

SWEDEN

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Foreword

- [1]. This in-depth analysis of the legal system in Sweden that is to guarantee the rights and freedoms of persons with mental disorders and persons with intellectual disabilities was produced by: Jamie Bolling – doctoral student at the Swedish Institute for Disability Research, Dr. David Rosenberg and doctoral student Victoria Kawesa in collaboration with the Swedish Center against Racism. Translations of Swedish texts and English texts are those of the authors.

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Executive summary

The section on definitions

- [2]. This study is a thematic legal study on mental health and fundamental rights in Sweden. The section on definitions describes the use of terms for “persons with mental disorders” and “persons with intellectual disabilities”.

The section on antidiscrimination

- [3]. The section on anti-discrimination shows that Sweden ratified the UN Convention on the Rights of Persons with Disabilities without changes in the law as recommended by the study carried out by Grönwall (DS 2008:23)¹.
- [4]. There is a new law in Sweden against discrimination called the Discrimination Act (SFS: 2008:567)². This act enlarged the grounds of discrimination to include age and transgender. The Equality Ombudsman was established pursuant to a merger of the four previous anti-discrimination ombudsmen.
- [5]. A form of preferential treatment exists at the legislative level. Two laws provide the right to ten services of which the right to personal assistance is one. It can be debated whether or not these rights should be considered as preferential treatment as they in essence are just different measures to ends that are protected for everyone in society.
- [6]. Sweden has had anti-discrimination legislation for employment, covering various grounds, since 1999. The new Discrimination Act is horizontal in that it covers employment, education, health care, social protection, housing and access to and supply of goods and other services that are available to the public.

The section on specific fundamental human rights

- [7]. The section on specific fundamental rights summarizes the Swedish legislation that provides basic protection for individuals. Most of the rights are protected in the Swedish Constitution and the Instrument of Government.³
- [8]. The right to freedom from exploitation is protected through the Penal Code (SFS: 1962:700)⁴, the right to marry in the Marriage Code (SFS: 1987:230)⁵.

¹ See: <http://www.regeringen.se/sb/d/10055/a/101918> (6 November 2009) page 12

² See: <http://www.regeringen.se/sb/d/11503/a/118018> (6 November 2009)

³ See: http://www.riksdagen.se/templates/R_Page_6307.aspx (6 November 2009)

⁴ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1962:700> (6 November 2009)

⁵ See: <http://www.notisum.se/rnp/sls/lag/19870230.htm> (6 November 2009)

The legal issues related to curatorship and trusteeships are provided through the Parents Code (SFS 1949:381).⁶

The section on involuntary placement and involuntary treatment

- [9]. The section on involuntary placement and involuntary treatment is an analysis of the legal framework for persons with a mental disorder and not of persons with intellectual disability. This is because in Sweden persons with an intellectual disability are not confined or treated involuntarily; they have the right to the assistance of curators to live lives integrated into society. There are laws which allow involuntary placement and treatment for persons with mental disorders which are an exception to voluntarism, which is the starting point for Swedish legislation. A new law is in place concerning compulsory outpatient care (Prop 2007:/08:70).⁷
- [10]. The report of the United Nations Committee Against Torture (UN 2008:76)⁸ noted that the provision of data on average lengths of physical restraint or isolation in psychiatric institutions and hospitals could not be provided in Sweden but that a register is under way.

The section on competence, capacity and guardianship

- [11]. The section on competence, capacity and guardianship analyses the Swedish legal framework concerning legal capacity and article twelve of the UN Convention on the Rights of Persons with Disabilities. As of 1989 one can no longer be declared incapable. This means that a person always has legal capacity in regard to rights. The limits on legal capacity to act, through curatorship and trusteeship are strictly regulated in the Swedish Parents Code (SFS 1949:381).⁹

The section titled Miscellaneous

- [12]. The section titled Miscellaneous includes an account of why there is limited case law in Sweden. There is also a description of the “Odell” Case, a very recent media case in Sweden concerning mental disorders and how a girl simulated being psychotic and how she was met with violence. This case brought a lot of attention to the psychiatric care system in Sweden.

⁶ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009)

⁷ See: <http://www.regeringen.se/sb/d/9251/a/99245> (6 November 2009)

⁸ See: <http://www.unhcr.org/refworld/publisher,CAT,SESSIONALREPORT,,492fb6522,0.html> (6 November 2009)

⁹ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009)

1. Definitions

- [13]. As per the guidelines for this study two terms are used in this report to refer to the individuals who are the subjects of this study: persons with a mental disorder and persons with an intellectual disability. These terms are similar to those used in Sweden today when adopting legislation. One of the latest communications from the Swedish government for persons with a mental disorder and persons with an intellectual disability is *Government Communication 2008/09:185*¹⁰. In this report the terms used are “*personer med psykisk sjukdom*” and “*personer med psykisk funktionsnedsättning*”. These can be translated as “people with mental illness” and “people with mental impairment (disability)”. Terminology in Swedish legislation concerning the groups in question varies depending on the age of the legislation. One of the main laws from 1993 is the *Act concerning Support and Service for Persons with Certain functional Impairments* (SFS: 1993/387).¹¹ This law uses the terms “*personer med varaktiga fysiska eller psykiska funktionshinder*” or persons with lasting physical or psychological disability. The law is called “*Lag (1993:387) om stöd och service till vissa funktionshindrade*” or “*Law (1993:387) on support and service to certain disabled persons*”. Concerning the convention the translation is “*FN: s konvention om rättigheter för personer med funktionsnedsättning*” or *UN Convention on the rights of persons with impairment (disability)*.
- [14]. The National Board of Health and Welfare has a terminology committee carrying out studies and adjusting the terminology to be used. In 2007 the national board recommended replacing the term “*handicap*” with the terms “*funktionshinder*” meaning the limitation of a disability in relation to the environment and “*funktionsnedsättning - nedsättning av fysisk, psykisk eller intellektuell funktionsförmåga*” or impairment – a reduction in physical, psychological or intellectual functional capacity.¹²
- [15]. In the *Compulsory Psychiatric Care Act* (SFS: 1991:1128)¹³ from 1991 the term used is “*psykisk störning*” or the equivalent to mental disorder.
- [16]. There is no available case law contributing to the national definition.

¹⁰ See: http://www.riksdagen.se/Webbnav/index.aspx?nid=37&dok_id=GW03185 (6 November 2009)

¹¹ See: <http://www.sweden.gov.se/sb/d/3873/a/72669> (6 November 2009)

¹² See: <http://app.socialstyrelsen.se/termbank/QuickSearchBrowse.aspx> (6 November 2009) see “*funktionshinder*” and “*funktionsnedsättning*”

¹³ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1991:1128> (6 November 2009)

2. Antidiscrimination

2.1. Incorporation of United Nations standards

- [17]. The Swedish government took the decision to ratify the *Convention on the Rights of Persons with Disabilities* (CRPD) and its *Optional Protocol* on the 4th of December 2008 with the convention and protocol coming into effect on January 14, 2009.¹⁴ The Swedish translation of the convention can be found on the government's website – www.regeringen.se with the reference SÖ 2008:26.¹⁵ According to the departmental inquiry carried out by Grönwall (DS 2008:23)¹⁶ there was no need for changes in Swedish law in order to ratify the UN convention. So the ratification of the convention was not preceded by any changes or amendments in any law concerning the rights of persons with a mental disorder and persons with an intellectual disability. However, it is worth noting that in the inquiry Grönwall did say that there is still much to do as far as disability policy is concerned before Sweden can be said to fulfil all the undertakings and requirements of the convention and that the convention will serve as an important document for future Swedish disability policy.
- [18]. There is an ongoing inquiry being carried out by the Swedish Delegation for Human Rights concerning promotion, protection and monitoring of all conventions on human rights. Within the framework of this task the delegation has been given the assignment of considering which body should be responsible for the implementation and monitoring of the *UN Convention on the Rights of Persons with Disabilities* as per article thirty-three of the convention. In the government inquiry SOU 2009:36 *Promote, Protect and Monitor*¹⁷ the delegation does not encourage the establishment of a new government agency for these responsibilities. It proposes the division of responsibility into several constituent parts assigned to different actors. The Equality Ombudsman, Handisam (the Swedish Agency for disability Policy Coordination) as well as public bodies such as the Riksdag (the Swedish Parliament), the Government, government agencies, municipalities and county councils all should share the responsibilities. The government ordinance (2007:1134) containing Handisam's duties would need to be changed if this bill is passed. The new Equality Ombudsman can be said to not fully comply with the requirements that are

¹⁴ See: <http://www.regeringen.se/sb/d/1928/a/18527> (6 November 2009)

¹⁵ Available at: <http://www.regeringen.se/sb/d/11071/a/123615> (6 November 2009)

¹⁶ Available at: <http://www.regeringen.se/sb/d/10055/a/101918> (6 November 2009) page 12

¹⁷ Available at: <http://www.regeringen.se/sb/d/108/a/126637> (6 November 2009) page 38

derived from the *Paris Principles*, as the Ombudsman's mandate is limited to matters concerning discrimination, equal rights and equality of opportunity, so its remit would need to be expanded. This is necessary so that the mandate includes the violations of human rights, which do not entail discrimination such as provisions for basic health and medical care for all citizens. The delegation's work is to be terminated in 2010. Some of the issues still under investigation are the relation of the UN conventions to Swedish law and the *Paris Principles* (SOU 2009:36)¹⁸.

- [19]. When considering the work of the EU Disability High Level Group 8 and what is relevant for the protection of rights and freedoms of persons with a mental disorder and persons with an intellectual disability, the Swedish report took up the question of legal capacity as trustees can be appointed for a person and the appointment of a trustee entails a loss in the legal capacity to act.¹⁹
- [20]. Legal capacity is relevant in article twelve of the UN Convention for equal recognition before the law. In his analysis of Swedish legislation and article twelve Grönwall²⁰ pointed out that the Swedish disability movement called attention to the fact that Swedish law and regulation may need to be updated concerning legal capacity in relation to curatorship and trusteeship - referring to chapter eleven in the *Parents Code* (SFS: 1949:381)²¹. Curatorship or *godmanskap* does not limit legal capacity but trusteeship or *förvaltarskap* does, and the disability movement made the point that it should be made clear that a trustee should be replaced with a curator or other intervention when a trustee is no longer needed.
- [21]. Grönwall²² states that the *Compulsory Psychiatric Care Act* (SFS: 1991:1128)²³ is also questioned at times in regard to its implementation even though the act contains strict rules concerning involuntary placement and treatment giving protection and support to persons in need. There are some who seriously question the implementation of these rules, even if the cases do not end up as a part of the case law. Various news media, NGO:s and Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights, and Anna Nilsson of the Raoul Wallenberg Institute for Human Rights have e.g. recently questioned the use of coercion measures unregulated in law such as thick leather gloves, isolation as a form of "care" and electro-shock therapy without consent²⁴.
- [22]. The next article in question as far as Swedish legislation and the concerned target group in Grönwall's inquiry was article fourteen – liberty and security of

¹⁸ See: <http://www.regeringen.se/sb/d/108/a/126637> (6 November 2009) page 27

¹⁹ See: <http://ec.europa.eu/social/main.jsp?catId=431&langId=en> (6 November 2009) page 203

²⁰ See: <http://www.regeringen.se/sb/d/10055/a/101918> (6 November) page 53

²¹ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November)

²² See: <http://www.regeringen.se/sb/d/10055/a/101918> (6 November) page 53

²³ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1991:1128> (6 November)

²⁴ See: <http://www.sofiaakerman.com/shedo/SHEDOdokument.pdf> (1 December 2009),
http://www.tv4.se/1.1277701/2009/10/17/skrev_kontrakt_med_hot_om_bestraffning (1 December 2009),
http://svtplay.se/v/1776561/uppdrag_granskning/del_13_av_16 (1 December 2009) and
http://www.svd.se/opinion/brannpunkt/artikel_3897237.svd (6 December 2009)

the person. People suffering from severe psychiatric disorders can under certain circumstances be subject to involuntary placement according to *the Compulsory Psychiatric Care Act (SFS: 1991:1128)*²⁵. This act as well the *Forensic Psychiatric Care Act (SFS: 1991:1129)*²⁶, concerning persons who have committed a crime, and suffer from a severe psychiatric disorder, entail being placed under constant surveillance. The disability movement pointed out that insufficiencies in psychiatric care can result in involuntary placement and treatment and that this is against the convention. Grönwall²⁷ recommends that the use of involuntary placement and treatment should be given special attention in the National Board of Health and Welfare's current follow-up of the implementation of laws concerning psychiatric care as well as within regular law reviews.

- [23]. According to article seventeen in the convention people with physical and intellectual disabilities have the right to respect for integrity under the same conditions as all other people. In addition, Article 25 d requires free and informed consent for care. For people in need of psychiatric care coming under the jurisdictions of the *Compulsory Psychiatric Care Act (SFS: 1991:1128)* and *Forensic Psychiatric Care Act (SFS: 1991:1129)*, there may be an issue of restricted rights for a certain period of time affecting physical and intellectual integrity. These laws allow for the restriction of rights, yet are laws that have strict rules for application with the possibility of appeal through the court system. Again though, there are doubts as to the effectiveness of these strict rules as the media, NGO:s and others are increasingly uncovering instances of abuse and pointing out violations of international standards, particularly the right to freedom from torture or cruel, inhuman or degrading treatment or punishment as well as Swedish law²⁸. A new care reform came into effect September 1, 2008; concerning open psychiatric involuntary care (*Government Bill 2007/08:70*)²⁹ allowing people to receive care in open society but having to abide by certain conditions. The *Compulsory Psychiatric Care Act (SFS: 1991:1128)* is, as previously stated, in a process of review by the National Board of Health and Welfare. Both these measures were results proposed by the government in its review of psychiatric care.³⁰ Sweden has its legislation under constant review, but is now in an involved process of review of the field of psychiatric care.
- [24]. There is anti-discrimination legislation in Sweden, so the articles of the convention were not put into focus as far as discrimination is concerned with the exception of article nine on accessibility. Inaccessibility outside of working

²⁵ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1991:1128> (6 November 2009)

²⁶ See: <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=1991:1129> (6 November 2009)

²⁷ See: <http://www.regeringen.se/sb/d/10055/a/101918> (6 November 2009) page 56

²⁸ See: <http://www.sofiaakerman.com/shedo/SHEDOdokument.pdf> (1 December 2009), http://www.tv4.se/1.1277701/2009/10/17/skrev_kontrakt_med_hot_om_bestraffning (1 December 2009), http://svtplay.se/v/1776561/uppdrag_granskning/del_13_av_16 (1 December 2009) and http://www.svd.se/opinion/brannpunkt/artikel_3897237.svd (6 December 2009)

²⁹ See <http://www.regeringen.se/sb/d/9251/a/99245> (6 November 2009)

³⁰ See: http://www.riksdagen.se/Webbnav/index.aspx?nid=37&dok_id=GW03185 (6 November 2009)

life is not yet considered to be discrimination in Sweden, yet the existing laws concerning accessibility were considered sufficient to allow ratification of the convention according to Grönwall (DS 2008:23).³¹ There is a departmental inquiry examining this particular issue.

2.2. The National Anti-Discrimination Framework

2.2.1. Analysis of anti-discrimination/equality rules in Sweden in respect to persons with mental disorders and persons with intellectual disability

- [25]. General protection for the principle of equal treatment is included in the Swedish constitution as well as at the level of legislation. The Swedish Constitution has the following wording in chapter one article two: *"The public institutions shall promote the ideals of democracy as guidelines in all sectors of society and protect the private and family lives of private persons. The public institutions shall promote the opportunity for all to attain participation and equality in society. The public institutions shall combat discrimination of persons on grounds of gender, color, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the private person."*³² This is a guiding principle for public authorities rather than being a statement of law that will be implemented by the courts.
- [26]. There were four relevant laws up until January 1, 2009 covering discrimination and disability in general, these all at the legislative level:
- *The Prohibition of Discrimination in Working Life of People with Disability Act (SFS: 1999:132)*³³
 - *Equal Treatment of Students at Universities Act (SFS: 2001/02:27)*³⁴
 - *The Prohibition of Discrimination Act (SFS: 2003:307)*³⁵

³¹ See: <http://www.regeringen.se/sb/d/10055/a/101918> (6 November 2009) pages 45-51

³² See: http://www.riksdagen.se/templates/R_PageExtended_6309.aspx (6 November 2009)

³³ See: <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=1999:132> (6 November 2009)

³⁴ See: <http://www.regeringen.se/sb/d/108/a/1646> (6 November 2009)

³⁵ See: <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=2003:307> (6 November 2009)

- *Act on the prohibition of discrimination and other degrading treatment of children and pupils (Prop.2005:06/38)*³⁶

- [27]. These laws as well as several others concerning discrimination were replaced by the new *Discrimination Act (SFS: 2008:567)*³⁷ that came into effect January 1, 2009. This change in legislation was made to make Swedish discrimination legislation more effective, comprehensive and ensure compliance with the EU: s anti-discrimination directives. The grounds of discrimination were enlarged adding age and transgender, and the concept of “race” was removed. Compensation for discrimination was introduced as a compensation for the violation of integrity represented by an infringement and to act as a deterrent against discrimination. This concept is intended to basically replace the concept of damages, as the damages awarded tended to be unsatisfactorily low. The right for special interest organizations to bring an action to court on behalf of an individual was also introduced, being somewhat equivalent to the right previously enjoyed by employees’ organizations.
- [28]. A new agency was created, the *Equality Ombudsman* which was mentioned earlier in relation to follow-up of the UN Convention. This new agency replaced the four previous anti-discrimination ombudsmen: the Equal Opportunities Ombudsman (gender equality), the Ombudsman against Ethnic Discrimination, the Disability Ombudsman and the Ombudsman against Discrimination because of Sexual Orientation.
- [29]. Neither this new law nor the previous laws explicitly referred to persons with mental disorders and persons with intellectual disabilities yet these groups are implicitly included within the ground of disability discrimination. There is no specific case law related to Sweden’s anti-discrimination laws and persons with mental disorders and persons with intellectual disability. At the same time, to the extent that there is case law applying the anti-discrimination laws in general, the case law also applies in general in regard to the persons mentioned.

2.2.2. Preferential treatment arrangements in respect to persons with mental disorders and persons with intellectual disabilities

- [30]. There is no preferential treatment in respect to disability at the constitutional level in Sweden, but at the legislative level. Two of the laws that can be said to confer preferential treatment in respect to disability, including the target groups of this paper, are laws that contain the right to appeal negative decisions, i.e. the *Act concerning Support and Service for Persons with Certain functional Impairments (SFS: 1993/387)*³⁸ and the *Assistance Benefit Act (SFS: 1993/389)*.

³⁶ See: http://www.riksdagen.se/webbnav/index.aspx?nid=37&dok_id=GT0338 (6 November 2009)

³⁷ See: <http://www.regeringen.se/sb/d/11503/a/118018> (6 November 2009)

³⁸ See: <http://www.sweden.gov.se/sb/d/3873/a/72669> (6 November 2009)

³⁹ The rights covered in these acts are advice and personal support, personal assistance, escort service (meaning help in getting from one place to another), contact persons, relief service in the home, short-term stays away from home, short periods of supervision for school children, supported living outside of the family for children, supported housing for adults and daily activities for people of working age. It can be debated whether or not these rights should be considered as preferential treatment.

- [31]. Other measures that can be termed to involve preferential treatment are covered by different laws or regulations and include: home-help covered in the *Social Services Act* (SFS: 2001:453)⁴⁰, disability allowance for extra costs according to the law on disability allowance (SFS: 1998:703)⁴¹, special education grants through the regulation on state grants for certain studies for persons with disabilities (SFS: 2007:1345)⁴², special education provided in the school legislation (SFS: 1995:1100)⁴³, state disability grants for adult education provided in the regulation on state grants for adult education (SFS:1991:977)⁴⁴, transportation services within the municipality according to the law on transportation services for the disabled (SFS:1997:736)⁴⁵, transportation services throughout Sweden provided in the *National transportation for the Disabled Act* (SFS:1997:735)⁴⁶ and dental grants through the dental reform (SFS:2008:193)⁴⁷. Measures can be both direct and indirect. Access to the special transport system, disability allowances and home help are examples of support going directly to the individual based on need. Special education grants can be given to the individual or to the schools attended by a student with a disability. State disability grants go directly to the adult education schools called Folk High Schools.
- [32]. There is no specific case law related to the laws that can be termed as providing preferential treatment to persons with mental disorders and persons with intellectual disability. At the same time, to the extent that there is case law applying these laws in general, the case law also applies in general in regard to the persons mentioned.

2.2.3. Swedish law and the Employment Equality Directive

- [33]. Protection against workplace discrimination on the basis of a disability was provided in 1999 through the *Prohibition of Discrimination in Working Life of*

³⁹ See: <http://www.sweden.gov.se/sb/d/3873/a/72664> (6 November 2009) SFS: 1993:389

⁴⁰ See: <http://www.notisum.se/Rnp/sls/lag/20010453.htm> (6 November 2009)

⁴¹ See: <http://www.notisum.se/Rnp/SLS/lag/19980703.htm> (6 November 2009)

⁴² See: <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=2007:1345> (6 November 2009)

⁴³ See: <http://www.notisum.se/rnp/SLS/LAG/19851100.htm> (6 November)

⁴⁴ See: <http://www.notisum.se/rnp/sls/lag/..%5Cfakta%5Ca9910977.htm> (6 November 2009)

⁴⁵ See: <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=1997:736> (6 November 2009)

⁴⁶ See: <http://www.notisum.se/Rnp/sls/lag/19970735.htm> (6 November 2009)

⁴⁷ See: <http://www.notisum.se/rnp/sls/lag/20080193.HTM> (6 November 2009)

People with Disability Act (SFS: 1999:132).⁴⁸ In this law, disability was defined as a lasting physical, mental or intellectual limitation of a person's functional capacity as a consequence of an injury or sickness at birth, something occurring thereafter or something expected to arise. This means that Swedish legislation specifically included persons with mental disorders in the employment discrimination legislation, which transposed the *European Employment Equality Directive*.

- [34]. *The Prohibition of Discrimination in Working Life of People with Disability Act* (SFS: 1999:132) was in turn one of the laws incorporated into the new *Discrimination Act* (SFS: 2008:567)⁴⁹ that came into effect January 1, 2009. In this new law, disability is defined with the exact same wording as in the employment legislation from 1999. The new Swedish discrimination legislation is horizontal as foreseen in the *Draft Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*.⁵⁰ The Swedish legislation includes employment, education, health care, social protection, housing and access to and supply of goods and other services that are available to the public. The law does not include inaccessibility outside of working life and education as discrimination, which affects the disability population as a whole.
- [35]. Reasonable accommodation meeting the needs of persons with a disability, including persons with a mental disorder, is provided through the new *Discrimination Act* in chapter two, article one, with the following wording: "*The prohibition of discrimination also applies in cases where the employer, by taking reasonable support and adaptation measures, can see to it that an employee, a job applicant or a trainee with a disability is put in a comparable situation to people without such a disability*".⁵¹
- [36]. The new agency known as the Swedish Equality Ombudsman started in January 2009. The supervision of discrimination was reorganized so that the different ombudsmen were basically merged into a single equality body. Through old and new legislation, the former Swedish Disability Ombudsman had, and the new Equality Ombudsman has the mandate to deal with cases of discrimination. Two cases concerning the target groups of this paper, both resulting in a settlement, could be found on the former Disability Ombudsman's website: one concerned a student going to special school who received SEK 15 000 in 2007 for having been subjected to unequal treatment by the school principal. The student was treated unequally in that the students attending the special classes were called up together as a group to receive their diplomas while the other students were called up individually.⁵² The other case concerned a man needing

⁴⁸ See: <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=1999:132> (6 November 2009)

⁴⁹ See: <http://www.sweden.gov.se/sb/d/3926/a/118187> (6 November 2009)

⁵⁰ See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0426:EN:NOT> (6 November 2009)

⁵¹ See: <http://www.sweden.gov.se/sb/d/3926/a/118187> (6 November 2009)

⁵² See: http://www.ho.se/Tpl/NewsPage_1205.aspx (6 November 2009)

an apartment during his stays away from the forensic psychiatric ward. This was refused. He received SEK 35 000 as a settlement.⁵³

- [37]. On the new website of the Equality Ombudsman two cases concerning disability could be found. One concerned a physical disability about a man who wanted to participate in a ski contest called Vasaloppet, sitting in a sit ski. He was refused entry but through a settlement reached with the help of the Equality Ombudsman, he was allowed to participate in the race and received SEK 30 000 in damages.⁵⁴ The other case concerns someone from the target group of this paper. A woman with a mental disorder was not allowed to continue to work afternoons and evenings by her new boss. She was not able to manage working mornings. She was considered to have been harassed due to her disability and received SEK 45 000.⁵⁵
- [38]. As stated previously, there is no specific case law related to Sweden's anti-discrimination laws, which were intended to transpose the EU Employment Equality Directive and persons with mental disorders and persons with intellectual disability. At the same time, to the extent that there is case law applying the anti-discrimination laws in general, the case law also applies in general to the persons mentioned.

3. Specific Fundamental Rights

- [39]. The basic rights of the individual are protected in the *Swedish Constitution*, through the various United Nations conventions (The Swedish Government's Human Rights Website)⁵⁶ and through the European conventions.⁵⁷ The *European Convention for the Protection of Human Rights and Fundamental Freedoms* was incorporated into the *Swedish Constitution* in chapter two, article twenty-three, of the *Instrument of Government* with the following wording. "No act of law or other provision may be adopted which contravenes Sweden's undertakings under the *European Convention for the Protection of Human Rights and Fundamental Freedoms*".⁵⁸ The target groups of this report are not named specifically in the *Swedish Constitution* but as Sweden respects the equal worth of individuals, persons with mental disorders and persons with an intellectual disability are protected by the rights of the individual. The *Swedish*

⁵³ See: http://www.ho.se/Tpl/NewsPage_1206.aspx (6 November 2009)

⁵⁴ See: <http://www.do.se/Om-DO/Stamningar-och-forlikningar/Forlikning-Vasaloppsforeningen/> (6 November 2009)

⁵⁵ See: <http://www.do.se/Om-DO/Stamningar-och-forlikningar/Forlikning-gym-i-Boras/> (6 November 2009)

⁵⁶ See: http://www.manskligarattigheter.gov.se/extra/pod/?id=15&module_instance=2&action=pod_show&navid=15 (6 November 2009)

⁵⁷ See: http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_eec_sv.htm (6 November 2009)

⁵⁸ See: http://www.riksdagen.se/templates/R_PageExtended_6319.aspx (6 November 2009)

Constitution has the following wording in chapter one article two of the first of the constitutional laws called the *Instrument of Government*:

- [40]. “Chapter 1. Basic principles of the form of government. **Art. 2.** “Public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the private person. The personal, economic and cultural welfare of the private person shall be fundamental aims of public activity. In particular, it shall be incumbent upon the public institutions to secure the right to health, employment, housing and education, and to promote social care and social security.”⁵⁹
- [41]. An individual’s **right to life** is protected through article two of the first chapter of the Swedish *Instrument of Government* through the exercise of power with respect for the equal worth of all and the freedom and dignity of individuals and through the second article of the *European Convention on Human Rights*⁶⁰. There is no case law related to the constitution and the laws that can be termed as protecting the right to life for persons with mental disorders and persons with intellectual disability.
- [42]. **The right to freedom from torture or cruel, inhuman or degrading treatment or punishment** is covered through the *Swedish Constitution* in chapter two, article five, of the *Instrument of Government*.⁶¹ Sweden ratified the *UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* on the 10 December 1984⁶². Protection is also provided in the third article of the *European Convention on Human Rights*⁶³ and the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*⁶⁴. In the *Swedish Constitution* the death penalty is forbidden in chapter two, article four, of the *Instrument of Government* and corporal punishment is forbidden in chapter two, article five.⁶⁵ There is no case law related to the constitution and the laws that can be termed as protecting the right to freedom from torture or cruel, inhuman or degrading treatment and punishment for persons with mental disorders and persons with intellectual disability.
- [43]. **The right to freedom from exploitation** is covered in Sweden through the *Penal Code (SFS: 1962:700)*.⁶⁶ In chapter four there are provisions on the respect of freedom and peace and in chapter six there are provisions on sexual offences. These provisions apply to all people. A person committing a crime

⁵⁹ See: http://www.riksdagen.se/templates/R_PageExtended_6309.aspx (6 November 2009)

⁶⁰ See: <http://www.hri.org/docs/ECHR50.html#C.Preamble> (6 November 2009)

⁶¹ See: http://www.riksdagen.se/templates/R_PageExtended_6319.aspx (6 November 2009)

⁶² See: http://www.manskligarattigheter.gov.se/extra/pod/?id=4&module_instance=2&action=pod_show&navid=4 (6 November 2009)

⁶³ See: <http://www.hri.org/docs/ECHR50.html#C.Preamble> (6 November 2009)

⁶⁴ See: http://www.manskligarattigheter.gov.se/extra/pod/?id=4&module_instance=2&action=pod_show (6 December 2009)

⁶⁵ See: http://www.riksdagen.se/templates/R_PageExtended_6319.aspx (6 November 2009)

⁶⁶ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1962:700> (6 November 2009)

and exploiting someone in a defenseless state could receive a more severe sentence in accordance with the *Penal Code* chapter twenty-nine, article two, point three.⁶⁷ In the *Social Services Act* (SFS: 2001:453), chapter six, articles five through eleven, there are provisions for the protection of children in risk zones.⁶⁸ There is no case law related to the laws that can be termed as protecting the right to freedom from exploitation for persons with mental disorders and persons with intellectual disability.

- [44]. **The right to liberty and security** is covered through the *Swedish Constitution*, chapter one article two.⁶⁹ All people have a right to equal treatment even in questions of illegal behavior and the need for penal sanctions. As mentioned earlier, people suffering from severe psychiatric disorders can under certain circumstances be subject to involuntary placement according to the *Compulsory Psychiatric Care Act* (SFS: 1991:1128)⁷⁰. As mentioned earlier, the *Compulsory Psychiatric Care Act* allows for persons with severe psychiatric disorders to, under certain circumstances, be subject to involuntary commitment. In addition, the *Forensic Psychiatric Care Act* (SFS: 1991:1129)⁷¹ applies similarly to persons who have committed a crime while suffering from a severe psychiatric disorder. There is no case law related to the constitution and the laws that can be termed as protecting the right liberty and security for persons with mental disorders and persons with intellectual disability.
- [45]. **The right to a fair trial** according to Swedish law is a right for all persons. There are stipulations in several Swedish laws aimed at providing conditions enabling proper access to justice for persons with a mental disorder and persons with an intellectual disability. In chapter eleven of the *Parents Code* (SFS: 1949:381)⁷² there is provision for curatorship and trusteeship. As taken up earlier, curatorship does not limit legal capacity to act but trusteeship does, and the disability movement when considering the *UN Convention on the Rights of Persons with Disabilities* made the point that it should be made clear that a trustee should be replaced with a curator or other intervention when a trustee is no longer needed (DS 2008:23).⁷³ In the *Compulsory Psychiatric Care Act* (SFS: 1991:1128)⁷⁴ there are strict rules concerning persons with a mental disorder and provisions for a support person and an official assistant for trials. There is no case law related to the laws that can be termed as protecting the right to life for persons with mental disorders and persons with intellectual disability.
- [46]. **The right to privacy** is guaranteed to all people through the *Swedish Constitution* and the *Instrument of Government*, chapter two.⁷⁵ As far as secrecy

⁶⁷ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1962:700> (6 November 2009)

⁶⁸ See: <http://www.notisum.se/RNP/sls/lag/20010453.htm> (6 November 2009)

⁶⁹ See: http://www.riksdagen.se/templates/R_PageExtended_6309.aspx (6 November 2009)

⁷⁰ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1991:1128> (6 November 2009)

⁷¹ See: <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=1991:1129> (6 November 2009)

⁷² See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November)

⁷³ See: <http://www.regeringen.se/sb/d/10055/a/101918> (6 November 2009)

⁷⁴ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1991:1128> (6 November 2009)

⁷⁵ See: http://www.riksdagen.se/templates/R_PageExtended_6319.aspx (6 November 2009)

concerning health and rehabilitation, there is the *Secrecy Act* (SFS: 1980:100) that does not allow information on individuals to be spread.⁷⁶ There is also the *Personal Information Act* (SFS: 1998:204) that is to ensure the privacy of individuals.⁷⁷ Access to one's own confidential medical records is guaranteed through the legislation for medical journals called *Patientjournallag* (SFS: 1985:562).⁷⁸ There is no case law related to the constitution and the laws that can be termed as protecting the right to privacy for persons with mental disorders and persons with intellectual disability.

[47]. According to the *Marriage Code* (SFS: 1987:230) the only hindrance to the **right to marry** is if someone is under 18 years of age or is related as a parent, child, brother or sister.⁷⁹ There are no laws saying that people with disabilities do not have the **right to build families** or **have children** or **maintain parental rights**. Children's rights are protected though through the *Parents Code* (SFS: 1949:381) when there are cases related to custody. According to chapter twenty-one the child's best interests are to be considered.⁸⁰ There is no case law related to the laws that can be termed as protecting the right to marriage or for building families for persons with mental disorders and persons with intellectual disability.

[48]. **The right to property** is protected in the Swedish constitution through the *Instrument of Government*, chapter two, article eighteen,⁸¹ and there are no exceptions for people with disabilities. There is no case law related to the constitution that can be termed as protecting the right to property for persons with mental disorders and persons with intellectual disability.

[49]. **The right to vote** is protected through the Swedish constitution in the *Instrument of Government* in the first chapter and first article and persons with mental disorder and intellectual disabilities are included in this protection.⁸² There is no case law related to the constitution that can be termed as protecting the right to vote for persons with mental disorders and persons with intellectual disability.

4. Involuntary placement and Involuntary Treatment

[50]. The vast majority of treatment, rehabilitation and support services for people with a mental disorder in Sweden are provided voluntarily and with the consent

⁷⁶ See: <http://www.notisum.se/Rnp/sls/lag/19800100.htm> (6 November 2009)

⁷⁷ See: <http://www.notisum.se/RNP/sls/lag/19980204.htm> (6 November 2009)

⁷⁸ See: <http://www.notisum.se/rnp/sls/lag/19850562.HTM> (6 November 2009)

⁷⁹ See: <http://www.notisum.se/rnp/sls/lag/19870230.htm> (6 November 2009)

⁸⁰ See: <http://www.notisum.se/rnp/SLS/lag/19490381.htm> (6 November 2009)

⁸¹ See: http://www.riksdagen.se/templates/R_PageExtended_6319.aspx (6 November 2009)

⁸² See: http://www.riksdagen.se/templates/R_PageExtended_6309.aspx (6 November 2009)

of the individual. Voluntarism is asserted to be the starting point for all legislation, including both the *Health Care Act* (SFS: 1982:763) and the *Social Services Act* (SFS: 2001:453), which control the care of people with a mental disorder. Despite this, there are still 3000 persons that are, on any given day, receiving involuntary treatment under either the *Compulsory Psychiatric Care Act* (SFS: 1991:1128) or the *Forensic Psychiatric Care Act* (SFS: 1991:1129).⁸³

- [51]. Compulsory care has a long history in Sweden and continues to be reflected in legislation in this area, which reinforces the idea that society must at certain times administer treatment and care despite the person resisting this care. This necessity is however, in theory, built on fundamental human rights and solidarity, and the wish to help others when they are perceived as not being able to help themselves. Any possibilities for utilizing involuntary or compulsory care must, in theory, be limited and as much as possible structured so that risks to personal integrity are minimized and a rights perspective is maintained.
- [52]. The current legislation went into effect in 1992 and is characterized by knowledge regarding care and support to people with mental disorders and psychiatric disabilities, which developed during the 1980's. However, developments in both the medical and social field, as well as perspectives on people with mental disorders and psychiatric disabilities have led to changes since 1992 and thereafter the position of the patient in the care system has become stronger. The government has called for an inquiry with the aim of suggesting a new, more pedagogic and accessible legislation within the area of compulsory treatment, as part of a larger inquiry, based on the Psychiatry Responsibility Committee's suggestion (SOU 2002:3). This report should be completed by the first of June 2010.⁸⁴
- [53]. In the *United Nations report (2002) on Human Rights and Disability* on the current use and future potential of United Nations human rights instruments in the context of disability, the *Convention against Torture* is discussed in part six of the report. The report states that:
- [54]. *People with disabilities – and especially those who live in institutionalized settings – are particularly vulnerable to torture or other forms of cruel, inhuman or degrading treatment. In such settings (places that are generally cut off from the world and in which the world takes little interest), there is often a massive imbalance of power.*
- [55]. They also take up the fact that people with disabilities may have less recourse to adequate protections for their rights, may be less aware of their rights in such

⁸³ See: <http://www.socialstyrelsen.se/psykiskhalsa/tvangsvard> (6 November 2009)

⁸⁴ See: http://www.riksdagen.se/Webbnav/index.aspx?nid=37&dok_id=GW03185 (8 November 2009)

situations, and may be especially vulnerable when they have difficulties expressing their complaints or allegations.⁸⁵

[56]. In the report of the United Nations Committee Against Torture (UN 2008:76), the committee notes in their review of issues in Sweden, the following concern regarding coercive measures, including physical restraints and isolation.

[57]. *The Committee regrets that the State party could not provide aggregated data on the average length of the use of physical restraints or isolation in psychiatric institutions and hospitals. However, it notes that the National Board of Health and Welfare is currently preparing an on-line register for compulsory mental care and forensic mental care with the aim, inter alia, to produce reliable statistical data on the use of coercive measures (arts. 11 and 16). The State party should review the use of physical restraints and further limit the use of solitary confinement as a measure of last resort and for as short a time as possible under strict supervision. The State party is encouraged to complete the on-line register as soon as possible.*⁸⁶ This report also pointed out the poor situation regarding monitoring, an issue which has recently been pointed out by Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights, and Anna Nilsson of the Raoul Wallenberg Institute for Human Rights, in regard to Sweden⁸⁷.

[58].

[59]. A lack of data regarding the use of isolation, physical restraints and other coercive measures may seriously undermine the ability of the regulatory bodies in Sweden to provide adequate oversight for this process. In view of the observations regarding the limitations of individuals themselves to question such measures, given their dependence on personnel during times of involuntary treatment, oversight of these practices becomes critically important in order to ensure the rights of these patients. According to the National Board of Health and Welfare an improvement of the situation is on its way with a system of indicators being developed and to be introduced in 2009/2010.⁸⁸

[60]. In a preliminary report following a visit in June 2009, the Committee for the Prevention of Torture states that they heard no allegations of ill treatment during their site visit. Accommodations were of good standard, but there were some concerns about access to outdoor exercise during initial admissions. They also report that while there was no evidence of excessive use of restraints or seclusion, there is some concern that patients had been secluded and intermittently restrained for lengthy periods of time (3-16 days). They reported that the restraints and seclusion did not appear to be excessive in the

⁸⁵ See: http://www.centrodiritiumani.unipd.it/a_temi/disabilit%C3%A0/reportunhchr.pdf (6 November 2009) page 134

⁸⁶ Available at: <http://www.unhcr.org/refworld/publisher/CAT.SESSIONALREPORT..492fb6522.0.html> (6 November 2009) page 76

⁸⁷ See: http://www.svd.se/opinion/brannpunkt/artikel_3897237.svd (6 December 2009)

⁸⁸ See: <http://www.socialstyrelsen.se/uppfoljning/indikatorer/godvard> (6 November 2009)

departments visited, and their use appeared to be properly documented and reported. These site visits were limited however to one forensic unit and one psychiatric clinic.⁸⁹ An earlier report, following a visit completed in February, 2003 similarly took up the issue of access to daily outdoor exercise, and also recommended that efforts continue to be made to provide patients with a structured daily program of therapeutic and rehabilitative activities, based on their needs and capacities. They were also concerned that in some cases the two physicians involved in determining an involuntary placement came from the same hospital and recommended a review of rules to ensure that one opinion came from an independent psychiatrist. Based on the findings of one specific visit, they also suggest that all involuntarily admitted patients be given information on appeals and complaints, and that the powers of the “patient board” be clarified. Finally, the “support persons” available to patients might be more effective in safeguarding their rights with further training and better selection procedures.⁹⁰

4.1. Legal Framework

- [61]. Swedish legislation on compulsory psychiatric care has been revised several times during the last four decades. As of 1967 psychiatric care was covered under the same legislation as all other health care and compulsory treatment regulated by the *Compulsory Mental Care Act* (LSPV). This law, which included provisions for criminal offenders, was replaced in 1992 by two laws, which aimed to reduce the element of coercion in psychiatric care and to increase the legal security of the patient.⁹¹
- [62]. *The Health Care Act* (SFS: 1982:763) is the foundation law for all health care in Sweden and defines a general duty to offer good care under equal conditions. Care should also be easily accessible, and built on respect for the patient’s integrity and self-determination. Good contact between the patient and health care personnel is emphasized, as well as a focus on continuity and confidence in care.⁹² These principles apply even when someone has to be cared for involuntarily. The specific laws related to compulsory treatment that took effect in 1992 are the *Compulsory Psychiatric Care Act* (SFS: 1991:1128) and the *Forensic Psychiatric Care Act* (SFS: 1991:1129). These supplement the *Health Care Act* and are the legal basis, on a national level, for the compulsory admission and mandatory treatment of patients with mental disorders. The *Compulsory Psychiatric Care Act* (SFS: 1991:1128) regulates civil commitment. The laws regarding compulsory treatment within psychiatry specify only care and treatment. There is no provision for placement alone.

⁸⁹ Available at: <http://www.cpt.coe.int/documents/swe/2009-23-inf-eng.pdf> (6 November 2009) page 7

⁹⁰ Available at: <http://www.cpt.coe.int/documents/swe/2004-32-inf-eng.pdf> (6 November 2009)

⁹¹ Kjellin et al. (2008) Compulsory psychiatric care in Sweden – Development 1979-2002 and area variation. *International Journal of Law and Psychiatry*. 31(2008) 51-59

⁹² See: http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8506/2009-126-81_200912681.pdf (6 November 2009)

- [63]. In order to achieve long-term improvements within psychiatry, based upon a recommendation from the government, the Swedish parliament approved a new form of compulsory treatment in May 2008, Compulsory Outpatient Care, or Involuntary Outpatient Commitment as this form is known in some countries. The aim of this reform (Prop 2007/08:70)⁹³ is to satisfy the treatment needs of patients who are unable to comply with treatment voluntarily, but do not need to be cared for on an inpatient basis in a medical facility. This new form of compulsory treatment presupposes that the patient requires special conditions in order to receive necessary psychiatric care. This care is intended to be adaptable to every patient's individual needs for care, treatment and support and therefore assumes a close coordination between the health care and social service authorities. The legislative bill also suggests a change to the privacy law, which would allow for the transfer of information, regarding a patient being treated involuntarily, between the health care and social service authorities if needed, so that the individual will have access to necessary care, treatment or other support.⁹⁴
- [64]. Treatment planning is the requirement in the *Compulsory Psychiatric Care Act* (SFS: 1991:1128) which is intended to guarantee the direction and intention of care. According to paragraph six, treatment shall begin in connection with the decision to place the person in involuntary inpatient care. A treatment plan should guide the care in the acute phase just after hospitalization and also act as an anchor for the planning of continued care. This plan is also intended to assure the patients' participation in and influence over the care that will be included in the plan. The plan should include a holistic perspective of the patient's medical, psychological and social needs. The plan should also specify the goals that are to be achieved during the period of care. If the patient has needs that would be best satisfied by other authorities, most often being the social services or primary care, then the plan should be coordinated and created together with representatives of these authorities. The creation of the plan should also be completed in close consultation with the patient's relatives, if this is not considered unsuitable (against the patient's will). It is the responsibility of the Chief Psychiatrist/Physician to see that a treatment plan is developed, followed-up and evaluated by a doctor with competence and experience regarding this responsibility.⁹⁵
- [65]. The law specifies that the director of the division providing the treatment has the responsibility for follow-up with regard to assuring that the treatment provided is in compliance with the law. This follow-up should also assess whether the patient's influence and rights are guaranteed and that there are no risks to their physical or mental health. They are also responsible for reviewing the quality of the measures and guaranteeing that compulsory treatment and compulsory measures are minimized.⁹⁶ The directive to the leadership of the

⁹³ See: <http://www.regeringen.se/sb/d/9251/a/99245> (6 November 2009)

⁹⁴ See <http://www.regeringen.se/sb/d/9251/a/99245> (6 November 2009)

⁹⁵ See: <http://www.socialstyrelsen.se/sosfs/2008-18> (6 November 2009)

⁹⁶ See: <http://www.socialstyrelsen.se/sosfs/2008-18> (6 November 2009)

psychiatric unit to minimize compulsory treatment, and the right to outpatient care for Swedish citizens may be seen as an assumption of aftercare, although this language is not specifically used.

- [66]. The *Compulsory Psychiatric Care Act* (SFS: 1991:1128) has no minimum age and it is estimated that approximately 100 children and young adults receive involuntary treatment under this legislation each year. According to a study presented in the *Physicians Journal* (Läkartidningen), there is a lack of current epidemiological data regarding the use of coercion in child and adolescent psychiatry in Sweden. A questionnaire study among all of the child and adolescent psychiatric clinics in Sweden revealed a great variation in the estimated numbers of involuntarily admitted patients and in the practice regarding local guidelines for involuntary hospitalization and treatment, information to patients and relatives, and follow-up of coercive measures. There was a notable difference in the handling of inpatients that were also coercively placed simultaneously in the legal custody of social services. The legal prerequisites for cases of the latter kind are unclear, and the protection of the legal rights of the individual may be questioned.⁹⁷
- [67]. *The Law for Care of Substance Abusers in Certain Cases* (SFS: 1988:870)⁹⁸ is a compulsory care law, which supplements the *Social Services Act* (SFS: 2001:453)⁹⁹. It makes possible compulsory care for substance abusers following a decision by the administrative court. Another law, the *Law for Care of Youth* (SFS: 1990:52), covers substance abusers under the age of 18.¹⁰⁰ The *Law for Care of Youth* is the law regulating compulsory care of youth in special circumstances, and covers compulsory placement of youth under eighteen years old, and in certain cases under twenty. The grounds for temporary custody may, for example, be problematic home situations or careless behavior.¹⁰¹

4.2. Criteria and Definitions

- [68]. According to the *Compulsory Psychiatric Care Act* (SFS: 1991:1128) compulsory treatment can be given if the criteria in paragraph three are satisfied:

Compulsory Treatment is only given if the patient suffers from a serious psychiatric disturbance and due to their psychiatric condition and their personal circumstances in general;

⁹⁷ See: http://www.lakartidningen.se/store/articlepdf/5/5154/LKT0642s3162_3164.pdf (6 November 2009)

⁹⁸ See: <http://www.notisum.se/Rnp/sls/lag/19880870.htm> (6 November 2009)

⁹⁹ See: <http://www.notisum.se/rnp/SLS/lag/20010453.HTM> (6 November 2009)

¹⁰⁰ See: <http://www.notisum.se/RNP/sls/lag/19900052.htm> (6 November 2009)

¹⁰¹ See: <http://www.notisum.se/rnp/sls/lag/19900052.HTM> (6 November 2009)

1. has an absolute need for psychiatric care, which cannot be satisfied in any other manner than to be admitted to a health care facility for qualified psychiatric 24 hour care (involuntary inpatient care) or
 2. requires special conditions in order to be given necessary psychiatric care (involuntary outpatient care)
- [69]. A requirement for care according to this law is that the patient objects to the care, which is needed, or as a result of the patient's psychiatric condition (mental state), there is well-founded reason to believe that the care cannot be given with his/her consent. Involuntary care cannot be given if the patient's psychiatric disturbance, according to the first paragraph, consists only of a developmental disability. When assessing the patient's need for care, it must also be considered whether, as a result of their disturbance, he/she is a danger to the health or safety of any other person.¹⁰²
- [70]. This second condition, describing involuntary outpatient treatment was specified in Prop. 2007/08:70 and took effect in September 2008.¹⁰³ This type of compulsory care must always be initiated following an episode of involuntary inpatient treatment. The Chief Physician/Psychiatrist may then submit an application to the administrative court if they consider that the Compulsory Care should continue in an open form. Involuntary outpatient treatment may specify that the patient accept certain special conditions in order to receive necessary psychiatric care. The law further specifies that the patient and doctor must be for the most part in agreement regarding the content of the care measures, and that force may not be used in administering these measures while in an outpatient status. This is further specified for the Social Services Act Paragraph two of the *Compulsory Psychiatric Care Act (1991:1128)* directs that compulsory care should only be used if it stands in reasonable proportion to the aim of the measures to be taken, a principle referred to as proportionality. The goal is always to reasonably balance the good that can come from the involuntary treatment against the potential for encroachment on the self-determination and integrity of the individual. The law also stresses the importance of providing the individual with appropriate and individually tailored information that might help them to decide to accept the care voluntarily.¹⁰⁴ *The Council of Europe Recommendation (2004)10*, article 10, states that member states should take measures to make alternatives to involuntary placement and treatment as widely available as possible. While Swedish laws stipulate that the least restrictive available environment should be prioritized, there is little to suggest, in reviewing the government directives and advice, that the health care and social service systems have prioritized the development of evidence-based alternatives to inpatient care, including crisis

¹⁰² See: http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8336/2009-126-114_2009_126_114.pdf (6 November 2009) page 14

¹⁰³ See <http://www.regeringen.se/sb/d/9251/a/99245> (6 November 2009)

¹⁰⁴ See: <http://www.socialstyrelsen.se/sosfs/2008-18> (6 November 2009)

intervention models.¹⁰⁵ (SFS: 2001:453), which may also be used for certain measures regarding care and support during this period of compulsory outpatient treatment.¹⁰⁶

- [71]. In their handbook with information and guidance regarding involuntary care, the National Board of Health and Welfare specifies that if an individual with a serious psychiatric disturbance can receive sufficient support in their own or another environment, without being admitted to a health care facility, involuntary care shall not be given. They further specify that available outpatient and social service resources must be considered in the assessment of need for involuntary care.¹⁰⁷
- [72]. In the actual criteria for deciding on compulsory treatment, the law specifies the opinion of the patient only with regard to their inability or refusal to consent to voluntary care.¹⁰⁸ Having judged that the individual has a serious psychiatric disturbance and an absolutely necessary need of care, the implication is that the individual has the option of accepting or refusing the care offered. However, in the discussion related to exploring less intrusive alternatives, it is clear that the individual's opinions and desires should be taken into account, and that they have a right to information that will help them participate in such a process. In paragraph four of the *Compulsory Psychiatric Care Act* (SFS: 1991:1128) it is specified that the patient's participation and influence over their treatment shall be satisfied in the treatment plan.¹⁰⁹
- [73]. The input and participation of the individual is therefore more clearly specified in the treatment plan which should be developed immediately and steer the period of compulsory treatment. As described in the United Nations report on human rights and disability, the powerlessness of individuals described as psychiatrically disabled, especially in institutional and compulsory care situations, may undermine their ability to participate effectively and from an informed position.¹¹⁰ While the individual's participation in the treatment planning process is clearly specified, their ability to influence the actual decision regarding compulsory care is less clearly defined.
- [74]. In the Swedish criteria, dangerousness is specified as a factor to be considered, if the other criteria are satisfied, and with regard for the dangerousness of the patient to the personal security or physical or mental health of others. No

¹⁰⁵ See: http://health-evidence.ca/documents/17895/Joy_2006_Crisis_intervention_for_people_with_severe...pdf (6 November 2009)

¹⁰⁶ See: http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8336/2009-126-114_2009_126_114.pdf (6 November 2009)

¹⁰⁷ Available at: <http://www.socialstyrelsen.se/publikationer2009/2009-126-114> (6 November 2009)

¹⁰⁸ See: <http://www.socialstyrelsen.se/sosfs/2008-18> (6 November 2009)

¹⁰⁹ See: http://www.socialstyrelsen.se/sosfs/2008-18/Documents/2008_18.pdf (6 November 2009)

¹¹⁰ See: http://www.centrodirittumani.unipd.it/a_temi/disabilit%C3%A0/reportunhchr.pdf (6 November 2009)

mention of specific danger thresholds is mentioned in the law.¹¹¹ In article 18 of the *Committee of Ministers report (2004:10)*, dangerousness; *the person's condition represents a significant risk of serious harm to his or her health; or to other persons*, is presented as a criteria for involuntary treatment.¹¹² The Swedish criteria present dangerousness as a factor to be considered, but do not prioritize this factor to the same extent as the Council of Ministers.

4.3. Assessment, Decision Procedures and Duration

- [75]. The compulsory treatment certificate is to be based on a special examination by a licensed physician. The judgment as to whether the compulsory treatment certificate will be executed is the first step in a two-physician assessment regarding the need for compulsory care. The compulsory care order must be based on a care certificate issued by a physician other than the one deciding to admit the patient. It is only a physician that may call on the police to intervene if the potential patient is refusing to comply. The decision regarding admission under the *Compulsory Psychiatric Care Act (SFS: 1991:1128)* is to be taken by the Chief physician/Psychiatrist at the facility where the patient will be treated. The requirement is therefore that two physicians be involved in the decision to admit involuntarily. The administrative court (länsrätten) reviews all compulsory admissions, and always has an independent specialist in psychiatry assess the patient.¹¹³
- [76]. The administrative court (länsrätten) reviews the application by the Chief Physician in cases where there is a decision on the part of the treatment system to pursue continued compulsory care. In other cases the Chief Physician may choose not to apply for an extension of the order, based on the goals of the treatment plan having been met.
- [77]. A voluntary admission for psychiatric inpatient care can be converted to involuntary treatment, but only if the conditions for an involuntary placement are met and there is also a risk of harm to themselves or others due to the psychiatric disturbance. For new cases of compulsory treatment, a certificate must be issued and a decision taken within twenty-four hours. The decision to begin a period of compulsory treatment, made by the Chief Physician, must be

¹¹¹ See: http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8336/2009-126-114_2009_126_114.pdf (6 November 2009) page 14

¹¹² See: <https://wcd.coe.int/ViewDoc.jsp?id=775685&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679> (6 November 2009)

¹¹³ See: <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=1991:1128> (6 November 2009)

reviewed by the administrative court no more than one day after the treatment is converted.¹¹⁴

- [78]. The twenty-four hour period within which a decision regarding compulsory care must be taken begins from the time that the patient arrives at the treatment facility and allows for time to assess the patient's psychiatric condition and need of care, as well as to collect additional information regarding the patient's condition. A decision regarding compulsory care cannot be based on a care certificate that is more than four days old.¹¹⁵
- [79]. According to paragraph 6 of the Compulsory Care Act, (SFS: 1991:1128) the individual may be held at the medical facility in emergency situations once a care certificate has been issued. If other measures are not sufficient force may be used to keep the patient from leaving the facility. A decision regarding admission for compulsory care must then be taken within 24 hours of the individuals arriving at the treatment facility.¹¹⁶
- [80]. The duration of compulsory care is limited to four weeks. If care needs to be continued beyond that period, the Chief Physician must apply to the administrative court and can apply to prolong the care for four and then subsequently six months. Six months is the maximum length of time for a period of compulsory care that may be granted by the court at each application.¹¹⁷ If the Chief Physician (psychiatrist not specified) decides that the patient should be given compulsory treatment for more than the initial four weeks specified in the order, then they must apply to the court for permission to continue compulsory treatment. They must also apply to the court if an order should be changed to either inpatient or outpatient compulsory care according to the *Compulsory Psychiatric Care Act* (SFS: 1991:1128)¹¹⁸
- [81]. Electro-convulsive therapy given during a period of compulsory care is to be reported, as directed by the national Board of Health and Welfare (SOF 2000:12). Previously only ECT treatments administered against the will of the patient were to be reported. While the reporting of all such treatment is an improvement there is a lag in reporting as some care providers may continue to operate under the older rules. The National Board has been visiting sites and emphasizing the necessity of reporting all ECT treatment during involuntary care.¹¹⁹ According to a recent (2006) oversight report in the southern region by the National Board of Health and Social Welfare, the use of ECT and other

¹¹⁴ See: http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8506/2009-126-81_200912681.pdf (6 November 2009)

¹¹⁵ See: http://www.socialstyrelsen.se/sosfs/2008-18/Documents/2008_18.pdf (6 November 2009)

¹¹⁶ Available at: <http://www.notisum.se/Rnp/sls/lag/19911128.htm> (6 November 2009)

¹¹⁷ See: http://ec.europa.eu/health/ph_projects/2000/promotion/fp_promotion_2000_frep_08_en.pdf (6 November 2009)

¹¹⁸ See: <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=1991:1128> (6 November 2009)

¹¹⁹ See: http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8802/2008-126-60_200812660.pdf (6 November 2009)

compulsory measures have not been reported to the extent demanded by the Board's official instructions (SOFS 200:12) regarding compulsory care.¹²⁰

- [82]. As specified in the *Compulsory Psychiatric Care Act* (SFS: 1991:1128), if other measures do not suffice, force may be used to prevent a patient from leaving the facility, or the unit where they are being cared for, in order to uphold order or to satisfy the security requirements in the care facility. If there is an immediate danger that the patient may seriously hurt himself or herself or someone else, then the patient may be strapped down with a belt for a short time, as long as care personnel are present during this time. If necessary, it can be decided to prolong the restraint. The Chief Physician must make the decision regarding the use of this type of restraint.
- [83]. A patient may be held isolated from other patients only if it is necessary due to the patient's aggressive or disturbing behavior being a serious problem in relation to the care of the other patients. A decision to isolate can be made for a maximum of eight hours. A new decision may be taken at that time to extend the isolation for an additional eight hours. Under special circumstances a decision can be made to extend the time beyond eight hours. The Chief Physician must make the decision regarding isolation. If the patient is held in isolation for more than eight hours the National Board of Health and Welfare is to be made immediately aware. The patient must be under the observation of personnel during this time.¹²¹ According to the *Recommendations of the Committee of Ministers*, measures such as seclusion and restraint should only be used under medical supervision, and should be appropriately documented (in all cases except for "momentary restraint").¹²² The National Board of Health and Social Welfare have recommended improvements in oversight and follow-up in order to assure quality when such measures are utilized.¹²³
- [84]. The *Compulsory Psychiatric Care Act* (SFS: 1991:1128) includes material and procedural rules assuring fundamental rights as well as predictability and the possibilities for legal control. This includes the patient's right to appeal the decision of the Chief Physician/Psychiatrist and to request that the order of compulsory care be discontinued. The appeal is directed to the administrative court (länsrätten) and the Chief Physician is expected to express her/his opinion in the case before the appeal is taken up. The goal of the court, as presented in the Act, should be to address such appeals quickly, optimally within eight days of the submission of the appeal. The Act specifies that the Chief Physician does not have the right to appeal a decision of the court under this law.¹²⁴

¹²⁰ See: http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8802/2008-126-60_200812660.pdf (6 November 2009)

¹²¹ See: <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=1991:1128> (6 November 2009)

¹²² See: <https://wcd.coe.int/ViewDoc.jsp?id=775685&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679> (6 November 2009)

¹²³ See: http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8506/2009-126-81_200912681.pdf (6 November 2009)

¹²⁴ See: <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=1991:1128> (6 November 2009)

- [85]. The Swedish Act seems to meet the majority of the criteria for appeals of involuntary treatment described in article 25 of the *Recommendations of the Committee of Ministers*. There is a right to appeal, and regular review of the decision by the court, whether or not the person has challenged the decision. The Committee of Ministers specifically recommend: *Member states should consider providing the person with a lawyer for all such proceedings before a court. Where the person cannot act for him or herself, the person should have the right to a lawyer and, according to national law, to free legal aid. The lawyer should have access to all the materials, and have the right to challenge the evidence, before the court.*¹²⁵ The *Compulsory Psychiatric Care Act* (SFS: 1991:1128) does specify the right to a “public counsel”, but does not specifically specify whether this person must have legal training or have special knowledge regarding involuntary care. It is the responsibility of the court to appoint this representative in all cases involving involuntary admissions, consent to extend involuntary care and all appeals regarding involuntary care.¹²⁶ While the right to free legal representation is therefore not stipulated in the *Compulsory Psychiatric Care Act*, it is a fundamental right to have your case heard by a legal representative in Sweden. Legal aid is a form of statutory social protection legislation that aims to help an individual who cannot get legal support in any other way. The right to legal aid is governed by the *Legal Aid Act* and is available to patients in such situations.¹²⁷ It would appear however that it is up to the patient themselves, their support person, or their family and friends to take the initiative to secure legal help. This right to representation is especially important when the individual’s condition and the inherent powerlessness when receiving involuntary treatment, may compromise their ability to understand the process and represent themselves.
- [86]. Support for the rights of the patient also includes the Patient Committee of the county in which they live, a “Support Person” as described below, the Ombudsman of the Parliament, and the National Board of Health and Social Welfare, with which the individual can also lodge an appeal.¹²⁸
- [87]. The *Compulsory Psychiatric Care Act* (SFS: 1991:1128) specifies the right of the patient to a Support Person, as soon as their condition allows. It is the responsibility of the Chief Physician to insure that the patient is given information regarding this right. The Support Person shall aid the patient as long as the patient is receiving compulsory care and up to four weeks following the end of the involuntary order.¹²⁹

¹²⁵ See: <https://wcd.coe.int/ViewDoc.jsp?id=775685&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679> (6 November 2009)

¹²⁶ See: <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=1991:1128> (6 November 2009)

¹²⁷ See: http://www.domstol.se/templates/DV_InfoPage___3755.aspx (6 November 2009)

¹²⁸ See: http://ec.europa.eu/health/ph_projects/2000/promotion/fp_promotion_2000_frep_08_en.pdf (6 November 2009) page 136

¹²⁹ See: <http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=1991:1128> (6 November 2009)

5. Competence, Capacity and Guardianship

These following paragraphs are an analysis of the Swedish legal framework concerning legal capacity.

- [88]. Sweden has a legal framework based on full self-determination making provision for the management of affairs of persons with mental disorders and persons with an intellectual disability if they need assistance. As of January 1, 1989 one can no longer declare an adult as incapable, as the concept was abolished in Swedish law. Instead legal capacity to act, including curatorship and trusteeship, is regulated in chapters eleven and sixteen of the *Parents Code* (SFS: 1949:381).¹³⁰
- [89]. According to chapter eleven, article four in the *Parents Code* if someone due to illness, mental disorder, a weak state of health or similar circumstances needs help to manage his/her affairs a curator or *godman* can be appointed by the court. This cannot be done without the consent of the individual unless the person's condition is a hindrance to consent. A curator is an assistance form through which the individual retains his/her legal capacity to act.
- [90]. A trustee or *förvaltare* can be appointed when an individual is perceived as not being able to care for him/herself or his/her property due to the same reasons that a curator is appointed: the reasons are illness, mental disorder, a weak state of health or similar circumstances. The appointment of a trustee does not require the consent of the person perceived to be in need of assistance in managing his/her affairs. The law strictly regulates the trustee's mandate, and the individual concerned retains the right to make decisions concerning various sources of income and the right to vote¹³¹. Though consent is not necessary for the appointment of a trustee, individuals can subsequently request a termination hearing concerning the trusteeship and also the curatorship.¹³²
- [91]. There is no definition of "competence" or "capacity" in Swedish legislation and a person cannot be declared incapable. Nor, are there, any mental health related causes determining the legal incapacity of an adult, as this cannot be done. A person is always capable so there are no degrees of incapacity. There is instead limited legal capacity to act when a person is perceived in need of a trustee or *förvaltare* when unable to manage his/her own affairs. The limitations are

¹³⁰ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009)

¹³¹ See: http://www.riksdagen.se/templates/R_PageExtended_6309.aspx (6 November 2009)

¹³² See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009) chapter 11 article 21 of the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

personal and are to be stipulated in the trustee's mandate.¹³³ Even when a person has a trustee he/she is still able to:

- enter into a contract for services or employment
- dispose of gains or profits through employment
- dispose of gifts, testaments, benefits from insurance policies or savings from retirement plans unless the properties are included in the trustee mandate.¹³⁴

[92]. Someone perceived as needing a curator or *godman* retains his/her legal capacity.¹³⁵ An individual who has had a curator appointed is not bound if the curator acts outside of his/her mandate. The individual in question must give consent unless not capable. The curator is obliged to compensate a third party if damages have occurred and the curator has acted outside his/her mandate. Courts are to see to it that decisions concerning trustees are published in the *Post- och Inrikes Tidningar* or the Swedish Government gazette.¹³⁶ Curatorship and trusteeship are the two legal systems of protection for adults perceived as needing assistance to manage their affairs. The responsibilities of both are described as being to guard the rights of the persons represented, manage their affairs and look after or protect the person. Each case is to be adapted to the individual concerned through the specific mandate.¹³⁷ Curatorship is voluntary, needing the consent of the individual. Trusteeship does not require consent but requires that the person is perceived as incapable to voice an opinion concerning his needs.¹³⁸

[93]. Application for a curator or a trustee can be requested by a legal guardian, the person concerned if older than sixteen, his/her spouse, partner or close relatives.¹³⁹ If needed, the court can decide to initiate the question of a trustee

[94]. There are no general time limits for curatorship or trusteeship. Each case is particular and the mandate depends on the individual and his/her specific affairs

¹³³ See: <http://www.riksdagen.se/Webbnav/index.aspx?mid=3911&bet=1949:381> (6 November 2009) chapter 11 article 7 of the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹³⁴ See: <http://www.riksdagen.se/Webbnav/index.aspx?mid=3911&bet=1949:381> (6 November 2009) Chapter 11 article 8 of the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹³⁵ See: <http://www.riksdagen.se/Webbnav/index.aspx?mid=3911&bet=1949:381> (6 November 2009) chapter 11 article 5 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹³⁶ See: <http://www.riksdagen.se/Webbnav/index.aspx?mid=3911&bet=1949:381> (6 November 2009) chapter 11 article 27 of the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹³⁷ See: <http://www.riksdagen.se/Webbnav/index.aspx?mid=3911&bet=1949:381> (6 November 2009) chapter 12, article 2 of the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹³⁸ See: <http://www.riksdagen.se/Webbnav/index.aspx?mid=3911&bet=1949:381> (6 November 2009) chapter 11 articles 4 and 7 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹³⁹ See: <http://www.riksdagen.se/Webbnav/index.aspx?mid=3911&bet=1949:381> (6 November 2009) chapter 11 article 15 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

that need management. Once the mandate is fulfilled the protective system is to be terminated.¹⁴⁰

[95]. The responsible court having the jurisdiction to appoint curators or trustees is the *tingsrätt*, the district court or court of first instance. This includes making the decision that the person in need of a trustee is unable to voice his/her own needs.¹⁴¹ A medical certificate is needed for the appointment of a trustee, and even for a curator in some cases if the individual has not given his consent.¹⁴² The *överförmyndaren* or the city's chief guardian is the authority having the responsibility of controlling the curators and trustees.¹⁴³ The *överförmyndare* is appointed by the city council.¹⁴⁴ A municipality may decide to appoint a guardian board, *överförmyndarnämnd*, rather than only one single person.¹⁴⁵ Decisions concerning property, taking of loans and running of a business are to be taken by the curator and trustees with the consent of the chief guardian.¹⁴⁶

[96]. The district court or court of first instance needs to process a request for appeal, or even requests for adjustments in the curator's or trustee's mandate, upon request of a legal guardian, the individual concerned if older than sixteen, his/her spouse, partner, close relatives, the curator or the trustee. The court itself can carry out the process for changes in mandate without a request being made. Before the court issues its decisions the curator, trustee, chief guardian and individual concerned are to be given the chance to express their points of view.¹⁴⁷ Decisions of the district courts and the *överförmyndare* or chief guardian are subject to the principles of civil procedure as per the *Judicial Procedure Code* or *Rättegångsbalk* (SFS: 1942:740).¹⁴⁸ An appeal from the first instance or *tingsrätt* can be made to the second instance or *hovrätt* (*Court of Appeals*). A written appeal must be sent within three weeks from the receipt of the judgment to the first instance or *tingsrätt*.¹⁴⁹ It is worth mentioning again that there are no decisions concerning the incapacity of individuals, as this was made obsolete in 1989.

¹⁴⁰ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009) chapter 11 article 19 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹⁴¹ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009) chapter 11 article 25 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹⁴² See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009) chapter 11 article 17 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹⁴³ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009) chapter 12 article 9 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹⁴⁴ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009) chapter 19 article 1 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹⁴⁵ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009) chapter 19 article 2 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹⁴⁶ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009) chapter 14 articles 11-14 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹⁴⁷ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009) chapter 11 article 23 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹⁴⁸ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009) chapter 11 article 25 and chapter 20 article 6 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹⁴⁹ See: <http://www.notisum.se/rnp/SLS/lag/19420740.htm> (6 November 2009) chapter 50 article 1 of the *Judicial Procedure Code* (*Rättegångsbalk* SFS: 1942:740)

- [97]. The chief guardian has the responsibility of controlling the activities of the curators and trustees, which implies a review of the case.¹⁵⁰ The individual, his/her spouse, partner or close relatives have the right to be informed of acts concerning the case.¹⁵¹ The local Social Board and other authorities are obliged to inform the chief guardian concerning necessary information about the case.¹⁵²
- [98]. In the European Union comparative study on legal systems concerning legal capacity there is a reference to the draft proposal 2007/08:150¹⁵³ introduced in May 2008 by the Swedish government proposing improvements to the protection of property of persons under curatorship or trusteeship, by increasing the participation of the chief guardian, extending access to documents and reinforcing the supervision effected by the regional councils (*länsstyrelserna*) over the chief guardians.¹⁵⁴ This proposal came into effect as a law on January 1, 2009.¹⁵⁵ There are other proposed changes in the policies concerning persons with mental disorders or an intellectual disability introduced by the *Government Communication 2008/09:185*.¹⁵⁶ The four prioritized areas for the work are: measures for children and youth, work and occupation for people with intellectual disabilities, investment in competence and evidence and support for long-term quality improvement and development work. Beyond the new reform, within involuntary placement there is a process considering changes in the *Social Services Act* (SFS: 2001:453) for support to relatives and for a reform in the process of supervision. The proposal is that supervision is to be transferred from the county administrative boards (*länsstyrelser*) to the National Board of Health and Welfare.

6. Miscellaneous

6.1. Legal cases and the Swedish legal system

- [99]. Concerning the Swedish legal system it is important to realize that Sweden and Swedes are not very prone to going to court. This is changing slowly. But this is somewhat of an explanation as to the limited case law that is available. Another explanation is that it is seldom that the constitution is referred to in the

¹⁵⁰ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009) chapter 16 article 3 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹⁵¹ See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009) chapter 16 article 7 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹⁵² See: <http://www.riksdagen.se/Webbnav/index.aspx?nid=3911&bet=1949:381> (6 November 2009) chapter 16 article 10 in the *Children and Parents Code* (Föräldrabalken SFS: 1949:381)

¹⁵³ See: http://www.riksdagen.se/webbnav/index.aspx?nid=37&dok_id=GV03150 (6 November 2009)

¹⁵⁴ See: <http://www.europarl.europa.eu/activities/committees/studies/download.do?file=23687> (6 November 2009) page 99.

¹⁵⁵ See: http://www.riksdagen.se/webbnav/?nid=3322&dok_id=GW01CU2 (6 November 2009)

¹⁵⁶ See: http://www.riksdagen.se/Webbnav/index.aspx?nid=37&dok_id=GW03185 (6 November 2009)

development of case law. There are also other limitations on the ability to find specific cases within this particular field.

- [100]. Telephone contact with several disability organizations gave the description that cases concerning people with mental disorders and intellectual disabilities are hard to localize, as cases are not categorized by diagnosis or disability. Discrimination related to disability is a relatively new field, which means that awareness and recognition of discrimination and the law, as well as willingness to submit complaints, is limited among its victims in general, and presumably particularly among those who are the subject of this paper. There are numerous legal cases based on the *Act concerning Support and Service for Persons with Certain functional Impairments* (SFS: 1993/387)¹⁵⁷ and the *Assistance Benefit Act* (SFS: 1993/389)¹⁵⁸.
- [101]. One database called OFUS Rättsinfo AB has now registered approximately 3000 cases concerning these laws. OFUS Rättsinfo's first recorded cases are from 1995 as these laws came into effect in January 1994.¹⁵⁹ A case was found in the Rights Database belonging to the Swedish Disability Federation where a doctor was held liable for being the cause of death for a young man with a history of depression and the use of narcotics. The man had attempted suicide three times. The doctor, despite a medical certificate stating the man was depressed and suicidal, did not prescribe compulsory treatment. The next day the man was found dead.¹⁶⁰
- [102]. From another organization, it was asserted that good care in terms of a legal right is unavailable for people with multi-disabilities including intellectual disabilities. "I am thinking of situations of health care where JAG members can be denied adequate care on the grounds of the individual doctor's values concerning the person's general life qualities, in other words because of their intellectual disability. I have many times listened to relatives of our members needing life support measures for example respirators being met with "we are not going to put in a respirator even if needed, he really does not have a life" or similar such statements."
- [103]. The account included stories of relatives' struggles without success where care was not given with the result even of a patient's death. Health care priorities are not respected according to this source in relation to patients who have reduced autonomy. This employee of the organization considered the situation as definite discrimination. As a lawyer she felt that it was because the Health Care Law is not a rights based law similar to the *Act concerning Support and Service*

¹⁵⁷ See: <http://www.sweden.gov.se/sb/d/3873/a/72669> (6 November 2009)

¹⁵⁸ See: <http://www.sweden.gov.se/sb/d/3873/a/72664> (6 November 2009) SFS: 1993:389

¹⁵⁹ See: www.ofus.se The information on the total cases was given by Ulf Söderström from OFUS Rättsinfo via telephone 20 November 2009.

¹⁶⁰ See: Case nr B 10554-2003 Gothenburg tingsrätt

for Persons with Certain functional Impairments. There are reasons for complaints but no possibility to appeal to the courts. She knew of no cases where a relative had turned to the European court to accuse the Swedish care system of the violation of the right to life.

6.2. The Odell case

- [104]. A recent interesting case in Sweden concerning mental disorders and the media is the case of Anna Odell.¹⁶¹ In January 2009 Anna Odell launched a project for her thesis in art for the candidate program at the school of art called *Konstfack*. As the key issue in this project she acted psychotic and suicidal on a big bridge in Stockholm. People called for the police who took her to the psychiatric emergency unit at St Göran's hospital in Stockholm. She was put into belt restraints and medicated by force.
- [105]. Anna Odell had in fact reconstructed her own psychotic illness of 1995. Odell explained that through her behavior she was highlighting deficiencies in Sweden's psychiatric care, which she has argued to be "the most dictatorial part of society we have" where "patients are sometimes not believed". Odell's action met with massive criticism from health workers, politicians and the police, who said that she had taken community resources for a personal project. The opening of the exhibition of her work at the college in May generated a great deal of interest in the art world and wider media, and she received strong support from people active in the area of mental health in society, especially from the largest disability organization for people with mental disorders, RSMH - The National Organization for Social and Mental Health. They stated that Odell's action brought focus to the situation of the Swedish health care system and the overuse of violent methods. "In a single day Anna Odell managed to start a debate about psychiatry that user organizations have failed to do in a full year, in fact many years if one is honest and sincere." "Hopefully this means that violence in psychiatry, which led to two deaths just last year (...) will be taken seriously and avoided. At best, it results in a more humane treatment, worthy of a democratic society, where people with mental disabilities enjoy the respect they deserve and treatment as full citizens!"
- [106]. Odell was prosecuted for violent resistance, false alarm and disorderly conduct and convicted of disorderly conduct as Odell did not have a criminal intent and was acquitted on the count of causing a false alarm.

¹⁶¹ See: Quotation from "REVENGE" 3/2009, written by RSMH Chairman of the board, Mr. Jan-Olof Forsén <http://www.rsmh.se/Revansch-3-09.pdf> (6 November 2009)

7. Conclusions

- [107]. The elimination of designating people as incapable characterizes Swedish legislation guaranteeing the rights and freedoms of people with mental health problems. All people are considered capable and never lose the right to vote, but some may need assistance in taking care of him/herself and/or his/her property. This assistance provided through curatorship and trusteeship can lead to periods where people lose the legal capacity to act.
- [108]. Sweden is progressive with its legislation shown through the adoption of the recent law concerning compulsory outpatient care (Prop 2007:/08:70)¹⁶² aiming to satisfy the treatment needs of patients who are unable to comply with treatment voluntarily, but do not need to be cared for on an inpatient basis in a medical facility.
- [109]. But legislation and implementation of legislation do not always go hand in hand. The legal case with a doctor receiving the sentence for the cause of death for not having prescribed involuntary care for a young man with a history of depression, who took his life, shows that Sweden takes legislation seriously. It also shows how important it is for the rights and needs of persons with mental health problems to be respected and the implementation of legislation to be carried out to avoid such tragic happenings.

8. Annex – case law

Case title	Case number B10554-03
Decision date	Reference details: Case number B10554-03
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	<i>Tingsrätt</i> or District court or court of first instance – <i>Göteborgs Tingsrätt</i> – or Gothenburg’s District Court
Key facts of the case (max. 500 chars)	Boy with a history of depression exchanged medication for drugs leading to abuse. The abuse led to a series of suicide attempts and involuntary care periods. After a

¹⁶² See: <http://www.regeringen.se/sb/d/9251/a/99245> (6 November 2009)

	<p>suicide attempt with the mother saving her son through stomach pumping, a recommendation for involuntary care was not seconded and the boy released. That evening the boy again threatened to commit suicide and threatened his mother, who managed to call the doctor. The doctor then gave the order for involuntary care without mentioning the risk of suicide, so the police came the day after only to find the boy dead.</p>
<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The doctor did not second the care certificate, the opinion needed for involuntary care, nor did he decide to keep the patient as per the <i>Compulsory Psychiatric Care Act</i> - in spite of the care certificate stating that the patient was under the influence of drugs and in a suicidal state. This proved to be the wrong judgment. In certain cases involving a special duty (a guarantor position) a person can be sentenced for being liable for causing death due to a punishable omission. The doctor's decision was considered careless, as the same possibility for suicide would have been avoided if the boy had been kept under care.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The court considered that the judgment in such cases is difficult and that a wrong judgment should not be considered as a conscious risk taking and therefore the crime should be considered involuntary manslaughter and not a <i>grov brott</i> or serious offence. Though a doctor's position is considered difficult task, omission can be considered as carelessness and then as a cause of death.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>There was no reason to believe the doctor would commit a new crime so the doctor was given a conditional sentence, meaning he was not put in jail. As time had lapsed and the situation for the doctor was difficult the conditional sentence did not include a fine.</p>
<p>Proposal of key words for data base</p>	<p>Guarantor position, sentence cause of death, punishable omission,</p>