|  |  |
| --- | --- |
|  |  |
|  |  |
|  |  |
| 3 October 2013 |
|  |  |

|  |
| --- |
| **Ministry for Foreign Affairs** **Sweden** |
|  |
| Department for International Law, Human Rights and Treaty Law |
|  |

**Question 1 a)**

Sweden is a party to the International Covenant on Civil and Political Rights. Below is a summary of the specific provisions on detention in the Swedish Code of Judicial Procedure.

A prosecutor may decide to order the arrest of a suspect. When there are no longer reasons for an order for arrest, the prosecutor must rescind the order immediately. If there are continued reasons for an order for arrest, the prosecutor must apply to the court for a detention order not later than 12.00 on the third day after the arrest. The court must hold a hearing no later than four days after the arrest order was executed. The court is required to decide on the detention issue immediately after the hearing.

Relevant provisions in the Swedish Code of Judicial Procedure

Decisions to detain a person are issued by a court (Ch. 24, Sect. 5)

If there are grounds for detaining a person, he or she may be placed under arrest while awaiting the court's decision on detention (Ch. 24, Sect. 6, para. 1).

An application for a detention order shall be made without delay and not later than 12.00 on the third day after the arrest order (Ch. 24, Sect. 12, para. 1).

The detention hearing may never be held later than four days after the suspect was apprehended or the arrest order was executed (Ch. 24, Sect. 13, para. 2).

The court shall decide on the detention issue immediately upon the conclusion of the detention hearing (Ch. 24, Sect. 16, para. 1).

Year of adoption

The Code of Judicial Procedure was adopted in 1942. Chapter 24 (on detention and arrest) was updated in 1988, and Sections 12 and 13 were amended in 1996.

**Question 2**

There are other provisions on detention applicable in certain specific areas. An example is immigration detention under the Swedish Aliens Act. A summary of the relevant provisions in that Act is provided below.

The Swedish Aliens Act explicitly states that the Act is to be applied so as not to limit the freedom of aliens more than is necessary in each individual case (Ch. 1, Sect. 8). A detention order is executed only if other, less coercive measures cannot be applied. Accordingly, supervision (Ch. 10, Sect. 6) shall be used instead of detention whenever possible.

Detention is used only on certain grounds, as stipulated by the Aliens Act. The Aliens Act stipulates strict time limits regarding aliens held in detention.

According to the Aliens Act, a person aged 18 or older can be detained in the following circumstances (Ch. 10, Sects. 1 and 4):

- If detention is necessary to enable an investigation to be conducted. In this case, the person may not be detained for more than 48 hours.

- If the person’s identity is unclear, either upon arrival in Sweden or when he or she subsequently applies for a residence permit. If the person cannot provide probable proof of his or her identity, the person may be taken into detention for up to two weeks.

- If it is likely that the person will not be granted a residence permit and/or will be required to leave Sweden, and there is reason to believe that he or she will go into hiding or pursue illegal activities in Sweden. If it is likely that the person will not be allowed to stay in Sweden, the detention period may not exceed two weeks.

- If a refusal-of-entry or expulsion order has been issued, the alien may be detained for a maximum of two months, unless there are exceptional grounds for a longer period.  An alien who has been served a refusal-of-entry or expulsion order cannot be held longer than twelve months in detention even if the grounds for the order still exist.

The legislation allows the detention of a minor in certain circumstances, with a view to their removal from Sweden. A child may not be detained for more than 72 hours or, if there are exceptional grounds, for a further 72 hours (Ch. 10, Sects. 2 and 5).

Detained aliens are kept in special premises – detention centres – run by the Swedish Migration Board.  The detention centres are specially designed not to look like institutions for correctional treatment. The detainees enjoy a considerable degree of freedom within the centres and they have substantial access to contacts with the outside world. They also have access to a range of activities. Against this background, detainees who are considered to be a danger to other persons may be separated from the other detainees and sometimes transferred to a correctional institution, remand centre or police arrest facility. Such a transfer may also be ordered if the alien has been expelled for a criminal offence or if there are some other exceptional grounds. Detained aliens are kept separated from prisoners in the correctional institutions (Ch. 10, Sect. 20).

Year of adoption

The Aliens Act was adopted in 2005.

**Question 3**

As concerns the provisions in the Swedish Code of Judicial Procedure, the following can be highlighted:

A suspect can be apprehended by the police while awaiting an arrest order from the prosecutor. The person may only be held for a very short time – more or less only to question the suspect. If the suspect is not released by the police the prosecutor must *immediately* decide upon release or arrest. From the time someone is arrested, the mechanism described under Question 1 is applicable.

**Question 4**

Yes, the mechanism described under Question 1 entails the immediate release of the suspect if the prerequisites for arrest or detention are not met. There are also possibilities for the suspect to receive monetary compensation in some cases if he or she has been under arrest for more than 24 hours or held in detention.

**Question 5**

Proceedings before a court are mandatory within four days after the arrest order was executed.

**Question 6**

See answer to Question 5.

Relevant provisions in the Swedish Code of Judicial Procedure

If the arrest order is not rescinded, the prosecutor shall, within the

time limit prescribed in Section 12, submit to the court, orally or in

writing, an application for an order to detain the person arrested. (Ch. 24, Sect. 11, para. 1)

An application for a detention order shall be made without delay

and not later than 12 o'clock on the third day after the arrest order. (Ch. 24, Sect. 12, para. 1)

If an application for a detention order has been presented, the court

shall hold a hearing on the issue of detention without delay.

The detention hearing may never be held later than four days after

the suspect was apprehended or the arrest order was executed. (Ch. 24, Sect. 13, para. 1-2)

**Question 7**

Yes. It should be submitted by the prosecutor not later than 12.00 on the third day after the arrest order. If the application for a detention order is not submitted within the prescribed time limit, the prosecutor shall rescind the arrest order immediately.

**Question 8**

No, since court proceedings are mandatory in accordance with answer 5, the question can hardly arise.