EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

28 June 2023

Case Document No. 1

Amnesty International and Médecins du Monde – International v. Sweden
Complaint No. 227/2023

COMPLAINT

Registered at the Secretariat on 19 June 2023

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Directorate General of Human Rights and Rule of Law
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COLLECTIVE COMPLAINT

ON THE VIOLATION OF THE RIGHT TO PROTECTION OF HEALTH AND THE PRINCIPLE OF NON-DISCRIMINATION VIOLATION OF ARTICLE 11(1), READ ALONE OR IN CONJUNCTION WITH ARTICLE E

AMNESTY INTERNATIONAL AND MÉDECINS DU MONDE - INTERNATIONAL
VS.
SWEDEN

Date: 19 June 2023

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Contents:

Annexes:

- Annex I: Sweden: A Cold Welcome. Human rights of Roma and other "vulnerable EU citizens" at risk. Amnesty International (2018)
- Annex II: Diverging interpretations from state and private institutions on the scope of the 2013 Act
- Annex III: Regional policies on the interpretation of the 2013 Act
- Annex IV: Map of regional policies and routines for billing EU migrants without a European Health Insurance Card
- Annex V: Description and summary of research 2021-22
- Annex VI: National legislation: Swedish Act (2013:407) on healthcare and medical services for certain aliens residing in Sweden without necessary permits, Swedish Health Care Act (2017:30)
- Annex VII: Bills

THE RIGHT TO AFFORDABLE HEALTHCARE FOR EUROPEAN UNION (EU) MIGRANTS LIVING IN DESTITUTION IN SWEDEN

1. ADMISSIBILITY

1.1 COMPETENCE OF AMNESTY INTERNATIONAL AND MEDÉCINS DU MONDE - INTERNATIONAL

1. Amnesty International and Medécins du Monde - International hereby submit this collective complaint to the Executive Secretary, acting on behalf of the Secretary General of the Council of Europe, pursuant to the collective complaint mechanism established by the Council of Europe on 9 November 1995 in the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (the Additional Protocol) with the purpose of ensuring the full realization of social rights by all.

2. Under Article 1(b) of the Additional Protocol, the High Contracting Parties recognise the right of international non-governmental organizations holding consultative status to submit collective complaints. Amnesty International and Medécins du Monde - International are on the Governmental Committee list of international non-governmental organizations currently registered until June 2023 to submit collective complaints.

3. International non-governmental organizations are entitled to submit complaints, and unlike bodies coming under Article 1(c) and Article 2(1) of the Additional Protocol, need not come within the jurisdiction of the High Contracting Party. Amnesty International and Medécins du Monde - International are therefore entitled to bring a collective complaint against those countries that have ratified the European Social Charter or Revised European Social Charter or those that have also agreed to be bound by the collective complaints mechanism, without prejudice to any other admissibility requirement.

4. Amnesty International is an international non-governmental organization dedicated to protecting and promoting the rights enshrined in the Universal Declaration of Human Rights and other international treaties throughout the world. Amnesty International Limited is registered in England and Wales as a company limited by guarantee (company number 01606776) with a subsidiary, Amnesty International Charity (charity number 294230). The organization is a movement of over 10 million members, activists and supporters in more than 150 countries worldwide. It is independent of any government, political ideology, economic interest, or religion. Amnesty International is recognized as an accurate, unbiased and credible source of research and analysis of human rights conditions around the world. Amnesty International conducts research and leads efforts to advance international human rights at the international, regional and national levels.

5. It has formal relations with a number of human rights actors internationally and regionally. Amnesty International has consultative status with the United Nations (UN) Economic and Social Council (ECOSOC) and the UN Educational, Scientific and Cultural Organization (UNESCO). Amnesty International has observer status before the African Commission of Human and People's Rights and is registered with the Organization of American States as a civil society organization. It has working relationships with the Organization for Security and Cooperation in Europe (OSCE), the European Union (EU) and the Inter-Parliamentary Union. At the Council of Europe, Amnesty International is a member of the International Non-Governmental Organization Conference (the INGO Conference) and has observer status at the steering Committee for Human Rights (CDDH). In 1977, Amnesty International was awarded the Nobel Peace Prize.

6. Amnesty International has long been at the forefront of protecting internationally recognized social and economic rights worldwide. For instance, under its global Demand Dignity Campaign (2009-2014), Amnesty International contributed to strengthening the legal enforcement of economic, social and cultural rights and to advancing the right to health through research, campaigning and litigation. Subsequently, the organization has carried out research, produced reports, written submissions and conducted strategic litigation on a range of economic and social rights issues including rights to health, adequate housing, education and labour rights in many countries across Europe and beyond.[1] As a result, Amnesty International has extensive and global experience and expertise in human rights including on states' obligations under international law to respect, protect and fulfil all rights guaranteed in international treaties and on the principle of non-discrimination and equality in the enjoyment of all rights, including the right to health.

7. Amnesty International has previously filed two collective complaints. Firstly, No. 178/2019 Amnesty International v. Italy, alleged that the housing situation of Roma and Sinti in Italy is in violation of Article 31 (right of housing), read alone or in conjunction with Article E (non-discrimination), due to the continued perpetration of forced evictions, segregated and substandard housing, and use of discriminatory criteria for the allocation of social housing.[2] Secondly, No. 217/2022 Amnesty International v. Greece alleged that the health system was severely impacted by austerity measures introduced by the Greek authorities following the economic crisis of 2009/2010, and that the government failed to protect the population against them.[3] Both complaints are currently pending.

8. Specifically, in Sweden, Amnesty International has conducted research on various issues related to economic, social and cultural rights including EU migrants' access to a range of goods and services which forms part of the evidence presented in this complaint.[4]

9. Médecins du Monde (MdM) was founded in 1980 as an international humanitarian organization working towards realizing the right to health for all. Guided by medical ethics, MdM strives to provide everyone with proper access to physical, psychological, and social healthcare based on the needs of communities. The mission of MdM is to go where others will not, to testify to the

[1] See Research Archives - Amnesty International

[2] No. 178/2019 Amnesty International v. Italy - Pending complaints (coe.int).

[3] No. 217/2022 Amnesty International v. Greece - Pending complaints (coe.int).

[4] Sweden: A cold welcome: Human rights of Roma and other 'vulnerable EU citizens' at risk - Amnesty International.

intolerable and volunteer to help. The organization is religiously and politically independent and cares for the most vulnerable groups of the population when faced with crisis and exclusion, throughout the world and in Sweden. Through innovative medical programmes and evidence-based advocacy, MdM empowers excluded people and communities to claim their right to health while fighting for universal access to healthcare.

10. Médecins du Monde - International (MdM) is a network of 17 members: Argentina, Belgium, Canada, France, Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The international network's member organizations strive for a balance of domestic and international projects. Through more than 400 innovative medical programs and evidence-based advocacy initiatives in over 70 countries, MdM enables vulnerable people and their communities to access quality medical services. Based on its personal observations and experience, MdM draws attention to human rights abuses, in particular obstacles in accessing healthcare with 6,500 volunteers and 4,600 staff members serving 7,25 million people. Since 2006 the MdM has produced Observatory reports on barriers in access to health experience by their beneficiaries. The reports are based on quantitative and qualitative data collected at MdM medical and psychosocial programmes. Based on the evidence from the data collection, the Observatory report has included recommendations to policy makers within the EU to improve access to healthcare for vulnerable people.

11. Médecins du Monde - International has previously filed one complaint, No. 67/2011 Médecins du Monde – International v. France, alleging that the rights of Roma living in France were not respected with regards to housing, education for their children, social protection and healthcare. All in breach of Articles 11 (right to health), 13 (right to social and medical assistance), 16 (right to appropriate social, legal and economic protection for the family), 17 (right of children and young persons to appropriate social, legal and economic protection), 19§8 (guarantees concerning expulsion), and 31 (right to housing) of the Revised European Social Charter, read alone or in conjunction with the non-discrimination clause in Article E.[5] The complaint has been processed and the European Committee of Social Rights ("the Committee") concluded that there was a violation of Article E in conjunction with Articles 11§§1-3, 13§1, 16, 17§2, 19§8, 30 and 31§§11-2 of the Revised Charter and of Article 13§4.[6]

12. Médecins du Monde Sweden/Läkare i Världen (MdM SWE) (with organization number 802016-1306) was founded in 1991 as an independent chapter of Médecins du Monde - International. MdM SWE is currently managing seven medical clinics throughout Sweden where professional medical volunteers alongside legal experts, psychologists and volunteers from a range of professions provide support and medical care for vulnerable people. MdM SWE works with health promotion, sexual and reproductive health and rights, mental health support and legal advice. MdM SWE also aids service users in securing their rights through administrative support. When working towards realizing the right to health MdM SWE collects data and testimonies on barriers and discrimination in access to health. The service users of MdM SWE are often completely left out of national statistics on access to health and the data collection performed by the organization hence fills an important gap in health reporting. In

[5] No. 67/2011 Médecins du Monde - International vs. France - Processed complaints.

[6] In regard to other situations, the Committee concluded that there was no violation of Article E, read in conjunction with Article 16 and of Article 13§4.

2021 MdM SWE co-produced the latest European Observatory report containing data and testimonies from 25,355 service users in seven European countries with MdM programmes, concluding that healthcare exclusion in Europe disproportionally affects people already facing vulnerabilities, such as children, undocumented migrants, homeless people, pregnant women, and the elderly.

13. Médecins du Monde - International has participatory status with the Council of Europe and as such appears on the Governmental Committee list of international non-governmental organizations entitled to submit collective complaints. This complaint is signed by Hannah Laustiola, Executive Director of Médecins du Monde Sweden, whom the organization's articles of association authorize to act on its behalf.

1.2 APPLICATION OF THE REVISED EUROPEAN SOCIAL CHARTER AND THE COLLECTIVE COMPLAINT SYSTEM TO SWEDEN

14. Sweden is a State party to the 1996 Revised European Social Charter (Revised Charter) and to the Additional Protocol Providing for a System of Collective Complaints. Sweden ratified the 1961 European Social Charter on 17 December 1962. Sweden ratified the Revised European Social Charter on 5 May 1989 accepting 83 of the 98 Articles and sub-Articles including Articles 11 and 13.

15. According to Article B(2) of the Revised Charter,

> "*[A]cceptance of the obligations of any provision of this Charter shall, from the date of entry into force of those obligations for the Party concerned, result in the corresponding provision of the European Social Charter and, where appropriate, of its Additional Protocol of 1988 ceasing to apply to the Party concerned in the event of that Party being bound by the first of those instruments or by both instruments*." Further, Article D of the Revised Charter provides that '*The provisions of the Additional Protocol to the European Social Charter providing for a system of collective complaints shall apply to the undertakings given in this Charter for the States which have ratified the said Protocol*.'

16. Sweden ratified the Additional Protocol Providing for a System of Collective Complaints on 29 May 1998.

17. This complaint therefore meets the admissibility criteria under Article 1 and 13 of the Additional Protocol.

1.3 APPLICATION TO DESTITUTE EU MIGRANTS IN SWEDEN, THE POPULATION AT ISSUE

18. This case concerns a group, which in Sweden is commonly called "vulnerable EU citizens", referring to people who are nationals of other European Union (EU) member states living in Sweden in a state of destitution and marginalization. Many of them (but not exclusively) are

Roma and suffer widespread and systemic intersectional discrimination with respect to their ethnicity and socio-economic situation (see 2.3). As elaborated below in the main substance of the complaint, these multiple forms of discrimination and vulnerability cumulatively impact both their health status and their ability to access the corresponding healthcare and treatment they need. The exact definition of the group varies. The first National Coordinator for Vulnerable EU Citizens defined it as "individuals who are citizens of another EU country and who do not have right of residence in Sweden",[7] whereas the National Police Authority in a 2015 mapping exercise offered a more extensive definition:

> Vulnerable EU citizens means, in this report, citizens of another EU country, who in their home country live in poverty and social exclusion. Using the freedom of movement within the EU, they have made their way to Sweden to support themselves, usually by begging in public spaces. Generally, they lack housing and the means of subsistence in Sweden.[8]

19. Most individuals in this group, although they are EU citizens, lack the European Health Insurance Card. The European Health Insurance Card serves as proof of insurance in an EU member state and upon producing this card, an EU national visiting or residing in another EU state should get medical services on the same terms as the citizens of that state.[9] However, when an individual does not have healthcare coverage in their own country, he or she is also not covered by EU health insurance. A significant number of EU citizens are still not covered by health insurance in their home countries.[10] The reasons can be, for instance, according to the OECD, that they work in informal employment, are unemployed and not registered for social benefits, or lack identity cards. Lacking health insurance is particularly common among marginalised groups such as Roma communities.[11]

20. For the purpose of this submission, the parties refer to the 2015 definition by Swedish National Police (paragraph 18, above), which will be the population at issue. In brief, the term *EU migrants* will be used.

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[7] Swedish Government Official Reports 2016:6, (SOU 2016:6), *Searching for a future – Final report from the National Coordinator for Vulnerable EU citizens, (Framtid sökes – Slutredovisning från den nationella samordnaren för utsatta EU-medborgare)*, p. 13, available at: https://www.regeringen.se/4905f7/contentassets/b9ca59958b5f43f681b8ec6dba5b5ca3/framtid-sokesslutredovisning-fran-den-nationella-samordnaren-for-utsatta-eu-medborgare-sou-2016_6.pdf.

[8] Swedish National Police Authority, *National mapping: Crime connected to begging and vulnerable EU citizens in Sweden (Nationell lägesbild. Brottslighet med koppling till tiggeri och utsatta EU-medborgare i Sverige)* (2015), p. 7, available at https://www.svtstatic.se/image-cms/svtse/1475679820/svts/article10544306.svt/BINARY/Polisrapport%20om%20m%C3%A4nniskohandel%20inom%20tiggeri.pdf.

[9] 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, and EU's Administrative Commission for the Coordination of Social Security Systems, Decision No. S1 of 12 June 2009 concerning the European Health Insurance Card (2010/C106/08).

[10] See, for instance, OECD, Health at a Glance: Europe 2020: State of Health in the EU Cycle, "Population Coverage for Health Care", available at https://www.oecd-ilibrary.org/sites/ad0d6faa-en/index.html?itemId=/content/component/ad0d6faa-en#indicator-d1e26144.

[11] OECD, Health at a Glance: Europe 2020: State of Health in the EU Cycle, "Population Coverage for Health Care", available at https://www.oecd-ilibrary.org/sites/ad0d6faa-en/index.html?itemId=/content/component/ad0d6faa-en#indicator-d1e26144.

21. According to EU law, incorporated into Swedish legislation, all EU citizens can stay in the country for a maximum period of three months provided they have a valid identity card.[12] If EU citizens wish to stay for longer than three months, they must either work, seek work with a reasonable prospect of finding employment, study, or have enough money to support themselves and have a comprehensive health insurance.[13] When those conditions are met – which can be at any point during the initial three-month period – they have a *right of residence* in Sweden and should be treated the same as Swedish nationals.[14] Right of residence on the basis that someone is looking for work requires a "genuine prospect of being engaged".[15] Earning money in the informal sector, including begging, is not deemed "work" and does not provide a basis for right of residence. If, after three months, an EU citizen does not meet the criteria set out, then he or she no longer has a right to reside in the country.

22. EU citizens are not registered when they enter or leave the country, therefore the authorities do not know if somebody has been in Sweden for three months or more, and consequently will not automatically know whether or not an EU citizen has a right of residence. There is also no practice to expel EU citizens who are deemed to lack right of residence.[16] Moreover, an EU citizen can leave Sweden and then re-enter to restart the three-month period multiple times. In other words, there is no way for authorities to distinguish between those who have just arrived and those who have overstayed the three-month period or those who have returned multiple times but never in fact stayed more than three months at a time.

23. The Appendix to the European Social Charter states that,

> "without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 [of the Revised Social Charter] include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned".

24. Examining this issue, in cases specifically relating to Roma of Bulgarian and Romanian origin residing in France and Italy, the Committee has determined that all rights under the Charter apply to all individuals in the population under review.[17] It is true that EU citizens without a right of residence are, under EU law, technically speaking only legally in the territory of another member state for the first three months. However, the Committee has stated that

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[12] Aliens Act (2005:716) (Utlänningslagen), Chapter 2, para. 5 (Directive 2004/38/EC, Art. 6: Right of residence for up to three months). See also Case C-292/89: The Queen v. Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen. Judgment of the ECJ of 26 February 1991.

[13] Aliens Act (2005:716), Chapter 3a para. 3 (Directive 2004/38/EC, Art. 7: Right of residence for more than three months).

[14] Directive 2004/38/EC Art. 24: Equal treatment. The principle of equal treatment, and thus the prohibition of discrimination on grounds of nationality, can be found in the Treaty on the Functioning of the European Union (TFEU), Article 18, and is also a general legal principle of primary EU law.

[15] 3a kap 3 § 2 p. UtlL (Directive 2004/38/EC, April 29, 2004, Art. 14(4).

[16] In October 2022, following the September 2022 parliamentary election in Sweden, the new coalition government and its supportive party, the Sweden Democrats, issued a joint public policy programme called *Tidöavtalet.* In this programme the four parties announced their political goals for the coming four-year period in the fields of healthcare, climate/energy, crime, migration/ integration, school policies, and growth/household economy. Among other things, the programme includes the following statement: "A public inquiry will be initiated to suggest legislation and other measures for the registration of EEA citizens who have resided in Sweden for more than three months." Available at https://www.tidöavtalet.se, p. 35. At the time of the submission of this complaint, no public inquiry to this effect has yet been initiated.

[17] See European Committee on Social Rights, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, and European Committee on Social Rights, *Médecins du Monde - International v. France*, Complaint 67/2011 + ERRC v Italy (2004), look up.

> [I]t is extremely complex… to distinguish to whom the protection guaranteed by the Charter and its Appendix applies without restrictions. The Committee considers that the lack of identification possibilities should not lead to depriving persons fully protected by the Charter of their rights under it.[18]

25. Thus, even those who have stayed for longer than three months fall within the scope of the full Charter. Therefore, also for the purpose of this submission, it is submitted that all EU migrants like any other EU citizens are entitled to protection of their right to protection of health and the right to medical assistance in Sweden under Articles 11 and 13 of the Revised Charter respectively.

26. The Committee has also found that both the right to protection of health and the right to medical and social assistance concern such fundamental rights that are closely connected to the rights to life, physical integrity and the preservation of human dignity.[19] Therefore, denying entitlement to medical assistance to EU migrants within the territory of a State Party, even if they are there without a right of residence according to EU law, is contrary to the Charter.[20] As such, the exception in the Appendix mentioned above does not apply to the population at issue in this submission also for this reason. See further below (under Specific Allegations).

1.4 ARTICLES CONCERNED

27. It is submitted that Sweden is in violation of Article 11 (the right to protection of health) and of Article 13 (the right to social and medical assistance), read alone or in conjunction with Article E (non-discrimination), due to: 1) the denial of necessary healthcare for EU migrants in Sweden, 2) the billing of the full cost of necessary healthcare for EU migrants in Sweden, and 3) the deterring effects of not providing subsidized healthcare to EU migrants in Sweden, leading to their refraining from necessary healthcare with considerable risks for their health and life, as a consequence.

[18] *Médecins du Monde - International v. France*, Complaint No.67/2011, para. 33.

[19] *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, 23 October 2012, para 28

[20] *International Federation of Human Rights Leagues (FIDH) v France*, Complaint No.14/2003, 8 September 2004, paras. 26-32.

2. BACKGROUND

2.1 FREEDOM OF MOVEMENT WITHIN THE EU, THE RIGHT OF RESIDENCE AND IMPACT ON RIGHT TO ACCESS HEALTHCARE

GENERAL PRINCIPLES

28. According to EU law incorporated into Swedish legislation, all EU citizens can stay in the country for a maximum period of three months provided they have a valid identity card.[21] If EU citizens wish to stay for longer than three months, they must either work, seek work with a reasonable prospect of finding employment, study, or have enough money to support themselves and a comprehensive health insurance.[22] When those conditions are met – which can be at any point during the initial three-month period – they have a *right of residence* in Sweden and should be treated the same as Swedish nationals.[23] Right of residence on the basis that someone is looking for work requires a "genuine prospect of being engaged".[24] Earning money in the informal sector is not deemed "work" and does not provide a basis for right of residence. If, after three months, an EU citizen does not meet the criteria set out, then he or she no longer has a right to reside in the country.

29. The core EU principle of right to equal treatment for EU citizens applies during the first three months in another EU state. However, there are two exceptions to the rule and one of them is relevant here. According to the Free Movement Directive, the host state is not obliged to grant social assistance, including subsidized healthcare, to EU citizens during the first period of three months.[25] EU law does not, however, *ban* host states from doing so.

WHAT HAPPENS AFTER THE FIRST THREE MONTHS?

30. As mentioned above, in Sweden there is no registration of EU citizens when they enter or leave the country, nor is there a practice to expel EU citizens without a right of residence who have stayed longer than three months. Thus, the three-month limit is not upheld in practice.[26] At the same time, most Swedish national and municipal policies vis-à-vis EU migrants are designed to fit this three-month model, assuming that individuals in this group are in Sweden only "temporarily", staying for a maximum period of three months. In practice, many EU migrants stay for much longer, with or without occasional visits back to their home countries.

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[21] Aliens Act (2005:716) (Utlänningslagen), Chapter 2, para. 5 (Directive 2004/38/EC, Art. 6: Right of residence for up to three months). See also Case C-292/89: The Queen v. Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen. Judgment of the ECJ of 26 February 1991.

[22] Aliens Act (2005:716), Chapter 3a para. 3 (Directive 2004/38/EC, Art. 7: Right of residence for more than three months).

[23] Directive 2004/38/EC Art. 24: Equal treatment. The principle of equal treatment, and thus the prohibition of discrimination on grounds of nationality, can be found in the Treaty on the Functioning of the European Union (TFEU), Article 18, and is also a general legal principle of primary EU law.

[24] 3a kap 3 § 2 p. UtlL (Directive 2004/38/EC, April 29, 2004, Art. 14(4).

[25] Directive: 2004/38/EC Art. 24(2): Equal treatment.

[26] However, there may be potential upcoming changes in this regard, see footnote 16, above.

31. Therefore, after three months, the legal status in Sweden of EU migrants is unclear.[27] Some argue that people in this situation should be considered undocumented migrants, because they are in Sweden without legal support.[28] Others believe that, given the open borders and freedom of movement within the EU, nationals of other EU states can never be classified as undocumented.[29]

32. This is particularly important in relation to the right to healthcare because, according to Swedish law people considered to be undocumented migrants have a right to subsidized care that cannot be deferred and children who are undocumented have a right to all healthcare free of charge.[30] Regardless, as of March 2023, the government had failed to clarify whether EU citizens after their first three months in the country should be considered undocumented migrants and, as such, whether they on that ground should have access to subsidized healthcare. The consequence is a legal limbo for these groups which impacts on their ability to access affordable healthcare (see 3.1 below).

2.2 DESTITUTE EU MIGRANTS IN SWEDEN: NUMBER AND ORIGIN

33. There is no registration of EU citizens arriving in Sweden, so no official numbers exist of how many of the EU citizens in Sweden lack a right of residence and live in a state of poverty and marginalization. The lack of a clear definition of the group also implies difficulties when estimating the number.[31] The Police Authority estimated in November 2015 that there were around 4,700 individuals in Sweden who were

> "citizens of another EU country, who in their home country live in poverty and social exclusion. Using the freedom of movement within the EU, they have made their way to Sweden to support themselves, usually by begging in public spaces. Generally, they lack housing and means for their subsistence in Sweden."[32]

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[27] See: County Administrative Board of Stockholm (Länsstyrelsen i Stockholm), *Assignment regarding national coordination on vulnerable EU/EEA citizens lacking right of residence in Sweden -- interim report* (*Uppdrag om nationell samordning avseende utsatta EU/EES-medborgare som saknar uppehållsrätt i Sverige—delrapport)* (2018), p. 25, available at: https://docplayer.se/105505289-Uppdrag-om-nationell-samordning-avseende-utsatta-eu-ees-medborgare-som-saknar-uppehallsratt-i-sverige-delrapport.html.

[28] The legal definition of the term "undocumented migrant" in Sweden is "an alien residing in Sweden with no legal or regulatory support" ("utlänningar som vistas i Sverige utan stöd av myndighetsbeslut eller författning"), Act (2013:407) on healthcare and medical services for certain aliens residing in Sweden without necessary permits (Lag om hälso- och sjukvård till vissa utlänningar som vistas i Sverige utan nödvändiga tillstånd), para. 5

[29] For a discussion about this, see Vicki Paskalia, "*Is the Swedish social service system hermetically closed for 'EU migrants' after the European Court's recent case law?*" ("*Är det svenska sociala systemet hermetiskt stängt för 'EU-migranter' efter EU-domstolens senaste praxis?*"), Europarättslig tidskrift (1), 87-107, p. 95.

[30] Act on healthcare and medical services for certain aliens residing in Sweden without necessary permits (2013:407) (lag om hälso- och sjukvård till vissa utlänningar som vistas i Sverige utan nödvändiga tillstånd) and Act on Education (2010:800) (skollag), Chapter 29, para. 2.

[31] See for example County Administrative Board of Stockholm (*Länsstyrelsen i Stockholm*), *Assignment regarding national coordination on vulnerable EU/EEA citizens lacking right of residence in Sweden – final report*, p. 25, available at: https://docplayer.se/181062138-Uppdrag-om-nationell-samordning-avseende-utsatta-eu-ees-medborgare-som-saknar-uppehallsratt-i-sverige-slutrapport.html.

[32] Swedish National Police Authority, *National mapping. Crime connected to begging and vulnerable EU citizens in Sweden (Nationell lägesbild. Brottslighet med koppling till tiggeri och utsatta EU-medborgare i Sverige)*, p. 7, available at https://www.svtstatic.se/image-cms/svtse/1475679820/svts/article10544306.svt/BINARY/Polisrapport%20om%20m%C3%A4nniskohandel%20inom%20tiggeri.pdf.

34. Later reports have repeated rather than updated the figure of 4,700, while reiterating that the figure remains highly uncertain.[33] What is certain is that there are likely several thousand residing in the country at any one time.

35. The "National Coordinator for Vulnerable EU Citizens" (hereinafter the National Coordinator, see further 2.4 below) wrote in a 2018 interim report that municipalities had reported that they could not estimate the number of vulnerable EU citizens residing temporarily in their territory because they did not conduct outreach activities specifically targeting this group.[34] In his 2020 final report, the National Coordinator mentioned, without indicating the source for this statement, that the Police Authority estimated that there were around 4,800 EU migrants in Sweden in 2018.[35] Again, this figure must be treated with caution. The coronavirus pandemic 2020-2022 has also most likely affected the number of EU migrants in Sweden; however, no official figures exist that indicate what the present number might be.

36. According to the National Coordinator's final 2020 report, Romania and Bulgaria are the two most common countries of origin of EU migrants in Sweden.[36] Other countries of origin mentioned include Estonia, Hungary, Ireland, Latvia, Lithuania and Poland.[37] Neither that report nor any other official documents indicate how many of the individuals concerned are of Roma ethnic background but it is likely that they comprise the majority.[38]

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[33] See, for example, Swedish Government Official Reports 2016:6 (SOU 2016:6), *Searching for a future – Final report from the National Coordinator for Vulnerable EU citizens (Framtid sökes – Slutredovisning från den nationella samordnaren för utsatta EU-medborgare)*, p. 7, available at: https://www.regeringen.se/4905f7/contentassets/b9ca59958b5f43f681b8ec6dba5b5ca3/framtid-sokesslutredovisning-fran-den-nationella-samordnaren-for-utsatta-eu-medborgare-sou-2016_6.pdf, Swedish National Board of Health and Welfare (Socialstyrelsen), *Homelessness 2017– Magnitude and character* (*Hemlöshet 2017 – omfattning och karaktär)*, November 2017, p. 77, available at:https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/ovrigt/2017-11-15.pdf, and County Administrative Board of Stockholm (Länsstyrelsen i Stockholm), *Assignment regarding national coordination on vulnerable EU/EEA citizens lacking right of residence in Sweden – national status overview* (*Uppdrag om nationell samordning avseende utsatta EU/EES-medborgare som saknar uppehållsrätt i Sverige – nationell lägesbild 1)* (2018), p. 13.

[34] See: County Administrative Board of Stockholm (Länsstyrelsen i Stockholm), *Assignment regarding national coordination on vulnerable EU/EEA citizens lacking right of residence in Sweden -- interim report* (*Uppdrag om nationell samordning avseende utsatta EU/EES-medborgare som saknar uppehållsrätt i Sverige—delrapport)* (2018), p. 12, available at: https://docplayer.se/105505289-Uppdrag-om-nationell-samordning-avseende-utsatta-eu-ees-medborgare-som-saknar-uppehallsratt-i-sverige-delrapport.html.

[35] County Administrative Board of Stockholm (*Länsstyrelsen i Stockholm*), *Assignment regarding national coordination on vulnerable EU/EEA citizens lacking right of residence in Sweden – final report*, p. 29, available at: https://docplayer.se/181062138-Uppdrag-om-nationell-samordning-avseende-utsatta-eu-ees-medborgare-som-saknar-uppehallsratt-i-sverige-slutrapport.html.

[36] County Administrative Board of Stockholm (*Länsstyrelsen i Stockholm*), *Assignment regarding national coordination on vulnerable EU/EEA citizens lacking right of residence in Sweden – final report*, pp. 25–27, available at: https://docplayer.se/181062138-Uppdrag-om-nationell-samordning-avseende-utsatta-eu-ees-medborgare-som-saknar-uppehallsratt-i-sverige-slutrapport.html.

[37] County Administrative Board of Stockholm (*Länsstyrelsen i Stockholm*), *Assignment regarding national coordination on vulnerable EU/EEA citizens lacking right of residence in Sweden – final report*, pp. 25–28, available at: https://docplayer.se/181062138-Uppdrag-om-nationell-samordning-avseende-utsatta-eu-ees-medborgare-som-saknar-uppehallsratt-i-sverige-slutrapport.html.

[38] There are no statistics on the ethnic identity of EU migrants in Sweden. Of the 58 Romanian individuals interviewed for the 2018 Amnesty International report, 42 self-identified as Roma. Six identified as Romanian non-Roma and of those four were or had been married to Roma; two identified as Turkish; and eight as Rudari. The latter are often perceived as Roma, but those interviewed by Amnesty International did not themselves identify as Roma and did not speak Romani. See Sweden: A cold welcome: Human rights of Roma and other 'vulnerable EU citizens' at risk - Amnesty International (2018) p. 11.

37. According to the National Coordinator, EU migrants with origin in countries other than Romania and Bulgaria are less likely to be supporting themselves through begging and are less often victims of labor exploitation.[39]

38. According to a 2020 report from the Police Authority about human trafficking it is hard to estimate how many in Sweden are victims of human trafficking for sexual and other purposes, due to few police reports and difficulties detecting the cases.[40] Among the 19 reported cases of trafficking for forced labor in 2020, the victims mainly were from countries outside of the EU, but also from Romania, Bulgaria and Poland.[41] EU migrants, more specifically nationals of Romania and Bulgaria, comprise the majority of victims of human trafficking for begging purposes. In total 13 cases of human trafficking for begging purposes were reported in 2020.[42] However, this is likely to be a significant underestimate as these are only cases that have come to the attention of the authorities. Women recruited to Sweden for exploitation in prostitution in 2020 mainly came from Romania and Nigeria.[43] Again, there are no exact figures of victims of human trafficking in Sweden.

2.3 THE GENERAL SITUATION OF EU MIGRANTS: DESTITUTION AND HARASSMENT

39. From August 2017 to August 2018, Amnesty International conducted research on the situation of so-called "vulnerable EU citizens" in Sweden (Annex I).[44] There were four focus areas of the research: the right to the highest attainable standard of health (explored more in substance of the complaint and specific allegations at section 3 below), the right to housing, the rights to water and to sanitation, and the right to be free from harassment by the police.

40. Comprehensive desk research was combined with in-depth interviews of 58 EU migrants of Romanian nationality living in six municipalities: Stockholm (18), Malmö (12), Göteborg (nine), Umeå (eight), Lund (six) and Gotland (five). In all six locations, local NGOs were crucial in helping Amnesty International make contact and build trust with interviewees and communities. Amnesty International carried out 34 interviews with duty-bearers, including government representatives, officials in local authorities and police officers. Amnesty

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[39] County Administrative Board of Stockholm (*Länsstyrelsen i Stockholm*), *Assignment regarding national coordination on vulnerable EU/EEA citizens lacking right of residence in Sweden – final report*, p. 28, available at: https://docplayer.se/181062138-Uppdrag-om-nationell-samordning-avseende-utsatta-eu-ees-medborgare-som-saknar-uppehallsratt-i-sverige-slutrapport.html.

[40] Swedish National Police Authority, *Human trafficking for sexual and other purposes. Status overview 22 (Människohandel för sexuella och andra ändamål. Lägesrapport 22)*, p. 27 and 37, available at: https://www.nmtsverige.se/sites/default/files/lagesrapport-2020-original-final-211203_0.pdf.

[41] Swedish National Police Authority, *Human trafficking for sexual and other purposes. Status overview 20 (Människohandel för sexuella och andra ändamål. Lägesrapport 20)*, p. 38, available at: https://www.nmtsverige.se/sites/default/files/lagesrapport-2020-original-final-211203_0.pdf.

[42] Swedish National Police Authority, *Human trafficking for sexual and other purposes. Status overview 20 (Människohandel för sexuella och andra ändamål. Lägesrapport 20)*, p. 49, available at: https://www.nmtsverige.se/sites/default/files/lagesrapport-2020-original-final-211203_0.pdf.

[43] Swedish National Police Authority, *Human trafficking for sexual and other purposes. Status overview 20 (Människohandel för sexuella och andra ändamål. Lägesrapport 20)*, p. 28, available at: https://www.nmtsverige.se/sites/default/files/lagesrapport-2020-original-final-211203_0.pdf.

[44] The findings were presented in November 2018 in the report "Sweden: A Cold Welcome. Human Rights of Roma and other 'Vulnerable EU Citizens' at risk." See Annex I.

International spoke to over 20 representatives of networks and civil society organizations providing services to EU migrants.

41. Of the 58 EU migrants interviewed, all but six were homeless (sleeping rough, in cars, in caravans or in temporary or longer-term shelters) and 48 supported themselves through begging. At least nine combined begging with collecting bottles and cans for recycling (which gives a small income when these are returned to stores) or other informal, short-term work. Six people were in formal employment at the time of interview. Some 42 of the interviewees self-identified as Roma; six as Romanian non-Roma, of whom four were or had been married to Roma; two identified as Turkish; and eight as Rudari. The latter are often perceived as Roma, but those interviewed by Amnesty International did not themselves identify as Roma and did not speak Romani.

42. The report, published in November 2018, confirmed what had been found earlier: that many people in this group live in extreme poverty and navigate daily struggles for survival to find shelter, food, sanitation and healthcare exacerbated in some cases by harassment by the police in Stockholm.[45]

43. Specific concerns included lack of a secure, safe and stable place to sleep - a source of enormous stress, fear and anxiety. This was particularly the case in the major urban areas such as Stockholm, Gothenburg and Malmo.[46] In these big cities, many interviewees slept in cars, under bridges, in tents made of plastic sheets or in shacks in the woods. Some spent the occasional night at a shelter, but these have limits for the number of nights that people can stay and after three or five nights they are left to sleep rough again. One of the major cities, Malmö, did not have any shelter open to this group at all from end of March to end of December. Many interviewees testified to the insecurity of having nowhere to go, and the constant fear that the police would find them and force them to leave. Several told Amnesty International that they felt unsafe, cold and exposed when they slept outside.

44. Lack of access to housing also impacted access to water and sanitation since these services typically are only provided as part of housing. Public taps are scarce and drinking fountains are few or non-existent. If there are public toilets, they tend to be subject to a charge. Many of those interviewed told Amnesty International that they had very limited access to toilets and that they had to buy drinking water, which caused further economic stress and hardship and, in some cases, had serious health consequences.

45. In light of its findings, Amnesty International made a number of recommendations to both the government and local municipalities. These included in the case of the government (a) clarifying that the Swedish Roma integration strategy, adopted in 2012, includes *all* Roma residing in Sweden, regardless of their nationality and regardless of whether they formally are entitled to

[45] In Stockholm, a number of the women interviewed testified that they had been subjected to intimidating and disproportionately harsh treatment by the police. Police officers had repeatedly approached them, gestured to them to leave the spots where they were begging, or even forced them into police cars to be driven to random locations outside of town. They were subsequently left there to make their own way back. This treatment occurred in spite of the fact that begging is not banned or subject to licensing. In most instances, the treatment appeared to be initiated by the individual police officer rather than being based on complaints that the women would be obstructing access or disturbing public order.
The Stockholm police confirmed this practice but failed to acknowledge it.

[46] In two small municipalities visited by Amnesty International, long-term shelter was provided, demonstrating that a rights-focused and inclusive approach is possible.

residency status under EU law or not;[47] (b) adopting legislation that clarifies that all EU citizens in Sweden, both during their first three months in the country and thereafter, and whether they have a European Health Insurance Card or not, have a right to subsidized healthcare and medical services at least on the same terms as undocumented migrants, and (c) ensuring that no criminalization of begging be introduced nationally or that such bans be allowed on municipal level, nor that other laws or regulations be introduced that restrict the ability of people in marginalization to ask for help.

46. In the case of municipalities Amnesty recommended (a) adopting municipal action plans on combating homelessness among people considered "vulnerable EU citizens" based on the acknowledgment that it is a public responsibility to provide shelter to all, regardless of migration status or citizenship; (b) making longer-term shelter available to all in the municipality, without discrimination, accompanied by social support and (c) putting in place schemes that ensure access to water and sanitation and garbage collection for all individuals who sleep rough, including drinking water taps, portable toilets, and garbage dumpsters. This widespread lack of access to a range of social rights also clearly has a significant negative impact on the social determinants of health of this group thereby further exacerbating their vulnerability.

47. To date none of these recommendations have been adequately implemented.

2.4 THE GOVERNMENT'S RESPONSE: CONTINUING FAILURE TO TACKLE LONGSTANDING AND PERSISTENT DISCRIMINATION AND MULTIPLE VIOLATIONS

48. In 2016, Sweden was reviewed by both the United Nations (UN) Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights. Both expressed serious concerns over the treatment of people categorized as "vulnerable EU citizens" in Sweden, emphasizing the long-standing, persistent discrimination against Roma and the state's responsibility to ensure that minimum essential levels relating to, for example, the rights to housing and health, must be guaranteed to all, including those considered "vulnerable EU citizens".[48] Similarly, the UN Committee on the Elimination of All Forms of Racial Discrimination, in 2018, recommended Sweden to ensure equal access *by all Roma communities* to human rights such as housing,

[47] The Swedish Strategy for Roma inclusion does not explicitly distinguish between Roma who are Swedish nationals and Roma of other nationalities. The strategy states, for example, that "the government considers it self-evident that the Roma just like anybody else have a right to enjoy their human rights such as they are expressed in the Swedish Constitution and Sweden's obligations under international human rights conventions... In this context, the government chooses in particular to emphasize the principle of non-discrimination, due to the fact that several of the problems that affect many Roma have a connection with discrimination." The strategy states, however, that it does not apply to "EU citizens who are [in Sweden] for a period shorter than three months. Like many other official documents, the strategy ignores the fact that in practice many Roma who are citizens of other EU states are in Sweden for longer than three months and, thus, the text is silent on whether those Roma can benefit from inclusion and integration programmes under the strategy or not. Swedish Government, *A coordinated and long term strategy for Roma inclusion*, available at https://www.regeringen.se/rattsliga-dokument/skrivelse/2012/02/skr.-20111256-.

[48] UN Human Rights Committee, Concluding Observations on the Seventh Periodic Report of Sweden, CCPR/C/SWE/CO/7, 28 April 2016, paras 14-15, and UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the Sixth Periodic Report of Sweden, E/C.12/SWE/CO/6, 14 July 2016, paras 19-20.

healthcare and justice. Their findings, including with respect to the substance of this complaint, are explored in more depth at section 3.4 below.

49. In 2017, the Ministry of Social Affairs appointed former Police Commissioner Claes Ling-Vannerus to lead national coordination regarding "vulnerable EU citizens" (in this submission: EU migrants), under the auspices of the County Administrative Board of Stockholm. His mandate was to strengthen collaboration and coordination between public agencies, municipalities, civil society and others who interact with the target group; develop methodological support and capacity building to facilitate their work; provide services to municipalities in order to enhance consistent approaches across the country; and facilitate collaboration with the countries of origin.[49] His mandate did not include interacting directly with or consulting EU migrants in Sweden and/or promoting or strengthening the protection of their human rights.

50. In early 2018, the National Coordinator presented an interim report to the government followed by his final report in 2020.[50] Neither reports' detailed list of activities made any mention of consultations or interviews with EU migrants. Both reports stated repeatedly that the "legal situation is uncertain" with regard to EU migrants' access to welfare services in Sweden, including the right to healthcare, but without suggesting how this lack of clarification could be remedied.

51. Human rights are not referenced in the reports in any significant way, with the exception of the UN Convention of the Rights of the Child which, due to its recent incorporation into Swedish law, is mentioned a few times. This is despite the fact that the National Coordinator's final report was written after Amnesty International's publication of its 2018 report (see 2.3 above and Annex I) which set out very clearly the range of relevant international and regional human rights obligations accepted by Sweden. Amnesty International had also on repeated occasions met with the National Coordinator, pointing out the importance of a rights perspective on his work and his findings.

52. After the National Coordinator ended his mandate with this final report in 2020, the responsibility for coordinating the work of municipalities and regions on "vulnerable EU citizens" was formally transferred to the Stockholm County Board.[51] However, the appointed spokesperson at the County Board told Amnesty International in March 2022 that he "no longer works on these issues" and referred Amnesty International to the Government Agency on

[49] Swedish Government press release, "Prolonged national coordination by the county of Stockholm regarding vulnerable EU/EEA citizens" ("Stockholms läns nationella samordning om utsatta EU/EES-medborgare förlängs"), 12 October 2017, available at:https://news.cision.com/se/socialdepartementet/r/stockholms-lans-nationella-samordning-om-utsatta-eu-ees-medborgare-forlangs,c2366524.

[50] County Administrative Board of Stockholm (Länsstyrelsen i Stockholm), *Assignment regarding national coordination on vulnerable EU/EEA citizens lacking right of residence in Sweden – final report* (*Uppdrag om nationell samordning avseende utsatta EU/EES-medborgare som saknar uppehållsrätt i Sverige – slutrapport)* (2020), available at https://docplayer.se/181062138-Uppdrag-om-nationell-samordning-avseende-utsatta-eu-ees-medborgare-som-saknar-uppehallsratt-i-sverige-slutrapport.html and County Administrative Board of Stockholm (Länsstyrelsen i Stockholm), *Assignment regarding national coordination on vulnerable EU/EEA citizens lacking right of residence in Sweden – interim report* (*Uppdrag om nationell samordning avseende utsatta EU/EES-medborgare som saknar uppehållsrätt i Sverige – delrapport)* (2018), available at: https://docplayer.se/105505289-Uppdrag-om-nationell-samordning-avseende-utsatta-eu-ees-medborgare-som-saknar-uppehallsratt-i-sverige-delrapport.html.

[51] https://www.lansstyrelsen.se/stockholm/samhalle/social-hallbarhet/manskliga-rattigheter-och-demokrati/utsatta-eu-ees-medborgare.html. The different County Boards have respective nation-wide responsibilities for different issues. In this case Stockholm coordinated the EU migrant work in the whole country.

Gender Equality (*Jämställdhetsmyndigheten*), which has a national responsibility to work on issues related to work-related and sexual exploitation. Yet this body responded to Amnesty International's request that they do not have any project that aims at or could shed light on the situation for EU migrants.

3. SUBSTANCE OF THE COMPLAINT AND SPECIFIC ALLEGATIONS

53. The European Committee of Social Rights ("the Committee") has a rich and evolving jurisprudence on access to healthcare for vulnerable groups, including non-nationals, and the corresponding state obligations in this regard, which is relevant to this complaint. The Committee has repeatedly found that the right to protection of health (Article 11) and the right to medical and social assistance (Article 13) concern fundamental rights that are connected to the right to life, physical integrity and the preservation of human dignity.[52]

54. In this context, the Committee has stated that human dignity is the fundamental value and indeed the core of positive European human rights law, and that healthcare is a prerequisite for the preservation of human dignity.[53] Based on this close relationship between human dignity and access to healthcare, the Committee has concluded that "legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter".[54] Further, the Committee has found that the healthcare system must be accessible to everyone, in particular to disadvantaged groups which should not be victims of discrimination,[55] and that "the right of access to healthcare requires that the cost of healthcare should be borne, at least in part, by the community as a whole".[56] In turn this requires that "the cost of healthcare must not represent an excessively heavy burden for the individual."[57] This implies that healthcare must be effective and affordable to everyone, and that vulnerable groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status must be adequately protected.[58]

55. Bearing this jurisprudence on the right to accessible and affordable healthcare including for non-nationals and regardless of their legal status in the territory of the State Party in mind, it is submitted that based on the evidence presented in this complaint Sweden is in violation of Article 11 and of Article 13, read alone or in conjunction with Article E. This is due to: 1) the denial of necessary healthcare for EU migrants in Sweden, 2) the billing of the full cost of necessary healthcare for EU migrants in Sweden, and 3) the chilling effect created by not providing subsidized healthcare to EU migrants in Sweden, leading to EU migrants refraining from seeking necessary healthcare.

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[52] See, for instance, *Defence for Children International v Belgium*, Complaint No. 69/2011 para 120-121.

[53] *International Federation of Human Rights Leagues (FIDH) v France*, Complaint No.14/2003, 8 September 2004, paras. 26-32.

[54] *International Federation of Human Rights Leagues (FIDH) v France*, Complaint No.14/2003, 8 September 2004, paras. 26-32.

[55] 1257 *International Commission of Jurists (ICJ)* and *European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, decision on the merits of 26 January 2021, para 218.

[56] Conclusions I, Statement of Interpretation on Article 11; Conclusions XV-2, Cyprus.

[57] Conclusions 2013, Georgia.

[58] 1257 International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §218.

56. For an understanding of the climate in which these violations occur, the legal, regulatory and political context in Sweden is elaborated below.

3.1 LEGAL, REGULATORY AND POLITICAL CONTEXT

SWEDISH LEGISLATION ON HEALTHCARE AND HEALTH INSURANCE

57. Sweden has a universal health insurance system, which covers all citizens and residents, with responsibility for delivery of healthcare at the regional level. The main legislation regulating healthcare and medical services is the framework law the Health and Medical Services Act.[59] This states that the objective of health and medical services in Sweden is "good health and care on equal terms for the entire population" and states that "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 healthcare and medical services shall be given preferential access to care."[60]

58. Healthcare that is provided by the regions, within the framework of public healthcare, comes in three different categories: "complete care" (*fullständig vård*), "care that cannot be deferred" (*vård som inte kan anstå*) and "immediate care" (*omedelbar vård*).[61]

59. The law distinguishes between those who are Swedish residents (*är bosatta*) and those who are only living in the country temporarily. Those who are not residents still have the right to access immediate healthcare but the cost for this healthcare is not subsidized.[62] However, no one is to be denied such care due to an inability to pay. The legislative history of a 2013 law on right to healthcare for undocumented migrants (see paragraphs 64-69, below) clarify that nationals of other countries who lack right of residence in Sweden "shall be offered immediate care by the region of residence. The healthcare services are [as a general rule] unsubsidized. *Nobody may be denied immediate care due to lacking ability to pay*."[63]

60. What exactly constitutes immediate care is not completely clear. The legislative history of the Health and Medical Services Act states:

> No further specification of the limits of what is to be regarded as 'immediate care' can be given here. This will be assessed on a case-by-case basis. The medical provider should [...] decide whether a care seeker needs immediate care or whether the care can be delayed until the care seeker arrives in their own county or where they otherwise are to seek care.[64]

61. See further below regarding what constitutes care that cannot be deferred. Regardless, we reiterate that regions have no legal ground for *denying* anyone immediate care, no matter

[59] Health and Medical Services Act (2017:30) (Hälso- och sjukvårdslag).
[60] Health and Medical Services Act (2017:30), Chapter 3, para. 1.
[61] Government Bill (Proposition) 2012/13:109, pp. 15–16.
[62] Health and Medical Services Act (2017:30), Chapter 8, para. 4.
[63] Government Bill (Proposition) 2012/13:109, p. 16. Emphasis added.
[64] Government Bill (Proposition) 1981/82:97, p. 120.

whether the care is subsidized and whether the person in question is deemed capable of paying or not and regardless of whether the person has not complied with the migration rules.

62. Medical fees vary slightly across Sweden. Under the health insurance scheme (2022), an adult pays between SEK100 (€10) and SEK300 (€30) for a visit to a General Practitioner (GP) at a health clinic. For a visit to a hospital emergency unit, an adult pays between SEK200 (€20) and SEK500 (€50). Individuals under 20 are, with few exceptions, treated free of charge.[65] These moderate fees stand in stark contrast to the fees charged to those who are not eligible for subsidized healthcare, which can run into thousands of SEK (see specific allegations at 3.2 below).

LEGISLATION ON HEALTHCARE FOR NON-NATIONALS, INCLUDING EU NATIONALS

63. Non-EU citizens who do not have a right of residence in Sweden are, as a rule, charged the full cost of medical services (however see legal change in 2013 subsidizing healthcare for undocumented migrants set out below). Other rules apply for EU nationals and therefore to EU migrants as well, however. According to EU law, incorporated into Swedish law, if an EU national has health insurance in his or her country of origin, the person is entitled to any necessary medical treatment in the country where he or she temporarily resides at the same cost as nationals of that country.[66] The European Health Insurance Card serves as proof of insurance in an EU member state and upon production, an EU national visiting or residing in another EU state should get medical services on the same terms as the citizens of the latter state.[67] Thus, in theory, EU migrants should have access to necessary healthcare in Sweden on the same terms and at the same cost as Swedish nationals.

64. However, since many in the group of EU migrants who are the subject of this complaint lack health insurance in their home countries, they are not covered by the relevant EU regulation and cannot, according to EU (and Swedish) law, access subsidized healthcare in Sweden. Of the 58 individuals interviewed for the 2018 Amnesty International report, only six reported having valid health insurance in Romania and only one had a European Health Insurance Card.[68] No individuals interviewed for the 2021 research had an EHIC.

REGULATION ON SUBSIDIZED MEDICAL CARE FOR UNDOCUMENTED FOREIGNERS: LACK OF CLARITY ON KEY ELEMENTS

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[65] See a 2022 mapping by the Swedish Association of Local Authorities and Region (SALAR), a member organisation for Sweden's municipalities and regions in which all municipalities and regions of the country are members. Available at https://skr.se/download/18.7c1c4ddb17e3d28cf9bb91e3/1643354537330/Avgift_oppenvar_slutenvard_2022.pdf.

[66] 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 19, Swedish Health and Medical Services Act (2017:30), Chapter 8, para. 2 and Chapter 17 para. 1.

[67] 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, and EU's Administrative Commission for the Coordination of Social Security Systems, Decision No. S1 of 12 June 2009 concerning the European Health Insurance Card (2010/C106/08).

[68] Jakob to Baben, a doctor active in a group of health professionals providing care to "vulnerable EU citizens" in Jönköping, confirmed this impression: of the around 60 Romanian individuals he had met since the health service for "vulnerable EU citizens" started in 2015, he had only met one person who had a European Health Insurance Card. Phone interview, 14 August 2018.

65. Since 2013, individuals defined as "foreigners residing in Sweden without the support of a decision by an authority or a statute" are entitled to subsidized healthcare, according to a new law, the Act on Medical Care for Undocumented Migrants (hereinafter: the 2013 Act).[69] People in this group over the age of 18 now have the right to "care that cannot be deferred" (*vård som inte kan anstå*)], and in addition, to care during pregnancy and childbirth and post-natal care, as well as care in connection with abortion and contraceptive advice, all at a minimum cost.[70] Children who are undocumented have the right to all healthcare and medical services on the same terms as resident children; that is, free of charge.[71]

66. What constitutes "care that cannot be deferred" has not been exactly defined. According to the legislative history of the 2013 Act, "care that cannot be deferred" includes "care and treatment of illness and injuries in cases where even a moderate delay is assessed to have the potential to have serious consequences for the patient". However, exactly what constitutes care that cannot be deferred is to be assessed by the treating doctor in each case.[72]

67. As previously mentioned, whether people who in Sweden are characterized as "vulnerable EU citizens" are to be considered "undocumented" or not after the first three months of their stay remains unclear and subject to debate. It is therefore not clear if after three months they should be able to access subsidized medical treatment under the 2013 Act. The legislative history of the 2013 Act indicates that it is "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 [European] Union citizens in individual cases."[73] However, there have been no legal cases in which courts have been asked to clarify what this means in practice and what the criteria are for a person in need of healthcare to be considered one of those "individual cases". There is thus no case law shedding light on what may constitute these individual cases.

68. To conclude, Swedish regions provide three types of healthcare, and the categorization of the patient is the decisive factor that determines what type of care the region is to provide, and at what cost. If EU migrants lacking an EU Health Insurance Card are considered neither undocumented nor are deemed to have the right to subsidized necessary care as other EU citizens, according to current domestic legislation they should at least have the right to immediate care in Sweden even if this is non-subsidized (and therefore potentially breaches the right to affordable healthcare). Due to the legislator's failure to make clear whether and when EU migrants may be considered "undocumented", the confusion that the 2013 Act was aimed to remedy very much still applies regarding this specific group. Furthermore, a great deal of responsibility to categorize patients still falls on medical personnel.[74]

69. Different state and private bodies have diverging and to some degree conflicting interpretations on whether the 2013 Act is to include EU migrants or not. The national agency National Board

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[69] Act (2013:407) on healthcare and medical services for certain aliens resident in Sweden without necessary permits (*Lag om hälso- och sjukvård till vissa utlänningar som vistas i Sverige utan nödvändiga tillstånd*).

[70] Act (2013:407) on healthcare and medical services for certain aliens residing in Sweden without necessary permits, Section 7.

[71] Act (2013:407) on healthcare and medical services for certain aliens residing in Sweden without necessary permits, Section 6.

[72] Government Bill (Proposition) 2012/13:109, p. 18.

[73] Government Bill (Proposition) 2012/13:109, p. 41.

[74] Government Bill (Proposition) 2012/13:109, p. 39.

of Health and Welfare, on its website, states that "[European] Union citizens who have resided in the country for more than three months and who do not have a right of residence or residence permit and therefore reside in the country without the support of an official decision or law" should fall within the scope of the law,[75] however without providing any support on how practically to determine whether a person qualifies or not. The Swedish Association of Local Authorities and Regions (SALAR), an employers' organization representing local government in Sweden and providing guidelines to local government bodies on the interpretation of national law, by contrast, writes that "the 2013 Act applies only to foreigners residing in Sweden without a permit. Because vulnerable EU citizens have the right to reside in another EU country for three months without any special permit, the point of departure is therefore that they are not covered by this law."[76] The National Coordinator stated in his final report, in 2020, that the legal situation was unclear, albeit without providing any guidance as to how the situation could be clarified. For more details, see Annex II on the diverging interpretations of the 2013 Act.

70. In sum, the different categories of care and the different categories of people accessing it can be illustrated as follows:

	Residents	**EU citizens with an EHIC**	**Undocumented**	**Non-residents, including EU citizens lacking an EHIC**
Type of care	Complete care	Necessary care (term in EU but not in Swedish legislation)	Care that cannot be deferred (term in Swedish legislation)	Immediate care (term in Swedish legislation)
Subsidized / non-subsidized	Subsidized	Subsidized	Subsidized	Non-subsidized

MAPPING OF APPROACH BY DIFFERENT REGIONS: A CONFUSING AND INCONSISTENT PICTURE

71. As of March 2023, only one of the 21 regions[77], the Jämtland Härjedalen Region, expressly interprets the 2013 Act to mean that EU migrants who lack the EU card should be classified as

[75] National Board of Health and Welfare, *What care should a region offer to asylum seekers and undocumented persons?*, updated 25 March 2022, https://www.socialstyrelsen.se/kunskapsstod-och-regler/omraden/asylsokande-och-andra-flyktingar/halsovard-och-sjukvard-och-tandvard/erbjuden-vard.

[76] Swedish Association of Local Authorities and Regions, *Some legal issues concerning vulnerable EU citizens*, 4 Augusti 2017, p. 7, can be downloaded at: https://skr.se/skr/halsasjukvard/ekonomiavgifter/vardavpersonerfranandralander/vardaveueesochkonventionspatienterutlandssvenskarovrigautlandskamedborgare.7753.html.

[77] The respective administrative units responsible for healthcare.

undocumented foreigners while seeking medical care, no matter the length of their residence in Sweden. They are therefore entitled to subsidized medical care that cannot be deferred.[78]

72. Two more regions, the Skåne Region and the Stockholm Region interpret the 2013 Act at least in theory in the same manner as the National Board of Health and Welfare: that is, in some cases EU migrants should fall within the scope of the 2013 Act and therefore be entitled to subsidized healthcare after residing in Sweden for more than three months, regardless of their circumstances.[79] The practical implementation of the law in these regions is different, however, as will be illustrated below. The lack of clarity in the phrasing of the guidelines of the National Board of Health and Welfare means that it in practice is up to each caregiver to interpret whether an EU citizen seeking their services is one of the cases mentioned in the guidelines.

73. It is the experience of MdM SWE that even within regions that *de jure* follow these guidelines there are issues with *de facto* implementation. As a result, destitute EU migrants are denied treatment or are charged the full cost of medical care. In many instances, MdM SWE has found itself obliged to inform caregivers on the scope of the 2013 Act and the interpretation of the guidelines from the National Board of Health and Welfare. Many caregivers, afraid of doing wrong, simply deny healthcare because they do not know how to administer the service when the care seeker lacks an ID number (*personnummer*). In both the Skåne and Stockholm Region MdM staff have, in many instances, had to advocate for the right to care for EU migrants in order for them to be treated at all.

74. In the Gotland Region, EU migrants who have been residing in Sweden for more than three months and who do not have a right of residence only have access to subsidized maternal, post-natal, abortion and contraceptive care on the same terms as undocumented migrants. This means that "care that cannot be deferred" is not subsidized for them.[80]

75. Six of the regions expressly exclude EU migrants from the personal scope of the 2013 Act.[81] The remaining regions are unclear or vague in their wording about the interpretation of the law or refer to documents with vague language, which is why no certain conclusion can be drawn about whether they interpret EU migrants as included in the personal scope of the 2013 Act or

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[78] Jämtland Härjedalen Region, *Healthcare to undocumented patients*, 10 May 2021, available at: https://centuri.regionjh.se/ledningssystem/exportedfiles/37161.pdf.

[79] The Skåne Region, *Routine Healthcare for undocumented*, 5 May 2021, available at: https://vardgivare.skane.se/siteassets/2.-patientadministration/vard-personer-fran-andra-lander/migration-och-asyl/rutin-for-varden-halso--och-sjukvard-till-papperslosa.pdf, and the Stockholm Region, Offical Statement, Reply to letter from Helen Schoultz (SD) regarding the cost of care for EU / EEA citizens, 23 March 2021, p. 4, available at: https://docplayer.se/211193907-Svar-pa-skrivelse-fran-helen-schoultz-sd-avseende-kostnad-for-vard-av-eu-eesmedborgare-hsn.html.

[80] The Gotland Region, Decision in the Healthcare Committee, 10 June 2015, p. 29, available at: https://www.gotland.se/86266.

[81] The Gävleborg Region, *Foreign patients and Swedes abroad*, 1 January 2022, available at: https://www.regiongavleborg.se/samverkanswebben/halsa-vard-tandvard/samverkan-och-avtal/halsovalet/ersattning/Patientavgifter/, the Jönköping County Region, *Care of asylum seekers and refugees*, https://folkhalsaochsjukvard.rjl.se/dokument/evo/154b5110-cb34-4e27-9014-313479bedd17, the Kalmar County Region, *The Fee Manual 2022*, 1 January 2022, p. 6, available at: https://vardgivare.regionkalmar.se/globalassets/administration/avgifter/avgiftshandboken/5.-vard-av-personer-fran-andra-lander.pdf, the Norrbotten Region, *Healthcare for people from other countries*, 17 January 2017, https://www.norrbotten.se/sv/vard-och-halsa/regler-och-rattigheter/vard-for-personer-fran-andra-lander/, the Värmland Region, *Undocumented*, 1 November 2021, https://www.regionvarmland.se/vardgivarwebben/administration/asyl--och-flyktingfragor/tillstandslosa, the Dalarna Region, email to Amnesty International from the Dalarna Region, 23 February 2022.

not. See Annex III and IV for a full mapping of Swedish regional interpretations and the wordings of their policies.

76. It is against this unclear and inconsistent backdrop that the following specific allegations should be viewed.

3.2 SPECIFIC ALLEGATIONS

77. **It is alleged that Sweden is in violation of Article 11 and Article 13 of the Revised Social Charter, read alone or in conjunction with Article E, due to the continued denial of healthcare services for EU migrants in Sweden, the billing of the full cost of healthcare services for EU migrants in Sweden, and the chilling effect of said practices that lead to the refraining of seeking healthcare services. These violations have serious consequences for the lives, health and human dignity of EU migrants in Sweden.**

78. Article 11 of the Revised Charter states:

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

79. Article 13 of the Revised Charter states:

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

80. Article E of the Revised Charter states:

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

81. Having documented the critical situation for the health of EU migrants in Sweden from 2016 and onward and the unwillingness of responsible duty-bearers to remedy the situation, Amnesty International and Médecins du Monde submit that Sweden has been in continuous breach of Articles 11 and 13, standing alone or in conjunction with Article E, at least since 2016.

82. In particular, as elaborated in section 3.5 below, Sweden continues to fail to provide affordable, accessible healthcare to EU migrants in Sweden by in many cases a) actually denying healthcare, b) billing the full cost for healthcare and c) creating a chilling effect that effectively makes this population refrain from seeking healthcare.

3.3 RELEVANT INTERNATIONAL LEGAL STANDARDS

The right to the highest attainable standard of health

83. International human rights bodies monitoring treaties to which Sweden is a party make clear that access to affordable healthcare is an inherent aspect of the right to the highest attainable standard of health and that State Parties have duties to that effect. In particular, the United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) has in its General Comment 14 elaborated that states obligations under the Covenant include that they are to ensure that healthcare is *available, accessible, acceptable* and of *good quality* (AAAQ). The CESCR details:

12. The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party:

(a) *Availability*. Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs.

(b) *Accessibility*. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

(i) *Non-discrimination*: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

(ii) *Physical accessibility*: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

(iii) *Economic accessibility* (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

(iv) *Information accessibility*: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

(c) *Acceptability*. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

(d) *Quality*. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.[82]

84. The CESCR has also emphasized that everybody has the right to healthcare and treatment regardless of status and/or situation. Consequently, medical services cannot be denied to non-nationals like the EU migrants in this complaint. CESCR's General comment No. 20 on non-discrimination in economic, social and cultural rights, states that "[t]he 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."[83] More specifically, it has recommended a state party to "take all measures necessary to ensure that all persons in the State party, including refugees and asylum seekers, have equal access to preventive, curative and palliative health services, regardless of their legal status and identity documents."[84]

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[82] UNCESCR General Comment 14 (2000), para 12, https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1AVC1NkPsgUedPlF1vfPMJ2c7ey6PAz2qaojTzDJmC0y%2b9t%2bsAtGDNzdEqA6SuP2r0w%2f6sVBGTpvTSCbiOr4XVFTqhQY65auTFbQRPWNDxL.

[83] E/C.12/GC/20, para 30.

[84] E/C.12/UKR/CO/7, para 39.

The right to equality and non-discrimination

85. The European Committee of Social Rights has stated that "states should take as their main criterion for judging the success of health system reforms effective access to health care for all, without discrimination, as a basic human right".[85]

86. Other international legal instruments also reinforce the prohibitions against discrimination. In General Comment 20, the Committee on Economic, Social and Cultural rights reaffirmed that:

> Non-discrimination is an immediate and cross-cutting obligation in the Covenant … States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination.[86]

87. The Committee further stated that discrimination on the basis of "race and colour", gender identity, disability, age, nationality, health status, and "Economic and social situation", were all prohibited grounds of discrimination. It further asked states to "take concrete, deliberate and targeted measures to ensure that discrimination in the exercise of Covenant rights is eliminated".[87]

88. There is also increased recognition that addressing intersectional discrimination is a necessary aspect of guaranteeing equality and non-discrimination. The Council of Europe has noted that intersectional discrimination "happens when two or multiple grounds operate simultaneously and interact in an inseparable manner, producing distinct and specific forms of discrimination".[88] The Committee on the Rights of Persons with Disabilities has also said that "Intersectional discrimination" refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable and thereby expose relevant individuals to unique types of disadvantage and discrimination.[89] Further, in explaining the obligation of non-discrimination in economic, social and cultural rights, in its General Comment No. 20, the Committee stated that "[s]ome individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example, women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying."[90]

89. While the language of intersectional discrimination was not always expressly mentioned in both the text and application of international human rights law, it has been long accepted and recognised that human rights coexist and are mutually dependent. For example, the Vienna Declaration and Programme of Action, which states that 'All human rights are universal, indivisible and interdependent and interrelated.' This recognition is consistent with the intersectional approach as it

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[85] Conclusions 2005, Statement of Interpretation on Article 11

[86] Committee on Economic, Social and Cultural rights, General Comment 20: Non-discrimination in economic, social and cultural rights, E/C.12/GC/20, 2 July 2009 paras 7 and 8

[87] Committee on Economic, Social and Cultural rights, General Comment 20: Non-discrimination in economic, social and cultural rights, E/C.12/GC/20, 2 July 2009.

[88] https://www.coe.int/en/web/gender-matters/intersectionality-and-multiple-discrimination.

[89] Committee on the Rights of Persons with Disabilities, General comment No.6 on equality and non-discrimination, CRPD/C/GC/6, 26 April 2018, available at: https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-nondiscrimination, para. 19.

[90] Committee on Economic, Social and Cultural Rights, General Comment 20 on Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, available at: https://www.refworld.org/docid/4a60961f2.html [accessed 14 March 2023]

posits that when human rights violations occur, they are seldom independent of each other. The violation of one right often affects others and compounds the inability to enjoy and access rights.

90. The State bears the obligation to take the necessary steps to prevent and remedy discrimination and ensure that all persons, including non-citizens, enjoy equal access to healthcare. Intrinsic in this obligation is that the right of access to healthcare services must be realized in a substantively equal manner that takes account of the specific additional barriers that non-citizens like the EU migrants in this brief are forced to navigate due to their migration status. The State's obligation, therefore, extends to ensuring that adequate measures are put in place address the intersectional layers of what often amounts to systemic discrimination against a particularly vulnerable group of people.

3.4 FACTUAL EVIDENCE

91. The following is a summary of the research conducted in 2016-18 and subsequently 2021-22 which is then explored in more depth in each of the three main categories: denial of care and treatment; billing for the full cost of treatment, and its consequential chilling effect. In total 86 individuals were identified with 129 instances of violations documented. All of them, lacking a right of residence in Sweden, and as such not covered by Swedish health insurance nor of any other social security schemes, were particularly vulnerable. Many were in poor health (see examples of individual cases below) and several were homeless.

INITIAL RESEARCH 2016-18

92. Many of those interviewed for its 2018 report told Amnesty International about multiple health problems reporting that their already existing poor health status was exacerbated by their difficult living conditions in Sweden (see 2.3 above).[91] At the same time, interviewees found it extremely challenging to access the medical system. Many received huge bills for medical care or at times were denied treatment altogether, justified by the fact that most of them lacked the European Health Insurance Card. Of the 58 individuals interviewed only six reported having valid health insurance in Romania and only one had a European Health Insurance Card. Several of the EU migrants interviewed said that emergency rooms and clinics had received them and provided care, but that they had been expected to pay large amounts of money for healthcare.

93. Health professionals at MdM SWE, working in regions across the country, confirmed this picture. They told Amnesty International that they often met patients who had been billed high amounts in the ordinary health centres and also that on some occasions EU migrants had been denied care altogether because they did not have a Swedish identification number and could not produce a European Health Insurance Card. They said that serious conditions tended to be treated (but as a rule would also be billed), whereas when EU migrants came with less critical ailments, they would sometimes be turned away.[92]

[91] See also https://bmchealthservres.biomedcentral.com/articles/10.1186/s12913-021-07410-3 concerning the general health status of migrants, including vulnerable EU migrants, treated by the MdM clinic in Stockholm.

[92] Interview Thomas Avén, senior doctor at the Médecins du Monde clinic in Stockholm, August 9 2018. Jakob to Baben, a doctor active in a group of health professionals providing care to "vulnerable EU citizens" in Jönköping, also told Amnesty

94. None of those interviewed for the report who had received high bills from hospitals had been able to pay.

SUBSEQUENT RESEARCH IN 2021-22

95. In 2021, Amnesty International and MdM SWE decided to explore more and establish the extent to which EU migrants are denied or billed for healthcare in Sweden, how and if the situation had changed at all since 2018, and what chilling effects this had on their seeking care. Between November 2021 and February 2022 Amnesty International interviewed representatives of six civil society organizations providing social and medical support to EU migrants, scrutinized medical bills and medical records, and contacted regions to learn about their policies vis-à-vis this group. See Annex V, entailing a brief description and summary of the 2021-22 research. Between 2016 and 2021 MdM SWE collected quantitative and qualitative data from beneficiaries of medical and psychosocial programmes in mainly Stockholm and Malmö.

96. The empirical study covered the time period 2016-2022 and was conducted mainly in the three large urban areas of Stockholm, Göteborg and Malmö. A few cases have also been collected in Gävleborg, Umeå and Luleå. It is not an exhaustive picture of access to or denial of healthcare for EU migrants in the whole country. Rather, it serves as evidence that the findings of the 2018 report still stand. In fact, given that the Swedish government in power after the September 2022 parliamentary election has announced a number of proposals to strip non-citizens of access to rights and services, in its programme *Tidöavtalet*, there is every reason to believe that the situation is gradually worsening.[93] Numerous violations of the right to healthcare for EU migrants thus continue to routinely occur.

97. Violations identified related to *a) denial of healthcare*, *(b) billing for the full cost of healthcare*, and *(c) a chilling effect leading to individuals refraining from seeking healthcare out of fear of costs*. In total, the 2021-22 research resulted in the identification of 129 cases of violations, affecting 86 individuals. In 12 cases, individuals had been subjected to multiple violations in the sense that they had either had several health problems and encountered problems each time in accessing care or had received several bills for the same health condition.

98. The following evidence from both periods of research and covering the period 2016-2022 is broken down into the three categories:

a) DENIAL OF ESSENTIAL HEALTHCARE AND TREATMENT

99. *"One year ago, I collapsed when I was sitting begging. I wanted to get up and go to my husband but I couldn't. Someone called an ambulance. When I woke up I was in the hospital. The doctor*

International that on several occasions had met individuals who had not been provided care because they did not have a European Health Insurance Card. He said they would usually be turned away by administrative staff at the reception of the clinic or emergency room. Phone interview, 14 August 2018.

[93] See Tidöavtalet, available at https://www.tidöavtalet.se/ (2023-01-23).

said I had big lumps in my lung. They gave me IV, but no surgery. The doctor said: 'go home to Romania and get a surgery'." [Maria, a 49-year-old Roma woman interviewed in 2018][94]

100. The research identified 28 cases between 2016 and 2022 where individuals had been denied access to healthcare altogether because of their status as EU migrants without health insurance. Several of these cases concerned serious conditions as described below. This is in clear violation not only of Sweden's obligations under the European Social Charter and other international human rights instruments but also Swedish domestic legislation to deny anybody access to immediate care (see 3.1 above).

101. The following individual case examples demonstrate that EU migrant patients are being denied healthcare and treatment despite presenting with a range of serious health conditions. Although NGO health professionals who came into contact with these patients were unable to follow up with patients in most cases, it is clear that the health impacts of being denied such essential care and treatment was significant (and in some cases potentially life threatening).

DENIAL OF ESSENTIAL HEALTHCARE AND TREATMENT: EXAMPLES OF DOCUMENTED INDIVIDUAL CASES

102. In 2016, a Romanian woman born in 1998 who was pregnant with symptoms of urinary tract infection was denied medical attention in Region Skåne. The midwife told her to go home to Romania because no healthcare would be provided to her in Sweden.

103. In 2016, a Romanian woman born in 1987 gave birth to her baby in her car, in the parking lot of a hospital in Region Norrbotten. She had attended all the prenatal tests and had been told that she would be received at the maternity ward, but when she together with family members arrived at the hospital, they did not know where the entrance was because all the signs were in Swedish. One of the family members banged at the window of the ward closest to the entrance; according to the woman, healthcare staff saw this but did not let them in. The woman gave birth in the car; it was in December and the temperature was below 0° Celsius. Only after the birth of the baby was the medical staff alerted. Later, the woman was billed SEK 32,000 (€ 2,865) for the medical care she and the child received after the birth.[95] Women who are Swedish residents, thus covered by health insurance, do not pay for childbirth. Medical services for children are free of charge.

104. In 2017, a Romanian woman born in 1981 was denied access to abortion in Region Skåne. Consequently, she was forced to conduct an unsafe abortion on her own.

105. In 2017, a Romanian woman born in 1993 had deep vein thrombosis but was denied emergency care in Region Skåne.

[94] Maria had lived in Umeå with her husband since 2014. She told Amnesty International she had no health insurance in Romania and did not have a European Health Insurance Card. When Amnesty International spoke to her, she still had not had surgery; she described having chest pains that got so intense at night that she sometimes screamed or had to vomit.

[95] For further information on this case see https://www.dn.se/nyheter/sverige/tiggare-fodde-barn-kravdes-pa-43800/ and https://nyheter24.se/nyheter/inrikes/793542-tiggaren-fodde-pa-sjukhusets-parkering-nu-kravs-hon-pa-tusentals-kronor.

106. In 2019, a Romanian woman born in 1985 living in homelessness in Region Skåne was in pain and bleeding after an abortion. The doctor attending her told her that she needed surgery to remove remains after the abortion, but that this care could not be provided in Sweden because she lacked the European Health Insurance Card.

107. In 2019, a Romanian woman born in 1959 sought medical care at a health clinic in Region Skåne due to bleeding from her anus. She was turned away because of her status as an EU migrant.

108. In 2020, a Romanian man born in 1986 sought emergency care in Region Skåne because of issues with his pancreas. Staff at the emergency room told him, after having seen his Romanian ID, that he had to go back to Romania for medical care.

109. In 2021, a Polish man born in 1979 had received medical attention after breaking his foot, after which complications arose. He was denied a follow-up visit in Region Skåne because of his status as an EU migrant without European health insurance. Because of his pain and more permanent complications in his foot he could no longer work, after which he lost his job and his housing.

b) BILLING FOR THE FULL COST OF HEALTHCARE

110. The largest amount of the evidence collected, 64 cases, concern individuals who were billed for the full amount for receiving healthcare despite not being in a position to pay due to their socio-economic status, in breach of the obligation to guarantee affordable healthcare for all. Based on available evidence the complaining organizations are not aware of legal enforcement of these bills. However, this omission on behalf of the state party does in no way undermine the complainants' claim of violation of the right of non-discriminatory access to healthcare. Rather, the lack of enforcement illustrates that the state is fully aware of the fact that EU migrants, as a general rule, lack sufficient economic resources and, therefore, cannot be expected to pay for healthcare.

111. Some of the most significant examples include the following (where available copies of the relevant bills are included at Annex VII).

BILLING FOR FULL COST OF HEALTHCARE: EXAMPLES OF DOCUMENTED INDIVIDUAL CASES

112. In 2018, a 59-year-old Roma man in Region Västerbotten told Amnesty International that he had injured his foot badly in a cycling accident and required extensive surgery to insert metal pins. The hospital bill came to around SEK 18,000 (€ 1,610). He brought the bill to the Pentecostal church in Umeå, which supported EU migrants. After this, he was unaware of what happened to it.[96]

[96] Interview with "Neculai" Umeå, 12 September 2017. (The name has been changed to respect the interviewee's anonymity.)

113. In 2018, in Region Stockholm, a Romanian man told Amnesty International that his wife had received a bill of SEK 6,000 (€ 540) after emergency gynecological treatment in a Stockholm hospital.[97]

114. In 2018, a Romanian man born in 1957 sought and received emergency care in the Region Skåne after having been assaulted and robbed. He was billed SEK 4,920 (€ 440).

115. In 2019 in Region Västra Götaland, a Romanian woman born in 1991 accessed maternal care including childbirth, and was billed SEK 3,000 (€ 270) for each visit. Altogether she owed the region 6,000 SEK (€ 540).

116. In 2019, a Romanian man born in 1973 sought emergency treatment for high levels of cholesterol and lipoproteins in the blood in the Region Skåne, after which he was admitted to the surgical ward for five days. He was billed for his first visit SEK 4,920 (€ 440) and for his hospitalization SEK 47,132 (€ 4,220). The second bill, not the first, was sent to his home address in Romania. Altogether he owed the region SEK 52,052 (€ 4,660).

117. In 2019, a Romanian man born in 1972 sought and received emergency care after having suffered a stroke that led to paralysis and diarrhea. He was billed SEK 4,290 (€ 440) in Region Skåne.

118. In 2019, a Romanian man born in 1959 sought and received emergency care in Region Skåne for a coronary thrombosis and myocardial infarction. A bill of SEK 4,056 (€ 363) was sent to his home address in Romania.

119. In 2019, a Romanian man born in 1973 was admitted to the emergency department in Region Skåne and then hospitalized for a kidney surgery due to alcoholic addiction. He was billed SEK 47,557 (€ 4,255).

120. In 2020, a Bulgarian woman received bills for the full cost of healthcare in connection with pregnancy and childbirth through cesarean section in the Region Gävleborg. In total, she received 26 bills, altogether amounting to SEK 178,251 (€ 15,950). At the time of filing this complaint, the amount, which has been submitted to a debt collection company, amounts to SEK 224,480 (€ 20,100). Amnesty International has on behalf of this woman contacted local politicians in the region of Gävleborg to ask for her debts to be written off with reference to the 2013 law on Act on Medical Care for Undocumented Migrants. The politicians told Amnesty International that they could not intervene in her case, and said that on a more principled level it was impossible to do differently than to bill an individual in her situation for the full amount, as long as the legal situation would not clarify on a national level.[98] In 2022, this woman filed a complaint to the Administrative Court of Region Gävleborg, appealing the decision to bill her the full cost for healthcare with reference to the 2013 Act.

[97] Interview with "Emilian" Stockholm, 29 November 2017. (The name has been changed to respect the interviewee's anonymity.)
[98] Notes on file with Amnesty International.

On May 26, 2023, the Administrative Court found that Region Gävleborg had been wrong not to assess whether the woman fell within the scope of the 2013 Act.[99] The Region's argument that she had no right to appeal the bills that she had received was also flawed, given that such denial would be in violation of her rights to a fair trial under Article 6 of the European Convention on Human rights. The Court referred her case back to the Region, with the instruction that it must assess whether she is entitled to subsidized healthcare under the 2013 Act. At the time of filing this complaint, the Region has not yet reconsidered the case.

121. In 2021, in the Region Skåne, a Romanian man born in 1961 sought and received emergency care after a work-related accident. He was billed 11,688 SEK. The same man, a few days later, suffered a psychological breakdown and was admitted to the psychiatric ward where he was hospitalized for four days. For this, he was billed SEK 37,355 (€ 3,342). Altogether he owed the region SEK 49,043 (€ 4,388).

122. In 2021, a Romanian woman born in 1983 sought and received emergency care in the Region Västra Götaland after having been hit by a car. For this she was billed SEK 5,210 (€ 466).

123. In 2021, a woman from an Eastern European country visited the MdM SWE clinic in Region Norrbotten showing symptoms of a contagious disease. The doctor referred her to take tests and, because of the law on contagious diseases, contact was made with the infection ward, which saw the need to hospitalize the woman. She opposed hospitalization out of fear of costs, but the infection ward promised her that she would not be charged anything, and after a while she agreed to being admitted. After a few days at the ward it became clear that the woman also had other medical issues, and the medical staff offered her a full check-up, to which she agreed. After her discharge, she received a bill for SEK 5,000 (€ 447) although she had been promised that all care related to the hospitalization would be free of charge.

124. For a Swedish resident, in all these instances, the cost would have been a fraction of the amount that the EU migrants were billed. As mentioned in paragraph 62, above, under the universal medical insurance scheme, medical fees vary slightly across the country, but in no place does a visit to a General Practitioner cost more than SEK 300 (€30). For a visit to a hospital emergency unit, an adult pays between SEK200 (€20) and SEK500 (€50). Individuals under 20 are, with few exceptions, treated free of charge.[100] People who fall under the scope of the 2013 Act pay no more than SEK 50 (€5) for any doctor's appointment or emergency care, and maximum SEK 50 (€5) for prescribed medicine.[101]

c) CHILLING EFFECT/REFRAINING FROM SEEKING HEALTHCARE FOR FEAR OF COSTS

[99] Decision in case no. 2867-21, Administrative Court in Falun, May 26, 2023.
[100] See the 2022 mapping by the Swedish Association of Local Authorities and Region (SALAR), at https://skr.se/download/18.7c1c4ddb17e3d28cf9bb91e3/1643354537330/Avgift_oppenvar_slutenvard_2022.pdf.
[101] Ordinance on patient fees etc. for aliens residing in Sweden without necessary permits (2013:412) (förordning (2013:412) om vårdavgifter m.m. för utlänningar som vistas i Sverige utan nödvändiga tillstånd).

125. The 2021-22 research found 37 cases where individuals had refrained from seeking healthcare for the express reason that they justifiably feared the high cost that healthcare would entail. This is despite the fact that by not receiving care and treatment they were in many cases risking their own health and potentially their life in some instances. However, at the same time their decision is understandable given the regular high billing of patients as set out in the previous section. This should be seen in the context of the particularly vulnerable socio-economic situation of this group with many living in destitution and the systemic intersectional discrimination they face on a daily basis (see 2.3 above).

CHILLING EFFECT: EXAMPLES OF DOCUMENTED INDIVIDUAL CASES

126. In 2017, a Romanian man in Region Skåne who previously had had a coronary thrombosis/myocardial infarction (*hjärtinfarkt*) suffered from high blood pressure and heart pain, but would not seek healthcare due to fear of the high cost. The nurse at the NGO Stadsmissionen assessed that he ran the risk of early death if he would not receive the necessary care and treatment.

127. In 2018, a Romanian woman born in 1996 had health problems that the nurse at the NGO Stadsmissionen in Region Skåne suspected were due to blood clots. The nurse three times wrote referrals to the hospital for the woman but she refused to go, for fear of costs. The nurse was concerned that the situation would worsen considerably if the woman did not receive medical attention.

128. In 2019, a Romanian man born in 1968 sought help from the NGO Stadsmissionen in Region Skåne because of his diabetes. He refrained from seeking regular medical care for fear of costs. He suffered from headache, numbness and stress; the nurse feared that without proper medical attention his symptoms would quickly worsen.

129. In 2020, a Romanian woman sought help from the NGO Stadsmissionen in Region Skåne after a fistfight; she would not seek regular medical care out of fear of costs. The nurse judged that as a consequence, she would have to live with scars and other complications.

130. In 2021, a Romanian woman born in 1981 visited the MdM SWE clinic in Region Skåne, asking for a new contraceptive implant. The reason she did not go to regular health services was her fear for the cost, telling the volunteers: “If they charge me, I won’t be able to afford it”.

131. In six cases, all registered in the Region Skåne, women from Romania reported that they had contacted healthcare services seeking abortion care, but then decided against it upon learning that they would, given their status as EU migrants, have to pay the full cost of the procedure. In two cases, the women told the nurse at the Stadsmissionen NGO that they would take care of the abortion on their own. Two of the women gave birth; the children were left in Romania while their mothers continued to try to make a living in Sweden. Finally, in two cases, the women after having learnt about the cost for abortion care in Sweden traveled to Romania. They had abortions there but considerably later, in one case as late as five months of pregnancy. In this latter case, the woman returned to Sweden in poor physical and psychological health; she reported to Stadsmissionen that in addition to vaginal bleeding and pain she suffered from depression and anguish.

3.4 NATIO NAL AND INTERNATIONAL CRITICISM

NATIONAL CRITICISM OF THE LAW AND CALLS FOR CLARIFICATION

132. In 2016, the Swedish Agency for Public Management (*Statskontoret*) (hereinafter the Agency) submitted a report to the government evaluating the implementation of the 2013 Act. According to the report, about three quarters of the 21 Swedish counties have determined that people characterized as "vulnerable EU citizens", EU migrants in this brief, are *not* covered by the law and therefore, unless they are insured in their home country, they must pay the full price for medical services.[102] The Agency recommended that the government initiate a process to clarify when EU citizens should be entitled to medical care as undocumented persons.[103]

133. Similar calls have been made by academics and NGOs. For example, in 2017 a legal scholar specifically scrutinized how access to healthcare was granted children who are EU migrants in Sweden. She concluded that there are serious shortcomings in ensuring the right to health for this group of children, and that Sweden thereby breaches its obligations under binding human rights treaties such as the UN Convention on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. [104] In 2015, both UNICEF (focusing on EU migrant children's access to education, healthcare and social support) and Civil Rights Defenders (focusing on EU migrants' right to healthcare, education, social security and protection against hate crimes and forced evictions) published reports drawing similar conclusions, and recommending the government urgently to remedy the situation. [105]

134. Yet, despite clear and multiple recommendations to remedy this unsatisfactory state of affairs, the government has at the time of submission of this complaint taken no initiative to clarify the situation.

135. In September 2018, a representative for the Ministry of Social Affairs told Amnesty International that the government is aware of the confusing legal situation, that it is taking the evaluation from Swedish Agency for Public Management seriously, and that the administration is "considering what to do about it". This official could not, however, say when a clarification

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[102] Swedish Agency for Public Management (*Statskontoret*), Healthcare for the undocumented. Final report of the assignment to follow up the act on healthcare for persons residing in Sweden without permit (Vård till papperslösa. Slutrapport av uppdraget att följa upp lagen om vård till personer som vistas i Sverige utan tillstånd), 2016:11, p. 33, available at:

[103] Swedish Agency for Public Management (*Statskontoret*), *Healthcare for the undocumented. Final report of the assignment to follow up the act on healthcare for persons residing in Sweden without permit* (*Vård till papperslösa. Slutrapport av uppdraget att följa upp lagen om vård till personer som vistas i Sverige utan tillstånd*), 2016:11, p. 87, available at: https://www.statskontoret.se/siteassets/publikationer/2016/201611.pdf .

[104] See Kavot Zillén, *Under-aged Union citizens' right to healthcare in Sweden: about the right to healthcare for children who are Union citizens and who live in particular economic vulnerability* (*Underåriga unionsmedborgares rätt till sjukvård i Sverige: Om rätten till sjukvård för barn som är unionsmedborgare och som lever i särskild ekonomisk utsatthet*) (2017), NST, ISSN 2000-6500, nr 15-16, pp. 109-126.

[105] UNICEF Sweden, *What rights do children who are EU citizens and who live in vulnerability in Sweden have?* (*Vilka rättigheter har barn som är EU-medborgare och lever i utsatthet i Sverige?*) (2015), pp. 26-27, available at: https://unicef.se/rapporter-och-publikationer/vilka-rattigheter-har-barn-som-ar-eu-medborgare-och-lever-i-utsatthet-i-sverige, and Civil Rights Defenders, *Vulnerable Union Citizens in Sweden: The state's obligations under Swedish law, EU law and international human rights law* (2015), p. 33, available at: https://crd.org/sv/2015/12/10/utsatta-unionsmedborgare-i-sverige/

of the law could be expected or what the result of this process would be.[106] However, again three and a half years later, no initiative has been taken.

INTERNATIONAL CRITICISM AND THE SWEDISH GOVERNMENT'S RESPONSE

136. In 2016, both the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights reviewed Sweden's compliance with its human rights obligations with both bodies issuing critical remarks on the treatment of Roma EU citizens living in a marginalized situation in Sweden. Specifically, both bodies condemned the discrimination of EU migrants in their access to health services in Sweden as well as other essential goods and services. The UN Human Rights Committee stated:

> The vulnerable position of citizens of other European Union countries of Roma origin who, because of their lack of formal residency status in the State party, have only limited access to social benefits, *subsidized healthcare* and education, is also a matter of concern (arts. 2 and 26). The State party should take all measures necessary to ensure equal access by Roma to various opportunities and services, including to education, employment, housing and *healthcare*, without discrimination. It should also ensure that all individuals within its jurisdiction, including vulnerable Roma citizens of other European Union countries, enjoy equal rights without discrimination and identify ways to facilitate their access to support assistance services, including social benefits, *taking into account both their de jure and de facto situation*.[107]

137. Similarly, the UN Committee on Economic, Social and Cultural Rights concluded:

> The Committee is concerned about persistent societal discrimination against Roma, despite the many measures taken to address it... The Committee is also concerned that vulnerable foreigners, including citizens of other European Union countries, and in particular Roma, face major obstacles in accessing basic social services and social assistance benefits in the State party (art. 2, para. 2)… The Committee also recalls that the Covenant rights carry core obligations of an immediate nature and that the State party must meet those core obligations by ensuring that the minimum essential levels relating to the rights to housing, *health*, social security and education are respected, protected and fulfilled. To that end, the Committee recommends that the State party take measures to facilitate access to basic services by vulnerable foreigners, including citizens of other European Union countries, notably those of Roma origin.[108]

138. In 2018, Sweden was reviewed by the UN Committee on the Elimination of Racial Discrimination, which expressed concern that Roma continued to face difficulties in accessing certain human rights in Sweden. The Committee did not specifically mention non-Swedish

[106] Phone call from official at the Ministry of Social Affairs, 27 September 2018.

[107] UN Human Rights Committee, Concluding Observations on the Seventh Periodic Report of Sweden, CCPR/C/SWE/CO/7, 28 April 2016, paras 14-15. Emphasis added.

[108] UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the Sixth Periodic Report of Sweden, E/C.12/SWE/CO/6, 14 July 2016, paras 19-20. Emphasis added.

Roma EU migrants, but, like its sister committees, highlighted the obligation to "ensure equal access *by all Roma communities* to education, employment, housing, *healthcare* and justice".[109]

139. The Swedish government has to date failed to respond to any of the three bodies' conclusions on its human rights obligations to EU migrants and has declined, in meetings with Amnesty International and other civil society representatives, to comment on what action it will take to address the concerns of UN treaty monitoring mechanisms about the situation of EU migrants.

140. However, Sweden's response to its review in 2020 under the UN Universal Periodic Review (UPR) process does provide some indication of its stance on the issue. Bulgaria specifically addressed the situation for EU migrants, recommending Sweden to: "[t]ake further steps to ensure that vulnerable EU citizens are protected against hate crimes and granted rights to healthcare, primary education and social services."[110] The Swedish government did not accept this recommendation. Instead, it noted:

> Sweden is criticized for not providing care for vulnerable EU-citizens that are living in Sweden. This is mainly because they are not covered by health insurance in their home country. There is no easy solution to this problem, as it is difficult to overlook the consequences that could occur if people who are not covered by health insurance in their home country could take advantage of Swedish health insurance as long as they stay in Sweden. The free movement of people within the EU member states is strongly supported by the Swedish Government. But the right to stay in another member state comes with an obligation to be able to provide for one self (*sic*). The government understands the difficult situation of vulnerable EU migrants who are looking for opportunities to support themselves in Sweden.
>
> But Sweden has limited obligations to provide assistance to persons without a legal right to stay in the country, or for those EU migrants who cannot provide for themselves during the first three months. These persons have the right to apply for social services and assistance at the municipality for an individual assessment, but they are normally only entitled to necessary support to solve an emergency situation, such as temporary accommodation, money for food and a ticket to return home.[111]

141. Sweden's response that it has "limited obligations to provide assistance" to this group of people is contrary to its obligations under both the Charter and international law to ensure that everybody in its territory can enjoy access to a range of economic and social rights without discrimination, including healthcare, regardless of circumstances or status.

142. International bodies continue to be concerned as evidenced by the list of issues for consideration by the UN CESCR in its forthcoming review of Sweden. Specifically, it requests the Swedish government to "[*p]lease also provide information on the extent of health-care services provided*

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[109] UN Committee on the Elimination of Racial Discrimination, Concluding Observations on the combined twenty-second and twenty-third periodic reports of Sweden, CERD/SWE/C/CO/22-23, para. 26. Emphasis added.

[110] Recommendation 156.257 (Bulgaria), available at: https://www.regeringen.se/49be62/contentassets/49b69f19914542d2ab6c00d1e2ed56b2/response-from-the-swedish-government-regarding-upr-recommendations.pdf.

[111] Response to Recommendation 156.257 (Bulgaria), available at: https://www.regeringen.se/49be62/contentassets/49b69f19914542d2ab6c00d1e2ed56b2/response-from-the-swedish-government-regarding-upr-recommendations.pdf.

to asylum seekers and migrants, including those in an irregular situation, and on the efforts made to expand the scope of health-care services provided to them."[112]

CONTINUED LACK OF GOVERNMENT RESPONSE TO CIVIL SOCIETY CALLS FOR ACCESS TO SUBSIDIZED HEALTHCARE FOR EU MIGRANTS

143. After publishing the 2018 report, Amnesty International together with MdM SWE initiated a campaign for access to subsidized healthcare for EU migrants in Sweden. The two organizations arranged a number of panel discussions, including in the Parliament, published several opinion pieces in influential newspapers, engaged with individual parliamentarians, and collected over 10,000 signatures in a petition to the government to clarify the legal situation and ensure that EU migrants have access to subsidized healthcare at least on the same level as so-called undocumented people in Sweden. Several other organizations, including the Swedish Association of Health Professionals, the Swedish Nurse Association, the Swedish Society of Medicine, and the Swedish Association for Sexuality Education decided to join the campaign. The responsible minister, the Minister for Health and Welfare, consistently refused to meet with Amnesty International, MdM SWE and allied organizations, including to receive the signatures.

144. In January 2021, the then Minister for Health and Welfare was asked a question in a public hearing in the parliament from a parliamentarian. The question was: "Does the minister intend to initiate legislation that clarifies that all EU citizens in Sweden, both in the first three months and thereafter, and independent of whether they have the European Health Insurance Card, have a right to subsidized healthcare at least to the same extent as so-called undocumented persons?"[113]

145. The relevant parts of the Minister's answer are as follows:

> What healthcare a person has a right to depends among other things on the right to reside in the country. EU citizens are covered by the so-called Free Movement Directive and can thereby stay in the country for three months with no other than a valid identification document. During this period, the person can access healthcare upon demonstrating an EU [Health Insurance] Card. The legislative history demonstrates that it cannot be excluded that the Act on Medical Care for Undocumented Migrants in individual cases can be applied on EU citizens (prop. 2012/13:109, s. 41).
>
> To offer EU citizens healthcare in line with the Act on Medical Care for Undocumented Migrants decrease the incentives for the home countries of the EU citizens to ensure that all of their citizens are covered by health insurance.[114]

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[112] List of issues prior to reporting E/C12/SWE/QPR/7 available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1395&Lang=en

[113] https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/eu-medborgares-ratt-till-vard_H8111041. Our translation.

[114] https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/eu-medborgares-ratt-till-vard_H8111041. Our translation.

146. This statement and the government's overall approach and response are contrary to its obligations under both the Charter and other international treaties to provide adequate and affordable healthcare and treatment to all those residing within its territory regardless of status and situation.

4. CONCLUSIONS AND RECOMMENDATIONS

147. The combination of vague laws, inconsistent guidelines, lack of political will to remedy the situation and regional differences has created a situation in which EU migrants' right to access affordable healthcare as guaranteed under Articles 11 and 13 of the Charter is being seriously and widely breached in Sweden. This is demonstrated not just by the analysis of current laws, policies and measures but also the documentation by Amnesty International and MdM SWE of more than hundred instances of violations being committed. This evidence shows that EU migrants are being routinely denied necessary healthcare, have been billed the full amount for necessary healthcare, or have had to abstain from necessary healthcare out of fear for costs.

148. Based on the number of cases identified to date from different regions of the country, it can be reliably concluded that these are only the tip of the iceberg, and that the violations of the right to healthcare for EU migrants in Sweden is both systematic and structural. This is despite the absence of official data which as a general rule is not collected by the authorities with respect to this particular group of people – itself a breach of the state party's obligation to gather and analyse appropriate data on the health needs of all people residing in its territory. As such Sweden is ignoring EU migrants' right to healthcare both by refusing to clarify the legal situation and failing to document their needs.

149. In light of the evidence presented the complainants would respectfully make the following recommendations to address the situation:

149.1 The State party should ensure that everybody residing within its territory, including EU migrants, has access to accessible and affordable healthcare and actively promote this amongst impacted communities, in line with Sweden's obligations under Article 11, Article 13 and Article E of the revised European Social Charter,

149.2 Urgently, the State party should adopt and disseminate a policy clarifying that EU migrants, both during their first three months in the country and thereafter, have a right to subsidized healthcare and medical services on the same terms as undocumented migrants and that nobody should be denied essential healthcare and treatment,

149.3 The State party should design a scheme offering relief to those EU migrants who already are in debt because they owe money to regions for essential healthcare and treatment,

149.4 The State party should amend the legislation in order to clarify that all EU citizens in Sweden, both during their first three months in the country and thereafter, and whether they have a European Health Insurance Card or not, have a right to subsidized healthcare and medical services at least on the same terms as undocumented people.

5 ANNEXES

Annexes:

- Annex I: Sweden: A Cold Welcome. Human rights of Roma and other "vulnerable EU citizens" at risk. Amnesty International (2018)
- Annex II: Diverging interpretations from state and private institutions on the scope of the 2013 Act
- Annex III: Regional policies on the interpretation of the 2013 Act
- Annex IV: Map of regional policies and routines for billing EU migrants without an European Health Insurance Card
- Annex V: Description and summary of research 2021-22
- Annex VI: National legislation: Swedish Act (2013:407) on healthcare and medical services for certain aliens residing in Sweden without necessary permits, Swedish Health Care Act (2017:30)
- Annex VII: Bills