a rather isolated state with an ethnically and religiously homogeneous population of four million inhabitants, of whom just a few thousand were alien residents. Crime was a local and trivial affair with international complications arising only rarely from foreigners or from Swedish emigrants.

Today the situation is totally different. Though Sweden has been preserved from wars and its neutrality, first proclaimed in 1834, with a few exceptions respected, the country has become an integrated part of Europe and the world. Political stability and economic strength after World War II attracted many immigrants and refugees who have found shelter from hunger and political turbulence. Out of a total population of 8.4 millions, almost 400 000 are aliens and more than 600 000 are naturalized Swedish citizens (including the second generation).

This increase in manpower has been essential to industrial expansion throughout recent decades and the variety of race, religions and cultural traditions has greatly influenced daily life. In addition to immigration, the increase in international trade and communications and the growth of tourism has opened Sweden to the world and the world to Sweden. Crime is no longer a trivial local affair committed only by Swedes in Sweden, but often a hard international game with loopholes in the administration of criminal justice. This has called for participation in the international collaboration in the fight against crime, from police investigation to the enforcement of penal sanctions.

Geographical proximity, linguistic similarity (with the exception of the majority of Finns) and a common culture, as well as mutual political and economic interests, have called for special forms of collaboration between the five Nordic States: Denmark, Finland, Iceland, Norway and Sweden (internationally often called Scandinavia). Prior to and notwithstanding international conventions and diplomatic work, the Nordic States have often had and continue to have their own agreements and less formal collaboration between the authorities across frontiers. This has provided us with a variety of solutions to international and inter-Nordic legal questions, similar to developments within the Benelux States. There is a common Nordic labour market and no restrictions with regard to residence are imposed. Of all inhabitants in Sweden of foreign origin, those

from other Nordic States make up half a million, most of them of Finnish origin.

2. The legislative background

Swedish law is based on Acts of Parliament in strict conformity with the Constitution of 1974 and preceding constitutions. Almost all bills are initiated by the Government, but Parliament alone passes or rejects them. The Constitution empowers the Government to enact ordinances and Parliament may authorize the Government to supplement legislation by ordinances. Some regulations may also be issued by central authorities or even local communities. Within the sphere of penal legislation, little space is given to provisions decided by authorities other than Parliament. This legalistic tradition, confirmed in the Constitution, is of utmost importance for Swedish dealings with crime in an international perspective. No treaty or convention may be ratified by the Government unless it is found to be in conformity with existing legislation or has been adopted as Swedish law by a legislative act.

The PC 1864 included a chapter of the *Applicability of Swedish Law* and this tradition is maintained by the CC 1962 where Chapter 2 contains corresponding provisions under the same heading. Looking closer at the text (set out in the Appendix, pp. 37–40 below) it can be seen that this chapter regulates the competence of Swedish courts to hear criminal cases with an international background. The suspect, whether a Swedish citizen or an alien, has a right to be tried according to Swedish law and the court has an obligation to apply Swedish law in its findings. In fact the principle of legality, as defined in the Constitution, is the ultimate guarantee that nothing but Swedish law rules *in re*.

The provisions in Chapter 2 of the CC concern in fact the application of Swedish *criminal procedure* in these matters. The Code of Procedure and other provisions decide *which court* is to have *jurisdiction*. The court then has by virtue of Chapter 2 of the CC, to determine its competence to hear the case. Such considerations have in general already been taken by the prosecution. With a few exceptions, the public prosecutor is the only person who can bring the case before the court. For this reason the competence of the court is immediately his concern. Sometimes his competence is limited or directed by a decision taken by the Government or on its behalf by the Prosecutor-General or another high-ranking official,

for example the Parliamentary Ombudsman. Within his competence the prosecutor has to make certain that the provisions in Chapter 2 allow him to prosecute the suspect. If so, he may evaluate the evidence at hand and come to a reasonable conclusion that a crime has been committed and that the suspect is the offender. Then again, he has to consider whether he, within his competence, should remit prosecution or, instead of prosecution, give the suspect the opportunity to accept a proposed fine or to initiate court proceedings. In fact, most problems concerning the competence of the court are solved at an early stage. In this way the court rarely has to face questions of law, although no doubt some problems, whether legal, political or practical, may be hidden behind decisions taken long before. Finally, delay in the handling of the case can extinguish the possibility of prosecution.

The first question for the authorities to answer is whether the crime has been committed within or outside the Realm (sections 1 and 2). If committed in Sweden all suspects, Swedish and foreign, are tried in Sweden without any exceptions other than those relating to immunity. The Realm is identical with the territory of Sweden. For this reason special legislation has been enacted with the 'Pirate Radio' Act (1966:756),¹ the Continental Shelf Act (1966:314) and the Space Activity Act (1982:963), all based on international agreements. The Fishing Rights Act (1950:596) regulates fishing within territorial waters and in the Swedish fishery zone, as determined by an Ordinance of 1977 (1977:642). The Soviet Union and Sweden have for some time been in disagreement about the boundaries in the Baltic, east of the Swedish island of Gotland, but have now come to an agreement (1988:850).

With regard to *immunity* the general line has been demarcated (see section 7). So far no specific Swedish problems have arisen. Following the Soviet submarine incident in 1981 in the southern part of the Baltic near the Swedish marine base of Karlskrona, a debate arose concerning questions of immunity and Swedish jurisdiction over foreign citizens committing offences in the exercise of a duty or when holding a public position on behalf of another State or international organization. According to a new section 7(a), effective from July 1985, such persons should be prosecuted in Sweden only upon a directive from the Government. This

¹ References to the Swedish Statute-Book are by year followed by the relevant number, e.g., 1960:418. Decisions by the (Swedish) Supreme Court are cited from the (unofficial) publication *Nytt Juridiskt Arkiv* [New Juridical Archives] (hereinafter NJA).

limitation, however, does not apply to a suspect who has attempted to conceal by means of misleading information, disguise or otherwise, the capacity in which he has acted. This solution was found satisfactory though it did not openly answer the question whether a foreign warship and its crew are likely to be granted immunity in all situations when such a vessel without previous permission, under the pretext of error or necessity, has entered Swedish waters.

One of the key questions in a case with an international background is where the offence has been committed; within or outside Sweden. Here section 4 gives wide directives, supplemented by an assumption in section 1. According to these provisions, many criminal acts are deemed to have been committed within the Realm, even if the offender has completed his activity far from Sweden. He might have committed the crime in a way that makes him responsible in several countries. To Sweden it is enough that the crime is committed within a place deemed to be within the Realm. This construction has many implications. The crime is committed in Sweden if a bomb is sent from abroad in an unsuccessful attempt to kill a person in Sweden or if someone incites a person in Sweden, by letter from another country, to commit an offence abroad.

Several sections are based on the offender's citizenship or domicile. The starting point is the *status* of the offender at the time when the crime was committed. A change of status from a foreign country to Sweden is nevertheless of importance. According to section 2, Swedish law is applicable to an offence committed abroad by an alien not domiciled in Sweden if, after the crime, he has become a Swedish citizen or has acquired domicile in Sweden or is a citizen of another Nordic State and is present in Sweden. This provision may be detrimental to the offender but can also save him from extradition.

3. The range of Swedish penal provisions

In the 19th century the Swedish Legislature decided to restrict the content of the PC 1864 to crimes immediately endangering innate or acquired rights or attacking central civic or religious values. Offences by which such rights and values were indirectly damaged and threatened were to be regulated in administrative ordinances given by the Government. In this way, for example, traffic and fiscal offences were kept outside the PC. This tradition was followed in the work on the present CC.

Nevertheless, although the majority of serious crimes of more traditional types are included in the CC, there are serious crimes treated in legislation outside the CC, for example, smuggling, tax fraud and drunken driving, as well as production, possession and sale of narcotics.

The present division between the central CC and specific legislation for other serious crimes has long been seen as unsatisfactory. Now a Parliamentary Commission, within the limitations of its mandate, has proposed (SOU 1986:14) to exclude some minor offences from the CC and to include in it some of the serious offences presently outside the CC, for example, narcotic crimes and tax fraud. Traffic and smuggling offences are kept outside. The Commission also proposes that the crime of genocide, now in the 1964 Genocide Act, be included, though not a single case has been brought to the courts.

It is generally held that offences outside the CC have a *national* limitation while crimes within have a *universal* range. This assumption is still useful, but there are certainly many exceptions. The crime of genocide is of course universal, while the petty offence of disorderly conduct, still in the CC, should reasonably apply to such behaviour only within Sweden. However, the problem is more complicated.

Among the crimes against the State, included in the CC, some directly mention the Realm as being the object of the criminal act. It is taken for granted that there is a limitation to the *Swedish* State. Among the crimes against public activity in Chapter 17 of the CC there are several which are constructed in such a way as to impute a national limitation with regard to the object, for example, violence or threat of violence to a public servant, illicit award to a civil servant and violation of an official order, all in connection with the exercise of public authority.

Such an interpretation or reduction of the provisions to be limited nationally is often based on the argument that such violations do not merit punishment when the offence is directed towards a foreign object. Where the object is not clearly stated the application of a Swedish provision might often be limited with reference to the lack of public (and sometimes also private) interest to have the offender punished for an act, committed abroad and directed towards a foreign interest. In this way limitations may be found in many offences outside the CC which are designed to protect Swedish interests, for example, concerning trade, customs duties, taxes and fees, as well as regulations with regard to public order or social benefits.

Sometimes the Legislature has found it necessary to declare that a provision is universal or national. So the provision on counterfeiting currency applies to banknotes and coins 'valid within or outside the Realm' (14:6 CC). False or careless statements made under penalty of legal sanction before a court in another Nordic State are punishable according to a special provision (15:4(a) CC). The crime of gambling (16:14 and 14(a) CC) may be taken as an example of difficulties in interpretation. To organize or to accommodate gambling is held to be punishable only within Sweden. If the crime is found to be grave, such acts are also punishable when committed abroad.

While many offences in specific legislation outside the CC, as already mentioned, are found to concern merely Swedish interests, other provisions regulating, for example, traffic by land, sea or air, or concerning protection of the environment do not know any territorial limitation. Reference should also be made to the above-mentioned acts concerning 'pirate radio', activity on the continental shelf and in space, and illicit fishing in the Swedish fishing zone.

Finally, it should be observed that the provisions on attempt and on preparation and conspiracy in Chapter 23 sections 1 and 2 of the CC restrict the criminal liability to offences where it is explicitly provided that the act be punishable at that stage. No such restriction applies to the commission or instigation of, or the complicity in, the offence (23:4 CC).

When the European Convention (Strasbourg, 1972) on the Transfer of Proceedings in Criminal Matters was adopted into Swedish law some of the above-mentioned complications were taken into account. With the background of Article 7.1 and 7.2 of the Convention it was said that, for example, smuggling in another member state would be considered as an offence according to the Smuggling of Goods Act (1960:418), if the illicit import of such goods to Sweden would be punishable. It was further mentioned that an assault on a policeman in another member state would be considered equal to an assault on a Swedish policeman (and not just as 'mere' assault) and that bribery of an official in a member state would be judged equal to bribery of a Swedish official. There can be no doubt as to the applicability of the Swedish provisions on sabotage (13:4 and 5 CC) to an equivalent act in another member state.

Similar complications may arise with regard to offences which have been included in the 1971 Act on Traffic Offences Committed Abroad, an act founded upon the European Convention on the Punishment of Road

Traffic Offences (Strasbourg, 1964). Within the Nordic States some trouble may arise with regard to speeding offences. It is to be proposed that such offences be depenalized in Sweden and the punishment of a fine to be replaced by an administrative order imposing a monetary sanction (which by Swedish law is not regarded as punishment even if the sum imposed exceeds that of a reasonable fine).

4. Limitations with regard to prosecution

According to the Swedish Code on Procedure of 1942, the public prosecutor is, in principle, obliged to prosecute all persons suspected of crime. However, the prosecutor may, as hinted at above, decline prosecution or, for minor offences, suggest that the suspect plead guilty and accept a fine. So far there is no difference between the general handling of criminal cases and cases with an international background.

In the CC 1962 such offences and offenders are dealt with according to the principles concerning the competence of Swedish courts as stated in Chapter 2 of the Code. These provisions are reflected in the regulations for the prosecution included in the same chapter. The decisions taken by the prosecution should, in principle, be kept within this range and the prosecutor is supposed to be able to anticipate the court's decision on its competence. In this way the prosecutor alone decides which cases should be brought to the court and the court has no initiative of its own. This is in accordance with the general principles of Swedish criminal procedure.

According to the Code of Procedure the public prosecutors work on three levels: the District Prosecutors; the State Prosecutors for serious or complicated crimes; and the Prosecutor-General, who is the supreme prosecutor under the Government. All public prosecutors are state officials.

The preliminary investigations are carried out by the police and the case is taken over by the prosecution as soon as someone can reasonably be suspected of a serious offence. Upon the conclusion of the investigation the decision has to be taken whether an offence has been committed, depending upon whether a suspected person has been found or not. Even prior to the preliminary investigation, the police may undertake interrogations and take other measures which cannot be delayed.

The investigation of offences committed abroad has been facilitated by the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 1959), ratified by Sweden in 1967, and additional protocols.

Between the Nordic States mutual assistance is regulated to allow direct contact between the authorities in the five States.

In general the District or State Prosecutor decides on prosecutions. Chapter 2 includes, however, provisions according to which prosecution has to be decided by the Government or where prosecution may be ordered by the Government in cases exempted from the presently accepted principle of *ne bis in idem*. The provisions in section 5 and 5(a) allow the Government to delegate the decision to the Prosecutor-General and such delegation has been given by an ordinance (1972:818) or for particular cases. When the Government wishes to take a decision the opinion of the Prosecutor-General is obtained.

With regard to offences *within the Realm*, section 5 paragraph 1 provides that the Government shall decide on prosecution if the act has occurred on board a foreign vessel or aircraft and has been committed by an alien who was a commanding officer, or a member of the crew, or accompanied the carrier and the act was directed against such alien or a foreign interest. The order to prosecute is given by the Prosecutor-General in accordance with the ordinance.

NJA 1987 p. 473. A citizen of the USSR, a mate on a small Russian fishing control ship, threatened the crew with a gas pistol and locked them up in the ship during the voyage close to Swedish territorial waters in the Baltic. He sailed the ship to a harbour on the Swedish island of Gotland where he left the ship and gave himself up to the authorities as a refugee. He was prosecuted and during the trial he obtained a permanent residence permit as a refugee. The Supreme Court convicted him of unlawful deprivation of liberty, grave vehicle theft and unlawful possession of the weapon he had within Swedish territorial waters (and ordered a conditional sentence). The Supreme Court (contrary to the Appeal Court) found that a crime against the Weapons Act (1973:1176) constitutes an offence against a Swedish interest. Thus, no permission to prosecute was necessary (v. chapter 2, section 5, paragraph 1: 'a foreign interest').

The Prosecutor-General is also, by virtue of the ordinance, empowered to decide on offences committed *outside the Realm*; in cases mentioned in section 5 paragraph 2 (1-5) such competence is also given to his subordinate prosecutors. Of greatest importance is the exception of

offences committed by Nordic (including Swedish) citizens against a Swedish interest.

Section 5(a) is based on the principle *ne bis in idem* accepted through Sweden's accession to the European Convention on the International Validity of Criminal Judgments (The Hague, 1970), given effect in Swedish law by a 1972 Act (1972:260). In section 5(a) it is stated, *in principle*, that no prosecution may be instituted against a person for an act which is comprised in a valid judgment decided in the State where it was committed or in a State that has acceded to the Convention.

Provided that the proceedings in the foreign State have not taken place as a result of an application by a Swedish authority, Sweden has reserved its right to prosecute offences falling under section 1 (within the Realm) or section 3, no. 4 (against Sweden, etc.), 6 (against public international law, etc.) or 7 (being a very serious crime according to Swedish law). The prosecution order must be given by the Government or upon delegation by the Prosecutor-General (such delegation is given in the ordinance concerning Swedish citizens and foreigners domiciled in Sweden).

Whenever Sweden accepts that a foreign judgment should be executed according to the Hague Convention or the Inter-Nordic Convention (see below), no prosecution may be instituted for the same offence.

Prosecution for an offence may, as stated in section 3(a), be instituted for any offence which Sweden has accepted as an offence to be prosecuted according to the European Convention on the Transfer of Proceedings in Criminal Matters (Strasbourg, 1972), which has been adopted by Swedish law through a 1976 Act (1976:19). An application for transfer to Sweden is considered by the Prosecutor-General and granted by him, but a rejection of the application may only be decided by the Government (1978:108).

In section 7 attention is drawn to limitations resulting from generally recognized principles of public international law and from agreements with foreign powers. Such commitments are expressly mentioned in the Act on Immunity and Privileges (1976:661) and the Act on the Immunity of Witnesses (1958:988).

Finally section 7(a) ('the submarine case') provides that *only* the Government can order prosecution against an alien who has committed a crime in the exercise of a duty, etc., unless he has attempted to conceal the capacity in which he has acted.

For the prosecution, two questions arise in connection with offences with an international background. First, the prosecution has to ensure that the court has competence. However, it is inevitable, and sometimes also appropriate, that cases be brought before the court only to be dismissed. Secondly, the prosecution has to consider the individual case in order to evaluate the need for, and expediency of, bringing the offender up for trial. If the offender has already been sentenced for the offence by a foreign court, the Swedish court may have competence but the opportunity of imposing additional punishment is small (see 6. below).

5. Limitations with regard to jurisdiction

Before hearing a criminal case the court has *ex officio* to examine its right to jurisdiction and the competence of the prosecution. In spite of the preliminary considerations already undertaken before a case with an international background is brought before the court, application of the provisions in Chapter 2 of the 1962 CC in the particular case may be troublesome. The present regulation comprises layers of legislation from different periods and the structure today reflects how Sweden has gradually reached an ingenious combination of principles derived from doctrine and from the need for responses to international crime as well as from a wish to avoid the extradition of offenders to states where they might suffer prolonged or cruel punishment.

Initially the PC 1864 was based on the *principle of nationality* with regard to Swedish citizens and the *principle of territoriality* concerning aliens. The exception was those who had committed an offence against Sweden or a Swedish citizen. Later the *principle of personality* gained ground, and the CC 1962, like the contemporary Danish and Norwegian legislations, made Swedish citizens and foreigners domiciled in Sweden equally responsible for offences committed outside the Realm. Here Swedish jurisdiction was, in accordance with the *active personality principle*, unlimited until Sweden accepted restrictions based on the principle of dual liability to punishment by accession to the international conventions. At the same time, the need for unlimited jurisdiction with regard to certain types of offences increased. This conflict of interests is illustrated by provisions in Chapter 2 of the CC 1962.

Section 3 originally included four types of offences for which Swedish jurisdiction was unlimited. Today the competence of Swedish courts has been widened by the following provisions.

The first concerns offences committed on board a Swedish vessel or aircraft by the commanding officer or a member of the crew in that capacity. This provision is unchanged and reflects *the flag principle*.

The second relates to the same principle with regard to offences committed by members of the Swedish defence forces or by anyone within the area where the troops are present for purposes other than training. This provision has only undergone linguistic changes.

The third has been inserted as a consequence of the legislation concerning servicemen and refers to persons employed as Swedish emergency troops in the UN peace-keeping forces.

The fourth refers to offences against Sweden, a Swedish local or regional authority or other corporate body or a Swedish public institution. This provision corresponds partly to an earlier version and expresses *the state protection principle*. The interpretation of 'against Sweden' is illustrated by an example cited later.

The fifth refers to offences committed in an area not belonging to any State against a Swedish citizen, Swedish association or private institution or against an alien domiciled in Sweden. The provision has been restricted to give protection to private interests according to *the passive personality principle* in situations where no foreign State has jurisdiction.

The sixth originally included only offences against public international law, but has since been extended to cover hijacking of, or sabotage against, an aircraft or any attempt to commit such a crime. The amendment satisfies commitments under the international conventions and may protect the offender against extradition.

The seventh is a consequence of Sweden's accession to the above-mentioned Hague Convention. Swedish jurisdiction with regard to very serious offences such as murder or kidnapping and the aggravated offences of rape, robbery and arson, has been introduced in order to avoid the acceptance of a foreign judgment that would be inconsistent with moral values expressed in Swedish legislation.

Section 3 was originally restricted to foreigners who had committed offences outside the Realm, but was widened to include Swedish citizens as a result of the recognition of *the principle of dual liability* to punishment. A partial acceptance of this principle was made with regard to road

traffic offences by Sweden's accession to the European Convention on the Punishment of Road Traffic Offences (Strasbourg, 1964). When this convention was adopted by Swedish law by an Act on such offences (1971:965), the act included a provision based on dual liability. The complete recognition of the principle by the accession to the Hague Convention of 1970, which resulted in an Act (1972:260) and a reconstruction of Chapter 2 section 2 of the CC 1962 concerning Swedish jurisdiction over persons who have committed offences abroad, is not reflected in the enumeration in section 3.

According to the present section 2 paragraph 2, Swedish law is not applicable if the act is not punishable under the law where the act was committed or, if committed within an area not belonging to any State, the punishment for the act according to Swedish law is only a fine (i.e., a petty offence). In case these requirements are fulfilled the following categories of offenders fall under Swedish jurisdiction:

- (1) a Swedish citizen or an alien domiciled in Sweden;
- (2) any other foreigner who after the offence has obtained citizenship or domicile in Sweden;
- (3) a citizen of Denmark, Finland, Iceland or Norway who is present in Sweden; or
- (4) any other alien who is present in Sweden and according to Swedish law the offence is punishable by imprisonment of more than six months.

The first group of offenders is kept under Swedish jurisdiction in order to avoid extradition to another State (see 9. below). The jurisdiction over citizens in the other Nordic countries is in conformity with the inter-Nordic commitments to mutual assistance (see 8. below).

The last provision opens up a possibility to convict and sentence an alien who could otherwise have been extradited. However, the conviction for an offence punishable by imprisonment exceeding one year may be a reason for expulsion according to the 1980 Aliens Act (see 10. below).

NJA 1987 p. 771. An Iranian, living in Denmark, had committed several serious drug offences there, including conspiracy with Iranians, living in Sweden, of smuggling heroin in his possession to Sweden. He was extradited to Sweden on the basis of a Swedish detention order. His offences raised three different legal questions:

1. Was conspiracy of smuggling to Sweden an offence "against Sweden". The courts unanimously held that it was so.

2. Was he to be considered as "present in the Realm". The Supreme Court found that extradition to Sweden and detention here was not included in this prerequisite.

3. Was a Swedish court anyhow competent to try him for all offences? The Supreme Court found that the transfer of proceedings according to the 1976 Act was lawful as the trial in Sweden was called for due to the judiciary inquest. Thus, and with reference to the provisions in the Ordinance (1978:108; see 8. below) to the Act concerning inter-Nordic collaboration within the prosecution the Supreme Court found that the preconditions for transfer were complied with by the extradition procedure. The Iranian was convicted of possession and conspiracy and sentenced to imprisonment and subjected to forfeiture and expulsion.

Complications arising from the application of sections 2 and 3 have been illustrated by the following case, heard by the Swedish Supreme Court:

NJA 1983 p. 425. Two Swedish citizens planned to smuggle narcotics from the Netherlands to Sweden. They had a large sum of money (equivalent to D.fl. 100 000) and a lorry. Holes were drilled in the structure of the lorry to conceal the money on the way to Amsterdam and narcotics on the return trip. In Amsterdam they bought amphetamines and temporarily placed the drugs in a locker at the Central station. However, they were apprehended by the police and the hiding-place was found. They were tried by the Swedish courts and both were convicted of preparing to smuggle narcotics and of unlawful possession of narcotics.

The way in which the Supreme Court reached this result should be analysed. The preparation for smuggling had to a large extent been carried out in Sweden and thus according to Chapter 2 section 1 had been committed within the Realm. However, the possession of the drugs took place in Amsterdam. According to the Narcotic Offences Act (1968:46) the minimum punishment for a grave offence is two years imprisonment. This excludes the application of section 3 no. 7 where the prerequisite is a minimum punishment of four years imprisonment. The Court then turned to section 3 no. 4 concerning offences 'against Sweden' (cfr. *NJA 1987 p. 771*, mentioned above). After having consulted the preparatory

works for this provision the Court held that this condition was not met. This ruling, with which one might disagree, brought the Court back to section 2 and it found that possession of drugs was punishable according to Dutch law. So, in the end, the basis for Swedish jurisdiction and the application of Swedish law was established.

Following Sweden's accession to the European Convention on the Transfer of Proceedings in Criminal Matters (Strasbourg, 1972), and its transformation into Swedish law by the Act on international collaboration in the prosecution of crime (1976:19), a new section 3(a) was inserted into Chapter 2 to secure Swedish jurisdiction and the application of Swedish law in cases where Swedish authorities have granted an application concerning transfer to Sweden (see 8. below).

In addition to the provisions in Chapter 2, Swedish courts have jurisdiction according to the legislation extending competence outside the Realm, mentioned above. Another type of special legislation with reference to Swedish jurisdiction is the Act on international sanctions following decisions or recommendations by the United Nations' Security Council (1971:176). This act is supplemented by legislation concerning South Africa and Namibia and by ordinances. The above-mentioned act empowers the Government to decide that a Swedish citizen who has committed such an offence outside the Realm may be convicted by a Swedish court in accordance with the act notwithstanding the restrictions in Chapter 2 sections 2 or 3 and without prejudice to section 5(a) paragraphs 1 and 2.

6. Limitations concerning the assessment of punishment

Following the principle of dual liability, a new paragraph 3 was added to Chapter 2 section 2, providing that the sentence by the Swedish court should not be more severe than the maximum punishment prescribed in the State where the offence was committed. Prior to this amendment of 1972 the Supreme Court had considered problems concerning the assessment of the punishment within the scale set out in the foreign legislation: should the Swedish court follow the assessment by the foreign judicature? A case from the Supreme Court may be used as a starting-point.

NJA 1961 p. 596. A Swedish lady was found guilty of careless driving and of hit-and-run from the scene of an accident in which

she was involved in Copenhagen. She was ordered to pay very high fines (and not to imprisonment) following normal Danish court practice.

Without an open reference to this case the Supreme Court discussed the assessment of punishment in the case NJA 1983 p. 425 (see under 5. above). The Court recognized that there might be particular reasons for accepting the guidelines in the state where the offence was committed, for example, if the offender had grown up or lived there and adopted the social values of that country. No such circumstances existed in this case and no reason to follow an assessment by Dutch courts was found.

The provision in section 1 paragraph 3 regulates a singular offence and no instruction is given as to how the assessment of punishment should be handled in a case of concurrence of crime, as in the above case where the scale of punishment for preparation for smuggling of narcotics according to the 1960 Smuggling of Goods Act (1960:418) had a maximum of ten years imprisonment and the punishment for possession of narcotics had the same maximum. The court was informed that the maximum punishment for this offence, committed in Amsterdam, according to Dutch law, was four years imprisonment. The court found no difficulty in giving both accused a sentence of six years imprisonment for the two offences in combination. The offenders had a previous record, could enjoy full reduction for the period already detained and could look forward in due time to conditional release.

The accession to the Hague Convention on the International Validity of Criminal Judgments led to an amendment of Chapter 2 section 6. If the offender is found punishable according to Swedish law the sanction imposed shall be fixed with due consideration of the penalty suffered outside the Realm for the same offence. Any period of deprivation of liberty resulting from the offence (e.g., pre-trial detention) shall be fully deducted. The offender may, in this way, be sentenced to a lesser punishment than that prescribed in Swedish law for the offence and may even be completely exempted from any sanction.

As already mentioned (see 4. above) the expected inability to prosecute an offender for an offence for which he has already undergone punishment abroad has to be taken into consideration by the deciding authority.

7. International collaboration in the execution of sentences

After World War II it was felt that States ought to collaborate in the execution of sentences passed on persons convicted by courts in another state. In 1948 Denmark, Norway and Sweden took a small, cautious step by means of a Convention on the mutual recognition and execution of sentences and in Sweden this agreement was transformed into an Act of 1948 on the recognition and execution, in certain cases, of a sentence passed in Denmark or Norway. The undertakings were limited to fines, forfeiture and costs in the penal proceedings. The collaboration was carried out by the relevant ministries (in Sweden by the Prosecutor-General).

Fifteen years later this road to mutual assistance was broadened on the initiative of the (inter-parliamentary) Nordic Council. In 1962, the Council recommended that the Nordic States should arrive at a general agreement. In Sweden, preparatory work had already been done by the Ministry of Justice and proposals were presented to Parliament in a bill that passed without any difficulty. The Act of 1963 (1963:193) on collaboration with Denmark, Finland, Iceland and Norway replaced the Act of 1948 and included, in addition, sentences involving deprivation of liberty and the supervision of conditionally sentenced or released offenders. Requests based on this act, still in force, are handled by the competent administrative authorities in each country in direct contact with each other. With regard to the transfer of the execution of sentences of deprivation of liberty, consent from the convicted person is *no* prerequisite, but his opinion is generally respected.

Many had great expectations that this mutual assistance within the Nordic States would turn out to be successful, particularly in cases of persons sentenced to imprisonment. With regard to convicted persons the transfer to the other Nordic States from Swedish prisons has been less than expected. At most, around 150 persons were sent from Sweden annually and around 250 were received. Today no statistics are published. There are many administrative obstacles and most of those convicted serve short sentences. Many of the convicted persons are domiciled in Sweden and have their families there, whilst others are reluctant to change from the relative comfort of a Swedish prison to a harder regime at home. Moreover, Denmark and Finland, for many years, had overcrowded prisons and long waiting lists.

Information from the Swedish prison administration reveals that the proportion of all aliens admitted to Swedish prisons had dropped from 21 % (2 505 out of 12 272) in 1980 to 17 % (2 261 out of 13 535) in 1985. The daily number of foreign inmates is somewhat higher as their sentences are, on average, longer. The inmates from the other Nordic States amount to some two-thirds of the total number of foreigners in prison, and the large majority of them are Finnish citizens. It should be added that a considerable number of the Swedish citizens are naturalized subjects.

Bearing these figures in mind, the development of international collaboration outside the Nordic States can be addressed. Sweden, as already mentioned, has ratified the Convention on the Validity of Criminal Judgments and also the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (Strasbourg, 1964). Both have been adopted by Swedish law; the former by the aforementioned Act of 1972, the latter by an Act on international collaboration in non-institutional criminal care (1978:901). None of them has had more than a marginal importance for Sweden, though a few cases have turned out to be of great importance to the convicted person.

Against this background, Sweden hoped that the Convention on the Transfer of Sentenced Persons (Strasbourg, 1983) would lead to more intense mutual assistance with regard to persons sentenced to imprisonment. Sweden acceded to the convention and transformed its content by an amendment (1984:876) to the Act of 1972. During the negotiations Sweden argued, in vain, that the prerequisite concerning consent by the offender to the transfer should be abolished, at least with regard to those who had an expulsion order included in the sentence. It is still too early to evaluate the reform as the Swedish provisions only came into force on 1 July 1985.

As a consequence of the recognition of the Convention on the Validity of Criminal Judgments (The Hague, 1970) and the Convention on Mutual Assistance (Strasbourg, 1959) and other agreements, the use of *seizure* was regulated by an Act (1975:295) on the use of certain coercive measures upon requests by a foreign state. Preparations have now been made to amend this act by wider facilities to secure forfeiture by use of seizure or *sequestration* (personal attachment). At the same time a new act is being drafted on the transfer of prisoners and detained persons to another state for the *taking of evidence* or for *confrontation*. Such legisla-

tion will enable Sweden to recall a reservation to the Strasbourg Convention. These proposals will be presented to Parliament in 1989.

8. International collaboration in the transfer of proceedings

The success of the European Convention on the Punishment of Road Traffic Offences (Strasbourg, 1964) was likely to be difficult to achieve. Within the Nordic States consultations took place between the ministries. It was found that, in inter-Nordic relations, each state could prosecute traffic offenders directly and that the execution of the sentence, if necessary, could be transferred according to the above-mentioned 1963 Act (1963:193).

Nevertheless, with reference to the intensification of road transport throughout Europe and to the expansion of international tourism, the Nordic States agreed to accede to the Strasbourg Convention. It was ratified and in Sweden adopted by the Act on the punishment of traffic offences committed abroad (1971:965). This act includes a special provision concerning minor traffic offences (for example, against speed regulations) committed in another Nordic State, and other states which have acceded to the convention.

With regard to the transfer of penal proceedings within the Nordic States it was soon observed that the restriction in Chapter 2 section 5, concerning offences committed outside the Realm, sometimes caused unnecessary administration and delay. From 1965 the Prosecutor-General was authorized to take decisions concerning citizens from other Nordic countries. He soon reported that his examination and control was redundant. After consultations with his colleagues in the other Nordic States he instructed his staff to accept directly and to consider requests from the other states and conversely to consider such requests to them. In 1971 the precondition of final approval by the Prosecutor-General was abolished and the independence of the prosecutors was widened to also enable them to decide cases where the offence was committed on board a ship or an aircraft in regular traffic between Sweden and another Nordic State or in such traffic within the borders of another Nordic State. His instruction was revised in 1979 and is still in force. The transfer to and from Sweden functions well and has resulted in good personal contacts between all the officials concerned.

While mutual assistance within the Nordic States has developed in harmony, the transfer of proceedings to and from other states has been less progressive and hampered by formalities. The Convention on the Transfer of Proceedings has, as already mentioned, been adopted by the Swedish Act of 1976, and is referred to in Chapter 2 section 3(a). The adjoined Ordinance (1978:108, mentioned above under 5.) includes a provision on the inter-Nordic transfers. In Sweden the competent prosecutor acts on behalf of the Prosecutor-General. With regard to the assessment of punishment in Sweden the act is in conformity with Chapter 2 section 2, paragraph 3.

The 1976 Act is rarely used outside the Nordic States but a spectacular case of transfer from Sweden is worth mentioning. The terrorist, Norbert Kröcher from the Federal Republic of Germany, had been the leader of a group of Swedish citizens planning the kidnapping in 1977, of a female member of the Government and on several occasions it had committed robbery and other offences in Sweden. By Swedish request the prosecution of Kröcher was carried out in the Federal Republic where he was suspected of other serious offences. He and another terrorist, Manfred Adomeit, also from the Federal Republic, who was involved in the same group, had been apprehended by the Swedish police, kept in custody and a few days later expelled to the Federal Republic by virtue of a provision on terrorists in the Aliens Act 1954, now replaced by corresponding provisions in the present Aliens Act 1980 (see 10. below) on expulsion.

It had long been a hope that the international agreements on recognition of sentences, and particularly on transfer of proceedings, would be for the benefit, on the one hand, of the states involved and, on the other, of the offender concerned and at the same time would reduce the need for use of extradition and expulsion. So far the inter-Nordic contacts have fulfilled such expectations but it appears that there is a long way to go for those who wish to have international collaboration working effectively.

Finally, it should be mentioned that Sweden ratified in 1977 the European Convention on the Suppression of Terrorism (Strasbourg, 1977). There was no need for any changes in the Swedish legislation.

9. Extradition

The 1864 Swedish PC did not include any general provision on extradition of offenders but it referred to a bilateral agreement of 1819 with Norway as a result of the union between the two countries. In the years immediately following the PC 1864 Sweden entered into conventions with several European states and the United States, and continued this course after the termination of the union with Norway in 1907. In relation to Denmark, Sweden had long accepted a mutual arrangement whereby such matters were handled. It was not until 1913 that Sweden adopted a general act on extradition and at the same time signed a new convention with Denmark.

The Act of 1913 regulated the principles for extradition without reference to the network of conventions. It was specified that a Swedish citizen could never be extradited and that an alien could only be extradited for crimes outside the Realm or for being an accessory in Sweden to a crime committed abroad. Following the principles in Continental legislation, cases were to be handled by diplomatic means and a final decision as to whether the preconditions for extradition were met was to be taken by the Government after a hearing of the Supreme Court.

The modern Swedish legislation on extradition is a result of international consultations and agreements within the Nordic States and the Council of Europe. The European Convention on Extradition (Paris, 1957) led to an Act (1957:668) and the Nordic consultations to a special Act (1959:254), which was given preference with regard to extradition between the Nordic States. The Act of 1959 permits extradition of Swedish citizens on two conditions: the first is that the offender must have been resident in the requesting State for at least two years; and the second is that the crime must be serious (punishable according to Swedish law by a penalty of more than four years imprisonment).

With regard to extradition from Sweden of an *alien* who is in Sweden, but suspected, accused or convicted of a crime in another state, he or she may upon request from that state be extradited according to the provisions in the 1957 Act, or with regard to citizens in another Nordic State, the provisions in the 1959 Act. With regard to the seriousness of the crime in question the 1957 Act provides that the offence, according to Swedish law, should be punishable by imprisonment for more than one year while the 1959 Act requires a penalty more serious than a fine. The 1957 Act gives much wider protection than the 1959 Act against extradi-

tion for political crimes or under circumstances which imply the risk of persecution of the person in question on ethnic, religious or political grounds. In the 1959 Act the only restriction concerns political offences. A Swedish citizen may never be extradited and a foreigner only if the act in question is punishable according to Swedish law.

Requests for extradition are not common and concern primarily very serious crimes. Many accused consent to prosecution and punishment in the country where the offence was committed, while others agree to extradition when notified of the request. Such cases are investigated by the police, considered by the prosecution and heard by the courts under the same conditions as offences committed by Swedish citizens. Still, there are some who, for good reasons, object and refuse to leave Sweden. For them, safeguards are built into the procedure. In the case of extradition to another Nordic country the Government may ask the Supreme Court for its opinion. If the court concludes that the 1959 Act does not permit extradition, this decision is binding upon the Government. With regard to extradition to other states the Government has to consult the Prosecutor-General before allowing the extradition. If the person in question refuses to be sent away, the Supreme Court has to be heard before the decision is taken. In the last few years the Supreme Court has had to consider legal questions arising from the supplementary protocol on conviction in the absence of the suspect, ratified by Sweden in 1978.

Here are three illustrative cases:

NJA 1984 p. 903. Italy and the USA both requested the extradition of a Canadian citizen suspected of smuggling large quantities of cannabis. With regard to the Italian request it was found that he had not received the indictment nor was he allowed to have his case reviewed, unless new facts or proof of innocence could be presented. With reference to the European Convention on the Protection of Human Rights and Fundamental Freedoms (Rome, 1950) and the International Covenant on Civil and Political Rights (Paris, 1966), both ratified by Sweden but never adopted by Swedish law, it was found that the detention order was lawful and not obviously unjustified. Under these circumstances, neither the fact that the accused was married to a Swedish citizen with whom he had three children nor the fact that he could have been prosecuted in Sweden for the same offences, was found sufficient for refusing extradition on humanitarian grounds.

NJA 1986 p. 262. Turkey requested the extradition of a Turkish citizen convicted in Turkey of murder and sentenced to 20 years imprisonment. The Supreme Court of Turkey had, on appeal, confirmed the sentence. The procedure in the Turkish Supreme Court had been in writing as the accused's defence counsel had not appeared in court. The Swedish Supreme Court held that, as the absence of defence was not due to his economic situation, the handling of his case by the Turkish courts did not give reason for rejection of the request nor did humanitarian considerations lead to another conclusion. (The Swedish Supreme Court rejected the request for extradition based on the fact that he was liable to punishment for escape from prison after the sentence in the first (Turkish) instance and such an act did not amount to an offence according to Swedish penal law.)

NJA 1987 p. 825. The Federal Republic of Germany requested extradition of a Palestinian. He had been convicted of drug offences in 1980 by Landesgericht Berlin and sentenced to imprisonment. He had served the prison sentence in 1985 but was subjected to supervision (Führungsaufsicht) until 1990. He was now suspected of unlawful possession of heroin and a detention order had been issued in 1987 by Amtsgericht Tiergarten, Berlin. Heard by the Swedish courts on the request he argued that he had lived in Sweden since 1985 together with his mother, grandmother and seven brothers and sisters and their families (all of whom but two had obtained Swedish citizenship). He claimed now to be a refugee and at risk of being extradited from FRG to Lebanon where his life might be in danger. The Supreme Court rejected his objections and found that the request could be granted with regard both to the detention order and to the previous supervision order.

Extradition can often be avoided by the offender's consent to be sent back to the state where the offence was committed. In such a case the transport is arranged under the supervision of the police from both countries.

10. Expulsion

In my introductory remarks I mentioned emigration from Sweden in the latter part of the 19th century and up to World War I. In the same period immigration to Sweden was insignificant and easily tolerated. Trouble was mainly caused by vagrants who took advantage of the open frontiers. The first legislation was the Act of 1914 on the prohibition of foreigners remaining in the Realm. This act was followed by further regulations during and after World War I. After the war, immigration of workers led to the Aliens Act of 1927 followed by new acts of 1937, 1945, 1954 and finally the present Aliens Act of 1980 (1980:376), all supplemented by administrative regulations. After World War II international efforts were made to give protection to refugees and resulted in the Geneva Convention of 1951 and the UN protocol of 1967, and Sweden acceded to both.

In this period Sweden was a prosperous country but with a lack of manpower and the public attitude to immigration and the social welfare system could readily respond to humanitarian ideals. The present Aliens Act of 1980 reflects this attitude notwithstanding the deterioration of the economy and the increase in the number of refugees. Local communities were fully compensated by the state for the burden of bearing the responsibility for refugees and immigrants, however. Those who remained in Sweden on a long term basis often obtained Swedish citizenship by naturalization. For citizens from other states the Act of 1980 includes provisions on expulsion. Expulsion may be ordered due to crime, grave antisocial behaviour and, of course, illegal stay in the Realm. Special provisions are included, on the one hand, in order to protect stateless persons and, on the other, to rid the country of foreign terrorists.

The general provisions state that an alien may be expelled by court order if found guilty of a crime punishable by imprisonment for more than one year (e.g., theft). If expulsion is ordered the court, in the assessment of punishment for the offence, has to take into consideration the harm caused to the foreigner by expulsion. The expulsion order is carried out by the police after the sentence has been served. In 1986, 345 foreigners in penal institutions were awaiting expulsion. In 203 cases the order concerned a citizen from another Nordic State. Some of these orders cannot be executed due to international relations and some are revoked for humanitarian reasons.

In considering a request by the prosecution for expulsion of the offender the court has to consider the offender's living and family conditions and the length of his stay in Sweden. A foreigner who has lived there for a period as stipulated in the legislative provisions may only be expelled for particular reasons.

Furthermore, a child who has come to Sweden before the age of 15 and who has lived there for more than five years (for example, an adopted child), may never be expelled, and a refugee may only be expelled if he, by his very serious crime, has made it evident that his stay would imply a serious risk to public order and security and his expulsion would not endanger his life or lead to any other disastrous result. Several cases brought before the Supreme Court have reflected the reluctance to order expulsion:

NJA 1980 p. 407. A Turkish citizen was convicted of murder and sentenced to 10 years imprisonment but not expelled. He had come to Sweden in 1976, married a Turkish woman who had lived in Sweden for more than 10 years, with whom he had two children, born in 1977 and 1978, and had obtained permanent work as a machine operator.

NJA 1980 p. 725. A Tunisian citizen was convicted of rape and other less serious offences and sentenced to 2 years and 4 months imprisonment but not expelled. He had been living in Sweden since 1973 and had four children by three Swedish women. He had at the time of the conviction a permanent job and a permanent address.

NJA 1980 p. 769. A US citizen was convicted of assault and unlawful threat directed against his first and second wives and sentenced to imprisonment and *expulsion*. He had deserted the US army and come to Sweden in 1967 and had never had a permanent job but to a large extent lived off others. He had several times been found guilty of serious crimes. His two children in Sweden were US citizens and his knowledge of Swedish was poor.

NJA 1981 p. 327. A Czech citizen of gipsy origin was, while under probation for a previous offence, convicted of theft and sentenced to one month imprisonment but not expelled. He had come illegally to Sweden in 1977 with his (gipsy) wife and three of their children. His links with Czechoslovakia were weak.

NJA 1981 p. 426. A Finnish citizen who had lived in Sweden for more than four years was convicted of several offences and sentenced to eight months imprisonment and *expulsion*. He had shown an inability to establish himself in Sweden and had been found guilty of new offences after the present conviction at first instance.

NJA 1981 p. 825. A Moroccan citizen was convicted of smuggling large quantities of cannabis on several occasions and sentenced to two years imprisonment and *expulsion*. He had been living in Sweden since 1975 with his Norwegian wife and their child.

NJA 1981 p. 1246. A citizen of South Africa and a Moroccan citizen were convicted of a serious narcotics offence and both sentenced to one year three months imprisonment. The South African was found to have refugee status and the Moroccan had lived and worked in Sweden for 10 years but had once been sentenced to 18 months imprisonment, having had a previous narcotics offence. Neither of them was expelled.

NJA 1982 p. 198. A Greek citizen was convicted of procuring and sentenced to six months imprisonment. He had been living in Sweden for 15 years and had, after college studies, worked as a gymnastics instructor. Notwithstanding the fact that he had engaged several girls in prostitution and had retained good connections with Greece, he escaped an expulsion order.

NJA 1983 p. 131. A 15 year old boy came from Ethiopia in 1970 to Sweden and had lived a disorderly life and committed several offences. He was convicted of several serious offences, among them an assault on a policeman with the intent of killing him, and was sentenced to seven years imprisonment and *expulsion*. (Two dissenting justices voted for seven years imprisonment and revocation of the expulsion order.) The offender had a Swedish passport.

NJA 1985 p. 521. A Lebanese citizen was convicted of theft and robbery and sentenced to 10 months imprisonment. He was born in 1964 and had come to Sweden in 1984. He did not have refugee status; he had a permanent home but no job. The offences were not considered serious enough for expulsion.

NJA 1986 p. 324. A Finnish citizen, born in 1951, was convicted of assault and aggravated assault and sentenced to 18 months im-

prisonment but not expelled. He had been permanently living in Sweden since 1980 and had had full employment until 1985 when he lost his job due to constant alcohol abuse. His family relations with Finland were broken, and his links with Swedish society weak as his knowledge of Swedish was poor and his acquaintances were Finnish-speaking.

A court order concerning expulsion includes a prohibition, under penalty, on returning to Sweden for a stated period (in the above NJA 1980 p. 769 until 1990 and in the above NJA 1981 p. 426 until 27 February 1985), or even forever (NJA 1981 p. 825 and NJA 1983 p. 131). Defence counsel and legal advice is provided for aliens living in Sweden to the same extent as for Swedish citizens and on the general conditions of the Legal Assistance Act (1972:429).

With regard to offenders from the other Nordic countries the ambition has been to reduce the number of expulsions and to finally exempt citizens from these countries from expulsion. In 1984 the Prosecutor-General instructed the prosecutors to restrict their requests for expulsion and the same year he advised the Government to enter into negotiations with the Governments of the other Nordic countries for the same purpose. Nevertheless, in the last above-mentioned case (NJA 1986 p. 324) he argued for expulsion, but the Supreme Court took a more lenient standpoint.

Sweden has not been spared from activities by foreign terrorists. This led to special provisions in a 1973 Act on preventive measures against acts of violence with an international background and in a 1975 Act on the power to use certain measures of police investigations. Later a few provisions on members of terrorist groups or organisations were included in the Aliens Act (1980:376). Under this legislation less than 35 persons in total have been ordered to leave Sweden as presumed terrorists. The expulsion orders have not always been carried out, as the terrorists (mainly refugees from Kurdistan) have objected that they, on return, would suffer persecution in their native state and as no other state has been willing to let them in.

11. Concluding remarks

As in several other states a debate is in progress in Sweden about the rights of aliens to obtain citizenship in Sweden without losing their native citizenship. In fact, many foreign residents in Sweden hesitate to renounce their original citizenship as it would be a denial of their national identity. Other foreign residents are eager to be naturalized, as soon as possible, in order to obtain the protection of the Swedish authorities and to facilitate immigration to another country. Swedish constitutional law does not recognize dual nationality but foreign residents have obtained the right to vote in municipal elections and have become eligible for many political offices. Swedish criminal law and criminal procedure is based on single nationality.

APPENDIX

Extract from an unofficial translation of the Swedish Criminal Code 1962, as amended up to 1 July 1989

CHAPTER 2: THE APPLICABILITY OF SWEDISH LAW

Section 1

A person who has committed a crime within this Realm shall be tried according to Swedish law and in a Swedish court. The same applies when it is uncertain where the crime was committed but grounds exist for assuming that it was committed within the Realm. (1972:812)

Section 2

A person who has committed a crime outside the Realm shall be tried according to Swedish law and in a Swedish court if the person is:

- (1) a Swedish citizen or an alien domiciled in Sweden;
- (2) an alien not domiciled in Sweden who, after having committed the crime, has become a Swedish citizen or has acquired domicile in the Realm or who is a Danish, Finnish, Icelandic, or Norwegian citizen and is present here; or
- (3) some other alien who is present in the Realm and the crime is punishable according to Swedish law by imprisonment for more than six months.

The first paragraph shall not apply if the act is not punishable under the law of the place where it was committed or if it was committed within an area not belonging to any state and, under Swedish law, the punishment for the act cannot be more severe than a fine.

In cases mentioned in this Section a sanction may not be imposed which is to be regarded as more severe than the severest punishment prescribed for the crime under the law of the place where the crime was committed. (1972:812)

Section 3

Even in a case other than those mentioned in Section 2, a person who has committed a crime outside the Realm shall be tried according to Swedish law and in a Swedish court:

- (1) if he committed the crime on board a Swedish vessel or aircraft or if he was a commanding officer or belonged to the crew of such a carrier and committed the crime while in that capacity;
- (2) if the crime was committed by a serviceman in an area where a detachment of military forces was present or if committed other than by a serviceman in such an area and the detachment was there for other than training purposes;
- (3) if the crime was committed during service outside the Realm by someone employed as Swedish emergency personnel with the United Nations peace-keeping force;
- (4) if the crime was committed against Sweden, a Swedish local authority or other corporate body or a Swedish public institution;
- (5) if the crime was committed in an area not belonging to any state and was perpetrated against a Swedish citizen, Swedish association or private institution or against an alien domiciled in Sweden;
- (6) if the crime is hijacking of, or sabotage against, an aircraft or crime against international law or is an attempt at hijacking of, or sabotage against, an aircraft; or
- (7) if the mildest punishment for the crime provided under Swedish law is imprisonment for four years or more. (1986:645)

Section 3(a)

In other cases as well as those mentioned in Section 1–3, sanctions for crime may be imposed according to Swedish law and by a Swedish court pursuant to the provisions of the Act (1976:19) on International Collaboration in Prosecution of Crimes. (1976:20)

Section 4

A crime is deemed to have been committed where the criminal act occurred and also where the crime was completed or, in the case of an attempt, where the intended crime would have been completed.

Section 5

Prosecution for a crime committed within the Realm on a foreign vessel or aircraft by an alien, who was a commanding officer or belonged to the crew of, or otherwise accompanied the carrier, against such alien or a foreign interest shall not be instituted without an order from the Government or from a person authorized by the Government to give such order.

Prosecution for a crime committed outside the Realm may be instituted only pursuant to an order as stated in the first paragraph. Nevertheless, prosecution may be instituted without such order if the crime was committed:

- (1) on a Swedish vessel or aircraft or, while on duty, by the commanding officer or some member of the crew of such carrier;
- (2) by a serviceman in an area where a detachment of the armed services happened to be;
- (3) during service outside the Realm by someone employed as Swedish emergency personnel with the United Nations peace-keeping force;
- (4) in Denmark, Finland, Iceland or Norway or on a ship or aircraft in regular commerce between places located in Sweden or any of the aforesaid States; or
- (5) by a Swedish, Danish, Finnish, Icelandic or Norwegian citizen against a Swedish interest. (1986:645)

Section 5(a)

If the question of punishment for an act has been decided in a valid judgment pronounced in a foreign state where the act was committed or in a foreign state which has acceded to the European Convention of May 1972 on the Transfer of Proceedings in Criminal Matters, the accused may not be prosecuted for the same act in this Realm:

- (1) if he has been acquitted;
- (2) if he has been found guilty of the crime without a sanction being imposed;
- (3) if a sanction has been enforced in its entirety or enforcement is proceeding; or
- (4) if a sanction imposed has lapsed according to the law of the foreign state.

The first paragraph does not apply in respect of a crime mentioned in Section 1 or Section 3 (4), (6), or (7), unless prosecution in the foreign state has taken place at the request of a Swedish authority.

If the question of punishment for an act has been decided in a judgment pronounced in a foreign state and no impediment to prosecution exists by reason of what has been previously stated in this Section, the act may be prosecuted in this Realm only by order of the Government or by a person authorized by the Government. (1987:761)

Section 6

If a person is sentenced in the Realm for an act for which he has been subjected to a sanction outside the Realm, the sanction shall be determined with due consideration for what he has suffered outside the Realm. If it is found that he should be sentenced to pay a fine or to imprisonment and he has been sentenced to a sanction of deprivation of liberty outside the Realm, whatever penalty already imposed thereby shall be taken fully into consideration when determining the sanction.

In cases referred to in the first paragraph a person may be sentenced to a milder punishment than that prescribed for the act or be completely absolved of punishment. (1972:812)

Section 7

Aside from the provisions of this chapter regarding the applicability of Swedish law and the jurisdiction of Swedish courts, attention shall be paid to the limitations resulting from generally recognized principles of international law or, in accordance with special statutory provisions, from agreements with foreign powers.

Section 7(a)

If an alien has committed a crime in the exercise of a duty or assignment which has included a general position with another state or international organization, prosecution of the offence may only be instituted after authorization by the Government. What has now been stated does not apply if the perpetrator through deceptive information, disguise or in any other way has attempted to conceal the capacity in which he has acted. (1985:518)

Section 8

Separate statutory provisions govern extradition for crime.

Conditions stipulated in connection with extradition from a foreign state to Sweden shall be complied with in this Realm.