

Alternative Report

to the Swedish Government's response on the compliance of the EU-Commission's
recommendation of 27 November 2013 on procedural safeguards for vulnerable
persons suspected or accused in criminal proceedings
(2013/C 378/02)

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Introduction

Civil Rights Defenders, earlier known as the Helsinki Committee, and The National Organization for Social and Mental Health (RSMH), are currently cooperating towards improving human rights for individuals who are deprived of their liberty under Swedish law. To ensure individuals their rights, the two organizations have conducted a thorough investigation on the current human rights situation based on judicial review of the Swedish legal system and its conformity with international law, including the European Convention on Human Rights as well as how the laws are applied in reality.

Civil Rights Defenders and RSMH have identified a number of flaws in the legal system as well as in practice. Some of these flaws have been addressed in our reports to the UN, in our alternative reporting under the UPR, and some of the systematic flaws discovered have been addressed directly through communication with the Swedish government or state mandated investigators. However, Civil Rights Defenders and RSMH still have serious concerns about the severity of these systematic flaws and the Swedish government seemingly lack ambition in some aspects on the matter. Most demonstratively, there is a lack of understanding of the importance of identification and protection of vulnerable persons accused of a crime and ensuring that the individuals' human rights are protected. During 2016, the government put in place three official investigations concerning individuals accused of a crime. Neither of the investigations mentioned vulnerable persons as a group to focus on specifically.¹

We are appreciative that the EU Commission puts light on these important issues but are concerned that the Swedish government is not taking these recommendations seriously. Due to our concerns, we have chosen to issue this following statement with the hope that the Commission and the Swedish government may review the situation on these matters in Sweden.

Civil Rights Defenders and RSMH would like to point out the fact that identifying a vulnerable person is not only an issue of securing a person procedural rights. It is also a matter of making sure that the individual's health is maintained and secured, both mentally and physically. In Sweden, some individuals suffer damages in pre-trial detention each year due to

¹ Ministry of Justice, *Färre i häkte och minskad isolering*, ID no SOU 2016:52, report of the investigation on detention and restrictions, Stockholm 2016; Ministry of Justice, *Häktningsstider och forensiska undersökningar* ID no Ju2015/05664/Å, report of the Swedish Agency for Public Management, Stockholm 2016.

insufficient physical and/or mental conditions. A number of individuals have also died in detention.²

General comments on registration of disabilities

In Sweden, disabilities are not registered in any official or central register. Although, some authorities, such as the Social Insurance Office and job centres, do register disabilities while investigating a person's need of support. Such information is thus registered within the authorities' systems. The Public Access to Information and Secrecy Act (Swedish Code of Statutes 2009:400) regulates transfer of information between authorities in Sweden. Swedish authorities have an obligation to exchange information when the information is not classified.³ It is also possible to exchange classified information by transfer of confidentiality.⁴ In that way, for example the Swedish Police can get access to personal information that another authority has registered.

Beside the different authorities' own registers, the Chief Guardian Committee has a register of all persons who have been appointed an administrator/legal guardian. The chief guardians can provide information to the Police about whether someone has an administrator or not, and what the administrator's assignment comprises. The reasons why someone has an administrator or information about who applied to be appointed an administrator will never be shared. That information is possible to receive only through the decision of appointment taken by the District Court.

Except for in some specified cases, the Swedish constitution and Sweden's international ratified conventions do not permit mandatory health evaluations which include examination of a person's physical body, without the permission of the individual. Being processed into a pre-trial facility is not such an exemption. All measures concerning identification of vulnerable persons must therefore rely on the individual's free will. Parts of the constitution also protect

² See the following articles available at: <http://www.expressen.se/gt/markus-dog-i-sin-cell-fruktansvard-sorg/>, <http://www.dalademokraten.se/allmant/dalarna/stora-brister-i-samband-med-dodsfall-i-arresterer>, <http://www.expressen.se/kvallsposten/kameror-granskas-efter-michelles-dod/>, <http://www.svt.se/nyheter/lokalt/orebro/dodsfall-i-arresten-inte-det-forsta>. See also the criticism from the Parliamentary Ombudsman on the lack of adequate medical presence in detention facilities: <https://www.jo.se/Global/NPM-protokoll/NPM-protokoll%206889-2013.pdf>.

³ The Public Access to Information and Secrecy Act (2009:400), ch 6, para 5; Administrative Procedure Act (1986:223), para 6.

⁴ The Public Access to Information and Secrecy Act (2009:400), ch 3, para 1; ch 7, para 2; ch 11, para 1.

the individual from having his or her individual medical information shared with others without the individual's consent, including sharing with other agencies that might have a legitimate interest of obtaining that information. It means that the Police are not granted access to a person's medical file unless the individual grants access.

When a person is detained by Police, the Police will accordingly not have or be able to access any information on any documented pre-existing conditions.

SECTION 1

SUBJECT MATTER AND SCOPE

Elderly persons and people with disabilities are subjected to the same rules as everyone else in Sweden. The laws do not explicitly discriminate against these groups. Consequently, this means that when the legal system judges credibility, it presumes that all people have the same ability to explain a story. An important credibility principle in Swedish legal procedure is that stories are cohesive, detailed as well as not contradictory. It may be difficult for persons with disabilities to live up to these criteria, which must be taken into account.

There are some regulations stipulating special rights for vulnerable suspects or accused persons. The Administrative Procedure Act (1986:223) stipulates that "When an authority is dealing with someone who does not have a command of the Swedish language or who has a severe hearing impairment or speech impediment, the authority should use an interpreter when needed". This law concerns for instance the Police. The Code of Judicial Procedure asserts that an interpreter should be used when needed. The laws also include means of translation to and from Braille.

To some extent the general legislation provides for procedural rights, which facilitates the situation for vulnerable victims, but not for vulnerable suspects or accused. An example of this can be found in the Swedish Code of Judicial Procedure (1942:740) (chapter 12, paragraph 22), which ensures an individual the right to a legal assistant. The assistant can give legal advice and by power of attorney represent a person in court. This is not the same thing as the right to a lawyer who will protect and establish the individual's rights and defend them at all stages of criminal proceedings.

As can be seen in section 3 of this report, vulnerable suspects or accused sometimes do not receive the procedural rights as described in the recommendations.

Conclusion and suggested recommendations

The Swedish laws are objective, which means they do not discriminate against vulnerable suspect or accused. Except for the right to an interpreter, this means that the laws do not ensure specific procedural rights of vulnerable persons. Civil Rights Defenders and RSMH believe that both legislative and administrative measures are needed to ensure procedural rights for vulnerable suspect or accused at all stages of the criminal process.

We recommend the Swedish government to:

Assert and evaluate the possibility to establish a right for an individual of a vulnerable position to receive an ombudsman or support similar to what the Swedish legislation provides to victims in criminal proceedings;

To assert if laws and guidelines are in accordance with the recommendations as well as how such laws are applicable in reality;

Initiate extensive research on vulnerability and the connected issues in relation to individuals' procedural rights while in pre-trial facilities in Sweden;

Acknowledge the importance of taking vulnerable suspects and their procedural rights into account when making legislative adjustments concerning pre-trial facilities.

SECTION 2

IDENTIFICATION OF VULNERABLE PERSONS

Following its visit to Sweden in 2015, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stated in its report to the Swedish

government that “The procedure for screening newly arrived persons at police detention facilities continue to leave much to be desired.”⁵

As mentioned in the introduction, the Police will most likely not receive information on any documented pre-existing conditions of the individual. According to the regulations and general advice on Police Detention Facilities (PMFS 2015:7, FAP 102-1) (chapter 1, paragraph 6), an initial safety assessment should be carried out in connection with the detention in police custody. The purpose of this assessment is to estimate the need for security measures in case of danger of the life or health of the detainee.⁶ The detainee should also be asked about his or her health condition and medical treatment.⁷ However, the initial security assessment in police custody is only a basic and routinely procedure which leads up to identifying more acute health conditions and not the identification of possible vulnerabilities in relation to the criminal procedure.

In regards to pre-trial detention, the Swedish Prison and Probation Service’s regulations and general advice on detention (KVFS 2011:2) stipulates that an initial safety assessment should be carried out when an accused or suspected person arrives to the detention centre (chapter 1, paragraph 9). Furthermore, chapter 5 paragraph 1 regulates that an inmate should be asked about his or her health in connection with being taken into pre-trial detention and should as soon as possible be given the opportunity to have his or her health examined by a nurse. As for the Police, the initial security assessment performed by the Prison and Probation Service aims at identifying more acute health conditions. Nevertheless, the subsequent medical examination is much more thorough and includes a review of the detainee’s health care history, test results, evaluation on further contact with a physician and co-ordination of medical documents and measures.⁸ The examination in the pre-trial detention is carried out by a nurse. However, a doctor, psychiatrist or psychologist can be consulted in a subsequent procedure.⁹ Since the medical examination that is available in connection to the detention in police custody or pre-trial detention has no relation to the criminal proceedings, it does not

⁵ Committee for the Prevention of Torture (CPT), *Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 18 to 28 May 2015*, page 5.

⁶ The Swedish Police Authority, *Polismyndighetens föreskrifter och allmänna råd om polisarrest* (PMFS 2015:7), ch 1, para 6.

⁷ *Ibid.*, ch 6, para 1.

⁸ The Swedish Prison and Probation Service, *Initial hälsoundersökning*, internal regulations about health-care 2016.

⁹ Email correspondence between Lars Håkan Nilsson and Civil Rights Defenders.

safeguard the procedural rights of the accused or suspected, as requested by the Commission's recommendations.

Regarding the extent of the assessment, Civil Rights Defenders and RSMH believe that it may be possible to identify vulnerabilities through these measures, yet Sweden has no system for doing so. From the beginning of 2017, routinely screenings for ADHD of convicted prisoners will be carried out.¹⁰ The examination of these target groups may be more thorough than in general cases, and in some cases, enough in order to identify vulnerabilities. However, such screenings would not cover an overall identification of vulnerabilities in relation to the criminal proceedings.

In connection to a personal investigation in accordance with Act (1991:2041) on certain investigation of persons in criminal proceedings¹¹ (Civil Rights Defender's translation), the Prison and Probation Service should grant a detainee a trustee if she/he requires one and give his or her approval.¹² A trustee can ensure vulnerable persons their procedural rights but this measure is only applicable when a personal investigation is requested by the prosecutor or the court.¹³ It is applicable when the information is relevant to the choice of penalties which requires that the vulnerability have already been identified.¹⁴ The opportunity to get procedural assistance presupposes that the vulnerability have already been identified and requires that judicial authorities requests a such investigation.

The shortcomings in the system to identify vulnerabilities became clear in the case JO 2015/16 s. 260, where the Swedish Parliamentary Ombudsman¹⁵ criticized the treatment of a, later discovered, demented elderly woman. After being taken into custody by the Prison and Probation Service, with assistance from the police, it was concluded that the woman was in need of frequent observation but no health care staff was consulted. A nurse was consulted first the following day and since the judgement was already final she was transported to the prison the same day. Two days after being detained it was necessary to urgently take her to the hospital. She was later put in a private nursing home. The Parliamentary Ombudsman

¹⁰ Dagens Nyheter (DN), *Intagna ska undersökas för ADHD-diagnos*, 28 July 2016.

¹¹ Lagen (1991:2041) om särskild personutredning i brottmål.

¹² Act on Pre-sentence Investigation in Criminal Cases (1991:2041), para 4.

¹³ *Ibid.*, para 1-2.

¹⁴ Zeteo, *Law-commentary on the act on pre-sentence investigation in criminal cases para 1*, available at: http://zeteo.wolterskluwer.se.ezproxy.its.uu.se/document/brbkomm_brlag19912041?anchor=xbrbkommq1991q2041_1_px.

¹⁵ The Parliamentary Ombudsmen (JO) are appointed by the Swedish Riksdag (the Swedish Parliament) to ensure that public authorities and their staff comply with the laws and other statutes governing their actions.

criticized the initial decision to not consult a nurse or physician and for not informing the prison about her health condition. The case clearly shows the effects of a system without sufficient identification of vulnerable persons before the criminal proceedings. It also pinpoints the insufficiency with authority staff making the crucial initial identification of vulnerabilities.

Civil Rights Defenders is currently pursuing a case related to a man having senile dementia or, according to the forensic psychiatric investigation, a psychological disorder of unspecified type. The man has been the subject of a lawsuit in which his cognitive disabilities were not taken into account. He was not granted appropriate assistance related to his vulnerability.¹⁶ This case shows that even if there is an observation of the detained person being vulnerable, it does not relate to the criminal procedure.

Together these circumstances show that the examination performed does not ensure that all types of vulnerabilities are recognized. This applies especially to people taken into custody by the police which usually do not undergo any health care examination at all. Regardless of the accessibility and thoroughness of such an examination the result of the screening does not satisfy the aim to strengthen the procedural rights of the suspected and accused since it has no connection to the criminal proceedings at all.

Conclusion and suggested recommendations

The initial security assessment performed by the Prison and Probation Service only aims at identifying acute health conditions. The subsequent medical examination is more thorough and includes a review of the detainee's health care history, but, the examination does not ensure that all types of vulnerabilities are recognized. The medical examination that is available will however not satisfy the aim to strengthen the procedural rights of the suspected and accused since it has no connection to the criminal proceedings.

We recommend the Swedish government to:

Ensure that all personnel in charge of suspected and accused have basic knowledge of significant signs of vulnerability and have knowledge of the importance of identification of such individuals;

¹⁶ Scania and Blekinge Court of Appeal, *case no. B 1343-15*, judgement of 2 February 2016, Malmö.

Take immediate steps to ensure that every individual that are detained in a police facility are examined by qualified health-care personnel in a systematic and thorough manner on the same basis as recommended by the CPT; (This entails a responsibility to have qualified medical personnel available on site 24 hours a day).

Ensure that any information of vulnerability is being systematically transmitted to the relevant investigative authorities. Identification of vulnerability should be grounds for applying remedies and safeguards to ensure each individual their procedural rights.

SECTION 3

RIGHTS OF VULNERABLE PERSONS

Non-discrimination

The report Judiciary treatment of children with neuropsychiatric disabilities, from the law faculty of Stockholm University, takes a "holistic approach" to all stages of the judicial process (from pre-trial to any judgment). Although the circumstances in the report are reversed, that it is the victim and not the suspect who has a neuropsychiatric disability, the findings in the report are highly relevant even in cases where the suspect has a mental, intellectual or neuropsychiatric disability. Particularly noteworthy is the fact that the report shows that there was a significantly lower frequency of prosecutions in respect of cases in which the victim had a neuropsychiatric disability. (This despite the fact that the suspect confessed in a third of the cases, or there were witnesses or police who noticed damage.) The investigation therefore looked at the reasons for the low rate of prosecution, but also if the need for children's psychological / psychiatric expertise was met during the preliminary investigation. The investigator noted that children with neuropsychiatric disabilities were not heard in the same way as other children. Another observation was that information about disability usually was transferred into the investigation after, and not before, the child was heard.¹⁷ The report shows there is an obvious risk children with neuropsychiatric disabilities will be treated differently/discriminated against by the police, judges etc., but also that their procedural rights not are respected throughout the criminal proceedings as recommended by

¹⁷ Katrin Lainpelto, *Rättsväsendets bemötande av brottsutsatta barn med neuropsykiatriska funktionsnedsättning*, Juridiska institutionen, Stockholms universitet, Stockholm 2015.

the EU-commission. Here should be mentioned there are several well-developed methods of communicating with children with various disabilities as well as methods to enable children and adults the right to be heard. Those methods must be used in practice.

Presumption of vulnerability

In Sweden, there is no statutory presumption of vulnerability for persons with serious psychological, intellectual, physical or sensory disabilities, hindering them from understanding and effectively participating in the proceedings. As can be seen above, children as well as adults with serious psychological or intellectual disabilities are in a great risk to not receive the support they need within the judicial process. Civil Rights Defenders and RSMH therefor think that Sweden must undertake measures to ensure that police officers, law enforcement and judicial authorities will be able to presume vulnerability as recommended by the EU-commission.

Right to information

Persons who are deprived of their liberty shall, according to para. 12 of the Preliminary Investigations Ordinance (1947:948), without delay be given written information on their right to a lawyer, their right to an interpreter, the reasons for the arrest and of the charges against them, as well as their right to see a nurse. The detained persons shall also receive information on the right to have a relative or another person close to them notified of the deprivation of liberty. The information needs to be delivered in a language that the persons deprived of their liberty understand.¹⁸ The law does not however, stipulate that a vulnerable suspect or accused shall receive the information in an accessible format adapted to their disabilities. This means that there is a great risk that a vulnerable suspect or accused will receive information, but not be able to read or understand it.

Right to appropriate assistance

No Swedish law provide an explicit right for a vulnerable person to be given appropriate assistance and support when suspected or accused in a criminal proceeding. The subsequent question, the answers to which will be provided for below, is if this requirement can be

¹⁸ Swedish Government, *Response of the Swedish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Sweden from 18 to 28 May 2015*, p. 7 f., Strasbourg 2016.

fulfilled through other provisions within the Swedish legislation such as an accused person's right to a lawyer or the right of notification of custody in the initial stage or later on in the proceedings.

Appropriate adult

The Swedish legislation is insufficient in respect of notifying an appropriate adult with whom the accused person has a social relationship. The only category of persons that is granted this right within the Swedish legislation are minors whose legal guardian, according to the Code of Judicial Procedure, should be present during questionings by the police.¹⁹ Furthermore, when a minor is reasonably suspected of having committed an offence, the legal guardian or any other person who has a disciplinary role in relation to the minor shall immediately be notified and called to the questioning of the minor, unless it would be of harm to the investigation.²⁰ In these cases one must assume that the legal guardian of the minor is considered an appropriate adult.

Legal representative

According to the Swedish legislation, persons who have been deprived of their liberty shall as soon as possible, without harm to the investigation, have one of their closest relatives or another person particularly close to them notified. The Swedish provisions related to the right of notification when deprived of one's liberty do not focus on a person's right to appropriate assistance and support in criminal proceedings.²¹

A vulnerable person's right to be represented by an appropriate adult in criminal proceedings could nevertheless in some cases be satisfied through the right of notification. However, since it depends on what person is contacted or if a possible legal guardian –if contacted- decides to participate or not, the right to an appropriate adult cannot be considered fully safeguarded solely through the right of notification. The relevant provisions do not establish that '*the relative or other close person*' being contacted is considered an appropriate adult or is in fact the legal guardian of the person suspected or accused. Furthermore, in its report to the Swedish government on their visit to Sweden in 2015, the CPT pointed out that notification of

¹⁹ Code of Judicial Procedure (1942:740), ch 23, para 10, part 6.

²⁰ Act on Juvenile Offenders (1964:167) para 5.

²¹ Code of Judicial Procedure (1942:740) ch 24, para 21 a and Preliminary Investigations Ordinance (1947:948) para 12 a.

custody in Sweden was often delayed, even until the end of the period of police custody i.e. 96 hours, and recommended that the possibility to delay the exercise of the right of notification of custody should be more closely defined and made subject to appropriate safeguards.

In conclusion, the Swedish legislation is not sufficient when it comes to ensuring that a vulnerable person will have an appropriate adult or a legal representative present at all stages of the criminal procedure. In situations where an appropriate adult or legal representative has been nominated, there is no obligation for the appropriate adult or legal representative to be present at the police station or during court hearings.

Right of access to a lawyer

Sweden has on several occasions been criticized for not assuring the access to defence already at the initial stages of an investigation. In its report to the Swedish government on their visit to Sweden in 2015, the CPT pointed out that it was highly exceptional for persons in police custody to benefit from access to a lawyer as from the very outset of deprivation of liberty (i.e. from the moment they were obliged to remain with the police) and called upon Sweden to take effective steps to ensure individuals this right.²²

Civil Rights Defenders and RSMH are pleased to see that the Swedish government has adhered to the criticism and proposed amendments to the Swedish Code of Judicial Procedure (1942:740).²³ The Government Bill was passed in the Swedish Parliament, which means that the right of access to a lawyer from the very outset of an investigation should be granted to individuals as of the 27 November 2016, when the amendments will enter into force.²⁴

Possibilities to waive ones right to a lawyer

In Sweden, vulnerable persons are not explicitly protected by law from being able to waive their right to a lawyer, and thus not guaranteed a fair trial. The Parliamentary Ombudsman has stated that although the laws in Sweden are satisfactory in the sense that they provide

²² CPT, *Report to the Swedish Government carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Sweden from 18 to 28 May 2015*, 17 February 2016, p. 18 f.

²³ Government bill (2015/16:187) *on the implementation of the EU defence directive*.

²⁴ Code of Judicial Procedure (1942:740) ch 23, para 10, part 4.

protection to vulnerable suspects or accused persons, and subsequently safeguard their right to a fair trial, the application of the law may strip them of their rights. There is a need for better records of situations when suspects have waived their rights and why they have done so. Additionally, there is a need for more awareness of the vulnerable situation that these persons are in.²⁵

There are two cases that have raised particular concern in Sweden. In the first case, the Police interrogator questioned the suspect about alleged grave arson while the suspect was being treated at the hospital. The interrogator continued with the interrogation without having a legal counsellor present even though the suspect was not only in a vulnerable situation due to being hospitalized and suspected of a grave crime, but also feared to be mentally unstable at the time.²⁶ In the second case, a 15 year old boy was arrested in the middle of the night accused of attempted offence of aggravated assault.²⁷ In both cases the Parliamentary Ombudsman raised concerns about how the police and prosecutor's offices handled the suspects' waiving of the right to defence counsel.

When it comes to questionings by the Police, the new regulation in the Swedish Code of Judicial Procedure (chapter 23, paragraph 10, part 3) gives a better protection. According to this regulation which entered into force on the 27th of November 2016, a counsel (*biträde*) has the right to be present when the suspect is being questioned by the Police.

It is more difficult for children to waive their right to a lawyer. According to paragraph 24 of the Swedish Young Offenders Act (1964:167), a public defender will automatically be appointed for a suspect who has not reached the age of eighteen years, unless it is obvious that he or she does not need one.²⁸ The same protection does not exist for other vulnerable persons.

The Swedish Parliamentary Ombudsman has emphasised that where the interrogation from an objective perspective should not be held without a legal defence counsel, the assessment of the need for legal assistance cannot be made by the suspect or his relatives but should be carried out by the Police and prosecutor. The ultimate responsibility of the decision and the

²⁵ Parliamentary Ombudsman, *Consultation response by the Parliamentary Ombudsman on the ministry memorandum Right to defence Ds 2015:7 JU2015/755/Å*, no R 20-2015, 12 May 2015.

²⁶ Parliamentary Ombudsman, *decision no 2943-2015*, 17 June 2016.

²⁷ Parliamentary Ombudsman, *decision no 2502-2015*, 17 June 2016. Now included in the General Prosecutor's guidelines on minors' right to legal assistance.

²⁸ Act on Certain Provisions on Young Offenders (1964:167), para 24.

assurances of the suspect's right to a fair trial lie with the interrogators and investigators, not the suspect.²⁹

As of today, the application of law by the police and prosecutor's offices in Sweden does not accurately respond to recommendation number 11 by the European Commission.

Right to medical assistance

The legal conditions required are fulfilled as access to medical examination is part of national law. However, this is only in theory. Medical assessments as well as examinations are available only to the extent that such personnel are available. Access to medical resources is often limited and the law lacks effectiveness since there is no definition of the term "access to". As a result, individuals in pre-trial institutions could risk having to wait longer than acceptable to see the person responsible to do the medical assessment. One of the reasons for this may be that medical personnel are only available on office hours or that they are occupied.³⁰ There has recently been a complaint to the Parliamentary Ombudsman regarding this matter. We are waiting for the pending investigation.

Recording of questioning

According to the Swedish legislation, questionings during pre-trial detention are recorded and the accused person has the right to review those notes for possible comments afterwards.³¹ It should be noted that Swedish procedural legislation deems an accused person's own story in court to be of better evidence than a taped interview. This is also one of the reasons why a person may be in pre-trial detention for longer periods than otherwise necessary, the reasoning being that if a person would be released in the wake of the trial, his/her story risks being distorted in time for the actual hearing in court. However, a newly appointed Government inquiry has been mandated to, among a few other issues, discuss the effectiveness of this practice.³² In the directives given to the appointed investigator, there is no mentioning of

²⁹ Parliamentary Ombudsman, *decisions no 2502-2015; 2470-2015 and 2943-2015*, 17 June 2016. See also the Parliamentary Ombudsman directors' report 2013/14, Vällingby 2013, page 133.

³⁰ Parliamentary Ombudsman, *inspection protocol no 6889-2013*, 26 May 2014, available at: <https://www.jo.se/Global/NPM-protokoll/NPM-protokoll%206889-2013.pdf>

³¹ Code of Judicial Procedure (1942:740) ch 23, para 2; Decree on Preliminary Investigations, para 22, part 2.

³² Ministry of Justice, *En modern brottmålsprocess anpassad även för stora mål*, ID no Dir. 2016:31, Stockholm 2016.

vulnerable suspects. Lack of knowledge and limited communication skills will be affecting the individuals' prospect to be assured a fair trial.³³

Deprivation of liberty

Swedish law includes provisions restraining the use of detention due to means of proportionality and the suspect's personal circumstances.³⁴ For example, detention should never be used if the suspect is seriously ill.³⁵ Nor should detention be used if it, due to the suspect's age, health situation or any other similar circumstances, could cause serious harm to the suspect, or if the suspect is a woman who recently gave birth.³⁶ In such situations, detention is only allowed if alternative monitoring cannot be used with the consent of the suspect.³⁷ However, if the suspect does not consent, detention should be used.³⁸

Neither the Swedish law nor the preparatory work specifies how the authorities should identify a situation as one to cause a suspect serious harm, except from when the suspect is suffering from a mental disease,³⁹ has a severe disability or is at the final stage of pregnancy.⁴⁰ What could be considered to be a severe disability is not specified either. This may lead to the detention of persons with severe disabilities. See for instance above mentioned case concerning the elderly woman with dementia under section 1 in this report. In order for Sweden to fully comply with the EU-recommendation, further exemplification of the situations where detention has to be avoided is needed.

Detention of children is governed by special provisions. At the time of writing this report, the Government has recently proposed some legislative measures to decrease the use of restricting

³³ Two projects have been launched in order to address similar issues concerning people with hearing disabilities as well as one addressing the right to a fair trial concerning individuals with ADHD, see <http://www.arvsfonden.se/projekt/ung-i-rattsprocessen-adhd-add-ast-asperger>.

³⁴ Code of Judicial Procedure (1942:740), ch 24 para 1 part 3. See also Government bill (1988/89:124) *Om vissa tvångsmedelsfrågor*, page 26 f and 66 available at: https://pro.karnovgroup.se/document/435344/1#PROP_1988_1989_0124_S_0026.

³⁵ Government bill (1986/87:112) *Om anhållande och häktning m.m.*, page 34. Available at: https://pro.karnovgroup.se/document/435320/2#PROP_1986_1987_0112_S_0034.

³⁶ Code of Judicial Procedure (1942:740), ch 24, para 4.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Mentally ill persons can normally not be convicted to a prison sentence, see Swedish Criminal Code, ch 30, para 6. This should be considered while making the choice of detention.

⁴⁰ Government bill (1980/81:201) *med förslag till ändring i rättegångsbalken m. m.* page 41.

the liberty of children who are accused or suspects in criminal proceedings.⁴¹ Civil Rights Defenders and RSMH welcome this proposal, but are concerned that the Government does not deal with the issue of detention of elderly or persons with disabilities.

Suitable Facilities

Accessibility to the courts and police premises is laid down in the Regulation for Public Responsibility for Disability.⁴² It states that all public venues, information and activities must be accessible for persons with limited abilities of movement and orientation capacity. The regulation also stipulates that authorities should compile plans of action for their work with accessibility. However, there are no obligations to provide adjustments for reasonable accommodation within pre-trial detention. Such considerations are also absent in the Swedish Act on Detention. Although the Act on Detention does include provisions regarding the placement of a detained person in its second chapter, there is no provision specifying the necessity to have regards to vulnerable persons' special needs.⁴³

The Government has requested the Swedish National Council for Crime Prevention to investigate the situation in Swedish detention facilities and to identify how the use of detention can be more humane, secure and efficient.⁴⁴ The investigation is however limited to a person's sex, age, what crime the person is suspected of, reasons for detention and the time of detention. Civil Rights Defenders and RSMH have been in contact with the Government and suggested that it should advise the commission appointed with the task to also cover the issue of reasonable accommodation and support for vulnerable suspect or accused persons. The Secretary of the Ministry of Home Affairs, Anders Ygeman, has replied that it lies within the mandate given to the Swedish National Council for Crime Prevention to also investigate the situation for other groups of vulnerable suspects or accused persons. We have therefor informed the investigator at the Swedish National Council for Crime Prevention about the EU-recommendations. Unfortunately, we have been informed that they have no plans to

⁴¹ Ministry of Justice, *Färre i häkte och minskad isolering*, ID no SOU 2016:52, report of the investigation on detention and restrictions, Stockholm 2016.

⁴² Ordinance (2001:526) on Disability Policy (Responsibility of National Agencies for Implementation).

⁴³ Act on Detention (2010:611), ch 2 para 3 and Ordinance on Detention (2010:2011) para 3.

⁴⁴ Swedish Government, *Decision (Ju2015/05662/KRIM) to the committee for crime prevention to investigate the situation in detention centres*, 23 July 2015, available at: <http://www.regeringen.se/contentassets/be34a8574fba4ea3ae5f3c51dba877bf/uppdrag-till-bra-att-kartlagga-situationen-i-hakte.pdf>.

extend their investigation to also include vulnerable suspects or accused persons, except for children.

Today's pre-trial facilities accommodate a large amount of persons with restrictions, something that the CPT has repeatedly criticised Sweden for. When restrictions of a person's rights are being considered, the risk of interference of the investigation is to be weighed against the potential harm or damage such a restriction may cause.⁴⁵ However, the potential additional damage of a restriction to the individual, due to the person's disability or other form of vulnerability, is not mentioned in the investigation.

Privacy

All sensitive data is protected by law and any sharing between government agencies is forbidden without the individual's permission (some exceptions are allowed but are not applicable here).⁴⁶ An investigation initiated by the government has suggested a change that would make it possible for the social services and the Police to exchange data in order to better decide suitable restrictions for under age persons in pre-trial facilities.⁴⁷

Civil Rights Defenders and RSMH are sceptical to an implementation of the suggestion without the individual's permission as it would be an abnormality in Swedish jurisdiction which is not entirely in favour of, or motivated by, the best interest of the child. Civil Rights Defenders and RSMH can accept and understand some medical data being assessed in favor of better placement or treatment of a person while in a pre-trial institution, but we doubt that sharing of social service records are ever justifiable in absence of a free and informed given permission by the individual. A consequence of such sharing would enable others to ask for these data since trial-records are public in accordance to law.

Training

According to a poll administrated by the National Police Union, three out of four police officers feel insufficiently prepared to deal with mentally unstable persons.⁴⁸ The report also

⁴⁵ Act on Detention (2010:611), ch 1, para 6.

⁴⁶ The Public Access to Information and Secrecy Act (2009:400) ch 35 para 1.

⁴⁷ Ministry of Justice, *Färre i häkte och minskad isolering*, ID no SOU 2016:52, report of the investigation on detention and restrictions, Stockholm 2016, page 45.

⁴⁸ The Swedish Police Union, *Har Polisen rätt förutsättningar att bemöta psykiskt sjuka? - En undersökning bland 2024 poliser*, Exquiro Market Research, 2009.

shows that the Police regularly deal with psychiatrically ill persons without having adequate training or preparation.

A government commission has recently given proposals for the future police training. Civil Rights Defenders and RSMH certainly welcome the proposal that the police training will become part of the Swedish higher education system, but are critical in terms of the investigation not having analysed the police training in relation to Sweden's international commitments. The investigation does not at all highlight the importance of adequate knowledge of human rights, nor what it means for the police officers to work with a human rights approach. Neither does the investigation mention the recommendations of the EU Commission on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings.

Uppsala University has since 2014 been handed a commission from the Swedish government to develop and implement a training program on human rights for state employees. Unfortunately, a preparatory investigation concerning the need of training among state employees shows that very few of the contacted authorities have implemented programs where human rights explicitly are mentioned. Several authorities also claimed that they are not in need of education on human rights.⁴⁹ The report does not show the courts' nor the police's attitude towards a human rights education, but the conclusion of the report should be considered an indication that state employees such as police officers, public defenders and judges have not completed courses in human rights.

Conclusion and suggested recommendations

The information above shows that there is an obvious risk that persons with serious psychological or intellectual disabilities will be discriminated against in all parts of the criminal procedures, but also that these persons' procedural rights often are not respected by police officers, law enforcement and judicial authorities. One central problem is the lack of an adequate system to identify vulnerability, but also that the existing health examinations are not related to the criminal procedures. Other reasons are the lack of knowledge among police

⁴⁹ Uppsala University, *Mänskliga rättigheter - Övergripande program för kompetensutvecklingsinsatser om mänskliga rättigheter för statsanställda*, ID no UUE 2014/25, Uppsala, 2015.

officers, law enforcement and judicial authorities, as well as shortcomings in legislation and administrative procedures.

We recommend the Swedish government to:

Investigate if vulnerable persons suffer from indirect discrimination considering that the law does not distinguish between accused and suspects on grounds of vulnerability;

The right to information

Amend routines, guidelines and law in accordance with the CPT recommendations to ensure that vulnerable persons, or their representatives, have access to information in ways that are accessible to them and that information is given repeatedly during the process;

Legal representative or an appropriate adult

Provide clarification in the Swedish legislation of a vulnerable person's right to have a legal representative or an appropriate adult nominated and present at the police station and during the court hearings. The clarification should establish that the relative or the close person being contacted is considered an appropriate adult or is in fact the legal guardian of the person suspected or accused;

Evaluate and extend methods of communication with vulnerable persons in criminal proceedings. Existing methods of communicating with children with various disabilities and methods to enable children and adults the right to be heard, should be further developed and adjusted to suit vulnerable persons covered by the EU recommendation;

Right to medical assistance

Make the right to have access to a doctor within reasonable time the subject of a specific legal provision. The provision should include a clear definition of what would be an acceptable time-frame to fulfil the requirement of "access to" as well as a definition of what kind of personnel is required by "medical assistance";

Ensure that a medical assessment is available on site no later than one hour from the time the individual was brought into the pre-trial facility or the individual asks for such assessment;

Regulate that the medicines prescribed by a doctor should be available as prescribed without timely disruption until a doctor deem otherwise, and only after medical assessment has been carried out;

Ensure that necessary medical assessment is made and has an impact on what restrictions are decided;

Deprivation of liberty

Emphasise in law the importance of due regard to a vulnerable person's special needs when making a decision about detention and clearly specify in which situations vulnerable persons should not be detained;

Ensure that the reasoning behind detaining a vulnerable person is duly documented;

Adjust guidelines so that the reason behind a person's vulnerability is always taken into account before deciding if a person's rights should be further restricted, i.e. through isolation, visitation right etc.;

Ensure that suitable detention facilities are made available in all regions in Sweden to meet vulnerable person's needs;

Make it mandatory for all personnel within the criminal procedures to have knowledge of the needs and behaviour patterns of people with different ages and disabilities. The personnel must be aware of how vulnerable persons may act, react, and communicate in ways that could be misunderstood, and make sure they have training in distinguishing symptoms of a disability or psycho-social-issue from other behaviour issues.

The right to privacy

Limit the possibility to share social service's records between government authorities without the individual's permission;

Conduct further investigations concerning how and when investigative authorities may be given notice of a registered vulnerable person to both protect the individuals' integrity as well as to ensure that the individual gains full access to procedural rights.

Training

Take significant measures to ensure that the Police and pre-trial personnel have knowledge in human rights and the rights of vulnerable suspects or accused, and how the rights shall be implemented in practice.