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(Un)protected children?

Social rights of children with disabilities
granted temporary protection in Sweden

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Summary

This thesis examines the legal landscape surrounding the social assistance provided to children with disabilities under temporary protection in Sweden. The aftermath of Russia's invasion of Ukraine in 2022 prompted a significant influx of displaced individuals into the EU. The EU Temporary Protection Directive was activated for the first time. The thesis explores the Swedish legal system's response to these vulnerable children's needs.

The central aim of the thesis is to evaluate the access to social assistance granted to children with temporary protection in Sweden. The following research questions have been investigated to fulfil the aim:

- (i) What social assistance is granted to children with disabilities in general and children with temporary protection in Sweden according to national law?
- (ii) Can the rights enshrined in the ECHR and the CRC be used as arguments for granting full access to social assistance to children with disabilities under temporary protection?
- (iii) How is the minimum level of social assistance defined in the TPD? Does the Swedish legislation meet the TPD and the CFR minimum standards on access to social assistance for children with disabilities granted temporary protection?

The analysis reveals that the primary acts applicable to children with disabilities under temporary protection are the Act on Reception of Asylum Seekers and others (LMA) and the Social Service Act (SoL). The children under temporary protection are excluded from the scope of the Act Concerning Support and Service for Persons with Certain Functional Impairments (LSS) due to them not being considered residents in the meaning of the act. However, the scope and application of the SoL may be unclear and depend on whether the children are seen as temporarily visiting Sweden. Due to the interpretation challenge related to the status of children granted temporary protection, the scope to which the social assistance measures are given can vary across municipalities, leading to inconsistencies and potential limitations in access to social assistance.

The thesis explores the potential use of ECHR and CRC rights as arguments for obtaining more comprehensive social assistance. The child's best interests, non-discrimination, and the right to private and family life emerge as key considerations, suggesting a nuanced interplay between these rights and the national legal framework. These rights may require providing access to social services to the children granted temporary protection beyond acute care under the SoL. The prohibition of discrimination may also demand that the

children under the temporary protection receive access to the LSS measures, though whether such practice will be developed is to be observed.

The analysis concludes that Sweden's social care system falls short of meeting the Temporary Protection Directive's requirement for equal protection of children granted temporary protection.

The thesis underscores the legal complexities and shortcomings within the Swedish system regarding social assistance for children with disabilities granted temporary protection. It argues for legal reforms to ensure consistency, equality, and adherence to international and EU standards, fostering a more inclusive and protective environment for all vulnerable children.

Sammanfattning

Detta examensarbete undersöker det rättsliga landskapet kring möjligheter att få stöd och service för barn med funktionsnedsättning som har fått tillfälligt skydd i Sverige enligt Massflyktsdirektivet. Detta skedde som ett resultat av Rysslands invasion av Ukraina 2022, vilket ledde till en betydande tillströmning av personer till EU och aktiveringen av EU:s Massflyktsdirektiv för första gången.

Syftet med arbetet är att utvärdera tillgången till stöd och service för barn med tillfälligt skydd. Forskningsfrågorna som har undersökts för att uppfylla detta syfte inkluderar:

(i) Vilket socialt stöd beviljas barn med funktionsnedsättning generellt och barn med tillfälligt skydd i Sverige enligt nationell lagstiftning?

(ii) Kan rättigheterna i Europakonventionen och Barnkonventionen användas som argument för att ge full tillgång till socialt stöd till barn med funktionsnedsättning som har tillfälligt skydd?

(iii) Hur definieras miniminivån för socialt bistånd i Massflyktsdirektivet? Uppfyller den svenska lagstiftningen Massflyktsdirektivet och EU-stadgans miniminormer om tillgång till socialt stöd för barn med funktionsnedsättning som har fått tillfälligt skydd?

Analysen visar att de primära lagarna som gäller för barn med funktionsnedsättning under tillfälligt skydd inkluderar lag (1994:137) om mottagande av asylsökande m.fl., LMA, och socialtjänstlag (2001:453), SoL. Barnen med tillfälligt skydd undantas från tillämpningsområdet för lag (1993:387) om stöd och service till vissa funktionshindrade, LSS eftersom de inte anses vara bosatta enligt lagen. Analysen betonar att tolkningsutrymmet kring tillämpningen av SoL kan vara oklart beroende på om barnen anses vistas tillfälligt i Sverige. Detta kan leda till inkonsekvenser och potentiella begränsningar i tillgången till socialt stöd.

Examensarbetet utforskar även möjligheten att använda rättigheterna i Europakonventionen och Barnkonventionen som argument för att få ett mer omfattande socialt stöd enligt SoL och LSS. Barnets bästa, icke-diskriminering och rätten till privat- och familjeliv framstår som viktiga överväganden, vilket tyder på ett nyanserat samspel mellan dessa rättigheter och den nationella rättsliga ramen.

Slutsatsen är att Sveriges sociala omsorgssystem inte uppfyller Massflyktsdirektivets krav på lika skydd för barn med tillfälligt skydd. Examensarbetet understryker den rättsliga komplexiteten och bristerna i det svenska systemet när det gäller stöd för barn med funktionsnedsättning som har fått tillfälligt

skydd. Det argumenterar för nödvändiga rättsliga reformer för att säkerställa konsekvens, jämlikhet och efterlevnad av internationella och EU-standarder, vilket skulle främja en mer inkluderande och skyddande miljö för alla utsatta barn.

Preface

My sincere gratitude goes to my supervisor Professor of Public Law Henrik Wenander. Thank you, Henrik, for your invaluable comments, time, and unwavering support in my choices! Your guidance has been instrumental in my journey.

I would also like to express my deepest regards to my family for their constant support and understanding. You inspire and motivate me to pursue my dreams and persevere. Thank you, my soulmate, for always being by my side, sharing both the challenges and joys that life brings! Love you! Always!

Abbreviations

Abbreviation	Clarification
CFR	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
CRC	Convention on the Rights of the Child
ECSR	European Committee of Social Rights
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ESCr	European Social Charter
EU	European Union
FBL	Population Register Act
gTP	granted protection under the Temporary Protection Directive (or granted temporary protection)
LMA	Act on Reception of Asylum Seekers and others
LSS	Act Concerning Support and Service for Persons with Certain Functional Impairments
SoL	Social Service Act
TPD	Temporary Protection Directive
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

1 Introduction

1.1 Background

Imagine a 3-year-old girl who has profound disabilities and difficulties in breathing and a 14-year-old boy with autism. Both children have only one guardian, who needs to work to provide for the family. They might also have young siblings that need to be cared for. The girl needs to be observed constantly, as she might stop breathing any moment and die. The boy goes to a Swedish school, but the school day finishes at 14 o'clock, while his mother is working and cannot pick him out without losing her job and the source of their income. After-school centres are not available for children of his age in Sweden, and the boy cannot find and be at home on his own. Swedish legislation allows children and families to obtain social assistance in such situations. This thesis will delve into the question of whether all migrant children are protected equally in Sweden.

Russia's invasion of Ukraine in 2022 caused a massive influx of displaced persons into the EU. To deal with the influx, the Council activated the Temporary Protection Directive (TPD) for the first time.¹ The Swedish Migration Agency has granted temporary resident permits based on TPD to about 40,000 Ukrainians, including 10,000 children.² Due to the male citizens being called to defend Ukraine, most of these children have only one guardian.

Like any population, the displaced Ukrainian children have various needs related to their experiences before or during the war. Disability is a common condition in over 16 % of the world's population; it can be even more common as a result of war.³ One can easily assume that displaced children will have social care needs related to their disabilities. Such needs include special accommodation, accompanying, or personal assistance for more severe cases.

¹ Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L 212/12. See also Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection [2022] OJ L 71/1.

² More than 15,000 are expected to arrive in 2023 and 2024. Migrationsverket 'Sökande från Ukaraina' (30 September 2023) <<https://www.migrationsverket.se/Om-Migrationsverket/Statistik/Sokande-fran-Ukaraina.html>> accessed 16 October 2023; Migrationsverket 'Ukrainare kan bli kvar länge i Sverige enligt ny prognos' (Migrationsverket, 25 April 2023) <<https://www.migrationsverket.se/Om-Migrationsverket/Pressrum/Nyhetsarkiv/Nyhetsarkiv-2023/2023-04-25-Ukrainare-kan-bli-kvar-lange-i-Sverige-enligt-ny-prognos.html#:~:text=Allt%20mer%20talar%20f%C3%B6r%20att,kvar%20i%20Sverige%20efter%20det>> accessed 15 September 2023.

³ WHO 'Disability' (WHO, 7 March 2023) <<https://www.who.int/news-room/fact-sheets/detail/disability-and-health#:~:text=Key%20facts,1%20in%206%20of%20us..>> accessed 20 September 2023; European Disability Forum 'One year of war: persons with disabilities in Ukraine' (24 February 2023) <<https://www.edf-feph.org/one-year-of-war-persons-with-disabilities-in-ukraine/>> accessed 20 September 2023.

Yet, the social law legislation is often difficult for citizens to navigate. What responses will it provide for newly displaced children with disabilities?

The TPD provides minimum protection standards without prejudice to member states' obligations under international law.⁴ The member states may also implement or maintain extended or more favourable protection measures compared to the Directive on their initiative. One of the minimum standards guaranteed in the TPD is the right to social assistance for those who do not have the necessary resources. The scope of such assistance is not specified in the Directive.

Sweden is bound by the TPD and international human rights instruments, such as the Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR) and the Convention on the Rights of the Child (CRC). Children with disabilities granted protection (gTP) have the right to a certain level of social assistance under the Directive and human rights treaties. Yet, the material substance of these obligations appears somewhat unclear on the international and national levels. This thesis will clarify the legal standing of children with disabilities gTP in Sweden concerning obtaining necessary social assistance.

1.2 Aim and research questions

The thesis aims to evaluate the access to social assistance granted to children with temporary protection in Sweden. The following research questions will be investigated to fulfil the aim:

- (i) What social assistance is granted to children with disabilities in general and children with temporary protection in Sweden according to national law?
- (ii) Can the rights enshrined in the ECHR and the CRC be used as arguments for granting full access to social assistance to children with disabilities under temporary protection?
- (iii) How is the minimum level of social assistance defined in the TPD? Does the Swedish legislation meet the TPD and the CFR minimum standards on access to social assistance for children with disabilities granted temporary protection?

1.3 Terminology and limitations

This thesis will interchangeably use the terms social assistance, support, social services, social care, social aid, and social protection, as these terms are

⁴ Recitals 8, 12 and 16 of the TPD.

often used synonymously in various legal instruments. Children here are defined as persons under the age of eighteen.

This research is limited to voluntary social assistance for children with disabilities, within non-contributory system prescribed under Swedish national law and selected international instruments. Due to differences in applicable rules, the research will not encompass the legal regulation for unaccompanied children.

The thesis concerns only situations when persons obtained formal decisions and residence permits under TPD of the children who have come from Ukraine due to the war. The notions “Ukrainian children” and “children who have come from Ukraine” will be used interchangeably. Children granted temporary protection will be referred to as children gTP to make the visual burden of long sentences easier for the reader.

The study will encompass the following international instruments: the Charter of Fundamental Rights of the European Union (CFR), the ECHR, and the CRC.⁵ Though the European Social Charter (revised) (ESCr) and the Convention on Rights of Persons with Disabilities contain relevant rights, the study of these instruments is precluded, though further study of these instruments is considered to be of importance. The ESCr will, however, be mentioned when relevant for interpreting the scope of the EU law obligations and when appropriate in light of the methods of interpretation because one of the discussed articles is based on the ESCr.

I have chosen to focus on the following rights in the ECHR, the CRC and the CFR: the best interest of the child, the right to life, including the right to life, survival and development, prohibition of torture, special care and assistance for children with disabilities, respect for private and family life, property, non-discrimination, social security and social assistance, and integration of persons with disabilities. The discussion in this thesis is confined to these rights and usually in one instrument only. The rights that do not add new points of reasoning or have the same nature and framework for reasoning, as the abovementioned, have not been included in the discussions in the thesis to avoid cluttering.

1.4 Methods and materials

Due to the focus of this research on current Swedish, EU and international laws and to fulfil the objectives introduced in section 1.2, the traditional legal dogmatic approach is employed. The legal dogmatic approach enables the

⁵ The facultative protocols to the CRC are irrelevant for the current study and will not be studied here.

interpretation of valid legal sources following their hierarchy.⁶ The preparatory works and case law are essential for understanding Swedish national law. Preparatory works are crucial sources for statutory interpretation, enabling the determination of the legislator's objectives and linguistic meaning of texts (textual interpretation).⁷ Precedents of the Swedish High Administrative Court constitute binding sources of Swedish law. In the thesis, the decisions of the courts of appeal (kammarätter) are seen as examples of possible interpretations of law, which are not binding beyond a particular case.

International human rights treaties may also require additional methodology of interpretation. The Vienna Convention on the Law of Treaties (VCLT) identifies in Article 31 that the following methods of interpretation may be used: textual, contextual and teleological. The hierarchy of applying these methods would depend on the area of international law studied and the treaty provisions interpreted.⁸ International human rights law inclines toward teleological interpretation.⁹ Supplementary means of interpretation depend on the specific treaty. In the CFR's and ECHR's interpretation, the decisions of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) play a significant role. However, *Cameron* suggested careful application of the ECtHR's case law related to other legal systems due to the necessity of "translation" of the ECtHR's case law into the Swedish legal system's context.¹⁰ For this thesis, Cameron's warning implies the need to carefully read the circumstances and compare the domestic legislation in the respective cases with the legal provisions in Sweden to ensure the correct "translation".

For the interpretation of the CRC, the interpretations of the treaty bodies, primarily the Committee on the Rights of the Child (Committee) will be utilised.

⁶ Aleksander Peczenik, *On Law and Reason*, (2nd edn. Springer Science and Business Media B.V 2008) 14; Rune Lavin, 'Är den förvaltningsrättsliga forskningen rättsdogmatisk?' (1989) FT 115, 116f.

⁷ Mauro Zamboni, 'The Legislative Drafting in Sweden: Its Informal and Non-Linear Nature' (2023) FT 81, 81ff; Alexander Peczenik, 'Rättsordningens struktur' (1974) SvJT 369, 374.

⁸ Juliet P. Kostitsky, *Plain Meaning vs. Broad Interpretation: How the Risk of Opportunism Defeats a Unitary Default Rule for Interpretation* (Case Western University School of Law 2007) 53ff; Leena Grover, 'A Call to Arms: Fundamental Dilemmas Confronting the Interpretation of Crimes in the Rome Statute of the International Criminal Court' (2010) 21(3) *European Journal of International Law* 543, 547ff; Ian McLeod, 'Literal and Purposive Techniques of Legislative Interpretation: Some European Community and English Common Law Perspective' (2004) 29(3) *Brooklyn Journal of International Law* 1109, 1125ff.

⁹ See e.g. Kerstin Mechlem, 'Treaty Bodies and the Interpretation of Human Rights' (2009) 42(3) *Vanderbilt Journal of Transnational Law* 905, 912.

¹⁰ Iain Cameron, 'The Swedish Experience of the European Convention on Human Rights Since Incorporation' (1999) 48(1) *The International and Comparative Law Quarterly* 20, 25f and 39f.

The Committee's interpretations are not binding but are valuable and used as authoritative sources in this research.¹¹

Concerning the EU law interpretation, apart from the CJEU case law, some non-binding tools may be of great value for the interpretation of specific EU law instruments, such as Explanations relating to the Charter of Fundamental Rights (Explanatory notes), prepared under the authority of the Praesidium of the Convention which drafted the CFR.¹² The European Commission's operational guidelines 2022/C 126 I/01 (Operational guidelines) intend to assist the Member States in applying the Council Implementing Decision 2022/382, the TPD and other applicable EU law.¹³ EU Strategies concerning persons with disabilities and children's rights, established by Communication from the European Commission to the European Parliament and the Council, may also give some insights into present rules and will be utilised in the thesis.¹⁴

Another type of source for interpretation is a doctrine that will additionally be used to clarify national and international rules. The doctrine will be used to support my argumentation or when the interpretation of the law leads to unclear results, but the doctrine provides a straightforward and logical argument.

The empirical research method – the survey – will be implemented to complement the dogmatic method in answering question (i) and get a broader view of the outcome of applying legal rules in practice.¹⁵ The survey questions were sent via e-mail to forty-six municipalities and fifteen administrative districts of Stockholm and Gothenburg. The survey participants (municipalities and districts) were selected by the highest number of persons gTP under age eighteen, according to the Migration Agency, who were settled in certain municipalities.¹⁶ The selected municipalities have the potential for more cases where children with disabilities would need social assistance. The selection of municipalities should represent most regions in Sweden. The need to select municipalities for the survey is explained by limited resources to request and handle the data obtained. Municipalities were asked to respond within three weeks by e-mail or phone. Many municipalities have not

¹¹ Yana Litins'ka, *Assessing capacity to decide on medical treatment. On human rights and the use of medical knowledge in the laws of England, Russia and Sweden* (Uppsala University 2018) 104f.

¹² Explanations relating to the Charter of Fundamental Rights, [2007] OJ C 303/17.

¹³ Communication from the Commission on Operational guidelines for the implementation of Council implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection 2022/C 126 I/01, [2022] OJ C 126I/1.

¹⁴ The EU Commission, *EU Strategy on the Rights of the Child*, Publications Office of the European Union 2021; *Strategy for the Rights of Persons with Disabilities 2021-2030*, Publications Office of the European Union 2021.

¹⁵ Willem H. van Boom, and others (eds.), *Empirical Legal Research in Action* (Edward Elgar Publishing 2018) 2.

¹⁶ *Migrationsverket 'Sökande från Ukaraina'* (n.2).

answered the questions sent. Since the survey exemplifies the problems that occur, the absence of the answers is not particularly challenging for the purpose. However, the results of the survey may not be particularly representative.

1.5 Previous research

Many scientific works contributed significantly to studying human rights law on national and international levels. The crucial works that had the most prominent impact on this research are described below.

Several researchers have focused on the issues of the social rights of migrants in Sweden. *Kjellbom* and *Lundberg* address both theoretical aspects of the access to the right to social assistance for irregular migrants and former asylum-seekers and deliver practical comments on the possibilities for the courts to decide differently.¹⁷ In *Cuadra* and *Staaf*'s article 'Public Social Services' Encounters with Irregular Migrants in Sweden: Amid Values of Social Work and Control of Migration', the authors provided reflections on how the staff of different municipalities deal with contradictory international and national law requirements to control migration and provide social protection.¹⁸ *Fridström Montoya* and *Mattsson*'s works on interpreting the aims of social legislation have also been used as sources of inspiration.¹⁹ *Lundgren* and *Sunesson*'s "Nya sociallagarna" commented on Swedish national rules regarding social assistance, though the source has a general nature. *Litins'ka* and *Zillén* have focused on healthcare issues for various groups of migrants, particularly those gTP.²⁰ Yet, the previous research has not focused on social assistance for displaced persons with disabilities, and in particular, children

¹⁷ Pia Kjellbom and Anna Lundberg 'Olika rättsliga rum för en skäliglevnadsnivå? En rättskartografisk analys av SoL och LMA i domstolspraktiken' (2018) 17–18 Nordisk socialrättslig tidskrift 39; Anna Lundberg and Pia Kjellbom 'Social work law in nexus with migration law: A legal cartographic analysis of inter-legal spaces of inclusion and exclusion in Swedish legislation' (2021) 11(2) Nordic Social Work Research 142.

¹⁸ Carin Björngren Cuadra and Annika Staaf 'Public Social Services' encounters with irregular migrants in Sweden: amid values of social work and control of migration' (2014) 17:1 European Journal of Social Work 88.

¹⁹ Titti Mattsson, 'Ålderns betydelse i socialrätten' in Thomas Erhag, Pernilla Leviner, & Anna-Sara Lind (eds.), *Socialrätt under omvandling: om solidaritetens och välfärdsstatens gränser* (Liber 2018) 132; Therese Fridström Montoya, *Leva som andra genom ställföreträdare – en rättslig och faktisk paradox* (Iustus Förlag AB 2015).

²⁰ Yana Litins'ka, 'What Healthcare Services Temporary Protection Entitles to Have? Navigating the European Social Charter' (2023) European Journal of Health Law <<https://brill-com.ludwig.lub.lu.se/view/journals/ejhl/aop/article-10.1163-15718093-bja10112/article-10.1163-15718093-bja10112.xml>> accessed 16 October 2023; Yana Litins'ka, 'Hjärt- och/eller lungtransplantation för personer som saknar permanent uppehållstillstånd' (The Swedish National Council on Medical Ethics 2020) <https://lucris.lub.lu.se/ws/portalfiles/portal/87407590/Litinska_Transplantation_Smer_rapport_01_03_2020_.pdf> accessed 15 October 2023; Kavot Zillén, *Barn i välfärdsstatens utkant : om rätten till sjukvård för barn som är unionsmedborgare och som lever i ekonomisk utsatthet i Sverige* (Iustus 2019).

with disabilities (either gTP or without it). This gap emphasises the need for further focus on the issue.

My survey of the previous research does not allow finding the research directly addressing the same tasks as the current thesis but calls for making independent conclusions, which will be supported by more general public (national and international) law discussions.

1.6 Outline

The thesis structure reflects the research question mentioned in section 1.2. Each numbered research question will be addressed in one of the subsequent chapters. **Chapter 2** overviews the Swedish social support system for children with disabilities. The applicability of Swedish rules on social assistance to Ukrainian children with disabilities gTP will also be investigated in the chapter. There, I present the survey results. In **Chapter 3**, the rights enshrined in the ECHR and the CRC will be analysed in the context of social care for children gTP. I reflect on whether these rights can be used to grant fuller protection for these migrant children. The analysis of the TPD, the CFR and other EU-law provisions that guarantee minimum standards for social care for children with disabilities is provided in **Chapter 4**. **Chapter 5** concludes the findings.

2 Children with disabilities under temporary protection in the Swedish legal system

2.1 General remarks

The overall purpose of Chapter 2 is to answer question (i), namely, what social assistance is granted to children with disabilities in general and children gTP in Sweden according to national law. In section 2.1, the general remarks concerning the construction of the legal rules in the area are presented.

Personal welfare is proclaimed as one of the fundamental goals of the state in the Instrument of Government (IoG).²¹ The state strives to provide social care and security, promote children's rights, and fight discrimination against persons with disabilities. According to preparatory works for the IoG, Chapter 1 Section 2 gives no individual rights to the persons which can be invoked before the state authorities; it is rather a proclamation of the state's future goal.²² Instead, a person can refer to the rights and freedoms accumulated in Chapter 2 of the IoG. Chapter 2 of the IoG contains the right to education and the right to property that can be identified as social rights. However, provisions of Chapter 2 of the IoG include neither the right to social assistance for persons with disabilities nor direct protection against discrimination on this ground.

Rules on social assistance for children with disabilities in Sweden are fragmented. These include the Act Concerning Support and Service for Persons with Certain Functional Impairments (LSS)²³ and the Social Service Act (SoL).²⁴ Some measures concerning social care for migrants are prescribed under the Act on Reception of Asylum Seekers (LMA)²⁵. These acts have a complex scope of application in relation to migrants. For this reason, to answer question (i), the application of each act in general and towards children gTP is discussed in the sections below. To spotlight how municipalities

²¹ Kungörelse (1974:152) om beslutad ny regeringsform (IoG), Chapter 1 Section 2, paragraph 2.

Sweden has a constitution which consist of four fundamental laws: the Instrument of Government, the Act of Succession, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. The Instrument of Government's current version (Regeringsformen (1974:152)) was adopted in 1974. It contains the basic principles of Swedish form of government, including creation and functioning of state institutions, the fundamental freedoms, and rights.

²² Prop. 2009/10:80 p. 173; see also Anna -Sara Lind, *Sociala rättigheter i förändring: en konstitutionell rättslig studie* (Uppsala universitet 2009) 26f.

²³ The LSS is an abbreviation from Lag (1993:387) om stöd och service till vissa funktionshindrade, translated as Act Concerning Support and Service for Persons with Certain Functional Impairments.

²⁴ The SoL is abbreviation of Socialtjänstlag (2001:453), translated as Social Service Act.

²⁵ the LMA is abbreviation to Lag (1994:137) om mottagande av asylsökande m.fl., translated as Act on Reception of Asylum Seekers and Others.

navigate the complexities related to the legislation, the survey will be presented in section 2.5.

2.2 The Act Concerning Support and Service for Persons with Certain Functional Impairments (LSS)

2.2.1 Introduction, personal scope and aim

The LSS is a legislative act explicitly created to provide services to persons with long-term disabilities (*lex specialis* in the area). According to Section 1, items (1) and (3) LSS, the act can be applicable towards children with intellectual development disorders, autism or similar state,²⁶ and/or children with other long-term serious disabilities that cause considerable difficulties in everyday life.²⁷ The LSS contains relatively detailed descriptions of services. Swedish authorities are usually reluctant to apply the LSS if the services requested under the act do not entirely correspond to the description.²⁸

LSS is a right-based act, which means that persons included in the LSS's personal scope, or their representatives (guardians) may demand local authorities to take measures regardless of resources and local policies and ask for re-examination according to Section 27 of the LSS in case of refusal. The legislator took such an approach to guarantee that persons with disabilities have equal life conditions in a decentralised society.²⁹

According to Sections 5, 7 and 8 of the LSS, the measures under the act aim to meet a child's needs in conditions for *a good life and the possibility to live his/her life independently*. The aim is also defined as *living as others do*. The right of the child to receive support under the LSS is limited to situations

²⁶ For further legal definition of these states and the effects on the social and personal life see prop. 1992/93:159 p. 167. Socialstyrelsen, *Stöd till barn och unga med funktionsnedsättning: Handbok för handläggning och utförande av LSS-insatser* (Socialstyrelsen 2020) 84. Centres of Disease Control and Prevention, 'Autism Spectrum Disorder' (Centres of Disease Control and Prevention, 28 March 2022) <<https://www.cdc.gov/ncbddd/autism/signs.html>> accessed 23 September 2023.

²⁷ See also RÅ 1999 ref. 54; prop. 1992/93:159 pp. 55 f, see also RÅ 2001 ref. 33 when a four-year-old deaf girl was declared eligible to service under LSS due to communication difficulties. Lars Lundgren & Per-Anders Sunesson, *Nya sociallagarna* (1 jan. 2023, Version 36, JUNO) kommentaren till 1 § LSS; Socialstyrelsen (n. 26) 85ff.

Therefore, children that have intellectual developmental disabilities, ASD or alike, as well as other long-term physical or psychical disabilities that cause serious difficulties in everyday life which a person cannot overcome without help, are included in the LSS's personal scope.

²⁸ See for instance RÅ 1996 ref. 45; RÅ 2008 ref. 39; HFD 2011 ref. 8; HFD 2013 ref. 85.

²⁹ Prop. 1992/93:159 p. 49.

when there is no other way to satisfy the needs except through the LSS.³⁰ Services should be easily accessible and adapted to the child's needs.³¹

Section 4 of the LSS states that included in the LSS's personal scope may seek social care pursuant to other acts, e.g., SoL. It does not mean, however, that persons with disabilities have the right to "double care", but they may choose the act according to which services will be provided.³²

2.2.2 Responsibilities for services to children with disabilities

Pursuant to Section 2 of the LSS, Swedish regions and municipalities share responsibilities to take measures to provide services to children with disabilities described in Section 9, items 1-10 of the LSS. By default, regions are responsible for the first item - advisory service and complex support by experts in different spheres (psychologists, dieticians, speech therapists, physiotherapists and others). These services can be provided to a child or to a whole family (family-type children's home).³³

Municipalities are responsible for taking measures according to items 2-10 of Section 9 if no agreement has been made with a region about the different distribution of responsibilities between them. The list of measures applicable for children with disabilities includes:

- **personal assistance** or financial support to cover the expenses for such assistance,
- **accompanying service**,
- providing a **contact person**,
- short-time **relief services** for relatives inside and outside the home,
- short-time **in-school service** for children over 12 years old,
- **accommodation** within a specific home for children.³⁴

³⁰ Prop. 1992/93:159 p. 171 suggests that a person may get refused to provide services according to Section 9 of the LSS for instance if parents or other relatives are able to satisfy child's needs voluntary.

³¹ See Section 7 paragraph 2 LSS.

³² Prop. 1992/93:159 pp. 169f.; see also HFD 2013 ref. 45 and HFD 2016 ref. 56; Ellinor Englund och Ylva Lindblom, *LSS-boken: Stöd till beslutfattare och yrkesverksamma* (Norstedts Juridik 2018) 31–36.

³³ Lundgren & Sunesson (n.27) kommentaren till 2 § LSS. Basic routines are also listed in Section 9a LSS.

³⁴ According to item 10, daily work service applies only to persons of working age with disabilities described under Section 1, items 1 and 2 of the LSS. Swedish law does not define working age; however, preparatory works and applying the rule in practice give some understanding that working age is considered between 18 and 67 years old. Under such circumstances, item 10 of Section 9 does not apply to children with disabilities and is therefore excluded from further discussion. Prop. 1992/93:159 p. 87; Upplands Väsby kommun 'Kvalitetsgaranti för daglig verksamhet, LSS' (Upplands Väsby kommun, 9 October 2023) <<https://www.upplandsvasby.se/kommun-och-politik/service-och-kvalitetsarbete/kvalitetsgarantier/kvalitetsgaranti-for-daglig-verksamhet-lss.html#:~:text=F%C3%B6ruts%C3%A4ttningen%20f%C3%B6r%20att%20f%C3%A5>

According to Section 20 of the LSS, parents may be charged for their child's maintenance in a family home or other facilities. It means that the parents of children who have obtained care in a family foster home or short-term home due to their disability should contribute to municipality expenses for food, clothes, free-time, etc.³⁵ Parents' responsibility depends on the child's maintenance needs and parents' economic situation and is regulated by Chapter 19 of the Social Insurance Code or SFB.³⁶ Moreover, a municipality may charge a child with a disability or eventually his/her legal guardians for accommodation, leisure and cultural activities if the child receives a pension or other equivalent income, such as work or capital income, sickness benefit, an amount that should not exceed municipality's self-expenses.³⁷

To sum up, the LSS contains an exhaustive list of services that may be provided to persons included in LSS's scope. Some services address only children's needs for support and promoting independence; others also regard family interests. The measures are voluntary; some are provided free of charge. However, parents (guardians) and children may be charged for some related expenses.

2.2.3 The application of the LSS to children with disabilities under temporary protection

Whether the LSS applies to children with disabilities gTP depends on two factors: 1) whether they fall within the personal scope of the act, and 2) the responsibilities laid upon Swedish authorities for children gTP. This section will focus on the second factor, assuming that some children gTP will fall within the personal scope.

The local authorities responsible for providing the LSS services are determined in Section 16 of the LSS: the municipalities are responsible for their residents.

Do the municipalities then have responsibilities for children with a disability gTP? It follows from the preparatory works to Section 16 of the LSS, that the legislator intended to determine a municipality (region) of a person's residence by records in the Population Register.³⁸ However, Section 4 of the

[20daglig, inte%20deltar%20i%20n%C3%A5gon%20utbildning](https://www.norrkoping.se/stod-och-omsorg/stod-vid-funktionsnedsattning/daglig-verksamhet)> accessed 15 October 2023; Norrköpings kommun 'Daglig verksamhet' (Norrköpings kommun, 15 October 2023) <<https://www.norrkoping.se/stod-och-omsorg/stod-vid-funktionsnedsattning/daglig-verksamhet>> accessed 15 October 2023; HFD 2014 ref 41.

³⁵ Prop. 1992/93:159 pp. 186f.

³⁶ Abbreviation SFB means Socialförsäkringsbalk (2010:110); see also Regulation about support and service for persons with disabilities (Förordning (1993:1090) om stöd och service till vissa funktionshindrade), Paragraph 5 with reference to Regulation on Social Service (Socialtjänstförordning (2001:937)), Chapter 6 Sections 2–4.

³⁷ See Section 19 of the LSS and prop. 1992/93:159 p. 186.

³⁸ Prop 1992/93:159 p. 185.

Population Register Act or FBL directly excludes persons under temporary protection from being recorded in the Population Register.³⁹

In summary, municipalities (regions) are not authorised to provide services under the LSS to persons with gTP due to their lack of residency status in Sweden.

2.3 The Social Service Act (SoL)

2.3.1 Introduction

Section 2.3 focuses on SoL's provisions as grounds for social support for children with disabilities gTP in Sweden.

The SoL is a framework act containing possibilities for support in preventing or resolving financial and social problems (*lex generalis* in the area). The act is also based on the principle of voluntariness and self-determination. It aims to promote personal responsibility for one's own social situation and make resources available for individuals and groups. The SoL's aim is formulated differently compared to the LSS. The latter (LSS) puts the outcome – living as others – in focus and the good life and independent living are seen as standards to be promoted. In the SoL, the balance between the interests of many and the individual is more visible.

The SoL contains personal rights for children to receive social support, which are discussed below.⁴⁰

2.3.2 Assistance for children with disabilities

The possibility of receiving various types of social support is enshrined in Chapter 4 Section 1 SoL. Generally, the social support under Chapter 4 Section 1 of the SoL is provided to persons who cannot satisfy their needs on their own. The social support under the provision consists of “maintenance support” and “other life support” measures.

The “maintenance support” can be provided as a lump sum and individually adjustable regular costs that together should cover basic needs in food, clothes, shoes, free time, health, hygiene, rent, household maintenance, business trips, home insurance, union participation and unemployment fund.⁴¹

³⁹ The same interpretation was also made by the Swedish Association of Local Authorities and Regions (employer organisation for municipalities and regions). See SKR, 'Har massflyktingar rätt till LSS-insatser?' (SKR, 6 July 2022) <<https://skr.se/skr/kriget/ukraina/bistan-dekonomisktochannat/bistandfaq/harmassflyktingarratttillssinsatserupdate-rad6juli.66362.html>> accessed 20 October 2023; see also Litins'ka 'Hjärt- och/eller lungtransplantation för personer som saknar permanent uppehållstillstånd' (n.20) and Zillén (n.20) 68.

⁴⁰ Chapter 1 Section 2 in conjunction with Chapter 2 Section 1 of the SoL; Lundgren & Sunesson (n.27) kommentaren till 1 kap. 1 § SoL; prop. 2000/01:80 pp. 81ff.

⁴¹ Prop. 2000/01:80 pp. 86, 91f.; see also basic needs in Chapter 4 Section 3 of the SoL.

The lump sum is determined in the Social Service Ordinance. For an adult in 2023 it constitutes 3490 SEK per month or 112–116 SEK per day. It depends on the age of the child but can be up to 4 390 SEK per month or 141-143 SEK per day.⁴²

“Other life support” measures may include all possible needs not covered by maintenance support to ensure a person’s reasonable standard of living. Preparatory works to Chapter 4 Section 1 of the SoL give some examples of “other life support” measures such as eyeglasses, furniture, household utensils, winter clothes, care- and treatment for a person with addiction, children or youths, separate accommodation for persons with disabilities. Other examples of measures available for children with disabilities may be found in Chapter 3 of the SoL (contact person, contact families, professional support and treatment at home or pre-emptive measures. “Other life support” measures do not constitute an exhaustive list of services; they can cover all the services provided under Section 9 of the LSS and go beyond those, individual assessment is necessary on a case-by-case basis.⁴³

I will further on focus on “other life support” measures, which are essential for children with disabilities not covered by the LSS protection (see examples in section 1.1).

Whether the need in measure exists, it is determined through the reasonable standard of living (Chapter 4 Section 1 SoL). This aim should be seen as having a lower standard than “living like others” in the LSS.⁴⁴ Preparatory works clarify “reasonable standards of living” as minimum standards for the quality of measures. The preparatory works suggest that the municipalities should consider the following factors when deciding upon the measure:

- the request to take specific measures has been submitted,
- the measure is necessary and available,
- costs for measures requested and equal alternatives.

If alternative measures reduce expenses without harm to the quality of assistance, the alternative measures may be applicable.⁴⁵ Therefore, it is up to an authority to make a final choice, but not a child or representative to choose measures.

The right to social assistance depends on the inability to satisfy a child’s needs by his/her own or parents’ resources. Therefore, assessing the economic state is one of the prerequisites for executing the right to aid.⁴⁶ However, since 2010, Chapter 4 Section 1 of the SoL lets the municipalities provide “other

⁴² Social Service Ordinance (Socialtjänstförordningen (2001:937)), Chapter 2 Section 1.

⁴³ Prop. 2000/01:80 pp. 92f. HFD 2011 ref. 8 indicates that all measures that cannot be employed under Section 9 of the LSS may be provided on the ground of Chapter 4 Section 1 of the SoL.

⁴⁴ Mattsson (n.19) 147ff, Fridström Montoya (n.19) 227.

⁴⁵ Prop. 2000/01:80 p. 91.

⁴⁶ RÅ 2008 ref. 38.

life support” measures without examination of the economic needs of the person (child) if the authority can charge a fee according to Chapter 8 Sections 1 and 2 of the SoL.⁴⁷

Additional social assistance possibilities are prescribed in Chapter 4 Section 2 SoL. Such possibilities exist only when the person cannot receive assistance under Chapter 4 Section 1 of the SoL.⁴⁸ If rights are defined as demandable and definitive in terms of content and conditions, Chapter 4 Section 2 SoL does not contain rights.⁴⁹

To sum up, the right to get support measures for children with disabilities under Chapter 4 Section 1 of the SoL depends on the ability of the child or his/her parents to satisfy the child’s needs. The reasonable standard of living determines the assessment of a child’s needs as a minimum requirement for the quality of measures. The measures that can be applied under Chapter 4 Section 1 of the SoL are not exhaustive: children may generally have the same services as under Section 9 of the LSS and others.

However, the open-ended character of provisions gives municipalities responsible for services a wide margin of appreciation to decide on measures and their quality to be applicable in each case. It gives a child or his/her parents, respectively, fewer possibilities to choose and demand services from the municipality than prescribed in the LSS. The aims that shall be achieved with LSS measures and SoL measures are different: for the LSS it is to give good life and ensure the standard of living as others do. For SoL the standard is lowered to reasonable standard of living and with the aim to promote responsibility for own living situation.

2.3.3 Right to assistance for children under temporary protection

Chapter 2 Section 1 of the SoL prescribes that each municipality must provide social services within its responsibility. Municipalities are obliged to provide social support if no other authority is responsible. According to preparatory works for the first version of the SoL, migrants are also covered by SoL’s scope.⁵⁰ Chapter 2a Section 1 of the SoL determines that a municipality where a person stays is responsible for social support. This rule may not be applied if another municipality is responsible for social care under Chapter 2a Sections 3–5 of the SoL’s provisions. Usually, a municipality where a person

⁴⁷ Prop. 2009/10:57 p. 29.

⁴⁸ Prop. 2000/01:80 p. 165; see also JO 2003/04 p. 236.

⁴⁹ Prop. 2000/01:80 p. 83; see also Lundberg and Kjellbom ‘Social work law in nexus with migration law: A legal cartographic analysis of inter-legal spaces of inclusion and exclusion in Swedish legislation’ (n.17) 145. Chapter 4 Section 2 of the SoL contains no right to aid due to absence of detailed description and ability to demand aid. According to Chapter 16 Section 3 of the SoL (*in contrario*) decision under Chapter 4 Section 2 of the SoL cannot be challenged under Administrative Procedure Act.

⁵⁰ Prop. 1979/80:01 p. 144.

resides bears the primary responsibility for the social care of that person.⁵¹ Persons reside in a municipality if they permanently live there and are recorded in the Population Register or have the strongest connection (e.g. primary place of living or family location) (Chapter 2a Section 3 SoL). Therefore, the SoL interprets municipality of residence depending on a person's connection with the municipality and intention to stay in a particular municipality as a primary place of living.⁵² Such a definition in the SoL means that a person who is not recorded in the Population Register but has a primary place of living within the municipality should be considered as a person residing there.

The principle of stay municipality's responsibility aims to secure support and help wherever a person stays. A person's stay municipality is responsible for necessary help and support unless another municipality has the strongest connection or even another authority is responsible for a person's social care. When another municipality is responsible for a person's welfare, the municipality of stay is limited to acute social care. A similar approach has been used towards refugees: their social assistance was limited to acute care.⁵³

Preparatory works define acute situations as unexpected and unpredictable, and other cases when a person cannot wait for care from another municipality or authority. Assessment of whether the situation is acute is conducted on a case-by-case basis.⁵⁴

Due to temporary status in Sweden and remaining connections in the home country (family members, permanent home, etc.), it is unclear if a child gTP should be seen as residing in the municipality in the meaning of SoL.⁵⁵ The analysis asks whether children with disabilities gTP can receive all necessary care from municipalities during their stay or whether their rights under Chapter 4 Section 1 of the SoL are limited to acute situations.

⁵¹ Prop. 2010/11:49 pp. 31f, 380.

⁵² Ibid pp. 39f. and 86; see also Kamarrätten i Stockholm beslut den 2 december 2013 i mål nr 3179-13. In this case the Administrative Court of Appeal in Stockholm points out that in determination of residency municipality between two municipalities personal preferences and social contacts in one municipality may be disregarded in favour of municipality where person has permanent residence (recorded in Population Register) if it concerns neighbour municipalities.

⁵³ Prop. 2010/11:49 pp. 35, 44–48; RÅ 1995 ref. 70. The Supreme Administrative Court defines persons as temporary staying in Sweden under following circumstances: temporary residence permit, short-term stay (several months) in Sweden, no intention for settling down, remaining connection with home country (permanent home and workplace); see also see also Cuadra and Staaf (n.18) 93.

⁵⁴ Prop. 2010/11:49 p. 36.

⁵⁵ Note that no guidance on this issue has been provided by the Swedish Association of Local Authorities and Regions, SKR, 'Frågor om svar om ekonomiskt och annat bistånd till människor som flyr från Ukraina' (SKR, 22 April 2022) <<https://skr.se/skr/krigetiukraina/bistandekonomisktochannat.62339.html>> accessed 30 October 2023.

To sum up, it is unclear whether children gTP should be seen as residents in the municipalities of their stay according to Chapter 2a Section 3 SoL. If children gTP are considered to be residents in the meaning of SoL, they have access to social services under Chapter 4 Section 1 of the SoL. If they are not considered residents, they are likely to have access only to social assistance in acute situations and not assistance to satisfy their reasonable standard of living.

2.4 The Act on Reception of Asylum Seekers (LMA)

Section 2.4 overviews the Act's on Reception of Asylum Seekers (LMA) provisions and discusses the scope and delimitation between the SoL and the LMA.⁵⁶ The LMA guarantees some forms of social support for persons arriving in Sweden from non-EU countries. This section will investigate whether these guarantees are applicable to children under temporary protection.

It follows from the last paragraph of Section 1 of the LMA that a person who has the right to assistance under the Act cannot invoke provisions of Chapter 4 Section 1 of the SoL to receive assistance of the same type. Persons gTP are entitled under Section 1, paragraph 1, item 2 of the LMA to get assistance from the Migration Agency under this Act. It means that if Ukrainian children with disabilities are entitled to receive assistance under the LMA, their possibilities of receiving similar aid under the SoL will be restricted.⁵⁷ Such limitation is primarily related to maintenance support. The aim is to reduce state bills for foreigners with temporary status in contrast with persons with residency status in Sweden. Measures other than maintenance support not regulated in the LMA may theoretically be complemented under the SoL.⁵⁸

Pursuant to Section 13 of the LMA, children with disabilities gTP are entitled to get assistance via receiving accommodation or compensation for expenses, daily allowances, and special aid.⁵⁹

If a migrant gTP does not have a place to live, the Migration Agency offers a place in an accommodation centre. Municipalities may also provide accommodation on behalf of the Migration Agency under the same conditions applicable to the accommodation centre. The Migration Agency website informs that persons with physical and mental disabilities can expect accommodation adapted to their specific needs.⁶⁰ The Migration Agency and

⁵⁶ Chapter 2 Section 1 of the SoL contains specific provisions on assistance and accommodation of children.

⁵⁷ See also SKR (n.54).

⁵⁸ Prop 1993/94:94 pp. 44, 93f.

⁵⁹ The right to aid is conditional and depends on the person's registration in the accommodation centre. Yet, an actual stay in an accommodation centre is unnecessary for receiving aid. Ibid 18.

⁶⁰ See Sections 2, 14 of the LMA; see also information on Migrationsverket 'Accommodation for those who have protection under the Temporary Protection Directive'

municipalities share responsibilities for providing accommodation, where necessary assistance for persons with disabilities is included.⁶¹

Daily allowances may be provided for foreigners who lack resources to buy food, clothes and shoes, free-time activities, hygiene items and other consumables. Adults living with family receive up to 61 SEK per day. Children receive less money: up to 50 SEK per day, but the amount depends on age (the younger children, less money). If a person gets free food as a part of the accommodation, daily allowances are reduced to a maximum of 24 and 12 SEK per day, respectively.⁶² Daily allowances for children gTP constitute three times less than the sum provided under SoL (see section 2.3.2).

According to Section 18 of the LMA, persons have the right to receive special assistance to cover other expenses necessary for daily life, such as equipment for a person with a disability, glasses, dietary supplements, etc. However, Swedish courts do not necessarily consider that the provisions of the LMA cover assistance in kind.⁶³ For example, the Administrative Court of Appeal in Jönköping clarifies that assisting persons with disabilities is prescribed under another set of rules (such as the SoL). Section 18 of the LMA does not cover special aid in kind because special aid may be provided only in cash as economic benefits.⁶⁴

To sum up, children with disabilities gTP have the right to assistance, according to the LMA. A municipality, through the Migration Agency, can provide accommodation adapted to the specific needs of children with disabilities gTP. The Migration Agency should also provide economic benefits to cover children's basic needs, specific equipment or other consumables. Daily allowances for children under the LMA are three times less than under the SoL, and these children cannot claim economic benefits under the SoL since the LMA covers them. The Migration Agency is not responsible for arranging assistance in kind, such as accompanying services, relief for parents within and without their home, or other services that can be arranged under the SoL.

The answer to whether children with disabilities gTP have the right to get services under the SoL, which the LMA does not cover, is not a simple one.

(Migrationsverket.se, 4 December 2023) <<https://www.migrationsverket.se/English/Private-individuals/Protection-under-the-Temporary-Protection-Directive/Accommodation.html>> accessed 10 December 2023.

⁶¹ Kammarätten i Jönköping, beslut den 10 januari 2020, mål nr 2654-19. But see also and SKR, 'Vem har ansvar för sociala insatser till de som flytt från Ukraina och har särskilda behov?' (SKR 1 July 2022) <https://skr.se/skr/krigetiukraina/bistandekonomisktochannat/bistandfaq/vemharansvarforsocialainsatsertilldesomflyttfranukrainaochharsarskildabehovuppdaterad1juli.62353.html> accessed 30 October 2023.

⁶² Section 17 of the LMA and Sections 5 and 6 of the Ordinance on Reception of the Asylum Seekers (Förordning (1994:361) om mottagande av asylsökande m.fl) or FMA.

⁶³ See examples of special aid in Section 7 FMA. Restrictive approach was mentioned for instance in the cases Kammarätten i Sundsvall, beslut den 4 maj 2011, mål nr 2914-10.

⁶⁴ Kammarätten i Jönköping, beslut den 10 januari 2020, mål nr 2654-19.

On the one hand, provisions of Section 1 of the LMA in conjunction with Chapter 2 Section 1 of the SoL may be interpreted as the SoL is complementary to the LMA and applies when the LMA lacks provisions on specific aid.⁶⁵ Thus, the municipality of a child's stay should take the lead in providing social services according to the principles of staying municipality and municipalities' utmost responsibility for personal wellbeing. On the other hand, the principle of utmost responsibility means that the children in question may only have access to social care in acute situations due to lack of residency status. Therefore, the rights to social care under Chapter 4 Section 1 of the SoL for children with disabilities gTP may be sufficiently limited compared to children who enjoy residency status in Sweden.

2.5 Social Assistance in the Practice of Municipalities: The Survey

To understand what social assistance children with disabilities gTP are entitled to in Sweden, empirical analysis in a survey has been employed. As explained above (section 1.4), such a method is hoped to broaden understanding of what rules are applicable in practice.⁶⁶ For the survey, forty-six municipalities and fifteen administrative districts of Stockholm and Gothenburg were requested via e-mail to answer the questions listed below.

Question 1: How many applications were submitted to the municipality in 2022-2023 under Section 9 of the LSS concerning children gTP? How many applications were granted, and how many were denied?

Question 2: How many applications were submitted to the municipality in 2022-2023 under Chapter 4 Section 1 of the SoL to apply measures concerning children gTP? How many applications were granted, and how many were denied?

Question 3: How many applications were submitted to a municipality in 2022-2023 under Chapter 4 Section 1 of the SoL and declined on the grounds of absence of residence?

Question 4: Has the municipality issued some documents (guidelines, policies, etc.) or routines on residency status regulated in Chapter 2a Section 3 of the SoL concerning children gTP? (please enclose copies of those documents)

Question 5: Has a municipality issued documents (guidelines, policies etc.) or routines to address situations when measures according to Chapter 4

⁶⁵ About application of the SoL and the LMA see for instance in Kjellbom and Lundberg 'Olika rättsliga rum för en skäliglevnadsnivå? En rättskartografisk analys av SoL och LMA i domstolspraktiken' (n.17) 55; Lundberg and Kjellbom 'Social work law in nexus with migration law: A legal cartographic analysis of inter-legal spaces of inclusion and exclusion in Swedish legislation' (n.17) 149ff.

⁶⁶ van Boom (n.15) 2.

Section 1 of the SoL or Section 9 of the LSS were requested concerning children gTP? (please enclose copies of those documents)

Table 1, Appendix A, displays the list of municipalities and all answers received. Among sixty-one requests sent, twenty-three municipalities or approximately thirty per cent, have not answered all questions. Some municipalities refused to provide answers to some of the questions.⁶⁷ Ten municipalities have responded that they had no statistical data to answer Questions 1-3, and three more municipalities informed me about the lack of statistics on Questions 2-3.

Overall, with regard to Question 1, four municipalities reported about five applications, according to the LSS. None of those applications were granted.

As to Question 2, nineteen applications in seven municipalities were submitted under SoL. Seventeen were granted, one application was declined and one was revoked. One of seventeen granted applications under SoL was initially submitted for the LSS measures to take. No applications under SoL were declined on the absence of residency status (Question 3).

As indicated in those answers, the small number of applications submitted (twenty-four) may be explained by the absence of data concerning Ukrainian children gTP in twenty per cent of municipalities.

As to Questions 4 and 5, only one municipality had guidelines for the LSS and the SoL application in relation to children with disabilities gTP. According to the guidelines, the LSS is not applicable to the situation in question. The survey shows that all municipalities agreed to that, except one that would have applied the LSS if it had a chance.

Concerning the SoL, the guidelines suggested that it applies complementary when measures cannot be taken under the LMA.⁶⁸ Municipalities have no unified position concerning the LMA and the SoL delimitation. Some municipalities agreed that SoL has auxiliary meaning in relation to the LMA, some indicated that the SoL is fully applicable to the persons under temporary protection in all situations. Some municipalities would have applied the SoL only in acute situations, but not among those municipalities which actually applied the SoL to Ukrainian children.

To sum up, the survey shows that most municipalities either do not respond, have no statistical data or receive no applications for social assistance or support for children with disabilities gTP. Among municipalities that received applications according to Section 9 of the LSS and Chapter 4 Section 1 of the

⁶⁷ One municipality has indicated no Ukrainian children registered within the municipality, which does not correspond with data from the Migration Agency.

⁶⁸ See section 2.4.

SoL, all agreed that the LSS is not applicable and more than ninety per cent that SoL applies to children gTP as to residents.

Overall, the assessment of municipalities' answers demonstrates that they have different opinions on delimitation between the LMA and the SoL. There is no unified position among municipalities if the SoL is limited only to acute situations in relation to children under temporary protection.

The results as to the frequency of the application should not be representative since the answers have not always been provided. However, the results illustrate the existing problems with the interpretation of the legislation.

2.6 Reflections and discussion

To summarise, the LSS does not apply to children with disabilities gTP, even in cases when they fall within the personal scope of the act. Exclusion is based on the absence of residency status in the meaning of Section 4 FBL. In accordance with the survey, Swedish municipalities do not apply the LSS to children with disabilities gTP and all applications under the LSS were declined.

Children with disability gTP may have access to the Swedish social care system under the SoL and the LMA's provisions. Under the LMA, children gTP may receive maintenance support in cash to satisfy their basic and special needs. These children can also receive support through housing adjusted for their needs. However, daily allowances for children under the LMA are three times less than allowances for children under the SoL.

The measures not included in the LMA scope should be realised via Chapter 4 Section 1 of the SoL. What measures may apply should be assessed on case-by-case basis on the grounds of reasonable standard of living as minimum standards on quality of social care and assistance.

The degree to which the SoL is applicable towards children with disability gTP may be a subject of debate. The answer to the question depends on whether children's gTP are seen as residing in the municipality or are temporarily present there. In the latter case, only measures of the acute character will be applied, whereas in the former, the SoL can be used to receive various types of measures to promote a reasonable standard of living.

The survey indicates the following differences in interpreting the law by municipalities:

- some municipalities recognise the auxiliary character of the SoL in relation to the LMA, but some municipalities do not apply the LMA provisions,

- most municipalities provide full access to social care for children with disabilities gTP, whereas others limit social care to acute situations.

The LSS, the SoL and the LMA have different goals for assistance. The LSS aims to create possibilities for persons with disabilities to live as others. The SoL focuses on promoting personal responsibility for one's social situation and reasonable standard of living. The aim of the LMA is not specified, but it seems to be primarily connected with ensuring the minimum standards of protection and survival. It leads to the conclusion that children with disabilities gTP who are entitled to receive assistance under the LMA and SoL have reduced possibility for support in contrast with children who can have support under the LSS and SoL. The standard of protection provided to children gTP is lower.

The analysis of Swedish law indicates risk for substantive restrictions in accessing the rights to social support for children with disabilities gTP.

3 International human rights law perspectives

3.1 General remarks

This chapter discusses the relevant rights established in the CRC and the ECHR. These include the best interests of the child, the right to life, survival and dignity, the prohibition of torture, the right to special care for children with disabilities, private and family life, property, and the prohibition of discrimination.

The conventions discussed in the chapter have a twofold status: on the one hand, they are international treaties, a part of international human rights law, which influences the chosen methods of interpretation. On the other hand, both conventions became domestic law after implementation.

The Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was ratified by Sweden in 1952, and since 1 January 1995 it was incorporated into the domestic law. The ECHR is mentioned explicitly in the IoG: Chapter 2 Section 19 prohibits authorities from legislating in a way that violates the Convention.

The CRC was ratified in 1990 and incorporated into Swedish law in 2020. Some rights established in the Convention – such as the child’s best interests – have been a part of the national legal system long before the implementation.⁶⁹ However, it was regarded that Sweden had failed to protect the child’s best interests in the area of social care.⁷⁰ Incorporating the CRC was considered to create better opportunities to protect children’s rights in Sweden.⁷¹ Unlike the ECHR, the CRC is not mentioned in the national constitutions and has a status of ordinary law. Whether the implementation of the CRC brought about the expected changes can be questioned: Sweden continues to be criticised for not fulfilling its international obligations after the CRC was implemented in domestic law.⁷²

This chapter addresses whether the rights enshrined in the ECHR and the CRC can be used as arguments for granting full access to social assistance to children with disabilities gTP.

3.2 Best interests of the child

Pursuant to Article 3 Section 1 CRC, the child’s best interests shall be a *primary consideration* in all actions taken by various public and private actors

⁶⁹ See e.g. Chapter 1 Section 2 of the SoL, Section 6a of the LSS.

⁷⁰ SOU 2016:19 pp. 190–194; SOU 2020:63 pp. 253f.

⁷¹ Prop. 2017/18:186 pp. 1ff.

⁷² UN CRC Concluding observations on the combined sixth and seventh periodic reports of Sweden (2023) CRC/C/SWE/CO/6-7, paras 5, 12f.

concerning children - a similar provision is inserted in Article 24(2) of the CFR. According to the ECtHR's case law, states must place the child's best interests "at the centre of all decisions affecting their health and development".⁷³ The term "primary considerations" has been interpreted as requiring the assessment of all the interests in the case. The next step would be that in all the existing interests, the "child's best" should be given high priority and not regarded as a mere one of the considerations in the case.⁷⁴ The child's best is meant to strengthen the interests, but it does not mean that the decisions, when a number of other interests are present, will always be the most favourable for the child.⁷⁵

The best interests of the child require assessment on a case-by-case basis. The United Nations Committee on the Rights of the Child (Committee) suggests that the child's view and identity, preservation of family relations, care, protection and safety of the child, situations of vulnerability, and the child's rights to health and education shall be considered. Vulnerability depends on the situation where the child, for example, is a refugee or has a disability.⁷⁶ Based on the abovementioned criteria, it isn't easy to imagine the situations when receiving voluntary social assistance the child or guardians applied for would not be in the child's best interest. I, therefore, assume that in the case of children gTP, the social assistance measures are in accordance with their best interests.

The child's best interests is a concept with three faces, meaning that it is a substantive right, a fundamental principle, and a rule of procedure that concerns children.⁷⁷ I will focus on the first and second reiterations below since those are most relevant for the case of children gTP in Sweden.

Best interests as a substantive right means the obligation for any authority to assess the interests, identify them, and provide the weighting mentioned above, while prioritising the child's best considerations. The obligations can

⁷³ *Vavrička and Others v the Czech Republic* [GC] App no 47621/13 (ECtHR, 8 April 2021), paras 286–288; *Parfitt v the United Kingdom* (dec.) App no 18533/21 (ECtHR, 20 April 2021), para 51; *Neulinger and Shuruk v Switzerland* [GC] App no 41615/07 (ECtHR, 6 July 2010), para. 135 and, *X v Latvia* [GC] App no 27853/09 (ECtHR, 26 November 2013), para. 96.

⁷⁴ The UN CRC, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) CRC/C/GC/14, para. 39.

⁷⁵ In the most recent observation, the Committee notes that the state should ensure the application of the child's best interests by authorities, especially regarding immigration issues, and clarify the determination of best interests in the LSS. CRC/C/SWE/CO/6-7, paras 5, 12f.; SOU 2020:63 pp. 253f.

⁷⁶ CRC/C/GC/14, paras 52–79; see also case C-112/20 *M. A. v État belge* (CJEU, 11 March 2021) ECLI:EU:C:2021:197 para. 27 where the CJEU considered "age of the child, the child's physical and emotional development, the extent of the child's emotional ties to each of his or her parents and the risk of separation from the third-country national parent for that child's equilibrium" as relevant factors to decide on the best interests of the child.

⁷⁷ CRC/C/GC/14, para. 6.

be invoked before a court if the interests are not identified or weighted.⁷⁸ In our case, it simply means that if the application is submitted, the authorities must assess the best interests, which are likely to receive social support. As to the competing interests, it is possible to estimate that these might include the interests of protecting public spending, migration control, and, in cases related to the requests under LSS, the legality.⁷⁹ The combination of these interests can likely result in denial of the assistance, especially when combined with the absence of legal support under the LSS. However, if the issue is decided under the SoL – the migration control and financial considerations are weighed against the best interests of the child with a disability - estimating how dramatic the economic burden will be for a specific child to receive the measure appears essential. The reasoning is likely to result in the conclusion that the social assistance measures should be granted.

As an interpretative principle, the child's best means that if a legal provision is open to interpretation, the most favourable interpretation for the best interests shall be chosen.⁸⁰ Previously, it was identified that whether children gTP can receive assistance per SoL is open to interpretation and depends on whether these children are considered to reside in the municipality or are temporarily present there. In the latter case, only acute measures apply. Here, the child's best (as an interpretation principle) would signify that the authorities should choose the interpretation that allows the children to obtain the measures in their best interests.

To sum up, the best interests of the child as an interpretive principle can be used as an argument for granting access to social assistance to children with disabilities gTP according to Chapter 4 Section 1 SoL. The CRC's best interest is unlikely to be an effective instrument for granting access to the rights enshrined in the LSS.

3.3 Protection of life, survival and dignity

3.3.1 Right to life, survival, and development under the CRC
The right to life, survival, and development established in Article 6 of the CRC constitutes a fundamental principle of the Convention and must be considered whenever other rights are applicable.⁸¹ According to the Committee, the right to life should be interpreted extensively: the states must ensure that a child enjoys their *life with dignity*. The Article aims to create an

⁷⁸ Ibid, para. 6(a).

⁷⁹ As explained above, the requests under the LSS on behalf of persons gTP shall not be granted because local authorities are not responsible for such measures in accordance with Section 16 of the LSS (see section 2.3.3).

⁸⁰ CRC/C/GC/14, para. 6(b).

⁸¹ See for instance UN CRC, General Comment No. 7 (2005) Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, para 10; Susann Swärd, *Barnkonventionen i praktisk tillämpning. Handbok för socialtjänsten* (Norstedts Juridik 2020) 65.

environment for children to experience normal childhood and become adults.⁸² The “*development*” should be seen as a holistic concept that includes children’s physical, mental, moral, psychological, and social development on the level optimal for their present and future.⁸³ Therefore, the right’s scope includes economic and social rights as minimum conditions for a life with dignity, especially for vulnerable children.⁸⁴ Many measures of social assistance, such as personal assistance, accommodation within the special home or accompanying service, can fall within the scope of the rights. The threshold here will be whether the measures signify childhood with dignity (normal childhood) and development with dignity.

States’ positive obligations under Article 6 (2) CRC are to take actions to the maximum extent possible to ensure the child’s survival and development.⁸⁵ The obligations thus are not absolute; they depend on state resources and other factors, such as parents’ and children’s right to decide.⁸⁶ However, as a fundamental principle and *Jus Cogens* rule, the right to life, survival, and development should prevail in balancing with other rights or interests.⁸⁷

To sum up, the right to life, survival, and development encompasses states’ positive obligations in economic and social spheres to ensure life with dignity, which also means possibilities for children’s development on optimal levels. The obligations depend on the resources the state has. However, the right to life, survival, and development as a fundamental principle and *Jus Cogens* rule should prevail in balancing with other interests. The right to life, survival and development can be used as an additional argument for granting social assistance to children with disabilities gTP. Because the right has rather a general character and can be realised in multiple ways, and the CRC was implemented as an ordinary law to the Swedish legal system, domestic social law provisions will often be seen as *lex specialis*. Using the provisions as a separate strong argument, particularly to obtain social assistance under the LSS, may be problematic.

3.3.2 Right to life in the ECHR

⁸² Ibid.

⁸³ General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6) CRC/GC/2003/5 para 12; CRC/C/GC/7/Rev.1, para 10; Swärd (n.79) 66f; see also Article 6 paragraph 2 CRC in conjunction with to example Articles 23 and 27 CRC which constitute right to development.

⁸⁴ UN CRC, General comment No. 21 (2017) on children in street situations CRC/C/GC/21, para. 29.

⁸⁵ SOU 2020:63 p. 334; Julia Dahlvist and Pernilla Leviner, ‘Barns rätt till liv, överlevnad och utveckling’ in Karin Åman, Pernilla Leviner, och Kavot Zillen (eds.) *Barnkonventionen i praktiken. Rättslig utmaningar och möjligheter* (Norstedts Juridik 2020) 90, 95f.

⁸⁶ Article 4 of the CRC; Ibid.

⁸⁷ UN Office of HCHRC, Legislative history of the Convention on the Rights of the Child HR/PUB/07/1, article 6, C 2 paras 18 och 21; See also section 3.2 about the best interests of the child.

The right to life, together with the prohibition of torture, constitute fundamental principles of the democratic society enshrined in the ECHR.⁸⁸ Article 2 ECHR imposes obligations to safeguard the lives of persons. Among activities that may be life-threatening in some contexts, the ECtHR has adjudicated upon the issues related to healthcare, including medical care, assistance to vulnerable persons in state facilities, industrial and environmental disasters, road safety, and others.⁸⁹ Though the practice did not directly concern social services for children with disabilities, it is possible to imagine a situation when the absence of such can be life-threatening. This, in particular, concerns children whose disabilities require personal assistance with feeding or breathing when guardians, for various reasons (disability, weakened state of health, own need for sleep and so on), cannot help with such fundamental needs (see example in section 1.1 with a 3-year old girl).

In contrast with the CRC (see previous section), the Court uses a stricter approach in defining the material scope of Article 2 ECHR. The obligations can be invoked if a real and imminent risk to a person's life exists.⁹⁰ Furthermore, it must be established that state authorities knew or ought to have known at the time of the existence about the real and immediate risk and failed to take appropriate measures within their powers to address that risk. The choice of measures falls within the margin of appreciation of the states.⁹¹

This brief analysis leads to the following conclusions. In the social assistance context, Article 2 ECHR can be rarely invoked due to the high threshold for its application established by the ECtHR: it should be shown that there is a real and immediate danger to life, and authorities know about it. The threshold of danger for life is not usually reached but can be in some singular cases, such as help with breathing or feeding of the child for children whose parents' health is failing to satisfy their needs. This can be used as an additional argument for providing some social assistance to receive acute measures under SoL - a mechanism already established in SoL for children gTP. Thus, Article

⁸⁸ *Giuliani and Gaggio v Italy* [GC] App no 23458/02 (ECtHR, 24 March 2011), para. 174; *Bouyid v Belgium* [GC] App no 23380/09 (ECtHR, 28 September 2015), para. 81.

⁸⁹ See for instance, *Nencheva and Others v Bulgaria* App no 48609/06 (ECtHR, 18 June 2013); *Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania* [GC] App no 47848/08 (ECtHR, 17 July 2014); *Dumpe v Latvia* (dec.) App no 71506/13 (ECtHR, 16 October 2018); *Calvelli and Ciglio v Italy* [GC] App no 32967/96 (ECtHR, 17 January 2002); *Öneryıldız v Turkey* [GC] App no 48939/99 (ECtHR, 30 November 2004); *Brincat and Others v Malta* App nos 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11 (ECtHR, 24 October 2014); *Rajkowska v Poland* (dec.) App no 37393/02 (ECtHR, 27 November 2007); *Anna Todorova v Bulgaria* App no 23302/03 (ECtHR, 24 August 2011).

⁹⁰ *Tërshana v Albania* App no 48756/14 (ECtHR, 4 November 2020), para. 132; *Nicolae Virgiliu Tănase v Romania* [GC] App no 41720/13 (ECtHR, 25 June 2019), paras 139–145.

⁹¹ *Mastromatteo v Italy* [GC] App no 37703/97 (ECtHR, 24 October 2002), para. 68; *Paul and Audrey Edwards v the United Kingdom* App no 46477/99 (ECtHR, 16 October 2002), para. 55; *Kurt v Austria* [GC] App no 62903/15 (ECtHR, 15 June 2021), para 64; *Fernandes de Oliveira v Portugal* [GC] App no 78103/14 (ECtHR, 31 January 2019), para. 68; *Budayeva and Others v Russia* App nos 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 (ECtHR, 29 September 2008), paras 134–135; *Vilnes and Others v Norway* App nos 52806/09 and 22703/10 (ECtHR, 24 March 2014), para. 220; *Brincat and Others v Malta*, para. 101.

2 ECHR cannot be used as an independent and robust argument for granting full access to social assistance to children with disabilities gTP.

3.3.3 Prohibition of torture in the ECHR

As mentioned in the previous section Article 3 ECHR enshrines one of the most fundamental principles of democratic societies – the prohibition of torture and inhuman or degrading treatment or punishment. The right is closely linked to respect for human freedom and dignity. The ban is absolute, and no derogation is permissible.⁹²

To fall within the scope of Article 3 of the ECHR, torture and inhuman or degrading treatment or punishment should reach a minimum level of severity which depends on the circumstances in each case, such as duration of treatment, purpose and context, its physical or mental effect, person's sex, age, state of health or vulnerable situation.⁹³

The intensity of the suffering caused determines the distinction between torture, inhuman or degrading treatment.⁹⁴ Torture is the cruellest form of ill-treatment.⁹⁵ Inhuman treatment is a treatment that causes physical injury, long-term pain or mental suffering.⁹⁶ Degrading treatment is considered when a person is exposed to humiliation and diminishes their dignity, treatment, fear, anguish, and inferiority, making them unable to break personal moral or physical resistance. Degrading treatment is the most relevant form in relation to children with disabilities.

The Court referred to the degrading treatment in the following examples: when a person with severe disability was detained in a room with a hard, unreachable bed and toilet or inability to move around; when a detained disabled person was forcefully shaved without any justification; when a person is detained for an unnecessarily long period without ensuring appropriate conditions for existing; when police did not provide protection from verbal and physical abuse; delay in providing tests results which cause painful

⁹² *Bouyid v Belgium* [GC] para. 81. Concerning non-derogation see for instance *A. and Others v the United Kingdom* [GC] App no 3455/05 (ECtHR, 19 February 2009), para. 126; *Mocanu and Others v Romania* [GC] App nos 10865/09, 45886/07 and 32431/08 (ECtHR, 17 September 2014), para. 315; *El-Masri v the former Yugoslav Republic of Macedonia* [GC] App no 39630/09 (ECtHR, 13 December 2012), para. 195.

⁹³ *Savran v Denmark* [GC] App no 57467/15 (ECtHR, 7 December 2021), para. 122; *Muršić v Croatia* [GC] App no 7334/13 (ECtHR, 20 October 2016), para. 97; *Khlaifia and Others v Italy* [GC] App no 16483/12 (ECtHR, 15 December 2016), para. 160.

⁹⁴ *Ireland v the United Kingdom* App no 5310/71 (ECtHR 18 January 1978), para. 167.

⁹⁵ *Ilaşcu and Others v Moldova and Russia* [GC] App no 48787/99 (ECtHR, 8 July 2004), para. 426; *Selmouni v France* [GC] App no 25803/94 (ECtHR, 28 July 1999), para 97; *Salman v Turkey* [GC] App no 21986/93 (ECtHR, 27 June 2000), para. 114; see also delimitation of torture in Article 1 UN CAT.

⁹⁶ *Simeonovi v Bulgaria* [GC] App no 21980/04 (ECtHR, 12 May 2017), para. 90; *Chember v Russia* App no 7188/03 (ECtHR, 1 December 2008), para. 57; *Musayev and Others v Russia* App nos 57941/00, 58699/00 and 60403/00 (ECtHR, 31 March 2007), para. 169; *Gäfgen v Germany* [GC] App no 22978/05 (ECtHR, 1 June 2010), paras 91 and 101–108.

uncertainty.⁹⁷ The ECtHR considers that the absence of intention to treat a person in a degradable manner is similarly covered by Article 3 ECHR, as such a treatment with intention.⁹⁸

The positive obligations under Article 3 ECHR, means that a state is under the obligation under specific circumstances to take operational measures to protect a specific person.⁹⁹ In particular, the state should protect the person in vulnerable situations, such as children and asylum seekers.¹⁰⁰ In several cases, the ECtHR reiterated that states had a duty to act when persons wholly dependent on state support faced indifference from state authorities, which led to severe deprivation incompatible with human dignity.¹⁰¹

In relation to Article 3, the ECtHR developed a similar test as to when the obligations arise, as the one discussed in the previous section, namely: (1) authorities knew or ought to have known that the risk of ill-treatment is real and immediate, and (2) authorities have failed to take reasonable steps in their powers to prevent ill-treatment.¹⁰² Like Article 2 of the ECHR, the Court should assess whether the authority's risk evaluation and preventive measures are adequate.¹⁰³

To sum up, under Article 3 of the ECHR, states have the substantive positive obligations to act if a person finds themselves in a dependent situation from the state help, and there is a real and immediate risk of ill-treatment which is foreseeable for the state authorities. The ECtHR's case law shows examples of degrading treatment of vulnerable persons, which fall under the ambit of Article 3 of the ECHR. Despite that there is a lack of case law concerning children with disabilities in the social care context, the Court's approach suggests that Article 3 is very likely applicable in the situation, for example, when

⁹⁷ *R.R. v Poland* App no 27617/04 (ECtHR, 28 November 2011), para. 159, *Women's Initiatives Supporting Group and Others v Georgia* App nos 73204/13 and 74959/13 (ECtHR, 16 March 2022), para. 60; *Z.A. and Others v Russia* [GC] App nos 61411/15, 61420/15, 61427/15 and 3028/16, (ECtHR, 21 November 2019), para. 195; *Kalashnikov v Russia* App no 47095/99 (ECtHR, 15 October 2002), para. 102; *Khan v France* App no 12267/16 (ECtHR, 28 May 2019), paras 94–95.

⁹⁸ *Gäfgen v Germany* [GC], para. 89; *Ilaşcu and Others v Moldova and Russia* [GC], para. 425; *M.S.S. v Belgium and Greece* [GC] App no 30696/09 (ECtHR, 21 January 2011), para. 220.

⁹⁹ *X and Others v Bulgaria* [GC] App no 22457/16 (ECtHR, 2 February 2021), para. 178. See also Vladislava Stoyanova, *Positive Obligations under the European Convention on Human Rights: Within and Beyond Boundaries* (OUP 2023) 19. Concerning procedural duty to carry on investigation it will not be analysed due to its irrelevance to this work.

¹⁰⁰ *X and Others v Bulgaria* [GC], para. 177 and *R.B. v Estonia* App no 22579/16 (ECtHR, 22 September 2021), para. 78; *Premninny v Russia* App no 44973/04 (ECtHR, 20 June 2011), para. 73.

¹⁰¹ *M.S.S. v Belgium and Greece* [GC], paras 249 and 253; *Tarakhel v Switzerland* [GC] App no 29271/12 (ECtHR, 4 November 2014), paras 95 and 98; *N.H. and Others v France* App nos 28820/13, 75547/13, and 13114/15 (ECtHR, 2 October 2020), paras 165–186.

¹⁰² *O'Keefe v Ireland* [GC] App no 35810/09 (ECtHR, 28 January 2014), para. 144; *X and Others v Bulgaria* [GC], para. 183.

¹⁰³ *Kurt v Austria* [GC], para. 69.

children with disabilities gTP and their families who are entirely dependent on the state's social care and support find themselves accommodated in premises unsuitable for a disabled child's basic needs. This example can be seen as a degrading treatment which affects human dignity due to indifference from the state authority. However, it appears that Article 3 ECHR does not provide additional strong arguments for fuller access to rights. These types of situations Article 2 concerns are already covered by national legislation, as discussed in Chapter 2.

3.3.4 Right to special care and assistance for children with disabilities

According to Article 23 CRC, every child with a disability should enjoy “a full life, in conditions that ensure dignity, promote self-reliance and facilitates the child's active participation in the community”. The term “disability” is understood as long-term physical, mental, intellectual, or sensory impairments which, in interaction with various barriers, may hinder a person's full and effective participation in society on an equal basis with others.”¹⁰⁴ Provision of Article 23 CRC is directly rooted in the right to life, survival, and development as a leading principle under Article 6. To ensure that children with disabilities enjoy life with dignity and development, Article 23, paragraph 2 of the CRC establishes the right to special care and assistance to meet the special needs of children with disabilities and provide adequate access to education, training, health care and rehabilitation services, and others with fullest possible social integration and individual development.

The right to special care and assistance entails the positive obligation to provide such care and protection within the available resources necessary for a child's and their family's welfare. The Committee encourages states: “to develop and effectively implement a comprehensive policy employing a plan of action which not only aims at the full enjoyment of the rights enshrined in the Convention without discrimination but which also ensures that a child with disability and her or his parents and/or others caring for the child do receive the special care and assistance they are entitled to under the Convention”.¹⁰⁵ The Committee insists that states shall “make special care and assistance a matter of high priority and to invest to the maximum extent of available resources” to avoid discrimination with maximum inclusion of children in social activities. Whenever possible, special care and assistance provided by the states should be free of charge.¹⁰⁶ Provisions of Article 23, paragraphs 2 and 3 of the CRC suggest that special care and support should be adjusted to the circumstances of each case and the child's individual needs.¹⁰⁷

¹⁰⁴ UN CRC General comment No. 9 (2006): The rights of children with disabilities, CRC/C/GC/9, para. 7.

¹⁰⁵ CRC/C/GC/9, para. 13, see also SOU 2020:63 p. 929f.

¹⁰⁶ CRC/C/GC/9, para. 14; see also positive obligations of states under Article 4 of the CRC.

¹⁰⁷ CRC/C/GC/9, para. 74; SOU 2020:63 p. 932f.

Article 23 of the CRC aims to establish a legal environment where a child with a disability may enjoy other rights on an equal basis with others. The right to special support and assistance should be seen as linked to protection against discrimination under Article 2 of the CRC (see principle on non-discrimination in section 3.6.2).¹⁰⁸ Besides, the right is related to adequate access to education, training, health care, rehabilitation and social integration recognised under Articles 24, 26, 27, 28, 29, and 31 of the CRC. Article 23 of the CRC is also facilitated by provisions on the child's best interests according to Article 3, paragraph 1 of the CRC, which is analysed in section 3.2. In particular, the child's best interests are crucial in allocating resources in the child's favour. Thus, special care and assistance financing under Article 23 of the CRC should be prioritised, especially for displaced children with disabilities.¹⁰⁹

To sum up, Article 23 of the CRC, which should be seen in conjunction with other articles of the Convention, aims to guarantee life with dignity and development for children with disabilities. To ensure the achievement of this principle, special care and assistance to children with disabilities and their families shall be established by states as a high priority, and the maximum extent of available resources shall be invested to avoid discrimination and promote the full inclusion of children in social activities. Special care and assistance should be adjusted to the circumstances and the child's needs. For the case of children gTP, it means that the states should allocate their resources to ensuring access to the rights of children with disabilities to the maximum extent possible. The provisions should be read in conjunction with the non-discrimination principle (see further section 3.6); thus, the answer as to how the right provides additional protection cannot be complete at this stage.

On the one hand, the right can be used to question whether Sweden has allocated its maximum available resources for the protection of the children gTP. The design of the right can thus put a burden of proof of the appropriate usage of the resources on the state. However, if the state can show that such resources are not available, the right cannot provide any immediately realisable obligations. On the other hand, the right is implemented in Sweden as a general law, which makes it hard to apply in cases when special regulations – such as the SoL and the LMA – can be seen as *lex specialis* providing protection only in limited forms. The possibilities to use the right to provide additional protection, particularly full protection under the SoL, are limited.

3.4 Right to respect for private and family life

Article 8 ECHR protects private and family life. The right to private life includes everyone's right to personal development, which encompasses

¹⁰⁸ CRC/C/GC/9, para. 2.

¹⁰⁹ Swärd (n.79) 106; CRC/C/GC/9 paras 13, 79f.

establishing and developing relationships with other individuals.¹¹⁰ The Court's case law underlines that the right to private life protects, among others, the value of personal well-being and dignity, including living conditions, individual self-determination, and physical and psychological integrity.¹¹¹ The right to family life protects family relationships and their normal development, including the possibility for members of the family to enjoy each other's company.¹¹² The existence of family life depends on *de facto* family ties and the length of the relationships.¹¹³

The ECtHR often chooses to apply Article 8 of the ECHR restrictively in social assistance cases, even in some situations concerning persons with disabilities or children. For instance, the state's obligation to ensure accessibility of public buildings for persons with disabilities falls under Article 8 of the ECHR only on an exceptional basis when it prevents personal development or the development of relationships with others.¹¹⁴ The right under Article 8 of the ECHR does not cover all public activities, such as hunting or keeping a dog.¹¹⁵ Social assistance is necessary for the child's development, and maintaining or developing family or personal relations is likely to fall within the threshold of the Article.

Article 8 of ECHR imposes positive obligations to act when necessary to protect private and family life from being disrupted.¹¹⁶ Whether the positive obligations have been fulfilled varies from case to case.¹¹⁷ It usually implies that the ECtHR asks whether the effective regulation to protect the rights has been

¹¹⁰ *Bărbulescu v Romania* [GC] App no 61496/08 (ECtHR, 5 September 2017), para. 71; *Botta v Italy* App no 21439/93 (ECtHR, 24 February 1998), para. 32; *Peck v the United Kingdom* App no 44647/98 (ECtHR, 28 April 2003), para. 62; *Von Hannover v Germany* [GC] App no 59320/00 (ECtHR, 24 September 2004), para. 50; *Altay v Turkey* (no. 2) App no 11236/09 (ECtHR, 9 July 2019), para. 48.

¹¹¹ *Hudorovič and Others v Slovenia* App no 24816/14 and 25140/14 (ECtHR, 7 September 2020), paras 112–116; *Beizaras and Levickas v Lithuania* App no 41288/15 (ECtHR, 14 May 2020), para. 117; *Pretty v the United Kingdom* App 2346/02 (ECtHR, 29 July 2002), para. 61; *J.L. v Italy* App no 5671/16 (ECtHR, 27 May 2021), para. 118; *Vavříčka and Others v the Czech Republic* [GC] App no 47621/13 (ECtHR, 8 April 2021), para. 261; *Söderman v Sweden*, [GC] App no 5786/08 (ECtHR, 12 November 2013), para. 80.

¹¹² *Marckx v Belgium* App no 6833/74 (ECtHR, 13 June 1979), para. 31; *Olsson v Sweden* (no. 1) App no 10465/83 (ECtHR, 24 March 1988), para. 59.

¹¹³ *Paradiso and Campanelli v Italy* [GC] App no 25358/12 (ECtHR, 24 January 2017), para. 140; *Johnston and Others v Ireland* App no 9697/82 (ECtHR, 18 December 1986), para. 56; *X, Y and Z v the United Kingdom* [GC] App no 21830/93 (ECtHR, 22 April 1997), para. 36.

¹¹⁴ *Glaisen v Switzerland* (dec.) App no 40477/13 (ECtHR, 25 June 2019), paras 43–46, with further references therein; see also *Zehnalova and Zehnal v the Czech Republic* (dec.) App no 38621/97 (ECtHR, 14 May 2002); *Botta v Italy*, para 32.

¹¹⁵ *Friend and Others v the United Kingdom* (dec.) App no 16072/06 (ECtHR, 24 November 2009), paras 40–43; *X. v Iceland* (dec.), App no 2525/65 (ECHR, 6 February 1967).

¹¹⁶ *Kroon and Others v the Netherlands* App no 18535/91 (ECtHR, 27 October 1994), para. 31; *Lozovyye v Russia* App no 4587/09 (ECtHR, 24 July 2018), para. 36.

¹¹⁷ *Bărbulescu v Romania*, para 113; *López Ribalda and Others v Spain* [GC] App no 1874/13 and 8567/13 (ECtHR, 17 October 2019), para. 112.

enacted and if a fair balance between different identified interests was struck.¹¹⁸

As to the fair balance, it means that the ECtHR will question what interests are at stake and, whether all the important ones have been identified, the national authorities decided after weighing these different interests against each other (see previous discussion on the best interest of the child in section 3.2). Usually, states have a wide margin of appreciation to determine the protected interest (within limits enshrined in Article 8). For instance, the statutory schemes to compensate costs due to a child's disability to parents lie within the broad margin of appreciation.¹¹⁹ However, the margin of appreciation may be narrowed due to the nature of the issue and the seriousness of the interest at stake.¹²⁰

Regarding access to social assistance, the ECtHR applies the following argumentation to assess a fair balance. On the one hand, the case law shows that the ECtHR is reluctant to apply Article 8 of the ECHR in a manner that would demand extensive state resources. This is because state authorities have a wide margin of appreciation and are better positioned to determine available resources and their distribution for social care.¹²¹ On the other hand, states must ensure effective protection of children and other vulnerable individuals, such as asylum seekers or persons with disabilities, in case their physical and mental well-being and development, as well as family relations, are under threat.¹²² Therefore, the margin of appreciation for children with disabilities

¹¹⁸ *Hämäläinen v Finland* [GC] App no 37359/09 (ECtHR, 16 July 2014), para. 66; *Noveski v the former Yugoslav Republic of Macedonia* (dec.) App nos 25163/08, 2681/10, and 71872/13 (ECtHR, 13 September 2016), para. 61; *Buckley v the United Kingdom* App no 20348/92 (ECtHR, 29 September 1996), para. 76; *Tanda-Muzinga v France* App no 2260/10 (ECtHR, 10 October 2014), para. 68; *M.S. v Ukraine* App no 2091/13 (ECtHR, 11 October 2017), para. 70; *Liebscher v Austria*, 2021, §§ 64-69; *Fernández Martínez v Spain* [GC] App no 56030/07 (ECtHR, 12 June 2014), para 114; *López Ribalda and Others v Spain* [GC], para 110; *Stoyanova* (n.97) 199ff.

¹¹⁹ *Maurice v France* [GC] App no 11810/03 (ECtHR, 6 October 2005), paras 124–125; *Draon v France* [GC] App no 1513/03 (ECtHR, 6 October 2005) para. 107–108.

¹²⁰ *Hämäläinen v Finland* [GC], para. 65; *Roche v the United Kingdom* [GC] App no 32555/96 (ECtHR, 19 October 2005), paras 157–158; *Arnar Helgi Lárusson v Iceland* App no 23077/19 (ECtHR, 10 October 2022), para. 63; *Strand Lobben and Others v Norway* [GC] App no 37283/13 (ECtHR, 10 September 2019), para. 211. States have in particularly wide margin of appreciation in cases where there are no consensus between the Member States, and which raise sensitive moral or ethical issues, see e.g. *Paradiso and Campanelli v Italy* [GC], para. 184.

¹²¹ *Sentges v the Netherlands* (dec.) App no 27677/02 (ECtHR, 8 July 2003); *Pentiacova and Others v Moldova* (dec.) App no 14462/03 (ECtHR, 4 January 2005); *O'Reilly and Others v Ireland* (part. dec.) App no 54725/00 (ECtHR, 28 February 2003). National authorities have, in principle, better understanding of the public interest on social or economic grounds, and the Court generally respects states' policy choices unless it is "manifestly without reasonable foundation", see *Stec and Others v the United Kingdom* [GC] App no 65731/01 and 65900/01 (ECtHR, 12 April 2006), para. 52; *Bah v the United Kingdom* App no 56328/07 (ECtHR, 27 December 2011), para. 37.

¹²² *Wetjen and Others v Germany* App nos 68125/14 and 72204/14 (ECtHR, 22 June 2018), para. 74, *Tlapak and Others v Germany* App nos 11308/16 and 11344/16 (ECtHR, 22

gTP should be relatively narrow due to the importance of the interest at stake.¹²³

The ECtHR also reiterates that there is a broad consensus in international law concerning states' obligations to place the best interests of the child or children as a group "at the centre of all decisions affecting their health and development" and that the child's best interests shall be paramount.¹²⁴ The Court, thus, examines whether states have struck a balance and whether the child's best interest was weighted appropriately.¹²⁵ This makes the margin of appreciation in the cases relevant to the current discussion even narrower.

According to the Court, domestic proceedings shall ensure that individuals' rights and preferences are taken into account and that the person is involved in all stages of proceedings. However, it is not necessarily a violation of Article 8 of the ECHR if the state refuses to follow a person's wishes to protect their health and well-being.¹²⁶

To sum up, social assistance is necessary for the child's development, and maintaining or developing family or personal relations is likely to fall within the threshold of the Article. The state's possibilities to deny any social assistance are limited: there is a narrow margin of appreciation because the issue concerns especially vulnerable groups (children, whose best interests are paramount, persons with disabilities, and migrants in a temporary situation). However, the right does not guarantee that the state should provide specific assistance following a child's or parent's wishes.

The right to privacy, therefore, cannot be used to guarantee full access to the rights as those established in the LSS. The right only allows reasoning (or criteria) as to the fair balance in case the social assistance under the SoL is restricted, meaning that Sweden should have only very substantive reasons for denying access to services under SoL to children gTP. Put differently, in

June 2018), para. 87; *A and B v Croatia* App no 7144/15 (ECtHR, 4 November 2019), paras 106–113; *X and Y v the Netherlands* App no 8978/80 (ECtHR, 26 March 1985), paras 23–24 and 27; *Bensaid v the United Kingdom* App no 44599/98 (ECtHR, 6 May 2001), para. 47; *Zehnalova and Zehnal v the Czech Republic* (dec.); *Khan v France*, paras 73–74 and 92–93.

¹²³ *Petrov and X v Russia* App no 23608/16 (ECtHR, 4 February 2019), paras 98–102; *Dubská and Krejzová v the Czech Republic* [GC] App nos 28859/11 and 28473/12 (ECtHR, 15 November 2016), para. 178; see also, for instance, *Hämäläinen v Finland* [GC], paras 67–68; *A.-M.V. v Finland* App no 53251 (ECtHR, 23 June 2017), para. 90. See *Jivan v Romania*, App no 62250/19 (ECtHR, 08 May 2022), paras 47–52 where the domestic authorities refused to recognise person eligible for personal assistant due to inadequate assessment of the severity of person's disability despite available facts.

¹²⁴ *Vavříčka and Others v the Czech Republic* [GC], paras 286–288; *Parfitt v the United Kingdom* (dec.), para 51; *Neulinger and Shuruk v Switzerland* [GC], para. 135 and, *X v Latvia* [GC], para. 96.

¹²⁵ *Abdi Ibrahim v Norway* [GC] App no 15379/16 (ECtHR, 10 December 2019), para. 145; *R.L. and Others v Denmark* App no 52629/11 (ECtHR, 7 June 2017), paras 47–48.

¹²⁶ *A.-M.V. v Finland*, para. 90; *Elsholz v Germany* [GC] App no 25735/94 (ECtHR, 13 July 2000), para. 53.

some cases, it can be disproportionate and violate Article 8 to provide only acute assistance under the SoL.

3.5 The right to property (Article 1 Protocol 1 to the ECHR)

Right to property under Article 1 Protocol 1 of the ECHR encompasses a peaceful enjoyment of a person's possessions. The concept of "possessions" is autonomous from the formal classification in domestic laws and is broader than ownership of physical goods. It needs to be examined in every case whether a person de facto has substantive interest protected by the right to property, and it is up to the person to show that such interest existed.¹²⁷ Article 1 Protocol 1 applies only to "existing possessions" or assets and claims with "legitimate expectation" to obtain property rights. "Legitimate expectation" exists when a national legal provision includes well-established case law or a legal act insuring property interest. To establish that possession exists, the Court has examined, for instance, whether the person referred to the "claim which was sufficiently established to be enforceable" or to the existence of "an assertable right under domestic law to a welfare benefit", or to the "legal conditions laid down in domestic law for the grant of any particular form of benefits" that person asserted to be satisfied.

Concerning social care, the ECtHR's case law suggests that the social benefits could constitute a "possession" under Article 1 Protocol 1 as an essential interest to protect.¹²⁸ Financial support to cover the expenses for personal assistance or other kind of financial support to ensure access to social care may fall within such a definition.

It is up to the state to create or not create a social security and welfare benefits system and to choose the type or amount of benefits. However, if the state implements such benefits into its legislation, they (benefits) should be respected as a right that falls within the scope of Article 1 Protocol 1.¹²⁹ There will be no interference with the right to property if the person does not satisfy statutory requirements to obtain benefits under domestic law.¹³⁰

¹²⁷ *Fabris v France* [GC] App no 16574/08 (ECtHR, 7 February 2013), paras 49 and 51; *Parrillo v Italy* [GC] App no 46470/11 (ECtHR, 27 August 2015), para. 211; *Bélané Nagy v Hungary* [GC] App no 53080/13 (ECtHR, 13 December 2013), para. 76; *Pištárová v the Czech Republic* App no 73578/01 (ECtHR, 26 January 2005), para. 38; *Zhigalev v Russia* App no 54891/00 (ECtHR, 11 December 2006), para. 131.

¹²⁸ *Stec and Others v the United Kingdom* (dec.) [GC] App no 65731/01 and 65900/01 (ECtHR, 6 July 2006), paras 47-56; *Koua Poirrez v France* App no 40892/98 (ECtHR, 30 December 2003), para. 37; *Wessels-Bergervoet v the Netherlands* (dec.) App no 34462/97 (ECtHR, 3 October 2000).

¹²⁹ *Stec and Others v the United Kingdom* (dec.) [GC], para. 54.

¹³⁰ *Bellet, Huertas and Vialatte v France* (dec.) App nos 40832/98, 40833/98, and 40906/98 (ECtHR, 20 April 1998), para. 5.

The discussion above indicates that children with disabilities and their guardians cannot claim fuller access to the rights under the LSS because such benefits were not created in the system. The threshold for application of the right to property will not be reached here. Similarly, granting full access to benefits under the SoL (as opposed to the acute measures), is not necessarily covered by the right to property because the legislator has not explicitly created legitimate expectations for persons gTP as to what legislation and to what extent shall be applicable.

3.6 Prohibition of discrimination

3.6.1 Discrimination of migrant children with disabilities under the ECHR

Section 3.6 will focus on whether denying full access to the rights of children with disabilities can constitute discrimination in the meaning of the ECHR (section 3.6.1) and the CRC (section 3.6.2).

Article 14 of the ECHR prohibits discrimination in the enjoyment of substantive rights enshrined in the Convention. This means that the ECtHR always examines Article 14 in conjunction with another substantive provision of the Convention.¹³¹ However, it is not necessary for Article 14's applicability that the ECtHR found a violation of a substantive right.¹³² Regarding social assistance to children with disabilities, Articles 2, 3, 8, or Article 1 Protocol 1 ECHR can be used as conjunctive rights, with no need to declare their violation.¹³³

The Court applies the following test to determine a violation of Article 14. Firstly, it should be shown that a person alleging discrimination belongs to a group with protected grounds, as stated in the Article. The list of the grounds is not exhaustive, as the Article contains the clause "other grounds". Denial of social assistance to children with disabilities granted temporary protection

¹³¹ Article 1 of Protocol No. 12 ECHR expands its scope of the prohibition to any rights, including those enshrined in domestic law. Sweden has not ratified the protocol, it is not a part of the domestic law and will not be considered in this thesis.

¹³² *Carson and Others v the United Kingdom* [GC] App no 42184/05 (ECtHR, 16 March 2010), para. 63; *E.B. v France* [GC] App no 43546/02 (ECtHR, 22 January 2008), para. 47. The Court, however, might not examine the violation of Article 14 in conjunction with a substantive right if the breach of the substantive right had been found. *Dudgeon v the United Kingdom* App no 7525/76 (ECtHR, 22 October 1981), para. 67; *Norris v Ireland* App no 10581/83 (ECtHR, 28 October 1988); *V.C. v Slovakia* App no 18968/07 (ECtHR, 8 February 2012), para 180.

¹³³ See for example, *Stoica v Romania* App no 42722/02 (ECtHR, 4 June 2008); *Antayev and Others v Russia* App no 37966/07 (ECtHR, 15 December 2014); *A and B v Georgia*, App no 73975/16 (ECtHR, 10 May 2022); *Konstantin Markin v Russia* [GC] App no 30078/06 (ECtHR, 22 March 2012); *Petrovic v Austria* App no 20458/92 (ECtHR, 27 March 1998); *Bah v the United Kingdom*; *Glor v Switzerland* App no 13444/04 (ECtHR, 30 April 2009). In case *Gaidukevich v Georgia* App no 38650/18 (ECtHR, 15 June 2023), paras 70–75 the Court found even breach of substantial aspects of Article 2 ECHR connected with state's positive obligation to take protective measures.

can raise concerns as to discrimination on the basis of national origin or other grounds. National origin is usually understood as, among other characteristics, nationality/citizenship.¹³⁴ However, even “other grounds” can be relevant for our relevant cases. In particular, migration status and disability have been recognised as other statuses protected by the Convention.¹³⁵ The ECtHR recognises that several grounds may constitute specific negative effects for individuals, and multiple (intersectional) discrimination can occur.¹³⁶

Secondly, the ECtHR investigates whether persons have been treated differently in similar situations or, alternatively, whether a state failed to treat persons whose situation is dissimilar differently. These situations are classified as a less favourable treatment. The analysis does not require identical comparator groups/persons.¹³⁷

The following claims can be made regarding the different treatments in similar situations. If the less favourable treatment is alleged because the SoL measures, rather than the LSS measures are applied, it can be hard to prove less favourable treatment. This is because the measures generally have the same character. Still, there are exceptions to this description, particularly those related to the aims of the acts, which, in some cases, will be obvious. Suppose only emergency measures under the SoL are granted, and receiving the assistance a child requires is impossible. In that case, it can be, therefore, claimed that Ukrainian children with disabilities are treated less favourably compared to Swedish children or children in other migration statuses, such as those who have been granted refuge in Sweden and become residents in the meaning of the FBL.

As to the failure to distinguish between dissimilar situations, suppose Sweden denies access to social support to children like the 14-year-old boy in the scenario mentioned in section 1.1. For instance, the measure will not be considered acute in the SoL meaning. In that case, it can be claimed that the state has failed to accommodate children with disabilities, whose situation is different to the children without disability. Ukrainian children with disabilities and those without them are groups with different needs for social assistance. Therefore, the cases the thesis is concerned with pass this threshold.

¹³⁴ *Gaygusuz v Austria* App no 17371/90 (ECtHR, 16 September 1996), para. 41; *Koua Poirrez v France*, paras 47–49.

¹³⁵ *Dhahbi v Italy* App no 17120/09 (ECtHR, 8 April 2014), para. 53; *Ponomaryovi v Bulgaria* App no 5335/05 (ECtHR, 21 June 2011), para. 86; *Glor v Switzerland*, para. 80; *Alajos Kiss v Hungary*, App no 38832/06 (ECtHR, 20 May 2010), paras 42–44; *Çam v Turkey* App no 51500/08 (ECtHR, 23 May 2016), para. 55; *Novruk and Others v Russia* App nos 31039/11, 48511/11, 76810/12, 14618/13 and 13817/14 (ECtHR, 15 March 2016), para. 91.

¹³⁶ See e.g. *B.S. v Spain* App no 47159/08 (ECtHR, 24 October 2012); *S.A.S. v France* [GC] App no 43835/11 (ECtHR, 1 July 2014); *Carvalho Pinto de Sousa Morais v Portugal* App no 17484/15 (ECtHR, 25 October 2017).

¹³⁷ *Fábián v Hungary* [GC] App no 78117/13 (ECtHR, 5 September 2017), para. 121; ECtHR [GC], Advisory Opinion - Protocol 16, paras 68–70.

Thirdly, the Court will determine whether “objective and reasonable justification” existed.¹³⁸ Usually, the burden of proof is laid on the applicant to show whether less favourable treatment took place. The state bears the burden.¹³⁹

The Court starts by analysing the legitimate aim linked to the less favourable treatment to determine whether a state had objective and reasonable justification.¹⁴⁰ Several aims can be invoked here as legitimate; these include protecting national security and maintaining economic stability in crisis and likely to be used in the cases on social assistance to children.¹⁴¹ The Court does not consider some aims legitimate, such as avoiding complications in procedure,¹⁴² reference to traditions, general assumptions, or social attitudes.¹⁴³ In some cases, regarding the difference in treatment concerning child benefits for children with or without stable residence permits, the Court referred to the decision of the domestic constitutional court to decide that no reasons for justification were found.¹⁴⁴

The next step of the assessment is similar to the proportionality test (see section 3.4): there should be a fair balance between public and individual interests. Analogous to Article 8 ECHR, states enjoy a certain margin of appreciation in deciding what interest should be protected, which depends on circumstances, subject matter, and background.¹⁴⁵ Generally, the Court recognises a wide margin of appreciation of states concerning the public policy in social or economic spheres as well as property.¹⁴⁶ Nevertheless, the state’s margin of appreciation is narrowed when differences in treatment concern vulnerable

¹³⁸ *Molla Sali v Greece* [GC] App no 20452/14 (ECtHR, 19 December 2018), para. 135; *Fabris v France* [GC], para. 56; *D.H. and Others v the Czech Republic* [GC] App no 57325/00 (ECtHR, 13 November 2007), para. 175.

¹³⁹ Concerning distribution of burden of proof see for example *Timishev v Russia* App nos 55762/00 and 55974/00 (ECtHR, 13 March 2006), para. 57. However, if the Court comes to conclusion that state’s authority is in a better position to provide convincing explanation about difference in treatment the burden of proof may be shifted to the state. In such cases, discrimination presumes if the applicant provides arguable allegation of discrimination and the state fail to rebut a presumption by showing that there was no comparable situation or differential treatment is not based on the protected ground. See for instance, *Biao v Denmark* [GC] App no 38590/10 (ECtHR, 24 May 2016), para. 114; *D.H. and Others v the Czech Republic* [GC], para. 177.

¹⁴⁰ *Molla Sali v Greece* [GC], para. 135; *Fábián v Hungary* [GC], para 113.

¹⁴¹ *Konstantin Markin v Russia* [GC], para. 137; *Mamatat and Others v Greece* App nos 63066/14, 64297/14, and 66106/14 (ECtHR, 30 January 2017), para. 103.

¹⁴² *Darby v Sweden* App no 11581/85 (ECtHR, 23 October 1990), para. 33.

¹⁴³ *Ünal Tekeli v Turkey* App no 29865/96 (ECtHR, 16 February 2005), paras 63–68; *Konstantin Markin v Russia* [GC], para. 127.

¹⁴⁴ *Okpísz v Germany* App no 59140/00 (ECtHR, 25 October 2005), para. 34; *Niedzwiecki v Germany* App no 58453/00 (ECtHR, 25 October 2005), para. 33.

¹⁴⁵ *Stummer v Austria* [GC] App no 37452/02 (ECtHR, 7 July 2011), para. 88.

¹⁴⁶ *Belli and Arquier-Martinez v Switzerland* App no 65550/13 (ECtHR, 11 March 2019), para. 94; *Mamatat and Others v Greece*, paras 88–89; *Chabauty v France* [GC] App no 57412/08 (ECtHR, 4 October 2012), para. 50; *Ponomaryovi v Bulgaria*, para. 54.

persons/groups¹⁴⁷ or fundamental values¹⁴⁸ where states have consensus regarding the standard of protection. The margin in the cases concerning equal opportunities and the full inclusion of persons with disabilities in society is narrow.¹⁴⁹ The Court also suggests that difference in treatment solely on the grounds of nationality requires very weighty reasons to be justified.¹⁵⁰ Immigration status, however, is not as weighty as in the case of different treatment on the grounds of nationality. For instance, in *Bah v. UK*, the Court found measures which led to differences in treatment proportional to the need to allocate available social housing as fairly as possible.¹⁵¹

The reasoning above would mean that in cases of children with disabilities receiving access to urgent measures under the SoL, the state needs to provide very weighty reasons for such a limitation. Here, the margin of appreciation for the objective and reasonable justification is narrow because of the vulnerability of the child due to being a child and having a disability. The discrimination likely takes place. The same conclusions apply to situations when a child with disability gTP is compared to a child without disability gTP: the margin or appreciation is narrow in this case.

Conclusions as to not applying the LSS are less clear. This is because such cases are unlikely to pass the threshold of difference in treatment discussed above. If they pass a threshold due to the difference between the aims of the LSS and SoL can be shown, a unanimous conclusion cannot be drawn. Suppose the similar measures under the SoL can be guaranteed and could be rather similar. In that case, it seems the state would have a wide margin of appreciation in deciding, and discrimination is unlikely to be recognised. If no similar accommodation for the needs of the child with a disability can be provided, the ECtHR reasoning can differ.

Therefore, the freedom from discrimination under Article 14 of the ECHR can be used as an argument to grant fuller protection under the SoL, and in some (limited) cases under the LSS.

3.6.2 Principle of non-discrimination in the CRC

According to Article 2 Paragraph 1 of the CRC, state authorities shall respect and ensure children's rights and treat them without discrimination of any

¹⁴⁷ *Alajos Kiss v Hungary*, para 44. See also Oddny Mjöll Arnardottir 'Vulnerability under Article 14 of the European Convention on the Human Rights. Innovation or Business as Usual?' (2017) 4 (3) Oslo Law Review 150, 165.

¹⁴⁸ *Ponomyrovi v Bulgaria*, para 46; *G.L. v Italy* App no 59751/15 (ECtHR, 10 December 2020), paras 60–66, and 71.

¹⁴⁹ *Glor v Switzerland*, para. 54; *Enver Şahin v Turkey* App no 23065/12 (ECtHR, 2 July 2018), paras 67–69; *Çam v Turkey*, paras 65–67; *G.L. v Italy*, paras 60–66.

¹⁵⁰ *Zeibek v Greece*, App no 46368/06 (ECtHR, 9 October 2009), para. 46; *P.B. and J.S. v Austria* App no 18984/02 (ECtHR, 22 October 2010), para. 38; In *Luczak v Poland* App no 77782/01 (ECtHR, 2 June 2008), para. 52 the Court also suggested that exclusion person from social security schemes should not posing a threat to persons livelihood.

¹⁵¹ *Bah v the United Kingdom*, para. 47.

kind, in particular on the grounds of ethnicity and disability. States shall take appropriate measures to protect children against discrimination by association (Article 2 Paragraph 2 of the CRC). The scope of protection in the Convention is similar to the one in the ECHR. There is a need to find a connection with other articles in the CRC, which is indicated by the marker “the rights set forth in the present Convention” in the provision’s text.¹⁵² These conjunctive articles can be Article 2 and Article 23 of the CRC.¹⁵³

The CRC text does not define discrimination; the Committee defines discrimination as “differences in treatment on grounds that are arbitrary and objectively unjustifiable”.¹⁵⁴ The Committee clarified that different treatment of migrants is allowed under conditions that treatment is lawful, proportional, has a legitimate aim and is in accordance with the best interests of the child as well as other standards within human rights law.¹⁵⁵ This test appears to be similar to the one in the ECHR; therefore, the conclusions made regarding their applicability should not be repeated.

In the concluding observation on the Swedish report, the Committee was deeply concerned about persistent discrimination against children in disadvantaged situations (e.g. children with disabilities, migrants or ethnic minorities) due to disparities between Swedish municipalities on equal access to social services and protection from discrimination. According to the Committee, a state is responsible for implementing the CRC provisions on its territory regardless of the decentralised structure of the state power via delegation and autonomy of its integral parts. Such decentralisation should not lead to discrimination of children in some municipalities. The state must also ensure that the government has enough power to implement the Convention under its jurisdiction, establish effective control, and that all state authorities have enough resources to comply with it.¹⁵⁶ The survey results in section 2.5 indicated that Swedish municipalities have different understandings of how social rights work for children with disabilities gTP. These may provide additional arguments for discrimination actually taking place in Sweden.

According to *Besson and Kleber*, the CRC’s non-discrimination clause remains vague and ineffective due to its general and non-contextual

¹⁵² *Carson and Others v the United Kingdom* [GC], para. 63; *E.B. v France* [GC], para. 47; CRC/GC/2003/5 para. 12.

¹⁵³ SOU 2020:63 p. 127.

¹⁵⁴ UN Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child, Belgium (2002) crc/C/15/Add.178, para. 6.

¹⁵⁵ 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 CRC/C/GC/22, para. 22.

¹⁵⁶ CRC/C/SWE/CO/6-7, paras 16–17, see also CRC/GC/2003/5, paras 40 and 41.

character.¹⁵⁷ Nevertheless, the Committee praxis clarifies how non-discrimination clauses are applied and what steps are necessary to improve national legal systems. From the analysis of the case practice of the Committee, it is also obvious that there are very few decisions when the discrimination clauses are, in fact, discussed. However, if the reasoning concerning the CRC and the ECHR is similar, the contribution of the instrument is supposed to be similar within the national legal system to promote access to the fuller rights of the children gTP. The CRC can also strengthen the argument for discrimination because different municipalities have different practices in applying the law.

3.7 Conclusions and reflections

The main question the chapter answers is whether the rights enshrined in the ECHR and the CRC can be used as arguments for granting full access to social assistance to children with disabilities gTP (question (ii) of the thesis, as identified in section 1.2). The section analysed the material content of the broad array of rights under the ECHR and CRC, and each of the rights was made in the chapter, and it will not be repeated in this section. Chapter 2 identified that children with disabilities gTP cannot receive access to the rights as provided in the LSS. It is questionable whether they can receive access only to acute measures under the SoL, or get full access to the right in the SoL – if the LMA does not cover such. The reflections in this section will reflect on whether the rights analysed in Chapter 3 can be used as arguments for protecting the LSS or fuller protection (beyond acute) under the SoL.

Among the studied rights, the strongest arguments for additional protection are given by the child's best interests and the prohibition of discrimination. Positive obligations under these rights require identifying the interests at stake, which are the child's interest (which is likely to be to receive care and live the life of inclusion on the equal basis with others), protecting public spending, and migration control. The child's best interests as an interpretive principle can be used as an argument for granting access to fuller social assistance under the SoL. Yet, the child's best is unlikely to provide a strong argument for ensuring protection under the LSS: here, the balance between best interest on the one hand, public spending, and migration control, in addition to the principle of legality (since the LSS does not allow municipalities to protect persons that are not residents) may mean different outcome.

Regarding non-discrimination, the ECtHR recognises that states have a narrow margin of appreciation concerning equal opportunities and the full inclusion of persons with disabilities in society. The absence of very weighty reasons for not providing children gTP the full assistance under the SoL may be seen as discrimination. The Committee – the CRC treaty body – may also view the fact that some municipalities provide only acute measures under the

¹⁵⁷ Samantha Besson and Eleonor Kleber, 'Article 2: The Right to Non-Discrimination' in Tobin John (ed.), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press 2019) 41, 47 f and 70–71.

SoL, whereas others provide fuller protection, as discrimination. Regarding the LSS, straightforward conclusions cannot be provided without additional practice from the ECtHR. I believe that discrimination can be claimed only when assistance under the LSS cannot be granted under the SoL. These are the cases when the standard of measures are manifestly different, in particular, due to the purposes of the SoL and the LSS, or the fact that the LSS takes the wishes of children with disabilities (or guardians) into account to a much larger degree than the SoL.

The right to private and family life appears to have – to a degree – a similar effect on the situation as the child’s best interests. The right to privacy is applicable for assistance necessary for the child’s development and maintaining or developing family or personal relations. Denial of such social assistance is likely to be a violation due to the narrow margin of appreciation in such cases. However, the right does not guarantee that the state should provide specific assistance following a child’s or parent’s wishes. Thus, if the abovementioned needs are not satisfied by acute measures, the right can point out the need for fuller application of the SoL.

The ECHR and the CRC regulations for the right to life and prohibition of degrading treatment appear different.

The ECHR’s right to life and prohibition of torture establishes a high threshold in its application: a real and immediate danger to life or dignity that authorities know or supposed to know about. The threshold can be reached in singular cases, such as help with breathing or feeding for children whose parents’ health is failing to satisfy their needs. This can be used as an additional argument for providing some social assistance to receive acute measures under the SoL. Articles 2 and 3 ECHR do not provide additional protection for cases with lower thresholds.

In the CRC, the right to life, survival, and development encompasses states’ positive obligations in economic and social spheres to ensure life with dignity, which also means possibilities for children’s development on optimal levels. The obligations depend on the resources the state has. The right to life, survival and development can be used as an additional argument for granting social assistance to children with disabilities gTP. Because of the ordinary legal status of the CRC in Swedish law and the possibilities of realising the right in many ways, the right cannot be used to receive social assistance under the LSS. Similar conclusions can be drawn as to the right to special care and assistance for children with disabilities: although the right is specifically designed for children with disabilities, its implementation depends on the resources. In Sweden, the status of the right is particularly weakened due to its being *lex generalis* compared to the SoL and the LMA. Therefore, the possibilities to apply it for granting fuller protection to children with disabilities under temporary protection are limited.

Finally, it was indicated that the right to property under the ECHR establishes a high threshold for the rights application, connected with legitimate expectations. Children with disabilities (their guardians) cannot claim fuller access to the rights under the LSS or SoL because such benefits were not assigned to them by the system.

Thus, it can be viewed that not providing children with disabilities under temporary protection access to social assistance they need may violate, in particular, the freedom from discrimination, the child's best interests, and in some cases, the right to privacy, life, and prohibition of torture. The CRC and the ECHR conform interpretation indicates that the rights should be granted at least at the level of the SoL.¹⁵⁸ The requirement to heighten protection to the level of the LSS is not very straightforward at the moment, but can originate from the case practice on the prohibition of discrimination. The direct application of the rights in the CRC is particularly problematic due to the ordinary law status of the CRC in domestic law and the general character of its provisions.

¹⁵⁸ See for instance prop. 1993/94:117 pp. 36f and 39ff; prop. 2017/18:186 pp. 60f, SOU 2016:19 pp. 366ff.

4 Standards of social assistance under EU law

4.1 General remarks

EU law affects the national legal systems of the EU Member States in the spheres of conferred power due to its direct effect and primacy over national laws.¹⁵⁹ EU directives, however, have no direct effect and, in a normal situation, should be implemented into domestic law to be applicable. States have a choice of form and implementation methods. However, when the period of transposition into the national law has expired, the directive becomes a part of EU law and takes precedence over national law provisions. National authorities should interpret domestic rules as closely as possible to the directive's provisions.¹⁶⁰

The Temporary Protection Directive (TPD) adopted on 20 July 2001 was supposed to be transposed into national laws of the EU Member States on 31 December 2002. Therefore, the TPD became a part of the EU law, and Swedish rules should comply with its provisions.

This chapter aims to analyse the minimum level of social assistance under TPD and evaluate whether Swedish legislation meets the TPD and the CFR minimum standards on access to social assistance for children with disabilities gTP.

4.2 Temporary Protection Directive

4.2.1 Purpose of the TPD, personal scope and time frame

The TPD aims to create an extraordinary legal mechanism to offer immediate temporary protection in the EU Member States in case of a mass influx of displaced persons from third countries who cannot return to their country of origin. Another purpose is to establish the EU common policy and promote solidarity among the EU Member States during crises.¹⁶¹ According to Article 5 of the TPD, the temporary protection mechanism should be activated by the Council decision adopted by a qualified majority on the Commission's

¹⁵⁹ The principle of conferral, established by Article 5 TEU, means that the EU has limited competence by the Member States in particular when it concerns sphere of social policy as the shared competence under Article 4 TFEU. The direct effect of the EU-law was established in the CJEU case 26/62 *Van Gend en Loos v Nederlandse Tariefcommissie* [1963] ECR 1. Supremacy of the EU-law invented in case 6/64 *Costa v ENEL* [1964] ECR 585.

¹⁶⁰ See Article 288 TFEU. Concerning directive precedence over national law see for instance, case C-262/88 *Barber v Guardian Royal Exchange Assurance Group* [1990] ECR I-1889, at 1936–7 and case C-106/89 *Marleasing SA v La Comercial Internacional de Alimentacion SA* [1990] ECR I-4135 followed in case C-456/98 *Centroteel Srl v Adipol GmbH* [2000] ECR I-6007 and Case C-240-244/98 *Océano Grupo Editorial SA v Quintero* [2000] ECR I-4941.

¹⁶¹ See Article 1 together with recitals 1–7 of the TPD.

proposal. The decision should determine to whom the temporary protection applies among displaced persons and the date when temporary protection will take effect. Due to Russia's invasion of Ukraine on 24 February 2022, the Council made the Decision (EU) 2022/832 of 4 March 2022 (Decision), by which it introduced temporary protection according to the TPD for the following categories of persons displaced from Ukraine on or after 24 February 2022:

- a) Ukrainian nationals residing in Ukraine before 24 February 2022;
- b) stateless persons and third-country nationals who benefited from protection in Ukraine before 24 February 2022 and can prove their legal stay in Ukraine and
- c) family members (such as spouse, minor unmarried children, and other close relatives as part of the family unit) of the persons referred above.

The Member States could extend temporary protection to other categories of persons unable to return safely to their countries of origin.¹⁶² Under Article 28 TPD, the Member States may exclude persons from temporary protection if they committed specific crimes or were considered a danger to the host state's security or community.

The Decision entered into force on the same day of publication, 4 March 2022. According to Article 4 of the TPD, the duration of temporary protection shall be three years maximum, giving the exceptional character of protection, unless it terminates earlier: one year from the initial decision with possible automatic extension every six months for the maximum period of one year; if the reasons for temporary protection still exist, it can be extended for another one year by the Council decision on proposal of the Commission. The temporary protection was extended automatically until 4 March 2023, and by Decision (EU) 2023/2409 of 19 October 2023, the Council extended the temporary protection until 4 March 2025.¹⁶³

To sum up, temporary protection was introduced for the first time for persons displaced from Ukraine. Children who fled from war and are Ukrainian citizens, or residents under the protection of Ukraine, or family members of those

¹⁶² For instance, Sweden decided to extend a temporary protection regime for persons mentioned in the Decision who resided in Sweden between 30 October 2021 and 23 February 2022 and continued being in Sweden. See the Aliens Ordinance (Utlänningsförordning) (2006:97) Chapter 4 Section 19h in conjunction with Article 7 of the TPD and Article 2(3) of the Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection [2022] OJ L 71/1.

¹⁶³ Council Implementing Decision (EU) 2023/2409 of 19 October 2023 extending temporary protection as introduced by Implementing Decision (EU) 2022/382 [2023] OJ L 2023/2409.

two categories are eligible for temporary protection under the TPD. Additionally, those children mentioned above who have resided in Sweden since 30 October 2021 before the war might also apply for temporary protection in Sweden. The temporary protection is provided from 4 March 2022 till 4 March 2025 unless it is terminated earlier by a Council decision.

4.2.2 Minimum standards

As it follows from its title, the TPD provide minimum protection standards for the persons displaced under the Directive; therefore, the EU Member States may introduce more favourable conditions for this category of migrants, but not less.¹⁶⁴ Article 13 of the TPD elaborates that persons enjoying temporary protection of the Member States should have access to suitable accommodation (housing). Persons under temporary protection also have rights to receive necessary social care, assistance and means of subsistence if they have no sufficient resources. Persons who have special needs may receive necessary medical or other assistance.

Article 13 TPD states that persons gTP shall receive “necessary social care and assistance”. Whether the necessary social assistance shall be granted at the same level as to nationals or other migrants in a host member state is not specified.¹⁶⁵ In recital 15 of the TPD, the Council indicates that the Member States’ obligation “as to conditions of reception and residence of persons enjoying temporary protection ... should be fair and offer adequate level of protection”. In recital 16 of the TPD, it is mentioned that the Member States regarding persons with temporary protection status are bound by their human rights obligations, which prohibit discrimination in relation to persons enjoying temporary protection.

“Fare level of protection” may be seen in light of international law standards, such as the ones laid down in the UN Convention relating to the status of refugees. According to Article 23 of this Convention, refugees should be offered the same public assistance as provided to the nationals. However, Article 12 TPD allows the Member States to prioritise EU citizens before persons under temporary protection.

Reference to “adequate level of protection” can also be found in recital 16 of the Council Implementing Decision (EU) 2022/382, which indicates that persons “...should enjoy harmonised rights across the Union that offer an adequate level of protection”. According to Operational guidelines for implementing Council Implementing Decision 2022/382 (hereinafter – the Operational guidelines), “adequate protection” that the Member States may offer to the persons gTP should comply with the CFR. “Adequate protection” is

¹⁶⁴ See recital 12 of the TPD and the recital 17 of the Council Implementing Decision (EU) 2022/382 of 4 March 2022.

¹⁶⁵ Compare with Article 14 TPD that prescribes that children enjoy the right to education on the same level as nationals.

understood as respect for human dignity consistent with a standard of living regarding accommodation (housing), access to means of subsistence, residency rights, emergency care and adequate care for minors.¹⁶⁶

According to the Operational guidelines, protecting children is a top priority for the EU, and all recommendations for strengthening protection for migrant children are valid for children gTP. From the Commission's point of view, it means full protection and access to specific children's rights related to necessary social support services to secure the child's best interests and well-being. The Member States should duly address obstacles in "decent housing" and other social services. All decisions or actions taken concerning children gTP should be based on the child's best interest principle.¹⁶⁷

According to the EU Strategy on the Rights of the Child and Strategy for the Rights of Persons with Disabilities 2021-2030, the socio-economic inclusion of children with disabilities is crucial to ensure their rights to an adequate standard of living and equal opportunities. The EU encourages the Member States to ensure that families with migrant children or those who have disabilities have access to public services and support necessary to secure parental care and thus children's equal right to live with their families.¹⁶⁸

To sum up, the material substance of the minimum obligations related to social assistance for children is not specified directly in the TPD. The interpretation of available sources, including EU soft law instruments, leads to the conclusion that children with disabilities gTP shall enjoy fair and adequate social assistance, which means that protection shall comply with the rights enshrined in the CFR, non-discrimination and the child's best interests. "Adequate (level of) protection" or "adequate standard of living" is understood as full social protection and access to social services necessary to satisfy children's individual needs to be included in society on an equal basis with others, including nationals. Therefore, it can be questioned whether the national legislation that does not provide full access to the LSS measures to children with disabilities complies with the TPD standards.

4.3 Charter of Fundamental Rights of the European Union (CFR)

4.3.1 Introduction

The CFR is a primary EU law source with the same legal value as the TEU and the TFEU with the legally binding force attached. However, the CFR's provisions are addressed to the EU and the Member States' authorities only

¹⁶⁶ Communication from the Commission on Operational guidelines (n.13).

¹⁶⁷ Ibid. See also Communication from the Commission to the European Parliament and the Council. The protection of children in migration COM/2017/0211 final.

¹⁶⁸ The EU Commission, EU Strategy on the Rights of the Child (n.14) 6f; Strategy for the Rights of Persons with Disabilities 2021-2030 (n.14) 11, 20–24.

when implementing (applying) the EU law. The CFR does not extend the scope of application of the EU law beyond the powers conferred to the EU.¹⁶⁹ It means that the CFR applies as far as some EU law provisions are applied. When third-country nationals seek temporary protection through the TPD, the EU law is applicable, as is the CFR.

Concerning the interpretation of the rights in the Charter, which corresponds with the rights guaranteed by the ECHR, the scope and the meaning of these rights shall be at least the same as laid down by the ECHR if EU law does not provide more extensive protection. From the ECtHR's case law perspective, there is a presumption that EU law provides equivalent protection of fundamental rights enshrined in the Convention.¹⁷⁰ Moreover, by Article 6(3) TEU, fundamental rights guaranteed by the ECHR shall constitute the general principle of the EU law. As it was settled in CJEU case law, fundamental rights in the international instruments accepted by the Member States became an integral part of the general principle of the EU law.¹⁷¹ The rights in the CRC, for instance, the child's best interests, which is mirrored in the CFR, became a part of the general principle of the EU law. Since the CFR, the ECHR and the CRC offer similar protection, the rights discussed in Chapter 3 will not be repeatedly addressed in Chapter 4. This includes, in particular, the right to life, privacy, and the child's best interests.

This section will analyse the right to social security and social assistance and the right to integration of persons with disabilities laid down in the CFR.

4.3.2 Right to social security and social assistance

The right to social security and social assistance enshrined in Article 34 of the CFR recognises the state's positive obligation to support those who need it. Article 34(3) of the CFR implies that the right to social assistance intends to assure a decent existence for persons who lack the necessary resources to combat exclusion and poverty beyond contributory systems. Union and national laws and practices should lay down rules concerning social assistance.

Explanatory notes clarify that Article 34(3) of the CFR is based, for instance, on paragraphs 30 and 31 of the European Social Charter (revised) (ESCr), which contain similar rules. CJEU case law explains the right to social assistance enshrined in Article 34(3) of the Charter by interpreting the concept of "core benefits". The "core benefits" should be understood as a minimum level

¹⁶⁹ See Article 6 of the TEU and Section A Paragraph 1 of the Declarations Annexed to the Final Act of the Intergovernmental Conference which Adopted the Treaty of Lisbon, signed on 13 December 2007, OJ C 326/339; Article 51 of the EU-Charter; see also CJEU case C-617/10 *Åklagaren v Hans Åkerberg Fransson* (CJEU, 26 February 2013), ECLI:EU:C:2013:105, paras 18–21.

¹⁷⁰ See Article 52(3) EU-Charter; see e.g. *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v Ireland* [GC] App no 45036/98 (ECtHR, 30 June 2005), paras 155–165.

¹⁷¹ See e.g. ECJ case 4/73 *J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities*, [1974] ECR-I 00491, para. 13.

of social protection that every Member State must provide to the third-country nation to meet their basic needs. The notion covers at least minimum income support, parental assistance (family benefits), long-term care, and housing.¹⁷²

To sum up, Article 34 of the CFR means that third-country nationals have the right to core benefits as a minimum guarantee to cover basic needs such as food, accommodation and health, including minimum income support, assistance in case of illness, long-term care and housing. The Article does not provide any additional protection compared to the TPD or the assistance already provided in Swedish law under the LMA and acute measures under the SoL.

4.3.3 Integration of persons with disabilities

Article 26 of the CFR recognises the right of persons with disabilities “to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of community”. The explanatory note clarifies that Article 24 of the CFR is based on Article 15 of the ESCr and point 26 of the Community Charter of the Fundamental Social Rights of Workers. This section will focus on the ESCr only.

Pursuant to Article 15 of the ESCr, state parties should undertake the following measures to ensure independence (independent living),¹⁷³ social integration and participation in the life of the community for persons with disabilities:

- 1) provide guidance, education and vocational training;
- ...
- 3) adopt measures, including technical aids, to overcome barriers to access to transport, housing, cultural activities, and leisure.

State parties’ obligation to provide guidance, education and vocational training includes access to general (preferably) and special schools with adequate teaching adapted to the needs of a person with a disability and necessary assistance.¹⁷⁴ Technical aids may include, in particular, walkers, wheelchairs, and guide dogs and appropriate housing support arrangements or/and support

¹⁷² Case C-571/10 *Servet Kamberaj v Istituto per l’Edilizia Sociale della Provincia autonoma di Bolzano (IPES) and Others*, ECLI:EU:C:2012:233. “Core benefits” concept is seen as an exemption from equal treatment by e.g. Article 11(4) Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents [2004] OJ L16/44; recital 44 and Article 29(2) Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (the Qualification Directive) [2011] OJ L337/9.

¹⁷³ Council of Europe, Explanatory Report to the European Social Charter (Revised) (1996) ETS 163. Under independence in the Explanatory Report is understood the right to an independent life of persons with disabilities.

¹⁷⁴ *International Association Autism-Europe v France*, Complaint No. 13/2002, (ECSR, 4 November 2003) para. 48; *European Action of the Disabled (AEH) v France*, Complaint 81/2012 (ECSR, 11 September 2013) para. 85.

services, such as personal assistance and auxiliary aids, free of charge or by reduced prices.¹⁷⁵ Article 26 of the CFR, thus, shall be interpreted, at least similarly. In its report, EU Commission emphasises that persons with disabilities shall have the right to support that ensures living in dignity and obtaining services that enable their participation in society.¹⁷⁶

The CJEU applied a conservative approach to interpret Article 26 of the CFR. In *Glatzel* the court indicated that Article 26 of the CFR “cannot by itself confer on individuals a subjective right which they may invoke as such”. Therefore, to be fully effective, Article 26 of the CFR should be invoked together with other provisions of EU or national law granting actionable rights to persons with disabilities.¹⁷⁷

To sum up, Article 26 of the CFR is based on Article 15 of the ESCr and encompasses the rights of persons with disabilities to have access to education and infrastructure, appropriate accommodation, technical aids, as well as social assistance and other social support services necessary for independent living and participation in all aspects of society’s life on an equal basis with others. However, the CJEU interprets Article 26 of the CFR as a right without independent existence without EU or national law provisions. Thus, Swedish law appears to be compliant with this right.

4.4 Reflections and discussions

Children with disabilities who are citizens of Ukraine or have enjoyed protection on the Ukrainian territory fall within the personal scope of the TPD if they come to Sweden after 30 September 2021 and remain in Sweden after 24 February 2022. Rights to social assistance and support of children with disabilities gTP enshrined into the Swedish national law by transposition of the TPD provisions on minimum standards of protection. It seems that social assistance and support in Sweden is mainly provided by the LMA while application of the SoL is auxiliary if not limited to acute situations. The LSS is not applicable to persons who seek temporary protection at all. Nevertheless, Swedish national law acts should be interpreted as close as possible to the TPD provisions.

¹⁷⁵ Council of Europe, Conclusions 2008 - Statement of interpretation - Article 15-3, 2008_Ob_5/Ob/EN.

¹⁷⁶ See also EU Commission, DG Justice and Consumers, 2018 report on the application of the EU Charter of Fundamental Rights, (Publications Office of the European Union, 2019) 105 where the Commission emphasised.

¹⁷⁷ Case C-356/12 *Wolfgang Glatzel v Freistaat Bayern* (CJEU, 22 May 2014), para. 78. See for instance Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/16 or Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies [2016] OJ L 327/1, Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L 151/70 that contains provisions that can be attributed to persons with disabilities.

To comply with the TPD, children with disabilities gTP shall enjoy fair and adequate social assistance. This means that protection shall comply with the rights enshrined in the CFR, principles of non-discrimination, and the child's best interests. Besides, adequate protection for children with disabilities, which is sometimes called adequate standards of living, is understood as full social protection and access to social services necessary to satisfy children's individual needs to be included in society on an equal basis with others. The Commission gave a generous interpretation of the TPD minimum standards concerning children with disabilities, which is necessary for the CFR to be fully effective. The TPD protection in the thesis has been interpreted as access to the rights for social assistance for children with disabilities gTP at the same level as nationals. The restrictions in the LSS or the SoL for children granted temporary protection, established in the national legislation, are thus seen as not compliant with the TPD. Ukrainian children should receive the same level of protection as nationals in Sweden to comply with the requirements in the Directive.

The application of rights to social security and integration of persons with disabilities in the CFR is sufficiently limited without the provisions of the TPD and other EU law instruments. Together with the general and vague character of the CFR's rights, the CJEU indicates that, for instance, the rights of persons with disabilities (Article 26 of the CFR) should be backed up by provisions of the EU or national laws to invoke the substance of rights. Article 34 of the CFR directly refers to the EU and national laws of the Member States, which define the content of the right to social security and social services.

5 Final analysis and conclusions

5.1 General remarks

As identified in section 1.2, the thesis aims to evaluate the access to social assistance granted to children with temporary protection in Sweden. To fulfil the aim, three research questions have been selected. In the following sections, I will provide the final analysis and conclusions to answer the research questions and address the purpose of the thesis. The overall evaluation (connected with the purpose) will be provided in section 5.5.

5.2 Social assistance granted to children with temporary protection in Swedish law

This section will address question (i): what social assistance is granted to children with disabilities in general and children gTP in Sweden according to national law?

For Swedish children with disabilities, social assistance is provided in accordance with the LSS and the SoL provisions. The LSS is a special legislative rights-based act that allows children with disabilities or their guardians to opt in for applying its provisions. The act aims to empower persons with disabilities to live like others and ensure good living. The LSS personal scope is limited to persons that have intellectual developmental disabilities and long-term physical or mental disabilities that cause serious difficulties in everyday life that a person cannot overcome without help. The LSS provides an exhaustive list of services applicable only when there is no other way to satisfy the needs of the child with a disability in good life conditions, except through the LSS. The list of services applicable to children and their families under Section 9 of the LSS includes personal assistance or financial support to cover the expenses for such assistance, accompanying service, providing a contact person, short-time relief services for relatives inside and outside the home, short-time in school service for children over 12 years old, accommodation within a specific home for children. The measures are voluntary and provided free of charge; however, parents (guardians) may be charged for some related expenses.

The SoL is an act of more general character that covers social assistance for children with disabilities in cash (maintenance support) and kind (other life support). These types of social support in the SoL aim to provide a reasonable standard of living, which is a lower standard than the one the LSS aims to provide. Similar to the LSS, the right to get support measures for children with disabilities under Chapter 4 Section 1 of the SoL is limited to the ability of the child or his/her parents to satisfy the child's needs. The specification of measures that can be voluntarily applied is not exhaustive: children may generally have similar services as under Section 9 of the LSS and others to ensure reasonable living standards. The broad and open-ended nature of the

provisions gives municipalities considerable latitude to determine the measures and their quality applicable in individual cases. This, in turn, limits the options for a child (guardians) to impact the received social assistance compared to what is stipulated in the LSS. Measures in kind under the SoL are free, yet payments may be charged for related expenses.

According to the LSS and the SoL, municipalities provide social assistance to children with disabilities residing on their territory. However, these two acts have different perspectives on determining a person's residency status. The LSS refers to the FBL, which requires persons' registration in the Population Register. The SoL, however, has more flexible rules that, in addition to the FBL, determine the place of residence with the strongest connection to the person (e.g. primary place of living or family allocation). Moreover, a person's stay municipality is responsible for necessary help and support unless another municipality has the strongest connection or even another authority is responsible for a person's social care. When another municipality is responsible for a person's welfare, the municipality of stay is limited to acute social aid. These provisions of SoL lead to the interpretation challenge: it is unclear whether the children with temporary status reside in a Swedish municipality in the meaning of the SoL, or the home country is responsible for them, and thus, Swedish municipalities have responsibilities for acute situations only.

The LSS and the SoL do not limit directly their on personal scope depending on immigration status. Nevertheless, the LSS is not applicable to children gTP. Exclusion is based on the absence of residency status in the meaning of Section 4 FBL. The outcome was confirmed by the answers from municipalities that do not apply the LSS, and all applications under the LSS were declined.

Primary act applicable to children gTP in the question of social assistance is the LMA. The aim of the LMA, though not directly specified, appears to be primarily related to survival. According to the LMA, children gTP may receive maintenance support in cash to satisfy their basic and special needs. The standards of social care in cash for the issues related to living are significantly lower in the LMA compared to the SoL (at least three times lower). The Migration Agency is responsible for providing services and can assist in housing in collaboration with municipalities.

The LMA excludes some possibilities for children with disability gTP to receive the services under the SoL, if the LMA covers such services. As mentioned above, these include maintenance support and housing. However, other services under the SoL can be provided in case the municipalities are responsible for the child. Yet, as was mentioned above, the interpretation challenge as to whether a municipality is responsible for acute services only or all services not covered by the LMA exists.

Thus, children gTP are excluded from the LSS scope due to their migration status. They can receive care under the LMA (maintenance support and housing). They may either receive care not covered by the LMA under the SoL or only acute care under the SoL.

The survey to municipalities was sent to find out how the interpretation challenge is dealt with in practice. Application of the LMA and the SoL by municipalities reveals the following discrepancies:

- some municipalities recognise the auxiliary character of the SoL in relation to the LMA, whereas others disregard LMA provisions and provide all care under the SoL;
- most municipalities provide full access to social care for children with disabilities gTP, whereas others limit social care to acute situations.

Thus, the inconsistencies in the interpretation of law that can significantly impact lives, trust and care for children, depending on where one lives, have been confirmed. The reason for these inconsistencies seems to be the vagueness of the SoL provisions.

Different aims in the LSS, the SoL, and the LMA, and the possibilities to impact the measures received, can result in significant differences in the scope of assistance provided depending on migration status. Thus, the possibility for children with disabilities gTP receiving social assistance is sufficiently reduced in comparison with others. Considering all mentioned above, children with disabilities gTP are not protected equally as nationals or residents of Sweden.

5.3 Can the ECHR and the CRC be used as arguments for granting full access to social assistance?

The section addresses the question (ii): can the rights enshrined in the ECHR and the CRC be used as arguments for granting full access to social assistance to children with disabilities under temporary protection? The findings concerning Swedish national law show that the children gTP do not have access to the LSS assistance, and their access to the SoL, beyond acute aid, may be compromised, are taken as a baseline for discussion. Access to the LSS assistance and fuller access to the SoL were used as the evaluators for the possibilities of the rights to provide “full access to social assistance” in the meaning of the thesis.

Among the scrutinised rights, the most compelling arguments for enhanced protection stem from the child’s best interests and the prohibition of discrimination. Positive obligations under these rights necessitate identifying the

interests at stake, including the child's interest (likely centred on receiving care and experiencing inclusive living on an equal basis with others), protecting public spending, and controlling migration. As an interpretive principle, the child's best interests can be posited as an argument for granting access to more comprehensive social assistance under the SoL. However, it is improbable that the child's best interests provide a robust argument for ensuring protection under the LSS. The interplay between best interest, public spending, migration control, and the principle of legality (given the LSS restrictions on protecting non-residents) may yield different outcomes.

Concerning non-discrimination, the ECtHR acknowledges the limited margin of appreciation states have in ensuring equal opportunities and full inclusion of persons with disabilities in society. The absence of substantial reasons for withholding full assistance under the SoL from children gTP may be construed as discrimination. The Committee, a treaty body under the CRC, might view the disparate provision of only immediate measures under the SoL by some municipalities, while others offer more comprehensive protection, as discriminatory. Regarding the LSS, conclusive judgments await additional ECtHR practice. Discrimination claims may be warranted only when assistance under the LSS cannot be granted under the SoL. Such cases arise when the measures' standards markedly differ, particularly due to the distinct purposes of the SoL and the LSS, or the LSS gives greater consideration to the wishes of children with disabilities (or their guardians) than the SoL.

The right to private and family life seems to exert a comparable influence on the situation as the child's best interests. The right to privacy applies to assistance essential for the child's development and for maintaining or developing family or personal relations. Denying such social assistance may likely constitute a violation due to the narrow margin of appreciation in such cases. However, the right does not mandate specific assistance provision according to a child's or parent's wishes. Thus, if the aforementioned needs remain unmet by immediate measures, the right can underscore the necessity for broader application of the SoL.

The regulations of the ECHR and CRC regarding the right to life and the prohibition of degrading treatment differ. The ECHR's right to life and prohibition of torture set a high threshold: a genuine and imminent threat to life or dignity that authorities are aware of or should be aware of. This threshold may be met in specific cases, such as assistance with breathing or feeding for children whose parents' health fails to meet their needs. This can be cited as an additional argument for providing some social assistance through immediate measures under the SoL. Articles 2 and 3 of the ECHR do not offer additional protection for cases with lower thresholds.

In the CRC, the right to life, survival, and development encompasses positive state obligations in economic and social realms to ensure a dignified life, including optimal development possibilities for children. These obligations are

contingent on the state's resources. This right can be cited as an additional argument for granting social assistance to children with disabilities gTP. However, due to the CRC's ordinary legal status in Swedish law and the various ways it can be realised, it cannot be used to secure social assistance under the LSS. Similar conclusions can be drawn for the right to special care and assistance for children with disabilities, as its implementation depends on available resources. In Sweden, its weakened status, being *lex generalis* compared to the SoL and the LMA, limits its application for providing more extensive protection to children with disabilities under temporary protection.

Finally, it is noted that the right to property under the ECHR sets a high threshold for its application, linked with legitimate expectations. Children with disabilities (and their guardians) cannot assert broader access to rights under the LSS or SoL since the formulation of the legislation does not create legitimate expectations for the group, which is one of the criteria for establishing that the right has been put into the question.

In summary, the denial of access to necessary social assistance for children with disabilities under temporary protection may potentially violate freedom from discrimination, the child's best interests, and, in certain instances, the right to privacy, life, and prohibition of torture. The interpretation provided by the CRC and the ECHR suggests that these rights should be guaranteed at least at the level of the SoL. The imperative to elevate protection to the level of the LSS is presently not straightforward but could evolve from case practice concerning the prohibition of discrimination. The direct application of CRC rights is particularly challenging due to its ordinary legal status in domestic law and the general nature of its provisions.

5.4 Compatibility of the Swedish system of social care with the TPD and CFR

This section strives to answer question (iii): how is the minimum level of social assistance defined in the TPD? Does the Swedish legislation meet the TPD and the CFR minimum standards on access to social assistance for children with disabilities granted temporary protection?

The TPD's main objective is to create an extraordinary legal mechanism for immediate temporary protection of third country-nationals in the EU Member States in case of mass influx due to extraordinary situations. On 4 March 2022, temporary protection under the TPD was introduced for persons displaced from Ukraine for the first time. The temporary protection is provided from 4 March 2022 till 4 March 2025 unless it is terminated earlier by a Council decision.

According to the TPD's minimum protection standards, children with disabilities shall enjoy fair and adequate social care and assistance. "Adequate (level of) protection" or "adequate standard of living" is understood as full

social protection and access to social services necessary to satisfy children's individual needs to be included in society on an equal basis with others. Protective measures shall also comply with the rights enshrined in the CFR and principles of non-discrimination and the best interests of the child.

The analysis in the thesis leads to the following conclusions. The Swedish system of social care, which has differences in the scope and application of law among different municipalities, has been failing to comply with the requirement of the TPD on full protection of children with disabilities on an equal level with others. Not providing children gTP the same care as to nationals, in particular, due to their exclusions from the scope of the LSS, and in some cases, the SoL, can constitute a violation of the EU law.

The analysis in the thesis also concerns the CFR. The CFR is a primary EU law source with the same legal value as the TEU and the TFEU. However, the CFR applies as far as some EU law provisions are concerned. For third-country nationals, when temporary protection is granted under the TPD, the EU law is applicable, and thus the CFR.

Compared to those discussed in the previous section, two additional rights have been analysed in the CFR. These are the rights to social security and social assistance, and integration of persons with disabilities. These rights in the CFR are constrained in the absence of the provisions established by the TPD, national law and other instruments of EU law. These rights, on their own, do not provide any additional possibilities to enforce the fuller protection of children gTP.

5.5 Evaluating the legal system of Sweden: Final words

The Swedish social care system generally provides access to social assistance for children with disabilities granted temporary protection. However, due to differences in the scope of assistance and application of laws (the LMA and the SoL) on the municipality level, access to social assistance may be limited. In the beginning of the thesis, two examples were used, namely, the 3-year-old girl who has profound disabilities and difficulties in breathing and a 14-year-old boy with autism who cannot get from school on his own. The evaluation of the national law indicates that the 3-year-old girl is likely to receive services under the SoL. However, whether the 14-year-old boy will receive the necessary services under the SoL may depend on whether the municipality considers his situation acute or if it decides that SoL applies to children granted temporary protection. Children with disabilities gTP are excluded from the scope of the LSS and thus receive social assistance to a lesser extent to satisfy the reasonable standard of living rather than to live like others. They are not treated equally compared to nationals or residents.

The human rights discussion in the thesis allows definitive criticism of Swedish law due to the unforeseeability of the standards and not providing all children with disabilities care on the level in the SoL. There is a possibility that the exclusion of children gTP from the provisions of the LSS can be seen as a violation of non-discrimination provisions. However, the practice has not been developed yet. The EU law – the TPD – appears to call for equal possibilities of children with disabilities gTP to receive social services as nationals. Swedish law seems to be non-compliant with the TPD.

VÄSTERVIK	NS	NS	NS	NS	NS	No	No	No	LMA
VÄXJÖ	NA	NA	NA	NA	NA	NA	NA	NA	
BODEN	NA	NA	NA	NA	NA	NA	NA	NA	
LULEÅ	NS	NS	NS	NS	NS	No	No	No	
HELSINGBORG	NS	NS	NS	NS	NS	No	No	No	LMA + SoL (akut)
KRISTIANSTAD	No	No	1	0	No	No	No	No	
LUND	No	No	NS	NS	NS	NA	No	No	LMA + SoL
MALMÖ	No	No	No	No	No	No	No	No	
ÄNGELHOLM	No	No	NS	NS	NS	No	No	No	No LSS
TRELLEBORG	1	-1	No	No	No	No	No	No	No LSS
BOTKYRKA	NA	NA	NA	NA	NA	NA	NA	NA	
HANINGE	1	-1	1	+1	No	No	No	No	SoL
HUDDINGE	NA	NA	NA	NA	NA	NA	NA	NA	
NACKA	No	No	No	No	No	No	No	No	
SOLENTUNA	NA	NA	NA	NA	NA	NA	NA	NA	
STOCKHOLM (soci- alförvaltningen)	NA	NA	NA	NA	NA	NA	NA	NA	
Bomma	NA	NA	NA	NA	NA	NA	NA	NA	
Enskede-Årsta-Vantör	No	No	No	No	No	No	No	No	
Farsta	NA	NA	NA	NA	NA	NA	NA	NA	
Hagersten-Alvsjö	NA	NA	NA	NA	NA	NA	NA	NA	
Hasselby-Vällingby	NS	NS	NS	NS	NS	No	No	No	
Jarva	NA	NA	NA	NA	NA	NA	NA	NA	

Kungsholmen	NA	NA	NA	NA	NA	NA	NA	NA	
Norra Innerstaden	No	No	NA	NA	NA	No	No	No	
Skarpnack	No	No	No	No	No	No	No	No	
Skarholmen	NS	NS	NS	NS	NS	No	No	No	
Söder	No	No	2	+2	No	No	No	No	SoL
SÖDERTÄLJE	NA	NA	NA	NA	NA	NA	NA	NA	
ÖSTERÅKER	No	No	No	No	No	No	No	No	
ESKILSTUNA	No	No	No	No	No	No	No	No	
NYKÖPING	1	-1	No	No	No	No	No	No	No LSS
STRÄNGNÄS	NS	NS	NS	NS	NS	No	No	No	
ENKÖPING	NA	NA	NA	NA	NA	NA	NA	NA	
UPPSALA	2	-2	1	+1	No	No	No	No	Open care SoL
ARVIKA	NA	NA	NA	NA	NA	NA	NA	NA	
KARLSTAD	No	No	NS	NS	NS	No	No	No	No LSS SoL
SKELLEFTEÅ	No	No	8	+8	No	No	No	No	Alla barn be- handlas lika
UMEÅ	NA	NA	NA	NA	NA	NA	NA	NA	
SUNDSVALL	No	No	NA	NA	NA	NA	No	NA	
ÖRNSKÖLDSEVIK	No	No	2	+1/-1	No	No	No	No	SoL
VÄSTERÅS	No	No	NA	NA	NA	No	Yes	Yes	No LSS LMA+SoL

BORÅS	NA	NA	NA	NA	NA	NA	NA	NA	
GÖTEBORG (funktionsstöd)	NS	NS	NS	NS	NS	No	No	No	No LSS LMA + SoL (acute)
Centrum	NA	NA	NA	NA	NA	NA	NA	NA	
Hisingen	No	No	4	+4	No	No	No	No	SoL
Sydväst	No	No	No	No	No	No	No	No	
Nordost	NA	NA	NA	NA	NA	NA	NA	NA	
ÖREBRO	No	No	No	No	No	No	No	No	
LINKÖPING	NA	NA	NA	NA	NA	NA	NA	NA	
NORRKÖPING	NS	NS	NS	NS	NS	No	No	No	Yes LSS SoL
Summary	Requests (total) = 61 NA (total) = 23 NS Q1-3 = 10, NS Q2-3 = 3 No Q1 = 20; Q2 = 10; Q3 = 17; No Q4=33; Q5=34 Yes Q1=5(-5)4m; Q2=19(+17,-1, 0)7m; Q3=0; Q4-5=1								

Appendix B

The original request to municipalities (in Swedish)

Begäran om allmänna handlingar

Hej!

Mitt namn är Denis Karamyshev, jag är student på juristprogrammet i Lund och jag skriver mitt examensarbete om barn med funktionshinder som har fått skydd enligt massflyktdirektivet på grund av kriget i Ukraina. Jag undrar om ni skulle kunna hjälpa mig och svara på följande frågor.

1. Hur många ansökningar om insatser enligt 9 § LSS angående barn som har fått uppehållstillstånd enligt massflyktdirektivet fick kommunen under 2022 och 2023? Hur många av dessa ansökningar beviljades och hur många avslogs?
2. Hur många ansökningar om insatser enligt 4 kap. 1 § SoL angående barn som har fått uppehållstillstånd enligt massflyktdirektivet fick kommunen under 2022 och 2023? Hur många av dessa ansökningar beviljades och hur många avslogs?
3. Hur många ansökningar om insatser enligt 4 kap. 1 § SoL angående barn som har fått uppehållstillstånd enligt massflyktdirektivet avslogs av kommunen på grund av bristande bosättning?
4. Har kommunen några styrdokument (exempelvis riktlinjer, policy) gällande bosättning enligt 2 a kap. 3 § SoL angående barn med uppehållstillstånd pga. massflyktdirektivet? Om ja, så vill jag gärna ta del av dessa dokument.
5. Har kommunen några styrdokument (exempelvis riktlinjer, policy) eller rutiner för hantering av situationer gällande insatser enligt 9 § LSS eller 4 kap. 1 § SoL för barn som har uppehållstillstånd enligt massflyktdirektivet? Om ja, så vill jag gärna ta del av dessa dokument.

Min handledare är professor Henrik Wenander, henrik.wenander@jur.lu.se, telefon 046-222 11 13.

Jag skulle vara tacksam för svar senast den 10 november 2023 på karamyshev-denis@gmail.com.

Stort tack på förhand för ditt svar!

Med vänliga hälsningar,

Denis Karamyshev

tel. 0738043712

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