



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 16 February 2018

CommDH(2018)4
English only

REPORT
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COMMISSIONER FOR HUMAN RIGHTS
OF THE COUNCIL OF EUROPE
FOLLOWING HIS VISIT TO SWEDEN
FROM 2 TO 6 OCTOBER 2017

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SUMMARY

Commissioner Nils Muižnieks and his team visited Sweden from 2 to 6 October 2017. During the visit, the Commissioner held discussions on the human rights of immigrants, refugees and asylum seekers and the human rights of persons with disabilities.

The present report focuses on the following two issues:

Human rights of immigrants, refugees and asylum seekers

The Swedish government responded to the very high number of asylum seekers in 2015 by introducing a package of temporary measures, intended to apply for three years, which was announced in November 2015. While the Commissioner commends Sweden's efforts in helping asylum seekers and refugees, particularly at the peak of arrivals in 2015, he is concerned at the restrictions introduced. Noting signs that Sweden is moving beyond emergency mode, as illustrated by the country's welcome progress in the relocation and resettlement programmes, he considers that it is an opportune time to reverse that stance.

The Commissioner is notably concerned at the impact of the amendment to the Law on the Reception of Asylum Seekers (LMA), as a result of which asylum seekers who have no children with them, and who have had their application rejected and have to leave the country, are no longer entitled to accommodation, subsistence allowance and subsidised medical care. He calls on the authorities to ensure that rejected asylum seekers, who cannot be returned and are at risk of destitution, are treated in a manner that is both humane and human rights compliant so that their basic needs, including shelter, clothes and food, are met.

Furthermore, the Commissioner is concerned that the law on temporary restrictions to obtaining a residence permit in Sweden, which entered into force on 20 July 2016 for a three-year period, makes it more difficult to be reunited with family members, especially for beneficiaries of subsidiary protection and those recognised as refugees under the Geneva Convention whose family members do not apply for reunification within a three-month deadline. The Commissioner urges the Swedish authorities to ensure that refugees and other beneficiaries of international protection fully enjoy their right to family reunification and expresses the hope that the restrictions to the right to family reunification in particular will be lifted on the occasion of the mid-review of the temporary law in 2018.

While welcoming the efforts made by the authorities to rise to the challenge posed by a significant increase in the arrivals of unaccompanied minors in 2015, the Commissioner notes a number of deficiencies in the reception of unaccompanied migrant minors in Sweden. He underlines that the authorities should always treat the best interests of the child as a primary consideration in all decisions relating to their asylum and migration status. These cases should be prioritised to avoid long waiting periods, which contribute to psychological distress. As arrivals have slowed considerably, the Commissioner calls on the Swedish authorities to strengthen the support provided to unaccompanied migrant children. With regard to age assessments, the Commissioner calls on the Swedish authorities not to rely only on a medical assessment of age but to establish multidisciplinary procedures and to ensure that minors are always given the benefit of the doubt where there is uncertainty as to their age. Noting an increase in the number of unaccompanied minors that have gone missing after arriving in Sweden, the Commissioner calls on the Swedish authorities to investigate all cases of disappearances of unaccompanied children and take all necessary measures to increase their protection. Finally, the Commissioner draws the attention of the Swedish authorities to the particular vulnerability of unaccompanied minor migrants whose asylum claim has been rejected and who face forced return to Afghanistan. He recalls that states should not return a

child to a country where there are substantial grounds for believing that he or she is at real risk of irreparable harm. Furthermore, the Commissioner reiterates that any decisions on return should be based strictly on individual circumstances, such as the demonstrable existence of a family network or a secure environment upon return.

Despite the high number of stateless persons living in the country, Sweden does not have a dedicated statelessness determination procedure, nor does the national legislation contain a definition of a stateless person. The Commissioner recommends the establishment of such a determination procedure, so that those persons who are entitled to the protection regime of the 1954 Convention relating to the Status of Stateless Persons can be identified, and be granted a legal status as a stateless person. The Commissioner also encourages the authorities to consider adopting a system of automatic granting of citizenship at birth to children who would otherwise be stateless, replacing the current system of notification to be made after birth by parents or legal guardians.

Human rights of persons with disabilities

Sweden ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol thereto in 2008 and submitted its first report on the implementation of the CRPD in September 2012. While welcoming the positive policies developed by Sweden to improve the rights of persons with disabilities, the Commissioner considers that the full incorporation of the CRPD into Swedish law could have a positive impact on the protection of the rights of persons with disabilities and contribute to raising awareness of its provisions.

The Commissioner welcomes the fact that the protection afforded by the Discrimination Act against discrimination on grounds of disability has been extended in recent years, notably with the introduction of the denial of reasonable accommodation to persons with disabilities as a form of discrimination, and encourages the Swedish authorities to further expand the scope of protection against discrimination under its domestic law to all spheres of life.

While welcoming measures undertaken to foster employment of persons with disabilities in Sweden, the Commissioner is concerned that unemployment remains higher for persons with disabilities than for the general population. He calls on the authorities to phase out the term “reduced capacity to work” and instead focus on the ability of the person to work, with due regard to how support can compensate the disability.

The Commissioner notes the good functioning of the innovative Personal Ombudsmen system, which provides support in decision-making to individuals who have a complex need of care due to a mental or psychosocial disability. However, he notes that, while Sweden abolished total guardianship in 1989, it replaced it with two alternative measures of assistance. The Commissioner calls on the Swedish authorities to sustain progress in replacing all forms of substituted decision-making with supported decision-making, so as to fully comply with the requirements of Article 12 of the CRPD.

Sweden has long been at the forefront of developing and implementing personal assistance services. The Act concerning Support and Service for Persons with Certain Functional Impairments (LSS), which entered into force in 1994, gives people with disabilities the right to personal assistance. The Commissioner notes reports that a number of persons who were entitled to personal assistance under the LSS had lost support in recent years and that intrusive checks have increasingly been made on individuals when determining the extent of the right to personal assistance. As a result of the decrease in state-funded personal assistance, a trend towards re-institutionalisation has also worryingly been reported. The Commissioner is concerned that Sweden is implementing retrogressive measures in the area of state-funded personal assistance. He calls on the authorities to closely monitor the impact of the decrease in

state-funded personal assistance in terms of access to rights, in particular access to education and employment; resort to congregated settings; and re-medicalisation of the approach to disability.

The Commissioner is concerned by the long-standing problem of the prevalence of compulsory admissions and coerced treatment in Sweden's psychiatric institutions. The lack of sufficient safeguards to ensure a free and informed consent when it comes to psychiatric treatments such as electroconvulsive therapy (ECT) has notably been a constant concern in Sweden. The authorities should send a clear signal that the goal is to drastically reduce and progressively eliminate the recourse to coercion in psychiatry and to ensure that sufficient safeguards are in place in the meantime. In particular, the Commissioner calls on the authorities to ensure that patients' written informed consent is always sought before resorting to ECT and adequately registered. While the Commissioner commends Sweden's efforts towards reinforcing the rights of patients and their participation in decisions about care, he recalls that medical treatment should be based on free and fully informed consent, with the exception of life-threatening emergencies when there is no disagreement regarding the ability to consent.

INTRODUCTION

1. The present report follows a visit by the Council of Europe Commissioner for Human Rights, Nils Muižnieks (the Commissioner), to Sweden from 2 to 6 October 2017.¹ The main topics of the visit were the human rights of immigrants, refugees and asylum seekers and the human rights of persons with disabilities.
2. In Stockholm, the Commissioner held discussions with the Minister for Foreign Affairs, Margot Wallström; the Minister of Justice and Home Affairs, Morgan Johansson; the Minister for Migration, Helene Fritzon; the Minister of Culture and Democracy, Alice Bah Kunke; State Secretaries to the Minister for Employment and Integration, Irene Wennemo, Annica Dahl and Anders Kessling; the State Secretary to the Minister for Children, the Elderly and Gender Equality, Madeleine Harby Samuelsson; the State Secretary to the Minister of Defence, Jan Salestrand, as well as with the Swedish Ambassador for Human Rights, Annika Ben David. The Commissioner also held an exchange with the Vice Chair of the Swedish Delegation to the Parliamentary Assembly of the Council of Europe, Tobias Billström, and other members of the delegation. He met with representatives of the Ombudsman for Children and of the Equality Ombudsman and with the Director General of the Swedish Data Protection Authority. The Commissioner also held discussions with representatives of UNHCR and UNICEF, representatives of non-governmental organisations and other members of civil society, and met with a number of unaccompanied minors of Afghan origin. The Commissioner furthermore travelled to Malmö, where he met with the Head of Safety and Security of the Municipality of Malmö, and visited the Linnéskolan School.
3. The Commissioner wishes to sincerely thank the Swedish authorities in Strasbourg and Stockholm for their assistance in organising the visit and facilitating its independent and smooth execution. He is grateful to all his interlocutors for sharing their knowledge and insights with him.
4. In addition to the key themes mentioned above, during the visit the Commissioner discussed the establishment of a national human rights institution (NHRI) in Sweden. In a letter addressed to the Parliament of Sweden shortly after the visit, the Commissioner sought to raise awareness about the crucial role played by national human rights institutions in promoting and protecting human rights at the national level. In the letter, the Commissioner welcomed the current discussions in the Committee on the Constitution to establish a NHRI, and urged parliamentarians to ensure that the new body is adequately funded, independent and effective, in accordance with the Paris Principles adopted by the UN General Assembly in 1993. In particular, he underscored that national human rights institutions should have as broad a mandate as possible, be pluralistic, independent from the government, adequately funded and shielded from financial control which might affect their independence. The Commissioner also recalled that particular attention should be given to involving civil society in this process. The letter was published on the Commissioner's website on 30 October 2017.² However, as indicated in the response received from the Parliament on 30 November 2017, the issue has been

¹ The Commissioner was accompanied by Mr Giancarlo Cardinale, Deputy to the Director of his Office, and Ms Anne Weber, Adviser.

² "Commissioner Muižnieks calls on Swedish Parliament to be ambitious in plans to establish a national human rights institution", [Letter addressed to the Parliament of Sweden](#), 30 October 2017.

referred back to the government, which unfortunately further delays the process of establishing a NHRI in Sweden.

5. During the visit, the Commissioner also held discussions regarding human rights protection in the context of counter-terrorism. He notably had the opportunity to discuss the role played by Swedish municipalities in this area and particularly welcomes the role of local authorities in countering terrorism and extremist violence through prevention programmes and social intervention.
6. The Commissioner wishes to continue his constructive dialogue with the Swedish authorities on strengthening human rights protection in Sweden. He trusts that this dialogue will be facilitated by the present report, which consists of the following chapters: I. Human rights of immigrants, refugees and asylum seekers; and II. Human rights of persons with disabilities. Each section of the report ends with the Commissioner's conclusions and recommendations addressed to the Swedish authorities.

1 THE HUMAN RIGHTS OF IMMIGRANTS, REFUGEES AND ASYLUM SEEKERS

7. Sweden received a record 162,877 asylum applications in 2015, resulting in the highest proportion of asylum applications per capita in the European Union that year. This number sharply decreased in 2016, with 28,939 asylum applications received. The drop in numbers of asylum seekers continued in 2017, with 25,666 asylum applications. The top five countries of origin in 2017 were Syria, Iraq, Eritrea, Afghanistan and Georgia. Sweden also receives a large number of asylum applications from stateless persons.
8. Sweden is Party to the 1951 Convention relating to the Status of Refugees (the Geneva Convention) and 1967 Protocol (ratified respectively in 1954 and 1967). The Swedish Migration Agency (SMA), previously known as “Migration Board”, is the central administrative authority in the area of asylum.
9. The Swedish government responded to the very high number of asylum seekers in 2015 by introducing a package of temporary measures, intended to apply for three years, which was announced in November 2015. The Swedish authorities have underlined that this package brings the Swedish legislation into line with the minimum requirements of international conventions and EU law. The government’s clear and express purpose was to deter asylum seekers from coming to Sweden.³
10. This package included amendments to the Aliens Act, the main legislative act relevant to the asylum procedure. At the same time, measures to adjudicate the high number of asylum applications were adopted, such as the increase of the number of SMA staff members from 3500 to 8000. Following an instruction from the government, 111,979 decisions were made on asylum applications by the SMA in 2016, with the quality of decisions having reportedly suffered at times from this increased level of activity.
11. While the Commissioner commends Sweden’s efforts in helping asylum seekers and refugees, particularly at the peak of arrivals in 2015, he is concerned at the restrictions introduced. Noting signs that Sweden is moving beyond emergency mode, he considers that it is an opportune time to revert to previous levels of protection.
12. One of these signs is that, after a suspension of its participation in the relocation programme,⁴ Sweden is now close to achieving its commitment of 3766 relocations.⁵ The Commissioner also welcomes Sweden’s commitment to increase resettlement up to 5,000 in 2018, more than doubling its programme in two years. The Commissioner also acknowledges that, in 2016, Sweden was UNHCR's third largest contributor per capita with a total contribution of SEK 1.2 billion.

³ See [“Government proposes measures to create respite for Swedish refugee reception”](#), 24 November 2015.

⁴ See [Council Decision \(EU\) 2016/946](#) of 9 June 2016 establishing provisional measures in the area of international protection for the benefit of Sweden in accordance with Article 9 of Decision (EU) 2015/1523 and Article 9 of Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

⁵ As of 9 January 2018, 2860 persons were effectively relocated to Sweden (1204 persons from Italy and 1656 from Greece), see: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf.

13. Recognising the challenges Sweden faced recently due to the lack of a joint European response, the Commissioner reiterates the urgent need to increase European solidarity, as well as safe and legal avenues for people to reach protection in Europe.
14. Since the mass influx has ended, the Commissioner calls on Sweden to lift the temporary measures, which introduced restrictions in 2016 in response to that influx, before the 2019 deadline. In particular, the Commissioner draws the attention of the authorities to the following areas in which he considers that improvement is urgently needed.

1.1 RECEPTION CONDITIONS

15. With the rapid decline in the number of asylum seekers since the record high of 2015, there is no congestion in accommodation centres any more and reception conditions in Sweden are overall good.
16. An amendment to the Law on the Reception of Asylum Seekers (LMA) was introduced on the 1st of June 2016, as a result of which asylum seekers who have no children with them, and who have had their application rejected and have to leave the country, are no longer entitled to accommodation, subsistence allowance and subsidised medical care. The only exceptions foreseen relate to cases of severe illness and situations where individuals cooperated fully in preparing for their own removal and where the hindrances to implementing the removal order are not linked with their own actions or in-action, a condition which is however strictly interpreted.
17. The Commissioner is concerned at the impact of the amendment on the rights of the persons concerned. During the visit, several interlocutors of the Commissioner stressed that this amendment had severe humanitarian consequences for a number of individuals, who ended up living in the streets. It also resulted in increasing numbers of people seeking support and help, notably asking for food, and in a reportedly serious deterioration of health situations.⁶ The Commissioner notes that the amendment has in practice led to a shift of responsibility from the government to civil society and municipalities, some of which decided to cover themselves the subsistence allowance for the individuals concerned, who would otherwise face destitution.
18. The Commissioner welcomes the setting up by the Swedish government of a commission of inquiry,⁷ with the purpose of identifying possibilities for the granting of residence permits to persons who have declared themselves willing to return and for whom there are practical impediments to the enforcement of a removal order, given the fact that their situation has been considerably worsened as a result of the amendment to the LMA. The inquiry notably proposed that the concept of “practical impediments to enforcement” be introduced in the Aliens Act, in order to clarify the circumstances where these apply and could be the basis for the granting of a residence permit.
19. Furthermore, the Commissioner recalls that, in a decision of July 2014 concerning the Netherlands, the European Committee of Social Rights held that “access to food,

⁶ See Swedish Red Cross, [Status report](#), *Consequences of the amendment to Sweden’s Reception of Asylum Seekers and Others Act (LMA)*, January 2017.

⁷ See the [report](#) “*Betänkande av Utredningen om uppehållstillstånd på grund av praktiska verkställighetshinder*”, October 2017 (with a Summary in English starting p. 25).

water, as well as to such basic amenities as a safe place to sleep and clothes fulfilling the minimum requirements for survival in the prevailing weather conditions are necessary for the basic subsistence of any human being”⁸ and found a violation of Article 13§4 of the European Social Charter (right to social and medical assistance), as practical and legal measures denying the right to emergency assistance had restricted the right of adult migrants in an irregular situation and without adequate resources in a disproportionate manner. The Committee also found a violation of Article 31§2 (right to housing) of the European Social Charter (revised) and reiterated that “the right to shelter is closely connected to the human dignity of every person regardless of their residence status” and that “shelter must be provided also to adult migrants in an irregular situation, even when they are requested to leave the country and even though they may not require that long-term accommodation in a more permanent housing be offered to them”.⁹ Furthermore, the Committee considered “that the provision of emergency assistance cannot be made conditional upon the willingness of the persons concerned to cooperate in the organisation of their own expulsion.”

1.1.1 CONCLUSIONS AND RECOMMENDATIONS

20. The Commissioner calls on the authorities to ensure that rejected asylum seekers, who cannot be returned and are at risk of destitution, are treated in a manner that is both humane and human rights compliant so that their basic needs, including shelter, clothes and food, are met. The Commissioner recalls that anyone, irrespective of whether their stay in a country is lawful, has the right to an adequate standard of living for him/herself and his/her family, including adequate food, clothing and shelter, as required notably by Article 13 and Article 31 of the European Social Charter (revised), to which Sweden is a party.

1.2 RIGHT TO FAMILY REUNIFICATION

21. A number of limitations to the right to family reunification have been introduced through the law on temporary restrictions to obtaining a residence permit in Sweden,¹⁰ which entered into force on 20 July 2016 for a three-year period.
22. Under the new law, persons recognised as refugees under the Geneva Convention, who are granted a three-year residence permit, have the right to be reunited only with their nuclear family (husband/wife/registered partner/cohabiting partner and children under the age of 18 years). Persons who qualify for subsidiary protection, and are granted an initial period of 13 months temporary residence permit, including unaccompanied minors, have no right to family reunification. In order to be able to reunite with their family, they have to wait until they are granted a permanent residence permit, which can take up to three years. However, the law provides that the right to family reunification should be granted even to subsidiary protection beneficiaries in exceptional cases, *i.e.* if it would otherwise violate Swedish

⁸ Decision on the merits, [Conference of European Churches \(CEC\) v. the Netherlands](#), Complaint No. 90/2013, 1 July 2014.

⁹ *Ibid.*

¹⁰ *Lag om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige*, 2016:752, <http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2016752-om-tillfalliga-begransningar-av-sfs-2016-752>. While the vast majority of residence permits granted to persons in need of international protection or on humanitarian grounds were permanent, the new law makes temporary residence permits the general rule. The temporary law also removes possibilities of getting a permit as a person “otherwise in need of protection”.

obligations under international law, a provision which has still to be interpreted by domestic courts. The same applies to persons who cannot be removed because their expulsion would be contrary to “the Swedish commitment to international conventions”. Children with families and unaccompanied children who have applied for asylum at the latest on 24 November 2015, when the government presented the proposed law, will have their cases assessed according to the previous law.

23. Moreover, the new law introduced a maintenance requirement: persons wanting to reunite with their family have to demonstrate that they are able to financially support both themselves and their family members and must have a home of a sufficient size and standard. This requirement does not apply to unaccompanied minors or to recognised refugees in cases where family members apply for family reunification within three months of the granting of asylum.
24. The Commissioner is concerned that the temporary law makes it more difficult to be reunited with family members, especially for beneficiaries of subsidiary protection and those recognised as refugees under the Geneva Convention whose family members do not apply for reunification within the three-month deadline. Several interlocutors of the Commissioner have also drawn attention to several practical obstacles to family reunification, in addition to the legal impediments, such as a strict ID/passport requirement to prove identity, difficulties in reaching a Swedish embassy or consulate to participate in an interview, and long processing times, with a 21-month waiting period on average.
25. The Commissioner also shares the concern expressed by UNHCR that, given that applicants fleeing conflict situations in most cases receive subsidiary protection rather than refugee status under the Geneva Convention, the temporary law will significantly hamper for example Syrian applicants’ access to family reunification.¹¹
26. The Commissioner has recently carried out extensive work on the right to family reunification and has had to conclude that long-term separation from their families has an immensely negative impact on refugees and is an ill-advised policy that adversely affects their integration efforts.¹² Moreover, restricting legal routes to come to Europe only leads people desperate to be with their families to find alternative, irregular and dangerous options, such as being smuggled by sea. The Commissioner has also stressed that for refugees, “delaying the enjoyment of their right to family reunion also denies effective protection to family members in camps and conflict zones”.¹³
27. The Commissioner notes that, in its case-law, the European Court of Human Rights has reiterated that family unity is an essential right for refugees and that family reunification is a fundamental element in enabling persons who have fled persecution to resume a normal life. In addition, the Court usefully underlined that, especially in

¹¹ In 2016 for instance, only 5% of applicants from Syria were recognised as refugees under the Geneva Convention, while 85% received subsidiary protection or other forms of protection.

¹² See the Commissioner’s [Human Rights Comment](#), “Ending restrictions on family reunification: good for refugees, good for host societies”, 26 October 2017.

¹³ Council of Europe Commissioner for Human Rights, [Issue Paper](#) “Time for Europe to get migrant integration right”, May 2016, p. 13.

refugee cases, family reunification procedures should be flexible, prompt and effective.¹⁴

1.2.1 CONCLUSIONS AND RECOMMENDATIONS

28. The Commissioner urges the Swedish authorities to ensure that refugees and other beneficiaries of international protection fully enjoy their right to family reunification, as further detailed in the Commissioner's Issue Paper "Realising the right to family reunification of refugees in Europe".¹⁵ In particular, the Commissioner calls on the Swedish authorities to:

- grant persons receiving subsidiary protection the same family reunification rights as those recognised as refugees under the Geneva Convention;
- assess how practical obstacles to family reunification, such as onerous documentary requirements to prove identity and access to far away embassies, can be overcome, to give effect to the European Court's case-law that requires refugee family reunification procedures to be flexible, prompt and effective;
- abolish the three-month deadline for applications for family reunification;
- ensure that extended family members are also eligible for family reunification when they are dependent on the sponsor, with the concept of dependency allowing for a flexible assessment of emotional, social, financial and other ties between the sponsor and his/her family member(s).

29. In light of the mid-review of the temporary law in 2018, the Commissioner expresses the hope that the restrictions to the right to family reunification in particular will be lifted on that occasion and that refugees and beneficiaries of subsidiary protection will notably enjoy the same rights in this regard.

1.3 UNACCOMPANIED MIGRANT CHILDREN

30. A large number (35,369) of unaccompanied children applied for asylum in Sweden in 2015. The number dropped in 2016 and in 2017, with respectively 2,199 and 1,336 asylum applications from unaccompanied children received. While the Commissioner is aware that their reception has put a strain on the system and welcomes the efforts that Sweden has deployed in this domain, their situation raises a number of concerns.

1.3.1 RECEPTION AND CARE

31. Unaccompanied children are assigned to a resident municipality when they arrive in Sweden. The social services of the municipalities are then responsible for providing accommodation and for the appointment of a guardian to look after the child's interests. Unaccompanied children are entitled to health care and have access to education. As the asylum procedure is often the only path to obtain a residence permit, unaccompanied minors have to apply for asylum to the SMA, which appoints a legal representative for every asylum seeking child. A transfer of responsibility from the

¹⁴ *Tanda-Muzinga v. France*, application no. [2260/10](#), judgment of 10 July 2014, § 75.

¹⁵ Council of Europe Commissioner for Human Rights, [Issue Paper](#) "Realising the right to family reunification of refugees in Europe", June 2017.

municipality to state authorities occurs in general when a minor turns 18, leading to many young people being forced to move to another location and school.

32. Recent reports point to a number of deficiencies in the reception of unaccompanied migrant minors in Sweden.¹⁶ A major issue relates to the appointment of guardians. The Commissioner notes with concern that, while a guardian should be appointed “as soon as possible” after the arrival of an unaccompanied minor, there is no time frame provided in the legislation, and the actual appointment can be delayed by months. This can have serious consequences for the child, since the guardian is for instance responsible for enrolling the child in school. Furthermore, there is no limit to the number of children a guardian can take care of, and UNHCR reported for instance cases in which guardians had up to 25 children under their care.¹⁷ Guardians are also not always properly trained and supervised. Therefore, in practice, unaccompanied children sometimes turn to other persons such as their legal representative in the asylum procedure, social workers or volunteers to access the support which they should normally obtain from their guardian.
33. Additionally, interlocutors of the Commissioner have indicated that asylum applications from unaccompanied minors have been processed quite slowly and some children have been waiting for a decision for over two years. According to the migration authorities, the average waiting time for unaccompanied minors in 2017 was 578 days for the first decision, compared to 460 days in 2016. These lengthy waiting periods - for an interview to take place but also for a first decision - add to the anxiety related to the uncertainty about their future.
34. Finally, there is an increase in the number of unaccompanied minors that have gone missing after arriving in Sweden.¹⁸ Between 2013 and May 2016, 256 unaccompanied minors disappeared in the County of Stockholm, and 1,829 were officially reported as missing nationwide.¹⁹ These children who often disappeared due to fear of being sent back to their country of origin are at risk for trafficking, abuse and violence.

1.3.2 AGE ASSESSMENT

35. Several institutions have expressed concerns with regard to age assessments performed in Sweden, including the Swedish Ombudsman for Children, the Swedish Bar Association and the SMA in an internal review of cases involving age assessment. The

¹⁶ See in particular The Ombudsman for Children in Sweden, Annual report 2017, “[We left everything behind](#)” - Voices of children and young people on the move, and Human Rights Watch, [Seeking refuge: Unaccompanied Children in Sweden](#), 9 June 2016.

¹⁷ UNHCR, [This Is Who We Are Part 2](#) – Documentation of the secondary findings from the profiling survey of unaccompanied Afghan children arriving to Sweden in 2015, October 2016, p. 13.

¹⁸ See [Lost in Migration](#) - A Report on Missing Unaccompanied Minors in Sweden, Stockholm, 2016.

¹⁹ See also the report of the Swedish Ombudsman for Children, *Unaccompanied children who disappear in Sweden* (“[Ensamkommande barn som försvinner](#)”), 11 December 2017. The report indicates that 1,736 unaccompanied minors disappeared in Sweden between January 2014 and October 2017. An English summary of the report is available here: <https://www.barnombudsmannen.se/globalassets/dokument-for-nedladdning/english/publications/children-who-disappear-in-sweden.pdf>.

Ombudsman for Children notably stressed that the evidence - in most cases the child's account - was incorrectly analysed in a number of cases of age assessment.²⁰

36. In March 2017, the Swedish government proposed amendments to the Aliens Act²¹ requiring the SMA to assess a person's age earlier in the asylum process, that is as soon as possible after an application for asylum is made, and not at the same time as the application is decided, as was the case before. Simultaneously, a medical age assessment was introduced. This age assessment, which is voluntary, is conducted by the National Board of Forensic Medicine and involves an X-ray of teeth and an MRI scan of knee joints. It can be offered by the case officer of the SMA if there are serious doubts about whether a person who claims to be an unaccompanied child is actually a minor. On the basis of the forensic opinion on age and other supporting evidence, the SMA takes a temporary decision on the age of the person concerned. It is then possible to appeal this decision.
37. A number of the Commissioner's interlocutors have expressed concerns at the purely medical character of the age assessment. In its observations on the draft legislation, UNHCR underlined that, while an early age assessment is to be welcomed as it can bring clarity on what reception placement and procedural safeguards should be provided for a particular individual, the margin of error that will apply to a medical age assessment is based on a conclusion applicable to a sample population and therefore cannot automatically be applied to each individual asylum seeker.²²

1.3.3 RETURNS TO AFGHANISTAN

38. More than half of the unaccompanied minors who arrived in Europe in 2015 were Afghan nationals and half of all Afghan minors who applied for asylum in Europe in 2015 did so in Sweden. Sweden thus received 23,480 Afghan minors that year, a figure which represents two-thirds of the total number of unaccompanied minors who applied for asylum in Sweden in 2015.²³
39. About 40% of the unaccompanied minors from Afghanistan have been denied asylum in Sweden in 2016 and therefore face a possible forced return to Afghanistan. Given the long processing time, a number of them also turned 18 while waiting for an answer on their asylum application, meaning that the requirement of support upon return was no longer applicable. Moreover, the rejection rate of young Afghans who just turned 18 or whose age has been changed following an age assessment is very high.
40. The interlocutors of the Commissioner have stressed that this context has negative effects on the children concerned and that an increase in psychological distress and suicide attempts among Afghan minors had been observed. According to recent figures, there were 68 registered suicide attempts and three actual suicides since 2015

²⁰ The Ombudsman for Children in Sweden, Annual report 2017, "[We left everything behind](#)" - Voices of children and young people on the move, p. 24.

²¹ These amendments entered into force on 1 May 2017.

²² UNHCR, *Observations by the United Nations High Commissioner for Refugees Regional Representation for Northern Europe on the draft law proposal "Age Assessment Earlier in the Asylum Procedure"* ("Åldersbedömning tidigare i asylprocessen") DS 2016:37, 23 November 2016.

²³ UNHCR, *This Is Who We Are Part 2 – Documentation of the secondary findings from the profiling survey of unaccompanied Afghan children arriving to Sweden in 2015*, October 2016, p. 4.

in Sweden. Such stories have made the headlines and protests have regularly taken place. The youth group “Ung I Sverige” (Young in Sweden) started for instance a demonstration in Stockholm in August 2017, demanding an immediate stop of returns to Afghanistan due to safety and security reasons there. The Commissioner also notes that Amnesty International recently called on European governments to implement a moratorium on returns to Afghanistan due to the security situation and the lack of relevant and reasonable internal flight alternatives.²⁴

41. In the course of his visit, the Commissioner met in Stockholm with a number of unaccompanied minors of Afghan origin, who arrived in Sweden in late 2015. They described how they reached Sweden, after a hazardous journey which often brought them through Greece. Some of them were still waiting for the outcome of their asylum application, while others had had their applications rejected and were at risk of being deported to Afghanistan. However, half of them were actually raised and were living in Iran before fleeing. All of them were attending school and spoke Swedish. The Commissioner was struck by their willingness to integrate in the Swedish society and continue education but could at the same time witness their anxiety about the prospect of being returned to Afghanistan.
42. The Commissioner takes note of the government’s proposal to give unaccompanied children, who applied for asylum in Sweden before 24 November 2015 and are engaged in full-time education, a temporary residence permit. If adopted by the Parliament, this proposal would allow a number of Afghan minors, including those who turned 18 in the meantime, to stay in Sweden to complete their education.

1.3.4 CONCLUSIONS AND RECOMMENDATIONS

43. While welcoming the efforts made by the authorities to rise to the challenge posed by a significant increase in the number of unaccompanied minors in 2015, the Commissioner calls on the authorities to include a child rights perspective in any future review of the asylum legislation.
44. First and foremost, in line with their obligations under the UN Convention on the Rights of the Child, the authorities should always treat the best interests of the child as a primary consideration in all decisions relating to asylum and migration. These cases should be prioritised to avoid long waiting periods, which contribute to psychological distress. As arrivals have slowed considerably, the Commissioner calls on the Swedish authorities to strengthen the support provided to unaccompanied migrant children.
45. The Commissioner urges the authorities to ensure that each unaccompanied child is immediately appointed a competent and qualified guardian, who is regularly supervised by the responsible authority.
46. The Commissioner would also like to recall the recommendation made by the UN Committee on the Rights of the Child in 2015 that the Swedish authorities investigate all cases of disappearances of unaccompanied children and take all necessary measures to increase their protection.²⁵ They should particularly take measures in the areas of identification and protection of child victims of trafficking, to prevent further

²⁴ Amnesty International, [Forced Back to Danger: Asylum-Seekers Returned from Europe to Afghanistan](#), 5 October 2017.

²⁵ UN Committee on the Rights of the Child, [Concluding observations on the fifth periodic report of Sweden](#), CRC/C/SWE/CO/5, January 2015, § 50.

disappearances and limit the risks of unaccompanied migrant minors becoming victims of trafficking, in line with the recommendations of the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA).²⁶

47. The Commissioner welcomes the joint coordination plan adopted by the County Administrative Board of Stockholm. It aims at a better coordination between the SMA, the municipalities as well as civil society in order to improve knowledge about unaccompanied minors who disappear and to prevent further disappearances. He encourages other counties to follow suit.
48. The Commissioner reiterates that age determination of unaccompanied minor migrants is a complex process involving physical, social and cultural factors and that incorrect age assessments may result in detrimental consequences for the child concerned. He calls on the authorities not to rely only on a medical assessment of age but to establish multidisciplinary procedures and to ensure that minors are always given the benefit of the doubt where there is uncertainty as to their age. He draws the attention of the authorities to the view expressed by the UN Committee on the Right of the Child that age assessment should not only take into account the physical appearance of the individual, but also his or her psychological maturity and should be conducted “in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child”.²⁷ The Committee also indicated that “States should refrain from using medical methods based on, inter alia, bone and dental exam analysis, which may be inaccurate, with wide margins of error, and can also be traumatic and lead to unnecessary legal processes.”²⁸
49. Finally, the Commissioner draws the attention of the Swedish authorities to the particular vulnerability of unaccompanied minor migrants whose asylum claim has been rejected and who face forced return to Afghanistan. He recalls that states should not return a child to a country where there are substantial grounds for believing that he or she is at real risk of irreparable harm.²⁹ Furthermore, the Commissioner reiterates that any decisions on return should be based strictly on individual circumstances, such as the demonstrable existence of a family network or a secure environment upon return.

1.4 STATELESSNESS

50. Sweden is a Party to both the 1954 Convention relating to the Status of Stateless Persons (ratified in 1965, with reservations), and the 1961 Convention on the

²⁶ See Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden, adopted on 21 March 2014, [GRETA\(2014\)11](#), § 142.

²⁷ UN Committee on the Rights of the Child, [General Comment N° 6 \(2005\)](#), Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, § 31.

²⁸ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, [CMW/C/GC/4-CRC/C/GC/23](#), 16 November 2017, § 4.

²⁹ Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, [CMW/C/GC/3-CRC/C/GC/22](#), 16 November 2017, § 46.

Reduction of Statelessness (ratified in 1969). Sweden also ratified the European Convention on Nationality in 2001. Moreover, Sweden has pledged during the Ministerial Intergovernmental Event on Refugees and Stateless Persons convened by UNHCR in December 2011 to address statelessness through its foreign policy.

51. During the visit, the attention of the Commissioner was drawn to the high number of stateless persons in Sweden, consisting mainly of immigrants, asylum seekers and refugees. According to a recent UNHCR study,³⁰ the total number of stateless person known to the authorities to be on Swedish territory, by the end of 2015, was 29,733, while the number of persons with “unknown” nationality was 6,005, and the number of persons with nationality “under investigation” was 1,037.³¹ According to the SMA in 2017, 1,556 asylum applications were made by people who were stateless or of “unknown” nationality, or whose nationality was “under investigation – making up about 6% of the total applications.
52. However, Sweden does not have a dedicated statelessness determination procedure, nor does the national legislation contain a definition of a stateless person. As there are no specific residence permits for stateless persons, they have to apply for asylum or find other grounds to obtain a residence permit. In addition, there is limited awareness about the issue of statelessness and the situation of stateless persons in Sweden.
53. The Commissioner notes that, in the context of the abovementioned inquiry on practical impediments to the enforcement of a removal order,³² statelessness as such, combined with the lack of a clear definition of statelessness in Swedish law, was identified as an important such impediment. A specific inquiry on the introduction of a statelessness determination procedure³³ was therefore suggested.
54. A further concern in this area relates to the recent introduction of temporary restrictions on the granting of permanent residence permits,³⁴ and its possible impact on stateless persons’ ability to acquire Swedish citizenship by naturalisation. Having a permanent residence permit in Sweden - for at least four years for stateless persons - is indeed one of the requirements for naturalisation. However, under the new temporary law, stateless persons in need of international protection can only access a permanent residence permit if they can support themselves or, for persons under the age of 25 years, if they have completed upper secondary education or the equivalent. In view of Sweden’s recognition of the role citizenship plays in the integration process, the Commissioner finds this change to be problematic.
55. While welcoming that the Act on Swedish Citizenship provides protection against statelessness of children, the Commissioner notes that Sweden has not opted for the automatic granting of citizenship to children who would otherwise be stateless and that

³⁰ UNHCR, [Mapping Statelessness in Sweden](#), December 2016.

³¹ This results from the combination of two registers that apply different definition of statelessness: the Population Register, administrated by the Swedish Tax Authority, and the SMA’s register.

³² See above under 1.1.

³³ Proposal 4 in the Inquiry report: An inquiry should be appointed on the legal status of stateless people and a statelessness determination procedure.

³⁴ See above under 1.2.

citizenship can be granted only based on a notification to be made after birth by parents or legal guardians.

1.4.1 CONCLUSIONS AND RECOMMENDATIONS

56. The Commissioner recommends the establishment of a statelessness determination procedure, so that those persons who are entitled to the protection regime of the 1954 Convention can be identified, and be granted a legal status as a stateless person. Useful guidance in this regard is provided by UNHCR's Handbook on Protection of Stateless Persons.³⁵
57. The Commissioner further recommends that persons identified as stateless be granted a permanent residence permit on the ground of their statelessness, with all the rights to which they are entitled under the 1954 Convention.
58. The Commissioner stresses that automatic acquisition of nationality at birth is the most effective way of preventing statelessness and safeguarding the right for all children to have a citizenship at birth or shortly after birth, as enshrined in the UN Convention on the Rights of the Child. He encourages the authorities to consider adopting a system of automatic granting of citizenship at birth to children who would otherwise be stateless.

³⁵ UNHCR, [Handbook on Protection of Stateless Persons](#), 30 June 2014.

2 THE HUMAN RIGHTS OF PERSONS WITH DISABILITIES

59. Sweden ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol thereto in 2008 and submitted its first report on the implementation of the CRPD in September 2012. The Committee on the Rights of Persons with Disabilities adopted its concluding observations on the initial report of Sweden on 11 April 2014.³⁶ Among the positive aspects, the Committee noted that Swedish sign language is equal to the five minority languages, that all persons with disabilities, including with psychosocial and intellectual disabilities, have the right to vote and to be elected, and that an assistance system for voters with disabilities had been created. The Committee also commended Sweden for its inclusive education system. However, a number of developments, notably regarding the assistance to live independently in the community, gave rise to concerns and most of the Committee's recommendations have reportedly not been addressed to date.
60. According to official figures, 1,5 million people with disabilities are living in Sweden. The government presented a Disability Strategy for 2011-2016 in June 2011. In June 2016, the Swedish Agency for Participation (a government agency tasked with ensuring "that disability policy has an impact in all corners of society") evaluated the outcome of the Disability Strategy, stressing the slow pace of progress. On 15 May 2017, the government presented a bill for a new disability policy,³⁷ which was adopted by the Parliament on 30 November 2017. The objective of the disability policy, which is based on the CRPD, is to achieve equality in living conditions and full participation in society for people with disabilities, in a diverse society.
61. While welcoming the positive policies developed by Sweden to improve the rights of persons with disabilities, the Commissioner notes that the CRPD is not incorporated into Swedish law and that the extent to which it is applied in Sweden is therefore left to the practice of the authorities and the courts. He is of the opinion that the full incorporation of this Convention into domestic law could have a positive impact on the protection of the rights of persons with disabilities and contribute to raising awareness of its provisions, notably in the following areas.

2.1 EQUALITY AND NON-DISCRIMINATION

62. A new Discrimination Act entered into force in Sweden on 1 January 2009, with a new agency, the Equality Ombudsman, tasked to monitor compliance with the Act. It prohibits discrimination on grounds of sex, transgender identity or expression, ethnicity, religion or other beliefs, disability, sexual orientation or age. The Act covers prohibition of discrimination in the following spheres: employment; education; policies relating to the labour market and employment services not under public contract; business start-up and management; professional recognition; membership of certain organisations; goods, services and housing; meetings and public events; health and medical care; social services; social insurance; unemployment insurance; student grants; military and civilian service; and public employment.

³⁶ UN Committee on the Rights of Persons with Disabilities, [Concluding observations on the initial report of Sweden](#), CRPD/C/SWE/CO/1, April 2014.

³⁷ Bill [2016/17:188](#), *Nationellt mål och inriktning för funktionshinderspolitiken*.

63. Following an amendment to the Discrimination Act which took effect from 1 January 2015, the denial of reasonable accommodation to persons with disabilities also constitutes a form of discrimination.
64. Furthermore, with the adoption by the Parliament of another amendment in November 2017, which is due to enter into force on 1 May 2018, private enterprises in the goods and services sector which have less than ten employees will no longer be exempted from the requirement of reasonable accommodation and will therefore have to comply with the obligation of accessibility for people with disabilities.
65. The Commissioner also notes that the Equality Ombudsman, when supervising compliance with the Discrimination Act, may receive and consider complaints from individuals alleging that they have been the victims of discrimination, notably on the ground of disability. Following such an examination, the Equality Ombudsman may bring a legal action for damages on behalf of the individual concerned. In 2017, out of 2158 complaints received by the Equality Ombudsman 681 related to discrimination on the ground of disability, making it the first ground of reported discrimination.³⁸ These complaints mainly concerned discrimination in goods, services and housing (185 complaints), access to education (129 complaints), work life (116 complaints) as well as health and medical care (84 complaints). Among these complaints, only 2 cases were brought to courts in 2017, compared to 4 cases in 2016. The Commissioner was informed that the Equality Ombudsman is implementing a strategic litigation policy and that as a result only a small number of complaints are being taken to courts, as test cases.
66. Against this background, the Commissioner shares the concerns expressed by the UN Human Rights Committee in 2016 that the Equality Ombudsman is not empowered to invoke international standards, including the European Convention on Human Rights, and that it cannot deal with cases of alleged discrimination by some government agencies, such as the police, the prison service, prosecutors and the courts, when they exercise public authority, as these areas are not covered by the Discrimination Act.³⁹

2.1.1 CONCLUSIONS AND RECOMMENDATIONS

67. The Commissioner welcomes the fact that the protection afforded by the Discrimination Act against discrimination on grounds of disability has been extended in recent years and encourages the Swedish authorities to further expand the scope of protection against discrimination under its domestic law to all spheres of life.
68. Given the limited mandate and powers of the Equality Ombudsman, the setting up of a national human rights institution in accordance with the Paris Principles, as recommended by the Commissioner in his letter of October 2017,⁴⁰ appears all the more necessary to monitor the national implementation of the CRPD, as required by its Article 33.

³⁸ By comparison, in 2016, out of 1890 complaints received by the Equality Ombudsman 613 related to discrimination on the ground of disability.

³⁹ UN Human Rights Committee, [Concluding observations on the seventh periodic report of Sweden](#), CCPR/C/SWE/CO/7, March 2016, § 10.

⁴⁰ See Introduction, above.

2.2 EMPLOYMENT OF PERSONS WITH DISABILITIES

69. By ratifying the CRPD, Sweden made the commitment to “promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment” and to “employ persons with disabilities in the public sector” (Article 27e and 27g). However, the unemployment rate among persons with disabilities in Sweden remains quite high. The review of the Swedish Disability Strategy in 2013 highlighted that only 44% of those with “reduced capacity to work” (see below) were employed, compared to 75% of the general population.⁴¹ During the visit, the Commissioner was informed that the situation had improved since then and that 58% of persons with “reduced capacity to work” were currently employed compared to 79% of the general population.
70. Specific measures for people with disabilities who have “reduced ability to work”⁴² include subsidized employment (wage-subsidy for development employment, wage-subsidy for security employment, and wage-subsidy for employment and sheltered employment with a public sector employer); sheltered employment with Samhall AB (a state-owned company with a clearly stated social mission, which is to provide work for people with a functional impairment); support for technical occupational aids; support for a personal assistant; interpreter for people with visual or hearing disability; support while starting a business; and support for young persons with disabilities. In 2016, 74,965 persons with disabilities were receiving wage subsidies for employment.
71. The Commissioner observes that, in Sweden, the majority of labour market measures for persons with disabilities are based on the concept of “reduced capacity to work”, a concept which has been criticised by the disability community as it stigmatises the persons concerned. In its Concluding observations on Sweden, the UN Committee on the Rights of Persons with Disabilities recommended “that the State party assess the impact of the use in the labour market of the term ‘people with reduced capacities or limitations’ to refer to persons with disabilities, and revise it in accordance with the principle of non-discrimination.”⁴³

2.2.1 CONCLUSIONS AND RECOMMENDATIONS

72. While welcoming measures undertaken to foster employment of persons with disabilities in Sweden, the Commissioner is concerned that unemployment remains higher for persons with disabilities than for the general population. He calls on the authorities to phase out the term “reduced capacity to work” and instead focus on the ability of the person to work, with due regard to how support can compensate the disability.

2.3 SUPPORTED DECISION-MAKING

73. Article 12 of the CRPD guarantees the right to equal recognition before the law. It notably sets out that persons with disabilities should enjoy legal capacity on an equal

⁴¹ Handisam report on the situation in 2013 (“[Hur är läget 2013? Uppföljning av funktionshinderspolitiken](#)”), p. 21.

⁴² The Swedish Public Employment Service is tasked with working to compensate for the reduced working capacity of persons with disabilities.

⁴³ [Concluding observations on the initial report of Sweden](#), *supra*, § 50.

basis with others in all aspects of life and be provided access to the support they may require to exercise their legal capacity and take decisions about their lives.

74. While Sweden abolished total guardianship in 1989, the Commissioner notes that it replaced it with two alternative measures of assistance.⁴⁴ If a person needs assistance in safeguarding his or her rights, administering his or her property or providing for his or her needs because of mental or physical ill health, the court can appoint a mentor (*god man*) or an administrator (*förvaltare*). In 2016, 70,730 persons were assisted in this context: 59,807 were supported by a mentor and 10,923 by an administrator.⁴⁵
75. A mentor offers assistance without limiting the individual's legal capacity to act. An administrator, in contrast, is appointed when an individual is unable to take care of him- or herself or his or her property and does not need the consent from the person with a disability to take a legally binding decision. The administrator's mandate stipulates the concrete restrictions to legal capacity. In its concluding observations on Sweden, the UN Committee on the Rights of Persons with Disabilities expressed concerns that the appointment of an administrator is a form of substituted decision-making.⁴⁶
76. On the other hand, Sweden has developed a pilot project on supported decision-making in line with Article 12 of the CRPD through the innovative Personal Ombudsmen (*personligt ombud* or PO) system. The personal ombudsmen support model, which was developed based on a recognition that existing legal capacity systems did not meet the needs of many people with psychosocial disabilities who were pushed between authorities and unable to access their rights, has shown good results.⁴⁷
77. A PO holds an independent position in a municipality's social services and provides support in decision-making to individuals who have a complex need of care due to a mental or psychosocial disability. The municipalities can choose to run the PO service themselves, or contract some non-governmental organisations to run it for them.
78. The Commissioner notes with satisfaction that, in 2013, a new regulation included the PO system in the regular welfare system, establishing permanent funding for the PO system. As of 2014, 310 POs provided support to more than 6,000 individuals and 245 municipalities (84 % of all municipalities in Sweden) included POs in their social service system.⁴⁸

⁴⁴ See European Union Agency for Fundamental Rights (FRA), [Legal capacity of persons with intellectual disabilities and persons with mental health problems](#), Report, July 2013, p. 31.

⁴⁵ Figures provided by the Swedish Ministry of Justice, reflecting the situation as reported by those municipal chief guardians that have provided the necessary data.

⁴⁶ [Concluding observations on the initial report of Sweden](#), *supra*, § 33.

⁴⁷ For more details, see Council of Europe Commissioner for Human Rights, Issue Paper "[Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities](#)", February 2012, p. 20. See also <http://po-skane.org/in-foreign-languages/>.

⁴⁸ Report of the Swedish National Board of Health and Welfare on the activities of POs ("[Personligt ombud för personer med psykisk funktionsnedsättning – Uppföljning av verksamheten med personligt ombud](#)"), April 2014.

2.3.1 CONCLUSIONS AND RECOMMENDATIONS

79. The Commissioner calls on the Swedish authorities to sustain progress in replacing all forms of substituted decision-making with supported decision-making, so as to fully comply with the requirements of Article 12 of the CRPD. In this respect, the Commissioner encourages the authorities to continue to support and extend the innovative Personal Ombudsmen system.

2.4 INDEPENDENT LIVING

80. Article 19 of the CRPD (“Living independently and being included in the community”) requires states to ensure that “persons with disabilities have access to a range of in-home, residential and other community support services including personal assistance necessary to support living and inclusion in the community”. Personal assistance is thus a cornerstone of the independent living requirement. At the European level, Article 15 of the European Social Charter (revised) provides that persons with disabilities have the right “to independence, social integration and participation in the life of the community”.

81. Sweden has long been at the forefront of developing and implementing personal assistance services. The Act concerning Support and Service for Persons with Certain Functional Impairments (LSS), which entered into force in 1994, gives people with disabilities the right to personal assistance.⁴⁹ It applies to persons with intellectual disabilities, autism or conditions similar to autism; persons with significant and permanent intellectual functional disabilities, following brain damage in adulthood; and persons, who as a result of other serious and permanent functional disabilities, which are clearly not due to normal ageing, have considerable difficulties in everyday life and great need of support or service. An individual assessment of how much assistance is required for five “basic needs” (*i.e.* personal hygiene, eating, dressing and undressing, communicating with others, and help which requires extensive knowledge about the person’s impairment) is made: if these basic needs are estimated 20 hours or more per week, the assessment will be done by the Swedish Social Insurance Agency, otherwise by the municipality. Persons who need 20 or more hours of assistance per week for these basic needs are entitled to state-funded personal assistance at the Social Insurance Agency; persons who need less than 20 hours of assistance per week can obtain personal assistance from their local municipality. Decisions on personal assistance can be appealed through the Administrative Court system.

82. During the visit, the Commissioner was informed that a number of persons who were entitled to personal assistance under the LSS had lost support in recent years.⁵⁰ In addition, interlocutors of the Commissioner reported an increase of intrusive checks being made on individuals when determining the extent of the right to personal

⁴⁹ Other forms of assistance covered in the LSS include advice and personal support, companion service, contact person, relief service at home, short-term stays away from home, short-term care for school children over 12, living in family homes or housing with special services for children and young people or for adults, and daily activities.

⁵⁰ Recent statistics show that the number of persons who had their state-funded personal assistance removed after a reassessment significantly increased from 33 persons in 2003 to 284 in 2012. In 2016, 225 persons lost such support. See statistics available at: <https://assistanskoll.se/assistans-statistik.php>.

assistance. They also indicated that the proportion of first time applicants being denied personal assistance had increased.⁵¹

83. In its concluding observations on Sweden, the UN Committee on the Rights of Persons with Disabilities expressed concerns that “State-funded personal assistance has been withdrawn for a number of people since 2010 due to a revised interpretation of ‘basic needs’ and ‘other personal needs’, and that persons who still receive assistance have experienced sharp cutbacks, the reasons for which are unknown or only seemingly justified. It is further concerned at the reported number of positive decisions under the Swedish Act concerning Support and Service for Persons with Certain Functional Impairments that are not executed.”⁵²
84. According to the authorities, about 16,000 persons were receiving an allowance for personal assistance in 2016, while 700 persons were refused state-funded personal assistance.⁵³ As a consequence, some persons had to move from the national to the municipal system after a reassessment of their needs, as they fell below the 20 hours threshold required for receiving state-funded personal assistance. However, the difference between national and municipal policies was identified as a problem by the UN Committee on the Rights of Persons with Disabilities, which noted in 2014 that “there is a serious gap between the policies followed by the state party and those followed by the municipalities with respect to the implementation of the Convention”.⁵⁴
85. In the view of many of the Commissioner’s interlocutors, the decrease in the number of persons entitled to personal assistance is due to the willingness of the authorities to reduce costs given the high expenditures for the system. There is a general perception among officials that the system of personal assistance has been overused over the years, both in terms of numbers of persons concerned and numbers of hours of personal assistance that a person is entitled to – or even fraudulently mis-used. This has led to a restrictive interpretation of the LSS and a narrowing of eligibility for personal assistance, backed by a number of court rulings. In particular, the attention of the Commissioner was brought to a shift from a social to a medical interpretation of the criteria for accessing personal assistance.
86. The fact that the officials responsible for the assessments of the needs and the budget holders responsible for covering the cost are part of the same organisation, *i.e.* the Social Insurance Agency or the municipality, has also been subject to criticism.
87. As a result of the decrease in state-funded personal assistance, a trend towards re-institutionalisation has been reported, which is of special concern to the Commissioner. Children have apparently been particularly affected, as indicated by a recent report of the Swedish National Board of Health and Welfare, according to which municipalities have difficulties in finding adequate replacement for those who

⁵¹ This proportion increased from 32.8% in 2005 to 67% in 2015 and reached 88.5% in June 2017.

⁵² [Concluding observations on the initial report of Sweden](#), *supra*, § 43.

⁵³ As of November 2017, 14,984 persons were receiving an allowance for personal assistance.

⁵⁴ [Concluding observations on the initial report of Sweden](#), *supra*, § 7.

have been denied state-funded personal assistance, occasioning an increase of short-term stays in homes for children with disabilities.⁵⁵

2.4.1 CONCLUSIONS AND RECOMMENDATIONS

88. The Commissioner is concerned that Sweden is implementing retrogressive measures in the area of state-funded personal assistance. He calls on the authorities to closely monitor the impact of the decrease in state-funded personal assistance in terms of access to rights, in particular access to education and employment; resort to congregated settings; and re-medicalisation of the approach to disability.
89. In this context, the Commissioner welcomes the announcement made by the Minister for Children and the Elderly that some provisions of the LSS will be suspended, pending the outcome of a review of that law. The rule that people who have personal assistance are supposed to be reassessed every two years will notably be suspended.
90. The Commissioner underscores that arguments of cost-effectiveness and administrative organisation of care and services should not have primacy over the right to independent living. The UN Committee on the Rights of Persons with Disabilities recently stressed that when “a State party seeks to introduce retrogressive measures with respect to article 19, for example, in response to an economic or financial crisis, the State is obliged to demonstrate that such measures are temporary, necessary and non-discriminatory and that they respect its core obligations.”⁵⁶ Additionally, the Committee underlined that the “duty of progressive realization also entails a presumption against retrogressive measures in the enjoyment of economic, social and cultural rights. Such measures deprive people with disabilities of the full enjoyment of the right to live independently and be included in the community. As a matter of consequence, retrogressive measures constitute a violation of article 19.”⁵⁷
91. Finally, the Commissioner draws the attention of the Swedish authorities to his predecessor’s Issue Paper on the right of people with disabilities to live independently and be included in the community, which contains indicators and guiding questions to help member states to monitor their progress towards full compliance with this right.⁵⁸

2.5 INVOLUNTARY PLACEMENT AND TREATMENT

92. Involuntary psychiatric hospitalisation and treatment in Sweden is governed by two legal acts: the Compulsory Psychiatric Care Act (LPT), which provides the legal framework for civil involuntary hospitalisation of persons who refuse to consent to necessary psychiatric care or who are judged “incapable” of participating in such care voluntarily, and the Forensic Psychiatric Care Act (LRV), which concerns forensic

⁵⁵ Report on the consequences of judgments relating to personal assistance (“[Assistansdomar får direkta konsekvenser för enskilda och kommuner](#)”), December 2017.

⁵⁶ UN Committee on the Rights of Persons with Disabilities, [General comment No. 5](#) (2017) on living independently and being included in the community, adopted on 31 August 2017, CRPD/C/GC/5, § 44.

⁵⁷ *Ibid.*

⁵⁸ Council of Europe Commissioner for Human Rights, [Issue Paper](#) “The right of people with disabilities to live independently and be included in the community”, March 2012.

psychiatric patients sentenced to compulsory treatment pursuant to the Criminal Code.⁵⁹

93. Approximately 12,000 persons are annually deprived of their liberty under the LPT, while about 1,600 persons are cared for under the LRV.⁶⁰ Under the LPT, patients who are eligible for open care treatment or who could be released entirely must have an accommodation and be financially stable. However, it appears that, in 2014, 13% of the patients in forensic psychiatric care ready for release were not discharged due to a lack of housing and a lack of cooperation between the county council and the municipality regarding payments for these patients.⁶¹
94. The Commissioner is concerned by the long-standing problem of the prevalence of compulsory admissions and coerced treatment in Sweden's psychiatric institutions. The lack of sufficient safeguards to ensure a free and informed consent when it comes to psychiatric treatments such as electroconvulsive therapy (ECT) has notably been a constant concern in Sweden. In 2009 and 2015, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) underlined that "involuntary hospitalisation of a psychiatric patient continued to be construed as automatically authorising treatment without his/her consent."⁶² In this respect, the CPT referred to instances where doctors sought to obtain patients' verbal consent to treatment, but where there was no written proof that such informed consent had been given. Furthermore, a patient's refusal or subsequent withdrawal of consent to treatment did not result in an external independent psychiatric review as to whether treatment could be provided against the patient's will, according to the CPT.⁶³
95. In 2014, the UN Committee on the Rights of Persons with Disabilities expressed its deepest concern at the number of cases relating to the use of ECT and its possible use as a compulsory treatment, and was concerned that such treatment was performed more often on women.⁶⁴ It also underlined the need to "take all the immediate necessary legislative, administrative and judicial measures to ensure that no one is detained against their will in any medical facility on the basis of actual or perceived disability."⁶⁵ Moreover, the Committee was concerned about the methods used in coercive and involuntary treatment of children with disabilities in mental health care settings, as reported by the Ombudsman for Children in Sweden.⁶⁶

⁵⁹ See the report on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 May 2015, [CPT/Inf \(2016\) 1](#), § 103.

⁶⁰ Statistics on psychiatric care, Swedish National Board of Health and Welfare (*Socialstyrelsen*), <http://www.socialstyrelsen.se/statistik/statistikefteramne/psykiatrisktvangsvard>.

⁶¹ Swedish National Quality Registry for Forensic Psychiatry (*Nationellt Rättspsykiatriskt Kvalitetsregister (RättspsyK)*), [Annual report 2014](#), p. 25.

⁶² CPT report on the visit to Sweden, *supra*, § 123.

⁶³ *Ibid.*

⁶⁴ [Concluding observations on the initial report of Sweden](#), *supra*, § 37.

⁶⁵ *Ibid.*, § 36.

⁶⁶ *Ibid.*, § 39. See also UN Committee on the Rights of the Child, [Concluding observations on the fifth periodic report of Sweden](#), CRC/C/SWE/CO/5, January 2015, § 25.

96. Two years later, the UN Committee on Economic, Social and Cultural Rights expressed the same concern about the use of coerced treatment against persons, particularly women, during compulsory care. It also stressed “the insufficient use of alternative treatments for persons with psychosocial disabilities” in Sweden and “the prevalence of compulsory admissions of such individuals to psychiatric institutions.”⁶⁷ Finally, it was also concerned that persons with psychosocial disabilities enjoy limited opportunity to appeal against decisions for compulsory admission.
97. During the Commissioner’s visit, civil society representatives also raised concerns about the use of electroconvulsive therapy without free and fully informed consent. They pointed to an investigation conducted by the National Board of Health and Welfare, which indicated that only half of the ECT treatments carried out throughout Sweden were registered and that the reporting system of such treatments was not adequate.⁶⁸ In addition, they highlighted that while the law provides the possibility to contest a decision of coercive treatment and to secure a second medical opinion in the context of the hospitalisation procedure and treatment, these rights were not effectively ensured in practice.
98. A new Act on Patients’ Rights, applying also to psychiatric patients, entered into force on 1 January 2015 in Sweden, with a view to strengthening and clarifying the patients’ position and rights, notably the right to information. During its 2015 visit, the CPT, while welcoming this positive legislative development, stressed that the situation in practice continued to give rise to concern. A recent report of the Swedish Agency for Health and Care Services Analysis,⁶⁹ which has been commissioned by the government to monitor the implementation of the Act on Patients’ Rights, concluded that the patient’s position had not been strengthened since the introduction of the Act and, from the patients’ perspective, had in fact even been weakened in a number of areas, *i.e.* in terms of accessibility, information and participation. The report emphasised that these results were probably due to the low level of awareness still prevailing about the Act.

2.5.1 CONCLUSIONS AND RECOMMENDATIONS

99. All people with disabilities have the right to enjoy the highest attainable standard of health without discrimination and the care provided to them should be based on free and informed consent in line with Article 25 of the CRPD. The UN Committee on the Rights of Persons with Disabilities stated in 2014 that States parties are therefore obliged to require all health and medical professionals, including psychiatric professionals, to obtain the free and informed consent of persons with disabilities prior to any treatment and to refrain from permitting substituted decision-makers, including guardians, to provide consent on their behalf.⁷⁰

⁶⁷ UN Committee on Economic, Social and Cultural Rights, [Concluding observations on the 6th periodic report of Sweden](#), E/C.12/SWE/CO/6, June 2016, § 43.

⁶⁸ Report on ECT treatments (“[Rapportering av ECT-behandling till patientregistret – en kvalitetsstudie](#)”), March 2013.

⁶⁹ Act without impact – Assessment of the Swedish Act on Patients’ Rights 2014-2017 (“[Lag utan genomslag - Utvärdering av patientlagen 2014-2017](#)”), February 2017.

⁷⁰ UN Committee on the Rights of Persons with Disabilities, [General Comment No 1](#), Article 12: Equal recognition before the law, 11 April 2014, § 41.

100. Having regard to Article 14 of the CRPD (Liberty and security of the person), the Commissioner urges the Swedish authorities to reform legislation on involuntary placement in a way that it applies objective and non-discriminatory criteria which are not specifically aimed at people with psychosocial disabilities, while ensuring adequate safeguards against abuse for the individuals concerned. This legislative review should involve representative organisations of persons with psychosocial disabilities.
101. The Commissioner remains concerned by the use of coercion and involuntary treatment in psychiatric institutions in Sweden. The authorities should send a clear signal, including by means of the aforementioned legislative review, that the goal is to drastically reduce and progressively eliminate the recourse to coercion in psychiatry and to ensure that sufficient safeguards are in place in the meantime. In particular, the Commissioner calls on the authorities to ensure that patients' written informed consent is always sought before resorting to ECT and adequately registered. While the Commissioner commends Sweden's efforts towards reinforcing the rights of patients and their participation in decisions about care, he recalls that medical treatment should be based on free and fully informed consent, with the exception of life-threatening emergencies when there is no disagreement regarding the ability to consent.
102. In the Commissioner's opinion, a first step towards reducing coerced treatment would be to implement the recommendations contained in the report of the Swedish Agency for Health and Care Services Analysis regarding patients' rights. In addition, increase recourse to the Personal Ombudsmen system⁷¹ could be a way of limiting coercive practice in psychiatric institutions.

⁷¹ See above 2.3.