

The Convention
of the Rights of the Child
and the Aliens Act

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Summary of the interim report of the Committee
on the Convention of the Rights of the Child
and Swedish Legislation

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Preface

On 1 February 1996, the Swedish Government set up a parliamentary committee assigned with the task of conducting a broad survey of the standing of Swedish legislation and practice in relation to the provisions contained in the United Nations Convention on the Rights of the Child. The Committee on the Convention on the Rights of the Child, as it came to be called, was instructed to give priority to the situation of children in matters involving the Aliens Act, including cases involving refusal of entry or expulsion where children are affected. An interim report on these matters was submitted to the Swedish Government on 28 June 1996.

Since the plight of children in cases involving aliens can also be of interest outside Sweden, we are pleased to present a summary of the interim report in English

Gabriel Romanus

Chairman

The Committee on the Convention on the Rights of the Child

The Assignment of the Committee on the Convention on the Rights of the Child and Swedish Legislation

The United Nations Convention on the Rights of the Child was passed by the General Assembly of the UN on November 20, 1989. In this Convention the rights of the child were formulated for the first time in a systematic way in an internationally binding agreement. The Swedish Parliament gave its consent to the unconditional ratification of the convention on June 21, 1990 and the convention came into force on September 2 the same year.

In the light of Sweden's commitments, the Swedish Government decided on February 1, 1996 to commission a parliamentary committee to study how the spirit and content of the convention are manifested in legislation and practice. The committee was instructed to give priority to the issue of the status of the child in legislation concerning aliens. In other words, the assignment involved analysing aliens legislation in the light of the Convention on the Rights of the Child and the way in which it is applied.

The Committee on the Convention on the Rights of the Child and Swedish Legislation has used the four main principles of the Convention as the basic starting point for its analysis, that is: the principle of the best interests of the child, the importance of listening to the child, the child's right to life and development, and every child's right to enjoy his or her rights without discrimination. The question which the committee has asked in each of these areas is whether these principles are reflected in legislation and practice or if additions or changes are required.

The fundamental principles of the Committee's work

Some additional points of principle form the basis of the Committee's work. According to article 3 of the Convention the best interests of the child shall be a primary consideration. The Convention gives clear directions regarding when the child's best

interests shall constitute the decisive factor, for example in decisions regarding custody and adoption. With regard to other decisions which primarily affect the parents but which also affect the child, the principle of putting the child's best interests first must be the guiding one – "the best interests of the child shall be a primary consideration". This means that the child's interests shall carry great weight in those situations where they must be balanced against the overall interests of society.

The main principle underlying the work of the Committee is that the Aliens Act and related statutes constitute an area where the best interests of the child have to be balanced against the needs of the community to regulate immigration. Thus, the best interests of the child alone cannot be the decisive factor in such situations. At the same time, the Committee emphasizes that it is of crucial national interest that the Aliens Act and similar legislation are applied in a compassionate manner.

Moreover, the Committee is of the opinion that long periods of residence for those children and families with children who are subsequently expelled constitute a serious threat to a child's well-being. Another important principle according to the Committee is that the main responsibility for a child lies with his or her parents and that they are the ones most qualified to judge what is best for the child. However, this does not absolve the authorities from their responsibility to consider the best interests of the child when making various decisions which affect them.

The Convention on the Rights of the Child is a multilateral agreement which places an obligation on the states parties to realize the content and intention of the Convention. But the Convention also states that the states parties shall take into consideration the role of the parents and the family in the life and development of the child.

Proposals for changes

The review made by the Committee on the Convention on the Rights of the Child and Swedish Legislation shows that Swedish aliens legislation in the main is consistent with the Convention. On the other hand, there has been some criticism of how laws have been applied. For this reason the Committee is putting forward a

number of proposals and views concerning the application of aliens legislation. The Committee also proposes certain important changes to the law which in part are in line with the proposals of the Committee on Refugee Policy. If these proposals are adopted, the Committee is of the opinion that Swedish aliens legislation – at least as far as it is possible to foresee today – will comply with the spirit and content of the Convention.

Introductory provision

The fact that a large proportion of those persons who seek asylum or apply for residence permits for other reasons in Sweden are children is reflected only to a very small degree in the Aliens Act. The word or concept of "child" occurs in the current act in chapter 6 only, where the rules concerning detention and supervision are dealt with. The stipulation contained in the Convention that the child's situation be taken into consideration has no corresponding text in the Aliens Act.

The Committee therefore proposes that the general principle underlying the Convention on the Rights of the Child – that the best interests of the child be a primary consideration when taking any steps which affect children – be incorporated into the Swedish Aliens Act as an introductory provision. This provision, which should be incorporated into chapter one, paragraph 1 of the Act, shall state that when any decisions on the basis of this Act are to be taken, then special attention be paid to the health, development and general well-being of the child. The same paragraph in the Swedish Aliens Act should also contain a definition of a child as any person below the age of 18, in order to conform to article 1 of the Convention.

Strengthening of the first phase of the asylum process

The Committee has proposed that resources and competence should be concentrated on dealing with the introductory phase of the asylum process. Investigations as well as the grounds for decisions have to be improved so that the child's situation can be clearly deduced from the investigative reports. The grounds for decisions should also describe in what way the child's interests have been taken into consideration.

The Committee proposes that the Swedish Immigration Board be charged with the task of establishing routines for examination of children in families applying for residence permits. The model for examination of unaccompanied children which has been drawn up by the office of the United Nations High Commissioner for Refugees (UNHCR) should be used as a starting point. Further, the Committee proposes that the Swedish Immigration Board shall to a greater extent supplement investigations where children are involved with experts' reports on the health status of the child. In this context the Committee emphasizes the importance of consulting staff with knowledge and experience of children when undertaking such investigations.

Children shall be heard in the course of proceedings

As part of the process to improve the basic asylum investigative procedures which involve children and also as an adjustment to article 12 of the Convention on the Rights of the Child, the Committee proposes that the Aliens Act be supplemented with a provision stating that in investigations involving children, the child's statements be taken into account in accordance with the age and maturity of the child, and as long as such a procedure is not deemed inap-proprate.

Measures to create confidence

The Committee regards as a very serious matter the credibility gap which has arisen between those issuing certificates concerning i.a. the child's health and the authority granting the permits. The Committee therefore proposes that the Immigration Board be charged with the task of creating meeting places for the exchange of information and experiences between issuers of certificates and authorities. This work should be carried out in collaboration with voluntary organizations.

Furthermore, the Committee proposes that the Government initiate a broad review of the system of medical advisers which has been called in question and is controversial, particularly with respect to cases involving alien issues. In the present circumstances,

the Committee stresses how important it is that the medical adviser asked to evaluate a certificate which has been issued by a doctor, has at least the same level of competence as the issuing doctor when certificates need to be assessed.

The child's best interests and residence permits

The assessment of whether or not a residence permit shall be granted on humanitarian grounds should be made taking into account article 3 of the Convention. Factors which, in the view of the Committee, should be taken into account when considering the child's best interests are the child's need of care and good health, as well as his or her need of relations with parents. Furthermore the child's need of development and connections with Sweden should be considered in deciding what is best for the child. The most important factors relating to the child's best interests are whether or not the child is living with his or her parents and if the child has access to at least one reasonably stable parent.

Assessments made on the basis of the child's best interests must then be balanced against the overall interests of the community. The provision contained in article 3 should be considered to be complied with if the best interests of the child have been taken into account during the assessment process and have carried substantial weight.

Unaccompanied children

The Committee would like to emphasize the fact that unaccompanied children are first and foremost children. Their status as asylum-seekers takes second place. Thus, the ban on discrimination contained in article 2 of the Convention comes into force as soon as a child arrives in Sweden. An unaccompanied child should, in the opinion of the Committee, in principal never be expelled directly to a first asylum country or a so-called safe third-country. Moreover, the Committee holds the view that the child's reasons for seeking asylum should be given priority in investigative work and that efforts to find the parents should only be initiated after it

is quite clear that the child does not have such need of protection that grounds for asylum exist. The Committee also holds the view that unaccompanied children, irrespective of age, should always be placed in a family or a similar, home-like environment. The Committee would also like to draw attention to the international development work for unaccompanied children initiated by the UNHCR.

The situation of children in hiding

The Committee would first like to stress that the fact that children are in hiding in Sweden and beyond the reach of the community constitutes an extremely serious dilemma. Public measures must focus on reducing the number of people who go into hiding and on limiting the harm inflicted on children. The proposals put forward by the Committee with a view to improving investigative work and the grounds for decisions is also aimed at creating better understanding of the decisions that are made. In the long-term, the Committee believes that this could reduce the number of people going into hiding. The Committee thinks that it is important to invest resources in reception facilities in the home country. The Immigration Board should in this context develop cooperation with the voluntary organizations that also work internationally.

The Committee is of the opinion that the fact that it is possible to have applications for residence permits reconsidered an unlimited number of times creates new problems. It would also like to point out that the new circumstances which are cited in a new application for a residence permit shall be examined on the same basis as the circumstances cited in the original application. Consideration of the child's best interests must also carry great weight in this case. The Aliens Appeals Board has proposed that a new application for a residence permit may be considered only on the condition that the applicant is accessible for enforcement of the decision. In the opinion of the Committee this proposal should be regarded as a preventive measure. Such a limitation can contribute to a reduction in the number of children in hiding and reduce long stays in Sweden before expulsion orders are enforced.

Medical care for children in hiding

The Committee ascertains that present legislation assures all children in Sweden of the right to emergency medical care. If the provisions in articles 2 and 24 of the Convention are to be complied with, then children seeking asylum should be granted the same right to health and medical care as Swedish children. Therefore the Committee is of the view that the Health and Medical Services Act and other laws and statutes regulating the right to health and medical care should be changed in order to comply with the provisions contained in the Convention.

Revoking residence permits

In this context, the Committee would like to emphasize that it is seldom the child who has supplied incorrect information. Rather it is the child who is affected by something for which his or her parents are responsible. However, the Committee would like to stress that in cases where the question of revoking a residence permit has arisen, the interests of the child must be considered and his or her best interests must carry considerable weight in the final decision.

The Committee sees no reason to propose changes to the Aliens Act in this area. It is inevitable that legislation leaves room to revoke a permanent residence permit that is based on incorrect information from the applicant.

The child's right to his or her parents

The basic standpoint of the Committee is that the Convention's express principle of the child's right to his or her parents is paramount. In the assessment process, when an application for a residence permit for reunification from either the parents or the child are being considered, as well as in situations where the family is threatened with being split up, the principle of the child's best interests should carry great weight. Problems frequently occur when investigators are trying to establish correct family relationships when applications for reunifications are being examined. The Committee holds the view that the Swedish Immigration Board

should seek more unconventional methods and be more flexible about the documents referred to by the applicant.

In paternity investigations when the child and/or the alleged father are domiciled in Sweden, the Committee proposes that the possibility of granting a temporary residence permit be introduced to enable the authorities to complete their investigations. A temporary residence permit of this kind should also include the child's guardian. The Committee also proposes that the social welfare authorities' obligation to determine paternity be extended to include children born in Sweden to foreign women applying for residence permits where the alleged father is also living in Sweden.

Criminality and residence permits

When the authorities are investigating how a person's way of life should affect his or her right to be granted a residence permit or be allowed to remain in Sweden, the Committee is of the opinion that in those cases where children are affected by the decision, only when serious crimes such as drugs offences or crimes against life and health are involved should the interests of the child take second place. In those cases where a person with children in Sweden has been expelled and banned from re-entering the country, the Committee proposes that the Government initiate a review of the rules in order to make contact between parents and children possible.

Collision between the Care of Young Persons Act and the Aliens Act

As a first comment on this section, the Committee would like to stress that the protection afforded children by the Care of Young Persons Act is also valid for children of foreign origin domiciled in Sweden. The work of the social welfare authorities must focus on the reunification of children with their parents. The Committee proposes that a clause be added to the Aliens Act which would allow children and their guardians to be granted a temporary residence permit in those cases where the child has been taken into care under the terms of the Care of Young Persons Act. The social

welfare authorities should primarily focus on examining whether or not treatment can be completed within a limited period of time in Sweden. If the necessary treatment under the terms of the Care of Young Persons Act is estimated to be of long duration, then the authorities should turn their attention to helping the family return to their home country. For such purposes, the Committee finds it important that the social welfare authorities establish cooperation with the Swedish Immigration Board, the social authorities in the home country and voluntary organizations in Sweden and the home country with a view to drawing up a joint plan for continued care and repatriation. Taking a child into care under the Care of Young Persons Act should not automatically imply an obstacle to enforcement. Instead an individual examination must be made. During the course of this examination, the social welfare authorities must be questioned, and their opinion given due weight. The Committee intends to report later on how this process shall be regulated in connection with the Committee's further study of the Social Services Act and the Care of Young Persons Act.

Children in detention

The Committee is of the opinion that the main guideline, also in the case of children in detention, should be of a preventive nature. According to the Convention, custody may only be used as a "measure of last resort and for the shortest appropriate period of time". Every effort should be made to prevent such situations arising that make it necessary to detain children. Detaining children shall in principle only be permissible in those cases where such an action is absolutely essential in order to be able to ensure enforcement of a final refusal-of-entry or expulsion order, and even then the authorities should carefully consider if the same purpose cannot be achieved by placing the child under supervision. The Committee proposes that the rules concerned with detention in the Aliens Act be changed in order to conform better to article 37b) of the Convention.

The Committee also stresses the importance of the facilities used to accommodate children in detention. They should be suitable for keeping children in detention, and staff with knowledge

and experience of working with children should be available. Such facilities should resemble ordinary housing within the framework of normal immigrant and refugee accommodation. No personnel in uniform should be permitted. Furthermore, the Committee is of the opinion that the possibilities of developing support services for families with children in detention should be examined in cooperation with voluntary organizations.

Children and enforcement

When an expulsion order is to be enforced, every effort must be made to prevent the order from being enforced in a dramatic manner. Panic-stricken parents who resist enforcement can create a catastrophic situation for the child. One decisive factor for how expeditiously the order is carried out is, *inter alia*, the amount of time the family spends in Sweden. The longer the period before the final decision on expulsion is made, the more disturbing the idea of repatriation becomes. The Committee is also of the opinion that people who are to be expelled need support and time to prepare themselves for repatriation. This should be arranged in such a way that when the Immigration Board's decision on expulsion has been made, social support should be focused on adjustment to that decision.



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