



PRIV-WAR Report – Sweden

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The Regulation of Private Military and Security Services in Sweden

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PRIV-WAR

Regulating privatisation of “war”: the role of the EU in assuring the compliance with international humanitarian law and human rights

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Nomenclature and abbreviations

English translation

Act (2003:1156) on surrender from Sweden according to the European arrest warrant
Act on Extradition of Offenders
Act on surrender to Denmark, Finland and Norway
Annual Leave Act
Collective Agreement
Committee terms of reference (ToR)
Confederation of Swedish Enterprise
Contracts Act

Cooperation with the International Criminal Court Act
County Administrative Board
Employment (Co-Determination in the Workplace) Act
Employment Protection Act
Government Bill
Sweden's International Agreements

Labour Court
Law applicable to contractual obligations (Rome Convention)
Military Equipment Act
Military Security and Intelligence Directorate

Penal Code
Private Military Company/Contractor, Private Military Service (PMC /PMS)
Private Security Company (PSC)
Public defence
Public Procurement Act
Security Company
Security Company Act
Security guard
Security Protection Act
Swedish Government Official Reports
Swedish National Police Board Statutes

Swedish term

Lag (2003:1156) om överlämnande från Sverige enligt en europeisk arresteringsorder
Lag (1957:668) om utlämning för brott
Lag (1959:254) om utlämning för brott till Danmark, Finland, Island och Norge
Semesterlag (1977:480)
Kollektivavtal
Kommittédirektiv (Dir)
Svenskt näringsliv
Lag (1915:218) om avtal och andra rättshandlingar på förmögenhetsrättens område.
Lag (2002:329) om samarbete med Internationella brottmålsdomstolen
Länsstyrelse
Lag (1976:580) om medbestämmande i arbetslivet (MBL)
Lag (1982:80) om anställningsskydd (LAS)
Proposition (Prop.)
Sveriges internationella överenskommelser (SÖ)
Arbetsdomstolen (AD)
Lag (1998:167) om tillämplig lag för avtalsförpliktelser
Lag (1992:1300) om krigsmateriel
Militära underrättelse- och säkerhetstjänsten (MUST)
Brottsbalk (1962:700)
Privat militärt företag

Vaktbolag
Folkförsvaret
Lag (1992:1528) om offentlig upphandling
Bevakningsföretag (vaktbolag)
Lag (1974:191) om bevakningsföretag
Väktare
Säkerhetsskyddslag (1996:627)
States offentliga utredningar (SOU)
Rikspolisstyrelsens författningssamling (RPSFS)

Swedish Security Service
Swedish Statutes
Swedish Work Environment Authority
The Swedish Fellowship of Reconciliation
(SweFOR)
Tort Liability Act
Total defence
Trading Prohibition Act
Very Important Person (VIP)
Weapons Act
Work Environment Act
Working Hours Act

Säkerhetspolisen (SÄPO)
Svensk Författningssamling (SFS)
Arbetsmiljöverket
Kristna Fredsrörelsen
Skadeståndslag (1972:207)
Totalförsvaret
Lag (1986:436) om näringsförbud
VIP
Vapenlag (1996:67)
Arbetsmiljölagen (1977:1160)
Arbetstidslag (1982:673)

1. Introduction¹

This report covers the Swedish national legislation relevant for private military and security companies (PMC/PSC). The report corresponds to WP 7.1 (“The existing regulatory context for PMS/PSC at the national and EU level, report on the domestic legislation in relevant countries”) of the project Regulating Privatization of “War”: the role of the EU in assuring compliance with international humanitarian law and human rights (PrivWar).

2. Scope of the Report

For the purpose of this report the term Private Security Company (PSC) will be used and it refers to a company established under Swedish law; delivering security services on a contractual basis; in a war, conflict or post-conflict zone; and the execution requires: the carrying of weapons.

Swedish legislation does not provide any specific rules aiming at regulating private military and security companies offering their services abroad. Despite this, existing national legislation in different fields may be relevant for such business, e.g. laws on controlling the possession and the carrying and use of weapons; arms export; state control over the use of force; criminal law etcetera. That type of legislation will inevitably have an impact on security companies established under Swedish jurisdiction and on individuals, being Swedish citizens or not, residing or domiciled in Sweden. This report will outline the national legal framework which may possibly be relevant in this respect.

3. Outsourcing of Military and Security Services – a Swedish perspective

During the cold war most of the available resources in the Swedish society could be mobilized in the case of war; bakeries, electrical companies, ferries, airliners, vehicles etcetera. The Swedish defence system came to include virtually the entire society where almost everything could be used by the Armed Forces in order to preserve Sweden’s freedom and independence. Terms such as “total defence” and “public defence” manifested everyone's participation in the defence of the country. In this perspective outsourcing of military and security related services is old news. After the cold war the situation has evolved somewhat differently; partly because the tasks for the Armed Forces has expanded and nowadays includes an active participation in peace operations on a larger scale. In a domestic perspective; companies offering services such as security guards, bodyguards and transport of valuables and money, is an integral part of the society. In war, conflict and post-conflict zones however the outsourcing of similar

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services offers new challenges since it is a field of business, which from a societal perspective, requires certain government control.

The Swedish Armed Forces started in 2005 to use private security companies on a national level to conduct transports of weapons and munitions² and to guard stores of weapons. The extent of the use of such services today is not known. Abroad, both the Swedish Armed Forces and the Swedish Foreign Service procure security services from Swedish as well as, local or otherwise non-Swedish companies with specific knowledge of the relevant area. Such services include security guards for the protection of buildings, restricted areas and military camps, body guards for ambassadors, top consular officials or VIP's on temporary visit etcetera.³ The Ministry of Foreign Affairs has for instance procured security service for the embassy in Kabul from a Swedish company called Vesper Group. It provides the mission with security coordinators and a team of body guards.⁴ Vesper Group employees, working for the Swedish Foreign Service, enjoy diplomatic status and they are, when carrying out their mission, allowed to use force in self-defence only.⁵ The fact that the Swedish Armed Forces uses local nationals to manage part of the camp security in e.g. Afghanistan is well known. How the command and control over locally employed security staff is executed and organized is not known. Furthermore, during the last couple of years the Swedish Armed Forces have identified several areas suitable for outsourcing in the quest for more economic efficiency; that is logistics, transports, facility management, equipment maintenance and other support services.⁶ It is thus not unrealistic to assume that outsourcing within the Swedish Armed Forces and other Swedish authorities operating in war, conflict and post-conflict zones will increase.

4. Swedish Private Military and Security Companies

Swedish PSCs offering security services, or educating individuals performing such services for stationing, in war, conflict and post-conflict zones are easily counted. One can conclude that there are probably not more than a handful of enterprises potentially belonging to this category.⁷ Swedish examples are thus few. However, in 2007 the County Administrative Board in Uppsala suspended the license for Dynsec AB, a security company which offered e.g. education for security personnel aiming at high-risk environments. On their homepage the company promoted its personal security detail courses, aiming at service in Africa and the Middle East. The courses included training modules such as tactical shooting and tactical driving. The Uppsala County Administrative Board pointed out in the reasons for the decision to suspend the license that the education offered was "more advanced than Swedish law permitted" and that

² Military Security and Intelligence Directorate, Annual Report 2006, p. 34.

³ See e.g. Swedish Security Service, Annual Report 2008, p. 47.

⁴ Svenska Dagbladet, 2010-03-04; Svenska dagbladet 2010-10-05.

⁵ Answer to written question the Minister for Foreign Affairs 2009/10:629.

⁶ Confederation of Swedish Enterprise (2009).

⁷ See e.g. SweFOR (2007), p. 11 f & Svenska dagbladet, 2010-10-05.

the courses were "inappropriate from a general point of view". The National Police board has later stated that if they were to receive information that a Swedish company, licensed as a Security Company (see section 5 below), offered such services, they would questioning the authorization.⁸

5. The Security Company Act

5.1 Extraterritorial application

The offering of services such as security guards, bodyguards and transport of valuables and money, is regulated in the Security Company Act.⁹ Of interest for the purpose of this report is the applicability of that law outside Swedish territory. More specific, is a company registered under Swedish law obliged to require a license in order to legally offer such services abroad? From the wording of the law it is not possible to conclude that the Security Company Act is not applicable on business conducted abroad.¹⁰ The law focuses on where the company headquarters is located, and not where it geographically offers security services.¹¹ Furthermore, a quick review of the preparatory work reveals that the question has not been properly addressed.¹² Even though it appears that the question did not trouble the legislator, neither when the law first was adopted nor at any of the revisions it does not mean that the act cannot have certain extraterritorial applicability. On the contrary, the link between a security company established under Swedish law, its business abroad and Sweden is strong enough to create a legitimate interest to exercise control and require authorization. First, because the duties generally carried out by security guards, body guards and other security personnel necessarily puts them in a special position in relation to the public, which typically requires certain supervision and control from the society. Furthermore there is a public interest and a general duty to make sure that impunity is not prevalent. These interests are particularly important in war, conflict or post-conflict zones where the local authorities cannot be expected neither to have the capacity to issue appropriate regulations, exercise supervision nor to investigate and when necessary prosecute. In addition hereto the answer by the Minister of Justice to the Parliament on a written question (accounted for in section 12 below) seems to indicate that the Government considers the Security Company Act applicable to companies registered under Swedish law offering security services abroad.¹³ Nevertheless, the question has neither been subject to adjudication by a Swedish court nor to direct consideration by a County Administrative Board in a case of authorization. To sum up, good reasons suggests that the law has a certain extraterritorial applicability. However, the lack case law in this respect makes the situation somewhat unclear.

⁸ E-Mail 2010-09-24.

⁹ Security Company Act (1974:191).

¹⁰ Security Company Act (1974:191), sec. 1-2.

¹¹ Security Company Act (1974:191), sec. 5.

¹² See e.g. Government Bills 1974:39; 1979/80:122; 1988:89:63; 2005/06:136 & 2008/09:157.

¹³ Answer to written question 2007/08:1299.

5.2 *The Security Company Act*

According to Swedish law a company must be authorized by the County Administrative Board, in the county where the company board has its headquarters, in order to be allowed to offer security services. A company offering such and similar services is called a *security company*. In order to obtain a license the services must be offered on a *commercial scale* and for customers. A company that does not provide security services but offers education and courses for security personnel and security guards (*training company*) must also apply for a license.¹⁴ A security company may not be granted a general license; rather an authorization is always limited to a certain type of business and service. The offering of military and/or related security services abroad or otherwise in a war, conflict or post-conflict environment is not specifically mentioned in the law.⁹

The Security Company Act requires that all personnel hired by a security company, including board members and the managing director, must be vetted in respect of law-abidingness, civil reliability and suitability in general for employment in a security company. A security company that fulfils certain requirements may be licensed to possess weapons and their personnel may be granted permission to carry arms when executing certain duties. Personnel hired by a security company may only use weapons in self-defence. The Swedish National Police Board is authorized to issue regulations regarding equipment, including weapons and their use, the carrying of uniforms, mandatory training and similar.¹⁵

Both security and training companies are subjected to supervision of the County Administrative Board. Security Companies must account ex officio for their business each year in a formal report to the County Administrative Board in the county where they acquired their license. If security services are furnished without proper authorization it is an offence punishable with a fine or imprisonment for at most six months.¹⁶

6. Regulation of armed force

6.1 *Possession of arms*

The possession of arms is regulated in the Weapons Act.¹⁷ The act has no evident application outside the Realm and the reasons suggested for extraterritorial applicability of the Security Company Act do not apply. The act is principally not applicable to the state itself i.e. the Police, the Armed Forces and so on. The possession, production, trade and all other handling of weapons and ammunition is generally prohibited in Sweden. Hunters, sportsmen, security companies, museums etcetera must apply for a license to

¹⁴ Security Company Act (1974:191), sec. 2.

¹⁵ See Swedish National Police Board Statutes (2009:18), FAP 579-2 .

¹⁶ Security Company Act (1974:191), sec. 14.

¹⁷ Weapons Act (1996:67).

possess weapons. A license to possess a weapon is always limited to a certain purpose, that is, it is not allowed to own a weapon without a reason. The local Police grant permits to possess weapons and violations against the Weapons Act is punished with a fine or imprisonment for at most one year. A weapon used in a violation of the Weapons Act is almost exclusively forfeited.¹⁸

6.2 Arms export

6.2.1 Munitions export

The export of arms and munitions is regulated in the Military Equipment Act.¹⁹ What goods constitute munitions is decided by the Government in a government order. The act provides for licensing for the production of munitions as well as for offering such products for sale. Swedish authorities, Swedish companies and persons who are resident or permanently domiciled in Sweden are required to obtain a Swedish license in order to legally offer munitions for sale or otherwise supplying such goods abroad or to foreign countries. The penalty for violating the Military Equipment Act is a fine or imprisonment for not more than four years. Licensing and control is exercised by the Swedish Agency for Non-Proliferation and Export Controls.¹⁹

6.2.2 Service export

The Military Equipment Act does not cover the export of services as such. However training for a military purpose of persons who are not Swedish citizens, in Sweden, requires a permit. A violation is penalized with a fine or imprisonment for not more than four years.¹⁹ In addition hereto Swedish authorities, Swedish companies and persons who are resident or permanently domiciled in Sweden are required to obtain a permit when offering such training abroad.²⁰ Military training of Swedish citizens in Sweden and in a non-governmental context can be illegal, and considered as *unlawful military activity*, in accordance with the Penal Code.²¹

The Government Military Equipment Inquiry which was concluded in 2005 was assigned, among other tasks; to investigate if there was a need for legislation with regards to the export of military services since the lack of such regulation in Swedish law was considered a major deficiency.²² The inquiry suggested that the export of technical assistance, training, transfer of knowledge and skills or consultancy services in relation to the export of Military Equipment abroad should be subjected to licensing.²³ The suggestion has so far not brought about any legislation.

¹⁸ Weapons Act (1996:67), ch. 9, sec. 5.

¹⁹ Military Equipment Act (1992:1300).

²⁰ Military Equipment Act (1992:1300), sec. 10.

²¹ Cf. Penal Code (1962:700), ch. 18, sec. 4.

²² Swedish Government Official Reports 2005:9, p. 239, 287.

²³ Swedish Government Official Reports 2005:9, p. 27.

7. Corporate law

7.1 Freedom of trade

The principle of *freedom of trade* is prevailing in the Swedish legal system. That is, one does not have to obtain a license, or even register, to be allowed to run a business. The only exception is if an individual, by a court, has been imposed with trading prohibition.²⁴ Such trading prohibition is always limited to a specified period of time and can be imposed on an individual only, after he or she, in the capacity as a private entrepreneur, has seriously breached fundamental rules applicable to the conduct of commercial activities.²⁵ Furthermore certain type of businesses, e.g. the offering body guard services, may be subjected to authorization from or registration with; local, regional or national authorities. For obvious reasons many choose to organize their businesses in one of the legal forms available according to Swedish law, of which sole trader or private firm, unlimited partnership, limited company and economic association are the most common. The respective legal forms are subject to different regulations. Not complying with the applicable rules can among other things lead to compulsory liquidation whereby the business will be dissolved and cease to exist.

8. Labour law²⁶

Most areas of the Swedish labour market are in one way or another regulated in law.²⁷ The applicable rules fall into two broad categories: a body of rules on social protection and conversely a set of rules from which deviation is allowed within certain limitations. Absolute social protection rules for individual workers and basic rules for the functioning of the labour market are to be found in e.g. the Employment Protection Act,²⁸ the Employment (Co-Determination in the Workplace) Act²⁹ and the Work Environment Act.³⁰ The social protective rules are in many cases applicable not only to employees but also to other equivalent contractors³¹ Nonetheless, the Swedish model provides the parties on the labour market, mainly employers' associations and unions, with significant room for departing from much of the legislation, e.g. when it comes to wages, working hours in the Working Hours Act,³² vacation in the Annual Leave Act³³ and so on. This can be done, depending on the regulation, in different type of collective

²⁴ Trading Prohibition Act (1986:436).

²⁵ Trading Prohibition Act (1986:436), sec. 1-2.

²⁶ The most important acts relevant for the Swedish labour market are available in English on the Governmental Offices homepage, <http://www.sweden.gov.se/sb/d/13361>

²⁷ Gellner & Sydolf, p. 15.

²⁸ Employment Protection Act (1982:80).

²⁹ Employment (Co-Determination in the Workplace) Act (1976:580).

³⁰ Work Environment Act (1977:1160).

³¹ Karnov Internet, Employment (Co-Determination in the Workplace) Act sec. 1, note 1, 2010-09-20.

³² Working Hours Act (1982:673).

³³ Annual Leave Act (1977:480).

agreements but in some cases also in individual employment contracts. Collective agreements are important also for non-union members since they are considered to express the minimum acceptable standard within that employee category. Disputes between employers and individual workers may be solved in an ordinary district court or in the Labour Court, which is a special court for labour related disputes, depending on the conditions in each case. Swedish labour law does not contain any regulation aiming especially at private security companies.

8.1 Applicability of Swedish labour law in international cases

The applicability of Swedish labour law in cases of an international character is to be decided according to the rules of conflicts of laws. The jurisdiction for Swedish courts to rule on such cases should be decided according to international procedural rules applicable.³⁴ Some of the social protective rules established in e.g. the Employment Protection Act are of an overriding mandatory character and are to be applied irrespective of which law otherwise applicable to that case.³⁵ Swedish labour law is thus highly relevant for PSCs. In the preparatory work for the Employment Protection Act it is stated that the act in principle is applicable to work carried out outside the Realm, if both the employer and the employee are Swedish legal entities. Furthermore, an agreement between an employer and an employee on applicable law is not of relevance when deciding on the issue of applicable law.³⁶ The reason for this is the social protective character of the law. The same reasoning can be applied in relation to other labour law regulations of similar type. In relation to the European Union states the *Convention on the law applicable to contractual obligations* is applicable.³⁷ It entails two provisions of particular interest to employment. First, if the parties have not chosen law in the contract, the law in the country in which the employee habitually carries out his work is applied. If no such country exists, the law of the country in which the place of business through which the employer was engaged is applied. However, if it from the circumstances as a whole appears that the contract is more closely connected with another country, the law of that country will be applied. Second, if a choice of law is made, it does not deprive the employee of the protection afforded to him by the mandatory rules of the law which would be applicable if a choice of law was not made. To sum up, the social protective character of certain regulations in Swedish labour law extends the applicability to international employment relations, which may for obvious reasons be of importance for PSC established under Swedish law.

³⁴ Karnov Internet, Employment (Co-Determination in the Workplace) Act (1976:580), note *, 2010-09-20; Karnov Internet, Employment Protection Act (1982:80), note *, 2010-09-20.

³⁵ Bogdan, p. 84 f.

³⁶ Government Bill 1973:129, p. 229.

³⁷ Law applicable to contractual obligations (1998:167).

8.2 Work Environment Act

The Work Environment Act³⁸ contains basic provisions regarding the work environment. The employer has the primary responsibility for the work environment and must consequently take necessary measures to prevent ill-health and accidents at work and furthermore ensure a satisfactory work environment in general. The Work Environment Act is supplemented by a comprehensive set of regulations issued by the Swedish Work Environment Authority in its Statute Book, as *Provisions* and *General recommendations* specifying the requirements to be met by the work environment for different types of work. The Work Environment Act is principally not applicable outside the Realm,³⁹ the exception being the Armed Forces and the Police when operating abroad.⁴⁰ An employment with the Armed Forces or the Police, stationed abroad, is considered to have such connection to Sweden so that the Work Environment Act should apply, at least partly. Other Swedish Authorities are expected to apply the act in relation to their personnel stationed abroad, e.g. the Foreign Service.⁴¹ In the preparatory work it was pointed out that work assignments can have connections to several countries and in such situations some provisions regarding the employer's obligations in relation to the employee may be applicable also outside Swedish territory.⁴² These circumstances are of importance for PSCs; in the first case when conducting work for a Swedish government authority abroad and in the second case when performing work abroad for whatever customer. Thus the Work Environmental Act can have certain extraterritorial applicability.

8.2.1 Work Environment Crime and Company Fine

An infringement of the Work Environment Act entails personal or corporate responsibility. An individual who seriously violates his or hers duties according to the act, and thereby causes death, bodily injury or exposes an individual to danger of life may be sentenced to pay a fine or imprisonment.⁴³ A company may also be ordered to pay a corporate fine if the crime is committed in the exercise of business activities and the entrepreneur has not done what could reasonably be required of him for prevention of the crime. A corporate fine amounts at least five thousand Swedish crowns and at most ten million Swedish crowns.⁴⁴

³⁸ Work Environment Act (1977:1160).

³⁹ Karnov Internet, Work Environment Act (1977:1160), sec. 2, note 2, 2010-09-26; Government Bill 1976/77:149, p. 213.

⁴⁰ Sec. 1 a & 2 lag (1999:568) om utlandsstyrkan inom Försvarsmakten.

⁴¹ Government Bill 1988/99:68, p. 12.

⁴² Government Bill 1976/77:149, p. 214.

⁴³ Penal Code (1962:700), ch. 3, sec. 10.

⁴⁴ Penal Code (1962:700), ch. 36, sec. 7-8.

8.3 Liability for subordinates

According to the Tort Liability Act⁴⁵ employers have an almost unlimited liability for damages that employees, or other equivalent contractors, may cause at work or in close relation to the work assignments performed. The responsibility also covers other tortuous actions that an employee may cause at work. It does not matter if the damage is caused due to negligent or intentional conduct; or if it can be made clear who of several employees caused the damage.⁴⁶

9. Government procurement

Public Procurement has partly been accounted for in other parts of this report (e.g. in relation to the Armed Forces section 3 above). The national framework regulation can be found in the Public Procurement Act,⁴⁷ however this field of law is greatly affected by European Union legislation and related case-law. The underlying principles for public procurement are the free movement of goods and services and freedom of establishment. For this to be achieved a contracting authority shall:⁴⁸

“[...] treat suppliers in an equal and non-discriminatory manner and shall conduct procurements in a transparent manner. Furthermore, the principles of mutual recognition and proportionality shall be observed in procurements.”⁴⁹

When procuring military equipment and related services and products, special rules may apply. Especially when it comes to classified information which needs to be protected throughout the procurement process. According to the Security Protection Act, certain deviations from part of the rules that otherwise govern public procurement are permissible.⁵⁰ The procurement process can be secret or otherwise be subject to certain limitations for national security reasons. Such protected procurements may not be used to restrict competition or otherwise be conducted in a discriminatory manner.

10. Criminal responsibility

The 1962 Penal Code⁵¹ constitutes the basis for Swedish criminal law. However there is a comprehensive amount of special criminal law in different regulations e.g. *Work Environmental Crime* in the Work Environment Act.

⁴⁵ Tort Liability Act (1972:207).

⁴⁶ Karnov Internet, Tort Liability Act (1972:207), ch. 3, sec. 1, notes 32-36, 2010-09-27.

⁴⁷ Public Procurement Act (2007:1091).

⁴⁸ Falk, p. 33 ff.

⁴⁹ Public Procurement Act (2007:1091), ch. 1, sec. 9.

⁵⁰ Security Protection Act (1996:627).

⁵¹ Penal Code (1962:700).

10.1 Applicability of Swedish Criminal Law

Swedish courts have a fairly broad jurisdiction when it comes to crimes committed abroad. Such crimes shall be adjudged according to Swedish law and by a Swedish court if the crime has been committed:

1. by a Swedish citizen or an alien domiciled in Sweden,
2. by an alien not domiciled in Sweden who, after having committed the crime, has become a Swedish citizen or has acquired domicile in the Realm or who is a Danish, Finnish, Icelandic, or Norwegian citizen and is present in the Realm, or
3. by any other alien, who is present in the Realm, and the crime under Swedish Law can result in imprisonment for more than six months.⁵²

In addition hereto a number of other requirements must be fulfilled. First, the requirement of double criminality must be fulfilled which means that the crime must be punishable both in the country where it was committed as well as in Sweden. Further a sanction imposed for a crime committed outside the Realm “may not be more severe than the severest punishment provided for the crime under the law in the place where it was committed”. In all other regards courts shall exclusively apply Swedish law. Applicable law is thus never an issue when Swedish courts adjudge criminal cases. Moreover the crime must, according to Swedish law, render in a more severe punishment than a fine (which means minimum six month of imprisonment).⁵³ Sexual crimes committed against individuals under the age of 18 years and genital mutilation is exempted from the requirement of double criminality.

Moreover a Swedish court is empowered with jurisdiction to adjudge cases according to Swedish law if the alleged crime is committed abroad and it has a connection to Sweden. That is, if committed against the Swedish nation, a Swedish municipal authority or other assembly, or against a Swedish public institution; or if the crime is committed by service men or officers in the Armed Forces, or the Police, stationed abroad or other civil servants belonging to the police, the coast guard and similar in the course of duty outside the Realm. Lastly Swedish courts are empowered to decide any case if the alleged crime is hijacking, maritime or aircraft sabotage, airport sabotage, crime against international law, unlawful dealings with chemical weapons, unlawful dealings with mines, terrorism, false or careless statement before an international court, interference in a judicial matter regarding a case before an international tribunal or if the least severe punishment prescribed for the crime, according to Swedish law, is imprisonment for four years or more.

10.2 Surrender of individuals in criminal matters

Swedish law provides a range of possibilities to surrender alleged criminals for proceedings in the country where the crime was committed or to international

⁵² Penal Code (1962:700), ch. 2, sec. 2.

⁵³ Penal Code (1962:700), ch. 2, sec. 2.

tribunals.⁵⁴ Transfer of individuals for criminal proceedings in another EU member state is in most cases based on the Act on surrender from Sweden according to the European arrest warrant⁵⁵ which is an implementation of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. Transfer to Nordic countries, which are not EU member states, can be done according to the Act on surrender to Denmark, Finland and Norway.⁵⁶ For transfer to countries outside the Scandinavian countries and the EU the Act on Extradition of Offenders⁵⁷ is applied. The extradition framework aims at ensuring an efficient examination of the extradition request, which fulfills the requirements in a society governed by the rule of law and due process and Sweden's obligations under international law. For most of the international criminal tribunals there are special regulations allowing surrender for criminal proceedings.⁵⁸

10.3 Mercenaries

Sweden is not party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries⁵⁹ and has no law prohibiting individuals being mercenaries abroad or otherwise to be enrolled in military service for another country. However what an individual does in his or hers service for another state can still be a criminal offence under Swedish law. Accordingly, Swedish courts have under certain circumstances jurisdiction to adjudge such cases. The Penal Code has two provisions of interest when it comes to mercenaries and related activities. Organized military training outside the auspices of the Armed Forces in the Realm for combat or similar can be a criminal offence which could bring about responsibility for *unlawful military activity* and result in a fine or imprisonment for at most two years.⁶⁰ Furthermore it is penalized in to recruit, or otherwise induce, people to enter into foreign military service or comparable duties, without the authority of the Government. The offence, *unlawful recruiting*, is punished with a fine or, in peace time, maximum six month of imprisonment.⁶¹

⁵⁴ E.g. Act on Extradition of Offenders; Act (1994:569) on Cooperation between Sweden and the International Tribunals for Violations of International Humanitarian Law; Cooperation with the International Criminal Court Act (2002:329); Agreements: e.g. United States of America (SÖ 1963:17, SÖ 1984:34), Canada (SÖ 1976:30, 1980:21 & 2001:42) and Australia (SÖ 1974:3 & SÖ 1985:64).

⁵⁵ Act (2003:1156) on surrender from Sweden according to the European arrest warrant.

⁵⁶ Act on surrender to Denmark, Finland and Norway (1959:254).

⁵⁷ Act on Extradition of Offenders (1957:668).

⁵⁸ Committee terms of reference 2009:88 – Review of the Act on Extradition of Offenders etc.

⁵⁹ United Nations, Treaty Series , vol. 2163, p. 75.

⁶⁰ Penal Code (1962:700), ch. 18, sec. 4.

⁶¹ Penal Code (1962:700), ch. 19, sec. 12.

11. Civil liability

11.1 Contractual and tort liability

There are no specific laws, or any case law, in Sweden regarding civil liability and PSCs. As in most legal systems the basis for being liable to pay damages is either founded on a contractual relationship, for which the contract as such is of great importance, or tort. *Contractual liability* arises out of the breach of a contract provision and there is considerable room for the contracting parties to agree on most terms and conditions for contractual liability. According to the Contracts Act undue provisions in such agreements can be adjusted.⁶² *Liability for tort* is on a general level regulated in the Tort Liability Act. Many rules are however to be found in special legislation in different fields. The liability to pay damages for tort is based on neglect or intent and such liability can be imposed for personal injuries as well as property damages. Further, if harm arises out of a crime, the culprit may be ordered to pay for the moral damages caused.⁶³

12. The official Swedish position vis-à-vis PSCs

12.1 The Government

The Minister of Justice and the Minister of Foreign Affairs have in the last couple of years answered questions in relation to PSCs. In 2007 the Minister of Justice – Beatrice Ask – was asked if she was prepared to take legislative measures in order to close possible loopholes in the Swedish legislation in relation to PSCs operating in war, conflict or post-conflict zones.⁶⁴ The Minister answered that the police is responsible for maintaining law and order in society but that it is a well established fact that certain security services are provided by private companies. She concluded that the community, through the Security Company Act and the County Administrative Boards has the means to exercise control and follow-up on security companies established under Swedish law. She also recognized that some companies and certain individuals may choose to run business that is not covered by the Security Company Act and to the extent such business constitutes a criminal offence legal proceedings should be taken accordingly. The Minister also noted that Switzerland and the ICRC have taken a joint initiative, where Sweden will take part, to foster the adherence to international law and human rights in situations where private companies act under such circumstances and that she intended to follow how the initiative developed.⁶⁵

In early 2010 the Minister for Foreign Affairs was asked a question in the parliament with regards to the fact that the Foreign Ministry hires private security companies for its security in e.g. Afghanistan. The Minister was asked what measures he had taken in

⁶² Contracts Act (1915:218), sec. 36.

⁶³ Tort Liability Act (1972:207), ch.2, sec. 3; Karnov Internet, Tort Liability Act (1972:207), ch. 3, sec. 2, note 42, 2010-09-27.

⁶⁴ Written question 2007/08:1299.

⁶⁵ Answer to written question 2007/08:1299.

order to ensure that the PSCs, when performing duties for the Ministry, complied with Swedish respective Afghan national law. The Minister of Foreign Affairs – Carl Bildt – stated that the Foreign Ministry has engaged through public procurement a private security firm to reinforce the security team at the embassy in Kabul with security coordinators and a team of bodyguards. According to the statement the security personnel works under the same premises as the diplomats. The security personnel has been screened and is through the code of conduct of the company bound to observe Swedish, Afghan and international law. When it comes to the use of force it is, according to the statement, limited to self-defence.⁶⁶ In the light of these two statements it is worth observing that Vesper Group, engaged by the Foreign Service in e.g. Afghanistan, is not authorized as a security company.⁶⁷

12.2 The Parliament

In 2009 a member of the Swedish parliament submitted a motion and suggested that the parliament should announce to the government the need of an inquiry regarding, on the one hand the occurrence of private military companies in Sweden and, on the other hand, the involvement of Swedish citizens in such companies.⁶⁸ The Committee on Justice of the Swedish Parliament answered the motion in a consideration and referred to the written statement of the Minister of Justice in the question accounted for above and in addition thereto stated that the present regulation of security services in Sweden which entail that private actors who run such businesses is screened and must be authorized, is satisfactory. According to the statement there was no need for the parliament to take action in this question.⁶⁹

12.3 Conclusions

In Summing up the official Swedish position as, expressed by the Government, through the Minister of Justice, and the Parliament, through the Committee on Justice, seems to be that there is no need to take national initiatives to inquire or otherwise clarify the situation regarding Swedish PSC operating in war, conflict or post-conflict zones. For that reason one can also conclude that the Government does not consider it necessary to take legislative measures at this moment.

13. Conclusions

Sweden has no legislation specifically aiming at regulating PSC established under Swedish law which operates aboard in war, conflict or post-conflict zones. That,

⁶⁶ Written question 2009/10:629.

⁶⁷ E-Mail 2010-09-13.

⁶⁸ Motion to the Parliament, Private Security Companies, 2009/10:Ju332.

⁶⁹ Consideration of the Committee on Justice, 2009/10:JuU13, p. 17 f.

however, does not necessarily mean that relevant regulation is non-existing. One can conclude that it is almost impossible to conduct training, at least legally, in the Realm aiming at missions in such environments, outside the auspices of the Police or the Armed Forces. Furthermore the PSC “industry” in Sweden is for obvious reasons quite limited but the tendency is that the Swedish Armed Forces and other Swedish authorities with operations abroad, procure more services from private contractors. Finally Swedish criminal law provides a legal basis for punishing culprits, Swedish citizens as well as others, for crimes committed in war, conflict and post-conflict zones. Without pronouncing on the need of any additional national legislation, it is reasonable to conclude that it is very optimistic to consider that challenges of an international nature can be solved with national measures only.

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