Lund Disability Human Rights Clinic 2023

From Commitment to Reality

A Critical Assessment of Sweden's Compliance with Access to Justice in the Convention on the Rights of Persons with Disabilities

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This report has been produced as part of the Lund Disability Human Rights Clinic at the Raoul Wallenberg Institute for Human Rights (RWI). The report was written by students in the Human Rights Practice course at the Faculty of Law, Lund University. In this course students in the Law Program work with civil society organizations and authorities on specific cases and legal investigations under the guidance of researchers and professors at the Faculty of Law and RWI. This report is the result of a collaboration with the Swedish Disability Rights Federation. The report is a contribution to their parallel reporting to Sweden's review at the 30th session of the UN Committee on the Rights of Persons Disabilities.

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Summary

The following report provides an assessment of Sweden's compliance with the Convention on the Rights of Persons with Disabilities [hereinafter the CRPD][1] concerning access to justice for persons with disabilities. The report will serve as a resource for the Swedish Disability Rights Federation *(Funktionsrätt Sverige)* in their parallel reporting prior to Sweden's 2024 examination by the Committee on the Rights of Persons with Disabilities.

The report critically examines the alignment of Swedish legislation, policies and practices with the international standards outlined in the CRPD. The report identifies key barriers which impede access to justice for persons with disabilities in Sweden.

The report identifies several issues regarding access to justice in relation to persons with disabilities *as victims of crime and as accused of crime.* Studies and reports show that persons with disabilities currently do not have effective access to the Swedish justice systems and face barriers in terms of lack of procedural and age-appropriate accommodations, not being considered credible witnesses and not receiving adequate support during legal proceedings.

Hate crimes against persons with disabilities are not covered by the Swedish hate crime legislation. This is an illustrative example of Sweden's reluctance to undertake legislative efforts to implement the CRPD.

Furthermore, there is a lack of knowledge and competence about persons with disabilities and their rights among judicial personnel. In addition, recent statistics regarding the work of Swedish authorities show that a majority of Sweden's district courts have not participated in awareness-raising activities on the national goal for disability policy, which is linked to the CRPD, in the last twelve months.

[1] Convention on the Rights of Persons with Disabilities (CRPD). Adopted 13 December 2006. Entered into force in Sweden 14 January 2008. 2515 UNTS 3.

Specifically, in order for persons with disabilities to be guaranteed access to justice in the *criminal justice system* we recommend the following:

- Ensure effective and recurring training of personnel in the justice system in order to increase the knowledge about persons with disabilities and their rights, including knowledge about violence against persons with disabilities.

- Develop the methodological support on the interviewing and questioning of persons with disabilities, taking into account various disabilities.

- Amend the Swedish hate crime legislation in order for crimes against persons with disabilities to be recognised as hate crimes.

- Review the Swedish criminal law procedure in order to ensure that judicial authorities make procedural and age-appropriate accommodations when persons with disabilities take part in proceedings.

The report goes on to identify key barriers in the *Swedish administrative system,* highlighting the significant decrease of access to personal assistance connected to the view of such assistance as a cost rather than an investment. Furthermore, the report addresses the Swedish Social Insurance Agency's *(Försäkringskassan)* failure to conduct correct and fair assessments, leading to decisions that fail to fulfill the rights and meet the needs of persons with disabilities. Reports indicate that administrative court rulings contribute to the high rejection rates by the Agency, as the courts rule in favour of authorities in nine out of ten cases. Persons with disabilities are therefore likely to experience that they never stood a chance to begin with, and that they were never given adequate access to justice even in the preliminary stages.

Moreover, the report notes that the CRPD is not sufficiently taken into account in court decisions; even when the Convention is explicitly referred to by the complainant.

The courts appear to also be unduly restrictive in their interpretation of national legislation on supports such as personal assistance. The narrow interpretations of these regulations create significant obstacles for individuals seeking to access justice. This is especially troubling for persons with disabilities, as these processes usually regard the need for fundamentally important services or support.

Additionally, authorities' rejections often compel people to resort to filing a case with the administrative court, which is often costly as legal representation is not cheap and there currently are no effective systems in place to relieve individuals of this financial burden. In addition, a mentioned above, the outcome of the process is likely to be that the rejection is confirmed.

Specifically, in order for persons with disabilities to be guaranteed access to justice in *the administrative system* we recommend the following:

- Incorporate the CRPD into Swedish legislation.

- Introduce rules that give individuals the right to reimbursement for legal representation costs in a successful court case against the state.

- Expand the system of public counsel to encompass a broader range of case types (particularly those of importance to an individual's fundamental well-being and life circumstances).

- Comprehensively review the Swedish Legal Aid Act (1996:1619) (*Rättshjälpslag 1996:1619)* to increase the income threshold and adopt a more generous assessment of the “needs” requirement.

- Increase resource allocation as authorities need sufficient resources to perform their tasks correctly and efficiently.

- Review and clarify the laws and guidelines that are the basis of authority decisions, to ensure that laws are interpreted and applied correctly, fairly and as intended by the legislature.

- Include persons with disabilities and other affected groups in discussions and decision-making processes that affect them.

- Review and reform the personal assistance framework to ensure that it meets the requirements of the CRPD, guarantees of legal certainty, equality before the law and the requirements of the individuals concerned.

The report offers the aforementioned recommendations to overcome the barriers identified in the criminal and administrative system. Together with the feedback by the Committee on the Rights of Persons with Disabilities in the upcoming review, this report will hopefully contribute to Sweden's future compliance with the CRPD.

Foreword

We are pleased to present the report "From Commitment to Reality: A Critical Assessment of Sweden's Compliance with the CRPD on Access to Justice", with the hope that it will serve as a catalyst for positive change for persons with disabilities.

We would like to thank the Swedish Disability Rights Federation for including us in their work for inclusivity and social justice for persons with disabilities. We would also like to extend our appreciation to our supervisor Anna Bruce, whose encouraging sentiments and expertise on the subject have been of great help in shaping the report. We are honoured to have been able to contribute through this commission.

The following report is a collective effort, reflecting the dedication of many working towards an inclusive and equal society. We hope that it will inspire continued dialogue and action in pursuit of the rights and dignity of all individuals, and that it will prove an important asset for the review next year. The authors are grateful to Måns Olsson, Intern at the Raoul Wallenberg Institute of Human Rights, for assistance with editing this report.

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1 Introduction

1.1 Background

Upon signing the Convention on the Rights of Persons with Disabilities [hereinafter the CRPD or the Convention][2] in 2007, Sweden pledged to uphold the dignity and rights of all individuals with disabilities. Despite this, a myriad of challenges persists in the pursuit of asserting rights, even fourteen years later.

Article 13 of the CRPD states that all States Parties to the Convention shall "ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations". The second paragraph obliges States Parties to "promote appropriate training for those working in the field of administration of justice, including police and prison staff."

By adopting the Convention, Sweden has committed to ensure effective access to justice for persons with disabilities. The obligation is further reinforced by Goal 16 of the 2030 Agenda for Sustainable Development [3] and since 2020, by the UN's Special Rapporteur's International Principles and Guidelines on Access to Justice for Persons with Disabilities.[4]

Despite these obligations, Sweden has received criticism through individual complaints submitted to the Committee on the Rights of Persons with Disabilities [hereinafter the CRPD Committee] but has consistently failed to follow the given recommendations. A known example is the case of Richard Sahlin v. Sweden, in

[2] Convention on the Rights of Persons with Disabilities (CRPD). Adopted 13 December 2006. Entered into force in Sweden 14 January 2008. 2515 UNTS 3.
[3] United Nations General Assembly, '*Transforming our world: the 2030 Agenda for Sustainable Development*', 2015/A/RES/70/1, 25 September 2015, p. 25.
[4] Office of the High Commissioner for Human Rights, *International Principles and Guidelines on Access to Justice for Persons with Disabilities*, August 2020 [hereinafter OHCHR Principles and Guidelines 2020].

which Sweden was advised to reimburse the claimant for their legal expenses but decided against it.[5]

In January 2022, Sweden established the Institute for Human Rights (*Institutet för mänskliga rättigheter*)[6] to independently promote, protect and monitor human rights and oversee the State's adherence to Article 33(2) of the Convention. However, particularly as the institute does not have the authority to receive individual complaints or represent individuals in court, it is unclear what their role will be in relation to access to justice.[7]

Sweden faces many challenges in fulfilling its obligations under the Convention. Concerns have been raised by various stakeholders, including researchers like Sebastian Wejedal, regarding the economic and legal barriers that individuals with disabilities face in accessing justice.[8] These challenges indicate an immediate need for action to safeguard the rights and access to justice for persons with disabilities.

1.2 Purpose of the Report

The report seeks to provide a thorough assessment of the compatibility of Sweden's legal and practical framework with the stipulations of the CRPD, focusing predominantly on access to justice for persons with disabilities. The evaluation is based on the provisions articulated in Article 13 and Article 4 of the CRPD, alongside the International Principles and Guidelines Concerning Access to Justice for Persons with Disabilities.[9]

The upcoming examination by the CRPD Committee in 2024 presents a timely opportunity for Sweden to reflect on its progress and challenges in actualising the

[5] Committee on the Rights of Persons with Disabilities: *Richard Sahlin v. Sweden,* No. 45/2018, 2018. This case will not be further delved into as it primarily concerns discrimination in relation to Article 5 of the Convention.
[6] The purpose of the Swedish Institute for Human Rights is to promote and protect human rights in Sweden.
[7] Act (2021:642) on the establishment of the Institute for human rights *(Lag (2021:642) om Institutet för mänskliga rättigheter)*, 17 June 2021, section 2.
[8] See Chapters 3 and 4.
[9] OHCHR Principles and Guidelines 2020.

Convention's obligations. It also provides a platform for dialogue and engagement with the international community on the best practices and strategies to overcome existing barriers to access to justice for persons with disabilities.

1.3 Method and Material of the Report

As the report includes the interpretation of international law, the rules of interpretation as outlined in the Vienna Convention on the Law of Treaties [hereinafter VCLT] are applied.[10] Given the broad and general nature of the rights outlined in the Convention, the General comments provided by the Committee, albeit not legally binding, serve as guidance to identify key aspects pertaining to access to justice. Additional guidance is provided in the International Principles and Guidelines on Access to Justice for Persons with Disabilities, issued by the Office of the High Commissioner for Human Rights [hereinafter the OHCHR]. Although not of binding nature, the document serves as a practical tool for States to guarantee equal access to justice for individuals with disabilities. The document outlines ten principles, each accompanied by detailed directives for implementation.[11] Examples of principles that the report touches upon include principle 6 on the right to free or affordable legal assistance, principle 8 on the right to report complaints and initiate legal proceedings and principle 10 on training programmes for everyone working in the justice system.[12]

1.4 Scope and Delimitations of the Report

The scope of the investigation will be strictly confined to Article 4 on General Obligations and Article 13 on Access to Justice. Furthermore, the International Guidelines and Principles on Access to Justice for Persons with Disabilities presented by the OHCHR offer guidance in the implementation of aforementioned articles.

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[10] Vienna Convention on the Law of Treaties (VCLT). Adopted 23 May 1969. Entered into force in Sweden 27 January 1980. 1155 UNTS 331. Article 31 and 32 VCLT for the general rule and supplementary means of interpretation, respectively.
[11] OHCHR Principles and Guidelines 2020.
[12] Ibid, p. 11.

The strict focus on Articles 4 and 13 will allow insight into their implications. To maintain a sharp focus on the barriers identified in relation to access to justice, other articles in the Convention, although potentially relevant, will not be further discussed. The delimitation ensures a thorough understanding of the articles, while preventing the report from becoming diffuse.

Regarding the issues identified in relation to access to justice in the criminal justice system, the focus of the report is on the legal process and the lack of knowledge among judicial personnel. The report does not for example address conditions in Swedish detention centres and prisons for persons with disabilities, or the question of criminal liability.

In the chapter about access to justice in the administrative system, the analysis is limited to exploring the work of the Swedish Social Insurance Agency and its impact on persons with disabilities in light of Article 13 of the CRPD. The choice to focus on the Social Insurance Agency is based on the fact that the shortcomings in their methods, working models and decision-making processes are considered to have a severe impact in the lives of persons with disabilities. The Social Insurance Agency is often the first agency that people with disabilities interact with, making its role critical in ensuring justice and support. Other aspects or articles of the CRPD, as well as the work of other authorities, may be relevant but fall outside the scope of this report.

Additionally, relating to the assessments of the administrative law system, focus has been on the administrative courts interpretations and on issues deriving from high legal representation costs. The latter is only examined through the lens of administrative law, as this is the area of law that persons with disabilities mostly come into contact with and also where many in civil society have expressed major concerns.[13] While it is important to acknowledge that issues relating to high legal costs also exist within the civil and criminal law systems, we have intentionally

[13] The authors base this conclusion on participation in the meetings by the Swedish Disability Rights Federation to prepare for their parallel report to the CRPD Committee.

limited our focus to administrative law due to the frequency of issues that have been shown to arise in this area.

The report does not cover the provisions of Swedish civil law regarding discrimination against persons with disabilities, as this primarily concerns Article 5 on equality and non-discrimination, which is not the focus of the report.

1.5 Structure of the Report

Following the introductory chapter, the report has four distinct chapters each designed to offer insight into various aspects of access to justice. In the second chapter, an overview of the CRPD is presented to set the foundation for the subsequent analysis. The chapter introduces the concept of disability and delves into a detailed examination of Article 4 concerning general obligations, distinguishing between progressive and immediate obligations. Furthermore, it explores Article 13 on access to justice and what the obligation flowing from this article entails in practice.

Chapter 3 contains an assessment of access to justice for persons with disabilities within Sweden's criminal justice system. The focus is both on individuals accused of crimes and victims of crimes, identifying the barriers they encounter and assessing the level of alignment with the CRPD.

Chapter 4 explores the administrative law system in Sweden, focusing on the decision-making processes of the Social Insurance Agency and the administrative courts. The chapter goes on to examine the accessibility of legal aid as well as its financial implications for persons with disabilities, evaluating how these factors hinder access to justice.

The fifth and final chapter analyses the findings from previous chapters to provide an assessment of Sweden's compatibility with the CRPD's stipulations on access to justice. Recommendations are then proposed on how Sweden can enhance access to justice for persons with disabilities, drawing on the gaps identified in the preceding analysis. This chapter concludes the report and aims to offer actionable insights that

could be adopted to foster an inclusive justice system in Sweden, thereby promoting adherence to the CRPD.

2 An Overview of the Convention on the Rights of Persons with Disabilities

2.1 Introduction to the CRPD and its understanding of disability

The CRPD was adopted by the United Nations General Assembly on December 13th, 2006. The historic event marked the culmination of decades of work by the United Nations to change the way society perceives and interacts with persons with disabilities. In contrast to the perspective that persons with disabilities are objects of charity and medical care, the Convention recognises persons with disabilities as individuals with the ability to assert their rights, make informed choices and actively participate in society.

Article 1 of the Convention states that its purpose is to ensure "full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities". While the Convention omits a clear definition for the term "disability", the article states that persons with disabilities "*include* those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." [14] The article is a reflection of what is stated in the preamble of the Convention, recognising disability as an "evolving concept".[15]

2.2 On Article 4 – General Obligations

> 1. *States Parties undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.*

[14] Author's emphasis to underscore that the list provided in the article is not exhaustive.
[15] Preamble e) CRPD.

Article 4 is central to understanding the obligations States Parties have accepted through the ratification of the Convention, as it outlines the breadth and legal character of the obligations. The content of the article is connected to the mandatory character of treaty-derived norms and their implementation on a domestic level. Article 26 of the VCLT states that every treaty in force is binding to the parties and must be upheld in good faith. Furthermore, Article 27 states that a party cannot invoke the provisions of its internal law to excuse their failure in upholding a treaty. Under international law, States that ratify a treaty must adjust their legislation to its stipulations and are expected to amend or abolish any regulations that conflict with it. It can therefore be said that the obligation of Sweden to enforce the CRPD derives from the core principles of international law, codified in the VCLT.[16]

Article 4 of the CRPD strengthens obligations by demanding that States fully actualise the rights enshrined in the Convention "without discrimination of any kind on the basis of disability" and providing a comprehensive list of detailed obligations to achieve this objective. The obligation to "ensure and promote" has immediate implications and is both negative and positive in nature. States Parties to the Convention must refrain from violating the rights outlined in the Convention, but are simultaneously required to adopt suitable measures to fulfil their obligations.[17] Akin to other human rights treaties, three different responsibilities can be identified in the Convention: (a) the obligation to *respect*, (b) the obligation to *protect*, and (c) the obligation to *fulfil*.[18] The latter two duties are best reflected in Article 4(1)(a) of the CRPD.

To this end, State Parties undertake:

(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention.

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[16] Della Fina, V. (2017) 'Article 4 [General Obligations]' in Della Fina, V., Cera, R., Palmisano, G. (eds.), *The United Nations Convention on the Rights of Persons with Disabilities – A Commentary*, Springer [hereinafter Della Fina 2017], p. 141. See also the rules of interpretation in Article 31 and 32 VCLT.

[17] Ibid. p. 142.

[18] Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Economic, Social and Cultural Rights*, Fact Sheet No. 33, 2008, p. 11.

The provision establishes a positive obligation for States to take "appropriate" measures, which encompass a range of actions such as legislative, administrative, financial, judicial, and educational measures.[19] Additionally, under this provision, States Parties are obligated to review their national laws, regulations, and practices to align them with the CRPD and to guarantee that all new laws adhere to its rights and principles.[20] In this regard, the CRPD Committee has suggested national plans as an effective method.[21] While Sweden currently has a national goal for their disability policy, this does not provide any details on ensuring access to justice for persons with disabilities.[22]

The realisation of the Convention relies heavily on decision-making systems, and States must confirm that norms are adhered to within their institutions. Through the provision in Article 4(1)(a), States Parties undertake to implement all suitable administrative measures. The commitment includes all systems and procedures used by public bodies, including processes and decisions through which these rights are realised for the individual. Consequently, all processes must be capable of fulfilling the rights protected in various articles throughout the Convention.[23] The legal system plays a vital role as the final line of defence for individuals when their rights are not upheld, and is a central element of every right in the Convention. Article 13, which

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[19] The "appropriateness" of the measures taken is not always apparent, and therefore States Parties should report not only on the measures taken but also the basis on which they have deemed them as appropriate. The Committee, however, underscores that the final assessment of whether appropriate measures have been taken remains within the purview of the Committee. See Committee on Economic, Social and Cultural Rights: *General Comment No. 3, The Nature of States Parties Obligations*, 14 December 1990 [hereinafter CESCR, General Comment No. 3 1990], para. 4.

[20] Broderick, A. (2018) 'Article 4 General Obligations' in Bantekas, I., Ashley Stein, M., Anastasiou, D. (eds.), *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, Oxford University Press [hereinafter Broderick 2018], p. 119.

[21] CRPD Committee, Concluding observations on the initial report of Austria (2012), para. 4. See also Flynn, E. (2011) *From rhetoric to action: implementing the UN Convention on the rights of persons with disabilities*, Cambridge University Press, p. 107 in which Flynn uses South Africa as an example. While elements of the Convention have been incorporated into South African legislation, the government decided on an implementation plan through a National Disability Policy. The policy would have a special focus on Article 13 in order to improve access to justice for women and children with disabilities relating to domestic violence issues.

[22] Regeringen (*Government*) (2016) National objective and focus for the disability policy (*Nationellt mål och inriktning för funktionshinderspolitiken*), Government Bill, Prop. 2016/17:188 [hereinafter Government Bill 2016/17:188]. A strategy for *oversight* of implementation was adopted in 2021. Ministry of Health and Social Affairs (*Socialdepartementet*) (2021) Strategy for systematic follow-up of disability policy 2021–2031 (*Strategi för systematisk uppföljning av funktionshinderspolitiken under 2021–2031*), S2021/06595, 29 September 2021.

[23] Further discussed in chapter 4.

addresses access to justice[24], explicitly calls for equal access to the legal system for all persons with disabilities. This commitment is broad in scope, including all legal proceedings, even extending to processes otherwise categorised as administrative.[25]

Another positive obligation in Article 4 is found in para. 1(b), requiring States Parties to revise or abolish any laws or regulations that contradict the Convention:

> *To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.*

The provision in Article 4(1)(b) corresponds with Article 5(1) CRPD, prohibiting domestic legislatures from enacting or maintaining laws that discriminate against persons with disabilities. [26] In this regard, States Parties must adopt a spectrum of positive measures to ensure that various discrimination forms, including the denial of reasonable accommodation, are recognised in national legislation.[27] Furthermore, States must make sure that no existing laws inhibit the obligation to eliminate discrimination in its entirety.[28] Even when laws have been abolished or modified in line with the provision, monitoring mechanisms should be put in place to ensure enjoyment in practice.[29] The measures in the provision are therefore not limited to legislative measures.[30]

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[24] Further discussed in section 2.3.

[25] This broad application is confirmed in the preparatory works of the CRPD. See e.g. Ad Hoc Committee, Daily Summary of discussions at the seventh session of UN Convention on the Rights of Persons with Disabilities, Volume 8, #3, 18 January 2006.

[26] Article 5 is related to Article 13 in that access to justice, as stated in the Article, must be provided "on an equal basis with others". As the discussion on equality and non-discrimination is beyond the scope of the report, it will not be included. The authors, however, emphasise the link between these articles.

[27] A discussion on reasonable accommodation will not be held as the requirement in Article 13 for "accommodations" is stronger, in that it is not subjected to a requirement of "reasonableness".

[28] Broderick 2018, p. 120.

[29] See Article 33 on the obligation to "maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention." See also Principle 9 in the OHCHR Principles and Guidelines 2020, p. 25. The OHCHR suggests the establishment of institutionally, financially and politically independent monitoring mechanisms and promoting exchange between said mechanisms to identify challenges.

[30] Broderick 2018, p. 121. Shadow reports such as the present report is an example of a way to alert the Committee to ongoing discriminatory practices. It should, however, be noted that shadow reports are not a state obligation.

Lastly, Article 4 para. 1(i) calls for the education of professionals and staff working with persons with disabilities:

> *To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.*

The paragraph is of importance in relation to Article 13 (2), stating the obligation for States Parties to "promote appropriate training for those working in the field of administration of justice, including police and prison staff". The objective of Article 4(1)(i) is to elevate the quality of service and ensure that the assistance for persons with disabilities resonates with their internationally recognised rights. The obligation intends to broaden the understanding of the rights in the Convention among professionals such as medical staff, social operators and teachers.[31]

The promotion of training programmes is also included in the International Principles and Guidelines on Access to Justice for Persons with Disabilities as principle 10. The guidelines highlight the importance of educating many professionals, ranging from forensic experts to youth detention staff.[32]

2.2.1 Immediate and Progressive Obligations

The obligations of States Parties can manifest in either a progressive or immediate form, contingent upon the nature of the rights associated with them. Civil and political rights are absolute and immediately applicable, while economic, social and cultural rights are progressively applicable.[33] However, the Convention reaffirms in its preamble the "universality, indivisibility, interdependence and interrelatedness of

[31] Della Fina 2017, pp. 146-147.
[32] OHCHR Principles and Guidelines 2020, p. 26.
[33] Committee on the Rights of Persons with Disabilities: *General comment No. 5 on living independently and being included in the community*, 27 October 2017, para. 39.

all human rights and fundamental freedoms"[34], making it evident that the realisation of rights in both categories are directly dependent on each other.

Article 4 (2) of the CRPD makes the aforementioned distinction and states that "each State Party undertakes to take measures to the *maximum of its available resources* and, where needed, within the framework of international cooperation, with a view to *achieving progressively* the full realisation of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law."[35] It is important to highlight that the distinction revealed in Article 4 (2) in the CRPD was not set up to pass judgement on the superiority of one category over the other. The purpose of the differentiation is to acknowledge which rights that can take an immediate form, and which rights that require progressive realisation due to resource constraints.[36]

The article acknowledges that socio-economic rights can be realised progressively, aiming for their full realisation over time. The OHCHR states that the opportunity for progressive realisation recognises the many challenges that come with realising an obligation, not wanting to overburden states and other duty-bearers.[37] The Committee on Economic, Social and Cultural Rights [Hereinafter the CESCR Committee] provides valuable insight in this regard, underlining that progressive realisation does not render the obligation to act meaningless. On the contrary, the Committee maintains that it necessitates States to move "as expeditiously and effectively as possible"[38] and that the measures taken by the States should be "deliberate, concrete and targeted".[39] The obligation to undertake measures to the maximum of its available resources is clarified by the Committee in that governments must increase their effort beyond refraining from taking measures that negatively affect persons with disabilities. For disadvantaged groups such as persons with disabilities, the obligation transforms into proactive measures to mitigate structural advantages and

[34] Preamble c) CRPD.
[35] Emphasis added.
[36] Della Fina 2017, p. 149.
[37] Office of the High Commissioner for Human Rights: *Signing of the Convention on the Rights of Persons with Disabilities and its Optional Protocol. Opening Address — High Level Dialogue: From Vision to Action: The Road to Implementation of the Convention*, 30 March 2007, pp. 5-6.
[38] CESCR, General Comment No. 3 1990, para 9.
[39] Ibid, para. 2.

provide persons with disabilities with appropriate preferential treatment. When resources are limited, the obligation becomes more crucial rather than less.[40]

In addition, as expressly stated in the final sentence of Article 4(2), obligations related to economic, social, and cultural rights can, in certain circumstances, adopt an immediate form. The progressive realisation of certain rights must not compromise the Convention's immediately applicable commitments.[41] In such cases, an obligation ceases to be progressive, and the state is compelled to take immediate, pertinent, and effective actions.

2.3 On Article 13 – Access to Justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Article 13 recognises the inherent challenges that persons with disabilities may face within the legal system and seeks to promote inclusivity and equal access to justice. The article embodies a wider framework within international human rights law, which seeks to uphold the dignity, rights and equal participation of all individuals within legal systems. Article 13 is an extension of Articles 8 and 10 in the Universal Declaration of Human Rights[42] stating "the right to an effective remedy" and that each person is "entitled in full equality to a fair and public hearing", respectively.

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[40] Committee on Economic, Social and Cultural Rights: *General Comment No. 5, Persons with Disabilities,* 9 December 1994, para. 10.
[41] Committee on the Rights of Persons with Disabilities: *General Comment No. 4 on the right to inclusive education*, 25 November 2016, para. 40.
[42] United Nations General Assembly, '*Universal Declaration of Human Rights'*, 217 A (III), 10 December 1948.

The right to a remedy is considered effective if it is (a) adjudicatory, and (b) successfully adapted to the individual's needs. One can argue that a similar interpretation can be applied in the context of disability; effective access to justice cannot be met until the individual is accommodated.[43] Flynn argues that the scope of article 13 and the phrase "access to justice" is not limited to the formal legal system but all "systems, procedures, information, and locations used in the administration of justice".[44] This broad definition would encapsulate all scenarios in which persons with disabilities make claims about their rights.

2.3.1 Effective Access to Justice

In order to facilitate effective access to justice, valuable insight is provided through the Concluding observations of the CRPD Committee. The need for legal aid and representation is, for example, accorded utmost importance.[45] In its State Report, China called attention to their establishment of legal aid service centres for persons with disabilities. Following the evaluation of said establishments, the Committee pointed out insufficient resources and that they do not operate independently. The Committee called on the Chinese government to direct all necessary human and financial resources to the legal aid service centres.[46] The obligation was further heightened in the Committee's Concluding observations on Mexico, urging the State to provide legal support to persons with disabilities who are institutionalised or living in poverty.[47]

The need for legal aid is highlighted once more in the Concluding observations on New Zealand, in which the Committee instructed the State to review its method in evaluating compensation to ensure that sufficient legal aid is available to all

[43] Flynn, E. (2018) 'Article 13 Access to Justice' in Bantekas, I., Ashley Stein, M., Anastasiou, D. (eds.), *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, Oxford University Press [hereinafter Flynn 2018], pp. 390-391.
[44] Flynn 2018, p. 282.
[45] For legal representation and legal aid in a Swedish context, see Chapter 4.
[46] Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report of China*, 15 October 2012 [hereinafter CRPD Committee, Concluding observations on the initial report of China 2012], paras. 23-24.
[47] Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report of Mexico,* 27 October 2014, para. 26.

claimants.[48] What sets this apart, however, is the context. Although Article 13 (1) mandates access to "all legal proceedings, including at investigative and preliminary stages", the list merely serves as guidance and is not exhaustive. In the aforementioned Concluding observations, the discussion on access to justice was centred in non-judicial proceedings in relation to accident compensation claims.[49] The discussion of legal aid in a context outside of a court of law confirms that access to justice is invoked from the instance persons with disabilities engage with public or private entities to assert their rights.[50]

Furthermore, the Committee has expressed concern regarding the lack of accommodation in both criminal and civil procedure laws in China, noting that it is not provided on an equal basis and that assigned public defenders regularly mistreat persons with disabilities.[51] Bearing this in mind, the Committee instructed China to review its civil and criminal procedural laws to ensure appropriate accommodations for persons with disabilities.[52] The lack of procedural accommodation was also brought up in the Committee's Concluding observations on Australia, advising the State to assess whether persons with disabilities were given procedural guarantees equal to those of others.[53] Additionally, they were urged to review whether persons with disabilities currently held in prisons or other institutions had the necessary support and accommodation to defend themselves against criminal charges.[54]

The adoption of appropriate legislative and administrative measures, as stated in Article 4 (a), sets the groundwork for realising the objectives in Article 13 (1). This entails the establishment of a robust legal framework to make justice accessible for persons with disabilities. By formulating and enforcing laws and administrative protocols in tune with the needs and rights of persons with disabilities, states make significant progress in delivering on the promises of Article 13. Moreover, the

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[48] Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report of New Zealand*, 31 October 2014, paras. 23-24.
[49] Ibid.
[50] Chapter 4 illustrates the importance of this breath of scope of Article 13.
[51] CRPD Committee, Concluding observations on the initial report of China 2012, para. 23.
[52] Ibid, para. 24.
[53] Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report of Australia*, 12 September 2013, para. 29.
[54] Ibid, para. 30.

obligation to modify or abolish existing discriminatory laws and practices under Article 4(b) means eliminating barriers that impede access to justice for persons with disabilities. This proactive approach not only eradicates legal hurdles but also combats prejudiced attitudes and practices that may exist within the legal system, thereby fostering a more equitable and accessible judicial environment.

2.3.2 Promote Appropriate Training for Those Working in the Field of Justice

Article 13 (2) CRPD states that States must provide training to all individuals "working in the field of administration of justice, including police and prison staff". The emphasis on training, as outlined in Article 4 (i), provides a basis for meeting the substantial training demand outlined in Article 13 (2), thus contributing to a more informed and fair justice system in line with the principles of the CRPD. Through this connection, persons with disabilities can navigate the justice system with better assistance and understanding from concerned professionals.

A majority of the Committee's Concluding observations have centred on the need for more training across a broad spectrum of professionals.[55] In the Concluding observations on El Salvador, the Committee suggested that the State develop training programmes for all in the legal system but also social and healthcare workers, thus broadening the scope of "those working in the field of administration of justice".[56] However, a strong emphasis has been placed on police officers, prison and court staff, lawyers and the judiciary in other Concluding observations.[57]

The emphasis on in-depth training is echoed in the shadow reports submitted to the Committee by various civil society organisations representing persons with disabilities. A notable example is the shadow report submitted by the Peruvian National Confederation of People with Disabilities. In the report, the organisation claims that persons with disabilities are not given appropriate treatment as legal

[55] Flynn 2018, p. 401.
[56] CRPD Committee, Concluding observations on the initial report of El Salvador (2013), para 30 (c).
[57] Flynn 2018, p. 401.

proceedings involving them are far too slow, and that judges and prison staff lack the proper training to effectively handle their needs. Although not all shadow reports are reflected in the Committee's Concluding observations, they provide substantial information for when the Committee engages with States Parties.[58]

[58] Ibid., Ibid.

3 Access to Justice for Persons with Disabilities in the Swedish Criminal Justice System

3.1 Persons with Disabilities as Victims of Crime

3.1.1 Procedural and Age-appropriate Accommodations

Persons with intellectual disabilities do not have access to Sweden's justice system on an equal basis with others, according to a study conducted by Kuosmanen and Starke.[59] This applies in particular to people with intellectual disabilities who are victims of crime. The lack of access to justice is attributed to the absence of clear policies and procedures at agency level for people working with victims of crime with intellectual disabilities, according to several of the professionals participating in the study. Furthermore, the professionals questioned whether Sweden's legal system and judicial procedures "treated all citizens equally and were equally accessible to all".[60] This "exclusion" may be connected to the requirement in the Swedish justice system that victims, when describing a crime, must provide a statement that is "clear, coherent, and detailed", one participant suggested.[61] Since this can be challenging for persons with intellectual disabilities, authorities and courts often do not consider them to be credible witnesses. In addition, the legal system's requirement for people to be able to repeat information almost identically on several occasions poses challenges for people with intellectual disabilities. The inability to consider persons with intellectual disabilities as credible witnesses is attributed by Kuosmanen and Starke to both a lack of awareness about disability and a reluctance to develop more adequate

[59] The study explores Swedish professionals' experiences of access to Sweden's justice system for individuals with intellectual disability who are involved in prostitution and prostitution-like activities and are victims of crime. It was conducted through thirteen interviews with professionals working for the police, public prosecutor's office, social services or habilitation services. Kuosmanen, J. and Starke, M. (2015) 'Access to Sweden's Legal System of Crime Victims With Intellectual Disability Involved in Prostitution Activities', *Journal of policy and practice in intellectual disabilities*, Volume 12, Issue 4, p. 255-265 [hereinafter Kuosmanen and Starke 2015].
[60] Ibid, p. 258.
[61] Ibid.,Ibid.

methods in terms of assessing the credibility of statements given by persons with intellectual disabilities.[62]

According to research by Lainpelto, the requirement of testimonies to be clear, coherent, and detailed have also been applied to children with neuropsychiatric disabilities, in a way that obstructs access to justice.[63] Following a series of precedents from the Swedish Supreme Court (*Högsta domstolen*), dating back to the 1980s, Swedish courts have long turned to the Statement Reality Analysis (SRA) and Criterion-Based Content Analysis (CBCA) frameworks as their primary tools for assessing the credibility of children's statements. Testimonies are often expected to meet requirements such as "richness of detail, contextual embedding, unusual details, subjective experience, and reproduction of speech". Furthermore, statements should be, as mentioned above, "coherent, clear [and] detailed". In a study of court cases concerning sexual abuse allegations against children with neuropsychiatric disabilities, Swedish courts used these criteria to evaluate the credibility of the children's statements in 12 out of 14 cases, which indicates that testimonies from children with neuropsychiatric disabilities are expected to meet the same requirements as children without neuropsychiatric disabilities. "Richness of detail" was mentioned in 10 out of the 14 cases studies and in 6 out of these 10 cases, the testimonies were considered insufficient. Only in one of these cases did the court mention the neuropsychiatric disability as a possible reason for the absence of details (the defendant was still acquitted). Hence, according to the research of Lainpelto, it appears that courts do not factor in neuropsychiatric disabilities when identifying deficiencies related to the criteria mentioned above. Instead, Lainpelto finds that they appear to focus on the motives behind the allegations and the relationship between the child and the person they accuse.[64]

Furthermore, in one district court case concerning a child with autism, the defendant was found guilty. However, in the court of appeal's assessment of the same case, the

[62] Ibid, s. 258-261.
[63] Lainpelto, K. (2015) 'Evidential Difficulties in Criminal Proceedings Concerning Alleged Child Sexual Abuse against Children with Neuropshyciatric Disorders' [hereinafter Lainpelto 2015] in Mahmoudi, S., Leviner, P., Kaldal, A., Lainpleto, K. (eds.), *Child-friendly Justice: A Quarter of a Century of the UN Convention on the Rights of the Child*, Brill Academic Publishers.
[64] Lainpelto 2015, p. 213-214.

court stated that the victim "is during a predominant part of the interviews hiding his face and is sparing of words" and that his "statement contains few details and cannot be viewed as spontaneously related". The defendant was acquitted by the court of appeal.[65] In some cases, the court discussed the behaviour of the child without addressing the possible impact of the disability on the child's behaviour. For example, in a case involving a child with an intellectual disability, the district court considered the child's lack of emotions to be "peculiar".[66]

Current methods for both assessing and meeting the needs of children with disabilities who are victims of crime are often not effective. According to the Swedish Agency for Participation (*Myndigheten för delaktighet*), there is a lack of knowledge about efficient methods of interrogation, when using communication support, in relation to children with for example cognitive or intellectual disabilities.[67] According to persons working with interviewing crime victims and witnesses, in order to resolve the issues identified above, there is a need to develop interviewing techniques for persons with intellectual disabilities that would ensure them the same legal protection as others.[68] The lack of interviewing techniques developed for persons with intellectual disabilities is also evident in the legal guidance for the Swedish Prosecution Authority *(Åklagarmyndigheten).* Although it provides some guidance of what to consider when interviewing adults with disabilities, such as using clear instructions and avoiding negations, the authority states that there is not any "method" of questioning that has been developed specifically for adults with disabilities.[69] The guidance also states that, during the development of the guidance, it became clear that there was no research or accepted practice regarding the questioning of adults with "invisible" disabilities (autism or high-functioning autism, ADHD and ADD, and intellectual

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[65] Ibid., pp. 212-213.
[66] Ibid., p. 212.
[67] Swedish Agency for Participation (*Myndigheten för delaktighet*) (2023) Opinion on the European Commission's proposal for a directive amending Directive 2012/29/EU (Victims' Rights Directive) (*Yttrande över EU-kommissionens förslag till direktiv om ändring av direktiv 2012/29/EU (Brottsofferdirektivet)*), 2023/0284 [hereinafter Swedish Agency for Participation 2023/0284], p. 3-4. The Swedish Agency for Participation is an expert agency that promotes work with the implementation of disability policy. They develop and spread information about obstacles to participation and support public-sector bodies.
[68] Kuosmanen and Starke 2015, p. 261.
[69] Swedish Prosecution Authority (*Åklagarmyndigheten*) (2022) Child interrogation, etc. - also something about questioning adults with invisible disabilities (*Barnförhör m.m. - även något om förhör med vuxna med osynliga funktionsnedsättningar*), legal guidance 2022:3, pp. 23–26.

disabilities).[70] Furthermore, in connection with a review of the interviewing of children, it was also found that there was a complete lack of methodological support within the Swedish Police Authority *(Polismyndigheten)* and the Swedish Prosecution Authority regarding the interviewing of adults with various forms of invisible disabilities. Moreover, it was found that there had been occasions where the disability had not been accommodated.[71]

The Swedish Agency for Participation concludes that it must be ensured that a person that is being interviewed within the context of a hearing can make themselves understood, regardless of their communication needs.[72] Notwithstanding this, according to the Agency there are still remaining barriers to the investigation and prosecution of crimes against persons with disabilities, which includes accommodating the communication needs of persons with disabilities.[73]

Article 13 CRPD explicitly requires States to provide procedural and age-appropriate accommodations, in order to facilitate persons with disabilities' effective role as direct and indirect participants, including as witnesses, in all legal proceedings. Furthermore, according to Article 4(1)(a) CRPD, States have undertaken to adopt all appropriate legislative, administrative and other measures in order to implement the rights laid down in the Convention. The participants in the study concerning persons with intellectual disabilities by Kuosmanen and Starke noted already back in 2015 that there was a lack of clear policies and procedures at the agency level for people working with victims of crime with intellectual disabilities, which resulted in persons with disabilities not being provided with the procedural accommodations needed for them to be able to effectively communicate. The lack of age-appropriate accommodations was also evident in the study concerning children with neuropsychiatric disabilities by Lainpelto from the same year.

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[70] Ibid., p. 6.
[71] Ibid., p. 4.
[72] Swedish Agency for Participation (*Myndigheten för delaktighet*) (2023) Preventing and combating violence against persons with disabilities - society's knowledge, measures and actions (*Att förebygga och bekämpa våld mot personer med funktionsnedsättning - samhällets kunskap, åtgärder och insatser*), 2023:11 [hereinafter Swedish Agency for Participation 2023:11], p. 47.
[73] Ibid., p. 10.

The Swedish Agency for Participation's report on preventing violence against people with disabilities from 2023, shows that no substantive measures have been taken since the deficiency was identified in 2015, to develop policies on procedural accommodations in judicial proceedings. In its report, the Agency writes that there are still barriers for persons with disabilities, especially regarding the use of communication aids during interrogations.[74] The Agency further notes that the Swedish Police Authority and the Swedish Prosecution Authority's guidance on interviewing children and adults with disabilities states that a communication support may only be used during the "contact building phase" but should be avoided during the "substantial phase" of the interrogation.[75] The guidance also states that there are no interviewing techniques developed especially for adults with disabilities.[76] In addition, as mentioned above, the Agency states that there is currently a lack of knowledge about efficient methods of interrogation of children with, for example, cognitive or intellectual disabilities.[77]

States have a general obligation to adopt all appropriate legislative, administrative and other measures to implement the rights set out in the Convention. However, little to no effort has been made in regards to procedural accommodations, which is especially concerning given that the absence of procedural and age-appropriate accommodations and the serious effects of this absence was identified as early as 2015.

3.1.2 Hate Crime Against Persons with Disabilities

Persons with disabilities currently lack full protection under Swedish hate crime legislation.[78] The legislation on hate crime consists of three provisions: agitation against an ethnic or national group,[79] unlawful discrimination[80] and an "increase in

[74] Ibid., p. 47.
[75] Ibid., p. 38.
[76] Ibid., p. 38.
[77] Swedish Agency for Participation 2023/0284, pp. 3-4.
[78] Hate crime is an umbrella term and includes various crimes that are committed because of a perpetrator's negative attitude towards a person's race, color, national or ethnic origin, religion, sexual orientation, transgender identity or expression or any other similar characteristic.
[79] Swedish Criminal Code 1962:700 (*Brottsbalk (1962:700))*, 21 December 1967, Chapter 16, Section 8.

severity of a punishment" regulation.[81] The last provision states that a crime is to be considered more severe if it has been committed with a hate crime motive. None of the provisions include disability as a prohibited ground.

The Swedish Agency for Participation concludes in their report on exposure to violence among persons with disabilities, that there is a clear correlation between disability and being exposed to physical, psychological and sexual violence in both childhood and adulthood.[82] A greater number of women with disabilities than without disabilities report experiencing physical violence in childhood and in adulthood.[83] More than twice as many men with disabilities as men without disabilities report having experienced sexual violence in adulthood.[84] The increase in risk is more significant for women with disabilities compared to men with disabilities.[85]

Another study examining the experiences of violence among children and young people with disabilities show that any form of disability almost doubled the likelihood of having been exposed to psychological abuse, physical abuse, sexual abuse and bullying.[86] In addition, the risk of sexual exploitation doubled.[87] This situation is further confirmed by a study on safety and bullying in schools across Sweden, which shows that children with neuropsychiatric disabilities are nearly twice as likely to be the victims of frequent harassment.[88]

Besides ensuring effective access to justice according to Article 13 CRPD, Sweden has also under Article 4(1)(a) CRPD agreed to adopt all appropriate legislative, administrative and other measures to implement the rights recognised in the

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[80] Ibid., Chapter 16, Section 9.
[81] Ibid., Chapter 29, Section 2.
[82] Swedish Agency for Participation (*Myndigheten för delaktighet*) (2023) Violence against persons with disabilities - about vulnerability and occurrence of violence (*Våld mot personer med funktionsnedsättning - om utsatthet och förekomst av våld*), 2023:12, p. 31.
[83] Ibid., p. 32.
[84] Ibid., Ibid.
[85]Ibid., p. 31.
[86] Children´s Welfare Foundation Sweden (*Stiftelsen Allmänna Barnhuset*) and Swedish Agency for Participation (*Myndigheten för delaktighet*) (2023) More vulnerable than others – about violence and abuse against children with disabilities (*Mer utsatta än andra – om våld och övergrepp mot barn med funktionsnedsättningar*), 978-91-86759-42-1, p. 32.
[87] Ibid., p. 32.
[88] Friends (2023) Friends report 2023 - bullying and mental health *(Friendsrapporten 2023 - mobbning och psykisk ohälsa*), p. 8.

Convention. The CRPD Committee has expressed that the adoption and enforcement of laws on hate crimes against persons with disabilities is part of access to justice. In relation to Article 13, North Macedonia received the recommendation from the Committee to take measures to amend their criminal law in order for crimes against persons with disabilities to be recognized as hate crimes.[89] Georgia was in relation to Article 13 recommended to establish effective mechanisms to enforce their existing laws on hate crimes against persons with disabilities.[90] Attention was also drawn to the issue of hate crimes by the CRPD Committee in its list of issues prior to submission of the combined second and third periodic reports of Sweden,[91] in which Sweden was asked to provide information about the prohibition of "hate crimes against persons with disabilities, in particular women and girls with disabilities and persons with intellectual or psychosocial disabilities".[92] In its reply to the questions asked by the Committee, Sweden referred to a rule of the Penal Code which states that if the defendant has taken advantage of someone else's defencelessness, this should be taken into account when assessing the severity of an offence. However, the state did not provide any discussion as to why disability is not covered by the hate crime legislation.[93]

Prior to including transgender identity in the hate crime legislation, the Swedish government concluded that due to evidence that transgender people are exposed to crime to a large extent, there were strong reasons to review the law on hate crime in order to ensure the protection of transgender people in criminal law.[94] In light of the above reports on the systemic experiences of violence and bullying among persons

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[89] The Committee recommended the state to "[t]ake measures to amend the criminal law in order for crimes against persons with disabilities to be recognized as hate crimes" (Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report of the former Yugoslav Republic of Macedonia*, 29 October 2018, para. 4 (b)).

[90] The Committee recommended the state to "[e]stablish effective mechanisms to enforce existing laws against hate crimes, in particular online harassment, against persons with disabilities" (Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report of Georgia*, 18 April 2023, para. 28 (f)).

[91] Committee on the Rights of Persons with Disabilities: *List of issues prior to submission of the combined second and third periodic reports of Sweden*, 12 October 2018.

[92] Ministry of Health and Social Affairs (*Socialdepartementet*) (2019) Responses to questions from the UN Committee on the Rights of Persons with Disabilities (*Svar på frågor från FN-kommittén om rättigheter för personer med funktionsnedsättning*), 22 October 2019, p. 5.

[93] Ibid., pp. 5-6.

[94] Regeringen (*Government*) (2017) Extended criminal law protection for transgender persons (*Ett utvidgat straffrättsligt skydd för transpersoner)*, Government Bill, Prop. 2017/18:59, p. 14.

with disabilities, the Swedish government should draw the same conclusion in terms of including disability in the hate crime legislation. The fact that disability is not covered by the hate crime legislation also results in the Swedish National Council for Crime Prevention *(Brottsförebyggande Rådet)*[95] excluding reported crimes where the motive for the crime was disability from the statistics on hate crime.[96]

3.2 Persons with Disabilities as Accused of Crime

The Office of the Chancellor of Justice *(Justitiekanslern)*[97] has in two decisions issued a statement on the responsibility to ensure that the legal process is adapted to persons with disabilities. The first decision, from 2018, concerned a claim for damages against the State for the breach of Articles 6 (right to a fair trial) and 14 (prohibition of discrimination) of the ECHR in a criminal proceeding. In support of his claims, the applicant explained that he has a diagnosed intellectual and communicative disability, which had not been taken into account in all parts of the legal process, resulting in him not being able to fully understand the process. The applicant does not have Swedish as his mother tongue. However, a language interpreter was only present during the trial in the district court the day the applicant was heard. The applicant states that the lack of interpretation meant that he did not understand what was said against him and was unable to ask questions or respond to what was said. The court of appeal's judgement was mainly based on what emerged at the hearing in the district court, which the applicant held that he was not, partly due to inadequate interpretation, able to follow.

The Chancellor of Justice found that there had been no violation of the applicant's right to a fair trial as laid down in Article 6 of the ECHR. According to the Chancellor of Justice, one "important factor" was that neither the applicant himself nor his public defender had brought the attention of the court to the fact that the

[95] The Swedish National Council for Crime Prevention is a knowledge centre for the criminal justice system.
[96] Swedish National Council for Crime Prevention (*Brottsförebyggande rådet*) (2021) Reported hate crimes 2020 - A summary of the cases marked by the police as hate crimes (*Polisanmälda hatbrott 2020 - En sammanställning av de ärenden som hatbrottsmarkerats av polisen*), 2021:17, p. 27.
[97] The Chancellor of Justice acts as the government's ombudsman in the supervision of authorities and civil servants.

defendant had difficulties following the proceeding.[98] Furthermore, the Chancellor emphasized that the defendant had a public defender that looked after his interests and that even though interpretation only occurred during the interrogation of the defendant in the district court, an interpreter was present during the whole proceeding in the court of appeal.[99]

The second decision, from 2020, concerned a claim for damages relating to the conduct of the police and prosecutor during the preliminary investigation and the court proceedings. The applicant was arrested in February 2018 and a first hearing was conducted during which he was informed that he was suspected of, inter alia, preparation of aggravated theft and about his right to a lawyer. The applicant is said to have accepted that the interrogation was held without a lawyer, however, the interrogation was interrupted because the police suspected that he might have a psycho-social disability or be under the influence of drugs. The interrogation was therefore postponed until a lawyer was present. In July 2018, the applicant was sentenced to four and a half years in prison. The judgment stated that according to an examination, the defendant had previously been diagnosed with an autism spectrum disorder, which still appeared to be present. The applicant has in support of his claim for damages stated that although the police suspected during the first interrogation that he had a disability, neither the police nor the prosecutor made sure that he could effectively participate during the legal proceedings. The police and prosecutor had also not provided reasonable accommodation for him during the investigative stage in order for him to understand the process itself and the accusations against him. The lack of accommodations resulted in him not being able to face the accusations in an effective manner, according to the applicant.[100]

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[98] Chancellor of Justice (*Justitiekanslern*), Claims for damages against the state on the basis of a violation of Articles 6 and 14 of the ECHR in criminal proceedings (*Skadeståndsanspråk mot staten med hänvisning till att artikel 6 och 14 i Europakonventionen har åsidosatts i ett brottmål),* Dnr 5069-17-4.3, 14 September 2018, pp.6-7.
[99] Ibid., p. 6.
[100] Chancellor of Justice (*Justitiekanslern*), Claims for damages against the state with reference to the actions of the police and prosecutors during a preliminary investigation and court proceedings (*Skadeståndsanspråk mot staten med hänvisning till polis och åklagares agerande under en förundersökning och domstolsprocess)*, Dnr 6984-19-4.3.2, 7 July 2020, p. 2.

The Chancellor of Justice states that there is no evidence to support the claim that the information about the suspicion of crime and the defendant's right to a lawyer was not communicated to him in a "simple and accessible manner".[101] Regarding the claim that the police and prosecutor did not investigate his need for reasonable accommodation, the Chancellor simply states that there is no evidence that supports that the police and prosecutor acted in a way that would render the state liable for damages.[102] The Chancellor concludes that the prosecutor also stated that nothing during the final serving indicated that the defendant did not understand what he was accused of or the investigative material. Furthermore, the Chancellor highlights that the defendant had a public defender who looked after his interests.[103] In conclusion, the Chancellor states that there is nothing that supports the claim that the applicant in any way has been deprived of his right to defend himself or that there has been any violation of the ECHR.[104]

It is apparent from the above that the CRPD has not been sufficiently transposed into Swedish law and practice. There is a need to transpose into Swedish law the requirement of the Convention for States to adapt the legal process in cases where a person does not understand it due to, for example, an intellectual disability. The Swedish legislation calls for the provision of interpreters in situations where a person needs one because of a hearing or speech disability. According to said provisions, general courts may use an interpreter if a party, witness or other person that is to be heard before the court needs one because of a hearing or speech disability. For a suspect or victim in criminal proceedings, an interpreter must be provided in these cases.[105] There is however a need for provisions that broaden the scope of support for

[101] Ibid., p. 6.
[102] Ibid., p. 7.
[103] Ibid., p. 7.
[104] Ibid., p. 8.
[105] Swedish Code of Judicial Procedure (1942:740) (*Rättegångsbalk (1942:740)*), 18 July 1942, Chapter 5, Section 6. This also applies during a preliminary investigation and the decision to hire an interpreter is taken by the person in charge of the investigation (Chapter 23, Section 16). Regarding administrative authorities, Swedish legislation contains an explicit requirement of providing a person with an interpreter when interacting with public authorities, if a person has a disability that seriously limits his or her ability to see, hear or speak and if it is necessary to exercise his or her rights (Administrative Procedure Act (1971:291) *(Förvaltningsprocesslag (1971:291)),* 6 June 1971, Section 50). However, law enforcement authorities, such as the Swedish Police and the Swedish Prosecution Authority, are not covered by this provision (Ibid., Section 1).

persons with disabilities and do not only cover situations where a person has a hearing or speech disability.

Article 13 CRPD require States to adjust legal proceedings, through procedural accommodations, in order to facilitate the effective role of persons with disabilities as direct and indirect participants. The Committee has also stated in its Concluding observations that this includes individualised accommodations.[106] Furthermore, according to Article 4(1)(e) CRPD, States shall also take all appropriate measures to eliminate discrimination based on disability by any person, organisation or private enterprise, which means that the State's responsibility includes for example public defenders.

Sweden also has a responsibility under Article 4(1)(a) CRPD to adopt all appropriate legislative, administrative and other measures to implement the rights recognised in the Convention. In its Concluding observations on the report of Ecuador, the Committee expressed concern over the fact that there was no requirement under, for example, criminal law for judicial authorities to make procedural accommodations when persons with disabilities participate in proceedings.[107] Germany was also recommended by the Committee in 2015 to "introduce legislative reforms so that the national criminal, civil, labour and administrative procedures include the requirement to ensure procedural accommodations for persons with disabilities, taking into particular account persons with intellectual or psychosocial disabilities, deaf-blind persons, and children with disabilities".[108]

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[106] See for example the Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report of Singapore*, 5 October 2022, para. 28 (b) in which the Committee recommended the State to "[p]rovide age- and gender-appropriate procedural accommodation, including individualized assistance, to ensure that persons with disabilities are able to participate effectively in administrative and judicial proceedings at all stages and in all areas of the law" and the Concluding observations on the combined second and third periodic report of El Salvador (2019), para. 27 in which the State was recommended to "repeal any legislation that creates barriers for persons with disabilities to access justice and establish the necessary safeguards to guarantee the participation of persons with disabilities in all legal proceedings, on an equal basis with others, including a gender and age focus, and individualized accommodations".

[107] "The Committee is concerned that there is no requirement under the criminal, civil, labour and administrative procedures in Ecuador for judicial authorities to make procedural accommodations when persons with disabilities take part in proceedings" (Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report of Ecuador*, 27 October 2014, para. 26).

[108] Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report of Germany*, 13 May 2015, para. 28 (b).

The 2020 Chancellor of Justice decision expresses the same view as that of the 2018 Chancellor of Justice decision, namely that it is the responsibility of the defendant's lawyer to draw the attention of the police, prosecutor and court to whether the client has difficulties understanding the process or what is said during it. One conclusion from the 2020 decision is that the police and prosecutor do not have an obligation to investigate whether a person's disability may require the adaptation of the judicial process. This is contrary to the obligation laid down in Article 13, which explicitly requires States to facilitate the effective role of persons with disabilities as direct and indirect participants in the legal process, through procedural and age-appropriate accommodations. The view that it is the responsibility of the legal counsel, not the State, to inform the police and the court if their client has a disability that makes it difficult for them to understand the process, is also in violation of the CRPD's stipulation in Article 4(1)(e) that the State's responsibility includes the conduct of private actors. It shows a failure on behalf of the Swedish state to enforce the Convention. Furthermore, the lack of legislation covering the right to accommodation regarding information and communication in relation to disabilities other than hearing and speech disabilities, demonstrates a need to clarify the state's responsibility, in order to be in conformity with the CRPD.

3.3 Lack of Knowledge, Competence and Support

A common factor for the issues identified above is a deficiency in knowledge and competence among professionals and staff pertaining to persons with disabilities. The national goal for Swedish disability policy is to "achieve equality in living conditions and full participation in society for persons with disabilities". [109] The goal was set in 2017 and is derived from the Convention. In the national bill that presented the Swedish government's disability policy and the new national goal, the government pointed out that the knowledge about the conditions and needs of persons with disabilities was low among the employees of Sweden's courts.[110]

[109] Government Bill 2016/17:188, p. 22.
[110] Ibid., pp. 66-67.

The bill thus corroborates the findings by Kuosmanen and Starke as well as by Lainpelto, presented above. The participants in the study by Kuosmanen and Starke pointed to a lack of knowledge and competence about persons with intellectual disabilities among those working within the field of justice. This sometimes resulted in professionals and staff not even realising that they are working with a person with an intellectual disability. This lack of knowledge could for example mean not phrasing questions concretely enough or not adjusting the pace of the interview.[111] Furthermore, the results presented in the study of district court cases concerning alleged sexual abuse against children with neuropsychiatric disabilities by Lainpelto indicate that courts do not have adequate knowledge to assess the credibility of statements given by children with neuropsychiatric disabilities.[112]

The Swedish Agency for Participation concludes that public authorities, regions and municipalities, in certain areas, do not have the right resources to respond to violence against persons with disabilities. According to the Agency, this is both due to a lack of knowledge pertaining to violence against persons with disabilities and due to that existing knowledge is not being implemented.[113] For certain authorities, the issue is sometimes not whether there are existing methods to discover if a person has been exposed to violence, but even identifying a person's disability. In that regard, authorities report to the Agency that persons with intellectual disabilities can be especially difficult to identify.[114] In summary, the Agency writes that there is a need to improve the general knowledge about violence against persons with disabilities among personnel within the Swedish police, the Swedish Prosecution Authority and the courts of Sweden.[115]

Regarding the need of support for persons with disabilities who are victims of crime, the Swedish National Council for Crime Prevention notes that, according to the majority of police investigators, legal counsels and persons working in victim support organisations, the capacity for assessing whether a victim of crime needs support or

[111] Kuosmanen and Starke 2015, p. 261.
[112] Lainpelto 2015, p. 215.
[113] Swedish Agency for Participation 2023:11, p. 8.
[114] Ibid., p. 37.
[115] Ibid., p. 48.

not varies. The Council for Crime Prevention concludes that the ability to identify a victim's need of support is therefore, presumably, dependent upon which professional or staff the victim meets.[116] Victims of crimes with neuropsychiatric disabilities are at higher risk of not receiving the support needed, because their disabilities are not recognized by actors within and outside the legal system. In addition, even if the disability is identified, victims may still not receive adequate support.[117] Victims with neuropsychiatric disabilities are in interviews and surveys identified as a group with needs that seem to be particularly difficult to identify and meet.[118]

Criticism has also been put forward regarding the fact that persons in need of legal counsel are not always provided with one, especially persons with neuropsychiatric disabilities. According to the Council for Crime Prevention, there is reason to review the rules and practices concerning the appointment of a legal counsel in cases where the needs of the person, rather than the nature of the crime is the reason for appointing a counsel.[119]

Beyond the legal process itself, several actors within the justice system, such as police, prosecutors and lawyers, and people working in voluntary organisations identify persons with neuropsychiatric disabilities as a group that currently lacks support not only within the justice process but also outside the formal proceedings.[120] Interviews and surveys show that a victim might need support beyond what is covered by a strict legal framework. Offering support not only from those working within the justice system, can therefore have a great impact on the victim's ability to participate in the legal proceeding.[121] The Council for Crime Prevention concludes that knowledge about how the rights of victims with neuropsychiatric disabilities in terms of information and support are ensured needs to be improved.[122] LGBTQ victims of violence, ethnic minorities, homeless people and EU-migrants are also mentioned as groups that lack access to support in connection with legal proceedings.

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[116] Swedish National Council for Crime Prevention (*Brottsförebyggande rådet*) (2016) Participation of injured parties in the legal process (*Målsägandes medverkan i rättsprocessen*), 2016:8, p. 80.
[117] Ibid., p. 81.
[118] Ibid., p. 8.
[119] Ibid., p. 12.
[120] Ibid., p. 88.
[121] Ibid., p. 80.
[122] Ibid., p. 105.

The report notes that since a victim of crime can belong to several groups, the lack of support can have a significant impact on their participation.[123]

It is clear from the Swedish Agency for Participation's latest review from 2022 of how public authorities work with questions concerning disability rights that the weaknesses identified already in 2015 (by Kuosmanen and Starke as well as by Lainpelto) and in 2017 (in the government bill) remain. When asked whether professionals and staff have knowledge about the CRPD, thirty of Sweden's forty-eight district courts answer that only "some" are aware of the Convention. Two district courts even answered that there is "no" awareness about the Convention among those within the authority.[124] The Swedish Prosecution Authority, the Swedish Police, the Swedish Supreme Court, the Swedish National Courts Administration (*Domstolsverket*)[125] and the Judges Proposals Board (*Domarnämnden*)[126] also state that only "some" have knowledge about the Convention.[127]

In the Swedish Agency for Participation's latest review from 2022 the public authorities were furthermore asked whether their directors or employees have participated in awareness-raising activities, such as courses or seminars, on the national goal for the disability policy in the last twelve months.[128] Twenty-nine district courts state that neither the court directors nor employees have participated in awareness-raising activities during the last twelve months. The same is stated by the Swedish Prosecution Authority.[129]

States shall according to Article 13 CRPD promote appropriate training for those working in the justice system. Seeing as the Agency for Participation writes in its 2023 report that there are still barriers for persons with disabilities during the

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[123] Ibid., p. 89.
[124] Swedish Agency for Participation (*Myndigheten för delaktighet*) (2022) Results of the follow-up of government authorities (*Resultat från uppföljningen av myndigheter*), answer by authority.
[125] The Swedish National Courts Administration is an agency that provides the courts with support and service.
[126] The Judges Proposals Board is an agency that make proposals to the government regarding the appointment of ordinary judges.
[127] Swedish Agency for Participation (*Myndigheten för delaktighet*) (2022) Results of the follow-up of government authorities (*Resultat från uppföljningen av myndigheter*), answer by authority.
[128] Ibid.
[129] Ibid.

investigation and prosecution of crimes; a lack of knowledge in terms of the CRPD, identifying disability and the need of support; and a general lack of knowledge about violence against persons with disabilities, it is of great concern that there is no ongoing work with awareness-raising at the majority of Sweden's district courts and at the Swedish Prosecution Authority. Such lack of awareness-raising is not in conformity with the Convention's explicit requirement for the training of judicial personnel. The Committee has also in its Concluding observations emphasized the need of recurring training, by giving recommendations on "mandatory periodic education" and "regular training programmes and awareness-raising campaigns" for personnel within the justice system.[130] The Committee's view with regard to the training required by the Convention can be assumed to be that the work should be ongoing. However, as for the authorities listed above, it seems that the work is rather non-existent, despite serious shortcomings.

[130] "The Committee also recommends that the State party provide personnel in the judicial and law enforcement sectors, with mandatory periodic education and training on the universality of human rights for all persons with disabilities" (Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report of Cyprus*, 08 May 2017, para. 36.). "The Committee recommends that the State party [c]onduct regular training programmes and awareness-raising campaigns and information for court staff, judges, prosecutors and law enforcement agents including police and prison officials, on the duty to provide access to justice for persons with disabilities on an equal basis with others, in consultation with organisations of persons with disabilities." (Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report of Uganda*, 12 May 2016, para. 25 (c)).

4 Access to Justice for Persons with Disabilities in the Swedish Administrative System

4.1 The Swedish Social Insurance Agency's Rejection Rate

An official report from 2021 highlights the rising rejection rates in the Swedish Social Insurance Agency's[131] application of the health benefit rules, despite unchanged rules since 2008.[132] From 2004 to 2010, the number of sickness benefits granted fell drastically, from 70 000 to 6 000 per year.[133] The rate of rejection of applications for health insurance has also varied markedly over the last ten years, with a peak of 70% in 2015 and 2016.[134]

The rise as well as the variation in rejection rates are at least partly linked to instructions from the government to the Swedish Social Insurance Agency in 2015 and on.[135] The goal of the instructions was that a maximum of 18 000 people per year would be granted sickness benefits between 2015 and 2020. The peak in the rejection rate 2015-2016 must be seen in the light of the government's instructions.[136]

This should be understood against the background that in Swedish law, health benefits are part of the rights legislation. This means that if a person meets the basic criteria set by a law, they are entitled to claim a right which the state in turn has an obligation to provide. In the case of health benefits, this means that if a person meets

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[131] The Swedish Social Insurance Agency investigates and decides on eligibility for social security benefits.
[132] Ministry of Health and Social Affairs (*Socialdepartementet*) (2021) A health insurance with prevention, rehabilitation and security (*En sjukförsäkring med prevention, rehabilitering och trygghet*), Government Official Report, SOU 2021:69 [hereinafter Government Official Report 2021:69], p. 289.
[133] Ibid., p. 289.
[134] Ibid., p. 296.
[135] Ministry of Health and Social Affairs (*Socialdepartementet*), Instructions for the financial year 2016 regarding the Swedish Social Insurance Agency (*Regleringsbrev för budgetåret 2016 avseende Försäkringskassan*), 17 December 2015.
[136] Government Official Report 2021:69, pp. 326-327.

the criteria for entitlement to a benefit, they should receive that benefit. In cases of refusal, the decision can be appealed to the courts.

There is no obligation for the Swedish Social Insurance Agency to achieve the objectives in the government's instructions. Rather, if it is necessary for an authority to change its interpretation of existing legislation in individual cases to achieve the goals set by the government this is in conflict with the principle of popular sovereignty which entails that all power emanates from the people and which characterises the Swedish democratic system. Popular sovereignty is also found in Chapter 1, Section 1 of the Instrument of Government *(Regeringsformen (SFS 1974:152).*

The official report from 2021 states that it is primarily the Swedish Social Insurance Agency's interpretation and application of the rules that plays the decisive role in the changes in the number of granted applications.[137] Even if the stricter interpretation of the rules, which led to this change in rejection rates, could be considered in line with national legislation as much as the previous, more liberal interpretation, the unpredictability undermines people's confidence in the insurance system. In addition to violating the principle of popular sovereignty, the way the pattern in the Swedish Social Insurance Agency's rejection rates mirrors the government's instructions severely affects legal certainty and public confidence in the social insurance system.

After the instructions by the government in 2015, the Swedish Social Insurance Agency was named a "rejection machine" because of the high rejection rate.[138] The increasing rejection rate by Social Insurance Agency was largely executed through a changed evaluation of whether a person can work in a "normally occurring job".[139] According to the regulations, unemployed persons and persons who have received health benefits for 180 days must as a rule be assessed against a "normally occurring job" on the labour market. If you are considered capable of doing such a job, you will

[137] Ibid., p. 329.
[138] Altermark, N. (2020) *Avslagsmaskinen: Byråkrati och avhumanisering i svensk sjukförsäkring*, Verbal [hereinafter Altermark 2020], p. 12.
[139] Ibid., Ibid.

no longer receive benefits.[140] How the concept of normal work is interpreted therefore has a decisive impact on how many people receive health benefits. According to the research of Niklas Altemark, the Swedish Social Insurance Agency is doing its best to meet the goal of reducing the sickness rate by interpreting the concept of "normally occurring work" to include jobs with very low requirements. It will then be possible to reject applications even for people who are very sick.[141] Altemark provides an example of a woman who was severely ill and had been so for two and a half years. She experienced a number of illnesses and difficulties in her everyday life, resulting in that she couldn't stand or sit for more than 10-20 minutes at a time because she would get dizzy, have difficulty breathing and have a lot of pain in her body. She says she had a 30-minute doctor's appointment and after that she had to lie still for two days before she felt well enough to cook for herself. Despite the fact that all the members of the assessment team conducting tests of her activity capacity certified that she was unable to work, the Social Insurance Agency thought she could take a full-time job. A job that did not involve physical work or cognitively demanding tasks. In other words, a job where neither body nor brain was needed. The employment service said that such jobs did not exist.[142]

The above paints a concerning picture of the Swedish Social Insurance Agency's operational style, which is included here to illustrate the culture and context in which the disability supports discussed in the following section are decided upon. It shows clear shortcomings on the part of the administrative authority from the perspective of CRPD Article 13, including lacking legal certainty.

[140] Social Insurance Code (*Socialförsäkringsbalk (2010:110)),* 4 March 2010, Chapter 27, Section 48.
[141] Altermark 2020, p. 22.
[142] Ibid., p. 21.

4.2 Personal Assistance

4.2.1 An Expense or an Investment?

Achieving equal living conditions for persons with disabilities requires a commitment to rights for all. Rights are usually divided into substantive rights and formal rights. The latter means being treated equally before the law or having equal access to existing services. The concept of substantive rights, in contrast, concerns the nature of the resources and services to which one is entitled. Examples of this include the right to healthcare and the right to go to school.[143] The right to personal assistance is both a formal right covered by article 13, and a substantive right covered by article 19 of the CRPD.

In recent years, the cost of personal assistance has been in the focus of politicians. The above section mentions how the government introduced a target to reduce sickness benefits and a similar target was to reduce the cost of personal assistance.
The approval rate for applications for personal assistance has gradually declined over time, from 73% in 2002 to a low of around 16% in 2017. The decline was steady between 2002 and 2017 and shows two more significant drops, one in the period 2015-2017. In 2021, the approval rate was 23%.[144]

Research by Norberg concludes that the norm in the history of Swedish welfare has long been that expenditure has been seen as an investment, mainly in areas such as education, parental leave and infrastructure. However, expenditure on personal assistance has instead been seen as a cost. This choice of words itself is an indication of how the authorities view the issue. An investment is used to positively describe something that can be considered to generate something back, while a cost is seen as something negative that does not generate anything back.[145] In the 2017 Social Insurance Report from the Swedish Social Insurance Agency, personal assistance is

[143] Norberg, I. (2018) 'Kostnadsfrågan som strukturell diskriminering' in Altermark, N, Knutsson, H., Svensson Chowdhury, M., (eds.), *Forskning om personlig assistans - en antologi*, KFO Personlig assistans [hereinafter Norberg 2018], p. 144.
[144] Swedish Social Insurance Agency (*Försäkringskassan*) (2023) Indicators to monitor the development of the assistance allowance (*Indikationer för att följa utvecklingen av assistansersättningen*), FK 2023/002100, p. 29.
[145] Norberg 2018, p. 141-142.

consistently referred to as a cost.[146] According to Norberg, this is indicative of an attitude according to which the public spending on personal assistance must always be as small as possible.[147]

Further according to Norberg, this understanding can be illustrated in how persons with disabilities are formulating their applications for personal assistance. The focus is on describing how the state saves money by investing in a measure, instead of describing the needs that an individual has as this can be seen as a cost to the state. In Norbergs study of the cost narrative, a person with a disability applying for assistance for a better wheelchair, as the one she had caused pain, needed to change the wording of the application so that it instead looked like an investment. The person in question had to formulate her application so that it focuses on the state's benefits from a new wheelchair because it then leads to less pain and less costs in future treatments, instead of actually describing her own problems and needs.[148]

The semantics around 'cost' and 'investment' as regards personal assistance expose a deeper systemic bias that seems to influence the handling of applications. Viewing personal assistance as a cost rather than an investment hints at an underlying predisposition that may be contributing to the high rejection rates. This view does not only undermine the essence of substantive rights but also creates a financial burden for individuals who have to appeal unjust decisions.

An analysis by the National Board of Health and Welfare (*Socialstyrelsen*)[149] has also shown that the number of rejections of applications for housing under the Swedish Act (1993:387) on Support and Service for Persons with Certain Functional Impairments (*Lag (1993:387) om stöd och service till vissa funktionshindrade*)[150] varies greatly depending on which municipality in the country one lives in. In some 30 municipalities in the country, the number of rejections amounts to at least 50%

[146] Swedish Social Insurance Agency (*Försäkringskassan*) (2017) The development of the assistance allowance (*Assistansersättningens utveckling*), Social Security Report 2017:4.
[147] Norberg 2018, p. 144.
[148] Ibid., p. 142.
[149] The National Board of Health and Welfare works with ensuring high-quality health and social care by developing regulations, compiling statistical data and conducting evaluations.
[150] Act (1993:387) on Support and Service for Persons with Certain Functional Impairments (*Lag (1993:387) om stöd och service till vissa funktionshindrade*), 27 May 1993.

during 2022. In the National Board of Health and Welfare's progress report, it stated that a large part of the country's municipalities does not fulfil the requirements to fully meet the needs of interventions and support for people with disabilities. A coordinator for disability issues at the National Board of Health and Welfare, Karin Flyckt, says that the municipalities give several reasons why they have difficulty meeting the needs. The main reasons are the lack of suitable premises and difficulties in recruiting staff.[151]

The above shows the Swedish Social Insurance Agency's operational culture extends to disability rights. The formal shortcomings from the perspective of CRPD Article 13 thus include both lacking legal certainty and, as concerns the municipalities, equality before the law irrespective of place of residence.

4.2.2 The Swedish Social Insurance Agency's Duty to Investigate

The Swedish Social Insurance Agency's obligation to investigate, which is defined in general terms in the Public Administration Act *(Förvaltningslag (2017:900)),* aims to clarify relevant factual circumstances.[152] The Swedish Social Insurance Inspectorate (*Inspektionen för socialförsäkringen*)[153] emphasises that the Swedish Social Insurance Agency should investigate cases objectively to ensure a sufficient basis for decision-making. At the same time, the Swedish Health and Social Care Inspectorate (*Inspektionen för vård och omsorg*)[154] identifies shortcomings in the guidance for benefit investigators on how to evaluate the evidence and what measures should be taken.[155]

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[151] National Board of Health and Welfare (*Socialstyrelsen*) Rejection of an application for LSS housing is common (*Vanligt med avslag på ansökan om LSS-boende*), press release, 3 April 2023 [hereinafter National Board of Health and Welfare 2023-2].

[152] Swedish Social Insurance Agency (*Försäkringskassan*) (2023) Administrative law in practice (*Förvaltningsrätt i praktiken*) Guidance 2004:7, Version 15, p. 49.

[153] The Swedish Social Insurance Inspectorate is an independent supervisory agency for the Swedish social insurance system.

[154] The Health and Social Care Inspectorate is a government agency responsible for supervising health care, social services and activities under the Act concerning Support and Service for Persons with Certain Functional Impairments.

[155] Swedish Social Insurance Inspectorate (*Inspektionen för socialförsäkringen*) (2021) The Swedish Social Insurance Agency's obligation to investigate - A review of the Swedish Social Insurance Agency's application of the obligation to investigate in cases concerning health benefit and disability benefit where the application has been rejected (*Försäkringskassans utredningsskyldighet - En*

A report from Swedish Health and Social Care Inspectorate in 2021 reviews the execution by the Swedish Social Insurance Agency of its obligation to investigate. The review shows that the Social Insurance Agency does not fulfil its obligation to investigate in 11% of cases. In the remaining 89% of cases where the review shows that they have fulfilled their obligation to investigate, there are still deficiencies in individual elements of the investigation in 37% of the cases. The Inspectorate for Social Security thus assesses that only 52% of the cases are sufficiently investigated to the point where no deficiencies exist. This means that 48% of cases are lacking. There is an urgent need for systemic reforms to address these shortcomings, ensure access to justice and maintain trust in the social security system, in line with national laws and the CRPD, in particular Article 13.

4.3 Weaknesses in Judicial Interpretations

In its most recent annual progress report on services and support for people with disabilities, The National Board of Health and Welfare lists administrative court rulings as a factor contributing to the high rejection rate among Sweden's municipalities and government agencies.[156] The vast majority of all verdicts in administrative courts are in favour of the authorities. In fact, statistics reveal that nine out of ten cases end in full favour of the government.[157]

Moreover, upon examining some of the cases relating to people with disabilities, a certain disregard of the CRPD becomes evident. This can be attributed to the presumption that the Convention inherently aligns with the national law and that the specific provisions of the CRPD therefore are redundant.[158] This presumption is, in turn, based on the State's dualistic approach to international law, whereby the authorities and courts are not automatically made to apply international law, as is the

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granskning av Försäkringskassans tillämpning av utredningsskyldigheten i ärenden om sjukpenning och aktivitetsersättning där ansökan har avslagits), 2021:3, p. 3.

[156] National Board of Health and Welfare 2023-2, p. 11.

[157] Öster, U., "Usla odds för den enskilde – ändring på gång?", *Advokaten*, No. 4 2022 Year 88, p. 28.

[158] Bremdal, P., Grahn-Farley, M., Reichel, J. (2017) 'Principen om fördragskonform tolkning – förhållande till Sveriges konventionsåtaganden om mänskliga rättigheter', Uppsala University [hereinafter Bremdal et al 2017], p. 13.

case with the CRPD. Thus, while all levels of government are obliged to comply with it, the Convention needs to be incorporated into Swedish legislation to be directly enforceable within the court system.[159] However, ensuring that the obligations outlined in the CRPD are upheld is not solely the responsibility of the government and parliament. Authorities and courts also have a responsibility to interpret national law in accordance with the CRPD when necessary for the state to fulfil its international obligations. This is also referred to as using a *convention-compliant interpretation*.[160]

Law professor Maria Grahn-Farley has found that the courts use two different methods in regards to the principle of convention-compliant interpretation: a "strong" and a "weak" convention-compliant interpretation. "Strong convention-compliant interpretation", as defined by Grahn-Farley, refers to the court making sure that Swedish law is as closely aligned as possible with an international convention. This method of interpreting international law means setting aside Swedish law in situations of conflict with international law, if it has been incorporated into national law.[161] On the contrary, the "weak convention-compliant interpretation" was predominantly shown to be applied to international law that has not been formally incorporated into national law. Within this method, non-incorporated international law only serves as a basis for the interpretation of national law. International conventions such as the CRPD are therefore unable to supersede Swedish law.[162]

The responsibility of the courts created by the CRPD on the one side and the courts' neglecting explicit references to Convention rights by individuals who bring a case before the court on the other, raises the question of whether the courts are actually required by national law to consider the CRPD in their decisions. A convention-compliant interpretation is said to only be one of many interpretation methods that can be used to interpret and apply Swedish law, when a convention is not

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[159] Ministry of Culture (*Kulturdepartementet*) (2016) The Government's strategy for national human rights work (*Regeringens strategi för det nationella arbetet med mänskliga rättigheter*), Skr. 2016/17:29, 13 October 2016 [hereinafter Strategy for national human rights work 2016], p. 10.
[160] Ibid, p. 10–11.
[161] Grahn-Farley, M. (2018) 'Fördragskonform tolkning av MR-traktat', *SvJT,* Part 5 2018, s. 450, p. 453.
[162] Bremdal et al 2017, pp. 5-6.

incorporated into Swedish law.[163] However, the Swedish government has stated about non-incorporated conventions that "authorities and courts, when interpreting national provisions, [shall] take into account Sweden's treaty commitments to the extent possible [...] but only within the frame of the wording of Swedish legislation".[164]

The courts' lack of consideration for disability rights and laws appear to extend beyond the CRPD, as the courts are overlooking the intentions of Swedish legislation, specifically in cases related to the Swedish Act (1993:387) on Support and Service for Persons with Certain Functional Impairments. The CRPD Committee has expressed concern over this matter in its Concluding observations on the initial report of Sweden.[165] In the case of the Swedish Act (1993:387) on Support and Service for Persons with Certain Functional Impairments, the law was designed with the intention to protect people with disabilities from facing deprioritization or neglect within the local political decision-making process. Yet statistics reveal courts are ruling in a way that disadvantages people with disabilities seeking support. Law professor Andreas Pettersson notes that authorities then use these court rulings as guidance for their own decisions, creating a feedback loop of rejection.[166] The courts' approach has been criticised for disregarding the idea of individual and specific needs and instead adopting a general assessment that applies to an entire target group, a situation that runs counter to the nature of the Swedish Act (1993:387) on Support and Service for Persons with Certain Functional Impairments.[167] Consequently, it is unrealistic for an individual to expect a legally secure review or legal process in the administrative law system.[168]

As has been stated previously, the fact that the CRPD has not yet been properly transposed or incorporated into Swedish law is allowing the administrative authorities

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[163] Ibid, p. 5
[164] Strategy for national human rights work 2016, p. 10.
[165] Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report of Sweden*, 12 May 2014 [hereinafter CRPD Committee Concluding observations on the initial report of Sweden 2014], para. 43-44.
[166] Pettersson, A. (2022) 'Att kunna "leva som andra"? Kritiska funktionshinderrättsliga slutsatser utifrån HFD:s rättstillämpning avseende mål om personlig assistans enligt LSS', *Förvaltningsrättslig Tidskrift*, 2022 3, October 2022 s. 371–392 [hereinafter Pettersson 2022], p. 371.
[167] Strahlemo, Å., Celinska, K., "Beslut och domar måste ta hänsyn till LSS och FN:s funktionsrättskonvention", *Dagens Juridik*, 7 March 2022, webpage accessed 21 December 2023.
[168] Pettersson 2022, p. 391.

and courts to adopt decisions and judgements that unduly hinder people with disabilities from accessing justice. Both the CRPD Committee[169] and civil society[170] urge the government to incorporate the Convention into Swedish legislation in order for it to be applicable as Swedish law, thus compelling courts to conform to the norms and principles set forth by the CRPD.

4.4 The Price of Accessing Justice

The culture of rejection that has been described above leads individuals down a lengthy road of different legal procedures in the administrative law system. To navigate this process, individuals have a right to use legal counsel.[171] However, the financial burden associated with acquiring legal representation quickly renders this 'right' illusory. That is, unless there is a corresponding right to reimbursement of these high costs. Whether an individual has access to legal representation therefore depends on how the costs are managed.[172]

4.4.1 An Outdated System

There are two ways in which a party can be reimbursed for their legal representation. On the one side, through rules of cost allocation between the parties in the case, and on the other side through other external financing options such as legal aid publicly funded by the state or private legal protection through insurance companies.[173]

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[169] CRPD Committee Concluding observations on the initial report of Sweden 2014, para. 8.
[170] Over 30 organisations working towards ensuring the rights of people with disabilities have together written an open letter urging the Swedish government to incorporate the CRPD into Swedish legislation. The organisations have also been collecting signatures from people who support this call. The number of signatures at the time of writing is 2509. Riksorganisationen av Unga Reumatiker, 'Make the Convention on the Rights of Persons with Disabilities into law!' (*Gör Funktionsrättskonventionen till lag!*), Petition 2023, webpage accessed 21 December 2023.
[171] Administrative Procedure Act (1971:291) *(Förvaltningsprocesslag (1971:291)),* 6 June 1971, Section 48.
[172] Wejedal, S., (2017) 'Rätten till biträde – Om biträdeskostnaders hantering vid svenska domstolar', 2017, Department of Law, School of Business, Economics and Law at University of Gothenburg, *Juridiska institutionens skriftserie*, No. 024, Gothenburg [hereinafter Wejedal 2017], p. 963 f.
[173] Ibid, p. 966.

Two opposing principles often determine the internal cost allocation between parties, namely "the English rule", where the losing party must cover the winning party's expenses, and "the American rule", where each party is responsible for their own expenses, regardless of the outcome of the case.[174] In broad terms, in Sweden, the English rule governs the general legal process, while the American rule governs the administrative process. This distinction is primarily based on the fact that the legislature, in reference to the *ex officio inquiry principle*[175], has determined that there is no 'need' for legal representation in administrative proceedings. This is due to the assumption that the authorities, as parties, are objective. This means that the authority, even as the opponent of the individual, must present arguments in the individual's favour. Consequently, the legal framework for the administrative process does not contain any regulations that enable the court to grant cost reimbursement for legal representation, deeming such expenses as "unjustifiable," even in cases where the individual is successful in winning the case.[176]

The issue of legal cost allocation was recently raised by the Supreme Administrative Court, in which the court ultimately ruled that individuals are not entitled to reimbursement of legal costs in an administrative proceeding.[177] It is important to note though that this verdict was not unanimous and has led to various critical legal analyses.[178] For instance, critics such as legal scholar Sebastian Wejedal contend that despite the Administrative Procedure Act's absence of regulations on legal cost reimbursement, the European Court of Human Rights has repeatedly stated that Article 6(1) of the ECHR, which guarantees the right to a fair trial, may require compensating successful litigants for their legal fees in administrative proceedings against the state.[179] In addition to administrative courts therefore being compelled to

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[174] Ibid, p. 109.
[175] The ex officio inquiry principle ("officialprincipen") refers to the administrative court's obligation to investigate all facts of a case and rule based on the result of such investigation.
[176] Regeringen (*Government*) (1988) Reimbursement of costs in tax cases, etc. (*Om ersättning för kostnader i ärenden och mål om skatt, m.m.),* Government Bill*,* Prop. 1988:89/126, p. 13.
[177] Supreme Administrative Court (*Högsta förvaltningsrätten*), HFD 2022 ref. 10.
[178] See for example Wejedal, S. (2023) '"Finn fem fel" – några (sista) reflektioner med anledning av HFD 2022 ref. 10', *SvJT*, Part 3 2023, s. 174 [hereinafter Wejedal 2023] and Knutsson, M. (2022) 'HFD 2022 ref. 10 — fråga om ersättning för rättegångskostnader', *Förvaltningsrättslig tidskrift*, 2022 2, May 2022 s. 281–290.
[179] European case law regarding the requirement of reimbursing an individual's legal costs under Article 6(1) of the ECHR has developed since the case of Stankiewicz v. Poland, No. 46917/99, 6 April 2006. Other relevant cases are Černius and Rinkevičius v. Lithuania, Nos. 73579/17 and

apply the ECHR, the Supreme Administrative Court has consistently declared that Swedish authorities may, on occasion, be required to disregard domestic law in order to fulfil the state's international obligations under the ECHR, as it is incorporated into Swedish law. Furthermore, the court's jurisprudence also states that individual parties may "directly invoke the Convention if it provides them with greater protection than that afforded by other legislation".[180] Considering this, critics (including ourselves) are unclear as to why administrative courts are to decline cost claims that could, and should, be supported by the ECHR.[181]

Similar to the rules on internal cost allocation, the availability of external funding for legal representation shows a clear distinction between the civil, criminal and administrative systems. In civil and criminal cases, parties often have access to such options, while in administrative cases they do not. A large proportion of civil cases can be covered by home insurance and state-provided legal aid, and in most criminal cases the state can provide a public defender or a plaintiff's lawyer.[182] For administrative proceedings, public representatives are only available for two specific types of administrative cases: compulsory care and migration. In all other administrative cases, including those pertaining to social services and social insurance, public representatives cannot be appointed. Furthermore, private legal protection insurance typically does not cover administrative court cases. The only available external financing option for administrative cases is publicly funded legal aid and is administered under the highly restrictive rules of the Legal Aid Act (1996:1619), which, in practice, often leads to most applications being denied.[183]

The restrictive nature of the Swedish legal aid system has two main causes: an extremely low income threshold and a quite demanding assessment of the

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14620/18, 2 June 2022; Zustović v. Croatia, No, 27903/15, 20 April 2022; Dragan Kovačević v. Croatia, No. 49281/15, 12 May 2022.

[180] Supreme Administrative Court (*Regeringsrätten*), RÅ 2004 ref. 99; Supreme Administrative Court (*Regeringsrätten*), RÅ 2001 ref. 56.

[181] Wejedal 2023.

[182] Legal Aid Act (1996:1619) (*Rättshjälpslag (1996:1619)*), 5 December 1996, Section 2; Swedish Code of Judicial Procedure (1942:740) (*Rättegångsbalk (1942:740)*), 18 July 1942, Chapter 21, Section 3.

[183] Statistics presented by Sebastian Wejedal during the Swedish Section of the International Commission of Jurists, 'Seminar: Access to Justice?' (*Seminarium: Tillgång till rättvisa?*), 24 May 2021, webpage accessed 21 December 2023 [hereinafter Swedish Section of the International Commission of Jurists, seminar on Access to Justice].

individual's need for legal representation. To be eligible for legal aid, an individual must have an annual income of no more than 260 000 SEK.[184] This threshold was set in 1999 and has not been adjusted since, resulting in a significant decrease in the number of people who meet this initial criteria for legal aid. In 1999, roughly 80 % of the population met this limit, whereas now, only around 40 % do so. In order to reach the same degree of coverage today as over two decades ago, the income threshold would need to be increased to around 500 000 SEK.[185] Interestingly, in the preparatory work for the Legal Aid Act (1996:1619), there was an explicit suggestion that the income threshold should be reviewed every three years to ensure that it would align with the evolving economic landscape, to thereby prevent legal aid from becoming an exclusive privilege accessible only to a select few.[186] Today however, the unwillingness of the state to adjust this threshold (according to their own suggestion) has created a paradoxical situation where the rules that were intended to protect the most disadvantaged individuals become increasingly restrictive over time. As society progresses and incomes rise, more and more people find themselves excluded from the legal aid system, contradicting the original intent of this safety net completely.[187]

For the few who do qualify for legal aid by having an income lower than 260 000 SEK, the next obstacle to overcome is the "needs assessment" which is meant to further determine whether the individual in question has an actual need for legal representation.[188] This assessment aims to objectively evaluate personal qualifications and the gravity of the matter at hand. As legal representation is often deemed unnecessary because of the state's current view of the administrative system, in

[184] Legal Aid Act (1996:1619) (*Rättshjälpslag (1996:1619)*), 5 December 1996, Section 6.
[185] Wejedal 2017, p. 292.
[186] Regeringen (*Government*) (1982) Amendments to the Legal Aid Act, etc. (*Om ändringar i rättshjälpslagen m.m.*), Government Bill, Prop. 1982/83:61, pp. 15-17.
[187] SOU 2014:86 *Rättvisans pris*, pp. 16-17. In 2013, the government appointed a former chief judge to examine the expenses related to legal counselling, including legal aid. Upon submitting the report in 2014, it was suggested an increase in the income threshold under the Legal Aid Act. The proposed new limit of 400 000 SEK would expand legal aid eligibility to approximately 80% of the population. Nevertheless, the proposal was not submitted to the Swedish Parliament.
[188] Legal Aid Act (1996:1619) (*Rättshjälpslag (1996:1619)*), 5 December 1996, Sections 7-8.

practice this leaves a vast majority of individuals wishing to pursue an administrative case with the help of a lawyer to bear these expensive costs on their own.[189]

To demonstrate the extent of the restrictiveness of the legal aid system, statistics from 1996 (the year after the implementation of the Legal Aid Act (1996:1619)) show that legal aid was granted in only four administrative cases during the whole year. In contrast, legal aid was granted in around 2 000 civil cases that same year.[190] In the following years, hardly any legal aid has been provided for administrative cases. When also examining the state's legal aid expenditure for these cases, it becomes clear that it has remained more or less unchanged for a considerable time. Over the past eight years, the budget has hovered around 270 million SEK – a relatively insignificant amount in the context of a state budget.[191]

4.4.2 The "Lawyer Advantage"

The Swedish notion that legal representation is somehow unnecessary implies that individuals with disabilities must face the intricacies of the administrative system without any legal support. Our interactions with the Swedish Disability Rights Federation in preparation for the upcoming review by the CRPD Committee in 2024, have highlighted the disproportionate impact of this issue as administrative decisions often have a significant impact on the ability of individuals with disabilities to lead independent and fulfilling lives. Navigating the administrative legal process has been described as feeling like "a never-ending process" that is also highly emotional, as the stakes are high all the while the individual finds themselves constantly being bounced between different agencies and tribunals, all of which ultimately reject their efforts.[192]

For the individuals pursuing an administrative case on their own, the odds are stacked against them. With the layman individual in one corner and the powerful state or

[189] Ministry of Justice (*Justitiedepartementet*) (1991) The courts facing the 21st century *(Domstolarna inför 2000-talet),* Government Official Report, SOU 1991:106, p. 632.
[190] Statistics presented by Sebastian Wejedal during the Swedish Section of the International Commission of Jurists, seminar on Access to Justice. The administrative cases concern social insurance. The civil cases concern damages.
[191] Ibid.
[192] Digital meetings to produce the Alternatives Report with the Swedish Disability Rights Federation, autumn 2023.

municipal administrative authority in the other, this power imbalance is further amplified by the individual being unrepresented. A study on the situation of administrative courts in Sweden, encompassing cases concerning the Act (1993:387) on Support and Service for Persons with Certain Functional Impairments, reveals that unrepresented parties have a 92 % loss rate.[193] While it remains possible that this statistic can be explained by the fact that many of the decisions appealed against are correct, a rate of more than 90 % still speaks volumes about the strength of the parties when the figure drops to 74 % loss rate in cases where the individual is assisted by a lawyer.[194] International research supports these numbers and has even shown that those who are able to acquire a legal professional are five times more likely to succeed in court. Statistics like these have generated an expression of a "lawyer advantage", which signifies that, contrary to the Swedish legislature's perception, the individual has a very distinct need for legal representation as this very clearly enables the access to justice.[195]

In light of the above, it is apparent that there is a pressing need to re-examine the legal framework regarding the reimbursement of the costs of an individual's legal representation in administrative proceedings. This is especially important in the context of people with disabilities accessing justice, as data indicates that this group is significantly more likely to face financial instability compared to the overall population.[196] As legal representation costs can easily escalate into the hundreds of thousands, the current systems for cost allocation and legal aid in the administrative system poses a significant disadvantage to people with disabilities as they are less likely to be able to bear such high costs. Implementing the right for individuals to claim reimbursement for legal expenses after a successful case against the state, for instance, would therefore be a key step to guaranteeing access to justice for people with disabilities. However, given the statistics just mentioned, only implementing regulations for internal cost allocations to cover the winning party's expenses *after* a

[193] Lorentzon, R., Holm, L., Wejedal, S., (2022) 'Ombudsfördel i förvaltningsmål – ett empiriskt bidrag till teorin om "lawyer advantage"', *Förvaltningsrättslig tidskrift*, 2022 1, March 2022 s. 47–94, p. 74.
[194] Ibid.
[195] Ibid., pp. 56-60.
[196] Statistics Sweden (*Statistikmyndigheten*) Poorer economy for persons with disabilities (*Sämre ekonomi för personer med funktionsnedsättning*), short analysis, 28 September 2022.

legal process concludes does actually not guarantee the individual's ability to afford legal representation as this expense is borne *during* the process.

To remedy this, an adequate response would instead be to implement regulations that *fully* alleviate this costly burden for individuals in such situations. This can be accomplished by two means. One is to extend the current system of appointing public counsel to encompass a broader range of case types within the administrative system, particularly those of importance to an individual's self-determination and ability to lead a fulfilling life. Another is to reexamine the legal framework for publicly funded legal aid. In terms of this, the CRPD Committee has emphasised the necessity for legal representation combined with legal aid on multiple occasions.[197] Several States Parties have received recommendations to provide their citizens legal aid in order to uphold Article 13 of the Convention.[198] Furthermore, the International Principles and Guidelines on Access to Justice for Persons with Disabilities state that legal aid should be publicly funded and accessible in all legal proceedings and at every stage of the legal process.[199] While the Principles and Guidelines on Access to Justice are not in themselves binding, the removal of barriers to access to justice must be addressed in order to comply with the Convention. As the Committee continuously evaluates the scope of the obligations established in Article 13 regarding access to justice, it has clearly deemed the financial burden of the legal process as a barrier that needs to be eliminated. Accordingly, the implementation of publicly funded legal assistance may be regarded as necessary to comply with the convention. In the case of Sweden and its Legal Aid Act (1996:1619), it is therefore necessary to increase the income threshold as well as adopting a more generous assessment of the 'needs' requirement. This is instrumental for eligibility purposes, ensuring the practical means of accessing the legal system and thereby bridging the gap between a complex legal system and persons who face multiple barriers in navigating it.

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[197] See subsection 2.3.1.

[198] See for example Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report of Estonia*, 5 May 2021, p. 26 (c); Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report of Norway*, 7 May 2019, p. 22 (b). See additional sources under subsection 2.3.1.

[199] Principle No. 6 of the OHCHR Principles and Guidelines 2020.

5 Concluding Reflections

The issues related to access to justice that have been identified in relation to persons with disabilities *as victims of crime and as accused of crime*, demonstrates not only a lack of knowledge among the Swedish authorities, but also an unwillingness on behalf of the Swedish state to implement the rights laid down in the Convention. Reports show that persons with disabilities currently do not have effective access to the Swedish justice systems and face barriers in terms of lack of procedural and age-appropriate accommodations, not being considered credible witnesses and not receiving adequate support during legal proceedings. The fact that crimes against persons with disabilities are not covered by the Swedish hate crime legislation is a clear example of the Swedish state's reluctance to recognise that it does need to make legislative efforts in order to ensure that persons with disabilities are protected by the law. This is particularly acute taken the high rates of violence against persons with disabilities.

Furthermore, the statistics regarding the work of Swedish authorities in addressing disability policy matters, which shows that a majority of Sweden's district courts have not participated in awareness-raising activities such as courses or seminars on the national goals for disability policy in the last twelve months, is disconcerting. It is important that the Swedish state take concrete measures in order to ensure effective access to justice for persons with disabilities, not only because of the obligations imposed upon the Swedish state by the Convention, but also because it is fundamental in a democratic society that individuals both are able to defend themselves against accusations of crime and are being guaranteed legal protection as victims of crime.

Specifically, in order for persons with disabilities to be guaranteed access to justice in the *criminal justice system* we recommend the following:

- Ensure effective and recurring training of personnel in the justice system in order to increase the knowledge about persons with disabilities and their rights, including knowledge about violence against persons with disabilities.

- Develop the methodological support on the interviewing and questioning of persons with disabilities, taking into account various disabilities.

- Amend the Swedish hate crime legislation in order for crimes against persons with disabilities to be recognised as hate crimes.

- Review the Swedish criminal law procedure in order to ensure that judicial authorities make procedural and age-appropriate accommodations when persons with disabilities take part in proceedings.

In regards to the issues emerging from *the administrative law system*, the increasing and varying rejection rates by Swedish authorities reflect a worrying trend of non-compliance with individuals' rights, which in turn undermines the reliability of the social security system. The interpretation and application of the laws has become increasingly restrictive, explicitly affecting persons with disabilities. This development reflects a strive to reduce expenses and perhaps also a lack of understanding of the challenges faced by many individuals.

One of the most affected areas is personal assistance and other forms of assistance via Act (1993:387) on Support and Service for Persons with Certain Functional Impairments, a vital resource for many persons with disabilities. This assistance has come to be seen in political and administrative contexts as a cost rather than an investment. This view changes not only the rhetoric but also the practice of how applications are handled. A rejection of personal assistance can have devastating consequences for individuals and their ability to live a self-determined and independent life. Moreover, the guidelines from the authorities demonstrate a lack of guidance on how to evaluate circumstances and requirements, creating an unequal and unpredictable environment for applicants. In addition, instruction from the government to authorities to reduce costs in the application of rights legislation is highly problematic.

The high rejection rates have also been impacted by the administrative courts' tendency to rule in favour of the authorities. These court rulings then essentially serve as a precedent or a basis for the decision-making processes of these authorities,

creating a self-perpetuating cycle where government agencies consistently reject applications and their decisions are upheld by the courts. This synergy between the courts and the authorities has been proven to create a significant barrier for individuals with disabilities who require different forms of support.

An analysis of some of the court rulings has revealed a disconcerting trend – the frequent disregard of the CRPD. This can partly be explained by the fact that the CRPD is not incorporated into Swedish law. However, while the legal status of the Convention somewhat limits the extent to which the courts can apply it, it does not preclude them from considering its principles and standards as part of their judgements. In practice, though, courts frequently omit addressing the provisions of the CRPD despite individuals and organisations submitting substantial documentation referencing the Convention. This calls into question the willingness and capability to include the CRPD into their decision-making processes. It could suggest that there may be systemic barriers or even a lack of awareness among judges and legal professionals regarding the relevance of the CRPD to these cases, ultimately compromising the rights and access to justice for individuals with disabilities in Sweden. Addressing these issues and ensuring that the CRPD is given its due weight within the legal system by incorporating it into Swedish legislation is essential to rectify the inequality in treatment of cases related to people with disabilities.

Due to the state's failure to remove obstacles by proactively reviewing its legislation and removing certain financial access barriers, affording legal representation in administrative proceedings has been proven to be a fundamental issue in the context of people with disabilities accessing justice. The complexity and high costs of navigating the administrative process represents a significant access barrier. The current system, with its high rejection rate and the financial and emotional costs of appeal, creates a sense of hopelessness and distrust of a system that should serve to support and protect citizens in vulnerable situations. This situation goes against Sweden's national and international human rights commitments and requires immediate and radical reforms to restore fairness and trust in the social security system.

Specifically, in order for persons with disabilities to be guaranteed access to justice in *the administrative law system* we recommend the following:

- Incorporate the CRPD into Swedish legislation.

- Introduce rules that give individuals the right to reimbursement for legal representation costs in a successful court case against the state.

- Expand the system of public counsel to encompass a broader range of case types (particularly those of importance to an individual's fundamental well-being and life circumstances).

- Comprehensively review the Swedish Legal Aid Act (1996:1619) to increase the income threshold and adopt a more generous assessment of the "needs" requirement.

- Increase resource allocation as authorities need sufficient resources to perform their tasks correctly and efficiently.

- Review and clarify the laws and guidelines that are the basis of auhtority decisions, to ensure that laws are interpreted and applied correctly, fairly and as intended by the legislature.

- Include persons with disabilities and other affected groups in discussions and decision-making processes that affect them.

- Review and reform the personal assistance framework to ensure that it meets the requirements of the CRPD, guarantees of legal certainty, equality before the law and the requirements of the individuals concerned.

The findings of the report reveal a stark contrast between Sweden's obligations according to the Convention on the Rights of Persons with Disabilities and the lived experiences of persons with disabilities in Sweden. The unwillingness to act has

consequences that extend beyond legal compliance; it affects thousands of people. The system presents many obstacles which severely impedes persons with disabilities from effectively engaging with the Swedish legal system.

It is imperative that Sweden is held responsible for their shortcomings and take immediate action to address the barriers outlined in the report. These actions should not be taken lightly, but are in fact essential to fulfil the nation's promise to protect the rights of persons with disabilities. By rectifying these shortcomings, Sweden will uphold its international commitment but also reaffirm its commitment to justice and equality for all persons with disabilities.

We urge Sweden to take note of the recommendations presented in the report. Furthermore, we hope that the findings by the CRPD Committee in the upcoming examination will be a stepping stone in ensuring access to justice to persons with disabilities.

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