



VULNERABLE UNION CITIZENS IN SWEDEN:

The state's obligations under Swedish law,
EU law and international human rights law

Preface

It is well known that the Roma are Europe's most marginalised, discriminated against, oppressed, excluded and segregated people. That is beyond question. It has been confirmed in report after report written by governmental, intergovernmental and non-governmental organisations, investigations and review bodies. It was also stated clearly in the 2010 report presented to the Swedish government by the Delegation for Roma Issues: Roma rights - A Strategy for Roma in Sweden (Swedish Government Official Reports, SOU 2010:55). This report made it clear that Sweden's Roma are no exception, on the contrary: "The human rights of the Roma have been subjected and are being subjected to serious abuse in Sweden and many Roma people are still excluded from essential elements of community life." Sections of the study constitute an excellent account of the systematic persecution to which the Roma have been subjected in this country. However, the report ultimately fails in its task as it concludes that it will take 20 years for the fundamental human rights of Swedish Roma to be guaranteed. This is of course an unacceptably low level of ambition since their rights, just like everyone else's, must be respected here and now.

Many EU Member States, if not most, have not come as far as Sweden in acknowledging their longstanding oppression of the Roma. An oppression that forces people to seek a future elsewhere. The fact that their countries of origin fail to see the oppression of the Roma means that those countries do not take their human rights responsibility. In those situations the authorities of the host countries are largely obliged to assume responsibility instead. The home countries' violations of their own citizens' rights must be criticised. At the same time, the host country cannot evade responsibility without violating the internationally recognized right to human rights protection. Exploring what this means for Sweden is the subject of this report.

Many of the most vulnerable Union citizens discussed in this report are Roma from Romania and Bulgaria. Our aim in this report is to shed light, against the background of EU law and international human rights law, on some of the fundamental rights held by vulnerable Union citizens, as well as point to the corresponding obligations incumbent on the Swedish State and its institutions. The report touches on a number of areas of relevance to vulnerable Union citizens in Sweden, although it does not claim to be exhaustive. It seeks to provide guidance on certain key issues concerning how the public sector — the State, municipalities and county councils — should act to enable Sweden to meet its obligations under international law.

Ultimately, the report is about how vulnerable Union citizens must be guaranteed their fundamental rights without being discriminated against during their time in Sweden. We cannot undo historical violations, but we have a responsibility to ensure that they are compensated for and, above all, that the abuse does not continue. As far as vulnerable European Union citizens are concerned, Sweden must ensure that the mistakes made when Roma in the past came to Sweden are not repeated. This time we have the power to do the right thing from the start. We are aware of their vulnerability and we know what our obligations are. The question is what we do with that knowledge.

Robert Hårdh
Executive Director, Civil Rights Defenders

Contents

Abbreviations	6
Summary	7
1. Introduction	8
1.1. Background and problem statement	8
1.2. A brief summary of EU law: key relevant concepts	9
1.3. A short summary of human rights: fundamental principles and key concepts	11
1.3.1. Starting points	11
1.3.2. Examples of relevant rights	13
2. Right to protection against hate crime	14
2.1. Sweden's obligations under international law	14
2.2. EU law	16
2.3. National law	16
2.4. Conclusions	17
3. The right not to be subjected to arbitrary evictions.	18
3.1. Sweden's obligations under international law	18
3.2. National law	20
3.3. Conclusions	21
4. Right to social assistance	22
4.1. Sweden's obligations under international law	22
4.2. EU law	23
4.3. National law	24
4.4. Conclusions	25
5. Right to labour market assistance	26
5.1. Sweden's obligations under international law	26
5.2. EU law	26
5.3. National law	28
5.4. Conclusions	29
6. Right to health care and medical services	30
6.1. Sweden's obligations under international law	30
6.2. EU law	31
6.3. National law	32
6.4. Conclusions	33
7. Right to education.	34
7.1. Sweden's obligations under international law	34
7.2. EU law	35
7.3. National law	35
7.4. Conclusions	36
List of sources.	37

Abbreviations

UN	The United Nations
EU	The European Union
TEU	The Treaty on European Union
TFEU	The Treaty on the Functioning of the European Union
ICCPR	The UN International Covenant on Civil and Political Rights
ICESCR	The UN International Covenant on Economic, Social and Cultural Rights
CRC	The UN Convention on the Rights of the Child
CERD	The UN International Convention on the Elimination of All Forms of Racial Discrimination
ECHR	The European Convention on Human Rights
HRC	The United Nations Human Rights Committee (monitors compliance with the ICCPR)
CESCR	The UN Committee on Economic, Social and Cultural Rights (monitors compliance with the ICESCR)
CERD Committee	The UN Committee on the Elimination of Racial Discrimination (monitors compliance with the CERD)
The Child Rights Committee	The UN Committee on the Rights of the Child (monitors compliance with the CRC)
ECtHR or European Court	The European Court of Human Rights (Strasbourg)
ECJ or EU Court	The Court of Justice of the European Union (Luxembourg)
WHO	The World Health Organization
UNICEF	The United Nations Children's Fund
RF	<i>Regeringsformen</i> [Instrument of Government]
SoL	<i>Socialtjänstlagen</i> [Social Services Act]
HSL	<i>Hälso- och sjukvårdslagen</i> [Health and Medical Services Act]
BRÅ	<i>Brottsförebyggande rådet</i> [the Swedish National Council for Crime Prevention]

Summary

This is Civil Rights Defenders' report on the rights of European Union citizens who are in Sweden in a situation of social and economic destitution — and the corresponding obligations incumbent on Sweden at national and regional level.

The human rights of the Roma are systematically violated in much of Europe. The Roma are subjected to discrimination and harassment on a daily basis both in their countries of origin and in the countries to which they migrate to seek a better life. Civil Rights Defenders has been working for years to safeguard the rights of the Roma in Sweden and in other parts of Europe. Many of the vulnerable Union citizens who are in Sweden belong to the Roma community and one important reason why they have come here is the anti-Gypsyism to which they are subjected in their home countries.

Protection for human rights is a global matter. **Sweden therefore has a responsibility to protect, respect and fulfil the human rights of everybody who is on Swedish soil, regardless of citizenship or legal status and regardless of the reason why they came to Sweden.** The State also has a particular responsibility for the groups in society that are the most vulnerable and that have historically suffered systematic marginalisation. That protection therefore extends to vulnerable Union citizens who have left their countries of origin because of structural discrimination and/or extreme poverty and who have come to Sweden to seek a better life for themselves and their families. EU law also allows free movement within the Union and, with few exceptions, the right to equal treatment.

This report highlights Sweden's responsibilities towards vulnerable Union citizens at national, municipal and county level in accordance with Swedish law, EU law and international human rights instruments that are binding on Sweden. It covers core rights such as the right to protection against hate crime and arbitrary evictions, the right to social assistance and labour market support and the right to health care, medical services and education. The report does not purport to be exhaustive, but provides guidance on certain key questions concerning how the public sector should act in order to live up to Sweden's human rights commitments.

In most cases, it is Swedish national law, rather than European law, that determines, purely in material terms, how vulnerable Union citizens' access to basic rights can be guaranteed in practice. Civil Rights Defenders

emphasises that, even though legislative changes would be desirable to clarify the legal situation of vulnerable Union citizens, the relevant authorities can and should act in accordance with the report's conclusions right now. **All parts of the public sector — the State, municipalities, county councils and private operators that provide services on behalf of the public sector — have a responsibility to ensure that national legislation is interpreted in accordance with the treaties, in other words in light of the standards laid down in the binding human rights instruments that Sweden has ratified.** The European Convention on Human Rights, which forms part of Swedish law, must be applied directly.

Based on the above premises, Civil Rights Defenders has reached a number of conclusions. Some of the most important of these are:

- Vulnerable Union citizens have a right to protection against hate crime, which means, among other things, that authorities responsible for the administration of justice must promptly follow up any indications of crime against vulnerable Union citizens and, in particular, investigate possible hate motives.
- A proportionality assessment must always be carried out in eviction processes with a view to assessing whether there is an urgent social need to evict the persons that is proportionate to the invasive measure that an eviction involves.
- Alternative accommodation must be prepared when evictions take place, except in emergency situations.
- After an assessment of need in the individual case, vulnerable Union citizens have a right to social assistance under the same conditions as Swedish citizens.
- Sweden has a particular responsibility to ensure that the Roma are placed in a stronger position in the labour market in view of the systematic discrimination experienced by many Roma. That obligation also extends to Roma citizens of other EU countries who reside in Sweden.
- Vulnerable Union citizens are entitled to subsidised health care from the moment they arrive in Sweden, regardless of whether or not they hold a European Health Insurance Card.
- Children of Union citizens have a right to receive primary and secondary education free of charge in Sweden.

These and the other conclusions of the report are discussed in chapters 2–7.



FOTO: RYAN MICHAEL RODRIGO/GETTY IMAGES

1. Introduction

1.1. Background and problem statement

In recent years, an increasing number of vulnerable persons from other EU countries have come to Sweden to seek ways to support themselves and their families. Many of them are Roma from Romania and Bulgaria. The majority find no way of supporting themselves other than by begging in the streets in Swedish cities. These people are often here because they are subjected to systematic discrimination in their country of origin that makes it close to impossible for them to earn a living and to have their most basic rights fulfilled. However, when they are in Sweden, they also live in difficult circumstances and are essentially excluded from Swedish society. They are subjected to structural discrimination and are denied their rights in Sweden as well. The presence of these people, whom in this report we have chosen to refer to as “*vulnerable Union citizens*”, has sparked off debate and has become an emotive issue in Sweden. Many people demonstrate solidarity with the vulnerable persons. Others argue that they should not be here at all. Racist groups exploit the feelings of discomfort caused by the presence of extreme poverty in Swedish cities and incite violence and threats against the vulnerable Union citizens. Hate crime against vulnerable Union citizens who are begging in Swedish towns and cities has become increasingly common.

The debate concerning vulnerable Union citizens has essentially come to revolve around a couple of specific arguments. On the one hand, commentators and politicians point out that the countries of origin must assume their share of the responsibility for protecting their vulnerable citizens’ rights and that Sweden should put pressure on Romania, Bulgaria and other EU countries in this regard. On the other hand, some argue that begging tends to cement marginalisation and should therefore be prohibited. However, few people discuss **Sweden’s legal obligations, as a State, to protect these people’s rights**. By means of this report, Civil Rights Defenders wishes to contribute to the discussion by raising this particular issue. **What is the actual legal situation for vulnerable Union citizens who reside in Sweden, from a human rights perspective based on both EU law and the binding human rights standards with which Sweden has undertaken to comply?**

There are a few papers and reports on the application of the EU regulatory framework relating to the free movement of vulnerable Union citizens,¹ but, overall, a human rights perspective is lacking. One exception is the recently published report “*Vilka rättigheter har barn som är EU-medborgare och lever i utsatthet i Sverige?*” [What rights do children have who are EU citizens and who are living

¹ See, inter alia, the Swedish National Board of Health and Welfare, *Rätten till socialt bistånd för medborgare inom EU/EES-området, En vägledning* [The right to social assistance for citizens within the EU/EEA area, a guide], 2014, Swedish Association of Local Authorities and Regions, *Några juridiska frågor gällande utsatta EU-medborgare* [Certain legal issues concerning vulnerable EU citizens], 2014, and Fores, *Fri rörlighet för vem? Socialt och ekonomiskt utsatta EU-migranter i Sverige* [Freedom of movement for whom? Socially and economically vulnerable EU migrants in Sweden], 2014.

in vulnerable circumstances?], published in September 2015 by UNICEF and the Center for the Rights of the Child at Stockholm University, which analyses the right of vulnerable Union citizens who are minors to social assistance and protection, health care and medical services and education.² Civil Rights Defenders wishes to help strengthen aspects of the debate that relate to rights by carrying out a more detailed analysis and by including a broader array of issues.

The term “*EU migrants*” instead of “*Union citizens*” is often used in the Swedish debate. However, since there is free movement within the EU, when Union citizens make use of their right to freely reside and settle in other Member States, this is not migration in the traditional sense. The term “*EU migrants*” therefore tends to be cited for the purpose of distinguishing the rights associated with freedom of movement between the two groups that are defined in EU law as economically active, on one hand, and economically inactive persons, on the other. As such, the latter are considered as migrants, but not the former. In this report, we have chosen to use the concept of “*vulnerable Union citizens*” in order, first, to stress that the people whose rights are discussed in the report are vulnerable and in need of support from society but that, second, in their capacity as Union citizens, they have the same right to freedom of movement as everyone else in the Union, along with a right to equal treatment, with few exceptions.

The social and economic circumstances of, for example, vulnerable Roma in countries such as Romania and Bulgaria is so serious that it is possible to argue that many leave their countries of origin to escape structural oppression.³ It is often these violations in their countries of origin that have caused them to travel to Sweden. In other words, the people coming here have made use of their freedom of movement as Union citizens to escape systematic discrimination in their home countries.

Civil Rights Defenders stresses that, in accordance with fundamental principles of international law, the State and the public administration are ultimately responsible for ensuring that Sweden complies with its commitments on human rights. Public employees must therefore have a good grasp of basic human rights issues in their work at State, county and municipal level. **Sweden and its institutions have an independent obligation to realise the rights we have undertaken to guarantee for everyone located in Swedish territory, regardless of the reason why people came here and regardless of their nationality.** The

fact that it can be shown that some EU Member States violate their citizens’ fundamental rights may never, in turn, cause or be used as a justification on Sweden’s part for evading its responsibility to meet its commitments.

In this report, Civil Rights Defenders clarifies the rights of Union citizens from an EU and human rights perspective within a number of key areas, and Sweden’s corresponding obligations. Initially, the report outlines the key concepts and principles of EU law and human rights. Then follows a legal analysis of the area of rights relating to protection against hate crime and evictions, social assistance, labour market support, health care, medical services, and education.

1.2. A brief summary of EU law: key relevant concepts

Citizenship of the EU was established in the Maastricht Treaty in 1992. All citizens of EU Member States are now considered to be Union citizens. An important fundamental principle of EU law is free movement of those persons within the Union.⁴ Free movement means that every Union citizen has a right to move between Member States and to reside in other States for up to three months without any requirements other than a valid identification document. Union citizens can also remain after the first three months if they meet certain requirements. The right of residence for Union citizens is established in the Treaty on the Functioning of the EU (TFEU) and is regulated in the Directive on Freedom of Movement and Residence (2004/38/EC) (Free Movement Directive).⁵

EU law divides Union citizens into two groups. The *economically active* group includes employees and self-employed persons and the *economically inactive* group includes the unemployed, students, pensioners and other Union citizens who are earning money in the traditional sense. The Free Movement Directive addresses the free movement of persons whether or not they carry out any economic activity and therefore also includes economically inactive Union citizens.

If any Union citizen meets certain criteria, that person has an automatic right of residence, which is the same as a right to reside in another EU country. The right of residence can be divided into three categories:

2 UNICEF and the Center for the Rights of the Child at Stockholm University, *Vilka rättigheter har barn som är EU-medborgare och lever i utsatthet i Sverige?* [What rights do children who are EU citizens and who are living in destitution in Sweden have?], 2015.

3 See, for example, Council of Europe Commissioner for Human Rights, *Human rights of Roma and Travellers in Europe*, Council of Europe Publications, 2012, EU Fundamental Rights Agency (FRA), *The Situation of Roma in 11 Member States, 2012*, European Roma Rights Centre (ERRC), *Romania, A report by the European Roma Rights Centre, Country Profile 2011-2012*, 2012 and ERRC, *Written Comments by the European Roma Rights Centre Concerning Bulgaria*, 2013.

4 The Treaty on European Union (TEU), Article 3(2), the Treaty on the Functioning of the European Union (TFEU), Articles 20–21.

5 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (the Free Movement Directive), codifies the TFEU, Article 21.

1. Fixed-term right of residence: a right to reside for up to three months subject to no requirement other than to hold a valid identity card or passport, as long as the Union citizen does not become an unreasonable burden on the social assistance system of the host State,⁶
2. Extended right of residence: a right to reside for longer than three months, provided that the Union citizens are employed or self-employed in the State in which they are residing or have “sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State”,⁷ and
3. Permanent right of residence: a right to reside in the State of residence in question after having held a right of residence for a continuous period of five years.⁸

Corresponding rules have been introduced in Chapter 3(a) and, in the case of refusal of entry/deportation, in Chapter 8 of the Swedish Aliens Act.

EU legal instruments and case law of the European Union Court impose stringent requirements with regard to equal treatment⁹ and thus also a certain degree of solidarity towards groups of persons other than just the State’s own citizens.¹⁰ **The principle of equal treatment means that the Member States must treat their own citizens and Union citizens who meet the requirements for a right of residence equally and they may thus not discriminate on grounds of nationality within the area of applicability of the treaties.** The principle of equal treatment is of key importance for the free movement of persons within the Union to work. It is therefore important to highlight that the *main rule* is that there must be no discrimination *on grounds of nationality*.

The principle of equal treatment applies not only in the case of an extended right of residence, but also during the first three months. However, there are two exceptions to the principle of equal treatment during that period. One of them is relevant in this context and relates to social assistance. During the first three months in which a Union citizen resides in the State in question, the host State is not obliged to grant him or her social assistance.¹¹ The second exception concerns the right to study allowance.

The exceptions to the principle of equal treatment relates to the agreement made within the EU that Union citizens who travel within the Union should not constitute an unreasonable burden on the welfare systems of the host States.

After the first three months, the right of residence is made subject to conditions. Every Union citizen has the right to reside in another Member State for longer than three months if he or she is employed or self-employed in the host State or if he or she has sufficient resources and a comprehensive health insurance that applies in the host State or if he or she is a student in the host State and meets certain criteria.¹²

In sum, this means that the Member States have no obligation, *during the first three months of residence*, to grant social assistance and that, *after the first three months*, the right of residence is made subject to the condition that the Union citizen has sufficient resources to cover the residence and a comprehensive health insurance. **If, after the first three months, a Union citizen fails to meet these criteria, the right of residence no longer applies, i.e. the person can be deported.** The fact that the Member States do not have any *obligation* does not, however, mean that more favourable treatment *may* not be granted to Union citizens. The preamble of the Free Movement Directive and its Article 37 provide that the Directive shall not affect more beneficial and favourable national regulations.¹³

As discussed above, only two exceptions to the principle of equality apply: social assistance and study allowance. Neither education nor health care and medical services are included among the exceptions. Indeed, matters relating to education and health care and medical services do not fall within the framework of the EU’s exclusive competence, i.e., the Union has no right to legislate in these areas. However, as long as it applies to Union citizens who make use of their freedom of movement within the Union, the treatment of these persons is a matter of EU law. Because neither education nor health care and medical services is included among the exceptions to the principle of equal treatment, the Member States therefore have an obligation to treat Union citizens in the same way as their own citizens in accordance with national law, including during

6 The Free Movement Directive (2004/38/EC), 29 April 2004, Article 6(1) and Article 14(1).

7 The Free Movement Directive (2004/38/EC), 29 April 2004, Article 7(1). The European Court of Justice defined the concept of social assistance system in case C-140/12, *Pensionsversicherungsanstalt v. Peter Brey*, 19/09/2013, para 61, in which it is stated that income support is included in the term.

8 The Free Movement Directive (2004/38/EC), 29 April 2004, Article 16.

9 Equal treatment, and therefore a prohibition of discrimination on grounds of nationality, is established in the TFEU, Article 18. The principle of equal treatment is also a general legal principle of primary EU law. The requirement for equal treatment also exists, *inter alia*, in the Free Movement Directive, Article 24 and Regulation 883/2004, Articles 4 and 5.

10 See ECJ cases C-184/99, *Rudy Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, 20/09/2001, para 44, and C-140/12, *Pensionsversicherungsanstalt v. Peter Brey*, 19/09/2013, para 72.

11 The Free Movement Directive (2004/38/EC), 29 April 2004, Article 24(2).

12 The Free Movement Directive (2004/38/EC), 29 April 2004, Article 7(1). The same applies to family members of persons who meet any of the criteria.

13 The Free Movement Directive (2004/38/EC), 29 April 2004, preamble (29).

the first three months, in relation to the right to education and health care and medical services.¹⁴ This reasoning is elaborated upon below in Chapters 6 and 7.

The principle of equal treatment is closely related to the prohibition of discrimination in the area of human rights, even though the principle of equal treatment in EU law focuses on discrimination on grounds of nationality. It should, however, be mentioned here that the Free Movement Directive stipulates that its provisions must also be implemented without discrimination on other grounds, including ethnic and social origin and membership of a minority.¹⁵

Since 2010, the EU has its own Charter of Fundamental Rights, which establishes obligations for the Member States to carry into effect certain fundamental rights for Union citizens. The Charter includes, inter alia, the right to education free of charge (Article 14), the right to non-discrimination on grounds of ethnic or social origin or membership of a national minority, among other grounds (Article 21), the right to social security and social assistance (Article 34), and the right to health care and medical services (Article 35). The Charter of Fundamental Rights forms an integral part of the Lisbon Treaty and is therefore considered as primary legislation, which means that no secondary legal instrument may contradict the provisions of the Charter.¹⁶ The Charter is binding on all European Union institutions and all Member States. Nevertheless, it is only applicable to matters that have a link to EU law and its application may not extend the EU's jurisdiction.¹⁷ Opinion is still divided as to what rights protection the Charter actually provides in practice, which makes it difficult to apply. Some consider that it must be regarded as applicable when Union citizens have made use of their freedom of movement, which is one of the most fundamental principles of the EU, and are in another Member State with a right of residence.¹⁸ In view of the unclear area of applicability of the Charter, however, we leave the matter open in this report.

To conclude, the EU law is based on the right to equal treatment for all Union citizens who are in other Member States, which is, in principle, closely related to the principle of non-discrimination in the area of human rights. There are only a few exceptions to the right to equal treatment for persons with a right of residence, among which is the right to social assistance. However, even if not required to do so, the host State is free to grant such assistance. The principle of equal treatment comprises the right to health care and medical services and education during the first three months. After the

first three months, the right of residence is made subject to conditions, depending inter alia on whether the Union citizen has sufficient resources not to be a burden on the host State's welfare system. However, we should point out here that the three-month periods can be repeated an unlimited number of times, as long as the EU citizen leaves the host State and then returns. This means that a person who has interrupted his or her residence for short periods can de facto have a right of residence for much longer than three months even if he or she does not have sufficient resources.

In the following sections, we will highlight how these rules have been interpreted more specifically by the European Court of Justice and how they must be applied in relation to the group of vulnerable Union citizens in light of prevailing human rights principles.

1.3. A short summary of human rights: fundamental principles and key concepts

1.3.1. Starting points

Sweden is bound by a number of international legal obligations laid down in the international human rights conventions that Sweden has ratified. These commitments also apply beyond EU law and in many cases go farther than the protection provided Union citizens by EU law. Policy makers and other key stakeholders in society suffer gaps in their knowledge of the contents of human rights instruments and how these are binding on Sweden, which results in violations of fundamental human rights.

Sweden has ratified instruments such as the International Covenant on Civil and Political Rights (the ICCPR), the International Covenant on Economic, Social and Cultural Rights (the ICESCR), The International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the UN Convention on the Rights of the Child (CRC), the European Convention on Human Rights (ECHR) and the European Social Charter. The European Court of Human Rights interprets the ECHR by examining and adopting decisions in cases where individuals report States or States report each other for violations of the European Convention. The decisions of the Court are binding. The European Social Charter is monitored by the European Committee of Social Rights, which is also able to review specific cases of human rights violations in the countries. Within the United Nations system, each Convention has a committee of experts attached to it; a so-called *treaty*

14 For a longer discussion of this matter, see UNICEF/Center for the Rights of the Child at Stockholm University *Vilka rättigheter har barn som är EU-medborgare och lever i utsatthet i Sverige* [What rights do children who are EU citizens and who are living in destitution in Sweden have?], 2015, pages 13–14, 22–27.

15 The Free Movement Directive (2004/38/EC), 29 April 2004, preamble (31).

16 See TFEU, Article 6. The fundamental TEU and TFEU treaties and the Charter of Fundamental Rights are primary law, whereas directives and regulations are secondary legislation.

17 This is clearly stated in the Charter of Fundamental Rights, Article 51.

18 See UNICEF/Center for the Rights of the Child at Stockholm University *Vilka rättigheter har barn som är EU-medborgare och lever i utsatthet i Sverige* [What rights do children who are EU citizens and who are living in destitution in Sweden have?], September 2015, pages 12–13.

monitoring body. The committees' task is to interpret the conventions and examine how the Contracting States fulfil their commitments. The committees issue General Comments or General Recommendations that interpret and elaborate on different provisions of the conventions. The interpretations provided in the General Comments or Recommendations then weigh heavily when determining whether individual States are violating or complying with the rights under the treaties.

The committee of experts whose task it is to interpret the ICCPR is called the *Human Rights Committee* (HRC). The UN *Committee on Social, Economic and Cultural Rights* (CESCR) interprets the ICESCR and the *Child Rights Committee* interprets the Convention on the Rights of the Child (CRC). The committees' interpretations are not binding in the legal sense but provide guidance as to how the various provisions of the conventions are to be understood. **If a State disregards the recommendations of the treaty monitoring bodies and their General Comments, it must be able to fully justify its actions on the basis of prevailing human rights principles in order for them to be considered to conform to applicable law.**

Article 5 of the UN Vienna Declaration, which is considered to be international customary law binding on all States, provides that all human rights are "universal, indivisible and interdependent".¹⁹ In accordance with binding human rights standards, a State is obliged to guarantee rights in accordance with the human rights instruments it has ratified for everyone in the country, regardless of citizenship or legal status. Human rights therefore apply to all the people within a State's jurisdiction, which is stated in the ICCPR and the ICESCR as well as in the CRC for all children:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour [...], national or social origin [...] or other status.²⁰

In one of its General Comments, the HRC explains that this means that the rights in the ICCPR apply to all people who are in the territory of a Contracting State to the Convention:

"In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness" and "each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens."²¹ The HRC also stresses that the States Parties must ensure that the provisions of the Convention are known to aliens who are within the country's jurisdiction. The CESCR describes the scope of the rights in similar terms:

The ground of nationality should not bar access to Covenant rights, e.g. all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.²²

Under the ICESCR, developing countries may, in certain circumstances, be granted an exception from guaranteeing all economic rights under the Convention to non-citizens.²³ A converse interpretation of the article provides that Sweden cannot apply any exception with regard to non-citizens' economic rights in accordance with the ICESCR. The CERD Committee, which monitors compliance with the UN's International Convention on the Elimination of All Forms of Racial Discrimination, also calls upon the States to remove obstacles to the enjoyment of economic, social and cultural rights for non-citizens, in particular regarding the right to education, health, housing and work.²⁴

Consequently, no discrimination on grounds of nationality or legal status is permitted under the human rights instruments. In other words, Sweden must take all its obligations under international law into consideration in relation to persons who are in Swedish territory who are not citizens or hold a residence permit. The Swedish Government has stressed that human rights apply to all people, "without distinction, solely because we are human."²⁵ The fact that human rights apply to everyone does not mean that all civil rights are granted to non-citizens, however. For example, the right to vote in national elections applies only to the State's citizens.²⁶

19 Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, Article 5.

20 ICCPR, Article 2(1). The ICESCR expresses the same principle: "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour [...], national or social origin, property [...] or other status." (Article 2(2)). The CRC provides that: "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, [...] national, ethnic or social origin [...] or other status." (Article 2.1).

21 HRC, General Comment No. 15: *On the position of aliens under the Covenant*, 1986, paras. 1–2.

22 CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, 2009, para. 30.

23 ICESCR, Article 2.3.

24 CERD, *General Comment XXX: On discrimination against non-citizens*, 2005, para. 29.

25 Government Communication 2005/06:95, *En nationell handlingsplan för de mänskliga rättigheterna 2006-2009* [A national plan of action for human rights 2006-2009], page 15.

26 See the Office of the UN High Commissioner for Human Rights, *The Rights of Non-citizens*, 2006, page 5.

Sweden is a dualist State, which means that international conventions must be incorporated in national legislation before they become directly applicable. However, this does not mean that the conventions are of no significance before they have been incorporated. Courts and authorities are required to interpret national law in accordance with the treaties, which means that, when Swedish law is applied, it must be interpreted in light of the commitments to which Sweden is bound in the human rights conventions.²⁷ If existing law or case law directly contravenes the human rights commitments, Sweden is obliged to change the law. **In other words, the public sector must ensure that human rights instruments pervade all public activity in both legislation and practical application.**²⁸

Many of the human rights obligations, including most of the rights under the ECHR and the ICCPR, are of immediate application.²⁹ This means that States cannot justify non-fulfilment of obligations on the grounds of lack of resources or other practical difficulties. In relation to other rights, such as some of the economic and social rights, so-called minimum levels or *minimum core obligations* apply in relation to what the States are required to provide. These rights include the right to health care and medical services, social security and an adequate standard of living. The minimum level is not the same for all States, but should be seen in light of the fact that different States Parties have different conditions under which to comply with the protection that human rights standards provide. The requirements established must therefore be set in relation to each State's capacity to guarantee the protection and must also be proportionate to the general living standard in the country in question.³⁰ Under the ICESCR, each State must "take steps [...], to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."³¹ Under that convention, each State must "demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations" for all the people in its territory.³² The States must give priority to access to human rights for the most vulnerable groups in society.³³ In a global comparison, Sweden must

be regarded as having far-reaching obligations to guarantee the contents of the conventions. It is also important to point out that some of the obligations under the ICESCR are immediate, such as the obligation for the State not to discriminate between groups or individuals.³⁴

The *principle of proportionality* and the *principle of objectivity* are two important principles that are key to the application of human rights standards. Briefly, the principle of proportionality means that measures must not go beyond what is required for the purpose or, in other words, that a reasonable balance between different interests must always be achieved to enable that legal protection will be maintained. For example, the public interest in maintaining order must be weighed against the individual rights to privacy or freedom of expression, and disproportionate conditions may not be established for individuals to be able to claim their rights. The principle of objectivity, which is enshrined, *inter alia*, in the Swedish Constitution, means that courts and authorities must take into consideration the equality of all people before the law and be objective and impartial in their assessments.³⁵ The State, through the Government, has ultimately responsibility to ensure that human rights are respected, protected and fulfilled. The State includes all authorities, municipalities and county councils, as well as private operators acting on behalf of the State.³⁶

1.3.2. Examples of relevant rights

The ICCPR provides, among other things:

- that everyone has a right to a fair and public hearing by an independent and impartial court for the examination of criminal charges or the examination of rights and obligations in civil matters,
- that everyone whose civil and political rights and freedoms have been violated has access to an effective remedy, even if the violation was committed by a public official in the course of his or her duties,
- that no-one must be subjected to arbitrary or unlawful interference in relation to their privacy, family, home or correspondence or to unlawful attacks on their honour or reputation.

27 See SOU 2010:70, *Ny struktur för skydd av mänskliga rättigheter* [New structure for the protection of human rights], 2010, page 20.

28 See SOU 2010:70, *Ny struktur för skydd av mänskliga rättigheter* [New structure for the protection of human rights], 2010, page 302.

29 For an analysis of the States' commitments under the ICCPR, see HRC, *General Comment No. 31: The nature of the legal obligation imposed on state parties to the Covenant*, 2004. See also HRC, *General Comment No. 21: Humane treatment of prisoners*, 1992, para. 4, in which the Committee specifically clarifies that failure to fulfil the rights under the ICCPR cannot be justified by a lack of financial resources.

30 CESCR, *General Comment No. 3: The nature of States parties' obligations*, 1990, para. 2 and 3.

31 ICESCR, Article 2(1).

32 CESCR, *General Comment No. 3: The nature of States parties' obligations*, 1990, para. 10.

33 CESCR, *General Comment No. 4: On the right to adequate housing*, 1991, para. 11.

34 CESCR, *General Comment No. 7: Non-discrimination in economic, social and cultural rights*, 2009, para. 7.

35 The Swedish Instrument of Government (RF) 1:9.

36 For a discussion of the responsibilities of the municipalities and county councils for carrying human rights into effect, see SOU 2010:70, *Ny struktur för skydd av mänskliga rättigheter* [New structure for the protection of human rights], 2010, pages 421–424.

The ICESCR stipulates that the State is required to ensure, among others, the following rights:

- the right of all people to earn a living through work,
- the right of all people to an adequate standard of living, which includes the right to housing and the right not to be subjected to arbitrary evictions,
- the right to social security, including social insurance,
- the right to the highest attainable standard of health, which means that conditions must exist that allow all people access to medical and hospital care at a reasonable cost,
- the right to education; primary and secondary education must be free of charge and accessible to all.

The CERD requires States to prohibit and eliminate racial discrimination and ensure all rights, regardless of nationality and ethnic origin. It further provides right to equality before the law in relation to civil and political rights as well as economic, social and cultural rights. CERD also obliges the States to take action against acts of violence against certain groups in society on grounds of race or ethnicity.

In addition to the protection that the general human rights instruments provide children, the provisions of the CRC include the following provisions that apply more specifically to children:

- in all measures concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration,
- the States Parties must adopt all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on grounds of parents'/ guardians' status and ethnic and religious affiliation.

The regional human rights instruments that are binding on Sweden often contain direct equivalents to the UN human rights provisions. The ECHR provides, among other things:

- the right to a fair trial by an impartial court of both criminal charges and in matters concerning civil rights and obligations,
- the right to protection of privacy and family life
- the right to education,
- the right to protection of property,
- prohibition of collective expulsion of aliens.

The revised European Social Charter of 1996 states, for example, that:

- everyone has the right to the effective exercise of the right to protection of health,
- those who lack sufficient resources are entitled to social and medical assistance,
- everyone has the right to benefit from social welfare services,
- everyone has the right to housing, which among other things means that States have an obligation to make housing accessible to those without adequate resources.

All human rights instruments contain a prohibition on discrimination, inter alia on grounds of ethnicity/race, national and social origin and gender.³⁷ The prohibition on discrimination is one of the most important human rights principles that must be safeguarded in order for an effective and meaningful protection of rights to be maintained.

The below parts of the report will contain further discussion of what these rights mean more specifically and how Sweden is therefore obliged to guarantee them in relation to the group of vulnerable Union citizens present in Sweden.

³⁷ See, for example, the ICCPR, Article 2(1), the ICESCR, Article 2(2), the ECHR, Article 14, the CRC, Article 2(1), and the European Social Charter, Part V.



2. Right to protection against hate crime

Hate crime is a collective term for various types of crime against persons based on the perpetrator's perceptions concerning, for example, the victim's ethnicity, race, religious affiliation, sexual orientation or disability. The focus is therefore on the *motive* of the crime: the crime is committed in order to violate a person merely because of his or her ethnicity, race or religion, for example. There is no internationally accepted definition of hate crime, **but the human rights instruments and their interpreters concur in their condemnation of hate crime as a particularly grievous form of human rights violation.** Hate crime is particularly serious because the offence not only affects the individual against whom it is committed, but also has consequences for others in the same group.

Vulnerable Union citizens in Sweden are routinely victims of threats, harassment and violent crime.³⁸ There are many indications that these crimes are often motivated by the victims' supposed Roma ethnicity and, therefore, that the attacks are based on anti-Gypsyism and must be classified as hate crime. Although the media have drawn attention to the phenomenon in recent years, a large number of cases remain unreported. Vulnerable Union citizens who

are subjected to violations rarely dare to ask for help and nor do they expect to receive support. Many of them have had bad experiences with the police in their countries of origin and therefore also have little confidence in the police in Sweden. The majority of cases reported in Sweden that actually involve hate crime against vulnerable Union citizens are closed without any further action.³⁹

2.1. Sweden's obligations under international law

According to the CERD, States Parties are obliged to "declare an offence punishable by law [...] all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin".⁴⁰ In view of the discrimination to which Roma are subjected all over the world, the CERD Committee has paid particular attention to discrimination and hatred directed against Roma.⁴¹ The States are obliged to "take appropriate measures to secure for members of Roma communities effective remedies and to ensure that justice is fully and promptly done in cases concerning violations of their

38 For a selection of news reports on hate crime against vulnerable Union citizens, see the Association for Homeless EU Migrants (HEM), "*Hatbrotten mot EU-migranter uppmärksammas i media*" [Media attention drawn to hate crime against EU migrants], <http://foreningenheim.se/hatbrotten-mot-eu-migranter-uppmärksammas-i-media/> [20/10/2015].

39 Delin, M, *Dagens Nyheter*, "Attacker mot tiggare leder sällan till åtal" [Attacks on beggars rarely lead to criminal charges], 07/08/2015.

40 CERD, Article 4(a).

41 CERD Committee, *General Recommendation XXVII: On discrimination against Roma*, 2000.

fundamental rights and freedoms.”⁴² More specifically, in the case of acts of violence directed against Roma, the Committee stipulates that States are obliged to do the following, among other things:

[States must] ensure protection of the security and integrity of Roma, without any discrimination, by adopting measures for preventing racially motivated acts of violence against them; to ensure prompt action by the police, the prosecutors and the judiciary for investigating and punishing such acts; and to ensure that perpetrators, be they public officials or other persons, do not enjoy any degree of impunity.⁴³

The ECHR prohibits discrimination with regard to all rights guaranteed in the Convention, including on ethnic grounds.⁴⁴ The European Court of Human Rights has interpreted the prohibition of ethnic discrimination as, *inter alia*, including an active obligation for States to investigate racist motives when violent crimes are committed.⁴⁵ The Court has also stated that hate crime requires a response from the justice system that is proportionate to the damage caused by the crime, in view of the fact that hate crime can be seen as particularly damaging to the rule of law and the principle of the equal value of all human beings. In *Secic v. Croatia* for example, which concerned an attack by a skinhead against a Roma, the Court explained:

[W]hen investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. [...] Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.⁴⁶

2.2. EU law

At EU level, in 2008, the Council of Ministers issued a so-called Framework Decision on combating certain forms and expressions of racism by means of criminal law.⁴⁷ In accordance with this Decision, which is binding on the Member States, the States “shall take the necessary measures to ensure that racist and xenophobic motivation

is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties.”⁴⁸

2.3. National law

Sweden has, until recently, lacked a coherent definition of hate crime. However, in 2014, the Government entrusted the Swedish National Police Board with the task, in consultation with the Swedish Prosecution Authority and the Swedish National Council for Crime Prevention, of promoting a consistent practical application of the term. The definition presented in 2015 reads as follows:

Hate crime consists of:

- the crime of incitement to racial hatred: Criminal Code, Chapter 16, section 8
- the crime of unlawful discrimination: Criminal Code, Chapter 16, section 9

and all other crimes where a motive was to aggrieve a person, ethnic group or some other similar group of people by reason of race, colour, national or ethnic origin, religious belief, sexual orientation or other similar circumstance (c.f. the rule regarding aggravating circumstances in assessing penal value in Chapter 29, section 2(7), Criminal Code).⁴⁹

Hate crime is thus not a separate legal classification, but a hate crime motive can exist in relation to all kinds of crime and can be linked to each classification of offence. There are two crimes in Swedish law that are pure hate crimes: incitement to racial hatred and unlawful discrimination. In addition to these two, hate crime is regulated in the rule regarding aggravating circumstances in assessing penal value contained in Chapter 29, section 2(7) of the Criminal Code (1962:700). In accordance with this rule, a so-called hate motive when a crime is committed must be regarded as an aggravating circumstance that will lead to a more severe punishment than if there were no such motive. The legislative history justifies the increase in severity of the penalty by stating that, “our society is based on the fact that all human beings are of equal value regardless of their race, colour and ethnic origin. Racism and similar manifestations expressed in terms of contempt for or oppression of vulnerable groups are incompatible with fundamental values and can therefore never be accepted.”⁵⁰

42 CERD Committee, *General Recommendation XXVII: On discrimination against Roma*, 2000, para. 7.

43 CERD Committee, *General Recommendation XXVII: On discrimination against Roma*, 2000, para. 12.

44 ECHR, Article 14.

45 See ECtHR, *Nachova and others v. Bulgaria*, 43577/98 and 43579/98, 06/07/2005, paras. 160-168.

46 ECtHR, *Secic v. Croatia*, 40116-02, 31/05/2007, paras. 66-67.

47 Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, 2008.

48 Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, 2008, Article 4.

49 The Swedish Police, Development Department, *Återredovisning av regeringsuppdraget beträffande hatbrott* [Report on the Government assignment concerning hate crime], February 2015, page 13.

50 Government Bill 1993/94:101, page 21-22.

In the Government-commissioned assignment on hate crime in 2014, the investigator noted that there are a large number of unreported cases of hate crime in Sweden and that the “culture of silence or the normalisation process that it involves to endure a continuous flow of threats, defamation and insults have a significant effect on the democratic process and on people’s ability to live and work freely in society.”⁵¹ The same report emphasises that willingness to report hate crime is particularly low in the Roma group in view of the documented low confidence that many Swedish Roma have in the police.⁵² The investigation does not specifically mention Roma Union citizens suffering hate crime in Sweden, but the media have documented that the reporting rate is extremely low among this group — and that when reported, these crimes very rarely lead to action on part of the police.⁵³ At the same time, the Swedish National Council for Crime Prevention report containing hate crime statistics from 2014 shows that the number of anti-Roma hate crimes reported in 2014 was the highest level recorded so far in this category.⁵⁴ Of the anti-Roma hate crimes reported in 2013, only three per cent had been solved by 31 May 2015. This means that a perpetrator had been linked to the crime in only three per cent of the cases. In nearly a third of the cases, no investigation had been initiated at all.⁵⁵

In sum, there is broad consensus, both internationally and nationally, that crime committed with the motive of violating a person on the grounds of his or her basic characteristics such as ethnicity, religion or sexual orientation must be regarded as particularly serious and a threat to the principle of the equal value of all humans. Society’s response in terms of both legislation and implementation should stand in proportion to that seriousness. International bodies have also placed particular emphasis on the specific vulnerability of Roma in relation to hatred and harassment on the grounds of their Roma ethnicity, and have stressed that society therefore has a particular responsibility to protect them and to bring perpetrators to justice. Swedish legislation can be seen as adequate from a human rights perspective, but the implementation leaves much to be desired. As the statistics from the Swedish National Council for Crime Prevention and news reports show, there are serious deficiencies in the way that the Swedish law enforcement agencies deal with hate crime both against Roma in general and against vulnerable Roma Union citizens in particular. Lack of trust in the authorities also leads to

a situation whereby many hate crimes against Roma are never reported.

There has been a lively debate on whether vulnerable Union citizens in Sweden are victims of organised crime or of human trafficking. In 2014, the Government’s national coordinator on homelessness, Michael Anefur, stated that organised crime does not take place to any great extent in relation to begging. He stated that the situation did not give rise to concerns of underlying general criminality and that there was also no indication that the money benefited anyone other than the beggars themselves and their families.⁵⁶ Nevertheless, there are reports that some exploitation has occurred in connection with begging.⁵⁷ Some recent reports show that gross violations of rights have occurred in certain cases.⁵⁸ When this is the case, it is extremely serious and brings to the fore Sweden’s responsibility to address the problem. Such violations of rights must be dealt with promptly by the police and the justice system and victims of such crimes must be given support, protection and redress.

2.4. CONCLUSIONS

In relation to hate crimes suffered by vulnerable Roma Union citizens, the following applies under national law, EU law and binding human rights instruments:

- the police and the Prosecution Authority are obliged to investigate all reports or indications of crimes affecting vulnerable Union citizens, including reports of human trafficking,
- the law enforcement agencies have a specific responsibility to investigate possible hate crime motives. Failure to do so may constitute separate violations of human rights under the ECHR,
- investigations and subsequent legal processes must be efficient, in accordance with the rule of law, and must not subject the victim of the crime to further stigmatisation or risk,
- in order to bridge the gap of trust between vulnerable Roma Union citizens and the Swedish law enforcement agencies, the police and the social services should develop systems for providing information on the right not to be subjected to hate crimes, as well as on mechanisms for reporting and follow-up when a hate crime has been committed against this group.

51 The Swedish Police, Development Department, *Återredovisning av regeringsuppdraget beträffande hatbrott* [Report on the Government assignment concerning hate crime], February 2015, page 4.

52 The Swedish Police, Development Department, *Återredovisning av regeringsuppdraget beträffande hatbrott* [Report on the Government assignment concerning hate crime], February 2015, page 4.

53 See, for example, Leander, P, *Dagens Arena*, “En procent av hatbrotten mot romer klaras upp” [One per cent of hate crimes against Roma are solved], 29/09/2014, Oldsberg, E, SVT Nyheter, “Få romer anmäler hatbrott” [Few Roma report hate crimes], 29/09/2014, and Delin, M, *Dagens Nyheter*, “Attacker mot tiggare leder sällan till åtal” [Attacks on beggars seldom lead to prosecutions], 07/08/2015.

54 Anti-Roma hate crime” is the term used by BRÅ. Otherwise, *antiziganism* [anti-Gypsyism] is the term more commonly used in the Swedish debate.

55 The Swedish National Council for Crime Prevention (BRÅ) *Hatbrott 2014* [Hate Crime 2014] (Report 2015:13), pages 68–71.

56 Guibourg, E, Metro, “Nej, tiggarna styrs inte av kriminella ligor” [No, the beggars are not controlled by criminal gangs] 28/08/2014.

57 County Administrative Board, *Utsatta EU-medborgare i Sverige – lägesrapport ur ett människohandelsperspektiv* [Vulnerable EU citizens in Sweden — a progress report from a human trafficking perspective], 2014:10, Olsson, J & Axelsson Olsson, K, SVT Nyheter, “Dubbelt så många tiggande EU-migranter senaste året” [Twice as many EU migrants begging last year], 29/04/2015.

58 TV4, *Kalla fakta*, “Slav i Sverige” [Slave in Sweden], 12/05/2015.

3. The right not to be subjected to arbitrary evictions

Vulnerable Union citizens in Sweden are continuously subjected to eviction from their residential sites. Evictions take place when the individuals are not considered to have a right to reside on the land they have claimed, but also because the settlements are often of poor quality and can pose a danger to the residents' health and safety. The residents often lack both running water and waste disposal and sanitary facilities. In some but not all cases, the people evicted are assigned temporary accommodation where they can sleep for a few nights. Evictions often take place by such means as demolishing any huts built, using bulldozers. If the residents leave the site, everything left behind is classified as refuse and is disposed of. Caravans are also seized.⁵⁹ In May 2015, an eviction of a residential site in southern Stockholm was undertaken despite the fact that the organisation Doctors of the World had pleaded that the eviction be postponed. This was because one of the residents had been found to be infected with tuberculosis and the doctors wanted to postpone the eviction until they were able to trace all suspected cases of the disease. Because the eviction was executed anyway, there is a significant risk that tuberculosis will spread among other vulnerable Union citizens and subsequently to their children in their countries of origin.⁶⁰

3.1. Sweden's obligations under international law

The ICCPR, the CRC and the ECHR contain provisions on the right to respect for privacy and family life.⁶¹ The ECHR makes it clear that the right to respect for privacy and family life may only be restricted if this is undertaken in accordance with the law, if it is necessary in a democratic society and can be justified in the interests of national security, public safety, the country's economic wellbeing, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.⁶² The ECHR also includes the right to protection of property: everyone has the right to respect for his or her property and may not be deprived of his or her possessions except in the public interest and under the conditions set out in law and in accordance with the principles of international law.⁶³

The European Court of Human Rights has, on several occasions, examined whether forced eviction of vulnerable Roma conforms to the right to respect for privacy and protection of property. One of the cases is *Winterstein and others v. France* (2013), which concerned a situation in which the French authorities had forcibly removed a group of Roma who had been living in caravans on a piece of land outside a French town for a long time.⁶⁴ The courts found that France had violated the right to respect for private and family life under the ECHR. The French courts that issued the eviction order had not weighed the various interests — breach of the land-use plan, on one hand, and the individual's right to home and private life, on the other — against one another and had not assessed whether there was an urgent social need to evict the people. With reference to the systematic discrimination to which Roma and travellers are subjected, the Court emphasised that these groups should never be subjected to forced eviction unless they are offered alternative accommodation, except in cases of *force majeure*. In the case of *Yordanova and others v. Bulgaria* (2012), the Court noted that the residents' particularly vulnerable situation as a marginalised group in society is a key factor in the proportionality assessment that needs to take place.⁶⁵ The case concerned a group of Roma who had settled illegally on land owned by the municipality. Local authorities evicted them without weighing the residents' interests in continuing to live there against the public interest in exploiting the land, which was strongly criticised by the Court. In the case of *Connors v. the United Kingdom* (2004), the Court underlined States' procedural obligations to protect the right to respect for private and family life. The Court pointed out that "the procedural safeguards available to the individual" are of particular importance for assessing whether the State acted in accordance with the Convention and that the Court, "in particular, [...] must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8"⁶⁶.

59 See, for example, a decision on the demolition of the Sorgenfri camp in Malmö in November 2015, in the City of Malmö/Environmental Committee, *Protokollsutdrag* [Extract from Minutes] 27/10/2015. See also Skarin, A & Ronge, J, *Expressen*, "Avhysning på flera platser i Stockholm" [Evictions at various sites in Stockholm], 05/05/2015.

60 Lindberg, S, *Aftonbladet*, "Aftonbladet avslöjar: De vräktes trots upptäckt av tbc-smitta" [Aftonbladet reveals: They were evicted despite the discovery of a TB infection], 06/05/2015.

61 ICCPR, Article 17(1), ECHR, Article 8(1). See also Article 27 of the CRC that recognises the right to a reasonable standard of living for children. Article 27(3) provides in particular that the States Parties are responsible for providing material assistance, whenever needed, and developing support programmes particularly in relation to housing, among other things.

62 ECHR, Article 8(2).

63 ECHR, Additional Protocol 1, Article 1.

64 ECtHR, *Winterstein and others v. France*, 27013/07, 17/10/2013. See also, *inter alia*, *Connors v. the United Kingdom*, 66746/01, 27/05/2004, and *Yordanova and others v. Bulgaria*, 25446/06, 24/04/2012.

65 ECtHR, *Yordanova and others v. Bulgaria*, 254467/06, 24/04/2012.

66 ECtHR, *Connors v. the United Kingdom*, 66746/01, 27/05/2004, para. 83.



FOTO: FORENINGEN HEM

The right to housing, which forms part of the right to an adequate standard of living in Article 11 of the ICESCR, includes protection against arbitrary evictions and protection from harassment and threats. This means, among other things, **that eviction may never result in homelessness and must never be carried out for the purpose of discrimination or with a discriminatory effect.**⁶⁷ The CESCR notes that forced evictions may involve violations of economic and social rights as well as civil and political rights such as the right to privacy, the right to personal security and the right to property.⁶⁸

The CESCR emphasises that even if evictions may be permitted in certain circumstances, the State’s conduct must always conform to Article 4 of the ICESCR, i.e. that “the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”⁶⁹ This means, among other things, that even though evictions take place in accordance with the legal and procedural guarantees applicable in domestic law, they can still conflict with the State’s obligations under the ICESCR if they are in breach of fundamental principles of human rights.

A case decided by the European Committee of Social Rights, which monitors compliance with the European Social Charter, examined the forced evictions and mass expulsions of a large group of Romanian and Bulgarian Roma from France in 2010.⁷⁰ The Committee of Social Rights **noted that when evictions take place, in order to be permissible under the Charter they must be carried out I) in conditions that respect the dignity of the persons concerned, II) in accordance with rules that are sufficiently protective of the rights of the persons concerned and, when the evictions are in the public interest, III) the authorities must take steps to rehouse or financially assist the persons concerned.**⁷¹ The Committee found that there was a close link between the eviction of the persons in question and their expulsion from France and noted that expulsion on grounds of public order or morality can only be considered to conform to the European Social Charter if the persons have committed crimes and have been brought to justice. The Committee found that the authorities had specifically identified the Roma and that the administrative decisions that led to the evictions and expulsions were of a discriminatory nature. France was considered to have violated the right to non-discrimination linked both to the right to housing and the right of migrant workers to protection and assistance.

67 CESCR, *General Comment No. 7: The right to adequate housing: forced evictions*, 1997, paras. 10 and 16.

68 CESCR, *General Comment No. 7: The right to adequate housing: forced evictions*, 1997, para. 4.

69 ICESCR, Article 4.

70 European Committee on Social Rights, *Centre on Housing Rights and Evictions (COHRE) v. France*, 63/2010, 28/06/2011.

71 European Committee of Social Rights, *Centre on Housing Rights and Evictions (COHRE) v. France*, 63/2010, 28/06/2011, para. 42.

Municipalities in Sweden regularly combine evictions of vulnerable Union citizens from their settlements with the offer of a bus ticket back to their countries of origin. Even though the persons are not formally expelled, the consequence for many vulnerable Union citizens is that they are forced to leave Sweden because they are often unable to settle anywhere else. Here it is worth emphasising that the ECHR prohibits the collective expulsions of aliens.⁷²

The CESCR has established specific requirements for legal certainty in eviction processes to ensure that these conform to applicable human rights principles. The Committee provides as follows:

Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.⁷³

These procedural rules for protection apply to all evictions, even when settlements have been established illegally. The Swedish regulations and the Swedish approach in eviction processes to which vulnerable Union citizens are subjected must therefore be scrutinized in light of these procedural rules. The CESCR's requirements also conform to the procedural requirements established by the European Court of Human Rights in order for forced evictions to be allowed under the ECHR.

The State has an obligation to intervene when people are living in conditions that pose a hazard to their health and it may therefore be necessary, under human rights law, to carry out evictions when people's health and safety are at stake. Nevertheless, these evictions must not take place without the adoption of safeguards in procedural terms and also with due regard to the consequences of the eviction for those affected.

3.2. National law

The regulatory framework contained in Act (1990:746) on Payment Orders and Enforcement Assistance is normally applied in the case of evictions of vulnerable Union citizens from private or public land in Sweden. In most cases, the property owner turns to the Swedish Enforcement Service for so-called special assistance to remove unwanted persons from his or her property. Special assistance may be provided in situations where an "unlawful act" has been carried out in relation to fixed or movable property, for example when people have settled on a property without the landowner's permission.⁷⁴ It is worth pointing out that the usual rules in the case of eviction — such as when a tenant is evicted due to inability to pay the rent — contain a number of safeguards. For example, a certain grace period is provided in order to give a tenant who is behind with the rent an opportunity to pay and particular account is taken of whether the inability to pay is due to illness or other similar circumstances.⁷⁵ There are no similar safeguards at all in the process leading to eviction of vulnerable Union citizens who have set up camp without a permit and where the rules relating to special assistance therefore apply.

In ordinary cases of assistance from the Swedish Enforcement Service, general procedural rules apply, specifying that the persons subjected to the measure must be informed of the decision and must be given the opportunity to state their opinion before it is executed.⁷⁶ However, these rules do not apply in the case of a so-called interim measures, which means that the measure can be implemented immediately. The measure — in this case the eviction of vulnerable Union citizens from private or public land — is granted immediately "if the applicant asserts that the matter admits no delay"⁷⁷ which, according to the legislative history, should be interpreted to mean that "the matter is so urgent that any further delay means a risk that the outcome will be of no value to the applicant".⁷⁸ In practice, the interim

72 ECHR, additional Protocol 4, Article 4.

73 CESCR, *General Comment No. 7: The right to adequate housing: forced evictions*, 1997, para. 15.

74 Act (1990:746) on Payment Orders and Enforcement Assistance, section 4.

75 See, for example, Chapter 12, section 44 of the Swedish Real Property Code (1970:994).

76 Act (1990:746) on Payment Orders and Enforcement Assistance, section 29.

77 Act (1990:746) on Payment Orders and Enforcement Assistance, section 63.

78 Government Bill 1989/90:85 page 143.

procedure is regularly applied in the case of evictions of vulnerable Union citizens, often without the Swedish Enforcement Service justifying why a delay would result in damage to the property owner in line with the purpose of the provision.⁷⁹ This means in practice that evictions are executed without the people evicted having any opportunity to comment on the matter or to dispute it before the action has already been taken. Nor is it possible to request a stay of enforcement or otherwise halt the execution.⁸⁰ It is worth emphasising that eviction when legal tenure has expired — for example, when a person no longer pays their rent — cannot be executed according to the interim procedure in view of the special protection that should apply when an intervention as invasive as eviction of individuals from their residence is at hand.⁸¹

The Swedish Environmental Code (1998:808) has also been applied in eviction cases in relation to, among other things, damage to human health and the environment. In one noted case, the municipality of Malmö decided to prevent vulnerable Union citizens from residing on a derelict piece of land (private land) with reference to the rules of the Swedish Environmental Code regarding the protection of human health and the environment.⁸² In the case in question, the settlement, where between 100 and 200 individuals were residing, was of poor quality and had no access to water or sanitation. When the camp was cleared, only a small proportion of the people resident at the site were offered alternative emergency accommodation by the city. All of them were offered payment for return to their home country. Doctors' opinions stated that several of the residents had minor illnesses that could have been treated, but that likely would develop into serious illnesses if the people suffered homelessness.⁸³ In the assessment of the case by the various judicial bodies, the consequences for the residents in terms of human rights were only touched upon briefly.

In the case of eviction from a public site, this often takes place pursuant to the Public Order Act (1993:1617). If the police assist in the execution, ordinary rules for police intervention apply. Section 8 of the Police Act (1984:387) provides that a police officer who must carry out a task as

part of his or her duties must intervene in a manner that is justifiable in view of the purpose of the action and other circumstances. The so-called *principle of proportionality* is clearly expressed in the Police Act: "If force must be used, it shall only be used in the form and to the extent required in order for the intended result to be achieved".⁸⁴

3.3. CONCLUSIONS

In order for the Swedish regulatory framework to be interpreted as conforming to treaties in accordance with Sweden's obligations under binding human rights instruments, the following must apply:

- in processes where the eviction of vulnerable Union citizens is requested, a proportionality assessment must always be made in order to assess whether such an urgent social need to evict the persons exists that it stands in proportion to the invasive intervention that an eviction entails,
- evictions in the case of so-called illegal settlements, in other words where the residents have no permit to settle at the site, must be subject to the same safeguards as other evictions,
- an interim process must not be applied. In other words, residents must be notified of the decision, they must be given the opportunity to state their opinion and must be able to contest the action,
- it must be possible for a stay of execution to be requested and granted in emergency situations,
- alternative accommodation must always be prepared when evictions take place, other than in situations of *force majeure*, and
- in the case of evictions of vulnerable Union citizens, the police and the Swedish Enforcement Service must behave with respect for the individuals affected and, in accordance with the principle of proportionality, never use more force than is called for and proportionate to the objective of the intervention.

79 See, for example, Swedish Enforcement Authority, case no. 01-133837-15, decision of 22/06/2015.

80 Derives from the Act (1990:746) on Payment Orders and Enforcement Assistance, section 57.

81 Derives from the Act (1990:746) on Payment Orders and Enforcement Assistance, sections 4 and 63.

82 See the Environment Department, City of Malmö, case 548:01614-2014, decision of 23/04/2015.

83 Supplement to the appeal to the County Administrative Board in case 505 12481-15, Environment Department, City of Malmö, 20/05/2015.

84 The Police Act (1984:387), section 8.

4. Right to social assistance



FOTO: FORENINGEN HEM

One of the questions that have arisen in the wake of the establishment of European Union citizenship is to what extent Member States are obliged to include citizens of other EU countries in their national social assistance systems.⁸⁷ Initially, it is important to understand how the binding human rights instruments and EU law deal, in different ways, with the right to social assistance and how these regulatory frameworks interact. To simplify somewhat, it may be said that **EU law sets the framework for Union citizens having a right to seek social assistance and a right to have their applications for social assistance examined individually, whereas the human rights instruments fill the concept of social assistance with meaning in terms of how that right should be understood in practice and what the State's obligations are.**

4.1. Sweden's obligations under international law

Although the ECHR does not explicitly protect the right to be covered by social assistance systems, matters concerning the right of individuals to receive social support and protection in some cases still fall within the framework of the Convention. The European Court of Human Rights has, in several cases, established that the right to a fair trial, which is protected by Article 6, includes processes whereby an individual applies for, is granted, or is refused social assistance.⁸⁸ This means that the procedural guarantees under Article 6, for example, that the assessment must be fair and impartial and must be carried out within a reasonable time, also apply to assessment of applications for social assistance.⁸⁹ Furthermore, the refusal to grant social assistance or social protection, if this leads to an individual ending up in destitution, can bring to the fore the State's responsibility not to subject a person to inhuman or degrading treatment under Article 3.⁹⁰ In *Koua Poirrez v. France* from 2003, the Court found that the refusal of an early retirement pension on the basis that the applicant in question was not a French citizen was a violation of the right to non-discrimination (Article 14) in combination with protection of property (Protocol 1, Article 1).⁹¹ The case

The economic crisis in Europe has left an increasing number of Europeans with less earning potential and a need to seek an alternative living abroad. For some, the journey is also a consequence of discrimination and stigmatisation in their home country. Many of the vulnerable Union citizens in Sweden have previously worked and have come to Sweden in the hope of finding employment. However, persons in this group experience extreme difficulty to find work in Sweden, which the result that some of them support themselves through begging instead.⁸⁵ Many vulnerable Union citizens beg throughout the day, from seven in the morning until seven in the evening, and according to studies the earnings amount to an average of less than 100 kronor a day.⁸⁶

85 The National Board of Health and Welfare, *Kartläggning av hemlöshet bland utrikesfödda personer utan permanent uppehållstillstånd i Sverige* [Survey of homelessness among foreign-born persons without permanent residence in Sweden], 2013, Stockholm City Mission, *Hemlös 2012* [Homeless 2012]. *The Stockholm City Mission annual homelessness report. Subject: EU-medborgaresom lever i hemlöshet i Sverige* [EU citizens living in circumstances of homelessness in Sweden], 2013. See also Fafo/Rockwool Foundation (Norway), *When poverty meets affluence. Migrants from Romania on the streets of Scandinavian capitals*, 2015.

86 Fafo/Rockwool Foundation (Norway), *When poverty meets affluence. Migrants from Romania on the streets of Scandinavian capitals*, 2015, pages 67–69. Hökerberg, J, *Dagens Nyheter*, "Frågor och svar, tiggarna i Stockholm" [Questions and answers, beggars in Stockholm], 11/03/2013, Hökerberg, J & Turesson, R, *Dagens Nyheter* "Jag ska inte behöva leva så här" [I shouldn't have to live like this], 11/03/2013, Stockholm City Mission, *Värt att veta om tiggeri* [Worth knowing about begging], <http://www.stadsmissionen.se/Socialverksamhet/Nyhetsarkiv-Social-verksamhet/Vart-att-veta-om-tiggeri/>. [04/11/2015]

87 The term "social assistance system" is used here as an umbrella term for social assistance, social insurance, social security, etc. Social insurance systems in the European Union are coordinated rather than harmonised. Regulation 883/2004, which regulates the coordination of national social security systems, applies *inter alia* when people wish to "carry over" their social rights from their Member State of origin to another Member State. In Sweden, the social insurance system includes pension insurance, sickness insurance, work injury insurance, parental insurance and unemployment insurance and therefore consists of something other than the right to income support/social assistance. This report focuses on social assistance and does not enter into any more detailed discussion of Union citizens' right to social insurance in other Member States.

88 See, for example, ECtHR *Salesi v. Italy*, 13023/87, 26/02/1993.

89 See ECtHR, *Kovachev v. Bulgaria*, report from the Commission, 28/10/1997, *Salesi v. Italy*, 13023/87, 26/02/1993 and *Zednik v. the Czech Republic*, 74328/01, 28/06/2005.

90 ECtHR, *Pancenko v. Latvia*, 40772/98, 28/10/1999, *Z. and others v. the United Kingdom*, 29392/95, 10/05/2001.

91 ECtHR, *Koua Poirrez v. France*, 40892/98, 30/09/2003.

shows that the right to certain forms of social assistance could come under the right of protection of property. The Court also underlined that in this case it was immaterial that France, at that time, did not have any so-called reciprocity agreement with the applicant's country of origin, the Ivory Coast, because France, when it ratified the Convention, undertook to guarantee those rights for "everyone within its jurisdiction".⁹² According to Article 1 of the ECHR, all States Parties undertake to guarantee "everyone within their jurisdiction" all the rights in the Convention.

Under the ICESCR, the States Parties recognise in Article 9 "the right of everyone to social security, including social insurance."⁹³ CESCR General Comment 19 develops the contents of the right to social security. The Committee establishes that Article 9 must be interpreted broadly and points out that access to non-contributory schemes is crucial because many marginalised groups are not covered by insurance-based systems that are often contributory.⁹⁴ Furthermore, the Committee emphasises the States' obligation to ensure that individuals and groups that have traditionally faced difficulties in exercising their right to social security, including women, minority groups and non-citizens, are not discriminated against either directly or indirectly.⁹⁵ The States are also obliged to ensure that linguistic and other minorities are not excluded through unreasonable eligibility conditions or lack of adequate access to information.⁹⁶ In the case of non-citizens, the Committee points out in particular:

Non-nationals should be able to access non-contributory schemes for income support, affordable access to health care and family support. Any restrictions, including a qualification period, must be proportionate and reasonable. All persons, irrespective of their nationality, residency or immigration status, are entitled to primary and emergency medical care.⁹⁷

The principle of proportionality mentioned by the Committee in this context means that any procedural obstacles to non-citizens' being granted assistance must be proportionate to their fundamental right to social security. This right derives from the fact that they are within the jurisdiction of the country in question.

4.2. EU law

As regards EU law, it is worth repeating that one of the cornerstones of the EU legal system is equal treatment for all Union citizens and that there is an extensive right of residence for Union citizens throughout the Union. The *main rule* in EU law is that Union citizens must be treated the same as nationals, and restrictions in this regard are an *exception* to the main rule and must be applied strictly. This also applies in matters of social assistance.

As stated above, one of the exceptions to the principle of equal treatment in EU law applies precisely to social assistance in relation to the right of residence. The Member States do under EU law not have any obligation to grant social security during the first three months of a Union citizen's residence.⁹⁸ Furthermore, the right of residence *after* the first three months can be made conditional upon availability of sufficient resources and a comprehensive sickness insurance in order not to constitute an unreasonable burden on the host State's social security system.⁹⁹

Even though EU law provides for exceptions from granting social security to all Union citizens from other Member States on the same terms as the State's own citizens, that does not mean that the States *cannot* decide on a more favourable regime. On the contrary, it could be argued that **equal treatment must be ensured in light of the provisions of the ICESCR on social security, a reasonable standard of living, and non-discrimination, and the right under the ECHR not to be subjected to degrading and inhuman treatment.**¹⁰⁰ Taking into consideration the human rights standards in this area, the two exceptions provided in the Free Movement Directive can also lead to problematic consequences in practice because vulnerable Union citizens are largely discriminated against with regard to fundamental rights in their home countries. Health insurance policies in some Member States are linked to employment, for which reason Union citizens who are unemployed may also lack health insurance. The widespread discrimination to which Roma are often subjected can also mean, in some EU countries, that they do not have identity documents and would therefore

92 ECtHR, *KouaPoirrez v. France*, 40892/98, 30/09/2003, para. 49.

93 ICESCR, Article 9. See also Article 26 of the CRC, which stipulates the right of every child to benefit from social security, including social insurance.

94 CESCR, *General Comment No. 19: The right to social security*, 2007, para. 4 (b): "Measures can include non-contributory schemes such as universal schemes (which provide the relevant benefit in principle to everyone who experiences a particular risk or contingency) or targeted social assistance schemes (where benefits are received by those in a situation of need). In almost all States parties, non-contributory schemes will be required since it is unlikely that every person can be adequately covered through an insurance-based system."

95 CESCR, *General Comment No. 19: The right to social security*, 2007, paras. 31, 35 and 36.

96 CESCR, *General Comment No. 19: The right to social security*, 2007, para. 35.

97 CESCR, *General Comment No. 19: The right to social security*, 2007, para. 37.

98 The Free Movement Directive (2004/38/EC), 29 April 2004, Article 24(2).

99 The Free Movement Directive (2004/38/EC), 29 April 2004, Article 7(1)(b).

100 See the ICESCR, Articles 2, 9 and 11 and the ECHR, Article 3.

not be able to show that they had comprehensive health insurance even if such insurance existed.¹⁰¹ These circumstances mean that the host State, on the basis of binding human rights standards, also has an obligation to guarantee vulnerable Union citizens' right to social assistance in cases where EU law does not require it.

After the first three months, the right of Union citizens to be granted social assistance is governed in accordance with national law and binding human rights standards. However, EU law is brought to the fore in matters regarding the *right of Union citizens to remain in the host State*, since the right of residence may be made subject on the requirement for sufficient assets and health insurance. This means that EU law stipulates when it may be necessary to deport a person who is unable to support him- or herself in the host State. The European Court of Justice (the EU Court) has established that the fact that a Union citizen has applied to social services for income support may not lead to automatic deportation of that person.¹⁰² Furthermore, income support that is granted for a shorter period in order to alleviate a Union citizen's temporary financial difficulties, should not affect the right of residence.¹⁰³ In its interpretation of the requirement contained in the Free Movement Directive for sufficient assets to retain a right of residence, the EU Court has pointed out that the principle of proportionality must be taken into consideration before a person can be deported and that it is the burden on the social assistance system *as a whole* that must be taken into account.¹⁰⁴

There is therefore no automatic right for the host State to deport a person even if he or she does not have sufficient resources. However, whether the person is actually granted social assistance is governed not by EU law but by national law.

In the *Dano* case, the EU Court pointed out that the authorities in the host State cannot collectively deport all members of a group of Union citizens, but must investigate each individual case in order to determine whether the person in question meets the conditions related to possession of sufficient resources.¹⁰⁵ In other words, **every individual has a right to an assessment of his or her circumstances before the authorities can decide on deportation. It should be pointed out that the assessment of the right of residence must be supplemented by an**

assessment of the individual's actual need for support in accordance with binding human rights standards. If the needs-based assessment leads to the conclusion that the individual has a need for social support, the authorities are obliged to grant that support under the same conditions as for nationals in accordance with the principle of non-discrimination.

4.3. National law

The right to social assistance under Swedish national law is governed in the Social Services Act (2001:453) (SoL). Chapter 2 of the Act provides for a right to emergency assistance and Chapter 4 provides for a right to income support. The SoL also provides that "each municipality is responsible for social services in its area and has ultimate responsibility for ensuring that individuals receive the support and assistance they need"¹⁰⁶ Furthermore, the municipality where the individual is residing is responsible for ensuring that individuals receive the help they need.¹⁰⁷ All persons residing in a municipality therefore have a right to apply for financial or other assistance in accordance with the provisions of the SoL, as well as to have their case assessed and formally decided. The right to apply for social security also applies to Union citizens. It is worth pointing out that the Act lacks the specific exception from the principle of equal treatment that is contained in EU law in relation to the right to social security. The Act states that the municipal social welfare committees are responsible for everyone residing in the municipality. However, in accordance with the SoL, the host municipality's responsibility is confined to emergency situations if "it is clear that a municipality other than the host municipality is responsible for providing an individual with support and assistance".¹⁰⁸ Case law shows that interventions that occur in such "emergency situations" may, for example, include assistance in arranging a journey to the individual's home municipality, accommodation and a food allowance up to departure.¹⁰⁹ The National Board of Health and Welfare is of the opinion that the same principle should apply to EU/EEA citizens who are considered not to have a right of residence and thus their actual domicile in Sweden. In other words, their country of origin must be considered to be "responsible for support and assistance for individuals".¹¹⁰ This analogy to the wording of the SoL

101 See, *inter alia*, Council of Europe Commissioner for Human Rights, *Human rights of Roma and Travellers in Europe*, 2012, page 184.

102 See, for example, ECJ, C-456/02, *Michel Trojani v. Centre public d'aidesociale de Bruxelles (CPAS)*, 07/09/2004, para. 40: "[W]hile the Member States may make residence of a citizen of the Union who is not economically active conditional on his having sufficient resources, that does not mean that such a person cannot, during his lawful residence in the host Member State, benefit from the fundamental principle of equal treatment as laid down in Article 12 EC."

103 ECJ, C-184/99, *Rudy Grzelczyk v. Centre public d'aidesociales d'Ottignies-Louvain-la-Neuve*, 20/09/2001, para. 42–43.

104 ECJ, C-140/12, *Pensionsversicherungsanstalt v. Peter Brey*, 19/09/2013, para. 72.

105 ECJ, C-333/13, *Elisabeta Dano and Florin Dano v. Jobcenter Leipzig*, 11/11/2014, para. 80.

106 SoL (2001:453) Chapter 2, section 1.

107 SoL (2001:453) Chapter 2a, section 1.

108 SoL (2001:453) Chapter 2a, section 2.

109 See Case law of the Supreme Administrative Court, RÅ 1995, ref. 70.

110 The National Board of Health and Welfare, *Rätten till socialtjänst för medborgare inom EU/EES-området – en vägledning* [The right to social assistance for citizens within the EU/EEA area — a guide], 2014, page 8. In accordance with the SoL, the municipalities have specific responsibility for children and young people, which is also emphasised in the guidance. A specific assessment regarding emergency interventions, with the child's best interests as the starting point, must be carried out for children. See pages 20–22.

regarding the home municipality's responsibility in relation to foreign nationals was established by the Supreme Administrative Court in 1996 and that is the case law to which the National Board of Health and Welfare now refers.¹¹¹

The case law upon which the National Board of Health and Welfare supports its conclusion that Swedish municipalities do not have any responsibility to do more than to remedy emergency situations for vulnerable Union citizens is almost twenty years old and derives from a time when Sweden had just joined the EU. The case concerned a non-EU citizen who had employment and accommodation in his country of origin. The case provides a weak legal ground for refusing social assistance in Sweden for vulnerable Union citizens who lack both work and dignified living conditions in their country of origin. In its broad interpretation of the 1996 case, the National Board of Health and Welfare does not reflect on the fact that vulnerable Union citizens often have severely limited opportunities to have their rights fulfilled in their country of origin. The comparison with the division of responsibilities among Swedish municipalities is defective because the EU has no common welfare system. **There are large numbers of Union citizens who do not have the fundamental right to social security that all Swedish citizens have, no matter where in the country they reside. To cite the distribution of responsibilities among Swedish municipalities in the SoL as a basis for refusing social support for vulnerable Union citizens in Sweden therefore does not conform to binding human rights standards.**

In conclusion, *in accordance with EU law*, a vulnerable Union citizen has no right to social security for the first three months. Thereafter, he or she has a right to social security under the same conditions as Swedish citizens provided that he or she has an extended right of residence, though the right of residence is conditional. *In accordance with international human rights standards*, the protection extends further, both during the first three months and subsequently. Because the main principle is that all people, regardless of citizenship, must have a right to a non-contributory scheme for income support whenever necessary and that all restrictions must be proportionate

and reasonable, a general refusal of social security to an entire group with reference to EU law cannot be justified. On the contrary, Sweden's obligations under, *inter alia*, the ICESCR require that persons in need not only have a right to assessment, but also to be granted social assistance. The right to individual assessment also derives from the ECHR.

4.4. CONCLUSIONS

The following applies to vulnerable Union citizens in accordance with national law, binding human rights instruments and EU law:

- the main rule for vulnerable European Union citizens is precisely the same as for nationals: the individual should support him or herself, but an application for income support must be assessed regardless of the applicant's legal status and must seek to clarify the individual's needs,
- in the development of guidelines for management by the social services of applications from vulnerable Union citizens, the State must take into consideration not only the rules of EU law as set out in the Free Movement Directive, but also the right to social security, particularly for vulnerable ethnic and linguistic minorities, in accordance with the conventions ratified by Sweden,
- in light of binding human rights standards, the precedent from 1996 on distribution of responsibility should no longer be used as grounds for refusing social assistance for vulnerable Union citizens,
- an individual assessment of the right to social assistance must be based on the principle of equal treatment, the principle of objectivity and the principle of proportionality, as well as the child's best interests if there is a child involved in the case, and
- after a means test, vulnerable Union citizens have a right to social assistance under the same conditions as Swedish citizens.

¹¹¹ See RÅ, 1995, ref. 70. It should be pointed out that in June 2014, the administrative court in Linköping found that, in accordance with the Swedish Local Government Act, vulnerable Union citizens who are within the municipal boundaries are the municipality's affair and that support for hostels for these persons can be granted by the municipal executive board on that basis. Case 611-14, 09/06/2014.

5. Right to labour market assistance

Reports indicate that most vulnerable Union citizens that come to Sweden do so in the hope of finding work.¹¹² For most of them, begging is not the purpose of the journey, but a consequence of a lack of other means of subsistence. Typical visitors at Crossroads — an activity for vulnerable Union and third-country nationals in several parts of the country that is run by the non-profit City Mission and others — are described in a report from Gothenburg as individuals who are willing to apply for any kind of work at all. Most are men aged between 21 and 46 and they often have CVs translated to several languages. In many cases, they have professional training and several years of professional practice behind them and many of the persons aged 30 to 40 have several years' work experience as construction workers or craftsmen.¹¹³

5.1. Sweden's obligations under international law

The right to work is enshrined in Article 6 of the ICESCR. The CESCR notes that the right to non-discrimination in relation to employment includes the following:

The principle of non discrimination as set out in article 2.2 of the Covenant [...] should apply in relation to employment opportunities for migrant workers and their families. In this regard the Committee underlines the need for national plans of action to be devised to respect and promote such principles by all appropriate measures, legislative or otherwise¹¹⁴

States' obligations under the ICESCR in relation to the right to work include, but are not limited to, an obligation to “ensure the right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity” and to “avoid any measure that results in discrimination and unequal treatment in the private and public sectors

of disadvantaged and marginalized individuals and groups or in weakening mechanisms for the protection of such individuals and groups.”¹¹⁵ The more specific measures that the States Parties must adopt in order to safeguard the right to work should include “technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”¹¹⁶

5.2. EU law

The free movement of workers is one of the pillars of EU law and this also includes free movement for job seekers. The TFEU provides that any Union citizen must be able to take a job in any other Member State and be treated on an equal footing with that Member State's own citizens.¹¹⁷ To enable freedom of movement to function on the basis of the idea that the EU is a single labour market, all Union citizens must have a right to seek employment in other Member States and must have a real chance of establishing themselves in those countries. Nevertheless, labour market issues are largely a national affair and the Member States have not given the EU a legislative mandate to implement more harmonising measures. Like in the area of social security, labour market measures are therefore only subject to coordination, not harmonisation.¹¹⁸

In the *Kempf* case, the EU Court established that a Union citizen who carried out paid work and applied for financial assistance to supplement his or her low income did not cease to be a worker for that reason but was still covered by the right to freedom of movement for workers.¹¹⁹ In the *Vatsouras & Koupatantze* case, it was noted that a salary for work must have been paid out for a period of time in order to form the basis for the right to employment benefits. Furthermore:

112 The National Board of Health and Welfare, *Kartläggning av hemlöshet bland utrikesfödda personer utan permanent uppehållstillstånd i Sverige* [Survey of homelessness among foreign-born persons without permanent residence in Sweden], 2013, Stockholm City Mission, *Hemlös 2012* [Homeless 2012]. *Stockholms Stadsmissions årliga hemlöshetsrapport. Tema: EU-medborgare som lever i hemlöshet i Sverige* [The Stockholm City Mission annual homelessness report. Subject: Homeless EU citizens in Sweden], 2013, Fafo/Rockwool Foundation (Norway), *When poverty meets affluence. Migrants from Romania on the streets of Scandinavian capitals*, 2015.

113 Crossroads/Göteborg Church City Mission, *Det nya Europa* [The new Europe], 2014. See also Fafo/Rockwool Foundation (Norway), *When poverty meets affluence. Migrants from Romania on the streets of Scandinavian capitals*, 2015, pages 26–28, 43–49.

114 CESCR, *General Comment No. 18: Article 6: the equal right of men and women to the enjoyment of all economic, social and cultural rights*, 2006, para. 18.

115 CESCR, *General Comment No. 18: Article 6: the equal right of men and women to the enjoyment of all economic, social and cultural rights*, 2006, para. 31.

116 ICESCR, Article 6.2.

117 TFEU, Articles 45–48.

118 TFEU, Articles 2–6.

119 ECJ C-139/85 R. H. *Kempf v. Staatssecretaris van Justitie*, 03/06/1986.



Neither the origin of the funds from which the remuneration is paid nor the limited amount of that remuneration can have any consequence in regard to whether or not the person is a ‘worker’ for the purposes of Community law [...]. The fact that the income from employment is lower than the minimum required for subsistence does not prevent the person in such employment from being regarded as a ‘worker’ [...].¹²⁰

Accordingly, the greater the degree of integration of Union citizens and their family members in the host Member State, the greater the degree of protection against expulsion should be. Only in exceptional circumstances, where there are imperative grounds of public security, should an expulsion measure be taken against Union citizens who have resided for many years in the territory of the host Member State [...].¹²³

Despite the fact that undeclared work cannot provide Union citizens with the status of worker, the Swedish National Board of Health and Welfare states that if adults in a family have carried out undeclared work, they may still have a right to financial assistance if they have lived long enough in Sweden to be considered to be domiciled in this country.¹²¹ The National Board of Health and Welfare states that the social services will carry out an overall assessment based on the adults’ ability to find work and what deportation would mean for the children, despite the fact that under EU law they are not covered by equal treatment because undeclared work does not qualify as work.¹²² The same principles are expressed in the preamble to the Free Movement Directive, which states, *inter alia*, as follows:

The Free Movement Directive provides that Union citizens or their family members may “under no circumstances” be deported if,

the Union citizens entered the territory of the host Member State in order to seek employment. In this case, the Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged.¹²⁴

This means that Union citizens seeking jobs have a right of residence also after three months, provided that the

¹²⁰ ECJ C-22/08 and C-23/08, *Vatsouras and Koupatantze v. ARGE Nürnberg* 900, 04/06/2009, para. 27–28.

¹²¹ The National Board of Health and Welfare, *Rätten till socialt bistånd för medborgare inom EU/EES-området – en vägledning* [The right to social assistance for citizens within the EU/EEA area – a guide], 2014, page 15.

¹²² The National Board of Health and Welfare, *Rätten till socialt bistånd för medborgare inom EU/EES-området – en vägledning* [The right to social assistance for citizens within the EU/EEA area – a guide], 2014, page 15.

¹²³ The Free Movement Directive (2004/38/EC), 29 April 2004, Article, preamble (24).

¹²⁴ The Free Movement Directive (2004/38/EC), 29 April 2004, Article 14(b).

above conditions have been met. Every Union citizen has a right to seek work in a Member State, work there without a specific work permit, reside there during the period for which the work continues and, under certain circumstances, remain even when the employment has ceased.¹²⁵ Furthermore, they must be treated in the same way as the country's own nationals as regards access to employment, employment conditions and all other social and tax benefits.¹²⁶ **In accordance with the principle of equal treatment, a Union citizen who is seeking work can register at the Swedish Employment Office in exactly the same way as a Swedish citizen who is seeking work. Sweden may not, under EU law, impose any quantitative restrictions or discriminatory recruitment criteria for Union citizens.**¹²⁷

In the case law of the EU Court, the application of the principle of equal treatment has resulted in a situation whereby a Union citizen seeking work must have the same right to labour market assistance as a national citizen, provided that some connection to the local labour market exists.¹²⁸ That connection can be, for example, that the job seeker speaks the language of the Member State or the relevant geographical area, or has relevant training or skills for the jobs sought. In practice, in many countries the requirement for connection to the labour market of the host country leads to a residence condition that is easier for a national citizen to meet than for a Union citizen. A requirement for residence therefore risks having unfavourable effects on Union citizens and for that reason the EU Court has stressed that the residence condition in the host country must be proportionate to the purpose of the regulation, objective, and applied without regard to the nationality of the person in question.¹²⁹ The Union citizen seeking work must also have access to all cash benefits that could help him or her to find work, in the same way as national citizens.

In the *Antonissen* case, the EU Court assessed a Union citizen's right of residence as a job seeker in another Member State. The Court concluded that a grace period of six months should generally be considered reasonable before a union citizen can be forced to leave the host

State. At the same time, a longer period will be necessary in individual cases if, when the period has expired, the Union citizen proves that he or she is still seeking work and "has genuine chances of being engaged".¹³⁰ Such genuine chances of being engaged can, for example, take the form of an actual link established between the job seeker and the host Member State's labour market. This link may, according to the EU Court, be considered determined, *inter alia*, if "the person concerned has, for a reasonable period, in fact genuinely sought work in the Member State in question".¹³¹ In the *Collins* case, the EU Court verified that the conditions established to enable a person to be considered as a job seeker must be proportionate to the purpose of the conditions and independent of the person's nationality.¹³²

5.3. National law

In Sweden, the Swedish Employment Office is mainly responsible for implementing labour market policy. Its overall objective is to help job seekers and employers to find one another and to prioritise support for persons who face major obstacles in accessing the labour market.¹³³ Despite the fact that vulnerable Union citizens can be definitely confirmed as one of the groups in Sweden that face the greatest challenges in accessing the labour market, the Government's appropriation directions for the Swedish Employment Office for 2015 contain no strategy to combat unemployment among vulnerable Union citizens.¹³⁴ Nor does there appear to be any national action plan for vulnerable Union citizens seeking work.

Persons over the age of 25 who are or who risk becoming unemployed and who seek work through the Swedish Employment Office are able to receive activity support.¹³⁵ Activity support is paid out by the Swedish Social Insurance Agency if the person is part of a labour market policy programme provided by the Swedish Employment Office.¹³⁶ Such programmes are initiatives designed to strengthen the individual's ability to obtain or keep a job and the award of a place in a programme must be justified by labour market

125 See, *inter alia*, the Free Movement Directive (2004/38/EC), 29 April 2004, Article 7(3)(c), which provides that any Union citizen must have a rights of residence in another Member State for longer than three months if "he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months."

126 See Regulation 492/2011 on freedom of movement for workers within the Union, 05/04/2011, Article 5.

127 See information from the EU Commission on unemployment, equal treatment and inclusion, <http://ec.europa.eu/social/main.jsp?catId=462&langId=sv> [2015-11-02].

128 ECJ C-138/02, *Brian Francis Collins and Secretary of State for Work and Pensions*, 24/03/2004.

129 This is indicated, *inter alia*, in ECJ C-138/02, *Brian Francis Collins and Secretary of State for Work and Pensions*, 24/03/2004, para. 72-73.

130 ECJ C-292/89 *The Queen v. Immigration Appeal Tribunal, ex parte: Gustaff Desiderius Antonissen*, 26/02/1991, para 21.

131 ECJ C-138/02, *Brian Francis Collins and Secretary of State for Work and Pensions*, 24/03/2004, para. 70.

132 ECJ C-138/02, *Brian Francis Collins and Secretary of State for Work and Pensions*, 24/03/2004, para. 73.

133 The Swedish Employment Office, *Uppdraget* [Our mission], <http://www.arbetsformedlingen.se/Om-oss/Var-verksamhet/Allmant-om-oss/Uppdraget.html> [20/08/2015].

134 Appropriation directions for the 2015 budget year for the Swedish Employment Office, 22/12/2014.

135 Regulation (2000:634) on labour market policy programmes, section 8.

136 Regulation (1996:1100) on activity support, section 7.

policy.¹³⁷ In a case from the Administrative Court of Appeal in Gothenburg, a Union citizen who had been provided an internship position through the Swedish Employment Office, and therefore also activity support from the Swedish Social Insurance Agency, obtained a right of residence as a job seeker. The Union citizen had applied for income support, but was refused because the social services took the view that she did not have a right of residence, arguing that her actual chances of working in Sweden were limited. The Administrative Court of Appeal pointed out that the fact that she was registered at the Swedish Employment Office and was part of an internship program and was provided activity support showed that she had a real chance of finding employment and therefore that she had a right of residence. Furthermore, the Administrative Court of Appeal pointed out that, in accordance with the SoL, the municipalities are ultimately responsible for providing people residing in the municipality with the support and help they need.¹³⁸

Persons who have been unemployed for a long period of time are made part of labour market programmes. In accordance with the principle of equal treatment, even though the issue has not yet been tried by the EU Court, it should therefore be possible for a Union citizen who can show that he or she has been unemployed for a long period of time in his or her home country to be made part of a labour market policy programme and receive activity support in Sweden. As such, a combination of periods of unemployment can form a basis for the assessment in cases in which the unemployed person has not only resided in Sweden during the period of unemployment.¹³⁹ This conclusion is supported by EU Regulation 883/2004 governing the coordination of social security systems, which provides:

[W]here, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.¹⁴⁰

It should be reiterated that many of the most vulnerable Union citizens are Roma who have left their countries of origin due to structural discrimination. This fact leads to particular obligations for the host countries to adopt positive measures to enable them to establish themselves in the labour market in those countries. The UN Committee on the Elimination of Racial Discrimination has drawn attention to how Roma are particularly subjected to human rights violations in many countries and has also pointed out that the States have an obligation to strengthen the establishment of Roma in society in general and on the labour market in particular:

[States are recommended to] take special measures to promote the employment of Roma in the public administration and institutions, as well as in private companies [and to] adopt and implement, whenever possible, at the central or local level, special measures in favour of Roma in public employment such as public contracting and other activities undertaken or funded by the Government, or training Roma in various skills and professions¹⁴¹

The States' human rights obligations apply, as stated above, to everyone located within their jurisdiction, regardless of their citizenship and legal status. Therefore, the above recommendation does not only extend Sweden's obligations to Swedish Roma but also applies in relation to the Roma Union citizens residing in Sweden.

5.4. CONCLUSIONS

The following applies to vulnerable Union citizens in accordance with national law, binding human rights instruments and EU law:

- vulnerable Union citizens have a right to seek employment in Sweden and cannot be deported for at least the first six months of the period in which they are actively seeking employment,
- vulnerable Union citizens that obtain only limited work must be regarded as workers and therefore have a right to equal treatment,
- in light of the Swedish Employment Office's assignment to provide support to those who face great challenges in accessing the labour market, vulnerable Union citizens must be prioritised and must be given the opportunity to apply for activity support,
- with reference to the principle of equal treatment, it should be possible for periods of unemployment in the country of origin to entitle a person to labour market assistance in Sweden, and
- Sweden has a particular responsibility to ensure that Roma are strengthened in the labour market in view of the systematic discrimination experienced by many Roma. This obligation also extends to Roma Union citizens.

¹³⁷ Regulation (2000:628) on labour market policy programmes, section 9, paragraph 1.

¹³⁸ The Administrative Court of Appeal in Gothenburg, judgment of 15 October 2009 in case number 5917-09. For similar judgments see the Administrative Court of Appeal in Jönköping, judgment of 27 September 2007 in case no. 3248-07 and the Administrative Court of Appeal in Gothenburg, judgment of 9 November 2010 in case no. 1600-09.

¹³⁹ Analogous application of the principle of aggregation in Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, preamble (10), can be carried out in view of the fact that the principle of equal treatment is a general principle of law.

¹⁴⁰ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, Article 5(b).

¹⁴¹ CERD Committee, *General Recommendation No. 27: On discrimination against Roma*, 2000, paras. 28-29.



6. Right to health care and medical services

The matter of medical services for vulnerable Union citizens has sparked debate in Sweden and the Swedish County Councils, responsible for the provision of health care in the country, have so far not adopted any clear joint position on the issue. Some county councils bill for the entire amount when Union vulnerable citizens seek health care, whereas others have chosen to equate vulnerable Union citizens with so-called “undocumented persons”, which gives them a certain right to subsidised care. In situations where the full amount is demanded, it can be a question of thousands of Swedish kronor. According to news reports, invoices amounting to almost 340,000 Swedish kronor were issued in Västerbotten in 2014 to vulnerable Union citizens who had sought health care.¹⁴² In some cases, uncertainty regarding the applicable rules have meant that vulnerable Union citizens have been refused health care altogether.¹⁴³ The media have reported that, for example, in April 2015 a pregnant woman was refused entry to a hospital in Luleå and was instead forced to give birth to her child in a car in the hospital car park. After giving birth, she was allowed to stay in the hospital for three days, as a result of which she was issued an invoice of over 32,000 kronor.¹⁴⁴

6.1. Sweden’s obligations under international law

The Universal Declaration of Human Rights and other human rights instruments provide a right to health care and medical services.¹⁴⁵ According to the ICESCR, the States Parties, including Sweden, acknowledge “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. This means, among other things, that the States are obliged to adopt all necessary measures to “bring about conditions that ensure all medical care and hospital treatment for everyone in the event of illness.”¹⁴⁶

The ECHR provides no explicit right to health care and medical services. However, the European Court of Human Rights has found that both Article 2, the right to life, and Article 3, the right not to be subjected to degrading and inhuman treatment, may be applicable when individuals are refused health care. The Court has pointed out that since the State has positive obligations to provide the population with health care and medical services, the right

¹⁴² Åsgård, S, *Dagens medicin*, “Olika villkor för EU-migranter i vården” [Different conditions for EU migrants in health care], 16/04/2015.

¹⁴³ According to reports from the human rights organisation Doctors of the World, and others.

¹⁴⁴ Carp, O, *Dagens Nyheter*, “Tiggare födde barn, krävdes på 43 800” [Beggars gives birth to child, asked to pay 43,800], 22/04/2015.

¹⁴⁵ See, for example, the Universal Declaration of Human Rights, Article 25(1), the ICESCR, Article 12(1) and the CRC, Article 24.

¹⁴⁶ ICESCR, Article 12(1) and Article 12(2)(d).

to life is violated if authorities expose a person to life-threatening risks by refusing medical care that is otherwise generally available to the population.¹⁴⁷ In one case, the Court found that it would be contrary to the obligation not to subject anyone to inhuman and degrading treatment (Article 3) to send back a person who was seriously ill with AIDS who had been sentenced to deportation to his country of origin. The Court pointed out that foreigners convicted of crimes and to deportation do not as a general rule have a right to stay to benefit from medical treatment or social assistance in the host State, but the circumstances in this case were exceptional. The man was in the final stages of AIDS and, had he been sent back to his country of origin, he would have been forced to interrupt the treatment and would thus have been subjected to a great deal of suffering, which the Court considered would be in breach of Article 3.¹⁴⁸

The CESCR has developed the following principles to clarify which State obligations arise from the right to the highest attainable standard of health in accordance with the ICESCR:

- **Availability:** functioning health care and medical facilities must be *available* in the State to a sufficient degree, as well as medicine, doctors and other trained medical staff,
- **Accessibility:** institutions and services must be accessible for all without discrimination. This specifically means that health care institutions and the services provided therein must be
 - non-discriminatory,
 - physically accessible:
 - economically accessible, and
 - accessible from the point of view of information
- **Acceptability:** all health care and medical services must be provided on the basis of medical ethical principles and in a culturally acceptable manner, which means, *inter alia*, that the activities must take into consideration patients' gender, age, sexual orientation, culture and ethnicity,
- **Quality:** health care and medical services must maintain acceptable medical standards. Treatments must be scientifically and medically appropriate and personnel must be properly trained.¹⁴⁹

These principles, which are usually referred to as AAAQ, have become generally accepted and now serve as guidance for the UN, the World Health Organisation (WHO) and others in assessing whether States fulfil their obligations to provide for the right to the highest attainable standard of health. In the Swedish government public enquiry that resulted in the right for undocumented persons to some health care and medical services in Sweden, the AAAQ principles were cited as benchmarks for how Sweden should fulfil its undertakings.¹⁵⁰ That same enquiry addressed the question of whom is covered by the protection of the right to health care. Through reference to the statements by the CESCR and the WHO, among others, the investigation reaffirmed:

When a State ratifies international human rights instruments, it means that rights such as the right to the best possible health for all applies to everyone, including immigrants, refugees and other foreign citizens within the State's jurisdiction. They also apply regardless of whether or not the person is residing in the country with the necessary permit¹⁵¹

It is, accordingly, a fundamental principle that good health care and medical services that are culturally and linguistically appropriate for the target group must be available and accessible to everyone in practical and economic terms. This includes vulnerable Union citizens in Sweden who do not have sickness insurance in their countries of origin.

6.2. EU law

In EU law, social insurance with regard to health care falls within the material scope of Regulation 883/2004 on the coordination of social security systems.¹⁵² If a Union citizen is insured in his or her country of origin, the person is entitled to necessary care in the Member State in which he or she resides. Exhibiting a European Health Insurance Card enables the insured person to certify his or her right to care in Sweden in accordance with the tariff for national patient fees.¹⁵³ However, many vulnerable Union citizens lack health insurance in their countries of origin, which means that they are not covered by Regulation 883/2004. This has the possible consequence that these persons are forced to pay the full cost of their medical care in Sweden.¹⁵⁴ When a Union citizen does not have a comprehensive health insurance in his or her country of origin and Sweden refuses the person access to medical care at reasonable cost on

147 See, for example, ECtHR, *Cyprus v. Turkey*, 25781/94, 10/05/2001, para. 219, and *Nitecki v. Poland*, 65653/01, 21/03/2002.

148 ECtHR, *D. v. the United Kingdom*, 2 May 1997, 30240/96, 02/05/1997.

149 CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, 2000, para. 12. See also SOU 2011:48, *Vård efter behov och på lika villkor — en mänsklig rättighet* [Care according to needs and under equal conditions — a human right], 2011, pages 171–174.

150 SOU 2011:48, *Vård efter behov och på lika villkor — en mänsklig rättighet* [Care according to needs and under equal conditions — a human right], 2011, pages 171–174.

151 SOU 2011:48, *Vård efter behov och på lika villkor — en mänsklig rättighet* [Care according to needs and under equal conditions — a human right], 2011, page 164.

152 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

153 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, Article 17.

154 The Swedish Association of Municipalities and Regions (SKL), *Några juridiska frågor gällande utsatta EU-medborgare* [Some legal issues regarding vulnerable EU citizens], 2014.

those grounds, Sweden is in breach of international human rights obligations concerning the right to health care and medical services. It should once again be emphasised that, according to binding human rights standards, everyone must be guaranteed practical and financial access to medical care and, in particular, access must be guaranteed for the most vulnerable and marginalised in society.¹⁵⁵ When the denial of this right is based on structural discrimination, it not only violates the right to health, but also the fundamental right to non-discrimination. In addition, a denial of health care and medical services in serious cases can lead to a violation of both the right not to be subjected to degrading and inhuman treatment and the right to life under the ECHR and other binding human rights instruments.

Even though the EU law has a system for how health care and medical services for Union citizens should be managed, it is clear that this system does not work for those whose rights are not guaranteed in their country of origin — for example, being denied a health insurance card as a result of structural discrimination. **In such situations, Sweden must, on the basis of its human rights undertakings as a State, recognise these persons' actual situation and guarantee them rights without discrimination when they are within Swedish jurisdiction.** Otherwise, denial of fundamental rights in their country of origin consequently also leads to denial of the same rights here, which conflicts with Sweden's international obligations.

6.3. National law

The responsibility for health care and medical services in accordance with Swedish national law is governed in the Health and Medical Services Act (1982:763) (HSL). The objective of health care and medical insurance in Sweden is good health and care under equal conditions for the entire population, and “the care shall be provided with respect for the equal value of all persons and for the dignity of the individual. Those who have the greatest need for health care and medical services shall be given preferential access to care”¹⁵⁶ This shows that the law does not differentiate between citizens and non-citizens. However, it does differentiate between those “settled” — i.e. those who are registered in the county — and persons who are only temporarily residing there. Persons who are

settled have a right to any kind of care prescribed by law, whereas persons who are only temporary residents in the county are entitled to “immediate health care and medical services”.¹⁵⁷ Everyone who is registered in Sweden, i.e. both patients settled in the relevant County and others, is entitled to subsidised health care. The main rule is that persons who are not settled and registered in Sweden must pay the full cost of the medical services.¹⁵⁸

In accordance with the Act (2013:407) on health care and medical services for certain aliens resident in Sweden without necessary permits, the County Councils now have an obligation to offer some care to so-called undocumented persons.¹⁵⁹ These people are defined in the Act as “foreigners residing in Sweden without the support of a decision by an authority or a statute”.¹⁶⁰ In the case of Union citizens residing in Sweden, the EU legal statutes — in particular Regulation 883/2004 and the so-called Patient Mobility Directive¹⁶¹ — are applied as far as possible. According to the legislative history of the Act on health care for undocumented persons, it is considered to be “not out of the question [...] that the proposed legislation on health services and medical services for persons residing in Sweden without a permit may also be applicable to Union citizens in individual cases”¹⁶² In April 2015, the National Board of Health and Welfare clarified that vulnerable Union citizens must be granted the same right to health care and medical services as undocumented persons if they “have been residing in the country for more than three months and have no right of residence or residence permit and are therefore not residing in the country without the support of a decision by an authority or a statute”.¹⁶³

According to the National Board of Health and Welfare's clarification, hence, the right to health care for undocumented persons also includes vulnerable Union citizens in certain situations.¹⁶⁴ The Act grants persons over the age of 18 the right to “care that cannot wait” as well as maternity health care, health care in the case of abortion and contraceptive counselling.¹⁶⁵ Minors must be offered health care to the same extent as persons who are settled in the county.¹⁶⁶ Furthermore, the County Council is free to offer health care over and above the minimum level required by law.¹⁶⁷ The Government's interpretation of the term “care that cannot wait” can be summarised as follows:

155 ICESCR, *General Comment No. 14: The right to the highest attainable standard of health*, 2000, para. 12.

156 HSL (1982:763), section 2.

157 HSL (1982:763), sections 3(1) and 4.

158 See the Swedish Association of Local Authorities and Regions (SKL), *Vård av personer från andra länder* [Care of persons from other countries], 6th edition, 2013.

159 Act (2013:407) on health care and medical services for certain aliens residing in Sweden without necessary permits.

160 Act (2013:407) on health care and medical services for certain aliens residing in Sweden without necessary permits, article 5.

161 Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (the Patient Mobility Directive).

162 Government Bill 2012/13:109, page 41.

163 See the National Board of Health and Welfare, “*Vilken vård ska ett landsting erbjuda asylsökande och papperslösa?*” [What care should a County Council offer asylum seekers and undocumented persons?], <http://www.socialstyrelsen.se/vardochomsorgforasylsokandemedflera/halso-ochsjukvardochandvard/vilkenvardskaerbjudas> [6 November 2015]. See also the National Board of Health and Welfare, “*Vård för papperslösa*” [Care for undocumented persons], 2014, page 10.

164 Act (2013:407) on health care and medical services for certain aliens residing in Sweden without necessary permits, article 1.

165 Act (2013:407) on health care and medical services for certain aliens residing in Sweden without necessary permits, article 7.

166 Act (2013:407) on health care and medical services for certain aliens residing in Sweden without necessary permits, article 6.

167 Act (2013:407) on health care and medical services for certain aliens residing in Sweden without necessary permits, article 8.

- care and treatment (including follow-up services) for diseases and injuries where even a moderate delay can have serious consequences for the patient
- care provided to prevent a more serious medical condition
- care to avoid more extensive care and treatment
- care required to reduce the use of more resource-intensive emergency treatment
- care for persons with specific needs (torture, serious abuse, trauma) should be assessed with particular care
- disability aids if the patient is unable to obtain access to them by other means¹⁶⁸

It is the doctor or dentist responsible for the care who decides whether the need for care in the individual case must be considered “care that cannot wait”.

Compared to the previous uncertainty in matters regarding the right of vulnerable Union citizens to health care and medical services, it is a step forward that the National Board of Health and Welfare has clarified that these persons are now entitled, under certain circumstances, to the same care as so-called undocumented persons. However, from a human rights perspective, the current situation remains unsatisfactory. Firstly, a right to limited health care and medical services is only granted after three-months’ residence and only if the person in question is residing in the country without a permit. Since no registration takes place when a Union citizen arrives in Sweden, it is impossible for a doctor to know whether a Union citizen has in fact been there for longer than three months. As discussed above, the concept of three months is also fluid, since a Union citizen can reside in Sweden legally after the three-month period has expired if he or she qualifies as a job seeker under EU law. This means that a person who is making efforts to legalise his or her residence, for example by registering at the Swedish Employment Office and actively beginning to seek work, is excluded from the right to health care and medical services. **Furthermore, the failure to offer vulnerable Union citizens — who often lack health insurance in their country of origin — subsidised medical care during their first months in the country, regardless of whether or not they are seeking work, strikes a discordant note with Sweden’s commitments under human rights law.** Finally, the concept of “care that cannot wait” cannot be considered to be sufficiently clear and predictable or sufficiently extensive to comply with the standards for what is required of a State in accordance with the generally accepted AAAQ principles.

Government Bill 1996/97:60 on priorities in health care and medical services emphasises that “our entire democratic governance is based on the notion of the equal value of all human beings. It is therefore natural that the principle of the value of the human being, which is fundamental to all of society, should also be the most important principle in health care and medical services”.¹⁶⁹ That same Government Bill states that the principles of need and solidarity have been established in Swedish health care and medical services since long and that resources must be geared toward activities and individuals most in need. Solidarity means, among other things, that the needs of the most vulnerable must be taken into account in particular and that “people who are unable to claim their rights have the same right to medical care as others”.¹⁷⁰ These principles fully conform to accepted human rights standards. In accordance both with the principles underlying Swedish health care and medical services and Sweden’s international commitments under the treaties, Sweden must consequently ensure that those who are most in need of medical care are prioritised, regardless of their nationality or legal status. In practice, this means that vulnerable Union citizens are entitled to subsidised health care and medical services in accordance with the AAAQ principles in Sweden regardless of their legal status or the length of their residence in the country.

6.4. CONCLUSIONS

In accordance with national law and binding human rights instruments:

- vulnerable Union citizens are entitled to health care and medical services in accordance with the AAAQ principles. This means that they must have access to care that must be *non-discriminatory, economically accessible, culturally suitable, of good quality and accompanied by easily accessible information,*
- according to these standards, vulnerable Union citizens are entitled to subsidised care from the time they arrive in Sweden and regardless of their possible status as job seekers or workers under EU law, and
- a right to subsidised care in Sweden can never be made dependent on whether or not the Union citizen seeking health care holds a European Health Insurance Card. If Sweden denies vulnerable Union citizens the right to health care on the grounds of the fact that they had been denied certain basic human rights in their country of origin, their rights are also violated here.

¹⁶⁸ Government Bill 2012/13:109, page 42–43. See also the National Board of Health and Welfare, “Vård för papperslösa” [Care for undocumented persons], 2014, page 15.

¹⁶⁹ Government Bill 1996/97:60, Chapter 5.2.

¹⁷⁰ Government Bill 1996/97:60, Chapter 5.2.

7. Right to education

As in matters concerning the right to health care and medical services, there is confusion in Sweden with regard to the right to education for children who are vulnerable Union citizens and present in the country. The law is considered to be difficult to interpret and Swedish municipalities have developed different approaches and policies in regard to the matter. Even though the National Agency for Education has issued certain instructions, the practice is very different in different parts of the country and municipalities have expressed frustration at the lack of central guidance.¹⁷¹

7.1. Sweden's obligations under international law

The Convention on the Rights of the Child (CRC) is clear: primary and secondary education is a human right and must be compulsory and free of charge.¹⁷² The CRC states that the States Parties must respect and guarantee *each child within their jurisdiction* the rights provided for in the Convention without any distinction of any kind.¹⁷³ The CRC emphasises that the States are obliged to comply with their legal obligations towards each individual child and to ensure that the realisation of the child's human rights may not be regarded as a charity.¹⁷⁴ **The Child Rights Committee has emphasised that children who are in a country without a permit are also entitled to enjoy certain fundamental rights such as the right to education.**¹⁷⁵ The right to education is also established in other human rights instruments, including in the first Additional Protocol to the ECHR, which provides that “no-one may be denied education”.¹⁷⁶ In the case *Velyo Velev v. Bulgaria*, the European Court of Human Rights noted that even though education may be complicated to organise and expensive to implement in certain cases, it is not possible to ignore the fact that “unlike some other public services, education is a right that enjoys direct protection under the Convention. It is also a very particular type of public service, which not only directly benefits those using it but also serves broader societal functions”.¹⁷⁷ The ESCR points out, in the same spirit, that education is both

a human right in itself and an indispensable means of realising other human rights and that education is among the most important tools to enable economically and socially marginalised children and adults to lift themselves out of poverty and be able to participate fully in society.¹⁷⁸

As stated above, the States Parties are required to respect, protect and fulfil all rights in the conventions they have ratified, regardless of whether or not the States have also incorporated them into their national law. Before the CRC and other human rights instruments have been incorporated in Swedish law, the courts and authorities are obliged to interpret existing national law in accordance with the treaties.

The foregoing leads to the conclusion that children who are vulnerable Union citizens, if they are residing in Sweden, have a right to education in the country. The United Nations Children's Fund, UNICEF, elaborates:

UNICEF shares the view that the child's country of origin obviously is responsible for safeguarding the child's human rights such as the rights to education, medical care and protection against discrimination. However, that does not exempt Sweden from responsibility when the child is in this country. According to the Convention on the Rights of the Child, all children have the same rights and must be protected against discrimination. It is a question of the fundamental principle of equal treatment. It means that a child has a right to education in the country in which the child is residing, regardless of the child's background, residence permit status or citizenship. There are several reasons for this:

- No country other than the country where the child is currently residing can guarantee the child its human rights.
- Children are individuals with their own rights, that is, they have rights regardless of their parents' background, position or decision.
- The right to education is of central importance for escaping poverty and marginalisation¹⁷⁹

171 See, for example, Sundberg, M, *Dagens Nyheter*, “Snårig lagstiftning kring EU-migranternas rätt att gå i skolan” [Highly complex legislation on EU migrants' right to go to school], 25/04/2015 and Thorén, M, *Lärarnas tidning*, “Oklart om EU-migranternas barn har rätt till skolgång” [Unclear whether EU migrants' children are entitled to education], 25/05/2015.

172 CRC, Article 28 and 29.

173 CRC, Article 2.

174 Child Rights Committee, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child*, 2003, para. 11.

175 See, for example, the Child Rights Committee's examination of Norway 25/04/1994, CRC/C/15/Add. 23, para. 12.

176 ECHR, Additional Protocol 1, Article 2. See also the Universal Declaration of Human Rights, Article 26 and the ICESCR, Article 13.

177 ECtHR, *Velyo Velev v. Bulgaria*, 16032/07, 27/05/2014, para. 33.

178 CESCR, *General Comment 13. The Right to Education*, 1999, para. 1.

179 Christina Heilborn, Programme Director UNICEF Sweden, *Varför ska EU-migranternas barn ha rätt till skolgång i Sverige?* [Why should EU migrants' children have a right to education in Sweden?], <https://blog.unicef.se/2015/05/26/varfor-ska-eu-migranternas-barn-ha-ratt-till-skolgang-i-sverige/> [21/06/2015]. For more on UNICEF's view of the right to education for children who are vulnerable Union citizens, see UNICEF and the Center for the Rights of the Child at Stockholm University, *Vilka rättigheter har barn som är EU-medborgare och lever i utsatthet i Sverige?* [What rights do children who are EU citizens and who are living in destitution in Sweden have?], 2015, pages 18, 22–25 and 36–37.



According to one of the leading principles of the CRC, the best interests of the child shall be a primary consideration in all measures concerning children.¹⁸⁰ The Child Rights Committee emphasises that the word “*measure*” refers not only to formal decisions but also to all other actions as well as omission and failure to act.¹⁸¹ The Committee also emphasises that the prohibition of discrimination is an active, not a passive, obligation. In order to ensure that all children are given an equal opportunity to enjoy their human rights, it is therefore necessary for the State to adopt necessary proactive measures.¹⁸²

7.2. EU law

EU law is lagging behind in the realisation of the right to education for children of vulnerable Union citizens. In accordance with a Directive from 1977, children of migrant workers in the Union who are subject to compulsory education in their country of origin are entitled to free education also in the host Member State.¹⁸³ Regulation 492/2011 on freedom of movement for workers within the Union reaffirms that children of a citizen of a Member State who is or has been employed in another Member State are

entitled to education in the host State.¹⁸⁴ These EU legal documents show that matters regarding education fall within the area of applicability of EU law, but only workers’ children are expressly granted the right to education in other Member States. With Union citizenship, which includes all citizens within the EU, the obstacles to free movement of so-called economically inactive persons were removed and the principle of equal treatment in the Free Movement Directive now also must apply in relation to the right to education. It is worth repeating that the right to education is not subject to the exceptions to the principle of equal treatment under the Free Movement Directive. Therefore, the same right to education applies to children of economically inactive Union citizens and to Swedish citizens for the first three months when they have a right of residence.

7.3. National law

Children who are Swedish citizens are subject to compulsory primary and secondary education if they are registered in Sweden.¹⁸⁵ Civil registration is not possible for Union citizens if they cannot be expected to reside in the country for at least one year with a right of residence,

180 CRC, Article 3.1.

181 The Child Rights Committee, *General Comment 14. On the right of the child to have his or her best interests taken as a primary consideration* (2013), para. 17–18.

182 The Child Rights Committee, *General Comment 14: On the right of the child to have his or her best interests taken as a primary consideration* (2013), para. 41.

183 Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers.

184 Regulation No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, Article 10.

185 Education Act (2010:800), Chapter 7, section 2 and Chapter 29, section 2.

which therefore excludes Union citizens who only have a right of residence for three months. The Board of Appeal for Education has interpreted EU law to mean that Union citizens who are minors must be registered in order to be covered by the principle of equal treatment in relation to the right to education.¹⁸⁶ However, the Education Ordinance (2011:185) states that the municipalities are able to provide education for children who are not registered in Sweden, even though they are not obliged to do so.¹⁸⁷ *Swedish citizens registered abroad* are entitled to education but are not subject to compulsory primary and secondary education in Sweden.¹⁸⁸ Since Union citizens cannot be registered but still have a right to equal treatment, they should be equated with this group rather than that of children who are registered. This interpretation means that, under EU law, they have a *right* to education but are not subject to *compulsory education*.¹⁸⁹

After the first three months, in some cases the child no longer has a right of residence and then the principle of equal treatment under the Free Movement Directive no longer applies. However, parallels should be drawn at this point to asylum-seeking children and children residing in Sweden without the support of a decision by an authority or a statute: so-called undocumented children. These children are subject to no obligation to attend school but still have the same right to primary and secondary education as other children in Sweden.¹⁹⁰ Union citizens who have resided in Sweden for more than three months and who do not have a permit to stay must be considered as undocumented. This has been clarified at least in relation to the right to medical care in accordance with the Act on health care and medical services for certain aliens residing in Sweden without necessary permits (see above in Chapter 6). The National Agency for Education has declared that the same definition must be applied in relation to the right to education, in other words children of Union citizens who have been in Sweden for longer than three months and who have no right of residence must have a right to education under the same conditions as undocumented children.¹⁹¹

The National Agency for Education has, thus, made it clear that children of Union citizens who are considered to lack a right of residence have a right to education if they have been in Sweden for longer than three months. A similar clarification is lacking for the first three months when the children have a right of residence, despite the fact that

this should derive from the principle of equal treatment in accordance with the reasoning set out above. Just as in relation to the right to medical care, it is a problem from a human rights perspective that such a fundamental right as the right to education should be expressly granted only after three months. It is also difficult for the municipalities to determine how long a child has been in Sweden since no registration takes place when Union citizens arrive in Sweden. Furthermore, many vulnerable EU citizens leave Sweden at regular intervals to go back to their countries of origin for short periods. Even if they could prove when they entered the country, a new three-month period begins every time they return. In practice, the children of these Union citizens reside in Sweden for longer periods of time with only short breaks, but have no opportunity to make use of their right to education either in Sweden or in their country of origin. Just as in relation to health care and medical services, the current situation also gives cause for concern because it may actually lead to vulnerable Union citizens refraining from legalising their residence, for example by actively seeking work, because this could result in them losing the right for their children to go to school.

7.4. CONCLUSIONS

The following applies in accordance with national law, binding human rights instruments and EU law:

- children who are Union citizens have a right to attend primary and secondary school free of charge in Sweden,
- it is of the utmost importance that the responsible authorities clarify that the right to education applies both during the first three months and thereafter for children who are vulnerable Union citizens,
- in accordance with principle of equal treatment in EU law and the principal of non-discrimination in human rights law, education must be accessible for children of both economically active and economically inactive Union citizens,
- the right to free primary and secondary education for children of vulnerable Union citizens must be guaranteed in all municipalities in Sweden from when the child arrives in Sweden. Short breaks in their residence in Sweden may not deprive them of their right to education.

¹⁸⁶ The Board of Appeal for Education, 16/02/2015, Reg. no. 2014:561.

¹⁸⁷ Education Ordinance (2011:185) Chapter 4, section 2(2).

¹⁸⁸ Education Ordinance (2011:185) Chapter 4 section 2, c.f. Education Act (2010:800) Chapter 29, section 7 on Swedish students abroad.

¹⁸⁹ For a more detailed elaboration on this matter, see UNICEF/Center for the Rights of the Child, *Vilka rättigheter har barn som är EU-medborgare och lever i utsatthet i Sverige?* [What rights do children who are EU citizens and who live in destitution in Sweden have?], 2015, pages 22–25.

¹⁹⁰ The Education Act (2010:800), Chapter 7, section 2 and Chapter 29, section 2.

¹⁹¹ See, for example, the statement in Sundberg, Marit, “*Snårig lagstiftning kring EU-migranternas rätt att gå i skolan*” [Highly complex legislation on EU migrants' right to go to school], *Dagens Nyheter* 25/04/2015, and quoted in Barnombudsmanen [The Children's Ombudsman], “*Möte om barn till EU-migranter gav tydliga besked om mänskliga rättigheter*” [A meeting on children of European migrants provided clear information on human rights] 26/11/2014, <http://www.barnombudsmanen.se/barnombudsmanen/i-media/nyheter/2014/bra-och-tydliga-besked-om-manskliga-rattigheter/> [25/08/2015].

List of sources

LEGISLATION, ETC.

International law

- The European Social Charter (revised) Council of Europe, 3 May 1996
- The UN Convention on the Rights of the Child, the UN General Assembly, 20 November 1989
- The UN Convention on Economic, Social and Cultural Rights, the UN General Assembly, 16 December 1966
- The UN Convention on Civil and Political Rights, the UN General Assembly, 16 December 1966
- The UN Convention on Elimination of all forms of Racial Discrimination, the UN General Assembly, 21 December 1965
- The European Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, 4 November 1950, with the Additional Protocol
- The UN Universal Declaration of Human Rights, the UN General Assembly 10 December 1948

EU law

- Treaty on European Union (TEU), 13 December 2007
- Treaty on the Functioning of the European Union (TFEU), 13 December 2007
- Charter of Fundamental Rights of the European Union, 18 December 2000
- Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (the Patient Mobility Directive).
- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (the Free Movement Directive)
- Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers
- Regulation (EU) No 492/2011 of the European Parliament and of the Council on freedom of movement for workers within the Union
- Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems
- Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

National laws and ordinances

- The European Convention on Human Rights (1994:1219)
- The Swedish Instrument of Government (2011:109)
- Act (2013:407) on health care and medical services for certain aliens residing in Sweden without necessary permits
- The Education Act (2010:800)
- The Social Services Act (2001:453)
- The Swedish Environmental Code (1998:808)
- Act (1990:746) on payment orders and enforcement assistance
- The Police Act (1984:387)
- The Health and Medical Services Act (1982:763)
- The Real Property Code (1970:994)
- The Criminal Code (1962:700)
- The Education Ordinance (2011:185)
- The Ordinance (2000:634) on labour market policy programmes
- The Ordinance (2000:628) on labour market policy activities
- The Ordinance Regulation (1996:1100) on activity support
- Appropriation directions for the 2015 budget year regarding the Swedish Employment Office, 22/12/2014.

Official publications

Government Communication 2005/06:95, *En nationell handlingsplan för de mänskliga rättigheterna 2006-2009* [A national plan of action for human rights 2006-2009]

Government Bill 2012/13:109, *Hälso- och sjukvård till personer som vistas i Sverige utan tillstånd* [Health care and medical services for certain aliens residing in Sweden without permits]

Government Bill 1996/97:60, *Prioriteringar inom hälso- och sjukvården* [Priorities in health care and medical treatment]

Government Bill 1993/94:101, *Åtgärder mot rasistisk brottslighet och etnisk diskriminering i arbetslivet* [Measures to combat racist crime and ethnic discrimination in employment]

Government Bill 1989/90:85, *Om ny summarisk process* [On a new summary process]

SOU 2011:48, *Vård efter behov och på lika villkor — en mänsklig rättighet* [Care according to needs and under equal conditions — a human right], 2011

SOU 2010:70, *Ny struktur för skydd av mänskliga rättigheter* [A new structure for the protection of human rights], 2010

COURT CASES

The European Court of Human Rights

Velyo Velev v. Bulgaria, 16032/07, 27/05/2014

Winterstein and others v. France, 27013/07, 17/10/2013

Yordanova and others v. Bulgaria, 25446/06, 24/04/2012

Secic v. Croatia, 40116/02, 31/05/2007

Nachova and others v. Bulgaria, 43577/98 and 43579/98, 06/07/2005

Zednik v. the Czech Republic, 74328/01, 28/06/2005

Connors v. the United Kingdom, 66746/01, 27/05/2004

Koua Popirrez v. France, 40892/98, 30/09/2003

Nitecki v. Poland, 65653/01, 21/03/2002

Cyprus v. Turkey, 25781/94, 10/05/2001

Z. and others v. the United Kingdom, 29392/95, 10/05/2001

Pancenko v. Latvia, 40772/98, 28/10/1999

Kovachev v. Bulgaria, report from the Commission, 28/10/1997

D. v. the United Kingdom, 2 May 1997, 30240/96, 02/05/1997

Salesi v. Italy, 13023/87, 26/02/1993

The European Committee of Social Rights

Centre on Housing Rights and Evictions (COHRE) v. France, 63/2010, 28/06/2011

The European Court of Justice

C-333/13, *Elisabeta Dano and Florin Dano v. Jobcenter Leipzig*, 11/11/2014

C-140/12, *Pensionsversicherungsanstalt v. Peter Brey*, 19/09/2013

C-22/08 and C-23/08, *Vatsouras and Koupatantze v. ARGE Nürnberg 900*, 04/06/2009

C-456/02, *Michel Trojani v. Centre public d'aide sociale de Bruxelles (CPAS)*, 07/09/2004

C-138/02, *Brian Francis Collins and Secretary of State for Work and Pensions* 24/03/2004

C-184/99, *Rudy Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, 20/09/2001

C-292/89 *The Queen v. Immigration Appeal Tribunal, ex parte: Gustaff Desiderius Antonissen*, 26/02/1991

C-139/85 *R. H. Kempf v. Staatssecretaris van Justitie*, 03/06/1986

The Supreme Administrative Court

RÅ [*Regeringsrättens årsbok* — case law of the Supreme Administrative Court], 1995, ref. 70

The Administrative Court of Appeal

The Administrative Court of Appeal in Gothenburg, case no. 1600-09, 09/11/2010

The Administrative Court of Appeal in Gothenburg, case no. 5917-09, 15/10/2009

The Administrative Court of Appeal in Jönköping, case no. 3248-07, 27/09/2007

The Administrative Court

The Administrative Court in Linköping, case no. 611-14, 09/06/2014

Other decisions

Decision on demolition of the Sorgenfri camp in Malmö in November 2015, City of Malmö/Environmental Committee, *Protokollutdrag* [Extract from Minutes] 27/10/2015.

Swedish Enforcement Authority, case no. 01-133837-15, decision of 22/06/2015

Supplement to the appeal to the County Administrative Board in case 505 12481-15, Environment Department, City of Malmö, 20/05/2015.

Environment Department, City of Malmö, case 548:01614-2014, decision of 23/04/2015.

The Board of Appeal for Education, 16/02/2015, Reg. no. 2014:561

INTERNATIONAL SOURCES

The United Nations

Office of the UN High Commissioner for Human Rights, *The Rights of Non-citizens*, 2006

CERD Committee, *General Comment XXX: On discrimination against non-citizens*, 2005

CERD Committee, *General Recommendation XXVII: On discrimination against Roma*, 2000

Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, Vienna 25/06/1993

HRC, *General Comment No. 31: The nature of the legal obligation imposed on state parties to the Covenant*, 2004

HRC, *General Comment No. 21: Article 10, Humane treatment of prisoners*, 1992

HRC, *General Comment No. 15: On the position of aliens under the Covenant*, 1986

CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, 2009

CESCR, *General Comment No. 19: The right to social security*, 2007

CESCR, *General Comment No. 18: Article 6: the equal right of men and women to the enjoyment of all economic, social and cultural rights*, 2006

CESCR, *General Comment 13. The Right to Education*, 1999

CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, 2000

CESCR, *General Comment No. 7: The right to adequate housing: forced evictions*, 1997

CESCR, *General Comment No. 4: On the right to adequate housing*, 1991

CESCR, *General Comment No. 3: The nature of States parties' obligations*, 1990

CRC Committee, *General Comment 14. On the right of the child to have his or her best interests taken as a primary consideration*, 2013

CRC Committee, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child*, 2003

CRC Committee, *Concluding observations of the Committee on the Rights of the Child: Norway*, CRC/C/15/Add. 23, 25/04/1994

OTHER MATERIALS

Guidelines

- National Board of Health and Welfare, *Vilken vård ska ett landsting erbjuda asylsökande och papperslösa?* [What care should a county council offer asylum seekers and undocumented persons?], <http://www.socialstyrelsen.se/vardochomsorgforasylsokandemedflera/halso-ochsjukvardoch tandvard/vilkenvardskaerbjudas> [6 November 2015]
- National Board of Health and Welfare, *Rätten till socialt bistånd för medborgare inom EU/EES-området – en vägledning* [The right to social assistance for citizens within the EU/EEA area – a guide], 2014
- National Board of Health and Welfare, *Vård för papperslösa* [Health care for the undocumented], 2014
- The Swedish Association of Local Authorities and Regions (SKL), *Några juridiska frågor gällande utsatta EU-medborgare* [Some legal issues regarding vulnerable EU citizens], 2014
- Swedish Association of Municipalities and Regions (SKL), *Vård av personer från andra länder* [Care of people from other countries], 6th edition, 2013

Reports

- The Swedish National Council for Crime Prevention, *Hatbrott 2014* [Hate crime in 2014], 2015
- Fafo/Rockwool Foundation (Norway), *When poverty meets affluence. Migrants from Romania on the streets of Scandinavian capitals*, 2015
- The Swedish Police, Development Department, *Återredovisning av regeringsuppdraget beträffande hatbrott* [Report on the Government assignment concerning hate crime], 2015
- UNICEF and the Center for the Rights of the Child at Stockholm University *Vilka rättigheter har barn som är EU-medborgare och lever i utsatthet i Sverige?* [What rights do children who are EU citizens and who live in destitution in Sweden have?], 2015.
- Fores, *Fri rörlighet för vem? Socialt och ekonomiskt utsatta EU-migranter i Sverige* [Free movement for whom? Socially and economically vulnerable EU migrants in Sweden], 2014.
- Crossroads/Göteborg Church City Mission, *Det nya Europa* [The new Europe], 2014.
- The County Administrative Boards, *Utsatta EU-medborgare i Sverige – lägesrapport ur ett människohandelsperspektiv* [Vulnerable citizens of the European Union in Sweden – A progress report from a human trafficking perspective], 2014
- European Roma Rights Centre (ERRC), *Written Comments by the European Roma Rights Centre Concerning Bulgaria*, 2013
- The National Board of Health and Welfare, *Kartläggning av hemlöshet bland utrikesfödda personer utan permanent uppehållstillstånd i Sverige*, [Survey of homelessness among foreign-born persons without permanent residence permits in Sweden], 2013
- The Stockholm City Mission, *Hemlös 2012* [Homeless in 2012]. *The Stockholm City Mission annual homelessness report. Subject: EU-medborgare som lever i hemlöshet i Sverige* [EU citizens living in circumstances of homelessness in Sweden], 2013
- Council of Europe Commissioner for Human Rights, *Human rights of Roma and Travellers in Europe*, Council of Europe Publications, 2012
- EU Fundamental Rights Agency (FRA), *The Situation of Roma in 11 Member States*, 2012
- European Roma Rights Centre (ERRC), *Romania, A report by the European Roma Rights Centre, Country Profile 2011-2012*, 2012

Other

- The Swedish Employment Office, *Uppdraget* [Our mission], <http://www.arbetsformedlingen.se/Om-oss/Var-verksamhet/Allmant-om-oss/Uppdraget.html>. [20/08/2015]
- The Swedish Children's Ombudsman, *Möte om barn till EU-migranter gav tydliga besked om mänskliga rättigheter* [A meeting on children of European migrants provided clear information on human rights], <http://www.barnombudsmannen.se/barnombudsmannen/i-media/nyheter/2014/bra-och-tydliga-besked-om-manskliga-rattigheter/> [25/08/2015]
- EU Commission, *Employment, equal treatment and inclusion*, <http://ec.europa.eu/social/main.jsp?catId=462&langId=sv>. [02/11/2015]
- Association for Homeless EU Migrants (HEM), *Hatbrotten mot EU-migranter uppmärksammas i media* [Media attention drawn to hate crime against EU migrants], <http://foreningenhem.se/hatbrotten-mot-eu-migranter-uppmarksammas-i-media/>, [20/10/2015]
- Heilborn, C, Programme Director at UNICEF Sweden, *Varför ska EU-migranterns barn ha rätt till skolgång i Sverige?* [Why should EU migrants' children have a right to education in Sweden?], <https://blog.unicef.se/2015/05/26/varfor-ska-eu-migranterns-barn-ha-ratt-till-skolgang-i-sverige/> [21/06/2015]
- The Stockholm City Mission, *Värt att veta om tiggeri* [Worth knowing about begging], <http://www.stadsmissionen.se/Socialverksamhet/Nyhetsarkiv-Social-verksamhet/Vart-att-veta-om-tiggeri/>. [04/11/2015]

MEDIA

Delin, M, *Dagens Nyheter*, "Attacker mot tiggare leder sällan till åtal" [Attacks against beggars rarely lead to criminal charges], 07/08/2015

Thorén, M, *Lärarnas tidning*, "Oklart om EU-migranternas barn har rätt till skolgång" [Unclear whether EU migrants' children are entitled to education], 25/05/2015.

TV4, *Kalla fakta*, "Slav i Sverige" [Slaves in Sweden], 12/05/2015.

Lindberg, S, *Aftonbladet*, "Aftonbladet avslöjar: De vräktes trots upptäckt av tbc-smitta" [Aftonbladet reveals: They were evicted despite of the discovery of TB infection], 06/05/2015.

Skarin, A & Ronge, J, *Expressen*, "Avhysning på flera platser i Stockholm" [Eviction at various sites in Stockholm], 05/05/2015.

Olsson, J & Axelsson Olsson, K, *SVT Nyheter*, "Dubbelt så många tiggande EU-migranter senaste året" [Twice as many EU migrants begging last year], 29/04/2015

Sundberg, M, *Dagens Nyheter*, "Snårig lagstiftning kring EU-migranternas rätt att gå i skolan" [Highly complex legislation on EU migrants' right to go to school], 25/04/2015

Carp, O, *Dagens Nyheter*, "Tiggare födde barn, krävdes på 43800" [A beggar gave birth to a and was asked to pay 43,800], 22/04/2015.

Åsgård, S, *Dagens medicin*, "Olika villkor för EU-migranter i vården" [Different conditions for EU migrants in health care], 16/04/2015.

Leander, P, *Dagens Arena*, "En procent av hatbrotten mot romer klaras upp" [One per cent of hate crimes against Roma are solved], 29/09/2014

Oldsberg, E, *SVT Nyheter*, "Få romer anmäler hatbrott" [Few Roma report hate crimes], 29/09/2014

Guibourg, E, *Metro*, "Nej, tiggarna styrs inte av kriminella ligor" [No, the beggars are not controlled by criminal gangs] 28/08/2014.

Cardell, J, *Expressen*, "Fick missfall: Krävdes på 11 000 kronor", [Had a miscarriage: Asked to pay 11,000 Swedish kronor] 05/02/2014

Hökerberg, J, *Dagens Nyheter*, "Frågor och svar, tiggarna i Stockholm" [Questions and answers, beggars in Stockholm], 11/03/2013

Hökerberg, J & Turesson, R, *Dagens Nyheter* "Jag ska inte behöva leva så här" [I shouldn't have to live like this], 11/03/2013



WE EMPOWER PEOPLE

Sergels torg 12
111 57 Stockholm, Sweden
Phone: +46 8 545 277 30
info@civilrightsdefenders.org
civilrightsdefenders.org