A different approach to organised crime

*The Swedish answer to the questionnaire in the Third Study Commission*

*Wien*na 9-13 November 2003

**New investigating measures and gathering of evidence**

To begin with it has to be pointed out that investigative measures and gathering of evidence is entirely a matter for the Police and the Public Prosecutors. The Courts can and may not participate in this process. It is therefore difficult to answer the question whether the Police over the last few years have developed new methods in order to make investigations of organised crime more efficient. I will confine myself to mentioning some new Acts of Parliament which in various ways may affect the combat of organised crime.

For several years now it has been possible to use wire-tapping during the investigation of a crime. It has to be decided by the Court on request of the prosecutor. Wire-tapping may only be conducted if someone is suspected of an offence in respect of which a less severe penalty than imprisonment for two years is not prescribed. Furthermore it is required that a reasonable suspicion exists and that the wire-tapping is of particular importance to the inquiry. According to a recent proposal a public representative (normally a lawyer) shall be appointed to watch/guard the interest of integrity of the individual. It is also proposed that the scope of wire-tapping be extended so that it may be used in the investigation of a crime which, although the minimum penalty is less, in the individual case is estimated to have a "criminal value" of two years imprisonment or more. The amendment of the law is expected to enter into force on 1 October 2004.

Over the last few years it has been discussed if monitoring (bugging) should be allowed as a means of improving the combat of serious crimes. A proposal for legislation was forwarded in 1998. It was proposed that bugging be allowed during the investigation of crimes with a
minimum penalty of four years imprisonment. The proposal was however criticized, i.a. for not solving the problem of how to handle surplus information. That question has now been looked into and the proposal is now to be reviewed. Legislation is to be expected in the next few years.

In October 2003 the Government put forward a proposal for an Act on the European arrest warrant and surrender procedures between member states of the EU. The Act is expected to enter into force on 1 January 2004. In 2002 Sweden adopted the Council framework decision on the European arrest warrant and surrender procedures between member states of the EU. The present law is being changed, i.a. in abandoning the requirement of double jeopardy with regard to certain crimes listed in the framework decision. Among them are crimes such as trafficking, terrorist crimes and participation in a criminal organisation. Extradition is to be decided by a court and not, as is the case now, by the Government after hearing the Supreme Court.

Participation in a criminal organisation, i.e. active participation in an association which has crime as an essential part of its activities is not a crime as such in Sweden. The issue has recently been dealt with by a Government commission, which held that it was not possible to create a provision both efficient and fulfilling demands of legal security. Sweden has adopted EU:s joint action on making it a criminal offence to participate in a criminal organisation in the European Member Sates. It was, however, considered that the Swedish law on complicity in crime is sufficient for Sweden to comply with the demands of criminalisation put up.

Police and prosecutors have from time to time promoted the introduction of a system of lenience in sentencing persons cooperating with the legal system. Such a system, it is argued, would facilitate investigation of organised crime. No proposal has yet been forwarded.

Rules on mutual legal assistance and police cooperation do already exist. As a consequence of the amendments to the Schengen Agreement a proposal is pending in order to extend the cross-border surveillance. The possibility of continuing the surveillance of a suspect into Swedish territory is broadened to encompass not only suspects but also persons who may assist in identifying a suspect. It is a requirement that an investigation into an extraditable offence is being conducted.
On 1 July this year a new Act on Terrorist Offences entered into force. The Act is based on the EU Framework Decision on combating terrorism. The essence of the Act is that persons who commit certain crimes, such as murder, sabotage and arson, may be held liable for committing a terrorist offence if the act committed may seriously damage a country or an international organisation and was committed with the intent of 1) seriously intimidating a population or group or 2) compelling an official body to perform or abstain from any act or 3) destroying fundamental political or economic structures of a country. The maximum sentence proscribed is imprisonment for life. Just recently a person was under suspicion of having prepared a terrorist offence. The Public Prosecutor tried to have him arrested but the Court did not find that the evidence was enough to detain him on suspicion of a terrorist offence. Instead there were suspicions of other serious offences, i.a. illegal possession of weapons and explosives and he was arrested.

On 1 July 2002 an Act on financing of particularly serious crimes entered into force. It is based on the International Convention for the Suppression of the Financing of Terrorism. The Act makes it punishable to collect or receive funds with the intention that they should be used or in the knowledge that they are to be used to carry out crimes which the Convention defines as being punishable to finance. Proceeds of crimes under the Act shall be forfeited.

**Protection of individual liberties in criminal cases**

The Swedish constitution states that no Act of Parliament or other Statutory Instrument may be enacted in contradiction with Sweden’s obligations under the European Convention on Human Rights. This has been held to mean that national provisions must also be interpreted in the light of the demands of the Convention. It follows from Swedish law that a person indicted with a non-trivial crime has the right of assistance by a public defender. Furthermore, a person taken into custody has the right of a court appearance within 3 days. In the last few years the provisions of Article 6:3 on the right of interrogating witnesses have come into practical use. Although it would be possible under Swedish national law at certain circumstances to rely on witness statements during Police investigations, the right under the Convention to question the witness has been held to limit the possibilities of convicting the defendant relying on such statements. Swedish law has in principle no rules on what evidence may be referred to (i.e. rules saying that evidence must be obtained in certain ways). It is a matter for the Court to decide if a certain piece of evidence may be relied on in deciding the
case. The Supreme Court has recently held that so called surplus information, i.e. information on criminal activity which the Police have obtained in the course of wire-tapping allowed on grounds of suspicion of another crime, may in principle be referred to as evidence in trial. The value of the evidence must however be judged according to the circumstances of the individual case.

Most criminal cases may be tried in at least two instances. A leave of appeal is only required in cases where the sentence is limited to a fine.

**Physical arrangements of the courtroom**

There are now special rules aimed at trials concerning organised crime. Several of the major courts of the country do however have security courtrooms. In these the public is separated from the members of the court and the parties by bullet-proof glass. If the judge decides on a security check all persons entering the court room may be searched. Such a decision has to be founded on the circumstances of the individual case.

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Ingela Sundin