

Contribution from Stockholm City Mission to the CESCR on Sweden's compatibility with the International Covenant on Economic Social and Cultural Rights

General Remarks

1. Stockholm City Mission works with vulnerable migrants mainly through our social day center Crossroads. The target groups of Crossroads are marginalized EU citizens and Third country nationals with long-term residency permits in another EU country (hereinafter TCN's) and Third country nationals without a long-term residency permit in another EU country (hereinafter TCN's without LTR).
2. We are seeing an increase of these types of migrants coming to Sweden, probably due to the financial crisis in southern Europe and the high unemployment rates in some EU member states. The EU citizens we meet are mainly coming from Romania through another EU country and the TCN's and TCN's without LTR are mainly moving from Italy, Spain and Greece.
3. The legal status of the EU citizens and TCN's are similar to each other and they enjoy similar rights. They have the right to work in Sweden and can by work gain right to residency. TCN's without LTR does not enjoy the right to work in Sweden and does not have the opportunity to gain residency through work.
4. Even though EU citizens and TCN's carry material rights with them according to national legislation or EU-, and international law, when they migrate to Sweden, there are structural obstacles to the enforcement of those rights. Furthermore, these obstacles individually and in conjunction deprives the target groups, including the TCN's without LTR, of their genuine enjoyment of their economic, social and cultural rights and contribute to the vulnerability of our target groups who often live in homelessness, unemployment and with little or no chance of changing their social situation.
5. With the aim of bringing attention to some of these structural obstacles our submission is divided into two parts. Part One concerns the threshold of the personal identity number and the connection to Migration Agency processing time. This is a general obstacle that must be considered to trigger several articles in the Covenant wherefore it is addressed through a general discussion.
6. Part Two concerns structural obstacles in relation to specific articles of the Covenant, wherefore these issues are addressed individually. This part contain structural infringements of the right to work in article 6, the right to health in article 12 and the right to education in article 13-14.

Part One

Personal identity number and Migration Agency processing time

7. The personal identity number works as a key for establishment in the Swedish society. The holder of a personal identity number can access the Swedish welfare system and may enforce rights such as the right to social benefits, healthcare and education. For a migrant to gain a personal identity number the migrant must be registered as a "resident".
8. The requirement for registering as a "resident" is a proven right to residence for longer than a year ahead. Since the main legal residence ground for EU citizens and TCN's is work, this normally means that the migrant must be offered a work contract for longer than a year in order to fulfill the "resident" requirement.

9. For the purpose of Stockholm City Mission's target group this raises two specific problems in relation to the personal identity number. Firstly, a migrant may have the right to residence without having the possibility to register as a "resident". Secondly, because of the long processing times at the Migration agency, a TCN who has the right to register as a "resident" must wait a disproportionate amount of time to gain a personal identity number.

The right to reside without the right to register as a "resident"

10. For EU citizens and TCN's the main ground for residence in Sweden is work and the right to residence arises when the migrant is being contracted by an employer. For many migrants these contracts are short term contracts, normally by hourly- or temporary employment which the employer extends from time to time, sometimes for a year or longer. Taking into account the requirement of one year proven future right to residence for the purpose of registering as a "resident", the migrants who work with short term contracts and accordingly are subjected to taxation in Sweden, are precluded from registering as "residents" because they cannot prove the right for residence for longer than a year ahead, even though they may de facto enjoy the right to residence for such a time or longer.
11. Consequently, the system constitutes a severe obstacle in gaining a personal identity number for migrants with short term contracts. In addition, since the personal number is directly linked to the access to the welfare system, the lack of such provides for a major barrier for migrants trying to invoke the rights as established by the Covenant.

Migration Agency processing time

12. TCN's who do have the right to a personal identity number, thus being eligible for accessing the welfare system, often have to wait a disproportionate amount of time due to the long processing times at the Migration Agency concerning their residence application.
13. At Stockholm City Mission we meet migrants who experience processing times between 12 and 18 months, during under which time their legal position is unclear, thus making it impossible to invoke their rights as established by the Covenant. Keeping in mind the vulnerability of our target groups, it is of specific concern that the processing times are shortened in order to secure the genuine enjoyment of their stipulated rights in accordance with the Covenant.

Part Two

Article 6 - The right to work

Question13

14. It is submitted that EU citizens and TCN's are experiencing difficulties exercising their right to work as stipulated in article 6. Firstly, TCN's cannot register at the Public Employment Service rendering difficulties obtaining coordination numbers which is a precondition for taxation in Sweden. Secondly, neither EU citizens nor TCN's can take part in the job seeking programs set up by the agency. Thirdly, because TCN's without LTR lacks the right to work in Sweden they go from documented- to undocumented migrants when they migrate to Sweden.

Registering at the Public Employment Service

15. TCN's are not allowed to register at the Public Employment Service without a coordination number and cannot participate in the work integration programs set up by the agency. The coordination numbers is used for taxation of workers and the Public Employment Service has the competence to requisite such from the Tax Agency. Coordination numbers are often a

demand put forward by employers when hiring migrants, wherefore if a jobseeker does not hold a coordination number it is likely that the employer will choose another candidate.

16. The consequence is that the TCN's are put in a catch-22 like situation. The TCN's need the coordination number to register at the Public Employment Service and to fulfill the criteria of the employers. The Public Employment Service however, even though they are the agency that holds the competence to provide the TCN's with the coordination number, refers the TCN's to the Tax Agency. In conjunction with employers request for coordination number when hiring migrants, this puts the TCN's in a problematic situation since an individual cannot apply for a coordination number at the Tax Agency unless the individual already have an employment contract.
17. By consequence, the coordination number system provides severe obstacles for TCN's to access the labor market and deprives them from the genuine enjoyment of the right to work as stipulated by article 6 in the Covenant.

Access to programs directed to job seekers

18. The Public Employment Service administrates programs directed for job seekers so as to provide for employment opportunities. For migrants, such programs can include language support, a personal employment officer, validation of educational- and working merits or similar programs.
19. Until recently EU citizens has had the right to participate in these programs during a period of 6 months. However, by recent communication with representatives from the Public Employment Service, Stockholm City Missions has been informed that EU citizens will no longer have the right to participate in these programs. This will create huge challenges for EU citizens with the purpose of accessing the labor market, especially taking into account the Roma EU citizens that already suffer from discrimination and segregation in the Swedish society.
20. The experience of Stockholm City Mission is that a majority of the Roma EU citizens are dependent of begging to provide for a basic income. From our perspective that raises a specific responsibility on the national authorities to provide for public support to facilitate de facto access to the labor market for this group in accordance with article 6 in the Covenant.

TCN's without LTR

21. Since the financial crisis in Europe, which especially has affected the countries in southern Europe, the number of TCN's without LTR is growing in Sweden. The group contains of different migrants with a resident permit in another EU country. They do not enjoy the right to work in another EU member state however and can only move around within the EU for three months.
22. Many of the TCN's without LTR that we meet at Stockholm City Mission are in a very vulnerable situation. They cannot find work in southern Europe, wherefore they are migrating north to find jobs even though the chance of establishing in Sweden is small. They face the choice of being unemployed in the country of their residence or being subjected to poor working conditions in Sweden. In reality most of them move from being documented migrants in one EU country to become undocumented migrants in Sweden.
23. TCN's without LTR carries a legal status that precludes the enforcement of article 6, wherefore it must be noted that the vulnerability of this group is closely connected to restrictive legislation concerning the right to work. If they would have the right to work in Sweden or gain right to residence through work, since many of them actually do work, it would have a positive impact on the general situation of this target group for the purpose of the Covenant.

Article 12 - The Right to health

Question 25

24. It is submitted that EU citizens and TCN's cannot enforce their right to health as stipulated in article 12 and with consideration to the AAAQ principles as established by your Committee. Firstly, the right to health is conditioned by registered "resident" status, with the consequence of precluding individuals from access to health care in Sweden. Secondly, many migrants lack a health insurance from their country of residence, wherefore they are deprived of their right to any health care.

"Resident" status as a precondition for healthcare

25. The Swedish healthcare system is based on registered "residency" as a ground for access to healthcare. "Residents" enjoy subsidized healthcare independently of whether they are Swedish citizens or not. To gain status as a "resident" an individual must prove right to residence for longer than a year ahead. Keeping in mind the fluid characteristic of right to residence for EU citizens and TCN's, migrants often enjoy temporary residence rights linked to short term working contracts. In reality this amounts to many migrants having rights to residence for a longer period than a year, but since they cannot proof right to residence for a year or more ahead, they cannot register as "residents" wherefore they are deprived of their right to Swedish health care and their right to health as stipulated by article 12.

Health insurance

26. While Sweden has enabled undocumented migrants the right to healthcare that cannot be postponed, EU citizens and TCN's do not enjoy the same rights. Rather, the right to healthcare for EU citizens and TCN's, unless they are registered as "residents", is pending on whether individuals enjoy such rights in their home country. Thus if a EU citizen or TCN lack a health insurance from another EU country, that individual cannot exercise the right to subsidized healthcare in Sweden.

27. Because of how the health insurance system is set up in other EU member states, many migrants do not possess a health insurance from their home country. With regard to this, importance must in particular be attached to the concern of the Roma EU citizens that often, due to discrimination and segregation, have been excluded from the formal labor market in their home country with the consequence that they are uninsured.

28. At Stockholm City Mission we observe that this regime affects the most vulnerable migrants the hardest, those who live on the street and those who already suffer from discrimination in their home country. Taking that into account, it must be noted that depriving an individual of her right to health care, because she lacks the same right in her home country, cannot be considered to be in accordance with the right to health as stipulated in article 12.

Articles 13 -14 - Right to education

Question 26

29. It is submitted that EU citizens and TCN's cannot enforce their right to education for the purpose of access to education in accordance with articles 13-14. Firstly, children to EU citizens and TCN's without right to residence are not considered undocumented migrants for the purpose of access to schooling. Secondly, TCN's cannot access the Swedish for immigrants.

Children without residence right lack access to schooling

30. The Swedish school system is obliged to provide schooling for children who are registered as “residents” in Sweden. The Swedish system also provides schooling for children to undocumented migrants. For children of EU citizens and TCN’s the right to education however, is not as easily accessible.
31. The Swedish school law requires registration as “resident” for access to schooling but a few municipalities fortunately interpret the law more favorably. In January 2016 however, Martin Valfridsson, the governmental coordinator for vulnerable EU citizens, stated in his report that children of EU-citizens who lack the right to residence, do not enjoy the right to education in Sweden¹. It was not addressed in the report whether this is the same for children of TCN’s but considering the constitutional similarities in the legal status of the two groups; it is likely this is applicable to those children as well.

Access to Swedish For Immigrants

32. TCN’s are not allowed to study at Swedish For Immigrants (SFI) in Stockholm until they are registered as “residents”. Even though we recognize that SFI is governed on a municipality level, wherefore the right to SFI for TCN’s may differ from commune to commune, we know that it affects a big part of the group since most of the TCN’s that arrive to Sweden move to Stockholm. Not having the possibility to take part in language classes is a huge obstacle for TCN’s, considering Swedish language skills is essential for a migrant’s integration process.

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¹ SOU 2016:16, p. 55