

# SUMMARY

English summary of Brå report No 2008:4

## Discrimination in the criminal justice process in Sweden

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# Discrimination in the criminal justice process in Sweden

The direct and indirect discrimination of individuals from a  
non-Swedish or other minority background

**English summary of Brå-report 2008:4**

**The Swedish National Council for Crime Prevention – centre for knowledge about crime and crime prevention measures.**

The Swedish National Council for Crime Prevention works to reduce crime and improve levels of safety in society by producing data and disseminating knowledge on crime and crime prevention work.

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# Background

In 2003, a Swedish governmental inquiry was appointed to examine the issue of structural discrimination on the grounds of ethnic or religious affiliation (dir. 2003:118). The report from the inquiry (SOU 2005:56) notes that very little research has been published on structural discrimination in the Swedish justice system. At the same time, the inquiry also noted that the justice system in Sweden is characterised by the same discriminatory mechanisms as those found in other countries where more extensive research has been conducted in this area.

In 2006, and against this background, the Swedish National Council for Crime Prevention (Brottsförebyggande Rådet – Brå) was instructed by the Swedish government to study how defendants and injured parties with a non-Swedish background may be subjected to discrimination in the criminal justice process. The directive issued to the National Council notes that inquiries focusing on the issue of discrimination in the justice system have indicated a need for additional efforts in this area. To begin with, this means developing a better understanding of the ways in which individuals with a non-Swedish background may be subjected to discrimination within the criminal justice process. More knowledge is required about discriminatory behaviours and structures within the police service, the prosecution service and the court system. The government's directive to the National Council states that the results will serve as a basis for assessing what additional measures may be required in order to ensure that discrimination does not occur within the Swedish justice system.

The principal objective of the report published by the National Council, whose contents are summarised in the following pages, has been to describe the ways in which behaviours and structures within the justice system can lead to individuals with a non-Swedish background being disadvantaged in their contacts with the criminal justice process, and to discuss what steps might be taken within the justice system to reduce the risk for the occurrence of this discrimination. Thus the Council has not been instructed to measure the *extent* of discrimination within the justice system, and the report therefore makes no attempt to estimate the number of cases in which different forms of discrimination may manifest themselves.

## The National Council's work with the project

The focus of the work conducted by the National Council has been directed at illuminating the ways in which discrimination may manifest itself at different stages of the criminal justice process: in the context of operational police work, in the criminal investigation process and within the court system. In the initial stages of the project, a review was conducted of existing research into discrimination within the criminal justice process. Against the background of this review, it was deemed particularly important to further illuminate the experiences of the two groups that have direct contact with discriminatory situations within the criminal justice system: on the one hand those who work within the criminal justice system, and on the other individuals with a non-Swedish background who perceive themselves to have been subjected to discrimination in the context of their contacts with the justice system. To this end, two new studies focused specifically on these groups were conducted within the framework of the project.

The first of these pieces of research examines perceptions of discrimination in the criminal justice process among individuals with a non-Swedish background. The study describes a range of the types of situation in which discrimination occurs, and is based on concrete cases of discrimination reported to the Swedish Ombudsman against ethnic discrimination (DO) between 2000 and 2005.

The second study focuses on experiences of discrimination in the criminal justice process as described by professionals working in the justice system. The study is based on questionnaire and interview data which provide an illustration of the situations in the criminal justice process in which various groups of justice system professionals (prosecutors, defence lawyers, injured party counsel, judges, lay judges and specialist legal interpreters) perceive that persons with a non-Swedish background are disadvantaged.<sup>1</sup>

In line with the project's objective to improve the existing knowledge on the *nature* of the discriminatory structures and behaviours that exist within the criminal justice system, both studies employ a qualitative rather than a quantitative approach.

### **A focus on the discrimination of people with both overseas and other minority backgrounds**

The government's directive to the National Council defined persons with a non-Swedish background as "individuals who were themselves born outside Sweden or who have at least one parent who was born outside Sweden". In the course of its work with the project, the National Council has chosen to move away from this strict definition however. Amongst other things this was due to the fact that the research published in this area shows that many of the factors that are associated with a risk for exposure to discrimination in the justice system among people who do not have an ethnic-Swedish background, such as an appearance that is linked to negative stereotypes for example, need not coincide with the definition prescribed by the National Council's directive. The definition would also miss members of domestic ethnic minorities, such as Romani men and women, or religious minorities, such as Muslim men and women, that existing research has shown to be at significant risk of exposure to discrimination in a broad range of contexts.

The report itself therefore employs different designations to refer to the groups at risk of being exposed to discrimination in the context of the criminal justice process, depending on the situation; in some cases the report refers to people from a "non-Swedish background" in others to people from a "minority background".

### **A focus on both direct and indirect discrimination**

Discrimination is often described in terms of *direct* and *indirect* discrimination respectively. Direct discrimination occurs when an individual is disadvantaged as a result of being *treated differently from someone else* in a comparable situation as a result of e.g. gender, ethnic background, religious affiliation or sexual orientation. Indirect discrimination instead refers to cases where an individual is disadvantaged as a result of the application of regulations, criteria or working methods *which appear to be neutral* but which *in practice disadvantage* people

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<sup>1</sup> In total the studies comprised data from 168 cases of discrimination reported to the Swedish Ombudsman against ethnic discrimination, 381 open-answers from a questionnaire sent to defence lawyers and prosecutors in which they described the most recent occasion on which they themselves had been involved in a case where they felt a person from a non-Swedish background had been disadvantaged in the context of his or her contacts with the justice system, and data from a total of nine group interviews involving 32 representatives of the groups of justice system professionals selected for inclusion in the study.

of a certain gender, ethnic background, religious affiliation, sexual orientation etc.

Thus discrimination can occur both as a result of an *unequal treatment* which disadvantages one group in comparison with another, and as a result of an apparently *equal treatment* which in fact disadvantages individuals from a certain segment of the population. Existing Swedish research on discrimination shows that individuals from a non-Swedish or other minority background may be disadvantaged in the context of their contacts with the justice system as a result of both unequal treatment and an apparently equal treatment that fails to take differences in the circumstances of different groups into consideration.

## Results

It should once again be noted that the data collected and analysed by the National Council in connection with the current project do not provide a basis for assessing *how often* people with a non-Swedish background are subjected to various forms of discrimination in connection with their contacts with the justice system. Instead, the results of the National Council's work illustrate *how* various behaviours and structures found within the justice system lead to the discrimination of people with a non-Swedish or other minority background in the criminal justice process. The following sections present a summary of the results from the National Council's studies and its review of the research by providing examples of the ways in which direct and indirect discrimination manifest themselves in the criminal justice process.

### **Examples of direct discrimination of people with a non-Swedish or other minority background**

As regards examples of direct discrimination, the results from both the review of the research literature and the National Council's own studies show that there are working routines and generalised conceptions, or stereotypes, relating to minority groups which lead to persons from a non-Swedish or other minority background unfairly being treated differently from persons with a Swedish background in a comparable situation.

Previous Swedish research shows that having a minority background can play a significant role in relation to whether or not you are suspected or stopped and searched by the police (Ekman, 1999; Granér, 2004; Pettersson, 2005), for the judgements made by police at a crime scene (Andersson, 2004), for whether or not a crime is investigated by the police (Brå, 2007; del Sante, 2005), for how investigating officers interpret witness statements and other information available in the context of a police investigation (Lindholm & Bergvall, 2006; Ask, 2006), and for the type of sanction chosen by the courts and the severity of the sentence awarded (Diesen, 2006; du Rées, 2006).

The two studies conducted by the National Council provide further confirmation of these findings. The results from the National Council's studies indicate the presence in the justice system of stereotyped conceptions that link certain minority groups with certain, often very common, types of crime, as well as similar stereotyped conceptions that individuals from certain types of minority background always deny their involvement in crime, and that other things they say are therefore not taken seriously either. Other examples of direct discrimination found among the cases reported to the Ombudsman against ethnic discrimination and in the questionnaire and interview study with justice system professionals involve groups with a non-Swedish background systematically being regarded

as less credible than ethnic Swedes at the crime scene, during the criminal investigation and in the courtroom.

The justice system professionals who participated in the National Council's study described different ways in which these stereotypes influence the practical work conducted within the justice system. One example presented in the report relates to perceptions that investigating police officers have proceeded from a presumption of guilt based on the individual's background, and have then investigated cases on the basis of this assumption. The National Council's studies also include examples of cases where individuals from non-Swedish or other minority backgrounds have been subjected to stops and searches by the police purely as a result of their background characteristics, and that the police have moved to prosecute them for more minor offences than they would consider prosecuting further if the individuals concerned came from an ethnic Swedish background.

The material from both the Ombudsman against ethnic discrimination and the justice system professionals further contains descriptions of a large number of cases where individuals from a non-Swedish or other minority background have been subjected to deprecatory, brusque, disrespectful, arrogant or disdainful treatment by police officers, prosecutors, defence lawyers or judges. The examples found in the materials collected by the National Council show that such treatment is not only experienced as offensive by the individuals subjected to it, but that it also negatively affects these individuals' opportunities to be heard, believed and taken seriously, and to have their cases tried by the justice system on equitable terms to those experienced by members of the majority Swedish population.

Stereotyped conceptions of individuals from a non-Swedish or other minority background can also influence the treatment received by crime victims at the hands of justice system professionals, and the way those working in the justice system deal with their cases. The report contains examples of people from a non-Swedish or other minority background who have been regarded and treated with scepticism in a way that justice system professionals say would not have been the case if they had been ethnic Swedes. These examples cover the entire justice system process from the first contact with the police to the individuals' appearances as injured parties in the courtroom. Overall, the results presented in the report indicate that crime victims from a non-Swedish or other minority background have less chance of having their cases prosecuted to court by comparison with crime victims from the majority Swedish population in a similar situation.

The justice system professionals who participated in the National Council's questionnaire and interview study provided examples which indicate that certain minority groups are disadvantaged more than others. Romani men and women, people from Eastern Europe, and Muslim and Black men all constitute groups that the justice system professionals perceive to be particularly disadvantaged as a result of stereotyped conceptions that are prevalent within the Swedish justice system.

Altogether, the data collected within the framework of the project show on the one hand that there are informal codes, attitudes and behaviours within the justice system that have a negative effect on the opportunities available to minority group members within the criminal justice process, and on the other that these informal codes, attitudes and behaviours are often based on generalised preconceptions, or stereotypes, about individuals from non-Swedish or other minority backgrounds. Attitudes and behaviours of this kind are often legitimised by routinised work practices and by institutional and organisational argots and directives (SOU 2002:37). Examples of work practices, directives and argots presented in the report include amongst other things the practice of racial profiling (i.e. where police officers select subjects for stop and search activities on the

basis of characteristics such as minority appearance), directives that identify certain ethnic groups as engaging in specific types of crime, the criteria employed in relation to decisions to detain individuals awaiting trial, and internal occupational jokes focused on specific ethnic and national groups. These various forms of direct discrimination are closely linked to one another and are bound together by what may be viewed as occupational cultures within the justice system that fail to sufficiently develop an awareness of and to combat, at both the individual and the institutional levels, negative preconceptions about various minority groups that exist in society at large and within the various agencies of the justice system in particular.

### **Examples of indirect discrimination of people with a non-Swedish or other minority background**

Indirect discrimination occurs when groups are disadvantaged as a result of an apparently equal treatment which fails to take account of important differences in the groups' circumstances and needs. In the literature on discrimination within the justice system, for example, it has been noted that problems will always arise when the justice system applies a mono-cultural "one-size-fits-all" approach to service provision (Bowling & Phillips, 2002). The work of the justice system must be adapted to take account of differences in the needs and circumstances of different groups if everyone is to receive a fair hearing and equitable treatment in the context of the criminal justice process.

Communicational difficulties and language differences constitute one area where the National Council's research shows the presence of substantial problems as regards the justice system's ability to deal with the needs and circumstances of groups which differ from the majority Swedish population. The studies of both the cases reported to the Ombudsman against ethnic discrimination and of the experiences of justice system professionals show amongst other things that interpreters are not always called to police interviews or interrogations or even to court hearings in cases where it is clearly evident that interpretation services are required. The studies also show that important misunderstandings can arise in situations of this kind. The cases reported to the Ombudsman against ethnic discrimination include examples where people have been interrogated by the police without even understanding that they are being interviewed as crime suspects, or without being aware of what crimes they are suspected of having committing. Other cases reported to the Ombudsman relate to situations where crime victims have felt that language differences have led to their not being given the opportunity to present as detailed an account of what has happened as they would have liked. The study focused on the experiences of justice system professionals also included several descriptions of situations of this kind.

Many of the justice system professionals also had experience of cases where the quality of the interpretation services provided had been very poor, sometimes as a result of the fact that an untrained interpreter had been used or because there had been no option other than to use an interpreter who spoke the client's second or third language since no interpreter was available who spoke the client's mother tongue. In these cases it was common for the justice system professionals involved to have experienced and to express concern over misunderstandings and a lack of clarity, which in turn negatively affect the quality of the information which justice system professionals have to work with.

Judges noted that they were often forced to rely on the use of interpretation by telephone in connection with remand hearings, since these have to take place within a relatively short space of time and there was often insufficient time to locate an interpreter who was able to attend the court hearing in person. The experiences of telephone interpretation described by justice professionals showed

that it was generally regarded as causing a lot of problems. Some judges and lay judges noted that these problems were so substantial as to constitute a serious threat to their ability to ensure that groups whose first language was not Swedish are treated equitably.

At the same time the National Council's studies also include examples showing that justice system employees themselves lack sufficient knowledge about how to act in situations involving an interpreter. The specialist legal interpreters interviewed within the framework of the National Council's work described amongst other things experiences of court cases where the judge, prosecutor and defence counsel had talked over one another or spoken too quickly to allow the interpreter to have time to translate everything that was said for their clients. The interpreters also described cases where the court had failed to take account of the fact that a defendant or injured party has the right to have the whole of the court proceedings translated, and where these proceedings had begun before the interpreters in question had even had time to sit down and put their equipment in order.

Legal interpreters play a central role in ensuring equality before the law and they are there to serve the interests of all those involved in the cases concerned: suspects and defendants, injured parties and witnesses, as well as justice system professionals. The experiences of legal interpreters show that there are people working in the Swedish justice system today who view interpreters as being there first and foremost to meet their own needs, and who fail to take into account the needs of the parties whose first language is not Swedish.

Taken together, the findings presented in the report show that the justice system's inability to satisfactorily deal with language differences can lead to people perceiving that they have been treated unjustly or that the criminal justice process is completely incomprehensible, and to a situation where the quality of the information that justice system professionals have to work with is negatively affected, leading to an increased risk for incorrect decisions as a result.

Another important example of indirect discrimination described in the report relates to the presence of expectations and norms within the justice system which restrict the opportunities for individuals from a non-Swedish or other minority background to receive equitable treatment in their contacts with the criminal justice process. The problems are in this instance grounded in assumptions that proceed from perceptions of how things "should be", and of what is regarded as "normal" within the justice system. The results of the National Council's research show that the frames of reference within which the justice system conducts its work are often too narrowly defined to be able to adapt to the needs and circumstances of all those whom the justice system is there to serve, and that deviations from what is regarded as "typically Swedish" behaviour tend to place people in a disadvantaged position.

Many of the examples described in the questionnaire and interview data relate to cases where individuals from a non-Swedish or other minority background have been disadvantaged as a result of the justice system's inability to satisfactorily cope with cultural differences in the way different people describe their experiences. The study provides examples of situations where police officers, prosecutors and judges have had expectations that crime victims would talk about their experience of victimisation in a certain way. These expectations have then led to a situation where the descriptions of those who express their experiences of crime in a different manner are regarded as less credible. Other examples relate to cases where justice system professionals have proceeded from an expectation that crime suspects and defendants would admit their guilt in certain types of situation where they argue that "Swedes" would do so. Amongst other things, the results from the National Council's studies show that individuals

whose behaviour differs from that “expected” by the justice system may find themselves being met with impatience, irritation or deprecation.

The National Council’s studies also provide further examples of how a blindness to differences in the needs and circumstances of different groups can manifest themselves in the context of the criminal justice process. Among the cases reported to the Ombudsman against ethnic discrimination there are examples where information relating to various decisions taken in the context of the criminal justice process has been unclear and where individuals with a non-Swedish or other minority background have found it difficult to reach the relevant justice system professionals in order to have questions relating to their cases answered. The experiences described by individuals with a non-Swedish or other minority background show that the justice system is often perceived as an inaccessible and difficult arena where an individual’s rights are not always respected.

The general picture described in the report indicates on the one hand that the justice system, at least in certain respects, proceeds on the basis of a view that one size does in fact fit all, and on the other that the justice system’s apparently neutral approach in practice serves to disadvantage individuals from a non-Swedish or other minority background in their contacts with the criminal justice process.

### **The role of the justice system in processes of cumulative discrimination**

It has been emphasised that the justice system cannot be regarded as separate from and unaffected by the structural conditions that lead to various groups consistently being disadvantaged in other areas of society (e.g. McPherson, 1999; Sarnecki, 2006). This insight is important, not least because it opens the way for an understanding of the role the justice system can play in what are usually referred to as processes of “cumulative discrimination” (e.g. Bowling & Phillips, 2002; Blank, Dabady & Citro, 2004; Massey & Blank, 2007). The concept refers amongst other things to the way in which conditions that negatively affect a given group’s opportunities in one area of society can also have a knock-on effect in other social arenas. Factors that affect the chances of children from minority backgrounds doing well in school, for example, will by extension also affect these individuals’ chances on the labour market. In combination with the extensive battery of discriminatory mechanisms that research has shown to exist in the job market, the effects of the earlier school-related factors will be further intensified. Thus even relatively small effects of discrimination in a given context may contribute to major differences in different groups’ chances of achieving equality.

The results of the National Council’s studies indicate that the forms of disadvantage and discrimination which affect people from non-Swedish and other minority backgrounds in other areas of society, such as within the education system, for example, or on the housing market and at work, also have consequences for the way these people are dealt with by the criminal justice system. These effects of cumulative discrimination manifest themselves *inter alia* in the context of court sentencing procedures, where justice system professionals have noted that the defendant’s social situation is more or less routinely employed as an important indicator of a given individual’s reoffending risk.

Among others, Blank, Dabady and Citro (2004) have argued that the effects of cumulative discrimination processes must be taken seriously, particularly given the fact that most of the anti-discrimination legislation that has been formulated to date around the world views discrimination in terms of isolated incidents that occur at a specific time and place, rather than as an ongoing process that leads to increasing levels of disadvantage over time.

### **A varied view of what constitutes discrimination among justice system professionals**

The answers provided by justice system professionals in the context of the questionnaire survey and their discussions at interview showed that there exists within the justice system a broad range of conceptions as to what can and should be regarded as constituting “discrimination” or “discriminatory behaviour”. These conceptions ranged along a continuum between two extremes. At the one extreme there were individuals who argued that it is only discrimination when there is a direct and intentional negative treatment of individuals *specifically as a result* of their non-Swedish or other minority background. At the other extreme there were individuals who professed the view that factors which led to an unintentional or unconscious disadvantaging of individuals from a non-Swedish or other minority background should also be regarded as discriminatory.

The range of views expressed in relation to the justice system’s inability to deal with language differences in a satisfactory way can serve as a simple, but illustrative example. All of the justice system professional interviewed in the course of the National Council’s study agreed that individuals whose first language is not Swedish are often disadvantaged in their contacts with the justice system. While some were clear that this constituted a form of discrimination, however, others argued – sometimes quite strongly – that since this was a problem that everyone was aware of, since there was no question of any conscious or “malicious” intent, and since everybody “did their best” to deal with it, it was quite wrong to view the resulting disadvantage experienced by individuals from a non-Swedish or other minority background as an example of discrimination.

## **Minority or class background as the basis for discrimination?**

One issue that is often discussed in connection with research into the discrimination of minority group members is that of how much of this discrimination is due to the individuals’ minority background, and how much is rather due to other factors that “happen to coincide” with membership of a minority group, such as the individuals’ social class affiliation, for example.

In the course of the interviews conducted by the National Council, some participants expressed the view that certain types of injustice should not be viewed as examples of ethnic discrimination since “they could also happen to Swedes”. One example of an injustice of this kind might be the negative effects that a use of language which differs from that expected by those working in the courtroom may have on the perceived credibility of a defendant, witness or injured party.

Some of the descriptions provided in the questionnaire expressed a view that an individual’s class background is more important than whether or not he or she comes from a non-Swedish or other minority background in relation to a defendant’s chances of being acquitted by a Swedish court. It was also sometimes argued that the injustices experienced by those from more disadvantaged social backgrounds were primarily the result of a tendency for the justice system to treat people from better social backgrounds unfairly well, rather than being due to the justice system subjecting people from more disadvantaged backgrounds to an unfairly negative treatment.

Clearly several of the factors described in the National Council’s report may conceivably also lead to individuals from various segments of the majority Swedish population being disadvantaged in the context of their contacts with the criminal justice system. The National Council has not however been instructed

to attempt to *isolate* specifically those aspects of the discriminatory mechanisms identified in the course of its work that are *exclusively* related to the non-Swedish or other minority background of the individuals who are disadvantaged by them. The very brief discussion of the mechanisms of cumulative discrimination presented at the end of the previous section instead indicates that individuals from a non-Swedish or other minority background are systematically at increased risk of being disadvantaged across a broad range of important social arenas (a conclusion that has consistently been born out by both Swedish and international research into the issue of cumulative discrimination – see e.g. Blank, Dabady & Citro 2004; SOU 2006:60; SOU 2006:79). This is due in part to the role played by factors associated with the individuals' minority background in the context of contacts with a broad range of societal institutions. But it is also due to the fact that the factors that constitute an obstacle to individuals from minority backgrounds achieving equality of opportunity across many different areas of society by extension also severely limit the range of positions within the social structure that individuals from a minority background are given an opportunity to attain.

A justice system that is seriously intent upon combating the effects of factors that lead to the discrimination of minority groups needs therefore to take into account not only those factors that are directly linked to the individuals' minority background *per se* (such as stereotyped conceptions about different minority groups, or a blindness to different groups' distinctive needs for example), but also factors that are associated with a risk for the discrimination of groups from a disadvantaged or marginalised social situation in more general terms.

## An institutional lag

Ensuring equality before the law is an ongoing process that requires continuous efforts in order to ensure that the work of the justice system is evaluated in the light of important changes in the society it is there to serve. It is also essential that the criminal justice system continues to adapt itself to meet the new challenges that changes of this kind inevitably involve. A more heterogeneous population places new and different demands on the justice system as an institution. In order for everyone to be given the opportunity to participate in the legal process on equitable terms, it is essential that the distinct needs of people from non-Swedish and other minority backgrounds are met on the basis of a careful assessment of each individual case.

In order to ensure fair and equal access to and participation in the criminal justice process, the justice system must be sufficiently flexible to ensure that there is room for the differential treatment of cases which differ from one another in important ways. This is not possible when a mono-cultural frame of reference is employed and when working routines and practices continue to be based on an incorrect assumption that the justice system is dealing with a culturally homogeneous population. It is essential that justice system professionals become more aware of the diverse needs of the groups that the justice system is there to serve. In order to transform the goal of equality before the law into a reality, it is also essential that opportunities for direct discrimination and for the effects of stereotyped conceptions are reduced. It is therefore important that justice system professionals become more aware of the way such stereotypes can manifest themselves, and of the negative effects that they can produce, in the context of their own work. To the extent that changes in the population structure have not led to changes in the practices and routines of the justice system of the kind required to

ensure that everyone can be sure of receiving equitable treatment, it is reasonable to speak of an institutional lag in relation to these issues.

It is almost impossible to determine whether a specific criminal case would have resulted in a different outcome if the injured party or the defendant had been given a better opportunity to describe his or her experiences of the case, had been treated with more respect, or if the individual's credibility had not been regarded as "compromised" as a result of stereotyped preconceptions relating to his or her ethnic background. It is every bit as difficult to assess whether the outcome of a case would have been different if the court had not been forced to rely on telephone interpretation services in connection with a remand hearing, or if a defendant or injured party had been cross-examined in their mother tongue rather than in their second or even third language.

One of the central conclusions that should be drawn from the National Council's work, however, is that possible inequalities in criminal justice *outcomes* only constitute one part of the problem of discrimination in the justice system. Irrespective of whether the factors associated with the institutional lag described above manifest themselves in relation to the final judgement passed in connection with a given criminal case (e.g. in connection with a decision to prosecute, or not to prosecute, or in connection with the determination of guilt, or of the type and severity of the sanction awarded) or only affect the way the case is handled on its way through the justice system, problems of the kind described in the National Council's report may have serious consequences for the ability to provide equality before the law, and for public confidence in the justice system as a whole.

## The National Council's assessment

### **An incomplete picture – but no excuse to put off introducing measures to combat discrimination**

The object of the work conducted by the National Council within the current project has been to illustrate different ways in which behaviours and structures within the justice system may lead to the discrimination of persons from a non-Swedish or other minority background within the criminal justice process. One of the report's strengths is that it sheds additional light on the obstacles that individuals from a non-Swedish or other minority background perceive themselves to be faced with in their contacts with the criminal justice system. Another strength is found in the fact that justice system professionals have been asked directly to describe their own experiences of the ways in which individuals from a non-Swedish or other minority background are disadvantaged at different stages of the criminal justice process. This is a strength because it is sometimes too easy for politicians and practitioners to dismiss research findings with the objection that the research community is following an agenda of its own and lacks any real insight into the practicalities of the real-world situation faced by those working with the issues under discussion. A third strength is found in the high level of correspondence in the picture that emerges from each of the different data sources employed in the project – from the research literature, from the experiences described by justice system professionals and from the experiences of individuals who have reported themselves to have been subjected to discrimination in the context of contacts with the criminal justice process.

At the same time it is important to note that the picture presented in the report can in no way be viewed as exhaustive. A great deal more research is still needed to illustrate amongst other things the ways in which existing routines, working methods and working conditions within the justice system can serve to

disadvantage different groups within the population. Furthermore there remain areas that have yet to be studied at all in Sweden, such as the prison and probation system, for example, where there is an urgent need for research illuminating how people from a non-Swedish or other minority background may be subjected to discrimination both in the prison system and when on probation.

The fact that there is still a long way to go before we have developed a sufficiently exhaustive understanding of the way discrimination manifests itself in the justice system must not however be used as an excuse to defer the introduction of measures aimed at redressing the problems that have been identified to date. To this end, the final chapter of the report presents a number of concrete measures that may be viewed as a point of departure for the continued work that is required to combat the occurrence of discrimination in the criminal justice process. The measures described are as follows:

- The active recruitment of people with a non-Swedish or other minority background to positions within the justice system
- Improved education and training for justice system professionals
- Raising the status of specialist legal interpreters within the justice system
- The systematic integration of diversity and equality analyses in connection with crime policy and criminal justice initiatives
- A review of the criteria employed in connection with discretionary decisions within the justice system
- The development of social equity indicators to be used in following up and evaluating the work of justice system agencies
- The initiation and maintenance of closer ties and collaborations with organisations representing groups with a non-Swedish or other minority background
- A review of the anti-discrimination legislation and an extension of the mandate of the Ombudsman against ethnic discrimination

This summary now concludes with a short presentation of the different proposed measures.

**The active recruitment of people with a non-Swedish or other minority background to positions within the justice system**

In Sweden the agencies of the justice system are among those public sector agencies with the smallest proportions of employees from a non-Swedish background (Arbetsgivarverket, 2007). Increasing the level of ethnic diversity among justice system professionals is an important goal for a number of reasons (see e.g. Etherington, 1994; MacPherson, 1999; American Bar Association, 2007). The presence of a larger number of justice system professionals from minority backgrounds would contribute to an increased awareness of ethnic and cultural differences where they do in fact exist and would at the same time reduce the tendency to see such differences where they do not. An improved level of diversity would furthermore increase the likelihood that the discrimination and racism that is to be found within the justice system is detected and dealt with constructively (cf. Etherington, 1994). Taken together the effects of improving the level of ethnic diversity among justice system professionals would produce a situation where crime victims, defendants and witnesses from a non-Swedish or other minority background can feel more secure in their contacts with the justice system.

**Education and training for justice system professionals**

Over recent years, the agencies of the Swedish justice system have made some effort to provide training for their employees in issues relating to ethnic diversity

and discrimination. The results presented in the National Council's report however show that the need for well-formulated training programmes in this area remains substantial. To be meaningful, training programmes for justice system professionals must aim to increase the level of awareness and understanding of how both direct and indirect discrimination can manifest themselves and must provide an orientation in how the underlying mechanisms that lead to discrimination produce their discriminatory effects. It is not until the education and training provided actually produces an increased awareness of the participants' own stereotyped preconceptions and a recurrent reflection over their own behaviour that such training can be viewed as having produced some form of desired effect. Training programmes should furthermore have the objective of bringing about lasting change in working routines and structural conditions within the justice system where these at present lead to a risk for discrimination. To this end education and training measures must be followed up and evaluated.

#### Raising the status of specialist legal interpreters within the justice system

The status of specialist legal interpreters needs to be raised as the issue of adapting the justice system to the needs of a multicultural society is taken more seriously. It is essential that the role of legal interpreters is understood on the basis of the needs of all of the parties involved and that interpreters are given the acknowledgement and respect that they deserve. Authorised legal interpreters constitute a highly trained group of professionals with a specialist competence that the justice system is dependent upon in order to function. The presence of an interpreter does not however by itself constitute any kind of guarantee that language differences will be evened out; instead it is the quality of the interpretation services provided that is the critical factor. The work of interpretation needs therefore to become better integrated and also evaluated within the framework of the work conducted by the agencies of the justice system.

#### The systematic integration of diversity and equality analyses in connection with crime policy and criminal justice initiatives

Since 1997, Canada has worked with an instrument known as the Integrated Diversity and Equality Analysis Screen (IDEAS). The model proceeds from the insight that the introduction of new legislation, strategies or working methods within the justice system may disadvantage groups from minority backgrounds in special ways. Since these groups are rarely represented among those who formulate such initiatives and who take part in the decision making process, the analysis has the objective of identifying any aspects of a given initiative that might disadvantage minority groups and that might otherwise be missed. Sweden could learn from Canada's example in this area and develop and adapt the model to Swedish conditions. The analysis itself comprises four stages, examining the purpose and status of the initiative, examining the likely impacts of the initiative on the members of various groups, proposing modifications to reduce or eliminate negative impacts and to accentuate positive impacts, and proposing additional research and/or consultation required to better appreciate the effects of the initiative on various groups.

#### A review of the criteria employed in connection with discretionary decisions within the justice system

There are a number of points within the justice system at which justice system professionals have a greater degree of freedom to themselves determine the criteria on which a given decision should be based or the how the prescribed criteria for arriving at a decision are interpreted from one case to another. Decisions of this kind are often referred to as "discretionary". Among the factors that the

research has emphasised as important for reducing the risk for discrimination in connection with such decisions are requirements that justice system professionals must record the reasons for their decisions, that the reasons for the decisions taken can then be examined, and that individuals are made responsible for decisions that result in discrimination (see e.g. Bowling & Phillips, 2002). Existing Swedish research, together with the studies conducted by the National Council, indicates that the risk for discriminatory effects of discretionary decisions may be relatively substantial in connection with police interventions, decisions to initiate and follow through on a police investigation into an offence, decisions to remand while awaiting trial, and the choice and severity of the sanctions awarded to convicted offenders. A first step towards reducing the opportunities for discretionary decisions to lead to discrimination would be to conduct a review of the criteria that are today applied in connection with these decisions at different points in the criminal justice process. A review of this kind would at the same time provide an opportunity to conduct a much needed diversity and equality analysis of the effects of these criteria on the members of various minority groups. The results of a review of this kind would on the one hand lead to justice system agencies and professionals becoming aware of risks for discrimination that had not previously been noted and on the other would provide a basis for formulating protocols for recording the reasons for decisions taken at the various points of the criminal justice process concerned.

The development of social equity indicators to be used in following up and evaluating the work of justice system agencies

Social equity testing involves introducing systems to follow up the extent to which public sector agencies provide public services to different social groups in an equitable way. Within the justice system, social equity testing can be employed to systematically follow up different aspects of the work of justice system agencies in order to provide an indication of areas where there may be a need to analyse whether unobserved discriminatory conditions are at work. A variety of types of data can be collected and employed as social equity indicators in relation to the work conducted by the different agencies of the justice system (see e.g. Brunet 2005). Within the police service this might involve systematically collecting data on how often different groups are subjected to stop and search procedures, for example, or on how long it takes the police to respond to calls for service in different neighbourhoods. The work of the courts could be monitored using indicators measuring the types of sanction and sentencing tariffs applied in connection with various categories of offences for different groups of defendants, or the size of the reparation payments awarded by the courts, examined in relation to background data for both injured parties and defendants.

The initiation and maintenance of closer ties and collaborations with organisations representing groups with a non-Swedish or other minority background

A large number of public sector agencies both in Sweden and other countries have begun to work more actively to adapt their work to the needs of different groups in society. Justice system agencies have worked to increase levels of sensitivity to groups occupying a marginalised position in society, including for example ethnic minorities. Expressed in simple terms, work of this kind is intended to make the justice system more accessible and user-friendly. In order to improve levels of sensitivity it is important to develop a much better picture of different ethnic groups' experiences of the justice system, as members of the general public, as witnesses, as suspects/defendants and as crime victims. One important area of work for the agencies of the justice system in this regard involves the initiation and maintenance of close ties and collaborations with organisations representing

minority groups, and the continuous evaluation of their own work on the basis of minority group members' experiences of the justice system. This work would contribute to improving the nature of the justice system's contacts with people from non-Swedish or other minority backgrounds and would thereby lead to improvements in levels of confidence in the justice system.

A review of the anti-discrimination legislation and an extension of the mandate of the Ombudsman against ethnic discrimination

The Swedish Anti-Discrimination Act that is currently in place – “Lagen (2003:307) om förbud mot diskriminering” – covers discrimination across several social arenas, but does not include discrimination that occurs within the justice system. The legal safeguards intended to ensure equal treatment in the justice system itself are found instead in the Instrument of Government (Regeringsformen), the Penal Code (Brottsbalken) and only to a very limited extent in civil law (with reference to Article 14 of the European Convention on Human Rights). Indirect discrimination within the justice system is particularly difficult to deal with within the framework of the existing legislation. The picture of the nature of discrimination within the justice system that emerges from previous research and the studies conducted by the National Council in connection with the current project indicate that there is good reason to question whether the existing legislation is sufficient to combat discrimination within the justice system.

The European Commission against Racism and Intolerance (ECRI) has recommended that the justice systems of member states should be covered by the civil law anti-discrimination legislation. A review of the Swedish legislation is therefore called for with reference to Sweden's position as a member state. Even from a more general perspective, given the importance of safeguarding equality before the law, it would be desirable for the work of justice system agencies to be covered by anti-discrimination legislation, and Sweden would not be the first nation to move in this direction. In the UK, for example, the work of the police service has been covered by the civil anti-discrimination legislation since 2000, with a focus on both direct and indirect discrimination (cf. Bowling & Phillips 2002).

In Sweden a proposal has been put forward for the establishment of a new office of the Ombudsman (SOU 2006:22) which will probably begin its work at some point during the course of 2009. This provides legislators with an opportunity to review and extend the mandate of the new Ombudsman so that it also covers the justice system, thus providing more concrete legal means of combating the discrimination that occurs in this area.

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