The Racism Problem in Sweden
And the Attempts to Repress It
By Means of Legislation
Seen in the Perspective of the Freedom of Expression

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1. The Points of Departure

Attitudes in Sweden in matters labeled as "the Racism Problem" must first and foremost be seen in the light of the fact that Sweden is the power that argued most vigorously to see to it that "the Aalanders were to be guranteeed their Swedish nationality"([1]). "The fears of the Alanders of being denationalized" had to be removed by "finding effective guarantees for the preservation of the Alanders' Swedish culture and nationality", it was argued on the Swedish side.([2]) The solution found was to insert the Swedish nationality guarantees into the Finnish autonomy law for the Islands of Aaland, as agreed between Sweden and Finland, the agreement being accepted and annexed to the Council's resolution of June 24, 1921. ([3])

The next matter to keep in mind is Swedish cultural history. *Deus creavit, Linnaeus disposivit* is cut in stone in the subway station of the University of Stockholm. Carl von Linné brought order to the chaos of nature's species by his classification system, and extending the classification system also to the human beings was seen as the great scientific achievement of the late 19th century. Here a honourable place was reserved for the Swedish scientist Anders Retzius and his craniological system for classification, certainly superior to the one to be found in the Holy Bible([4]). Like in zoology, classifying Man in races tempted to rank the races somehow according to what was suggested by the evolutionary philosophy that had been put in motion by Charles Darwin. Certain races being doomed to die out – as testified by history - others were supposed to carry the future, and superiority was normally attributed to your own race, be it Caucasian, or Chinese or whatever.

In Sweden, this was taken very seriously and indeed in 1922 an Institute for the study of race biology was created and enjoyed the highest esteem,([5]) rather parallel to the advances in agricultural genetics which increased crops in a way much appreciated during the isolation endured during world war 2. Consequently, it was for me no surprise when in 1949 I happened to meet an American professor of anthropology and was told that Swedes were known to be the one of the most race-conscious people in the world.

Another factor of importance when trying to come to terms with the Swedish situation was what may be called the Russian Scare. In Sweden, there has prevailed a surprising reluctance to discuss the legal-

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1 G. LINDHOLM, "Recent Developments in the Evolution of the Aaland Autonomy", in L. LYCK, ed., *Constitutional and Economic Space of the Small Nordic Jurisdictions*, NORDREFO 1996:6, p. 73-89, at 75.

2 J. BARROS, *The Aland Islands question. Its settlement by the League of Nations,* Yale University Press, New Haven and London, 1968 p. 326, cf. p. 329 (Ehrensvärd) and 330 (Branting).

3 J. BARROS, *op. cit.* pp. 332-333.

4 Genesis Ch. 10.

5 Statens institut för rasbiologi. Mr Hjalmar Branting, the Swedish Social-Democratic Prime Minister, was one of the supporters of ther new institute.

philosophical message of that part of the world that sometimes was labeled the Socialist Camp, the center of which was the Soviet Union. In trendy Swedish literature on Comparative Law you will find lots of comparisons made between Swedish Law and Common Law and Civil Law, but you will find no mention of any attempts to compare Swedish law and the system in the Socialist Camp – in spite of the fact that such a research programme was proposed in 1970 at the University of Stockholm and indeed carried out during the next decades.([6]) It is not too much to say that a citation cartel has been set up at the scholarly level. However, the same mentality permeates Swedish society in general and the mass media in particular, and this phenomenon has come to influence deeply the Swedish mentality and is perhaps best characterized as the 'finlandization' of Sweden. Whatever has been perceived as likely to antagonize the Soviet rulers has been tabooed or at least minimized and relegated to the category of non-news.([7])

The General Assembly of the United Nations approved on 10 November 1975 an Arab-inspired resolution that labels zionism "a form of racism and racial discrimination". The vote was 72 to 35 with 32 abstentions. The resolution originated in Social, Humanitarian and Cultural Committee as an amendment to a text condemning racism and colonialism. In Moscow, Tass hailed the resolution as a major decision and added that it "once again exposes Zionism as a racist ideology aimed at suppression of human rights."([8]) In a flashback, Mr Pat Moynihan described the resolution as "a calculated lie of the Communist Party of the Soviet Union" and he traces the lie back to Stalin and a two-part article in Pravda, Feb. 18 and 19, 1971.([9])

However, from a Swedish point of view this meant that 'racism' was dangerous ground to step on inasmuch as you risked to antagonize the Soviet Union, something considered very undesirable. The issue was moot.

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[6] The following works of my pen should be mentioned: : "Abu Thalaat – la guerre contre l'aviation civile internationale", 52 *Revue de droit pénal et de criminologie* (Bruxelles) 1971 pp. 419-442 ; "En handbok i folkrätt för svenska krigsmakten?", *Tidskrift i sjöväsendet* 1972 pp. 205-236 ; "Political hijackings", in FREDA ADLER & GERHARD MUELLER, eds., *Politics, Crime and the International Scene. An Interamerican Focus*, San Juan, Puerto Rico, 1972, pp. 108-140; "'Den ryska klockan' – Om krigsfångar och deras straffrättsliga ansvar i ljuset av de finska räfsterna och de sovjetiska dissenserna i Nürnberg", *Tidskrift I sjöväsendet* 1973 pp. 69-96 ; "Socialism and Family", *Contributions to Soviet and East European Research* 2 (1974), 1, pp. 25-40 ; "Recent Changes in Swedish Family Law – Experiment Repeated", 23 *American Journal of Comparative Law* 34—49 (1975); "Belligerent Occupation and the Geneva Protocol, 1977 : A Swedish Perspective", 42 *Law and Contemporary Problems* 67-85 (1978) ; *Om marxistisk juridik*, IOIR nr 46 ; "Teori och terrorism", i *Lov og frihet – Festskrift til Johs. Andenaes*, Oslo 1982, pp 325-343 ; "Humanitarian Laws of Armed Conflict in Sweden : Ogling the Socialist Camp", 16 *Akron Law Review* 605-618 (1983) ; "On Marxism as a Legal Practice", 65 *Washington University Law Quarterly* 823-838 (1987) ; "Introduction to International Terrorism – The Tactics and Strategy of International Terrorism", i MAGNUS D. SANDBU & PETER NORDBECK, ed., *International Terrorism. Report from a Seminar*, Skrifter utg. av Juridiska Föreningen i Lund nr 104, s 21-38.

[7] JACOB W.F. SUNDBERG, "Comparative Law and the Swedish Model", 39 *Scandinavian Studies in Law* pp. 367-386 (2000), at 370-376.

[8] *International Herald Tribune* 12 Nov. 1975 pp. 1, 2.

[9] D. P. MOYNIHAN, "A Duty to Undo That Monstrous Lie About Zionism", *International Herald Tribune* 30 Sep. 1991, p. 6.

From 1968, furthermore, the Swedish government adopted an anti-American policy that was mainly, but not entirely, concerned with Vietnam. Even allowing for general feeling against the American policy at that time, the Swedes became notoriously militant in their anti-American attitudes. Radio and TV became almost laughably biased. Producers were told that no programme on the United States would be considered unless it was unfavourable.([10])

> "Anxious only to expound what their colleagues believe, the Swedish communicators need no .compulsion to toe the party line. In their mental world, departure from the accepted norm is a kind of treachery. It is part of conditioning to group thinking, which makes personal divergence a sin, and acceptance of the collective opinion a cardinal virtue. -.- From this it follows that the press also supports the policies of the State. -.- It has increasingly become the practice of Swedish newspapers to recruit their journalists from those institutions [schools of journalism]. But, in the manner of the Swedish educational system, schools of journalism have followed the indoctrination of the party and State. They have moved consistently to the left, and turned out graduates with uniform opinions. They may be broadly described as radical Social Democrats, with possibly a tinge of Maoism. -.- Like their colleagues in architecture and the social sciences, these journalists regard themselves as social engineers, with the ambition of changing society, and indoctrinating their fellow-men. -.- they see their function as the *formation* of public opinion" ([11])
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> During the latter part of the 1960s, the consensus was social change, technological progress, radical attitudes and equality. The communicators all agreed that society was changing, and that it ought to do so rapidly. To be acceptable, it was absolutely necessary to adopt the label 'radical'. [12])

This being the prevailing mentality, 'hang the rich' was a completely acceptable slogan. I have personally listened to some teenager girls after a massive union demonstration running around and shouting rythmically to the passers-by : 'Power to the Red, Bourgoisie drop Dead!' – in Swedish, more bloodthirsty : "Röd makt, borgarslakt!"

Major General Jan Sejna who defected to the West after having assisted at the drawing up of the Strategic Plan of the Warsaw Pact later disclosed :

> Sweden, as the most powerful country in the area, was one of the main targets for our intelligence activities. We financed, in collaboration with the Poles and East Germans, the left-wing factions in the Swedish Social-Democratic Party, and I recall that in the mid-1960s at least forty percent of the S.D.P. was under our direction or influence. -.-.- I personally saw profiles of over 400 targets in the trade unions – up and coming men in the non-Communist union leadership who appeared to us to be in favour of progressive social change. There was a co-ordinating committee drawn from the Polish, Czech, East German, and

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[10] R. HUNTFORD, *The new totalitarians*, London 1971, p. 288.
[11] R. HUNTFORD, *op. cit.* pp. 293-295.
[12] R. HUNTFORD, *op. cit.* pp. 296-297.

Soviet trade unions to gather information about them and prepare plans for cultivating the most suceptible. ([13])

Killing groups of people because of their social origin or property was thus not something terribly shocking in this Swedish environment, but rather something radical chic! There was no reason to take issue with the Socialist Camp ideas, on the contrary they were believed to carry the future as Chrustjov had said.([14])

The impact on contemporary thinking of the victorious Soviets should not be underestimated. The Zionism-resolution in the UN may have been their greatest diplomatic triumf, but less visible but equally important was the proviso which they succeeded to get introduced into the Genocide Convention.

In the Genocide Convention, an intent clause has been put into Article II. In its final formulation, it proscribes "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such."

When the Convention was hammered out, the words "as such" were put in to replace a more elaborate list of various motives. What is required in matters of intent has thus to be deduced from the words "as such", and that interpretation may in turn be influenced by the fact that the destruction of a *political group* was removed from the enumeration of destructions in the Article. As a result, the perpetrators of a massacre of a kind we have seen in Cambodja or Ukraine are likely to claim impunity by simply asserting a 'political' motive, since political groups have been removed from the protection of the Convention. Such a claim may indeed go very far in order to remove ''class warfare'' from the strictures of the Genocide Convention and that was in all likelihood the purpose behind the move. It would suffice to define the 'bourgeois' population as 'political' and thus beyond the Convention's scope, or equating social status or occupation with membership in a political group, arriving at the same result.

2. The Legislative Picture

In some cases amendments to the Swedish Penal Code have been made by reason of Sweden's accession to international conventions. The UN Convention on the Elimination of All Forms of Racial Discrimination has thus led to an extension of the provisions of *Chap. 16, Sect. 8*, which deal with agitation against an ethnic [3] group, to cover categories other than those which were earlier protected thereby. The text is set out below.

The definition of what is punishable under this clause has been extended in other respects as well. As well as 'threat', every expression of contempt for a particular ethnic group was made a criminal offence. The prerequisite for what is considered public was extended so that a penalty could be imposed, for example, for the dissemination of culpable announcements among the public through repeated statements in private conversations.([15])

The Swedish statutory picture is somewhat confusing. This has to do with the fact that a provision corresponding to 16:8 also had to be

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[13] J. SEJNA, *We will bury you*, Sidgwick & Jackson, London, 1982, p. 121.

[14] "Whether you like it or not, history is on our side. We will bury you." Nikita Chrustjov at a reception in the Kremlin, 17 Nov. 1956.

[15] NELSON & MUELLER, *The Penal Code of Sweden*, Rothman etc. 1972, Introduction, p 2 .

introduced into the Freedom of the Press Act, which had constitutional rank and consequently could be changed only by resolutions of two consecutive parliamentary sessions, interspaced by general elections. ([16]). The provision appears in the Freedom of the Press Act as Chapter 7, Section 4, item 8.

> Chapter 16 section 8([17])
> If a person publicly or otherwise in a statement or other communication which is spread among the public threatens or expresses contempt for a group of a certain race, skin colour, national or ethnic origin or religious creed, he shall be sentenced for *agitation against ethnic group* to imprisonment for at most two years or, if the crime is petty, to pay a fine.

As well as the provisions concerning agitation against an ethnic group, a provision concerning a new crime called unlawful discrimination, was introduced in *Chap. 16, Sect. 9*, the section which previously dealt with breach of religious peace. For this new crime a penalty could be imposed, for instance, on a tradesman who exercises racial discrimination in his business.[18] This provision was originally introduced into Chapter 16 as Section 8 a by SFS 1970:224. Thereafter, by SFS 1970:225 it was repealed and reintroduced into Chapter 16 as Section 9, effective Feb. 17, 1971 (SFS 1971:29).

3. The notion of 'ethnic group'

The Part Report of the Discrimination Investigation Committee (*Diskrimineringsutredningen*) titled "Om hets mot folkgrupp" (On Agitation Against Ethnic Group), SOU 1981:38, may be considered as a later overview of the Swedish legislation against racial discrimination, which had been created as a result of the entry into force of the UN Convention on the Elimination of All Forms of Racial Discrimination, December 25, 1965, ratified by Sweden in 1971.

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[16] *Kungl. Proposition* 1980:87.

[17] Penal Code, 1962, as amended by SFS 1970:224, effective Feb. 17, 1971 (SFS 1971:29).

[18] As revised, the section read as follows :

> Chapter 16, Section 9
> If a businessman in the conduct of his business discriminates against someone on the ground of his race, skin colour, national or ethnic origin or religious creed by refusing to deal with him on the same conditions the businessman applies to others in the conduct of his business, he shall be sentenced to *unlawful discrimination* to pay a fine or to imprisonment for at most six months.
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> The provisions in the first paragraph concerning businessmen shall be applied correspondingly to a person who is employed in a business or who acts on behalf of a businessman as well as to a person who has a position as a civil servant in which he has to deal with the public.
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> An organizer of a public assembly or entertainment or an assistant to such an organizer may be sentenced for *unlawful discrimination* if he discriminates against someone on the ground of his race, skin colour, national or ethnic origin, or religious creed by refusing to allow him to enter the assembly or entertainment on the same conditions which apply to others.

In 1976, the Form of Government, i.e. the Swedish Constitution , was changed in order to make possible the banning of an organization.

The law on agitation against ethnic group has not been applied, it was noted by the committee. The Attorney General (*Justitiekanslern*), the Chief State Prosecutor (*Riksåklagaren*), and the Supreme Court had delivered precedents resulting in the law having no legal effect in practice. In 1978, the Attorney General decided in the matter of a report on the spreading of anti-immigrant leaflets and said that "immigrants are not to be considered an ethnic group in the sense of the Law." In order to come within the reach of the law, certain groups of immigrants such as black people or Norwegians had to be targeted. By this decision, in practice, agitation against immigrants was decriminalized. In one of the cases, it was attempted to bring a criminal case, suing in the capacity of a victim. This case was brought before the Supreme Court (*NJA 1978 p 3*), but the Supreme Court held that the criminal offence of agitation against ethnic group was a crime without victims entitled to sue. The case was dismissed.

Efforts were made, but in vain, to have the law changed. The Discrimination Investigation Committee proposed changing the law in the Freedom of the Press Act and the Penal Code so that *immigrants* could be regarded as an ethnic group, but as to the non-right of the victims to sue no change was proposed. What was proposed besides that was that insulting somebody because of race or

belonging to an ethnic or national group should be criminalized by extending the provisions of defamation in Chapter 5, Sec. 5. However, the proposed extension carried a proviso "if prosecution is considered called for from a public point of view". Whether this requirement was filled or not was left to the prosecutor.

When the Attorney General wrote his opinion as to the proposed change in the law he asked whether there really was any need for a change. He questioned whether it really was possible to suppress by means of legislation those who agitate against immigrants by word or by leaflets.. Furthermore he said that "in the very notion of *freedom of expression* there resides a licence to advance irrelevant and unsubstantiated statements".

The Minister of Justice of the time, Mr Carl Axel Petri, however, pushed the matter before Parliament. In his view it should be criminal to say : "damned blackhead" (*förbannade svartskalle*) – a widely known slur used to identify immigrants who generally had black hair instead of the blond hair common among native Swedes. The proposal was adopted by Parliament. However, the reform could not enter into force, since a constitutional act – the Freedom of the Press Act – was involved, and the matter was put to sleep until the next Parliament.

The end result was the following formulation, enacted by SFS 1982:271

> Chapter 16, section 8
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> If a person publicly or otherwise in a statement or other communication which is spread among the public threatens or expresses contempt for an ethnic group or other such group of persons with allusion to race, skin colour, national or ethnic origin
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> or religious creed, he shall be sentenced for *agitation against ethnic group* to imprisonment for at most two years or, if the crime is petty, to pay a fine.

4. Neighbourhood Broadcasting

By this time, however, the scene came to be dominated by new media, the so-called 'neighbourhood broadcasting' (*närradion*).

Neighbourhood broadcasting was the result of a 1976 initiative of the first non-Socialist Government The statute was drafted in 1978, and the system was launched during the Spring of 1979. The philosophy behind the reform was that associations should be given a possibility to send information and peddle their messages to their members and to others. Immigrant associations soon made use of the idea, and it was believed that Finnish immigrants were at the forefront here, but also immigrant women who normally lead isolated lives were happy to use the new system as a means of being in contact with each other. The concern of the Swedish government was mainly to see to it that no advertising occurred in these programmes. Advertising – *reklam* – was distasteful in Socialist thinking.([19])

Neighbourhood broadcasting was however much more close to the audience than the staterun monopolies. In June 1981 one of the staterun programmes allowed direct calls from the general public on a theme related to the impact on Sweden of the foreigners in Sweden. When people spoke their hearts, the rejection of the open-end immigration became more than apparent. In the end, the director of the programme had to stop it, mid-showing. The direct link also made characterizations and slurs non-stoppable elements in the broadcasts. This was an issue of the freedom of expression, indeed the Freedom of the Press.

Neighbourhood broadcasting turned out to be the weak link in the Swedish chain because it closely reflected what the general public was thinking, in particular those programmes allowing direct, uncensored calls from anybody. Previously, some kind of advance censorship could be exercised by the media administration, and the most aggressive interventions could be kept away. Balancing interventions, glorifying the blessings of immigration, could be interjected when the going got rough. But neighbourhood broadcasting made little room for such manipulative interventions. It was too democratic for that!

The 'Open Forum' Case

The entry of neighbourhood broadcasting swung the doors wide open to what the popular sentiment was, and popular sentiment was much less accommodating to immigrants than were governmental cercles. On the side of the Swedish authorities it was attempted to silence this type of anti-immigrant activity by legal actions.

Thus, during the summer of 1982, the very outspoken radio station Open Forum lost its licence to broadcast, on the pretext that the station only was devoted to sending programmes. According to the rules for neighbourhood broadcasting, it was required that the association should have some other main activity besides broadcasting, and this was not the case. But the decision was attacked in the Administrative Court of Appeals and that forced the authorities to again give to Open Forum a licence to send. Advance censorship was not permissible under the Swedish law, and consequently the Neighbourhood Broadcasting Committee (*Närradiokommittén*) was forced to renew Mr Pettersson's licence to send. Open Forum was given a second chance.

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[19] See *Claes Nydahl vs Sweden*, Appl. 17505/90, 16 EHRR CD 15 (1993) – the "Radio Nova Case". Compare *Justitieombudsmannens Berättelse* 1991/92 p. 153.

Mr Bengt Hamdahl, Attorney General, then introduced on 14 Oct. 1982 a freedom of the press complaint against Mr Pettersson as responsible for the broadcasting of Open Forum, arguing that the programme was criminal under the Freedom of the Press Act as agitation against an ethnic group. This action met with success when the freedom of the press jury found his programme criminal. The owner of the radio station "Open Forum" was sentenced, in December 1982, by the District Court in Stockholm to a two months jail sentence for 'agitation against an ethnic group' ([20]).

Three programmes were in issue : April 16 and 20, and May 4, 1982. In these there were numerous references to Negroes, but they were constantly referred to as 'niggers'. Furthermore, Mr Pettersson had mentioned Turks as an example, and the prosecutor found this to be sufficient as a matter of singling out an ethnic group for attack.([21]) However, Mr Pettersson with his renewed licence to send started his programmes anew nighttime, December 28, 1982.

Consequently, the constitutionally protected Freedom of the Press became one of the major centers of the problem. A string of cases against the neighbourhood mouthpieces highlighted the problem.

5. 'Racist organizations'

A certain caution on the part of the authorities was long dictated by the UN attitude that Zionism was a form of racism.

The second UN international conference on racism had ended sharply divided. Resolutions equating Zionism with racism had caused a walkout by Western countries at the first UN conference on racism, and the effect persisted. Israel and the United States boycotted the 1983 World Conference on Racism and Racial Discrimination for the same reason. The Conference which marked the culmination of the "decade on racism" declared by the United Nations, proclaimed that despite the efforts of the 'international community' over the past ten years, "racism, racial discrimination and apartheid continue unabated and have shown no sign of diminishing". A second decade of action to combat racism was called for.([22]) Evidently, there was little attraction in making this a major issue in a country in which loyalty to the Israeli cause used to be so strongly grounded as in Swedish Jewish-owned media.

But the Sovjet power was shrinking, indeed the Socialist empire was collapsing, and in September 1991 President George Bush called for the United Nations to undo the Zionism Resolution of 1975.([23]) Eventually, this was done. Racism became a more interesting matter in Sweden.

By the end of the 1980s, the collapse of the Swedish governmental policy in the matter was apparent. An aggressive phalanx was extremely upset by the grassroot reactions that made themselves heard in the neighbourhood broadcasts. The cry for prohibition of 'racist

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[20] Åklagaren vs Rolf Pettersson, Expressen 16 Dec. 1982.

[21] This was before the coming change in the penal code [to enter into effect on 1 Jan. 1983], no longer calling for an identifiable ethnic group to be under attack, 'immigrants' in general thereafter sufficing. The District Court wrote that the programmes in issue "in no way had been an objective criticism of the Swedish immigration policy. On the contrary it had included statements that were clearly derogatory."

[22] Int Her Trib 15 Aug. 1983 p 5.

[23] DANIEL PATRICK MOYNIHAN, "A Duty to Undo that Monstrous Lie About Zionism", Int Her Trib 30 Sep 1991 p. 6.

organizations' became more intense and shrill. It was argued that the Convention for the Elimination of All Forms of Race Discrimination indeed called for a ban on all organizations with a 'racist' bent. In order to fortify this argument it was asserted that the UN Committee on on the Elimination of Racial Discrimination (CERD Committee) had called for such a ban and had criticized the Swedish government for not establishing it. Certainly, this was far from the truth([24]) but it had a media impact and made the situation uncomfortable for the Government.

The Swedish position in the matter was originally based on a close reading of the treaty text. It said in Article 2 (2) that the State Parties shall "when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms." The Swedish reading was to the effect that, contrariwise, no legislation should take place if it were to contravene its purpose – e.g. if the employer were forced to place immigrants with bad or nonexisting paper merits at the end of the queue, or if heart-rending court battles would create anti-immigrant or racist conflicts in the workplace.([25]) When the first legislative reaction to the Convention requirements were being prepared, it was concluded that merely criminalizing the acts which members of a racist organization might be tempted to perform, sufficiently met the purpose of the Convention. Consequently, the 1970 amendment meant a stricter view taken of the outward racist signs, but no ban on the organization itself. The freedom of association itself was also guaranteed by UN Conventions.([26])

However, banning racist organizations had become a recurring issue in the late 1980s and the 1990s. Every time however the proposals had been put down in the parliamentary procedure. Many critics found a legislative ban to be unnecessary since already at the pertinent time it was forbidden to use violence in order to repress or persecute people , certainly from an ethnic point of view.

In February 1990, Mr Hans Stark, Attorney General, was charged with making a report on ethnic discrimination. He presented his ideas to the Government on 12 Sept. 1991. In summary his report said that we should not prohibit or penalize those printing racist matters, because this could be counteracted in the open debate. Expressing racist ideas should not be prohibited. But it should be possible to punish those who aid a racist organization. It is then a matter of e..g. renting space, or contributing money or transport.

However, pressure was mounting. In order to counteract criminality with racist and similar motivations the Swedish Parliament finally then decided to at least introduce into the Penal Code a special ground for sharper punishment. If the reason for the criminal offence was to offend [*kränka*] a person, an ethnic group or some other such group of

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[24] In an article published in the daily *Dagens Nyheter* 7 Sept. 1989, Mr Hans-Göran Myrdal pointed out that during 20 years, only 3 times had any criticism of this kind been voiced in the Committee : first time by one of the 18 Committee Members, second time by three members, one of them being the Swedish Delegate who was one of the most vociferous advocates in Sweden of such a ban, and the third time by one single Member of the 18.

[25] HANS-GÖRAN MYRDAL, *Dagens Nyheter* 7 Sep. 1989.

[26] *Dagens Nyheter*, editorial, 6 Apr. 1989 p 2.

persons on account of race, skin colour, national or ethnic origin, religious creed or some other similar circumstance, this shall now according to an express provision in the Penal Code be considered to be an aggravating circumstance when considering the penal value of the criminal offence. ([27])

It has been asserted that this legislative reform meant a dead hand preventing all possibilities of new legislative initiatives in the matter.

6. Political uniforms

During the turbulent 1930s, it was found prudent in Sweden to ban the wearing of political uniform, making no distinction what kind of movement that was using uniforms. The Act was enacted for shorter periods, however, but always prolonged. In 1947, the old legislation was replaced by a permanent Act of Parliament. In spite of the fact that the law had been applied as late as 1992, a few years later a number of courts held that the Act banning political uniforms of 1947 was contrary to the Swedish Constitution and refused to convict young neo-nazis with political badges on the basis of that Act..

On 13 September 1995, a schoolboy named Johan Bjärsborn, appeared in school with a necklace with a 1 – 1,5 cm sized swastika attached and a black pullover [sweater] with an eagle and a solar wheel on the left sleeve. One of his schoolmates, named Ekim Yilmaz [which is not a Swedish name] tore the necklace from Mr Bjärsborn and destroyed it and a policeman was called in. As it happened, he reported Mr Bjärsborn for carrying nazi insignia. The prosecutor decided that the insignia meant a violation of the statute against political uniforms of 1947. The matter went before the court, which however acquitted Mr Bjärsborn because the statute was found to be contrary to the Swedish Constitution. The matter went on appeal before the Gothenburg Court of Appeals, which confirmed the judgment , June 28, 1996, on the force of the following argument :

> The Court of Appeals finds no reason to depart from the opinion of the District Court in the matter whether the insignia identified by the prosecution do as such come within the ambit of application of the law banning uniforms. It is thus established that Mr Johan Bjärsborn did carry insignia violating the law banning uniforms in the form of an eagle emblem on the sweater sleeve, which demonstrated his political inclination.
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> The protection of fundamental rights and freedoms has been strengthened by the current Form of Government, created after the enactment of the ban on uniforms. The question arises whether the law banning uniforms is reconcileable with the provisions of the Form of Government protecting these rights.
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> According to Ch. 2, sec. 1 of the Form of Government, each citizen is accorded freedom of opinion as against the Public, but this freedom may be restricted under those conditions that are set out in Ch. 2, sec. 13. The purpose to be found in this statute provision which may be relevant in the present connections is, as was found by the District Court, that the freedom of expression and information may be restricted in reference to general order and security. In this connection it is also necessary to consider the

[27] SFS 1994:306. Cf LARS HAGLUND, "Lagstiftning i riksdagen våren 1994", *Svensk Juristtidning* 1994 p.753.

restrictions in the right to limit the freedom of expression that follow from Ch. 2, sec. 12 in the Form of Government. It is there provided, i.a., that the freedom of expression may not be restricted merely on account of a political, religious or other such ways of thinking. It is thus not possible to restrict the freedom of expression because of the undemocratic character of the ideas in question. It is another matter that the contents of an opinion together with the conditions in which it is being advanced and other circumstances may be important for judging the question whether there is a threat to general order and security. Of course, also insignia and similar things may, besides expressing the political ideas of the bearer, also be an offence against some other law, for instance by displaying disrespect of an ethnic group. However, in this case it is not possible to try whether such an offence is present because of the way in which the prosecutor has phrased the incriminated act.

It follows from the *travaux préparatoires* of the statute that the law banning uniforms was created in order to counteract threats against general order and security. In particular this is clear from the law (1933:472) in the same matter, preceding the 1947 Act banning uniforms, the said purpose there following from the statutory text. According to the previous law, which was limited in time and was renewed several times until the entry into force of the 1947 Act, the King was empowered to ban wearing uniforms or the like when so was called for in order to enforce general order and security. The Act was supplemented by an Ordinance. The ban covered the same insignia etc. as the statute now in force.

The Court shall refrain from applying an Act of Parliament only when it is manifestly contrary to the Constitution. It may be considered to follow from this requirement of manifestness that it is possible to refrain from application only if it is not possible to interpret or apply the law in a way in conformity with the Constitution. The law banning uniforms now in force has, as has been said, been created for the purpose of counteracting threats against general order and security, a purpose which may be pursued by legislating restrictions in the freedom of

expression. The way the Act is drafted, however, it includes an unlimited and unconditional ban against the wearing of uniform etc. which serves to identify the political opinion of the bearer. To apply this law in direct violation of its wording only in such situations where the carrying of the insignia may create a threat against general order and security is not possible. Therefore, the Court of Appeals arrives at the conclusion, just like the District Court, that the Act with a Ban on Political Uniforms does include such a restriction of the freedom of expression that it manifestly contravenes the rules protecting this freedom in the Form of Government.

Under those considerations the conclusions in the judgment of the District Court shall be confirmed. -.-

7. The notion of 'racism'

In 1996 there was commenced an overview of the so called Act banning political uniforms.

The Swedish Government was not in an enviable position. The new media fed on indignation, and asylum seekers and illegal immigrants offered enormous opportunities for indignation. Whenever a decision was taken to reject or expel an immigrant, the media uproar was formidable. At the same time, the creeping resentment of more foreigners found support and sympathy in exactly those layers of the population where the Social Democrats traditionally used to recruit its supporters. Legislating again in the matter would inflame feelings to a dangerous degree.

But, by a stroke of luck, the Supreme Court offered relief. It was done by the judgment in **Nytt Juridiskt Arkiv 1996 p 577**. The circumstances were as follows.

Björn B. – a seventeen year old schoolboy – met a number of friends and acquantances outside a supermarket in Wisby on November 30, 1995. He was casually dressed in black, a black bomber jacket, black jeans and black boots. A number of various insignia were visible on his clothes. A police car arrived at the scene and took the schoolboy to the station where all the insignia were removed. The public prosecutor brought a case against him for agitation against ethnic group, alternatively anti-social behaviour (*förargelseväckande beteende*). A young deputy judge presided in the District Court and found the schoolboy guilty of agitation against ethnic group and sentenced him to 100 dayfines of 30 crowns. The defendant took an appeal to the Svea Court of Appeals which decided the matter with a jury. Two of the professional judges confirmed the judgment, but one disagreed and said :

> The Prosecutor has argued, in the first place, that Mr Björn B. made himself guilty of agitation against ethnic group by carrying certain clothes with nazi symbols. When considering whether this amounts to such an offence, Ch. 2, Sec. 1 in the Form of Government should be considered first. According to this section, as against the Public power, every citizen is guaranteed i.a. freedom of expression, i.e. freedom to communicate information and express ideas, opinions and feelings, either orally, in writing, or in pictorial representations. According to Sections 12 and 13, same Chapter, the freedom of expression may however under certain conditions be restricted. One such restriction has been made by criminalizing agitation against ethnic group in Ch. 16, Sec. 8 of the Penal Code. It is not possible however to read directly from that provision that Mr Björn B:s act is a criminal offence. Considering the restrictivity that should be respected when it comes to applying a penal provision extensively and against the background of the basic provision about the individual's freedom of expression we consider that the behaviour of Björn B. – however reprehensible it may be – cannot be agitation against ethnic group.
>
> Considering the second alternative assertion of the prosecutor concerning anti-social behaviour it may well be assumed that the outfit of Mr Björn B. was offensive. Nevertheless, the penal provision may not be so interpreted that it works like a restriction on the feedom of expression (see *prop. 1975/76:209 p 142, compare also Strahl in Svensk Juristtidning 1967 p 412* [concerning 'Algérie française']). Consequently, Mr Björn B. cannot be found guilty of anti-social behaviour.

The case was brought before the Supreme Court which confirmed the conviction by a majority of 4. Much of the reasoning in the Supreme Court dealt with the meaning of the various symbols and to what extent they could be identified with a communication in the sense of the section in the Penal Code. The Chief State Prosecutor had done some research in this matter which he presented to the Court. The Court held, i.a. as follows :

> Against this background the Supreme Court has to take a stand in the matter of whether Mr Björn B. by carrying these insignia has disseminated a message in the sense of the law. The legislator takes as his point of departure that the communication in the normal case is disseminated in writing or orally. However, the law has by using the expression "in any other way" opened up a certain room for equating other ways of expression with statements. In the *travaux préparatoires* for example are mentioned gestures and pictorial representations that cannot be considered to be writings (*Nytt Juridiskt Arkiv II 1970 s 531 f.*). To the extent that such indirect expressions of opinion communicate unambiguously a message, it is close at hand to subsume them under the statutory provision. A comparable indirect expression of opinion may be the carrying of a badge or appearing in a certain outfit. If the badge and/or the dress unmistakeably provide a coupling to a certain course of thinking it is justified to see this as a communication in the sense of the law.
>
> Among the insignia on the dress of Mr Björn B. the eagle and the wreath of laurel on the right sleeve, by being symbols alike to that was frequently used in Nazi-Germany, provide an evident coupling to the Third Reich. As far as the other insignia are concerned they too are such that they can – although less known generally – be associated with symbols used by National Socialist movements during the 1930s and 1940s.
>
> Some of the symbols in evidence during the said time may today be considered strongly coupled with not only the said movements as such but also with the ideas about racial superiority and race hate which resulted in persecution and extermination of in particular people of Jewish descent and which are intimately tied to the ideology of these movements. Along the present line of thinking, one example of such a symbol that is today also coupled with a general devaluation of ethnic groups other than the Nordic one, is the swastika. The insignia with an eagle and a wreath of laurel that Mr Björn B. carried may be end up in the same category. The other symbols that are covered by the prosecution are rather more apt to reinforce the message that the eagle badge may thus be considered to bring about. Moreover it should be noted that the carrying of insignia which perhaps cannot alone be considered to disseminate a communication of the said kind, may mean such a dissemination when they are worn together with e.g. a dress of a certain colour or cut.
>
> By wearing these insignia among other people at the place identified in the indictment Mr Björn B. has communicated such a message as was referred to. This he must have understood. The message expresses disrespect of people belonging to other ethnic groups than the Nordic ones.

Mr Justice Torkel Gregow however disagreed and took a different view. He said, i.a. :

> The penal provision means a restriction of the freedom of expression. What is in question is a serious offence, punishable only by jail, unless, exceptionally, it is considered as petty. If measures that by themselves are merely expressions of sympathy for some political or similar movement, having more or less racist elements in its programme, were to be considered to be signs of such threat or such disrespect as said in the provision, the penal responsibility would go very far. The provision would then also acquire a vague and uncertain meaning which may result in considerable difficulties of application.
>
> Having what now has been said for a background, before imposing penal liability for wearing badges or symbols and other similar measures, it should be required that threat or disrespect of a certain ethnic group has found expression in a more concrete and consequently clear and unambiguous way. Such an interpretation is also in line with the restrictivity that was suggested by the the First Law Committee (*Första Lagutskottet*) in the course of the legislative deliberations in 1970 concerning this penal provision, although addressing another aspect of the requirement disrespect (ILU 1970:41, *Nytt Juridiskt Arkiv* II 1970 p 535). The Committee stressed that the expression must be interpreted with a certain caution and that not all statements of a disparaging or debasing character should be included ; for the imposition of penal liability it should rather be required that it was fully clear that the statement surpassed the borderline for an objective and responsible discussion concerning the ethnic group in question. These statements were also referred to in the legislative deliberations in 1982 concerning the provision (*bet.* 1981/82: JU41, *Nytt Juridiskt Arkiv* II 1982 p. 145).
>
> Wearing the badges in question Mr Björn B. must, as has been said in the past, be considered to express sympathy for Nazism, whatever view he himself took of that movement, and this he must have understood. Although what he did, because of the ideology of the Nazi movement's ideology, also carried the thinking over to its position as to the inferiority of other races and that consequently other people may have felt themselves outraged, the act cannot in view of the character of the badges – whether seen each apart or all together – be considered to be sufficiently clear expressions of threat against or disrespect for some other ethnic group. Therefore the indictment for agitation against an ethnic group must fail – in spite of the reprehensible in the behaviour.

8. The Brottby Case

The Wisby schoolboy case may have brought relief to the Government but it brought confusion to most others.

The matter surfaced again when a band of American musicians arrived to give a concert with 'White Power' music and an audience of some 300 sympathizers was brought together in a barn in Brottby, an unimportant place north of Stockholm. It happened on January 3, 1998. It was a private occasion, but the police was there, indeed plainclothesmen inside the barn and uniformed police outside. The concert was allowed to proceed for some time but then the police invaded the place, broke up the

gathering and arrested the American band which at that time hade been 12 hours in Sweden, together the public attending, all in all 314 people. After identification most of them were released but 20 were kept in custody, and after a while 16 more were set free. Under arrest remained 4 Americans, 3 men and one woman.

The Americans were charged with agitation against ethnic group. The prosecutor argued that the defendants during the concert "had by statements and measures (*åtbörder*) made communications expressing threats against and disrespect for other ethnic groups. The communications consisted of their making a socalled Hitler salute (raised the right arm) shouting 'sieg heil' at the same time. The salute represents a violent ideology which includes glorifying one race at the cost of another." The evidence was what the defendants had stated themselves.

The defendants were perhaps not supposed to raise any defences. Nevertheless they did. Not only did they argue that they had had no idea of such gestures and shouts being criminal, having been in the country only 12 hours. They also disputed the very reasoning of the prosecutor. The so-called Hitler salute was in fact the old Roman salute which had been used for centuries. Moreover, they argued that the salute with the right arm as such was perfectly acceptable in Sweden and that a monument to this salute had indeed been set up in Stockholm itself, albeit that it displayed a closed fist rather than an open one – i.e. a monument to the Communist salute rather than to the Hitler salute. They objected to the Bench of the court including one lay assessor belonging to the Movement that had erected that monument : he was unfit to judge in a case like this. The objection was dismissed – after an unsuccessful appeal – and the case proceeded, resulting in one month in jail for each defendant.

The reasoning of the District Court closely followed the argument of the Supreme Court in the 1996 case. By doing so the District Court, perhaps unintentionally, converted the trial into a scrutiny of the very Supreme Court judgment of 1996. The District Court said :

> By making the Hitler salute and shouting 'sieg heil' the defendants have displayed a behaviour that has an evident coupling to the Nazi movement. This movement is characterized by ideas of race superiority and race hate. By this action the defendants have provided a clear message showing that they sympathized with the ideas of the Nazi movement. By doing so they have happened to express disrespect for other ethnic groups than the Nordic one. No threat has however been expressed by such action. -.- All this must have been understood by the defendants. Consequently they have acted with criminal intent.
>
> All the defendants are to be found guilty of agitation against ethnic group.
>
> It is not a petty offence.

Thereafter the Court went on to dismiss without much ado the objections that the defendants were ignorant about the state of the Swedish law, that the concert had been allowed to proceed some time before the uniformed police stormed the premises, that plainclothes policemen had been sitting among the audience without interfering and without informing the public about it being criminal to perform the salute. Finally the Court was careful to point out that it was in no way impressed by the double standard implicit in allowing the Communist salute but not the Hitler salute. ([28])

[28] Södra Roslags tingsrätt, judgment 19 January 1998, ab 78.

An appeal was taken. However, at that time the four Americans had been under arrest for such a long time that they had no jail sentence time left to serve. Some of them preferred just to leave the country. At the end of the day, the only ones insisting on a continuation of the trial and the said scrutiny of the Supreme Court judgement, were Shawn Suggs and Eric Dobbs. The real character of this shadow trial - or rerun of the 1996 Case - confers considerable interest on the arguments of the appellants .The reasoning is therefore set out here in some detail.

The appeal focused on the weaknesses in the reasoning in the 1996 case which the District Court had adopted as its own, in particular the notion of 'the Nordic race'. The appellants argued :

> The reasoning is surprising in a number of respects. (a) The names of all the Americans in question follow a pattern that has no connection whatsoever with Nordic names. It is a matter of Irish or Slavic names. Pursuant to the reasoning of the District Court, these Americans were about to express by their behaviour disrespect for themselves. Such an argument is bold in its unrealism. (b) If there exists such a notion at all as the Nordic race, it should be identified with being 'blue-eyed and blond'. But Daniella Reda is neither the one nor the other. She was personally present during the deliberations in the District Court so her looks are notorious. That she should want to express disrespect for herself through her behaviour is totally lacking in realism. (c) In *NJA 1996 p. 577* the basis for the prosecution was the wearing of certain badges which were said by the Supreme Court to be symbols of certain phenomena that the Court disliked. But they are certainly symbols also of many other things. The sun-cross which is there mentioned is an old Christian symbol which incidentally is carried in procession in the Engelbrekt Church in connection with the celebration of Christmas. The cog-wheel is a symbol for countless phenomena on the technological side and also for the Rotary-movement.([29]) And that symbol which one may assume was most distasteful for the Supreme Court – the swastica (see page 582 in the Report) – is an old Christian symbol which will be found in abundance in e.g. the Engelbrekt Church and the Högalid Church. Furthermore it is a luck-symbol for the von Rosen clan and has in this way become the nationality marking which the Finnish air force used from 1918 when its first aircraft was donated by Eric von Rosen and down to the war's end in 1945. The Finnish veterans from the air combats during the Winter War and the Continuation War see in this symbol something that is far apart from what the Court formula suggests. Subjecting Finnish veterans to the same fate as is prepared for the young Americans because the veterans carry this symbol is hardly thinkable. Besides, the Swedish Embassy in Tallinn has been housed in the von Rosen Palace, i.e. the house that was erected by the Vice President in the Court of Appeals in Dorpat, Axel von Rosen, during the 1670s and which now is at the disposal of the Swedish State, which means that the von Rosen symbolism goes far deeper in Nordic history than one would think on the basis of the utterly superficial and

[29] Incidentally, some of the Supreme Court justices subscribing to the 1996 judgment were Rotarians, making the raising of this matter a very sensitive issue.

fragmentary writing of the Supreme Court. It is therefore not possible to do as the District Court has done and without more couple the symbols – be they badges on the dress or the old 'Ave Cæsar' salute which from time to time has been adopted by some grouping – with agitation against ethnic group. The judgment of the Supreme Court cannot reasonably be so interpreted that this coupling with criminal intent is automatic. Intent is an autonomous and intermediary requirement that must be substantiated and satisfied. Justice Gregow has in his dissenting opinion hit upon this defect in the reasoning of the Supreme Court majority. Mr Gregow demands that "threat or disrespect of a cetain ethnic group has found expression in a more concrete and consequently clear and unambiguous way". On the side of the appellants it is considered selfevident that such a request must be made, also when the judgment of the majority is given a broader interpretation.

(d) The vital point in the reasoning of the Supreme Court – and the District Court – is what ideas one may, with reasonable respect for accuracy, couple with these *per se* ambiguous symbols, among them the 'Ave Cæsar' salute. The judgment of the Supreme Court which has been copied by the District Court is less than informative on this point. It is spoken about 'the Nazi movement' which is saide to be characterized by ideas about racial superiority and race hate and of possibly other ideas, uncertain which ones. Then there is a jump in the line of thinking, a *non sequitur* ; the symbols as such should "express disrespect of people belonging to other groups than the Nordic ones." This warrants the observation that the writing of the Court has no support whatsoever in the description of *Nazism* that yhou find e.g. in the new Swedish National Encyclopedia. It goes without saying that the writing cannot find any support in what took place during the enormous second world war when Great Germany[30] gathered under its colours very big volunteer forces of Frenchmen and Spaniards – certainly no Nordic types – which fought with much valour on the Eastern Front. It is probably correct that in the leadership of NSDAP there was a foible relating to the Norwegians, blond and blue-eyed, that certainly was coupled with the idea about the 'Nordic ethnic group' and that the Norwegian volunteer forces together with the French were honoured by being included in the last desperate defence of Berlin in 1945. But this is hardly the same as disrespect for other ethnic groups than the Nordic ones.

(e) In so far as the question of intent is in issue it should furthermore be noted that those in question are American citizens. Even if it should be maintained that having spent 12 hours in the country they should have legal insight into the statutory text that creates the offence agitation against ethnic group – which is denied – it transpires from the documentation above that the intent that is asserted by the District Court in fact is defined by

[30] *Editor's Note :* The text speaks about "Stortyskland" which is a literal translation of German *Grossdeutschland*, the official identification of Hitler's Germany.

> local Swedish ideas about the 'Nazi movement' and its ideas. The poorness of the Court's writing about this theme is probably to be explained by the Court having without further reflection and particular knowledge adopted the embroidery work of vulgar journalism on this theme which is being disseminated in Swedish media.

It was then argued that the intent of the young Americans should be established against the background of their own capabilities and that it was unreasonable to ask that these Americans should be well read in the same way as the justices in the Supreme Court in Swedish vulgar journalism. What the defendants had said about their own attitudes in the matter should be taken as a fact until disproven by the prosecution and the prosecutor had not even tried such a disproof.

> The dark-headed girl, Danielle Reda, spoke about "her pride of her origin, her family, her inheritance … other ethnic groups should be equally proud about their origin just as she was about her own." It is an attitude that is founded in the family- and clan community and we are convinced that the same attitude is present among the elevated judges of good family who populate district courts, appellate courts and the Supreme Court. We are convinced that in these cercles one is absolutely alien to the idea that this pride would express disrespect for other groups than the Nordic ones. -.- The criminal intent required should be proven in this case just as in other criminal cases. The prosecutor has introduced no evidence, and consequently there is no evidence on this point in the case.

In this way, the appeal forced the Court of Appeals to sit, so to say, in judgment over the Supreme Court which is not an enviable situation in a career judiciary. Certainly, it so happened that none of the defendants could in any way be associated with particularly 'Nordic' features. They were not blond, they were not even Germanic; their ancestors originated in Central Europe or Ireland. The Court of Appeals found it prudent to try a completely new approach in the race matter, changing the reasoning into something possibly more fitting and rejecting the appeal in other respects. The Court wrote :

> As the Supreme Court has held in the case *NJA 1996 p. 577* Nazi insignia are strongly associated with the ideas of race superiority and race hate. The Hitler salute is today unmistakeably associated with Nazism, even if the salute as such is of quite another origin. A Hitler salute combined with shouting 'sieg heil' under the circumstances that prevailed during the concert – and which are illustrated by the video tape – must be seen as manifest expressions of racism and racist ideology. This impression is strengthened by the name used by one of the groups playing, White Aggression, and the music is known as "white power music". Eric Dobbs and Shawn Sugg have thereby by making hitler salutes and shouting 'sieg heil' put their own white race above other races and thus expressed disrespect for groups of persons on account of race or skin colour. It is evident that they when doing so must have been aware of the meaning of the gestures and shouts. What they have done is against this background criminal as agitation against ethnic group.
>
> -.-.-

> A main line in the defence argumentation advanced by the defence counsel has been that genocide has occurred during the 20th century not only under Nazi regimes but also in countries with Communist regimes. As far as the Court of Appeals is concerned it cannot see that such a comparison, whatever objective basis it has, is of importance when the present acts are to be considered. The fact that outrages against people during the course of history may have been legitimized also with the help of other ideological superstructures than Nazism does not entail that what the defendants have done in the present connection appears as less reprehensible.
>
> In summary and against the background of what has been said, the Court of Appeals agrees with the conclusion of the District Court that Eric Dobbs and Shawn Sugg should be sentenced for agitation against ethnic group.

On 25 May 1998, the Supreme Court refused to allow the case to proceed.

9. The Karolina Matti Case

The Brottby Case was followed by another case from the University of Umeå, concerning academic freedom. A young female doctoral student of sociology, Ms Karolina Matti, organized a seminar at the University of Umeå, focusing on "What do the Nazis want?" Her doctoral subject was "National dissidents" and the purpose of her project as officially accepted was to understand sociologically the race-ideological commitment on the basis of how the activists themselves understood it. She was responsible for a youth-oriented university programme and organized the seminar within this official framework. A young neo-nazi was invited to come to the seminar and give his views and the seminar was advertised as such at the University. The seminar took place on 5 December 1997, 8 people were present, Ms Matti gave an introduction, and thereupon the invitee spoke and answered questions.

Thereafter hell broke loose. Ms Matti was excluded from further teaching at the university and dismissed from her university position. After much turmoil the invitee was prosecuted for agitation against ethnic group and Ms Matti for aiding and abetting this criminal offence. They were both found guilty by the District Court ([31]) and the invitee sentenced to one month in jail and Ms Matti to a conditional sentence and 100 dayfines. On appeal, the jail sentence was set to two months, but Ms Matti's sentence was confirmed.([32]) The Supreme Court refused to hear the case insofar as the criminal liability was concerned.[33].

It transpired from the case report that the invitee had been unwilling because the city of Umeå and its University were known to be 'red nests' and going there meant trouble ahead. However, he had considered it to be civically important to accept the invitation and explain his position. As far as Ms Matti was concerned, she was mainly reproached for not having interrupted the invitee with counterarguments

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[31] District Court of Umeå, judgment 16 June 1998

[32] Court of Appeals for Upper Norrland, judgment 7 July 1998.

[33] The matter came before the Supreme Court as a Freedom of the Press issue, viz. whether the protection of the informant which is an important part of the Swedish freedom of the press system, included the defendants in this case as it happened that the lecture had been videotaped for later general distribution, see *Nytt Juridiskt Arkiv* 2000 p 355. The answer was No.

all the time. Her critics evidently were of the opinion that she should have organized a disputation, rather than listened to the lecture of an invitee. In the course of the trial, the transcribed lecture was scrutinized and found to include a number of commonplace characterizations of the Jewish domination in Swedish mass media and American politics.

The defence was rather poorly organized. Freedom of the press was made a major point by way of the lecture being filmed. Academic freedom was not much insisted upon, nor was reliance placed on the European Convention on Human Rights or the case *Jersild vs Denmark* ([34]) which happened to be rather parallel. Evidently, defence counsels were not familiar with the European context. Instead, media pressure was enormous and difficult to withstand in a small 'red nest' like Umeå where both courts involved were localized.

10 Conclusions

What now has been described have been the attempts to repress the 'racism' problem in Sweden, adding the perspective of the Freedom of Expression. What is displayed is mostly a picture of simplistic judicial responses to a mass media culture, primarily preoccupied with indignation, be it faked or not. The latter year media catchwords have been 'closeness' and 'feeling' (in Swedish : *närhet och känsla*) and this has not contributed to much understanding of the problem at hand, and even less to its resolution. In fact, about one third of the journalist population in Sweden is known to be Communist sympathizers.([35]) Their credibility is nil and their hostility is axiomatic to the young people on the neo-nazi side,. At the same time the general situation has been deteriorating. Anti-immigrant incidents ranging from verbal abuse to killings have become part of the fabric of life. Preaching against the ethical and moral aspects of foreigner hatred instead of recognizing that immigration brings foreseeable problems to be dealt with, has cemented the difficult situation. Media silence about immigrant youth gangs cutting out territory and terrorizing rivals as well as innocent bystanders who happen to come in their way, has not been helpful. As time goes by many may have found out the difference in media language between "Swedes" and "Swedish citizens", the latter meaning immigrant. A general feeling of disorientation has made turning to neo-Nazi violence often come natural. Furthermore, too often a true companionship between some neo-Nazis and violent and hardened real criminals seems to have been formed in the prisons where both were kept. Finally, the spread of Internet sites has given the neo-Nazis a voice that Swedish media and others – *vide* the Karolina Matti Case – have denied them.

It has become trendy to suggest that a silent majority may be abetting the violent crimes by not speaking out against them. Certainly, knowing the media situation, the perpetrators of the new immigrant-related violence have a feeling that they may be acting on behalf of the majority in the country, and even may think that they will not face much

[34] *Jersild vs Denmark*, 19 EHRR 1. The European Court having overruled the conviction of Mr Jersild, who had masterminded the showing of the talkative neo-nazis (greenjackets) on tv, the Revision Chamber of the Danish Supreme Court subsequently, on 24 January 1995, granted Mr Jersild a retrial in which he was acquitted.

[35] A recent research project at the Institution for journalism and mass communication at the University of Gothenburg has arrived at this approximation, but it simply confirms similar findings in earlier investigations going back to the 1970s.

resistance from the community. This trend to place the entire population under suspicion is hardly the way to promote reason. Many Swedes with no sympathy for neo-Nazi violence are troubled by the increasing number of foreigners in the country and by suggestions that Sweden must embrace multiculturalism, rather than stick to their inherited national identity. The key factor in the ugly development may indeed be found here. It seems that media silence and slanted reporting in fact has been backfiring. Reasoning around this theme, of course, has little chance of getting published in Swedish media. Outside Sweden it is not so. Consequently what a thoughtful Swedish journalist, coming från the Swedish leftist establishment, finds reason to publish in a Swedish-language paper in neighbouring Finland, is perhaps the best explanation you can find of what is called 'the racism problem in Sweden'. Such a journalist is Mr Bengt Lindroth, and the pertinent article in *Hufvudstadsbladet* in Finland is titled "The ghost of neo-nationalism":

> In Sweden, nationalism, Swedishness or flags and national celebrations have been tabooed for decades. We Swedes [sic!] [36] have been fed with the idea of ourselves being noble internationalists, guided by the former Secretary General of the United Nations, Dag Hammarskjöld or Olof Palme. Consequently, neo-nationalism has taken more violent forms, or more neurotically repressed forms, than in other countries where it has been allowed to exist freer and to be blossoming in a more folksy way. The consequence has been organized racism and Nazism, carrying over into murder and outrage to an extent without counterpart, certainly in the Nordic countries (the Baltic states inclusive).([37])

[36] It is a tactical position among the Social Democrats and their friends to the left to pretend that no opposition really exists to their rule, and consequently they like to equate 'Swedes' and 'Socialists'. See further ROLAND HUNTFORD, *The new totalitarians*, 1971, pp. 293-295.

[37] BENGT LINDROTH, "Nynationalismens spöke", *Hufvudstadsbladet* 14 Oct. 2000, p. 4.

The Racism Problem
in Sweden

And the Attempts to Repress It By Means of Legislation Seen in the Perspective of the Freedom of Expression

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