

ACCESS TO JUSTICE FOR CHILDREN: SWEDEN

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

Sweden ratified the CRC on 29 June 1990.¹ Treaties do not form part of national law unless they have been incorporated by an act of Parliament. The CRC has not been incorporated.² According to the Swedish government, “[n]o international human rights convention has been transposed into law in Sweden, except for the European Convention for the Protection of Human Rights and Fundamental Freedoms”. Instead, “[t]he Swedish legal and constitutional tradition is such that international agreements are incorporated into Swedish law by means of transformation, i.e. by adapting the national legislation to match the requirements of the conventions”.³ It is a general principle of Swedish law, however, that legislation is to be interpreted in light of international obligations.⁴

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law. The CRC is treated in accordance with the principle of treaty-conform interpretation. Accordingly, courts and other public bodies in Sweden are expected to interpret and apply laws and regulations to conform with the CRC wherever possible.⁵

C. Has the CRC been incorporated into national law?

The CRC has not been directly incorporated into Swedish law. However, Sweden has integrated aspects of the CRC, including the best interests of the child principle, into its legislation.⁶ In its 2009 examination by the Committee on the Rights of the Child, Sweden stated that “the Government does not see any need at present to transpose the CRC into Swedish law.”⁷ However, the Committee on the Rights of the Child in its

¹ UN Treaty Collection, ‘Convention on the Rights of the Child’, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

² L. Lundy, U. Kilkelly, B. Byrne and J. Kang, ‘The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries’, 2012, p. 94, available at:

http://www.unicef.org.uk/Documents/Publications/UNICEFUK_2012CRCImplementationreport%20FINAL%20PDF%20version.pdf.

³ *Written replies by the Government of Sweden to the list of issues (CRC/C/SWE/Q/4) prepared by the Committee on the Rights of the Child in connection with the consideration of the fourth periodic report of Sweden*, CRC/C/SWE/Q/4/Add.1, 24 April 2009, p. 2. Available at:

<http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.SWE.Q.4.Add.1.pdf>.

⁴ L. Lundy, et al, p. 94.

⁵ *Fifth periodic report of Sweden to the UN Committee on the Rights of the Child*, CRC/C/SWE/5, 5 May 2014, para. 26. Available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.SWE.5.pdf>.

⁶ L. Lundy, et al, p. 95.

⁷ *Written replies by the Government of Sweden to the list of issues (CRC/C/SWE/Q/4) prepared by the Committee on the Rights of the Child in connection with the consideration of the fourth periodic report of*

concluding observations recommended that the Swedish government “continue and strengthen its efforts towards formal recognition of the Convention as Swedish law” and that the CRC “should always prevail whenever domestic law provisions are in conflict with the law enshrined in the Convention”.⁸

The incorporation of the CRC into Swedish law is currently under discussion in Sweden. In a 2009 letter to the Swedish government, the Ombudsman for Children urged the government to appoint a commission to undertake a review regarding conformity of Swedish law with the CRC and to consider whether the CRC should be given legal status as law.⁹

In March 2013, the Swedish government appointed a special investigator to carry out a survey of whether the CRC should be incorporated into national law. The investigator’s final report which recommends the Convention’s complete incorporation is due to be published on 28 February 2016.¹⁰

D. Can the CRC be directly enforced in the courts?

The CRC may not be directly enforced in Swedish courts. However, under the principle of treaty-conform interpretation, Swedish courts are expected to interpret and apply laws and regulations to meet the obligations under the CRC as much as possible within the framework of Swedish legislation.¹¹

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

The CRC may be cited by Swedish courts;¹² however, there are no official translations of such cases from Swedish courts.¹³

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Children’s representatives—the custodian, for personal affairs, and the guardian, for economic affairs (and in some cases the children themselves if permitted by the court)—can bring actions in domestic courts. The Swedish Act on Special Legal Representative for Children (1999:997) provides a mechanism for a court-appointed representative to bring criminal actions against people close to a child who are

Sweden, p.2.

⁸ UN Committee on the Rights of the Child, *Concluding Observations on the fourth periodic report of Sweden*, CRC/C/SWE/CO/4, 2009, para. 10. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSWE%2fCO%2f4&Lang=en.

⁹ *Fifth periodic report of Sweden to the UN Committee on the Rights of the Child*, para. 28.

¹⁰ See <http://www.regeringen.se/rattsdokument/kommittedirektiv/2015/02/dir.-201517/>.

¹¹ *Ibid.*, para. 25.

¹² See CRIN, ‘Sweden: national laws’, available at: <https://www.crin.org/en/library/publications/sweden-national-laws>.

¹³ See S. Sternberg, ‘Update: Swedish law and legal materials’, September 2011, available at: http://www.nyulawglobal.org/Globalex/Sweden1.htm#_The_Court_System_and_Reports_of_Cases.

suspected of violating the child's rights.¹⁴

On the civil side, children (through their representatives) can bring actions for damages in accordance with the Swedish Code of Judicial Procedure. For example, with respect to discrimination and other degrading treatment of a child, an action for damages can be brought by a child through their representative, or by an Ombudsman¹⁵ or the National Agency for Education as a party for the child if his/her custodian consents.¹⁶

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

The custodian of a child acts as the child's legal representative for issues related to the personal affairs of the child.¹⁷ Under Swedish law the custodian of a child is usually responsible for the actual care of the child and has a duty to meet the child's needs for care, protection, education and maintenance. For matters related to the economic affairs of a child, the guardian acts as the legal representative.¹⁸ The guardian is responsible for the administration of the child's property and financial matters.¹⁹

In proceedings brought under the Social Services Act and the Care of Young Persons Act, the relevant parties are the child's custodian(s) and the social welfare committee. In these proceedings children 15 years of age or older may speak on their own behalf. Children under the age of 15 have the right to their own legal representative to replace the custodian and may speak on their own behalf if the court determines it would not be harmful to the child.²⁰

Children 16 years of age or older may apply to the court to be appointed a guardian. These children will not be a party to any case brought by the guardian but may be heard.²¹

The Swedish Code of Judicial Procedure allows a private claim resulting from a crime to be brought in conjunction with the criminal proceeding.²² If a private claim is brought related to an offence eligible for public prosecution, the prosecutor will prepare and present the victim's action in conjunction with the criminal prosecution at the request of the victim.²³ The Act on Counsel in Sweden provides that counsel for the plaintiff victim shall be appointed when a preliminary investigation has begun into

¹⁴ Child Centre, 'The Children (Special Representative) Act (1999:997)', available at: <http://www.childcentre.info/10726/>.

¹⁵ The Equal Opportunities Ombudsman, the Ombudsman Against Ethnic Discrimination, the Ombudsman against Discrimination because of Sexual Orientation or the Disability Ombudsman.

¹⁶ Act Prohibiting Discrimination and Other Degrading Treatment of Children and School Students (2006:67), section 20, available at: <http://www.regeringen.se/content/1/c6/06/42/67/4b3714d5.pdf>.

¹⁷ M. Jänterä-Jareborg, A. Singer & C. Sörgjerd, 'National report: Sweden', available at: <http://ceflonline.net/wp-content/uploads/Sweden-Parental-Responsibilities.pdf>.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ M. Jänterä-Jareborg, et al.

²¹ Ibid.

²² See FRA, 'Thematic study on child trafficking: Sweden', available at:

http://fra.europa.eu/sites/default/files/fra_uploads/524-Child-trafficking-09-country-se.pdf.

²³ Ibid.

serious crimes like trafficking, sexual offences, kidnapping, etc. The plaintiff's counsel in these instances is charged with protecting the plaintiff's interests, providing assistance and preparing and presenting the plaintiff's case if such actions are not already being taken by the prosecution.²⁴

C. In the case of infants and young children, how would cases typically be brought?

There are no special procedures for infants and young children. As long as the child is under the age of 18 the custodian or guardian of a child acts as the child's legal representative.

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

In Sweden it is a fundamental right to have one's case heard by a legal representative, either in or outside court. The right to legal aid is governed by the Legal Aid Law.²⁵

In civil matters, there are two types of legal assistance available: (1) advice, and (2) legal aid. Both are provided at State expense and regulated by the Legal Aid Law. The Legal Aid Authority in Sweden administers legal aid in all cases except criminal proceedings (where the decision is made by a court, as described below) and family law matters (where the decision is made by the lawyer consulted), and has the discretion to grant or refuse aid in all such cases.

Before applying for legal aid, a person must first make an appointment for advice under the Legal Aid Act. Advice is a meeting with a lawyer to examine the details of the dispute in order to provide advice and make a professional assessment of a person's need for legal aid. Individuals are required to pay a set fee for advice directly to the legal representative of SEK 1,552 per hour (as at 2013). This fee may be reduced to half for special reasons, such as if the individual has an annual income of less than SEK 75,000 per year.²⁶ Individuals under the age of 18 with no income or wealth are entitled to advice free of charge.²⁷

An individual applies for legal aid together with the lawyer who he/she wishes to represent him/her. The simplest way to find a lawyer is through the Swedish Bar Association.²⁸ To be granted legal aid, there should be a need for legal assistance and it should be reasonable that the State pays the costs in the dispute.²⁹ If legal aid is granted, the State will pay the cost of representation by the lawyer. Individuals under the age of 18 with no income or wealth are entitled to legal aid free of charge.³⁰

An applicant will not be granted legal aid if he or she is receiving help from a public defence counsel or a public counsel (see below). An applicant will also not be granted

²⁴ Ibid.

²⁵ Legal Aid Authority, 'Legal aid in Sweden', January 2007, available at: http://www.domstol.se/Publikationer/Informationsmaterial/Legal_aid_in_Sweden.pdf.

²⁶ Legal Aid Authority, 'Are you entitled to legal aid?', 27 June 2013, available at: <http://www.rattshjalp.se/In-English/In-English/Are-you-entitled-to-legal-aid/>.

²⁷ Legal Aid Authority, 'Legal aid in Sweden'.

²⁸ Legal Aid Authority, 'Are you entitled to legal aid?'.

²⁹ Legal Aid Authority, 'Legal aid in Sweden'.

³⁰ Ibid.

legal aid if he or she has legal protection cover through insurance.³¹

Other sources of legal assistance available from the State include public defense counsel, public counsel, special representatives for children, and assistance for victims of crime.

Public defence counsels are appointed by a court and must be made available if a person is suspected of committing a criminal offence, but is not provided for misdemeanor offences.³²

Assistance by public counsel is a factor in cases regarding administrative courts or authorities. Such counsels are appointed by the agency administering the matter and paid for by the State.³³

If a child is suspected to be a victim of a crime committed by a person with custody of the child (i.e. parent or guardian) or a person in a close relationship to the custodian, the child may be entitled to a special legal representative funded by the State.³⁴ The representative will represent the child's rights during the investigation and hearing and is usually an attorney appointed by the court.³⁵

Aggrieved party counsels are court-appointed lawyers who protect the interests of victims of crime, including victims of sexual offences, assault, unlawful deprivation of liberty, and other offences under the Penal Code for which imprisonment may be imposed.³⁶ They provide support and assistance at State expense, such as help in establishing the victim's claim for damages related to a criminal case.³⁷

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

Under Swedish law, children under the age of 18 would not be able to bring court challenges to rights violations without their custodian or guardian in most cases. Please see parts II.A and B above.

III. How can children's rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

The CRC has not been directly incorporated into Swedish law, therefore violations of the CRC cannot be brought directly to courts. However, violations of children's rights

³¹ Ibid.

³² Ibid.

³³ See Act Regarding Public Counsel.

³⁴ See Act Regarding a Guardian ad Litem for a Child.

³⁵ See Swedish Crime Victim Compensation and Support Authority, 'Support and help', 8 May 2013, available at: <http://www.brottsoffermyndigheten.se/eng/help-for-victims/support-and-help>.

³⁶ See Act on Assistance to the Injured Person.

³⁷ Sveriges Domstolar, 'To the aggrieved party (victim of crime)', 27 November 2009, available at: <http://www.domstol.se/Funktioner/English/Legal-proceedings/To-the-victim-of-crime/>.

as specified in national law may be challenged in the domestic courts.

The European Convention on Human Rights has been directly incorporated into Swedish law and is enforceable in Swedish courts.³⁸ The government is responsible for ensuring human rights are not violated, and human rights violations are tried in the general court system. Thus any action must proceed against the government through Sweden's trial and appellate courts, up to the highest level, the Swedish Supreme Court, before filing any complaint with the European Court of Human Rights.³⁹

The right to judicial review of a legal provision that conflicts with the Constitution or other superior statute is provided for in Chapter 11, Article 14 of the Instrument of Government.⁴⁰ Under the Swedish system of judicial review, it is not possible to request a court ruling solely on the question of a legal provision's constitutionality. To be reviewed by a court, this question must have arisen in connection with the application of the provision to a particular case.⁴¹

Regarding administrative law, while a general right to challenge administrative acts exists, individuals cannot bring actions to force an administrative official to perform his/her duties. In general, unless an administrative decision was improperly made, administrative decisions are final.⁴² State acts can be challenged through the administrative court system, while local council acts are much more difficult to challenge. Standing to challenge administrative acts is available to all persons whom, or whose rights, the case involves.⁴³

Finally, children or their representatives can turn to the Children's Ombudsman (*Barnombudsmannen*) if they have suffered a rights violation by private companies or State agencies. The Children's Ombudsman is responsible for monitoring the State's compliance with the CRC and protecting the rights of children generally. The Children's Ombudsman may not intervene in individual cases but may provide help where individuals bring their complaints in case of a violation. The Children's Ombudsman has a duty of notification and shall immediately submit a report to the Social Welfare Board (*Socialstyrelsen*) if it becomes aware that the Social Welfare Board needs to intervene to protect a child.⁴⁴ The Committee on the Rights of the Child has recommended improvements to the mandate of the Children's Ombudsman, including considering whether to provide the Ombudsman with the mandate to investigate individual complaints.⁴⁵

³⁸ Mänskliga Rättigheter, 'The European Convention on Human Rights and the European Court of Human Rights', available at:

<http://www.manskligarattigheter.se/en/who-does-what/european-council/the-european-convention-on-human-rights-and-the-european-court-of-human-rights>.

³⁹ 'A national human rights action plan - a summary', available at:

<http://www.ohchr.org/Documents/Issues/NHRA/swedish.pdf>.

⁴⁰ Available at:

<http://www.riksdagen.se/en/How-the-Riksdag-works/Democracy/The-Constitution/The-Instrument-of-Government/>

⁴¹ 'A national human rights action plan - a summary'.

⁴² See Helitz, Nils, 'Swedish Administrative Law', 2 *Int'l & Comp. L.Q.* 224 (1953).

⁴³ *Ibid.*

⁴⁴ See Ombudsman for Children in Sweden, 'About us', available at:

<http://www.barnombudsmannen.se/english/about-us/>.

⁴⁵ UN Committee on the Rights of the Child, *Concluding Observations on the fifth periodic report of Sweden*, CRC/C/SWE/CO/5, 6 March 2015, paras. 13-14, available at:

[http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSWE%](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fSWE%2f)

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.⁴⁶ Any individual, group of individuals or an NGO who is a victim of a violation of one of these rights may submit a complaint to the Court,⁴⁷ but the complaint will be admissible only if all domestic remedies have been exhausted.⁴⁸ Anonymous complaints are not permitted.⁴⁹ The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.⁵⁰ After examining the case, the Court renders a judgment which is binding on the State⁵¹ and also has powers to award monetary compensation to the victims of human rights abuses.⁵² It is also worth noting that the Court has an established practice of referring to other international human rights instruments, including the CRC, as guides to interpretation of the European Convention.

B. What powers would courts have to review these violations, and what remedies could they offer?

In civil cases, compensation is available as a remedy for damages suffered by victims.⁵³

In criminal cases, the remedies available in Swedish courts include damages, fines, probation and imprisonment.⁵⁴ A person who receives damages as an award in a criminal case receives a written offer from a Swedish government sponsored enforcement agency to assist with collection of the debt.⁵⁵ Damages are awarded in Sweden based on the injury suffered by the plaintiff and punitive damages are not available under Swedish law.⁵⁶

If the perpetrator is unable to pay and the victim does not have insurance that fully covers the injuries, the victim can in some cases get compensation from the State known as “criminal injuries compensation”. This compensation is intended primarily for personal injury and violations of integrity.⁵⁷ Victims may recover compensation for physical and psychological injuries resulting from the crime, including medical expenses, pain and suffering and loss of income.⁵⁸

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⁴⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention on Human Rights”), 1950, Articles 19 and 32, available at:

<https://www.crin.org/en/library/legal-database/european-convention-protection-human-rights-and-fundamental-freedoms>.

⁴⁷ Ibid., Article 34.

⁴⁸ Ibid., Article 35.

⁴⁹ Ibid.

⁵⁰ Rules of Court, July 2014, Rule 36, available at:

http://www.echr.coe.int/documents/rules_court_eng.pdf.

⁵¹ European Convention on Human Rights, Article 46.

⁵² Ibid., Article 41.

⁵³ ‘Sweden report’, available at:

http://ec.europa.eu/competition/antitrust/actionsdamages/national_reports/sweden_en.pdf.

⁵⁴ See Ministry of Justice Sweden, ‘The Swedish judicial system’, available at:

<http://www.government.se/content/1/c6/16/65/79/c2777e20.pdf>.

⁵⁵ Ibid.

⁵⁶ See ‘Sweden report’.

⁵⁷ See Ministry of Justice Sweden, ‘The Swedish judicial system’.

⁵⁸ Swedish Crime Victim Compensation and Support Authority, ‘Criminal injuries compensation’, 24

There is also a special form of criminal injuries compensation meant for children who have witnessed violence in a close relationship. One prerequisite is that the crime would be assumed to harm the child's confidence and trust in a person with whom he or she has a close relationship. The government has a responsibility to compensate children who have witnessed serious criminal acts towards persons close to them, even though the child cannot claim damages from the offender.⁵⁹ Additionally, victims of certain crimes, including sexual offences, may recover for violations of "personal integrity".⁶⁰

The Criminal Victim Compensation and Support Authority (Authority) is responsible for determining criminal injuries compensation and administering the Fund for Victims of Crime.⁶¹ To be eligible to receive compensation from the Authority, the crime must have been reported to the police.⁶² If the perpetrator's identity is unknown, there must have been an inquiry or preliminary investigation proving that the victim was subject to a criminal act. If the perpetrator or suspect has been identified, a conviction or imposition of a fine is required "in principle".⁶³ Applications for compensation must be submitted no more than two years after the conclusion of the legal proceedings in the matter.⁶⁴ The Authority is not bound by a court decision on damages when administering compensation and its decisions may not be appealed.⁶⁵ The Authority's compensation decisions may be reviewed by the civil servant first in charge of the action, by a different civil servant, by the director-general or by the Migration Board.⁶⁶

Under the Swedish system of judicial review, if a court finds that a provision conflicts with the Constitution or other superior statute, the provision shall not be applied. The same applies if a procedure laid down in law has been disregarded in any important respect when the provision was made.⁶⁷

Where an individual has lodged an appeal against a decision taken by an administrative authority, an administrative court may review the act with regard to its compliance with the law and its appropriateness and fairness. The court can annul the act or modify it, or require the administrative authority concerned to act in some manner.⁶⁸

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Generally it is not possible to challenge a law or action without naming a specific victim.

October 2012, available at:

<http://www.brottsoffermyndigheten.se/eng/compensation/criminal-injuries-compensation>.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ See FRA.

⁶² See Swedish Crime Victim Compensation and Support Authority, 'Criminal injuries compensation'.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Chapter 11, Article 14 of the Instrument of Government.

⁶⁸ 'Administrative justice in Europe: report for Sweden', available at:

http://www.juradmin.eu/en/eurtour/i/countries/sweden/sweden_en.pdf.

In class actions, the general rule is that all members of the class are to be specified by name and address in the application for a summons (see part III.D below).

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Under the Class Action Act 2003, individuals or legal persons, organisations, and authorities (with special authorisation from the government) may initiate a class action. The three forms of class actions are as follows:

- Private class action: any person or entity can file a private class action so long as that person or entity has a claim of its own and is a member of the class;
- Organisational class action: a non-governmental organisation (NGO) may bring a class action without having a claim of its own so long as it is a consumer, labour, or environmental protection organisation;⁶⁹ and
- Public class action: a government authority may bring a class action and act as plaintiff to litigate the action on behalf of a group of class members. This form of action is intended to permit authorities to pursue claims where the public interest, in a broad sense, suggests that action should be taken. At this time the Consumer Ombudsman and the Swedish Environmental Protection Agency are the only authorities authorised to bring public class actions.⁷⁰

Certain preconditions must be met for proceedings to be heard by a court, including: the issues addressed must be the same or similar as regards the claims of all the members of the class; the case must not be evidently unmanageable on account of substantial differences in the legal basis of the claims of different members of the class; a class action must be more appropriate than other legal proceedings; the class must be appropriately defined; and the person bringing the action on behalf of the class must be an appropriate representative, and must not have interests of his or her own in the case that clash with the interests of other members of the class.

Under the Class Action Act, a class member must choose whether or not to “opt in”, i.e., to be included as a member of the class. Only class members who have given written notice to the court and thus chosen to “opt in” will be allowed to participate in the proceedings.⁷¹ Judgments in class actions have legal effect for all members of the class, although they are not parties to the case.⁷²

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

As described in part III.D above, an NGO may bring a class action without having a claim of its own so long as it is a consumer, labour, or environmental protection organisation. Apart from this, NGOs do not have the right to intervene in existing cases.

Sweden has ratified the Additional Protocol to the European Social Charter Providing

⁶⁹ Ministry of Justice Sweden, ‘Group proceedings’, December 2002, available at: <http://www.government.se/content/1/c6/01/62/78/6cd3ccdf.pdf>.

⁷⁰ See ‘Sweden report’.

⁷¹ Ibid.

⁷² Ministry of Justice Sweden, ‘Group proceedings’.

for a System of Collective Complaints,⁷³ meaning that complaints of violations of children's rights contained in the European Social Charter⁷⁴ can be made to the European Committee of Social Rights. Such complaints of unsatisfactory application of the Charter may only be submitted by international NGOs that have participatory status with the Council of Europe.⁷⁵ The Committee reviews the information provided by both sides and writes a report with its conclusions, which is sent to the Committee of Ministers of the Council of Europe that adopts a resolution and makes a recommendation to the State.⁷⁶ The State then must provide information about the steps taken to comply with the recommendation in its next report under the Charter.⁷⁷

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

The district court in Sweden is the court of first instance where a case would be brought.⁷⁸ The district courts, courts of appeal and the Supreme Court are part of Sweden's general courts system and deal with both civil and criminal matters.⁷⁹

The initial filing of a civil case in Sweden involves the plaintiff filing a summons application and paying a fee of 450 SEK.⁸⁰ If the plaintiff fails to pay the fee, the court is required to order the plaintiff to pay. If the plaintiff still does not pay the fee, the case will be dismissed.⁸¹

To institute a criminal challenge an aggrieved person must file a written application with the court to obtain a summons for the person charged, specifying the defendant, the aggrieved person, the criminal act, the evidence to be presented and the circumstances that determine the court's competency.⁸² After detailed information gathering in the summons and pretrial phase, the main hearing of a criminal case will proceed provided that all parties and their representatives are present. The court may also determine that the aggrieved person will not be a party to the proceedings until his/her testimony.⁸³

Any constitutional challenge must be attached to an application of the provision in question to the plaintiff—thus such challenges might occur in any of Sweden's general courts in conjunction with civil or criminal matters.⁸⁴

⁷³ Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/158.htm>.

⁷⁴ Available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/TreatiesIndex_en.asp.

⁷⁵ Additional Protocol for a System of Collective Complaints, Article 1. See also:

http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrgEntitled_en.asp.

⁷⁶ Additional Protocol for a System of Collective Complaints, Articles 8-9.

⁷⁷ Additional Protocol for a System of Collective Complaints, Article 10.

⁷⁸ Ministry of Justice Sweden, 'The Swedish judicial system'.

⁷⁹ Ibid.

⁸⁰ See 'Sweden report'.

⁸¹ Ibid.

⁸² See Swedish Code of Judicial Procedure, Chapter 47, available at:

<http://www.regeringen.se/content/1/c4/15/40/472970fc.pdf>.

⁸³ Ibid., Chapter 48.

⁸⁴ See Chapter 11, Section 14 of RF. See also

http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Forfattningsfragor_GO

Regarding administrative law, an individual may bring an action in an ordinary court only where administrative remedies are exhausted or unavailable, except when an administrative official has committed a wrong in the performance of his/her official duties, in which case a civil action in tort can proceed against him/her in an ordinary court of first instance.⁸⁵ Judicial review may be sought in the Administrative Supreme Court as a court of first instance when the administrative decision in question involves political issues and no other challenge mechanism is available.⁸⁶

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above.

If the complainant has been summoned to appear in court at the request of a public prosecutor, the complainant has the right to reimbursement for expenses incurred with the appearance.⁸⁷

If the accused person is acquitted, he/she is not required to repay the State. If an individual is found guilty of a crime or loses a dispute, he/she could be required to pay all or part of the State's costs. When a civil dispute has been decided, the Legal Aid Authority makes a settlement and decides how much the individual will be required to repay. In criminal cases the court calculates how much an individual must pay and notifies the Legal Aid Authority which then notifies the individual.⁸⁸

C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Due to Sweden's comprehensive system of State-funded legal aid and assistance, there has historically been little need for lawyers to provide pro bono legal services.⁸⁹ However, a number of services are available. For example, the Swedish Bar Association runs the *Advokatjouren* program, a free service intended to provide people who are ineligible for legal aid with an opportunity to meet with local lawyers to identify legal issues and receive guidance on how to proceed.⁹⁰ The *Centrum för rättvisa* (Centre for Justice), a Swedish independent NGO, supports the rights of individuals by informing individuals about their rights and acting as representatives in

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⁸⁵ See Helitz, Nils.

⁸⁶ See 'Administrative justice in Europe: report for Sweden'.

⁸⁷ See Swedish Crime Victim Compensation and Support Authority, 'Legal proceedings', 28 August 2012, available at: <http://www.brottsoffermyndigheten.se/eng/help-for-victims/legal-proceedings>.

⁸⁸ Legal Aid Authority, 'Legal aid in Sweden'.

⁸⁹ Latham & Watkins, 'A survey of pro bono practices and opportunities in 71 jurisdictions', August 2012, p. 307, available at:

<http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

⁹⁰ Ibid.

legal proceedings.⁹¹

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

If a violation of children's rights constitutes a crime, the crime determines the relevant statute of limitations. Swedish Parliament abolished the statute of limitations for murder in 2010.⁹² For sexual crimes against children, the statute does not begin to run until the child reaches the age of 18.⁹³

The general limitation period that applies to bringing a claim in Sweden is 10 years beginning from the accrual of the right in question,⁹⁴ though some claims are subject to shorter periods. For example, legal proceedings in a case on damages concerning discrimination against a child at school must be initiated within two years from the date of the action complained about or from the last date on which a duty should have been fulfilled—otherwise the right to initiate legal proceedings is forfeited.⁹⁵

The time for appealing an administrative act is fixed, usually at 30 days, and the act is not considered valid until this appeal period has expired (or if a challenge has been initiated, until the case has reached last instance).⁹⁶

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

Swedish law provides for four types of evidence: documents, witness testimony, expert testimony and “inspection on-site of the subject matter of the dispute”.⁹⁷ Swedish evidence rules are relatively lenient and there are no technical rules regarding admissibility. The Swedish court uses its discretion to evaluate the evidence presented by a party.⁹⁸

Children are seldom examined directly in court. Normally the examination of a child during the preliminary investigation is video recorded, which is then shown at the court hearing. If a party to the case requests to seek testimony in court from a person under the age of 15, the court shall determine whether the child may be examined or not. The court can reject such a request if the examination in a regular courtroom may harm the child.⁹⁹

⁹¹ See <http://centrumforattvisa.se>.

⁹² See Stockholm News, ‘No statute of limitation for murder - Palme murderer can be convicted’, 3 February 2010, available at: <http://stockholmnews.com/more.aspx?NID=4762>.

⁹³ See Chapter 35, Section 4(2) of the Swedish Penal Code; see also http://www.eucpn.org/poldocs/SE_SC-%20Legislation.pdf.

⁹⁴ See Practical Law Company, ‘Multijurisdictional guide 2012/2013’, available at: http://www.mannheimerswartling.se/Publikationer/Sweden%20-%20dispute%20resolution_vol_1.pdf.

⁹⁵ Act Prohibiting Discrimination and Other Degrading Treatment of Children and School Students, Section 21.

⁹⁶ See Helitz, Nils.

⁹⁷ See ‘Sweden report’.

⁹⁸ Ibid.

⁹⁹ *Fifth periodic report of Sweden to the UN Committee on the Rights of the Child*, para. 528.

The court may order that a child victim or witness shall be examined in the absence of the defendant or another person attending the trial. Such an order may be issued if there is ground to believe that, in the presence of a party or any other person, a witness will not tell the truth openly through fear or other cause.¹⁰⁰

According to Swedish law, an examination in the District Court shall be recorded on video. If the case goes to appeal, the general rule is that the video recording from the District Court proceedings will be used in the Court of Appeal. This means that child victims and witnesses, often need to appear in court only once, namely in the District Court.¹⁰¹

A court may in certain cases, such as those involving sexual offences or trafficking of children, decide that the hearing or part of the hearing shall be held behind closed doors. Examination of anyone under the age of 15 may, even in other cases, be held behind closed doors.¹⁰²

There are a range of other measures available under Swedish law to protect and assist child witnesses and victims of crime involved in court proceedings, including the following:

- A child victim has in many cases the right to a legal counsel or special representative, who will be appointed to safeguard the interests of the child victim, and provide support and assistance to him/her;
- A child victim who is examined in aid of the prosecution's case may be accompanied at the examination by a suitable support person; and
- In court, witnesses may be assisted by a witness support person who helps witnesses and victims with emotional support and practical information in connection with a criminal court session. A witness support person can explain what happens in the trial and provide information about matters such as expense claims and the witness oath and other support measures.¹⁰³

F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Swedish courts aim to deal with civil cases within no longer than seven months in the district court and no longer than five months in the courts of appeal.¹⁰⁴ In 2011, cases averaged almost eight months in the district court and five months in the courts of appeal.¹⁰⁵

In the administrative courts timelines vary by procedure. In 2008, between the lodging of complaint and a judgment in the Supreme Administrative Court, the mean time varied between 1.1 and 10.4 months by procedure.¹⁰⁶ In matters related to the Care of Young Persons Act, the average length of proceedings was 1.8 months, compared with

¹⁰⁰ Ibid., para. 530.

¹⁰¹ Ibid., para. 531.

¹⁰² Ibid., para. 532.

¹⁰³ Ibid., paras 525-526.

¹⁰⁴ European e-Justice Portal, 'Costs of proceedings - Sweden', 19 March 2013, available at: https://e-justice.europa.eu/content_costs_of_proceedings-37-se-en.do?member=1.

¹⁰⁵ Ibid.

¹⁰⁶ See 'Administrative justice in Europe: report for Sweden'.

9.6 months for matters related to the Social Insurance Act.¹⁰⁷ In the Administrative Court of Appeal, matters related to the Care of Young Persons Act averaged 2.6 months from filing to judgment in 2008. In the County Administrative Courts such Care of Young Persons procedures averaged 1.7 months.

The majority of children who seek asylum in Sweden may wait more than three months. Migration board processing times—from application to decision to actual transfer—averaged 99 days for all refugees from Dublin in 2012.¹⁰⁸

For children subject to criminal proceedings, the Swedish courts have set objectives of deciding the charge within six weeks from the pre-trial investigation and holding the main hearing within two weeks from the moment the charge has been brought.¹⁰⁹ Cases involving children and cases relating to custody, access or a child's residence (family cases) are given priority, to be dealt with before the expiry of a defined maximum period.¹¹⁰ In the past decade Sweden has undertaken several initiatives to improve processing time.

G. Appeal. What are the possibilities for appealing a decision to a higher court?

In civil or criminal matters, if a party is not satisfied with the decision of the District Court they may appeal to the Court of Appeal.¹¹¹ The court's decision includes instructions on how to appeal and in some cases a review permit may be required for the Court of Appeal to hear the case. A Court of Appeal decision can be appealed to the Supreme Court but the Supreme Court will only review cases that would be useful to establish precedent or if the Supreme Court deems review absolutely necessary.¹¹²

Decisions in administrative cases can be appealed to the Administrative Court of Appeal and then to the Administrative Supreme Court, following the same general procedure as in the ordinary court. The first instance court's decision must be appealed within three weeks from its issuance.¹¹³ Two types of administrative appeals are possible: general and local. With general decisions the court of appeal determines both the legality and the appropriateness of the act, whereas an appeal from a local government act will examine only the legality, giving a simple yes or no answer.¹¹⁴

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Sweden is a civil law jurisdiction and courts are not bound by previous decisions.¹¹⁵ This reduces the potential impact of a negative decision. However, it is worth noting

¹⁰⁷ Ibid.

¹⁰⁸ Caritas Sweden, 'Dublin - Sweden', available at: <http://www.asylumineurope.org/reports/country/sweden/dublin>.

¹⁰⁹ European Commission for the Efficiency of Justice, 'Time management of justice systems: a Northern Europe study', 2006, available at: http://www.coe.int/t/dghl/cooperation/cepej/delais/GestionTemps_en.pdf.

¹¹⁰ Ibid.

¹¹¹ See Swedish Crime Victim Compensation and Support Authority, 'Legal proceedings'.

¹¹² Ibid.

¹¹³ See 'Administrative justice in Europe: report for Sweden'.

¹¹⁴ Ibid.

¹¹⁵ See European Judicial Network, 'Legal order - Sweden', 2 May 2005, available at: http://ec.europa.eu/civiljustice/legal_order/legal_order_swe_en.htm.

that decisions from the highest courts in Sweden may have an impact on a lower court's legal analysis.¹¹⁶

I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

As discussed above, Swedish courts provide litigants with resources to assist in the enforcement of judgments.

V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

The Royal Social Welfare Board in the Ministry of Social Affairs, Labor, and Housing serves as the administrative authority for the protection of children in Sweden. Local child welfare committees acting under the central board (in all 1,037 districts) carry out basic child protection, handling, without judicial procedure, functions usually performed by juvenile courts (such as whether to take a child for protective upbringing, whether to place a child in an institution and whether to place a child in foster-family care).¹¹⁷

When contemplating legal action to challenge a violation of children's rights it may be helpful to consult the relevant Swedish laws dealing with these subjects since the CRC has not been directly incorporated into national law. The relevant statutes include: The Children and Parents Code (1949:381); The Care of Young Persons (Special Provisions) Act (1990:52); The Children's Ombudsman Act (1993:335); The Act on Investigations Regarding Children who have Died as a Consequence of Crime (2007:606); The Act Prohibiting Discrimination and Other Forms of Degrading Treatment of Children and School Students (2006:67); The Social Services Act (2001:453); The Aliens Act (2005:716); The Detention Act (2010:211); The Young Offenders Act (Special Provisions), the Children (Special Representative) Act (1999:997); The Healthcare Act (1982:763); The Patient Code (2014:821); The Compulsory Psychiatric Care Act (1991:1128); The Education Act (2010:800); The Act concerning Support and Service for Persons with Certain Functional Impairments (1993:387); and The Discrimination Act (2008:567).¹¹⁸

This report is provided for educational and informational purposes only and should not be construed as legal advice.

¹¹⁶ Ibid.

¹¹⁷ See M. Emery, 'Provisions for the protection of children in Sweden', available at: <http://www.ssa.gov/policy/docs/ssb/v21n9/v21n9p12.pdf>.

¹¹⁸ See CRIN.