



Health for Undocumented Migrants
and Asylum seekers

ACCESS TO HEALTH CARE FOR UNDOCUMENTED MIGRANTS AND ASYLUM SEEKERS

LAW AND PRACTICE

SWEDEN

SWEDEN

HEALTH SYSTEM

A primarily tax-based National Health System based on the principles of equality and free choice in health care, and it covers the whole population. County councils and municipalities have considerable freedom with regard to the organisation of their health services. Responsibility for health and medical care is divided between the state, county councils, and municipalities. Private insurance has increased in recent years, but it is still very limited.

LEGAL ENTITLEMENTS TO ACCESS HEALTH CARE

The Swedish health system allows **nationals and the majority of authorised residents**¹ to access all medical services with the sole exception of plastic surgery (if not medically recommended). All persons can access the system through their national “personal number” (“*personnummer*”)². According to the principle of freedom of choice in health care, patients can seek care anywhere in the country on the same terms as in their own county council area. They must contribute to a minor part of medical and pharmaceutical costs through a nominal contribution. This amount cannot exceed the cost ceilings established by the state (SEK 900 (EUR 96.5) over a 12-month period) and depends on the county council, the type of care, and the professional category of the provider. Payment is normally expected when registering for medical consultation although it is possible to receive an invoice to be paid immediately afterwards. Children below age 18 are exempt from this charge as well as women in need of ante and post natal care, screening and treatment of specific infectious diseases (including HIV)³, cellular screening, home hospital care help, and family planning.

Asylum seekers are only entitled to access free of charge “care that cannot be postponed” (no definition is provided), ante and post natal care, family planning, abortion, and dental care that “cannot be postponed”⁴. Only asylum-seeking children have the same access to medical

1. Asylum seekers, persons confined in detention centres and persons with temporary protection in the event of a mass influx of displaced persons above 18 years old are only granted “care that cannot be postponed”, ante and post natal care, family planning, abortion and dental care that “cannot be postponed”. See § 4 (1-4) and § 6 of the *Lag (2008:344) om hälso- och sjukvård åt asylsökande m.fl.* of 22 May 2008.

2. The “*personnummer*” is a personal identity number based on their date of birth (yy mm dd) and four other figures. This 10-digit number is used widely to check the rights of access of individuals to social and economic rights. Those without personal identity numbers are basically denied access to these rights unless there is special legislation covering a particular group, such as asylum-seekers or European Economic Area citizens. See PICUM, *Book of Solidarity*, vol. 3. *Providing assistance to undocumented migrants in Sweden, Denmark and Austria*, 2003, p. 18.

3. This is the case for all diseases mentioned in the “Law of contagious diseases” (*Smittskyddslagen*).

4. See § 4 (1-4) and § 6 of the *Lag (2008:344) om hälso- och sjukvård åt asylsökande m.fl.* of 22 May 2008.

and dental care on equal grounds as children residing in Sweden⁵. Asylum seekers receive health care in any public health centre or hospital except in Stockholm, where there are two health centres treating only asylum seekers. In addition, they must pay a patient fee (around SEK 50 - 4.7 EUR) for each consultation, medicine on prescription and medical transportation, although they can get a compensation from the Migration Board if they have paid more than 400 SEK, 38 EUR) in six months. To prove entitlements, they are typically asked to show their “LMA-card”, delivered by the Migration board when applying for asylum.

With the sole exception of rejected asylum seeking children and the initiatives taken by few county councils, **undocumented migrants**⁶ are not entitled to access the Swedish health system unless they pay for the full cost of health services even in an emergency situation. Since 2008, the “Law 2008:344 concerning health care for asylum seekers, etc.” formally excludes rejected asylum seekers older than eighteen years for accessing health care within the Swedish national health system under the conditions recognised to those foreigners entitled to partial access to health care in Sweden⁷. The rest of undocumented migrants are not even mentioned by this law.

The pressure of civil society organisations has prevented the government from keeping in the text a formal prohibition to provide health care to undocumented migrants. The passed law does not require county councils to provide health care to undocumented migrants but also does not prohibit them from doing so if they have the resources and willingness to do it. In fact, it should be noted that the county councils of some Swedish regions have very recently recognised some health care entitlements to undocumented migrants, although it is still too early to evaluate the applicability in practice. Thus, the Stockholm county council has allowed access to pre-natal care to undocumented pregnant women (excluding giving birth and post natal care) and Skåne has agreed on granting rejected asylum seekers the same health coverage as asylum seekers. In other regions, like Gothenburg, this openness has taken place through an individual hospital initiative.

Before the “Law 2008:344”, no national legislation even formally denied health care to rejected asylum seekers, who are the only group of undocumented migrants whose presence the government recognises. There were however two general provisions indirectly applied to undocumented migrants since the laws did not formally exclude anyone from their scope of application: i) a provision of the Health and Medical Services Act that

5. Ibid. § 5.

6. Undocumented migrants, particularly those whose application for asylum failed, have been commonly known in Sweden as “*gömda*” (hidden). Now, they are also known by “*papperslösa*” (paperless).

7. Asylum seekers, persons confined in detention centres and persons with temporary protection in the event of a mass influx of displaced persons. See § 4 of the *Lag (2008:344)*.

obliged all county councils to provide health care to all persons in need of “immediate health care” regardless legal status; and ii) the provisions of the «law on diseases control” that did not specifically exclude any category of persons from being treated free of charge in specialised clinics in case of certain sexually transmitted diseases (excluding TB and HIV/AIDS)⁸.

Only **undocumented children** of rejected asylum seekers or children whose application for asylum failed are granted access to health care on the same conditions as nationals. This decision was only laid down in a financial agreement between the State and the county councils. Very recently, “Law 2008:344” has formally recognised this entitlement, although it does it in a very indirect and unclear way⁹. The drafted proposal also mentioned their entitlements in the explanatory part¹⁰. In regard to the rest of undocumented children living in Sweden (who have not been in the asylum process), they continue to lack visibility and do not have any entitlements to access health care fully or partially free of charge.

Given poor legal entitlements to access health care in Sweden for asylum seekers and undocumented migrants, the UN Special Rapporteur on the Right to Health in his visit to this country in 2006 denounced that this was not consistent with international human rights law and strongly encouraged the Swedish government to “reconsider its position with a view of offering all asylum seekers and undocumented persons the same health care, on the same basis, as Swedish residents¹¹.”

8. See PICUM, *Access to health care for undocumented migrants*, p. 89.

9. See § 4 (4) of the Lag (2008:344).

10. See Proposition 2007/08:105 Lag om hälso- och sjukvård åt asylsökande m.fl. Ibid. of 6 March 2008, p. 37.

11. See points 67-85 of the Report of the Special Rapporteur on the right to everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt. Addendum: Mission to Sweden, A/HRC/4/28/Add.2 of 28 February 2007.

ADULTS CARE

EMERGENCY CARE

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid (moderating fee).

Conditions:

- ▶ Provide the “personnummer”; and
- ▶ Pay the nominal contribution: 300 SEK (28.5 EUR).

ASYLUM SEEKERS

Entitlements:

Access co-paid (nominal contribution) to “care that cannot be postponed”.

Conditions:

- ▶ Show the “LMA-card”; and
- ▶ Pay the patient fee (50 SEK – 4.7 EUR).

UNDOCUMENTED MIGRANTS**Entitlements:**

No access free of charge (payment of full cost: about 2000 SEK - 184 EUR)¹². Access cannot be denied because the law obliges to provide care.

PRIMARY AND SECONDARY (OUTPATIENT) HEALTH CARE**NATIONALS/AUTHORISED RESIDENTS****Entitlements:**

Access co-paid (nominal contribution).

Conditions:

- ▶ Provide the “personnummer”; and
- ▶ Pay the nominal contribution (“outpatient charges”): 140 SEK -13.3 EUR for primary and secondary care.

ASYLUM SEEKERS**Entitlements:**

Access co-paid (nominal contribution) only for “care that cannot be postponed”.

Conditions:

- Care that cannot be postponed:
 - ▶ Show the “LMA-card”; and
 - ▶ Pay the patient fee (50 SEK - 4.7 EUR).

UNDOCUMENTED MIGRANTS**Entitlements:**

No access free of charge (payment of full cost: about 1600 SEK -146 EUR). In addition, access could be denied because the law does not oblige to provide care.

HOSPITALISATION (INPATIENT CARE)**NATIONALS/AUTHORISED RESIDENTS****Entitlements:**

Access co-paid (nominal contribution).

12. Data of 2005, see Médecins Sans Frontières, *Experiences of Gömda in Sweden. Exclusion from health care for immigrants living without legal status*, 2005, p. 9.

Conditions:

- ▶ Provide the “personnummer”; and
- ▶ Pay daily hospitalisation fee (80 SEK - 7.6 EUR) with a ceiling per year.

ASYLUM SEEKERS**Entitlements:**

Access free of charge ONLY for “care that cannot be postponed”.

Conditions:

- ▶ Show the “LMA-card”.

UNDOCUMENTED MIGRANTS**Entitlements:**

No access free of charge (payment of full cost). In addition, access could be denied because the law does not oblige to provide care.

ANTE AND POST NATAL CARE**NATIONALS/AUTHORISED RESIDENTS****Entitlements:**

Access free of charge.

Conditions:

- ▶ Provide the “*personnummer*”.

ASYLUM SEEKERS**Entitlements:**

Same as nationals.

Conditions:

- ▶ Show the “LMA-card”.

UNDOCUMENTED MIGRANTS**Entitlements:**

NO access free of charge (payment of full cost, about 500 SEK - 46 EUR for consultation with a midwife and 21000 SEK - 2197 EUR for delivery)¹³. In addition, access could be denied because the law does not oblige to provide care.

13. Ibid.

ADULTS TREATMENT

MEDICINES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access co-paid (“patient charges”). The amount depends on the category of medicines.

Conditions:

- ▶ Provide the “*personnummer*”; and
- ▶ Pay the “patient charges”. The cost ceiling is SEK 1800 (171.4 EUR) over a twelve-month period.

ASYLUM SEEKERS

Entitlements:

Access co-paid ONLY for medication that “cannot be postponed” or prescribed for ante and post natal care, family planning, abortion, and dental care that “cannot be postponed”.

Conditions:

- ▶ Show the “LMA-card”; and
- ▶ Pay the “patient charge” (50 SEK (4.7 EUR) for medicine on prescription).

UNDOCUMENTED MIGRANTS

Entitlements:

NO access free of charge (payment of full cost).

HIV SCREENING

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access anonymous and free of charge.

Conditions:

No particular conditions required.

ASYLUM SEEKERS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

UNDOCUMENTED MIGRANTS

Entitlements:

Same as nationals.

Conditions:

Same as nationals.

HIV TREATMENT

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge.

Conditions:

▶ Provide the “*personnummer*”.

ASYLUM SEEKERS

Entitlements:

Same as nationals (in practice, it is always considered “care that cannot be postponed”).

Conditions:

▶ Show the “LMA-card”.

UNDOCUMENTED MIGRANTS

Entitlements:

No access free of charge (payment of full cost). In addition, access could be denied because the law does not oblige to provide treatment.

TREATMENT OF OTHER INFECTIOUS DISEASES

NATIONALS/AUTHORISED RESIDENTS

Entitlements:

Access free of charge as long as the diseases are included in the “Law of contagious diseases”.

Access free of charge in specialised clinic for sexually transmitted diseases (eg. gonorrhoea, chlamydia and syphilis) excluding tuberculosis.

Conditions:

▶ Provide the “*personnummer*”.

ASYLUM SEEKERS**Entitlements:**

Access free of charge ONLY in specialised clinic for sexually transmitted diseases (eg. gonorrhoea, chlamydia and syphilis) excluding tuberculosis.

Conditions:

▶ Show the “LMA-card”.

UNDOCUMENTED MIGRANTS**Entitlements:**

Access free of charge ONLY in specialised clinic for sexually transmitted diseases (eg. gonorrhoea, chlamydia and syphilis) excluding tuberculosis.

Conditions:

▶ No particular conditions required.

CHILDREN

NATIONALS/AUTHORISED RESIDENTS**Entitlements:**

Access free of charge to all care for children under age 18. Vaccination is not compulsory. There are recommended vaccinations¹⁴.

Conditions:

▶ Provide the “personnummer”.

ASYLUM SEEKERS' CHILDREN**Entitlements:**

Same as nationals (children up to age 18)¹⁵.

Conditions:

▶ Show the “LMA-card”.

UNACCOMPANIED ASYLUM SEEKING CHILDREN**Entitlements:**

Same as nationals (children up to age 18)¹⁶.

Conditions:

▶ Show the “LMA-card”.

UNACCOMPANIED (MIGRANT) CHILDREN**Entitlements:**

If rejected asylum seeker or children of rejected asylum seekers: Same as nationals.

Otherwise: no access free of charge to any care (payment of full cost). In addition, with the exception of emergency care, access could be denied

14. For the list of vaccinations, see www.smittskyddsinstitutet.se/in-english/activities/the-swedish-vaccination-program/

15. See § 5 of the Lag (2008:344).

16. Ibid.

because the law does not oblige to provide care or treatment.

Conditions:

- If rejected asylum seeking children:
 - ▶ Show the expired “LMA-card”.

CHILDREN OF UNDOCUMENTED MIGRANTS

Entitlements:

If rejected asylum seeker or children of rejected asylum seekers: Same as nationals.

Otherwise: no access free of charge to any care (payment of full cost). In addition, with the exception of emergency care, access could be denied because the law does not oblige to provide care or treatment.

Conditions:

- If children of rejected asylum seeker:
 - ▶ Show the expired “LMA-card”.

DETENTION CENTRES

ADULTS

Access free of charge to “care that cannot be postponed”, ante and post natal care, family planning, abortion, and dental care that “cannot be postponed”¹⁷.

Access to hospital care if needed¹⁸.

CHILDREN

Access free of charge on equal grounds as nationals¹⁹. The time limit for detention is 72h extendable to another 72h if there are exceptional grounds²⁰.

TRANSFER OR ACCESS TO INFORMATION BY THE AUTHORITIES

Transfer or access to information about administrative status: The municipal social welfare committee shall disclose information about an alien’s personal situation if a police authority, the Swedish Security Service, the Swedish Migration Board, a migration court, the Migration Court of Appeal, or the Government requests this information, and the information is needed for a decision in a case concerning a residence permit or long-term resident status in Sweden for a third-country national or to enforce a refusal-of-entry or expulsion order. This also applies when the question has arisen of whether the alien has a right to residence²¹.

17. Ibid, § 4 (3) and § 6

18. See Chapter 11, section 5 of the Aliens Act (2005:716) of 29 September 2005.

19. See § 5 of the Lag (2008:344).

20. See Chapter 10, section 5 of the Aliens Act (2005:716).

21. See Chapter 17, section 1 of the Aliens Act (2005:716).

NON EXPULSION FOR MEDICAL REASONS

RESIDENCE PERMIT FOR MEDICAL REASONS: “RESIDENCE PERMIT ON GROUNDS OF EXCEPTIONALLY DISTRESSING CIRCUMSTANCES”²²

WHO ?

Only asylum seekers.

CONDITIONS:

- ▶ Submit an asylum application.
- ▶ No residence permit has been granted on other grounds (namely asylum or subsidiary protection).
- ▶ The overall assessment of the applicant’s situation must show exceptionally distressing circumstances with particular attention to the state of health, his/her adaptation to Sweden and his/her situation in the country of origin. In his visit to Sweden in 2006, the UN Special Rapporteur on the Right to Health pointed out that in their assessment of “particularly distressing circumstances”, migration courts should consider whether or not the individual, in practice, would be able to access life-saving treatment and not only the availability of the required treatment. The Rapporteur also recommended considering the accessibility of drugs, and he generally criticised the poor quality and limited approach to the question of availability of the reports issued by the Swedish Embassies in the applicants’ countries of origin²³.
- ▶ For children: the circumstances do not need to have the same seriousness and weight that is required for adults.
- ▶ Decision made by the Swedish Migration Board after consulting availability and accessibility of the treatment in the country of origin in their own database²⁴.

DURATION:

Limited (if the sickness or need of care is temporary)²⁵ or permanent²⁶.

ACCESS TO HEALTH CARE:

The applicant has the status of an asylum seeker, therefore access to health care to “care that cannot be postponed”, ante and post natal care, family planning, abortion, and dental care that “cannot be postponed.

22. See Chapter 5, section 6 of the *Aliens Act (2005:716)*.

23. See points 86-91 of the *Report of the Special Rapporteur A/HRC/4/28/Add.2*.

24. Database “LIFOS”, see PICUM, *Undocumented and seriously ill.*, p. 47.

25. Chapter 5, section 9 of the *Aliens Act (2005:716)*.

26. “According to the Swedish Migration Board, a residence permit in humanitarian case is often granted on a permanent basis”, see PICUM, *Undocumented and seriously ill.*, p. 47.

RESIDENCE PERMITS FOR MEDICAL REASONS: “TEMPORARY OR PERMANENT RESIDENCE PERMIT IN CASE OF (NOT LASTING OR LASTING) IMPEDIMENT TO ENFORCE A REFUSAL-OF-ENTRY OR EXPULSION ORDER”

WHO ?

Seriously ill undocumented migrants

CONDITIONS:

After the final (not possible to further appeal) decision of refusal-of-entry or decision order, new medical circumstances come to light preventing the enforcement of the order or there is a reason to assume that “the alien would be in danger of suffering the death penalty or being subjected to corporal punishment, torture, or inhumane or degrading treatment or punishment”²⁷. It is the decision of the Swedish Migration Board.

DURATION:

Limited (if the sickness or need of care is temporary) or permanent²⁸.

ACCESS TO HEALTH CARE:

As authorised residents, they receive a “personal number” and are granted access to health care on equal grounds as nationals.

27. Chapter 12, section 1 of the *Aliens Act (2005:716)*.

28. Chapter 12, section 18 of the *Aliens Act (2005:716)*.

IN PRACTICE

THE VISION OF MDM SWEDEN ABOUT THE SITUATION IN PRACTICE

Access to health care for undocumented migrants - adults and children:

The legislation does not recognise any access free of charge for undocumented migrants, with the sole exception of children of rejected asylum seekers or rejected asylum seeking children. Therefore, the biggest direct obstacle is the law in itself. Although the law does not recognise undocumented migrants' legal entitlements to accessing health care, it also does not prohibit providing medical services to them. Why then do medical staff not treat undocumented migrants in Sweden? It is often due to administrative and financial issues. In addition, since it is not required by law, the law does not motivate them to do otherwise. Similarly, the lack of knowledge on the side of health care providers sometimes leads to the misunderstanding that providing health care to undocumented migrants is a breach of law.

Medical staff often does not know how to handle the administrative routines for undocumented migrants when they seek health care. Everyone legally living in Sweden receives a personal identity number. This number facilitates administrative steps and it is always used in the health care system to register and to keep track of the patients. As undocumented migrants do not have a personal number, they do not exist in the health care system. This can result in denying treatment to a patient in need of care. A possible solution could be providing undocumented migrants "temporary numbers" (used for instance when a Swedish newborn child needs emergency health care and the administrative routines of providing a personal number has not yet been completed).

The financial aspect is another important issue, if not the largest. Undocumented migrants have the right to emergency healthcare, but they have to pay the whole cost themselves, which is often too expensive. Normally all patients are asked to pay before seeing a doctor, and if they cannot pay it is not guaranteed that they will get any treatment. It is possible for undocumented migrants to ask for an invoice to be sent to a given address, but few of them know about this possibility. Therefore, they end up not seeking healthcare.

Besides these issues, there are other indirect obstacles, including the fear of being reported to the police or to the migration board. A survey conducted in 2008 by *Médecins du Monde* Sweden in Stockholm²⁹ showed that the majority of interviewed undocumented migrants never went to the public health centers because of the fear of being reported. All Swedish public authorities including those working for the public health care system are bound by a duty of professional secrecy. Therefore it is illegal to report a patient, undocumented or not, to the police. The only exception to the applicable law is that the medical staff is obliged to answer a direct question made by the police if a named person

29. The *Second European Observatory Report of Médecins du Monde*, is published in September 2009.

is on the premises. This law is not well known by undocumented migrants and sometimes not even by medical staff in the sense that confidential information related to undocumented migrants should not be handled otherwise.

As for undocumented migrants, the lack of knowledge of their rights is also an obstacle. This aspect also became very clear in the survey conducted in 2008. Some of the interviewed patients thought they did not have any rights to healthcare at all, not even to emergency care (even if it is always on payment basis). These people never tried to seek healthcare, not even when they were in a critical situation.

HIV screening is accessible (anonymous and free of charge) for undocumented migrants. However, information and motivation are needed to increase access. Undocumented migrants cannot access HIV treatment free of charge.

Children encounter the same obstacles as adults. If they are failed asylum seekers or children of rejected asylum seekers, they have wider legal entitlements to access health care; however, their rights are overridden by the fact that their parents do not have any legal entitlement to access health care in Sweden free of charge. Their situation is closely related to their parents. Thus, the fear of being reported and the lack of knowledge about their rights are significant limitations preventing them to access healthcare.

The fact that Sweden has been criticized by the UN Special Rapporteur on the Right to Health (on the occasion of his visit to Sweden in 2006) for having a discriminating law and practice in this area has started a chain of events in terms of recognizing the importance to provide health care to undocumented migrants and the consequences of the restricted legislation.

The EU has also pointed out several times that Sweden should regulate by law access to health care for undocumented migrants and asylum seekers and not only through agreements between the government and the county councils. Although a new law has finally been passed in July 2008, this law has not changed anything in terms of access to health care for undocumented migrants. Their lack of rights remained the same. However, the whole process has reinforced networks, attracted the attention of the media, and created a debate among politicians. To some extent this attention has contributed to a heightened awareness among the general public, however the knowledge of this issue is still not enough.

In this context, several regional initiatives have been put in place to extend health care coverage for undocumented migrants. Some county councils, specific hospitals, and health care centers have started to develop their own policies to give a response to the consequences that the strict national legal framework have on health status and entitlements of undocumented migrants. One example is Skåne (in the southern part), where rejected asylum seekers get the same health care as asylum seekers. Another example of a regional

initiative concerns undocumented pregnant women in the Stockholm region that, from February 2009, have access to antenatal health care free of charge, not including delivery and post natal care. In Stockholm, the Karolinska University Hospital has agreed on deciding on a case by case basis, about treatment and follow up for all chronically and severe ill patients, meaning that undocumented migrants are to be included. At Sahlgrenska University Hospital in Gothenburg, they have made their own hospital policy to accept and treat undocumented migrants.

Despite all of these efforts, important difficulties have been reported concerning the effective implementation of these timid regulations. In addition, fear exists that these initiatives are taking place in a context of a health financial surplus and thus could disappear in case of shortage.

Access to health care in detention centres:

In Sweden, individuals confined in detention centers have the same rights to access health care as asylum seekers: subsidized access to emergency care, ante and post natal care, abortion and acute dental care. Illnesses, such as tuberculosis or hepatitis are not included unless the health situation of the patient is very serious. Similarly, there is not psychological support and not even psychiatric care unless the situation is considered an emergency. These restrictions have enormous consequences on the health of the detainees considering their distressing circumstances: no freedom of movement despite not having committed any criminal offence, forced migration due to war or poverty, rejected asylum claims, imminent expulsion from the host country.

Generally speaking, the provisions recognizing this right are not sufficient and a number of obstacles make access to health care in detention centers even more limited.

Access to health care in the detention center of *Kålleröd* outside Gothenburg: Detainees can access free of charge certain basic drugs that are available in the centers 24h/7: mild analgesics, drugs for coughing and stomach-ache or light sleeping pills. There is a regular presence of medical staff in the center for consultations, prescriptions and follow-up, however it is not provided on a permanent basis. In addition, health care providers are not always replaced during holidays or public holidays. This circumstance usually makes the waiting time longer for consultations. People retained could access some specialized care assuming that the nurse considers that this type of care falls under their entitlements. In emergency situation, they are taken to hospital. The lack of a permanent medical service entails that in many occasions it up to the general staff of the center (not doctors or nurses) to evaluate the gravity of a medical situation. In addition to the fact that the police can make wrong medical judgments, it might also be quite complicated for the police to transfer people to a hospital since they are obliged to comply with strict rules of transportation to go out from the centre.

Non expulsion for medical reasons:

The basic rule concerning the situation of seriously ill foreigners and residence permits on medical ground³⁰, according to the Migration Board, is that if the necessary medication and treatments exist in their country of origin, the Migration board will make the assessment that treatment is accessible to the patient and therefore a resident's permit on medical ground is dismissed. A thorough investigation based on whether this treatment is available to the patient or not is not something that is required to take into consideration in each case. Neither is the following up of each individual case. Obstacles in getting access to treatment, such as high costs and insurances, together with logistic issues are not taken into account.

There are exceptions to the circumstances above, one being dependent on social economic issues. The more unusual the illness or disease is, the more likely the person will get a residence permit in Sweden on medical grounds. This is because the individual case will not have a precedent, the chances of getting other similar cases are lower, and therefore the decision will be based on social economic value.

Another exception is if a person cannot handle the actual transportation because of medical reasons, meaning that if a person risks death during the deportation, the decision will be "stayed" until he/she recovers to the extent so that he/she is able handle the actual deportation.

Another scenario that will postpone the deportation is if the flight company/pilot will not accept a passenger because of their serious health condition. In these cases the Swedish State can charter airplanes in order to deport them to their country of origin. Obviously this only puts the problems to another flight company/pilot who could argue the same. However, the State can use the Frontex agency³¹.

Concerning seriously ill children³²: "a slightly more generous approach" is required. However, for children there is a restrictive practice in these cases as well. When it comes to children under the age of 18, they are seldom being deported if no "addressee" is found in the country of origin such as relatives, etc. However, an orphanage can also be classified as an addressee, which is not an unusual case. What can happen is that they arrive as minors and then by the time the asylum process is over it has taken such a long time and they have turned 18. Then the decision can be carried out for them to be deported.

In Sweden there are several serious cases of children with "pervasive refusal syndrome". These children have lost contact with the surroundings and live in a condition of a dejected status³³. Even in these cases it is very seldom that they will get a permit on medical grounds because the assessment made is that "treatment exists in their country origin". Also there is a lack of knowledge about this syndrome and the status of these children. Additionally,

30. In Swedish "När vård och mediciner finns att tillgå i hemlandet kan uppehållstillstånd inte beviljas på grund av synnerligen ömmande omständigheter även om utlänningsen själv måste bekosta den nödvändiga behandlingen."

31. Frontex, an EU agency based in Warsaw that was created to coordinate the operational cooperation between Member States in the field of border security. They focus on six principal areas and one of them is to provide Member States with the necessary support in organising joint return operations.

32. In Swedish "avseende barns rätt att få stanna på grund av synnerligen ömmande omständigheter, kan man anlägga ett något generösare synsätt."

33. In Swedish sk uppgivenhetsyndrom, sällsynt traumatiskt stresstillstånd hos barn.

these children are seldom being interviewed, neither by the Migration Board and further at the next level by the Migration Court, nor by the doctors.

In Sweden, the proof burden lies on the party representing the person applying for a residence permit, and not the opposite part as it is for other legal cases within the Swedish legal system where “you are innocent until proven otherwise”.

Obviously this means that there is a big responsibility placed upon the defending party of each case of completing a thorough and qualitative evaluation. The legal representative has a standard procedure for each case including a payment of 8 hours of work, something that will be paid by the Migration Board. If costs exceed the budget, something that can be caused by an assessment made by the legal representative that a further inquiry is needed to build up the case (e.g. a medical expert evaluation), the Migration Board will decide if the exceeding costs are legitimate or not in order for them to pay. Therefore the legal representative has a self interest of lowering the costs and not to go further with any uncertain inquiries that could jeopardise the budget, even though it could have been necessary to build up the medical case. Interpretation is often another very high cost that could be adjusted because of this reason. And of course, the “smaller” the language is, the harder it is to get an interpreter, and obviously this requires resources.

So if the legal representative decides on his/her own to go through with these measures anyway, either by paying from their own pocket or by working overtime, something that inevitably happens, the point is that the system in itself does not motivate a legal representative to jeopardize a budget comprised of only eight hours of work. For example, an inquiry made by the “Crisis and Trauma Center” (*Kris- och Traumacentrum*) for treatment of complex dissociative disorders is something that could have been necessary in terms of credibility in several medical cases. This measure is seldom used, as each inquiry costs approx 12 500 SEK (1 250 EUR). With reference to the circumstances above, this is highly problematic and it needs to be pointed out that Sweden has been convicted 12 times by the Committee Against Torture in Geneva for refusal of entry in cases of torture.

There are also some barriers in the officer’s job at the Migration Board. They have to deal with a lot of cases in a short period of time. Time pressure is a fact, and the officers cannot spend too much time on each case, which means that they have to limit their time to review, compare, and verify all the information. But then again the proof burden lies on the defending party which could be seen as a way of avoiding the responsibility to assure that the data is verified. The officers at the Migration Board set a time frame for the defending party to come in with proof, or so called “new elements”, for each individual case. This time frame limits the defending party of the asylum seeker because if they do not manage to come in with proof in time, the application is refused.

Läkare i Världen - Sweden

The first report of the HUMA network, available on www.huma-network.org, seeks to provide an updated overview of the different systems regulating access to health care for undocumented migrants and asylum seekers in ten Member States (Belgium, France, Germany, Italy, Malta, the Netherlands, Portugal, Spain, Sweden and the UK) and show the existing discriminations in regards to legal entitlements.

It also deals more specifically with health care entitlements for individuals confined in detention centres and the residence permits or other mechanisms established by national legislations to protect seriously ill undocumented migrants and asylum seekers who cannot effectively access treatments in their home countries against deportation.

In 2011, the HUMA network will publish an updated version of this report covering the situation in nine additional countries: Austria, Czech Republic, Cyprus, Finland, Greece, Hungary, Poland, Romania and Slovenia.



«The views expressed in this publication are the sole responsibility of the author and do not necessarily reflect the views of the Executive Agency for Health and Consumers (EAHC). Neither the EAHC nor any person acting on behalf of the EAHC is responsible for the use, which might be made of this». «This publication arises from the project HUMA network which has received funding from the European Union, in the framework of the Public Health Programme 2003-2008.»

THE HUMA NETWORK

The HUMA network's general objective is to promote access to health care on equal grounds as nationals for undocumented migrants and asylum seekers within the European Union.

It is an advocacy network active at national and European level.

It is for now constituted by 12 European NGOs, including the delegations and offices of Médecins du Monde in Europe, and a coordination team based in Paris, Brussels and Madrid.

The HUMA network's members develop activities related to health and migration and in particular, targeting undocumented migrants and asylum seekers. They also lead advocacy programs and campaigns at national and European level and contribute to the expertise and data collection of the network.

Médecins du Monde France leads the whole project together with Médecins du Monde Spain and Médecins du Monde Belgium.

For more about the project and its activities, see HUMA network website: www.huma-network.org

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