



REGERINGSKANSLIET

Ministry for Foreign Affairs
Sweden
Director-General for Legal Affairs

Stockholm,
13 November 2015

UF2015/08810/UD/FMR

Ms Rita Izsák
Special Rapporteur on minority issues
Office of the High Commissioner
for Human Rights
United Nations
CH-1211 GENEVA 10
Switzerland

Communication from Special Procedures: Urgent Appeal

Reference: SWE 1/2015

Dear Madam,

1. I have the honour of referring to your letter of 30 October 2015 in which the Swedish Government is invited to submit observations regarding the alleged eviction of Roma individuals from an area situated within the municipality of Malmö popularly called the Sorgenfri camp. In response to the invitation, I have the honour, on behalf of the Swedish Government, to submit the following.

2. The urgent appeal relates to a decision of 27 October 2015 issued by the Environmental Board of the City of Malmö (*Malmö stad*, which is the same as the municipality of Malmö). In view of that, your letter was transmitted to the City of Malmö on the same day as it was received by the Government, i.e. on 30 October 2015. Enclosed you will find a submission where the City of Malmö gives its views on the concerns and questions you have raised. It may be added that the camp was dismantled on 3 November 2015. In this context the Government would like to draw attention to the independent position enjoyed by all Swedish authorities under the Constitution, which means that any intervention by *inter alia* the Government in specific cases concerning exercise of authority or application of law is strictly prohibited.

3. In addition, it is important to note that both the Government and the municipalities have a responsibility to respect and promote human rights in its decision-making. The courts play a central role in the protection of the rights of private persons in Sweden. The legal remedies of the Swedish system are

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designed to protect human rights. It may also be noted that the European Convention on Human Rights is incorporated into Swedish law and can thus be invoked directly by individuals before Swedish courts.

4. According to the above-mentioned submission from the City of Malmö, the people staying in the Sorgenfri camp were EU citizens mainly from Romania but also Bulgaria. EU citizens have a right and far-reaching possibilities to move freely and stay in other EU Member States. This free movement of people is one of EU's fundamental principles. As a starting point it means that EU citizens with a valid identity card or passport may enter and live in another EU Member State for up to three months without any conditions or formalities. During this period the person is seen as a visitor in our country and thus naturally expected to make necessary and lawful arrangements for accommodation etc.

5. In order to have a right of residence and be entitled to stay longer than three months without a residence permit, EU citizens must fulfil certain conditions aiming to ensure that the person has possibilities or sufficient means to financially support himself or herself. Thus the person needs to be employed, self-employed or be in Sweden as a job seeker with real prospects of becoming employed. Students and other people not working must have sufficient resources for themselves and their family so as not to be a burden on the host country's social assistance system, and have comprehensive sickness insurance cover. This reflects the fact that the person remains the responsibility of his or her home country. If the EU citizens do not fulfil these conditions and do not have a residence permit, they have no legal right to remain in Sweden and should leave the country.

6. As regards EU citizens who do not fulfil the requirements to have a right to stay for more than three months, Sweden has limited obligations to provide assistance and they are normally entitled only to necessary support to solve an emergency situation, which often consists of temporary accommodation, money for food and a ticket to return home. However, they are able to apply for further assistance to the social authorities in the municipality where they are staying and to have an individual assessment with the possibility to appeal to the administrative courts. On the whole, the Swedish municipalities deal in different ways with the issue of support to economically and socially vulnerable EU citizens, including with addressing homelessness, which is done to some extent in cooperation with civil society organizations.

7. In order for the situation for Roma people to improve in their home countries as regards health, housing, education and work opportunities, the

Swedish Government has taken a number of initiatives both bilaterally with Romania and at the EU level. In addition, in January 2015 a national coordinator was appointed to provide support to the domestic organs dealing with vulnerable EU citizens who are staying temporarily in Sweden and do not have a right of residence here. A report is expected in the beginning of February next year.

Please accept, Madam, the assurances of my highest consideration.



Anders Rönquist

Ambassador

Background data concerning letter from UN Special Rapporteur on minority issues

- On 27 October, the City of Malmö's Environmental Board took a decision to make a 'correction' at the expense of the person at fault regarding the property at Brännaren 19 in Norra Sorgenfri. The decision regarding the correction of the fault concerns carrying out demolition, emptying and cleaning activities, and was issued pursuant to Chapter 26, Section 18 of the Swedish Environmental Code. The decision and some of the previous documents in the case are available at: www.malmo.se/brannaren
- The Environmental Board, with its officials at the Environment Department, is a supervisory agency tasked with ensuring compliance with environmental and health protection legislation. As this authority, the Environment Department is obliged to take action against nuisances and littering, report offences under the Swedish Environmental Code and ensure that those responsible comply with the requirements of the legislation. In its exercise of public authority, the Environmental Board is an administrative authority independent of the municipality and safeguarded from intervention from central or local government under the Constitution (Instrument of Government, Chapter 12, Section 2).
- A decision on 'correction' means that the Environment Department, through specially hired staff, executes the clean-up order imposed upon the property owner – clean-up that could not be executed earlier due to people living and staying overnight on the grounds. The cost is then divided between the Environmental Board and the property owner. The decision also means that those living and staying on the property must leave the site and take their belongings with them. This is because the decision means that the Department has the right to clean the grounds, demolish buildings, and scrap and dispose of material and other property that has been left behind.
- The explanatory statement to the decision makes clear that a reasonability assessment was made and that the possibility of offering emergency assistance and accommodation was considered.
- The decision does not entail expulsion from the country or even from the geographical boundaries of the municipality. The offer of emergency assistance also includes travel home *for those who so desire*, but is not compulsory.
- EU citizens have been occupying the site, these occupants come and go and some have reportedly been living there for as long as a year, while others have arrived recently. The same laws and regulations apply to all foreign EU citizens residing in Sweden. The same rules in the *Swedish Environmental Code* apply to all people residing in Sweden, regardless of whether they are Swedish

citizens or foreign EU citizens. It is not permitted for anyone to litter or expose the surroundings and the environment to nuisances. It is not legal, suitable or desirable for a group of people to be beyond the protection and requirements of the law. Decisions concerning litterers and others responsible for cleaning up in the event of littering, and decisions on prohibitions on residence (impositions), are taken regularly within the framework of the Environment Department's supervision, primarily with regard to companies and citizens/residents established in Sweden. When exercising this supervision, all residents are treated equally in that contact is taken with the social authorities when necessary.

- Brännaren 19 is a private site and it is not legal to take up residence on someone else's property without permission. Soon after the camp was set up, the property owner filed a police report citing unlawful intrusion and arbitrary conduct, and has asked the occupants to leave the site. New dwellings have been set up on the grounds even after this. Despite being aware that the dwellings were illegal, the occupants, with the help of sympathisers, built shacks on the property contrary to the wishes of the property owner and contrary to environmental and building legislation. At no time has the property owner given approval to people residing on the property. There is no contract or agreement. This also means that the municipality does not have the opportunity to provide support to the occupation of the owner's land by providing sanitary services. Under Article 17.2 of the UN Universal Declaration of Human Rights, the State is to provide the property owner with protection against being arbitrarily deprived of their property.
- The situation at the site in Malmö is untenable. It is illegal to live there, residing there is contrary to the wishes of the property owner, and the sanitary situation at the site entails serious health risks – not least for those who live there but also for residents and activities in the area due to the litter and smoke from fires. The decision is legally justified, has been dealt with from an equality perspective and is non-discriminatory.
- The Environment Department has taken two different decisions on a prohibition against living on the site Brännaren 19. One of the decisions, which focuses on the residents, was reversed by the County Administrative Board (and the Land and Environment Court) on technical grounds, since it is considered that a prohibition requires all those addressed to be named. The factual matters of the case were not considered; the examination instead focused solely on whether or not a prohibition pursuant to Chapter 26, Section 9 of the Swedish Environmental Code can be issued with regard to unidentified persons. The other decision on a prohibition against living on the site focuses on the property owner and was examined and determined by the County Administrative Board. Accordingly, there is a prohibition that has entered into legal force against living on the property.

- The information that the grounds for the decision on correction cannot be considered by a court is incorrect. It is also incorrect that the occupants have not received information on the possibilities for a legal examination of the decisions. The City of Malmö has provided information on how to appeal a correction decision to the legal representative. The occupants had the chance to express their views in the earlier examination of the 'order'.
- The assertion that the occupants have not received information is incorrect. The City of Malmö has informed the occupants several times about the existing prohibition against living on the property. The property owner, in turn, tried to inform the occupants earlier. Public authorities take action only if the property owner does not take action or is not capable of taking action. During the course of the case, the Environment Department has visited the site three times to provide information to the occupants: twice in April and once in October. Signs containing information about the prohibition to live on the property were set up in three different languages. The City of Malmö, via the Environment Department and the Social Resource Department, also held information meetings at Crossroads, a day centre financed by the City of Malmö. The Environment Department also invited the occupants' legal representative to a meeting on 2 October. The representative later declined, and therefore received information in writing on 12 October. In it, an account was presented of the Department's assessment and future processing, as well as the intention to take decisions that would lead to the occupants having to leave the property.
- All EU citizens have the right to try and find a stable income in another EU country during a three-month period. The occupants are neither registered in, nor citizens of, Sweden. They are European citizens, mainly from Romania but reportedly also from Bulgaria. Everyone who lives in the EU/EEA countries has the right to move freely within the Union and temporarily reside in other Member States for at most three months. Under the Free Movement Directive, EU citizens must be able to earn their own living (and not constitute an unreasonable burden on the social assistance system under the Social Services Act). Those who are temporarily in Sweden and not working are only entitled to limited municipal help. All decisions under the Social Services Act are to be taken following an application and an individual assessment of the applicant's needs. These needs could include a ticket to the home country or money for food or shelter.
- The equal treatment as prescribed in the *Charter of Fundamental Rights of the European Union* is respected in Swedish legislation as well as in the Swedish Environmental Code and the Social Services Act. Taking action against serious health and environmental risks is of public interest. The right to seek and receive assistance is based on where a person is staying and has residence, not on nationality or ethnicity.

- In the same way as for Swedish citizens, the social services have drawn attention to the situation and offer emergency accommodation. In the same way as for Swedish citizens, the right to assistance is based on individual assessments. Everyone has the right to turn to the social services to apply for support and receive a decision. EU regulations state specifically that EU citizens with the right of residence must be given equal treatment. The right of residence requires that certain requirements are met, such as having sufficient financial resources.
- The City of Malmö has adopted an action plan that describes the support the City gives to socially vulnerable and poor EU citizens. The plan includes measures such as evacuation facilities in the event of removal, a grant to the Crossroad's day centre offering guidance and information about public authorities and health care, support in looking for work, winter shelters, a coordination service and cooperation with other countries. All help is provided within the framework of the Social Services Act and the special measures determined by the politicians governing the municipality.
- Under the action plan, the Social Resource Department is tasked with opening a centre for overnight stays in connection with removal from a camp site. This evacuation accommodation will be available for no more than five nights. The aim is to give this group a respite so they have time to find other accommodation when they have to move. In this case, the City of Malmö is offering 50 beds as evacuation accommodations. Experience from previous removals shows that not everyone seeks the help that is offered. The assessment therefore is that this will suffice.
- Accommodation is also opened in shelters year round in the event of extreme weather.
- Within the framework of the action plan, the City of Malmö also offers 40 places in a shelter during the winter period from 1 December to 29 February.
- As far as the City of Malmö is aware, there are no children in the camp. If there had been children there, the City of Malmö has routines in place to give children the support they need.
- In a communication from 29 October, the Romanian Embassy posed questions about the removal and about what they must and can do to contribute. The Embassy received a reply from Carina Nilsson, the responsible Municipal Commissioner of the City of Malmö, on 30 October.