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# Responses to long-term irregularly staying migrants: practices and challenges in the EU and Norway - National Report Sweden



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**EMN Study 2020:**  
Responses to long-term irregularly staying migrants: practices and challenges in the EU and Norway  
- National Report Sweden

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**Editor:** Magdalena Lund

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**Contact:** [emn@migrationsverket.se](mailto:emn@migrationsverket.se)

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## Executive summary

The aim of the EMN study *Responses to long-term irregularly staying migrants: practices and challenges* is to provide an overview of existing policies and practices in Sweden, measures to end long term irregularly stay, the cooperation in place between national, regional and local authorities, the involvement of civil society and the rights and services available to irregularly staying migrants. The period covered in the study is from 2015 to October 2020.

The main challenge for the study has been to describe policies and practices for a category that does not exist in legislation and only to some extent in practice. A number of different terms are used to describe third-country nationals that are residing irregularly in Sweden such as hidden, undocumented or irregular migrants. It is a heterogeneous group, which explains why there are no targeted policies or practices. The common denominator is that they are staying irregularly in the country and as such, they have no right to stay in the country. The overall policy objective is subsequently to return those who lack authorisation to reside in the country. The policy and the legislative debate on irregularly staying migrants is for this reason limited. Return has however received increased attention after 2015, which underscore the overall policy objective.

Attempts have been made by both researchers and authorities to estimate the number of irregular migrants in Sweden but so far only rough estimations have been achieved. The number of irregular migrants has however been considered low in comparison with other Member States, which have a larger informal sectors in their economies. A highly regulated society and low access to rights and services are other factors mentioned to explain the difficulties to stay irregularly in Sweden. Scholars however indicate that the number of irregular migrants has increased as the labour market has become more flexible and less regulated. Despite the growth of the informal sectors of the economy, the majority of irregular migrants is still believed to be former asylum seekers that for different reasons have decided to remain in the country. The total number is however still missing.

A policy change that have had an impact is the amendment in 2013 to give third-country nationals without the necessary permits the same right to health and medical care as asylum seekers. Looking at the policy changes after 2015, there are three developments that have had an impact on the situation of irregular migrants. In 2016, single adults who did not comply with the return decision lost their right to accommodation and financial support. Further, in 2017, the Supreme Administrative Court ruled in a case, to clarify the extent of municipal responsibility concerning former asylum seekers with a return decision. The ruling implied that municipalities are not obliged to provide support to those who lost their right to accommodation and to financial support when not complying with the return decision. Finally in 2018, the Swedish Police Authority was conferred with greater powers to perform work place inspections.

There are no targeted measures to bring irregular stay to an end for irregular migrants. The measures in place address all third-country nationals without the

necessary permits. The policy is primarily to return irregular migrants to their country of origin through various measures such as information, return counselling, reintegration support, supervision and detention.

The responsibilities for the target group of the study are at state level, the municipalities become responsible only if irregular migrants are staying in the municipality and according to the Social Services Act. The responsibilities of the municipalities are however more extended regarding unaccompanied minors. A model of collaboration between the public sector and civil society (Idéburet offentligt partnerskap (IOP) is promoted by both regional actors and the government to facilitate cooperation. The model was for example used in 2018 when the government allocated additional means to civil society to address homeless young adults.

The Swedish Agency for Public Management showed in its report in 2016 that fear and unwillingness stop irregular migrants from contacting the relevant authorities which was also confirmed by the organisations contacted for the study. The main contacts therefore take place through civil society. To survive they rely on their own contacts and take the jobs that are available which implies that they are easily exploited by employers. Another problem is that many suffer from mental illness and drug and alcohol abuse. Addiction along with homelessness make it difficult to provide assistance and to find a more long-term solution such as to legalise the stay or to return to the country of origin. Another challenge is the lack of information, irregular migrants are not aware of their right to health and medical care. This is also a problem for the health care professionals and social workers not being sufficiently informed about the regulation and the entitlements provided for irregular migrants.

This EMN study is primarily a desk review and in addition to the research and the reports available, a number of specialists from non-governmental organisations, churches and municipalities have contributed with valuable comments and feedback. A draft report was submitted for consideration to the Ministry of Justice, the Swedish Police Authority, the Swedish Association of Local Authorities and Regions and the Unit for Migration Law at the Swedish Migration Agency. The statistics available were provided by the Unit for Statistics and Visualisation at the Swedish Migration Agency.

## **Sammanfattning på svenska**

Syftet med EMN studien "Responses to long-term irregularly staying migrants: practices and challenges in EU Member States and Norway" är tredelat; att belysa befintlig lag och praxis, vilka åtgärder som finns på plats för att motverka irreguljär vistelse och vilka aktörer som samverkar på området. Studien täcker perioden 2015-2020.

Ur ett svenskt perspektiv har utmaningen varit att beskriva och identifiera en grupp som inte är en målgrupp och därför inte hanteras specifikt i svensk lag och enbart till viss omfattning i praxis. Olika begrepp används för att beskriva tredjelandsmedborgare som vistas irreguljärt i landet såsom avvikna, gömda

och papperslösa, en heterogen grupp vilket också förklarar varför det saknas riktad politik och praxis. Den gemensamma nämnaren är att tredjelandsmedborgarna befinner sig irreguljärt i landet och således saknar nödvändiga tillstånd. De ska därför lämna landet och återvända liksom alla andra som utan nödvändiga tillstånd. Det faktum att det inte handlar om en politisk målgrupp gör också att antalet debatter är begränsade. Återvändande är dock en politiskt prioriterad fråga som har fått ökad uppmärksamhet sen 2015.

Olika försök har gjorts att försöka beräkna antalet irreguljära migranter i Sverige men hitintills har det enbart handlat om grova uppskattningar. Forskare har dock gjort bedömningen att antalet irreguljära migranter är lägre i Sverige jämförts med andra medlemsstater som har en större informell sektor. Ett så reglerat samhälle som det svenska som utesluter irreguljära migranter från de mest grundläggande rättigheter och servicefunktioner har också gjort att det har varit svårare att leva i Sverige för tredjelandsmedborgare utan tillstånd. Utvecklingen mot en mer flexibel och mer avreglerad arbetsmarknad har dock gjort att antalet irreguljära migranter har ökat. Huvuddelen av irreguljära migranterna bedöms dock fortsatt vara tidigare asylsökande som av olika anledningar har valt att stanna kvar i landet trots beslut om återvändande.

En betydelsefull förändring för irreguljära migranter är lagändringen 2013 att tilldela dem samma rättigheter som asylsökande till hälso- och sjukvård. Förändringar som har fått betydelse under den perioden studien omfattar, är lagändringen 2016 att ensamstående vuxna förlorar rätten till boende och ekonomiskt bistånd om de vid avslag på asylansökan inte återvänder inom given tidsfrist. Den andra förändringen är Högsta Förvaltningsdomstolens dom 2017 som förtydligar att kommuner inte är skyldiga att bevilja bistånd till före detta asylsökande som befinner sig irreguljärt i landet. Slutligen har polisen fått ökade befogenheter att genomföra arbetsplatsinspektioner vilket är det sätt många irreguljära migranter upptäcks.

I Sverige saknas riktade insatser för irreguljära migranter. De åtgärder som finns på plats omfattar alla tredjelandsmedborgare som saknar tillstånd att vistas i landet. Det handlar framförallt att få de utan tillstånd att lämna landet med framförallt följande åtgärder: information, återvändanderådgivning, återintegrationsstöd, uppsikt och förvar.

Det huvudsakliga ansvaret för irreguljära migranter ligger framförallt hos staten. Först om en tredjelandsmedborgare vistas irreguljärt i en kommun, kan hen omfattas av Socialtjänstlagen. För ensamkommande barn har emellertid kommunen ett större ansvar. I det fall samarbete sker mellan offentlig och privat sektor sker det ofta enligt modellen Idéburet offentligt partnerskap (IOP). Det skedde till exempel 2018 när regeringen tilldelade medel till civilsamhället för att motverka utanförskap och hemlöshet bland unga.

Rädsla och ovilja göra att irreguljära migranter drar sig från att kontakta myndigheter. Vanligare är att de vid behov kontaktar civila organisationer eller religiösa samfund. För att klara vistelsen i Sverige spelar egna etablerade nätverk en stor roll och att det finns arbeten för de som saknar tillstånd. Det gör att de är extra sårbara för arbetsgivare som utnyttjar deras utsatta situation. Ytterligare ett problem är att många lider av missbruk och psykisk ohälsa. Det gör det desto svårare att hitta en väg ut ur den irreguljära vistelsen. Ett annat problem är bristen på information, irreguljära migranter saknar information om

vilka rättigheter de har medan sjukvårdspersonal och socialarbetare å andra sidan inte känner till vad de är skyldiga att erbjuda.

EMN studien bygger på en genomgång av lagstiftning, offentliga utredningar, myndigheters handböcker och riktlinjer samt forskningsrapporter på området. Till stor hjälp har även representanter från Malmö, Göteborg och Stockholms stad varit liksom representanter från religiösa samfund och icke-statliga organisationer som Stadsmissionen. Ett utkast på rapporten lämnades även till Justitiedepartementet, Sveriges kommuner och regioner och Polismyndigheten för kommentarer. Statistik i studien kommer från Migrationsverket om inte annat anges.

## 1. Introduction

### 1.1 Background and rationale for the study

Member States are confronted with the situation of third-country nationals who no longer or have never fulfilled the conditions of stay, who were denied a residence permit or who have exhausted all legal options against the enforcement of their return decision. The Return Directive (Directive 2008/115/EC) sets the obligation for Member States to issue a return decision for third-country nationals once it has been established that they are not eligible for legal stay.<sup>1</sup> This is aimed at reducing situations of legal uncertainty for third-country nationals, so that any third-country national physically present in a Member State should be either considered as legally staying – and enjoying a valid right to stay – or as illegally staying and be issued a return decision.<sup>2</sup>

However, in practice, a certain share of third-country nationals issued with a return decision do not leave the territory of Member States. These situations may result in long-term or protracted situations of illegal stay and legal uncertainty over several years, as well as deplorable living conditions. Examples include homelessness, (mental) health issues, addiction issues, falling victim to organised crime (i.e. labour and sexual exploitation) or involvement in crimes, all of which contribute to the detriment of the third-country national concerned, national governments and the communities in which irregular migrants reside.

In terms of practices, the actions of national governments, and local authorities (cities, regions) may be contradictory. Central authorities are responsible for achieving the objectives of the national migration policy, such as ensuring the prevention and fight against illegal stay and enforcement of return decisions. Local authorities (municipalities and regions) are at the forefront of the practical consequences of third-country nationals irregularly staying for a prolonged time and are confronted with challenges such as ensuring access to basic services

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<sup>1</sup> Article 6 of the Return Directive. The directive applies to all EU countries except Ireland, nevertheless the concepts covered by the study are also relevant to the Member State.

<sup>2</sup> European Commission, Return Handbook (section 1.2 'illegal stay').

and public order. Accordingly, complementarity or tension can result between policy objectives at the central level aimed at achieving the return of irregular migrants and the practical realities faced at the local level.

While existing research offered some insights into approaches adopted by Member States towards long-term irregular migrants, policies and practical measures are changing rapidly and there is currently no recent and comprehensive EU-wide overview regarding this group of third-country nationals. This study aims to respond to this gap.

The Study covers the period from 2015 – October 2020.

## 1.2 EU legal and policy context

The return of illegally staying third-country nationals has been an important issue in the EU's policy agenda on migration over the past 20 years and has accentuated since 2015, as illustrated by the emphasis on enforcement of return in the European Agenda on Migration. There is little recent information available on the number of persons staying illegally in the EU Member States.<sup>3</sup> Eurostat data provides only rough estimate of 'third-country nationals found to be illegally present' in the EU as it covers persons who are apprehended or otherwise come to the attention of national immigration authorities. Accordingly, not all irregularly staying migrants are included in these figures. In 2017, the European Commission (in its communication on the delivery of the European Agenda on Migration) estimated that around 1 million third-country nationals were irregularly staying in the EU.

In terms of the applicable legislative framework at EU level, the return of third-country nationals as set by the Return Directive is the relevant starting point for this study. The Return Directive lays down common EU standards on forced return and voluntary departure. It has a two-fold approach: on the one hand, it provides that Member States are obliged to issue return decisions to all third-country nationals staying irregularly on the territory of a Member State. On the other hand, it emphasises the importance of implementing return measures with full respect for the fundamental rights and freedoms and the dignity of the individual returnees, including the principle of 'non-refoulement'. As a result, any return may only be carried out in compliance with EU and other international human rights' guarantees.

The framework provided in the Return Directive should be read in conjunction with other legal instruments which also apply to the category of third-country nationals falling under the scope of the study. For example, national authorities' approach to vulnerable persons should also consider obligations stemming from the 1989 UN Convention on the Rights of the Child, from the EU's framework on victims of trafficking in human beings.<sup>4</sup> Additionally, albeit the Return Directive is silent on access of irregular third-country nationals to other social assistance

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<sup>3</sup> A EU-wide research project on this topic carried out in 2008 found an estimate of around 3.8 million of persons were staying illegally in the EU, for more information about the Clandestino project see final report: [Microsoft Word - CLANDESTINO FINAL REPORT November 2009 \(eliamep.gr\)](#)

<sup>4</sup> As consolidated in Directive 2011/36/EU and Council Directive 2004/81.

than emergency healthcare and access to education, other instruments may nonetheless apply.

### **1.3 Study aims and primary questions**

The overall aim of this study is to provide an overview of existing policies and practices in Member States and Norway towards third-country nationals in a prolonged situation of illegal stay. The study aims to explore the responses and approaches to bring such situations to an end both by central and local authorities, and to mitigate the social consequences for the affected third-country nationals. As mentioned, these could range from providing access to basic services or support, other indirect measures to encourage eventual return to their country of origin or other non-EU country, or options to obtain a legal status.

More specifically, this study covers the EU Member States and Norway and aims to:

- Determine the legislation and policies of central, regional and local authorities towards long-term irregular migrants;
- Examine the policies and practices in place to provide access to public services and rights to long-term irregular migrants in the realm of Member States' obligation to cater for basic needs;
- Examine existing practices in Member States and Norway to identify cases of exploitation and abuse among long term irregular migrants;
- Explore cooperation mechanisms between central, regional and local authorities if and when implementing policies targeting this category of third-country nationals;
- Examine the policies and practices in place in Member States and Norway to end long term illegal stay, including return and granting authorisation to stay;

Following research questions will be addressed:

- What is the political and policy debate on the situation of long-term irregularly staying migrants?
- What are the characteristics of the group of third-country nationals who remained in a protracted situation of illegal stay? What information is available on the size of the (sub)groups or categories?
- To what extent are central, regional, and local authorities in your (Member) State confronted with the issue of long-term irregularly staying migrants?
- Which rights and public services are long-term irregularly staying migrants provided access to?
- What is the role of cities dealing with this group of migrants? To what extent are cities involved and cooperate with the central government?
- What is the role of NGOs regarding access to public services for long-term irregularly staying migrants?
- Which measures (e.g. policies, practical tools, guidance) – if any – were implemented to bring protracted situations of illegal stay to an end?

## 1.4 Definitions

Terms	Definition
<b>Entry ban</b>	An administrative or judicial decision or act prohibiting entry into and stay in the territory of the EU Member States for a specified period, accompanying a return decision.
<b>Family members</b>	A third-country national, as specified in Article 4(1) of Directive 2003/86/EC (normally members of the nuclear family – i.e. the spouse and the minor children), who has entered the territory of the European Union for the purpose of family reunification
<b>Forced return</b>	The process of going back – whether in voluntary or enforced compliance with an obligation to return – to one’s country of origin, a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted (Article 3(3) of the Return Directive).
<b>Illegal or irregular stay</b>	The presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Art. 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for entry, stay or residence in that EU Member State.
<b>Irregular migration</b>	The movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit and receiving countries.
<b>Non-refoulement</b>	A core principle of international refugee and human rights law that prohibits States from returning individuals to a country where there is a real risk of being subjected to persecution, torture, inhuman or degrading treatment or any other human rights violation.
<b>Overstayer</b>	A person remaining in a country beyond the period for which entry was granted. In the EU context, a person who has legally entered an EU State, but who has stayed beyond the expiry of his/her visa and/or residence permit.
<b>Regularisation</b>	State procedure by which illegally staying third-country nationals are awarded a legal status.
<b>Residence permit</b>	An authorisation issued using the format laid down in Regulation (EC) No 1030/2002 entitling its holder to stay legally on the territory of a Member State.
<b>Return</b>	The movement of a person going from a host country back to a country of origin, country of nationality or habitual residence usually after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous.
<b>Return decision</b>	An administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.
<b>Social protection benefits</b>	For the purpose of this study please refer to the definition of ‘core benefits’ as included in the Qualification and Long-Term Residents Directives which is understood as covering – as a minimum - income support, assistance in the case of illness, or pregnancy, and parental assistance.
<b>Postponement of removal</b>	(Temporary) suspension of removal of a third-country national who has received a return decision but whose removal is not possible either for humanitarian reasons (as their removal would violate the principle of non-refoulement or due to the third-country national’s physical state or mental capacity) or for technical reasons (such as lack of transport capacity or failure of the removal due to lack of identification or the country of origin’s refusal to accept the person) and for as long as a suspensory effect is granted in accordance with Art. 13(2) of Council Directive 2008/115/EC (Return Directive).
<b>Third-country national</b>	Any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code.
<b>Trafficking in human beings</b>	The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of

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	vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. <sup>5</sup>
<b>Voluntary departure</b>	Compliance with the obligation to return within the time limit fixed for that purpose in the return decision.
<b>Vulnerable person</b>	Minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation (Art. 21 of Directive 2013/33/EU (Recast Reception Conditions Directive)).
<b>Social protection benefits</b>	For the purpose of this study please refer to the definition of 'core benefits' as included in the Qualification and Long-Term Residents Directives which is understood as covering – as a minimum - income support, assistance in the case of illness, or pregnancy, and parental assistance.
<b>Postponement of removal</b>	(Temporary) suspension of removal of a third-country national who has received a return decision but whose removal is not possible either for humanitarian reasons (as their removal would violate the principle of non-refoulement or due to the third-country national's physical state or mental capacity) or for technical reasons (such as lack of transport capacity or failure of the removal due to lack of identification or the country of origin's refusal to accept the person) and for as long as a suspensory effect is granted in accordance with Art. 13(2) of Council Directive 2008/115/EC (Return Directive).
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<b>Trafficking in human beings</b>	The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. <sup>6</sup>
<b>Voluntary departure</b>	Compliance with the obligation to return within the time limit fixed for that purpose in the return decision.
<b>Vulnerable person</b>	Minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation (Art. 21 of Directive 2013/33/EU (Recast Reception Conditions Directive)).

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<sup>5</sup> Article 2 par.1 of the Anti-trafficking Directive

<sup>6</sup> Article 2 par.1 of the Anti-trafficking Directive

## 2. National legal and policy framework

Third-country nationals that are staying irregularly in Sweden is a heterogeneous group, which explains why there are no targeted policies or practices. The common denominator is that they are staying irregularly in the country and as such, they have no right to stay in the country. The overall policy objective is subsequently to return those who lack authorisation to reside in the country. The policy and the legislative debate on irregularly staying migrants is for this reason limited. Return has however received increased attention after 2015, which underscore the overall policy objective.

The policy is primarily to return irregular migrants to their country of origin. The last regularisation occurred in November 2005 to March 2006 when 13 000 were granted permanent residence permits. The temporary law addressed families that had been asylum seekers and that had been hiding for a long period of time. There are however scholars arguing that there have been more regularization decisions in Sweden such as the Upper-Secondary School Act (2017:353) in 2017<sup>7</sup>, giving unaccompanied minors who were not determined to be in need of international protection, the option to apply for and be granted a temporary residence permit for 13 months to study at upper secondary school. The law addressed primarily the large number of unaccompanied minors who arrived in Sweden in 2016 and who due to long application processing times turned 18 years old before their cases were finalised.

There is little information available on the number of persons irregularly staying in Sweden. To date, only rough estimations are known. The number of irregular migrants has however been considered low in comparison with other Member States having a greater extent of informal sectors of economy.<sup>8</sup> A highly regulated society and low access to rights and services are other factors mentioned to explain the difficulties to stay irregularly in Sweden. A labour market that on the other hand has become more flexible and less regulated imply a growth of the informal sector.<sup>9</sup> The increased costs for health and medical care provided to irregular migrants is another indication that the

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<sup>7</sup> Nadja Frykskog, *Uppehållstillstånd genom undantagsbestämmelse: En explorativ studie av svenska regulariseringsbeslut*, Bachelor's essay on regularizations decisions in Sweden, Department of Political Science the University of Uppsala, (2018). The essay is referred to in the Delmi report 2020:1, *Those who cannot stay: Implementing return policy in Sweden*, p. 42, (2020), highlighting laws and rules concerning refusal of entry and expulsions in Sweden. Frykskog highlights the different definitions used for regularizations which explains why there are different perceptions of the number of regularizations in Sweden.

<sup>8</sup> Amanda Nielsen, *Challenging Rightlessness: On irregular Migrants and the Contestations of Welfare State Demarcation in Sweden*, p. 15, Dissertation No 239/2016, Department of Political Science, Linnaeus University, Växjö, Sweden (2016).

<sup>9</sup> *Ibid.*, p. 16.

number of third-country nationals without the necessary permits is increasing.<sup>10</sup> The total number is however still missing.

There are no targeted measures to bring irregular stay to an end for irregular migrants. The measures in place address all third-country nationals without the necessary permits. A limited number of options are available such as lodging a subsequent new application for asylum. This is however only possible after the statutory limitation period of four years has ended. The other option for those with a return decision is to apply for impediments to enforcement, which is further described below. While there is a discretion in the examination of a new applications for asylum, possibilities are very limited to grant a residence permit. It requires that the person concerned was not the reason for why the return decision could not be enforced.<sup>11</sup>

## 2.1 Legal and practical obstacles to return

There can be both legal and practical obstacles to return. The third country national concerned can apply for impediments to enforcement by writing a letter to the Swedish Migration Agency, explaining the reasons why return cannot be carried out. A responsibility also lies with the executive authorities i.e. the Swedish Migration Agency and the Swedish Police Authority, to consider if there are any new circumstances that could prevent a return. A decision should be taken to perform a review of the return decision (Aliens Act chap. 12 section 19) if new circumstances can be assumed to constitute a lasting impediment to enforcement and these circumstances could not previously have been invoked by the third country national or he/she shows a valid excuse for not previously having invoked these circumstances. Further, a decision of suspension of , measures towards an enforcement of a return decision (Aliens Act chap 12 section 10) is taken if the Swedish Migration Agency or another competent body decide that the return decision needs to be reviewed.

There is an impediment to enforcement (Aliens Act chap. 12, section 18) if new circumstances emerge after a rejection of an asylum application or after a return decision has become final and non-appealable, if the following applies:

- The third country national would be in danger of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment or if the third country national is not protected in the country from being sent on to a country in which the he/she would be in such danger.
- The return decision may not be enforced to a country if the third country national risks being subjected to persecution in that country or if the third country national is not protected in the country from being sent on to a country in which the he/she would be at such risk.

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<sup>10</sup> The Swedish Association of Local Authorities and Regions (SRA) started to collect statistics on the costs for health and medical care incurred by undocumented migrants in 2017.

<sup>11</sup> Legal position paper adopted by the Swedish Migration Agency on practical obstacles to return (Rättsligt ställningstagande angående praktiska verkställighetshinder m.m) *SR 10/2020*, (27 March 2020).

- There is reason to assume that the intended country of return will not be willing to accept the third country national or there are medical or other special grounds why the removal order should not be enforced.

However, the preparation for return continues even if the enforcement of the return decision has been suspended. The decision of suspension implies that the return decision will not be enforced but also that the person concerned is covered by the Act on reception of Asylum Seekers and Others (*Lag (1994:137) om mottagande av asylsökande m.fl.*), entitled to accommodation and to financial support. A so-called LMA card is issued which is provided to all asylum seekers to prove their right to stay in Sweden while their case is being examined. The rights to accommodation and financial support cease to apply if the return decision enters into force.

The obstacle to the enforcement, the duration of the impediment and measures available to remove it are all examples of factors that need to be balanced when assessing the impediment to enforcement of the return decision. There are no impediments to enforcement if the return decision is considered enforceable or if the person concerned has not shown that attempts have been made to remove the impediments to enforcement such as to arrange the necessary documents.

### Situations in which residence permits can be granted

The Swedish Migration Agency may grant a permanent residence permit if the impediment is of a lasting nature or a temporary residence permit if there is only a temporary impediment to enforcement. The emphasis of the legislation should however be placed on the examination of asylum claims before the return decision has entered into force.<sup>12</sup> The regulations on the impediments to enforcement should therefore be applied restrictively and the burden of proof cannot be lower than the one required in the examination that took place before the return decision entered into force.

Situations that are considered are if the authorities in the country of destination report that the person concerned will not be readmitted or new country of destination information is provided showing that the return decision is not enforceable. Another example is returns of unaccompanied minors where there is no family member, nor a guardian nor reception facilities in the country of destination to welcome the minor. It falls on the person concerned to provide evidence that the return decision cannot be enforced. The standard of proof is set high and the evidence must be concrete.<sup>13</sup> In cases where the impediments are considered permanent or longstanding, a residence permit can be granted in accordance with the provisions on exceptionally distressing circumstances (Aliens Act chap. 5, section 6). This is the case if the person concerned will remain in Sweden for such a long time that grounds for a residence permit arises. A balanced assessment is made on the third-country national's health and situation in the country of destination. The discretion is however extremely limited. This is confirmed by the statistics available: 290 third-country nationals have been granted temporary residence permits during the period 2015-2020

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<sup>12</sup> Legal position paper adopted by the Swedish Migration Agency on practical obstacles to return (Rättsligt ställningstagande angående praktiska verkställighetshinder m.m) SR 10/2020, (27 March 2020).

<sup>13</sup> Ibid.

while 84 have been granted permanent residence permits during the same period.<sup>14</sup>

The limited discretion for granting permanent residence permit has been highlighted by a Commission of Inquiry.<sup>15</sup> The inquiry shows that a number of people remain in Sweden for long periods of time after receiving a refusal of entry or expulsion order without being granted a residence permit. The inquiry has identified difficulties for legal practitioners to reconcile the obligation to consider practical impediments to enforcement in the initial case with the Migration Court of Appeal's guidance on the matter. The high standard of proof that is applied means that the person concerned, under current practice, bears a considerable responsibility of obtaining acceptable evidence even in situations of great difficulty.<sup>16</sup> In cases where it is impossible to travel to the country of destination, the Commission of Inquiry assesses it as very difficult for the persons concerned to provide evidence of the country of return's unwillingness to readmit the person. Further examples of the difficulties are stateless persons or third-country nationals that need to establish their citizenship in states with weak institutions.<sup>17</sup> The Commission of Inquiry did however not lead to any regulatory proposals.

There is also the possibility to apply for a work permit if the application for asylum has been refused.<sup>18</sup> To become qualified the following requirements are needed: the application need to be submitted within two weeks after the return decision entered into legal force, a valid passport, employed by the same employer for the last four months and an offer for employment for the same employer for another 12 months, meet certain employment conditions and the salary at least SEK 13000 per month before tax. Another requirement is that third-country nationals have been exempted from the requirement to obtain a work permit to be able to work as an asylum seeker and to be exempted the asylum seeker needs to clarify his or her identity.

### **Extension of the voluntary departure period**

The voluntary departure period can be extended if there are special grounds (Aliens Act chap. 8 section 21). The competent authorities to extend the voluntary departure period are the Swedish Migration Agency and the Swedish Police Authority, ex officio or after an application from the third country national concerned. The voluntary departure period can be extended if particular reasons apply in accordance with the Return Directive (Article 7, voluntary departure) such as the duration of the stay, the existence of children attending school and the existence of other family and social links. Additional circumstances that may give rise to an extension of the voluntary departure period are if more time is required to obtain travel documents. This only applies however if the person concerned can demonstrate that he or she has been active in obtaining the documents needed. Likewise the voluntary departure period can be extended if

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<sup>14</sup> Statistics provided by the Swedish Migration Agency.

<sup>15</sup> Reports by Government commissions of inquiry (Betänkande av Utredningen om uppehållstillstånd på grund av praktiska verkställighetshinder och preskription, *SOU 2017:84*, p. 26, (2017).

<sup>16</sup> *Ibid.*, p. 30.

<sup>17</sup> *Ibid.*, p. 32.

<sup>18</sup> Aliens Act chap. 5, section 15a, (Utlänningslag (2006:716), 5 kap, 15a§).

the third-country national applies for a work permit (Aliens Act chap. 5 section 15 a). The handbook provided by the Swedish Migration Agency concerning the Return Directive (Handbok i migrationsärenden: Återvändandedirektivet) advocates a restrictive application. The voluntary departure period shall only be extended if necessary which also appear in the Government Bill (Prop. 2011/12:60 Genomförande av återvändandedirektivet). The voluntary departure period can in exceptional cases be extended more than once.

## 2.2 Debates on irregular migrants

The debates on irregularly staying migrants is not only limited but also challenging to describe. While the term "long-term irregular migrants" can easily be understood (and translated) into Swedish it is not used in practice. Rather, there are a number of different terms used for migrants that find themselves in an irregular situation. The terms used generally refer to the origins of the particular situation such as "absconded" [avviken], "undocumented migrants"/"migrants sans papiers" [papperslös], "hidden migrants" [gömd]. The term "illegal migrants" is occasionally used by some debaters, but has been largely replaced by the term "irregular migrants" in mainstream media outlets and in public discourse. The duration of the irregular stay is not reflected in the terms used in Sweden, as mentioned more importance seems to be attached to the reasons or origins of the irregular situation. Overall policy and legislative debate on these migrants as a group has been limited. Possibly this is due to the fact that it reasonably is a heterogeneous group.

It is difficult to identify trends in the debate over time, but irregular migrants have become more topical in the years following 2015. However, in the aftermath of the so called "refugee crisis" in 2015, national debate has primarily focused on developing a sustainable migration and asylum policy for the long term. It should be added that return, which is closely related to the target group of the study, has received increased attention by policy makers in the past few years. For example, the government has since 2016 launched a number of initiatives to improve return procedures as well as decided to increase detention capacity.

More specifically, there has been a debate on the rights and entitlements of undocumented migrants, and their obligation to return and often specific groups of irregular migrants. Swedish Parliamentary records confirm that the rights and situation of particularly vulnerable undocumented migrants such as women, children (unaccompanied minors) and workers employed in the informal sector has been discussed. Debaters that have focused on the rights of these migrants have often been more vocal.<sup>19</sup> For example, the Moderate Party has argued to reverse the 2013 law, which gives undocumented migrants health care and dental care on the same conditions as registered asylum seekers, by arguing that it sends contradictory signals to migrants that have a legal obligation to return, and that costs for health and medical care for this group has increased.<sup>20</sup>

<sup>19</sup> Cf sections on public and policy debate in Sweden's national contributions to the EMN focussed studies Dissemination of information on voluntary return: How to reach irregular migrants not in contact with the authorities (2015) and Returning Rejected Asylum Seekers: challenges and good practices (2016).

<sup>20</sup> See for example "The Moderates want to return to tougher regulations for asylum seekers with a return decision – regret settlement with the Green Party", Swedish Radio 6 February 2018, available at: [Moderaterna vill återgå till hårdare regler för](#)

There is arguably a growing debate whether government policies and actions might be perceived as conflicting by irregular migrants and by former asylum seekers with a final expulsion order, particularly in relation to return.

Finally, non-governmental organisations are active in calling attention to the plight of undocumented migrants.<sup>21</sup> For example churches have highlighted the situation of vulnerable groups in society such as the homeless or undocumented migrants. This has mainly taken place during the pandemic. For example, The Christian Council of Sweden called for a review of migration legislation in view of the current pandemic and argued that the government should take measures to protect, inter alia, undocumented migrants and those waiting for expulsion orders from the consequences of the pandemic.<sup>22</sup> Some non-governmental organisations and individual representatives of political parties have called for “corona regularisations”, particularly for those aged-out unaccompanied minors that arrived in Sweden in 2015 and did not receive a residence permit following the 2017/2018 temporary law aimed at this group.<sup>23</sup> Finally, the Covid-19 situation in Sweden initially led to a debate on the consequences of the pandemic for migrant communities overall, including migrants that are in an irregular situation.<sup>24</sup> For example, this debate highlighted the vulnerability of this group and, inter alia, questioned its equal accessibility to public information about the risks of the pandemic.

### 3. Rights and services available to long-term irregularly staying migrants

This section provides an overview of the rights and services accessible to long-term irregular migrants and of which authorities that are involved in the provision of services.

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[asylsökande som fått avslag – ångrar uppgörelse med Miljöpartiet - Nyheter \(Ekot\) | Sveriges Radio](#) (last accessed 21 October 2020), and Interpellation 2018/19:276 by Elisabeth Björnsdotter Rahm (M), Swedish Parliamentary Records.

<sup>21</sup> News report regarding the City Mission (Stadsmissionen) in Stockholm, meeting more and more undocumented migrants, Radio Sweden 4 July 2019, available at: [Stadsmissionen möter allt fler papperslösa: Är totalt rättslösa - P4 Sörmland | Sveriges Radio](#) (last accessed 4 November 2020).

<sup>22</sup> News report regarding aid packages to asylum seekers in the newspaper Expressen, 9 April 2020, available at: [Corona: Var är stödpaketet för hemlösa och asylsökande? \(expressen.se\)](#) (last accessed 2 November 2020).

<sup>23</sup> News report regarding “corona-regularisation” in the newspaper Göteborgsposten, 20 April 2020, available at: [Coronakrisen gör det nödvändigt att ge de ensamkommande amnesti | GP](#) (last accessed 4 November 2020).

<sup>24</sup> See for example “The Hidden Flaw in Sweden’s Anti-Lockdown Strategy”, Foreign Policy 21 April 2020, available at: [Immigrants Are the Hidden Flaw in Sweden's Anti-Lockdown Strategy \(foreignpolicy.com\)](#) (last accessed 3 November 2020).

Table 1: Rights and services available to long-term irregularly staying migrants

RIGHTS AND SERVICES AVAILABLE TO LONG-TERM IRREGULARLY STAYING MIGRANTS			
Type of services	Services provided	Responsible authority for the provision of services	Description
<b>Accommodation</b>			
Accommodation	Yes but only for adults with a return decision living with children under the age of 18 and unaccompanied minors have the right to accommodation until the very day they leave the country. <sup>25</sup>	Swedish Migration Agency	The accommodation provided is the same for all asylum seekers no matter the status. There are however return facilities but those are designated in particular for those returnees that are about to leave the country <sup>26</sup> .
Special accommodation facilities (i.e. shelter for victims of violence, children etc.)	<i>Yes if the Social Public Services decide that, there is a need of both of protection and support.</i>	The Social Public Services	The Social Services Act (2001:453), chap. 5, section 11. Accommodation provided varies sheltered accommodation, housing plus care and family homes depending on the assessment carried out and the needs identified by the Social Public Services.
<b>Healthcare</b>			
Emergency healthcare	Yes to emergency healthcare and dental care and health care that cannot wait. <sup>27</sup>	The County Council	The healthcare professionals determine which healthcare that cannot wait in accordance with the Act on health and medical care to Asylum Seekers and others section 6 (Lag (2008:344) om hälso- och sjukvård åt asylsökande m.fl).
Basic medical care	Children under the age of 18 are entitled to the same healthcare and dental care as children resident in Sweden. <sup>28</sup>	The County Council	
Other healthcare services	Yes to childbirth care, abortion care, advice on contraception, maternity care <sup>29</sup> and healthcare to prevent the	The County Council	

<sup>25</sup> Act on reception of Asylum Seekers and Others, section 11(Lag (1994:137) om mottagande av asylsökande m.fl. §11).

<sup>26</sup> A legislative change in June 2016 lead to that single adults lose their entitlement to accommodation if they do not return within the period of voluntary departure, unless this is obviously unreasonable due to for example medical reasons. Single adults can regain their entitlements to accommodation and financial support if the return decision is suspended due to new circumstances.

<sup>27</sup> Act on health and medical care to Asylum Seekers and others section 6 (Lag (2008:344) om hälso- och sjukvård åt asylsökande m.fl).

<sup>28</sup> Ibid.

<sup>29</sup> Act on health and medical care to Asylum Seekers and others section 6 (Lag (2008:344) om hälso- och sjukvård åt asylsökande m.fl).

<b>RIGHTS AND SERVICES AVAILABLE TO LONG-TERM IRREGULARLY STAYING MIGRANTS</b>			
<b>Type of services</b>	<b>Services provided</b>	<b>Responsible authority for the provision of services</b>	<b>Description</b>
	spread of contagious diseases. <sup>30</sup>		
<b>Social assistance</b>			
Social benefits	Only adults with a return decision living with children under the age of 18 and unaccompanied minors are entitled to financial support until the very day they leave the country. <sup>31</sup>	Swedish Migration Agency	.
Social benefits	Each individual residing in a municipality is entitled to apply for support and to have his/her application examined. <sup>32</sup> Nevertheless there is nothing that prevents the local authority from granting support according to the Social Services Act (2001:453), chap. 4, section 2 as municipalities are ultimately responsible for individuals residing in the municipality, even if only temporary residing,.	The Social Public Services	Irregularly staying migrants are, as a general rule not entitled to support other than Emergency Assistance. <sup>33</sup> There is no regulation of what the Emergency Assistance should comprise; only that it is a temporary assistance to avoid distress such as shelter for one or more nights and food for the day. Another key requirement is that the needs cannot be met with other means that the person concerned has at his disposal.
<b>Employment</b>			
Access to the labour market	Only for adults with a return decision who have been working while they were asylum seekers and have been exempted from the requirement to obtain a work permit, given that they are cooperating with the Swedish Migration Agency and preparing to return. <sup>34</sup>	The Swedish Migration Agency	To be exempted from the requirement to obtain a work permit the third-country national needs to clarify his/her identity or to prove his/her identity and the person concerned need to cooperate with the Swedish Migration Agency in preparing for return. The exemption applies until the person concerned leaves

<sup>30</sup> The Communicable Diseases Act (Smittskyddslagen (2004:168)).

<sup>31</sup> Act on reception of Asylum Seekers and Others, section 8(Lag (1994:137) om mottagande av asylsökande m.fl. §8). A legislative change in June 2016 lead to that single adults lose their entitlement to financial support if they do not return within the period of voluntary departure, unless this is obviously unreasonable due to for example medical reasons..

<sup>32</sup> The Supreme Administrative Court has however ruled (5 June 2017, HDF 2017 ref 33, case no 1527-1529-16) that there is no obligation for the local authority to provide assistance according to the Social Services Act, chap. 4, section 1 to long term irregularly staying migrants who have been issued a return decision. The reasoning of the Court only applies to those who have applied for asylum and had their application rejected that is those who have been registered at the Swedish Migration Agency and subsequently been covered by the personal scope in the Act on reception of Asylum Seekers and Others (1994:137). The ruling does not apply to third-country nationals who have not applied for asylum or who are irregularly staying migrants.

<sup>33</sup> Frequently Asked Questions concerning support to irregularly migrants who have been issued a return decision, provided by the Swedish Association of Local Authorities and Regions (Sveriges Kommuner och Regioner) available at: [Frågor och svar, ekonomiskt bistånd till den som ska utvisas i SKR](#) (last accessed 12 October 2020).

<sup>34</sup> Aliens Act Ordinance chap 5, section 4 (Utlänningsförordningen (2006:97)).

**RIGHTS AND SERVICES AVAILABLE TO LONG-TERM IRREGULARLY STAYING MIGRANTS**

Type of services	Services provided	Responsible authority for the provision of services	Description
			the country or a permit residence is granted. This implies that third-country nationals with a return decision can work even if no longer covered by the Act on reception of Asylum Seekers and others. (Lag 1994:137 om mottagande av asylsökande m.fl.) <sup>35</sup>
<b>Education</b>			
Compulsory education	Children are entitled to pre-school, primary school and special school. <sup>36</sup>	Local authorities, the municipality where the child is residing	Upper secondary school is only provided for those who started the schooling in Sweden before the age of 18. However, there is no entitlement to adult education. <sup>37</sup>
Legal aid or assistance			
Legal aid or assistance	Only if provided by NGOs, charities or private entities	NGOs, charities or private entities	

<sup>35</sup> Judicial inquiry by the Swedish Migration Agency into the exemption from the requirement to obtain a work permit to third-country nationals subject to a return decision, who apply for a work permit (Rättsutredning: Undantag från skyldigheten att ha arbetstillstånd för asylsökande som efter laga kraft ansöker om uppehållstillstånd för arbete RA/063/2020), 23 November 2020.

<sup>36</sup> Education Act (2010:800) chap. 29, section 3 (Skollagen (2010:800)).

<sup>37</sup> Ibid.

### 3.1 Challenges in providing rights and services

The regulations that entered into force in 2013 gave irregular migrants the same right to healthcare as asylum seekers. An amendment that has resulted in irregular migrants gaining access to emergency healthcare and dental care and health care that cannot wait. A number of inquiries have taken place to examine the effects of the amendment. The results from these inquiries will now be presented to highlight what challenges that exist despite extended rights.

The Swedish Agency for Public Management (Statskontoret) was given the mandate to carry out an inquiry by the government in July 2013.<sup>38</sup> The amendment implied that care is provided even if the person concerned has not identified him/herself. The lack of identity means that health care professional cannot get access to the health record of the person concerned nor personal health information, not knowing the medical diagnoses that already have been made. To address this problem, there is a system of back-up numbers (reservnummer) replacing the personal identity number. The same system is however not in place in all County Councils, different numbers are for this reason used for the same person. This problem hamper after care or repeated treatment. The other challenge highlighted in the report is the lack of information; irregular migrants do not know that they are entitled health care. This appears to be a problem particularly for children, having the same right to health and dental care as children resident in Sweden. The lack of contact details prevent the County Councils to call these children for preventive examinations and treatments. The lack of knowledge implies that irregular migrants are not given the health care they are entitled to.<sup>39</sup>

The Swedish Red Cross carried out a similar follow-up in 2018 to map the situation of the irregular migrants and their access to health and medical care after the Act entered into force in 2013.<sup>40</sup> The Red Cross confirms that there is still a lack of knowledge among the health care professionals concerning irregular migrants' right to health and medical care. Another problem is that the regulations are considered to be unclear, particularly to determinate which healthcare that cannot wait.<sup>41</sup> A number of ethical dilemmas arise when determining which health care an irregular migrant is entitled to. The report also highlights differences between County Councils; some councils have proved to be better in supporting their professionals how to address this group. Noteworthy is that the Swedish Red Cross has provided health care and

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<sup>38</sup> The final report by the Swedish Agency for Public Management (Statskontoret) regarding the Act on health and medical care to some foreigners who reside in Sweden without the necessary permits (*Vård till papperslösa: Slutrapport av uppdraget att följa upp lagen om vård till personer som vistas i Sverige utan tillstånd*) 2016:11 (2016).

<sup>39</sup> To address this problem, guidelines have been published by both the Swedish Association of Local Authorities and Regions (Sveriges Kommuner och Regioner) and the National Board of Health and Welfare (Socialstyrelsen).

<sup>40</sup> A report published by the Swedish Red Cross, assessing the information provided by the County Councils on the right to healthcare, December 2018, available at: [kunskap-och-vagledning-en-forutsattning-for-god-var-d-2018.pdf \(rodakorset.se\)](https://www.rodakorset.se/kunskap-och-vagledning-en-forutsattning-for-god-var-d-2018.pdf) (last accessed 3 November 2020).

<sup>41</sup> The National Board of Health and Welfare (Socialstyrelsen) updated their information on the website in 2019 to further clarify the guidelines concerning health care to irregular migrants, available at: [Vilken vård ska en region erbjuda asylsökande och papperslösa? - Socialstyrelsen](https://www.socialstyrelsen.se/om-socialstyrelsen/om-socialstyrelsen-och-papperslosa/) (last accessed 3 November 2020).

counselling to irregular migrants since 2006 in Sweden, having experience both before and after the Act entered into force in 2013.

The Swedish Red Cross has also carried out a follow-up regarding another policy measure that entered into force in June 2016,<sup>42</sup> a legislative change implying that single adults lose their entitlement to accommodation if they do not return within the period of voluntary departure, unless this is obviously unreasonable due to for example medical reasons.<sup>43</sup> The aim of the report was to highlight the humanitarian consequences of the amendment. The first observation made by the Red Cross was the increased number of former asylum seekers in need of housing, food and healthcare and medication. One of the objectives of the amendment was to further streamline the enforcement of return decisions. To provide housing and daily allowances to former asylum seekers with a return decision was considered to counteract an effective return. The Red Cross could however not see that the number of returns increased; instead a rising number of former asylum seekers that ended up in more vulnerable situations.

Another challenge that have been raised by a number of specialists from non-governmental organisations, churches and international organisations is the fear and unwillingness among irregular migrants to contact authorities. The main contacts therefore take place through civil society. To survive they rely on their own contacts and take the jobs that are available which implies that they are easily exploited by employers. Another problem is that many suffer from mental illness and drug and alcohol abuse. Addiction along with homelessness make it difficult to provide assistance and to find a more long-term solution such as to legalise the stay or to return to the country of origin and particularly when they are only entitled to healthcare that cannot wait.

### **3.2 Research on services available for irregular migrants**

The rights provided after the amendment in 2013 have also been highlighted by researchers. Two different studies will be presented to offer some valuable insights into the approaches adopted by Sweden, both with focus on welfare provisions provided by local authorities.

The first study is a case study on welfare provision for non-removed rejected asylum seekers in Amsterdam, Stockholm and Vienna, carried out by Ilker Atac, Theresa Schütze and Victoria Reitter at the Department of Political Science at the University of Vienna in Austria. Each individual residing in a municipality is entitled to apply for support and to have his/her application examined even if local authorities do not bear any formal responsibility such as for rejected asylum seekers. Local authorities are however ultimately responsible for individuals residing in the municipality, even if only temporary staying according to the Social Services Act (2001:453). The researchers show that the support granted in Stockholm is sporadic. Irregularly staying migrants are, as a general rule not granted emergency assistance. The municipality accepting the amendment in 2016 to not support rejected asylum seekers and not questioning

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<sup>42</sup> A report published by the Swedish Red Cross on consequences of the amendment in the Act on reception of Asylum Seekers and Others, 2016, available at: [lagesrapport-lma-2016.pdf \(rodakorset.se\)](https://www.rodakorset.se/lagesrapport-lma-2016.pdf) (last accessed 3 November 2020).

<sup>43</sup> Act on reception of Asylum Seekers and Others, section 11(Lag (1994:137) om mottagande av asylsökande m.fl.).

it, exemplify the ideal type of vertical top down relationship according to the researchers. Another difference compared to Austria and Netherlands is that the civil society in Sweden is not incorporated in the service of provisions of municipalities. This implies that the civil society cannot address the structural inequalities but it can mitigate the effects of a more restrictive migration policy.<sup>44</sup>

The second study highlighted in this study, was performed by Carin Björngren Cuadra at the Department of Social Work at Malmö University in Sweden. This study is also looking at to what extent social workers grant assistance to irregular migrants. It is an empirical study, carried out in a large city in Sweden in 2013. 127 social workers replied anonymously to an electronic questionnaire. The limited number of respondents implies that it is not statistically representative, but it highlights the reasoning of social workers when encountering irregular migrants. A third of the respondents have never encountered irregular migrants in their work and those who had confirmed that it did not occur that often. The social workers did not always know the legal status, which implies that they do not always ask for it. Looking at the services provided, those were mainly economic maintenance followed by housing and cases involving children and youth. The outcome of the cases studied, showed that applications are both approved and rejected, if approved it was mainly because children were involved. Adults were in fact rarely granted any assistance. The lack of guidelines was also highlighted as a problem, not knowing how to act in relation to other authorities or to other laws such as the Aliens Act. A leeway is provided in the Social Services Act to grant economic maintenance but very few social workers practise it.<sup>45</sup>

## 4. The different actors involved

The bulk of responsibilities with regard to the target group of the study are at state level (government, government agencies such as the Swedish Police and the Swedish Migration Agency). However, municipalities are responsible for receiving and examining applications for income support according to the Social Services Act, from those staying in the municipality. This includes irregular migrants present in the municipality that are not registered in the Migration Agency's reception system. Furthermore, municipalities are responsible for primary schools and accommodation for unaccompanied minors, both of which are policy areas with a potential connection to the target group of the study. Finally, County Councils are responsible for health and medical care.

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<sup>44</sup> Ilker Atac, Theresa Schütze & Victoria Reitter, Local responses in restrictive national policy contexts: welfare provisions for non-removed rejected asylum seekers in Amsterdam, Stockholm and Vienna, *Ethnic and Racial Studies*, Vol. 43 (16), (2020).

<sup>45</sup> Carin Björngren Cuadra, Encounters With Irregular Migrants in Social Work – “Collateral Damage” and Reframing of Recognizability in Swedish Public Social Services, *Journal of Immigrant & Refugee Studies*, Vol. 13 (3), (2015).

Municipalities and County Councils receive state funding to cover their expenses for schooling and health and medical care resulting from the 2013 law.<sup>46</sup>

Municipalities in Sweden enjoy local self-government, which is one of the pillars of the Instrument of Government. Hence, with regard to income support, there are no state guidelines, for example pertaining to the right to municipal income support for irregular migrants. In practice, social services in the municipality decide on such applications in the individual case. In 2016, policy changes were made to the effect that adult asylum seekers that have received a final expulsion order are no longer eligible to a daily allowance or provided with accommodation by the Swedish Migration Agency. In 2017, to clarify the extent of municipal responsibilities, the Supreme Administrative Court ruled in a case with regard to the right to income support to migrants with an expulsion order.<sup>47</sup> The ruling clarified that the responsibilities of municipalities are limited in such cases.

#### 4.1 The role of civil society organisations and other entities

There are a number of organisations in civil society involved in providing services for long term irregularly staying migrants. The coverage of services and the provider of the services vary however depending on the locality. A key factor is the resources available, which also determine what services that can be provided, but it is mainly emergency assistance to address the basic needs such as food, shelter and clothes. Legal aid or counselling is also provided through legal professionals volunteering or by NGOs providing legal assistance. Counselling is also provided in social care. The starting point is always the needs of the individual. Many organisations also assist irregular migrants in their contacts with the authorities, to ensure that they are given the rights they are entitled to. Different organisations have different target groups but those who provide support to homeless people and vulnerable groups excluded from health and social services also meet irregular migrants.<sup>48</sup>

The objective for many organisations is to provide different services under the same roof such as both legal and social counselling and health care in order to facilitate for the target group to receive efficient assistance. Services are however never provided if the person concerned does not want any help. Organisations do however strive to help the irregular migrants to regularise their situation and to find a more long-term solution to their problems. This involves not only looking at the options to get a residence permit in Sweden but also to return to their home country. The City Mission has developed a map

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<sup>46</sup> See for example information on the website of Swedish National Agency for Education, available at: [Statsbidrag för papperslösa barn 2020 - Skolverket](#) (last accessed 20 October 2020).

<sup>47</sup> Ruling of 5 June 2017 (*case 1527-1529-16*), the Supreme Administrative Court (Högsta förvaltningsdomstolen).

<sup>48</sup> The main organisations are the City Mission (Stadsmissionen), the Red Cross (Röda Korset), the Swedish church (Svenska kyrkan), Islamic Relief, Caritas, Social Mission (Sociala Missionen), Save the Children (Rädda Barnen), Support Service offered to LGTBTQI people (RFSL) and Swedish Refugee Law Center (Asyrättscentrum).

(Migrationstrådet) to not only display the services available but also the different routes to get out of the irregular situation.<sup>49</sup>

## 4.2 Cooperation mechanisms

The authorities responsible for return are the Swedish Migration Agency, the Swedish Police Authority and the Prison and Probation Service. The Swedish Migration Agency is responsible for voluntary return while the Swedish Police Authority for forced return. A division of responsibility has been established between the main agencies, the Swedish Migration Agency and the Swedish Police Authority, which is continuously reviewed to achieve a more efficient return policy but no specific measures have been introduced to help regional or local authorities.

The Swedish Police Authority is tasked to control if third-country nationals in Sweden have the residence permits required to stay and work (inre utlänningskontroll). Greater powers have been conferred to the Swedish Police Authority to carry out internal controls of third-country nationals in Sweden. In 2018, to perform work place inspections<sup>50</sup> and new provisions on photographing and taking fingerprints of third-country nationals enter into force in December 2020.<sup>51</sup> These two measures that are aimed to facilitate the work of the Swedish Police Authority to carry out internal controls of third-country nationals in Sweden. Work inspections can be performed even if there is no suspicion of crime, which was required in previous legislation. Sectors targeted are those where illegally working third-country nationals potentially are working such as in the hotel- and restaurant industry and in services of hairdressers and beauty shops.

The key model for collaboration between the public sector and the civil society is named IOP (Idéburet offentligt partnerskap). The model was developed by the National Forum for Voluntary Organisations in 2010<sup>52</sup> and was recommended by the Swedish Association of Local Authorities and Regions in 2017 in their work to support the local authorities and regions to address societal challenges.<sup>53</sup> To further promote this model of partnership, the government launched in 2018 a Commission of Inquiry to facilitate for organisations to apply for grants and to

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<sup>49</sup> A map (Migrationstrådet) available at the City Mission (Stadsmissionen) to guide irregular migrants, available at: [Babas migrationsråd \(stadsmissionen.se\)](https://www.stadsmissionen.se/babas-migrationsrad) (last accessed 12 November 2020).

<sup>50</sup> Amending of Aliens Act, chap. 9 section 14, 15 and 16 (2005:716) Swedish Code of Statutes (Svensk författningssamling) SFS 2018:739, published 12 June 2018.

<sup>51</sup> Amending of Aliens Act, chap. 9 section 8f (2005:716) Swedish Code of Statutes (Svenska författningssamling) SFS 2020:1005, published 1 December 2020.

<sup>52</sup> The National Forum for Voluntary Organisations (Forum Idéburna organisationer med social inriktning) is an umbrella organization for civil society organisations working within the social sphere in Sweden, aiming to strengthen civil society organisations in Sweden and to facilitate their mission and work. More information on the model is available at: [Idéburet offentligt partnerskap - Forum - idéburna organisationer med social inriktning \(socialforum.se\)](https://www.socialforum.se/ideburet-offentligt-partnerskap-forum-ideburna-organisationer-med-social-inriktning) (last accessed 21 October 2020).

<sup>53</sup> Information provided by the Swedish Association of Local Authorities and Regions (Sveriges kommuner och regioner) on the model of collaboration between the Public sector and the civil society, available at: [Utveckla idéburet offentligt partnerskap | SKR](https://www.skr.se/utveckla-ideburet-offentligt-partnerskap) (last accessed 21 October 2020).

enter into collaboration with the public sector.<sup>54</sup> The model is used as a platform to counteract social exclusion and to provide shelter for homeless. For example, the City of Malmö reports that they provide shelters to homeless, so-called "värmestugor" based on the IOP model.<sup>55</sup> Another example is when the government decided in March 2018 to allocate additional means targeting homeless young adults.<sup>56</sup> The government invested SEK 120 million to the civil society per year for three years to support their work against homelessness, to adopt measures that would get young adults back to the community and to address mental illness as this was identified as a contributing factor to homelessness.<sup>57</sup>

The project Baba that started in 2017 is another example of collaboration between the public sector and civil society based on the model of IOP, a collaboration between the City Mission in Stockholm, the City of Stockholm, Save the Children, the Red Cross and the Children's Rights Bureau (Barnrättsbyrå). The target group was children and young people in severe vulnerability, unaccompanied minors who were excluded and not covered by national welfare. The main aim of the project was to improve the situation of the young people, to take them out of the homelessness into the society. A key objective was also to involve the young people, to help themselves to find a solution to their own problems and to recognize their experiences and to have their voices heard. A third aim was to strengthen the coordination between civil society and the City of Stockholm when addressing the target group, for a seamless structure. The target group was provided both legal and social aid and if needed return counselling. The young people were requested to document and to disseminate their own stories. Input that was collected to develop working methods and which was in the end of the project published as a handbook. The City Mission is still supporting young people in line with the model they have developed even after the project.<sup>58</sup>

## 5. Conclusions

The lack of statistics imply that there are only rough estimations of the number of irregular migrants in Sweden. There are however, indications that the number has increased as the extended informal sector of economy make it easier to

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<sup>54</sup> The terms of reference of the Commission of Inquiry A clear definition of civil society actors in welfare (Dir. 2018:46 En tydlig definition av idéburna av aktörer i välfärden).

<sup>55</sup> Information provided by Sandra Lundberg, a development officer at the City of Malmö 18 November 2020.

<sup>56</sup> Press release from the Swedish government the 8 March 2018 on additional means to young adults in homelessness (Utökat stöd till unga hemlösa), available at: [Ny version: Utökat stöd till unga hemlösa - Regeringen.se](#) (last accessed 21 October 2020).

<sup>57</sup> The means were allocated to established organisations such as the City Mission in Stockholm, Gothenburg and Malmö, the Red Cross, the Swedish church and Save the children.

<sup>58</sup> A handbook published by the City Mission in Stockholm (Stockholms Stadsmission) based on the project Baba, available at: [Roster-fran-Baba-boken\\_0.pdf \(stadsmissionen.se\)](#) (last accessed 24 October 2020).

reside irregularly in Sweden. In addition to irregular labour migrants are former asylum seekers who do not comply with the return decision and remain in the country. The latter group has been considered to constitute the largest group of irregular migrants in Sweden. Long-term irregular migrants are however not a category that is defined in Swedish legislation or in practice.

There is a lack of targeted measures which is largely due to that it is difficult to take the measures necessary to such a heterogeneous group. The common denominator is that they do not have the residence permits required to stay in the country and as such, they are obliged to leave the country. Return is subsequently the primary response to end the irregularly stay and after 2015, return has received increased attention, to further improve return procedures for a more efficient return. During the period of the study, the Swedish Policy Authority has also been conferred with greater powers to perform the internal control of third-country nationals in Sweden.

The number of options available to legalise the stay are limited and very few manage to meet the criteria required. Those irregular migrants who choose to remain in the country are for this reason mainly caught in a situation of homelessness, as hidden, exploited by employers and in some cases struggling with mental illness and drug and alcohol abuse which further complicate the situation of irregular migrants. The exploitation of irregular migrants is a problem and difficult to address as third-country nationals do not report to the police as they are afraid of being deported. The pandemic further highlighted the vulnerability of the group, which lead to a number of non-governmental organisations and churches to call for attention to the situation of irregular migrants.

This is a group of third-country nationals that have not authorised their stay in Sweden and as such they are not recognized by the authorities. The health and medical Act in 2013 to make health and medical care more accessible to irregular migrants and to give undocumented children the right to school, did however imply a change. Their rights were recognized and as such their situation in Sweden. This has led to a debate about contradictory signals, i.e. providing rights to a group that is obliged to leave the country. The increased costs for health and medical care has also spurred debate. Another subject to debate is the role of the municipality to grant assistance for those who are staying without the necessary permits in the municipality. The responsibilities of the municipalities are limited but they have a responsibility towards mainly children and vulnerable groups, which makes the topic of some controversy.

A number of challenges have been highlighted, the lack of information and guidelines among health care professionals and social workers but also the economic uncertainty among non-governmental organisations which makes their planning difficult. The services available also depend on where in the country the irregular migrant reside. Cities are in general providing more services. Cooperation exists between national, regional and local authorities and with the civil society but it is mostly ad-hoc and based on a model of collaboration between the public sector and the civil society (Idéburet offentligt partnerskap).

To conclude, in 2013, irregular migrants were given the same rights as asylum seekers to health and medical care. The development has since then however, moved towards a more restrictive policy. In 2016, single adults lost their

entitlements to accommodation and financial support if not complying with the return decision and in 2017, the Supreme Administrative Court ruled that municipalities are not obliged to provide support to former asylum seekers. Return is also a key priority and has been since 2015. The overall policy objective to return those who lack authorisation to reside in the country will most likely remain as there are so far no indications of a political change for a more generous policy for irregular migrants.