

# SWEDEN

## Child-friendly justice

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## **1. The child's legal capacity**

### **1.1. Minimum age at which a plaintiff can bring a case to court in their own right**

In Sweden the minimum age of criminal responsibility is 15.

A case can be brought to court by persons who are at least 18 for family, employment, migration and asylum matters as well as administrative sanctions. For education matters the age is 16 and for health matters (only if this concerns compulsory psychiatric detention / treatment) and placement into care, 15 (although children will usually be defendants and not plaintiffs).

## **2. Access to adapted proceedings**

### **2.1. Specialised institutions and competent authorities**

#### **2.1.1. Criminal justice**

Sweden does not have special courts for young offenders. Children under the age of 15 cannot be prosecuted and instead fall under the care of social services, while those who are between 15 and 18 years of age are tried in general courts. However, young offenders between the ages of 15 and 21 enjoy special protection under the Young Offenders Act (1964:167). An investigation against a young suspect should, if possible, be conducted by an employee of the police authority or a prosecutor who, with respect to his or her interest or aptitude for working with young offenders, is particularly suited to the task. In general, social services, police and prosecution and any other relevant authorities should cooperate when children are involved (section 6 Police Act (1984:387); chapter 5 section 1a Social Services Act).

Social services are responsible for the wellbeing of children (chapter 5 section 1 Social Services Act (2001:453)) and are involved in a wide range of activities concerning children who are suspected of having committed a crime. Social services should attend interviews and submit a report with their opinion to the prosecutor before a decision on prosecution is made (sections 10-11 Young Offenders Act). In the report, social services investigate the young offender's social situation and assess whether he or she is in need of care, taking into account the young offender's situation, state of physical and mental health and risk of relapse into crime. If the child is under the age of 15, it is social services who decide whether such an investigation, resulting in the statement of opinion, should be made.

Authorities whose activities concern children and youth, as well as authorities providing health and psychiatric services, social services and correctional institutions are obliged by law to report to the Social Welfare Board any information they might come across on a child being abused (chapter 14 section 1 Social Services Act). This obligation also applies to the employees of such authorities. See also regarding Children's House (barnhus). – Section 3.1.2.1.1. Victims.

#### **2.1.2. Civil justice**

There are no specialist institutions dealing with children in civil judicial proceedings in Sweden. Civil law cases and cases regarding custody, residence and contact are handled by general courts. In the latter types of cases, the social services are given an opportunity to submit information to the court before the court makes a decision. The court may also instruct the social services to, for example, conduct an investigation concerning the child and the child's situation. Both the court and the social services must operate with the child's best interests in mind (chapter 1 section 2 Social Services Act).

Most family law disputes fall under the jurisdiction of the general courts but decisions of some authorities, e.g. decisions of the Tax Authority regarding the child's name, are appealed to the administrative courts. Proceedings in which the court makes decisions about the care of a child are dealt with under civil proceedings. The social services are often involved in family law cases and are responsible for investigating the child's views and wishes and present the investigation to the court. Before bringing their dispute to the court, the Children and Parents Code (1949:381) encourages parents to contact the social services, which are obliged by law to offer the parents cooperation discussions on issues concerning custody, residence and contact. If the dispute is brought before the court, the court may decide on cooperation discussions or mediation.

#### **2.1.3. Administrative justice**

Sweden has general courts and administrative courts. They work in parallel. There are no special family or

youth courts in Sweden. The administrative court system deals with challenges to administrative decisions. The first judicial instance dealing with appeals against administrative decisions by the State or public authorities is the local Administrative Court (förvaltningsrätt). Appeals against decisions of the administrative court go to a regional Administrative Court of Appeal (kammarrätten) and thereafter to the national Supreme Administrative Court (Högsta Förvaltningsdomstolen) (Act (1971:289) on General Administrative Courts, section 1). In the fields of migration, asylum, and citizenship, appeals against decisions of the relevant administrative authority (usually the Swedish Migration Board) go to one of four administrative courts sitting as a Migration Court (the first judicial instance), and thereafter to the Administrative Court of Appeals in Stockholm sitting as the Migration Court of Appeals (Aliens Act (2005:716), chapters 14 and 16). In some fields of administration, the applicable legislation provides for an administrative appeal to be heard first by a higher administrative authority such as a board or committee (nämnd). Decisions of such authorities may then be the subject of the appeal to the administrative courts. In particular cases, appeals must be made to central government.

## **2.2. Legal and policy measures in place to avoid undue delay in the handling of cases involving children**

### **2.2.1. Criminal justice**

When a child is suspected of a crime, the parents or another person responsible for the care of the child should as soon as possible be notified about the crime and the interview with the child. The parents should be present during the interview. If the crime is serious, the social services should also be notified as soon as possible about the crime and be present during the interview (sections 5-7 Young Offenders Act). When a child is suspected of a crime a public defense counsel is normally appointed (section 24 Young Offenders Act).

The investigation and court proceedings are adapted to young suspects. The investigation should be conducted as promptly as possible and the decision on prosecution should be taken no later than six weeks after the child has been served with an indictment. Specially appointed judges and lay judges adjudicate in the court proceedings in cases where the offender is under 21 years of age. The proceedings should be conducted promptly and without drawing attention.

### **2.2.2. Civil justice**

According to the Swedish Instrument of Government, a legal proceeding shall be completed within reasonable time (Chapter 2, section 11 of the Instrument of Government). This rule applies to all legal proceedings. At the same time, the Swedish law contains very few legal provisions on disputes which should be dealt with priority. There are, for example, no legal provisions, except the general rule, stating that relevant decisions and the commencement of proceedings shall take place without undue delay when children are involved in cases concerning custody, residence and contact the court can issue an interim decision if necessary.

### **2.2.3. Administrative justice**

The general rules described here apply to the sectors of asylum, migration, education, health, placement into care and administrative sanctions. However, specific rules may apply to certain sectors. Such rules are described in separate subheading below. As a general rule all cases before the administrative courts must be determined as soon as possible (Regulation (1996:382) containing instructions on the administrative courts, section 17). In addition, any case (or an issue arising on a case) before the administrative courts must be fast-tracked if the case or the issue for any particular reason must be determined expeditiously (Regulation (1996:382) containing instructions on the administrative courts, section 17). All judgements or other decisions by the administrative courts must be promulgated as soon as possible, and in any event no more than four weeks after the conclusion of the proceedings (unless a further period of time is unavoidably necessary with regard to the nature of the case or issue, or for any other particular reason) (Regulation (1996:382) containing instructions on the administrative courts, section 18). Sector-specific legislation contains further provision as to which cases should be handled with particular speed.

#### **2.2.3.1. Migration and asylum**

There are specific migration and asylum cases which must be dealt expeditiously. Such cases concern refusal of entry to Sweden or removal or deportation from Sweden (on any grounds), detention and cases in which the security police have recommended that applications be rejected with regard to reasons of national security or public order. These cases must be dealt with by the courts expeditiously and thus, in accordance with the aforementioned principles, fast-tracked) (Aliens Act (2005:176), chapter 1 section 13 and chapter 16 section 4). Cases concerning residence permits on grounds of family connections must, as a main rule, be determined by the Migration Board within a maximum of nine months from when the application for the residence permit was

submitted (Aliens Regulation (2006:97), chapter 4 section 21a), but there is no specific provision as to how quickly the courts must thereafter determine any appeal against such a decision (unless it falls within the cases mentioned above).

#### **2.2.3.2. Detention for compulsory psychiatric treatment**

The administrative courts are obliged to determine applications and appeals concerning detention for compulsory psychiatric treatment within eight days of the application or appeal reaching the court (Act (1991:1128) on Compulsory Psychiatric Care, section 35 sub-section 2), unless further investigation is necessary or it is necessary for some other particular reason (Act (1991:1128) on Compulsory Psychiatric Care, section 25 sub-section 2). The court is under a duty to handle all such cases expeditiously (Act (1991:1128) on Compulsory Psychiatric Care, section 35 sub-section 1).

#### **2.2.3.3. Compulsory care**

All cases concerning compulsory care must be dealt with expeditiously, including before the administrative courts (Act (1990:52) with Special Provisions on Care of Young People, section 33). Even before court proceedings are commenced, where a local social services authority receives a report concerning a child or young people, the social services authority must immediately make (and document) a judgement as to whether the child is in need of immediate protection (Social Services Act (2001:453), chapter 11 section 1a sub-section 1). The local social services authority is in any event obliged without delay (According to the Social Services Act (2001:453), chapter 11 section 1a sub-section 2, it must be done at the latest within 14 days, unless there are exceptional reasons to the contrary) to open an investigation into any information which, by application or by a report, or any other means has come to their attention and which could lead to some measure being taken by them (Social Services Act (2001:453), chapter 11 section 1 sub-section 1).

### **2.3. Child-specific support mechanisms and procedures and ways of ensuring the voice of the child is heard**

#### **2.3.1. Criminal justice**

##### **2.3.1.1. Victims and witnesses**

Children and adults alike may be parties in judicial proceedings. Thus, children who are victims of crime have the same right to be heard and to participate in the proceedings as adults. In cases where the child's account of the events is of particular importance (which is the case when the child is a victim) an expert in child psychology or interrogation psychology should be present during the interview or should comment on the value of the child's account (section 19 Ordinance on Preliminary Crime Investigations). Two types of experts may be relevant to the case: either an expert who is helping out during the investigation and questioning, or an expert who, during the trial, is giving his or her opinion on the child's credibility and the reliability of the account of the child. If the case is complicated, an external expert in child psychology or child psychiatry or another field may also be heard.

Special consideration should be given to children who are very young or who have any form of disability, either physical or mental. In these cases, the prosecution should always consider bringing in an expert. It should be noted that parents cannot prevent a child from being heard.

There is no right to be heard with regard to witnesses, regardless of whether the witness is a child or an adult. Witnesses are not parties in the trial and have no part in criminal proceedings other than providing their account of what happened if needed. Parents cannot prevent the hearing of a child as a witness. The right to be heard is ensured in the Code of Judicial Procedure, which allows the suspect to defend him or herself if he or she is an adult. Children under 18 years of age may be represented by their parent or guardian or a defence counsel (in most cases a public defence counsel). For child offenders aged under 18, the parents choose the defence counsel (Code of Judicial Procedure, chapter 21 section 1 and 3). The defence counsel puts forward the child's story and opinions. The child may also tell his or her story in his or her own words during the court proceedings.

##### **2.3.1.2. Multidisciplinary approach**

Different actors, such as the police, the prosecution, health services, and social services are required to cooperate (section 6, Administrative Procedure Act; chapter 5 section 1a, Social Services Act; section 3, Police Act). When a child is a victim of violence, the principal responsibility for cooperation falls on social services. However, each agency acts within its own responsibilities and competence, and each agency carries out its own

investigation and is responsible for its own decisions. Most municipalities have so-called consultation groups (samrådsgrupper) with representatives from social services, the prosecution, the police, child healthcare services, and child and youth psychiatry services. The consultation groups decide on the coordination of efforts and planning and decide in which order the different actors should act once a report on a crime against a child has been made.

### **2.3.1.3. Respect of the evolving capacities of the child**

The Children and Parents Code ensures the respect for the evolving capacities of the child. The custodians (normally the parents) have the right and duty to take decisions concerning the child's personal affairs. In doing so, the custodians are obliged, in keeping with the increasing age and maturity of the child, to take the child's views and wishes increasingly into account (chapter 6 section 11 and 13 Children and Parents Code). The law does not set any age limits in this respect, but keeps it open for the courts and decision makers to decide whether a child is old and mature enough to be involved. Furthermore, according to the preparatory work, children who are younger than 12 years of age are rarely considered to be old and mature enough to participate in legal proceedings (Government Bills 1981/82:168 p 78, and 1994/95:224 p17).

### **2.3.1.4. Protection from discrimination**

Children enjoy comprehensive protection under Swedish legislation. The Swedish Constitution stipulates that the public institutions must "promote the opportunity for all to attain participation and equality in society and for the rights of the child to be safeguarded" (chapter 1 section 2 of the Instrument of Government). The Constitution and the Discrimination Act prohibit discrimination on the ground of age. Children who feel that they have been discriminated against can contact the Equality Ombudsman or The Child and School Student Representative (BEO).

The Equality Ombudsman registers and investigates complaints falling under the Discrimination Act and can represent the child in court free of charge. BEO is part of the Swedish Schools Inspectorate though it functions independently. Together with the Swedish Schools Inspectorate, BEO has supervision over the section of the Education Act which deals with degrading treatment. They shall also, together with the Equality Ombudsman work to counteract degrading treatment, discrimination and harassment of children and students. One very important task for BEO is to safeguard the rights of children and students. This means that they investigate complaints concerning degrading treatment in schools and can represent children and students in court versus the principal organisers (both municipalities and independent principal organizers). The Ombudsman for Children represents children regarding their rights and interests on the basis of the UN Convention on the Rights of the Child (CRC). The Ombudsman for Children does not have the power to interfere in individual cases but has a duty of notification if it becomes aware that a child is being abused or needs protection.

### **2.3.2. Administrative justice**

Social services authorities have continuing responsibilities to support and provide care to children and young people, as the case may be also in relation to judicial proceedings. A child can access such services in their own right from the age of 15 (Social Services Act (2001:453), chapter 11 section 10 sub-section 2).

## **3. Multidisciplinary aspects**

### **3.1. Coordination of their activities by relevant organisations**

#### **3.1.1. Custody, residence and contacts**

In cases concerning custody, residence and contact the court shall make sure the matter is investigated properly. Before the court issues a judgement in the case the social welfare committee shall be given the opportunity to leave information. If more investigative measures are needed the court may mandate the social welfare committee to conduct such measures. If it is not unsuitable, the committee shall try to clarify the child's own view and present it to the court.

### **3.1.2. Criminal justice**

#### **3.1.2.1. Victims and suspects**

If a child is victim of a crime or is suspected of having committed a crime, police and prosecutors always need to cooperate. Cooperation is also initiated with social services and other relevant actors. The aim is that all concerned actors are involved as early as possible in order to focus on the child and its interests.

##### **3.1.2.1.1. Victims**

When there are suspicions that a child has been subjected to crime, relevant authorities should cooperate, especially police and prosecutors but also social services and health care services. Cooperation mostly takes place in the beginning of investigations. This is done partly through planning of actions, partly during interviews in order to avoid that the child has to tell what he or she has been through to several persons at different occasions. Normally a child under the age of 15 does not give evidence in person before a court. Such evidence is presented to the court in the form of a video recording of the police interview.

Children's Houses bring together the social services, police, prosecutor, forensic medical experts, paediatric medicine and paediatric psychiatry services, which work together, primarily in the initial stages of the preliminary police investigation and the investigation by the social services. Currently, more than 30 Children's Houses are operating throughout Sweden.

The idea of the Children's Houses is to protect children subject to physical and sexual abuse from further trauma during criminal proceedings, to facilitate the giving of evidence and to provide support and treatment. The House offers an environment suitable for children and provides rooms for treatment, medical examination, and forensic child interviews. This means that the child and its family need only to go to one place to meet social workers, police, prosecutor, doctors and others involved in the case. The social services have a coordinating role and one or more social workers are stationed in the premises. There is support for the assertion that the Children's Houses lead to improved quality from a child perspective. The environment is adapted to children, and there has been general improvement in crisis support. Follow-up and evaluation have shown that collaboration has become more effective and more structured.

##### **3.1.2.1.2. Suspects**

When a young person is suspected of having committed a crime police and prosecutors have an obligation to investigate the crime promptly. The preliminary investigation shall be led by a prosecutor or the police. If a child or a young person is a suspect he or she is interviewed by the police. When the police investigation is completed other authorities take over. Children under the age of 15 cannot be convicted in court. Instead, the social services decide upon sanctions and actions. If the child is above the age of 15 it is up to the prosecutor to decide if there should be court proceedings.

##### **3.1.2.2. Protection of private and family life**

When a child is taken to be interviewed, special protective measures should be taken so that the public are not made aware of the situation (section 17, Ordinance on Preliminary Crime Investigations). Confidentiality is ensured for adults and children during the investigation and during the proceedings if the offence involves, for example, sexual abuse (chapter 18 section 1 and chapter 21 section 1, Public Access to Information and Secrecy Act). However, there are no special provisions on confidentiality with regard to children involved in court proceedings. The general rule is that as soon as an investigation has been concluded it becomes available to the public with some exceptions, such as cases on sexual abuse, trafficking or victims of child pornography (chapter 35, section 12, Public Access to Information and Secrecy Act). During the court proceedings, it is possible to have a court hearing in camera (inom stängda dörrar). After the trial the court can decide whether the statements obtained in camera should be confidential or made public.

#### **3.1.3. Administrative justice**

Sector-specific legislation in numerous fields creates obligations for different authorities to notify each other or share information with each other about children. The administrative courts themselves have no general obligations that relate specifically to a multidisciplinary understanding of a child and his or her interests. However, the Social Services Act lists a number of public authorities (including courts) and professionals who are duty-bound to immediately report to social services if they receive knowledge that a child is being mistreated (Social Services Act (2001:453), chapter 11 section 1). In principle, authorities whose work concerns children and young people ought to include the administrative courts in appropriate cases. This opportunity for

the administrative courts to interact with social services authorities should also be seen in context of the administrative courts' general power, as part of their inquisitorial function of ensuring that cases are investigated as their character requires (Administrative Proceedings Act (1971:291), section 8), to gather submissions from authorities and officials or seek expert advice, on issues which call for particular expertise (Administrative Proceedings Act (1971:291), section 24 sub-section 1). Various provisions in sector-specific legislation oblige public authorities to provide information to the administrative courts at the court's request. Although this does not usually draw a distinction between information about children and adults, such provisions can of course be invoked by the courts in relation to child, offering a further opportunity for multi-disciplinary cooperation in administrative court proceedings.

### **3.1.3.1. Interactions between administrative judicial proceedings**

In relation to several administrative proceedings running at the same time, Swedish law specifically provides that where there is close connection between cases dealt by more than one administrative court, the cases may be handled by one of the administrative courts in question, if this can be done without considerable inconvenience for any party (General Administrative Courts Act (1971:289), section 14 sub-section 3).

### **3.1.4. Civil justice**

There are no special rules on the coordination of work between the courts and the social services. However, the social services are often involved in family law cases and are responsible for investigating the child's views and wishes and present the investigation to the court. With respect to the link between administrative and civil proceedings, Swedish law does not contain relevant provisions.

## **4. Training of professionals**

### **4.1. Training requirements for professionals who are in contact with the child during the proceedings**

#### **4.1.1. General requirements**

Small children in criminal cases are interviewed by specially trained police officers (see below) during the investigation and they are not interviewed in court. In family, and similar, cases the social services are in contact with small children in order to hear their view and make an assessment of the child's best interest.

#### **4.1.2. Police**

Investigations concerning sexual crimes against a child are to be conducted by a specialized prosecutor and the child forensic interview is to be conducted by a police officer trained for this purpose.

Sweden offers national training for investigators interviewing children. The training includes two steps. After concluding the training, police officers are investigators. The investigators are mostly police officers but can also be a specially trained non-police employee. The training includes planning and preparation, reception and interviewing. The training is not optional by regulations but the Police strongly recommends that every child-investigator is undertaking the training. The investigators are also recommended to take a two weeks course every second year, to keep up the skills and to develop knowledge.

#### **4.1.3. Prosecutors**

Newly appointed prosecutors have to undergo a comprehensive basic education which includes the topic abuse of children and how young offenders are treated. This training is mandatory for all prosecutors. In addition, there is further training, designed to give prosecutors specialized knowledge regarding investigations of child victims of crime. There is also continuing education regarding young people and crime, which aims to give participants more knowledge about youth crime. It also aims to get more knowledge about the criminal law framework relating to young offenders and about the task of the social services when young people are handed over to care. Finally it aims to get more knowledge on communication with and between young people.

In addition to training, there is a manual accessible for all prosecutors that deal with issues of child abuse and a manual on how to treat children. Furthermore, there are a "RättsPM" in force that include young offenders and the convention on the rights of the child. Within the Prosecution Authority there are also guidelines regarding, for example, processing of youth cases.

There are no specific educational requirements for prosecutors who meet children and young people at court in general. With regard to cases where children are victims of crime, the recommendation is that these cases should be handled and dealt with by a limited number of designated prosecutors who have completed the course Child abuse.

#### **4.1.4. Judges**

There are no specific requirements regarding education for judges, and other staff at the court, when children and young adults come into contact with the court. There is, however, a statutory requirement that cases involving youth, with perpetrators below age 21 (ungdomsmål), should be handled by a judge who has been specially appointed to handle such cases, but no requirements regarding training are linked to this. Generally, there are no requirements on continuous training for permanent judges. Instead, all such training is on a voluntary basis and is adapted to the needs of the judge. The training as a junior judge is obligatory, though. The Judicial Training Academy offers special courses for judges on handling cases involving youth, including courses on witness psychology and evaluation of evidence, where children's statements are dealt with.

The training as a junior judge does not contain any special courses on cases involving youth since junior judges normally don't handle such cases. However, the child's perspective is a part of the training on a general level in different subjects included in the training. The training also includes segments related to cases regarding special provisions on care of young people (LVU-mål).

The general aim is to raise judges' awareness of children's and youth's conditions and needs, and how they best should be approached.

#### **4.1.5. Advocates (lawyers who are members of the Swedish Bar Association)**

One who would like to become advocate (Swedish: "advokat", a lawyer who is a member of the Swedish Bar Association) has to meet several requirements – extensive education, experience of legal practice and personal suitability for the profession. In order for a lawyer to become a member of the Swedish Bar Association the applicant must have a law degree (juristexamen) and at least three years of experience of practicing law, either as employed at a law firm or through his or her own legal practice. Finally, the applicant must undergo the bar examination which consists of training and an oral exam. When the applicant fulfils these criteria, he or she may apply for membership of the Swedish Bar Association. The application is examined by the Board of the Bar Association. In addition to the formal requirements the applicant must be in a sound financial situation, honourable and be considered suitable for the legal profession. The applicant's suitability is assessed through e.g. references from persons the applicant has been in contact with as an employee at a law firm or through his or her own legal practice. There are no special demands that have to be met by applicants who wish to work within a specific area of law, for example litigation involving minors.

The Bar Association demands that each Advocate must go through at least 18 hours of education per year. The Bar Association offers courses in different areas of law which deal with issues connected to cases concerning minors, such as Act (1990:52) with Special Provisions on Care of Young People or the process of asylum. The Bar Association has also published guidelines on how advocates can defend a vulnerable, for example a minor, client's interests in accordance with the Code of Conduct.

An advocate can only accept a case for which he or she has capability to take into account the client's best interest. Cases involving minors can often require special knowledge and the advocate may only accept such cases if he or she has such knowledge. When someone is appointed by a court, the court is obligated to appoint a person who is suitable for handling the case. There is no requirement that an advocate must have gone through specific training in order to be able to accept cases involving minors.

## **4.2. Vetting of professionals**

Pursuant to inter alia the EU-directive on combating sexual exploitation of children and child pornography, Sweden introduced on 18 December 2013 new legislation for the purpose of vetting persons who are to work in places where they will have regular and direct contacts with children. According to the legislation, a person who is offered a position, commission or temporary employment involving regular contacts with children must on request present an extract from the criminal records before the employment commences. In other words, the legislation builds upon the principle that the person seeking, and subsequently is offered a position, shall herself or himself request an extract from the criminal records for submission to his or her potential employer. Beyond the mentioned legislation, there is other legislation protecting children, which prescribe obligation to present criminal records, for example the Education Act.

## **4.3. Cooperation with other Member States on training**

The Linnaeus University is currently developing a ground-breaking training tool that prepares any kind of professional working with children and youth on how to handle regular or sensitive conversations – including when a child might be a victim of violence or sexual abuse.

This online tool uses an avatar-based system to achieve an authentic experience and has achieved good results in preliminary tests. The project team foresees that the tool will help countries provide coordinated training across professional groups, thus improving common understanding and case coordination. When completed, the tool will be available for free for non-commercial use. It is expected that the development will be finalized in the second half of 2017. The project has received so called seed funding from the Swedish Institute and it is envisaged that funding to finalise the project will be sought from an EU source, possibly the Internal Security Fund.

Partners from Estonia include Police and Border Guard Board, University of Tallinn, Institute of Psychology, Ministry of Justice, Ministry of Social Affairs, and Police and Border Guard College. Partners from Latvia include the Ministry of Welfare and Kurzeme regional court of Latvia. Partners from Lithuania include Law Institute of Lithuania and Legal Division, National Courts Administration. Partners from Poland include The Nobody's Children Foundation. Partners from Denmark include the Police Academy, Socialstyrelsen, Kontoret for Børn og Familie, and Professionshøjskolen Metropol. Partners from Sweden include the Swedish Police.

## **5. Best interests of the child**

### **5.1. Measures in place to ensure that the child's best interests are a primary or paramount consideration**

Swedish law stipulates that the best interests of the child shall be of primary consideration of the court, which means that the court is required to consider the best interests of each child (chapter 6 section 2a, Children and Parents Code). In cases concerning custody, residence and contact, the court decides on the best interest of the child. The social welfare committee conducts investigations on the best interest of the child and presents a proposal to the court. The committee shall, if it is not unsuitable, try to clarify the child's view. The child can be questioned in court when necessary if it does not have a negative effect on the child.

#### **5.1.1. Administrative law**

There is no general principle under Swedish administrative law that authorities or administrative courts must have regard to the best interests of the child, or that particular weight must be given to the child's best interests. Administrative law therefore differs in this respect from civil law (where the requirement to safeguard the best interests of the child is of general application when it comes to decisions, in the framework of family law, concerning a child's care, residence and contact with others (Children and Parents Code, chapter 6 section 2a). However, sector-specific legislation has introduced into a number of specific administrative areas (including migration and asylum, social services including placement in care, and education) the principle that regard must be had, to varying degrees, to the child's best interests.

Nevertheless, where there are no provisions which explicitly require the administrative court to have regard to the best interests of a child, the administrative courts still have a broad discretion in any given case as to how to exercise their inquisitive functions. This includes their powers to investigate the case and invite submissions from relevant authorities and appropriate experts. In principle the administrative courts ought to carry out these functions in a way that strives to ensure the safeguarding of children's rights, as required by the Constitution (Instrument of Government (1974:152), chapter 1 section 2 sub-section 5).

## **6. Monitoring and enforcement of decisions in proceedings involving children**

### **6.1. Criminal justice**

#### **6.1.1. The child as a victim or offender**

##### **6.1.1.1. Provision of information**

There are no special provisions relating to information with regard to children. The same provisions apply to children as to adults. Information on the withdrawal of an investigation or prosecution, time of court proceedings and the judgment is provided if the child victim requests it. If necessary, the child victim should also be informed if the accused person absconds. There is a requirement to inform the child victim as soon as a decision on prosecution has been made (section 13b, 13c and 13d, Ordinance on Preliminary Crime Investigations).

##### **6.1.1.2. Sentencing**

Children under 15 years of age cannot be held criminally liable for crimes they committed. The fundamental principle is that young offenders should first be subjected to measures under the Social Services rather than be transferred to the Prison and Probation Service. There are special sanctions which only apply to young offenders aged between 15 and 21 (see chapter 32, Criminal Code). These are the following and should as a main rule be used in regard to young offenders between 15 and 18: Youth care (ungdomsvård), community service for young offenders (ungdomstjänst), institutional youth care (sluten ungdomsvård).

Child offenders aged between 18 and 21 are often be sentenced to the same sanctions as adults. These sanctions consist of: Fines, imprisonment, conditional sentence, probation, community service or, forensic psychiatric care. There is a special rule stipulating that if the offender committed the crime before he or she reached the age of 21, his or her youth should be given special consideration when determining the punishment. In such cases, the court may impose a less severe sanction than is prescribed by the law.

##### **6.1.1.3. Deprivation of liberty**

There are some types of deprivation of liberty that can be imposed on a young offender who has committed a crime before reaching the age of 21. These consist of: Imprisonment, forensic psychiatric care, institutional youth care.

Special grounds are required for sentence offenders aged 18 – 20 to imprisonment. Only in exceptional circumstances may persons under the age of 18 be sentenced to imprisonment. Child offenders under 18 years of age are as a main rule sentenced to institutional care of young persons instead of imprisonment (chapter 32 section 5, Criminal Code). The duration of such care is between 14 days and four years.

##### **6.1.1.4. Criminal records**

There are special provisions in the Criminal Records Act regarding children. The following time limits apply for a young offender's criminal record to be cleared:

- 3 years where the prosecution decided not to prosecute;
- 5 years for probation, suspended sentence, care of young persons, youth service, fines;
- 10 years for institutional care for young persons.

Prosecutors may waive prosecution against a child (straffvarning) in the following cases and provided that no compelling public or private interest is disregarded:

- if the child is subject to care or any other action within the Social Services Act
- if the child is subject to care or any other action within the Act with Special provisions on Care of Young People
- if the child is subject to any other action that will help or support the young offender (section 16-17 Young Offenders Act)

Prosecutors may also waive prosecution in the following cases and provided that no compelling public or private interest is disregarded:

- if it is presumed that the offence would not result in a sanction other than a fine;
- if it is presumed that the sanction would be a conditional sentence and special reasons justify the waiver of prosecution;
- if the suspect has committed another offence and no further sanction in addition to the sanction for that offence is needed in respect of the present offence;
- if psychiatric care or special care in accordance with the Act on Support and Service for Certain Persons with Functional Impairments is rendered.

Prosecution may be waived in cases other than those mentioned above if it is manifest by reason of special circumstances that no sanction is required to prevent the suspect from engaging in further criminal activity and that, in view of the circumstances, the institution of prosecution is not required for other reasons (chapter 20 section 7 Code of Judicial Procedure).

Criminal records can only be made available to the person who they concern or to certain authorities listed by the law and, beyond that, to other operators in certain situations. The following authorities are listed in the Criminal Records Act:

- the Parliamentary Ombudsmen, the Chancellor of Justice, The Swedish Data Protection Authority or the Swedish Commission for Security and Integrity Protection (for their oversight activities);
- the Police, the Tax Authority, Customs, the Coast Guard (for the prevention, discovery and investigation of crime), the prosecution office (for decision on investigation or prosecution) or court (for choice of sentence and duration of sentence);
- the administrative court (for permitting or other examination specified by law);
- other authorities to the extent that the Government has prescribed it or given permission (section 6 Criminal Records Act).

## 6.2. Civil justice

### 6.2.1. General procedural rules applicable to children involved in civil judicial proceedings regardless of their role

The provisions on the enforcement of civil court's judgements are the same for children and adults. The law requires that judgements of the court shall be in writing and that they shall specify, for example, the final judgement and the reasoning in support of the judgement (chapter 17 section 7 Code of Judicial Procedure). These provisions also apply to final decisions, if the nature of the matter so requires. A decision which is not final states, to the extent necessary, the reasoning supporting the decision (chapter 17 sections 12 and 13 Code of Judicial Procedure). Judgements are not enforceable until they have become legally binding, i.e. after the deadline for the appeal has expired. The deadline for appeal is specified in the court judgements. However, the court may decide that the judgement be enforceable immediately. Furthermore, decisions, during judicial procedures, which may not be appealed, must be enforced immediately (chapter 17 section 14 Code of Judicial Procedure).

If a counterparty does not fulfil his or her obligations according to a judgement or decision, the party may request for the enforcement of the judgement or decision. The enforcement of judgements and decisions is handled by the Swedish Enforcement Agency. A child is during the enforcement process represented by his or her legal representative or a legal counsel (chapter 2 sections 1 and 6 of the Enforcement Code).

The judgement or decision of the court is sent to the parties. There are no special provisions on informing the child on the decision of the court and its enforcement. The child's legal representative is informed about the decision and enforcement through the judgement, and it is his or her decision to inform the child and to what extent about the judgement.

If a decision in a civil liability case has been issued against a child defendant, the parent or parents who have the custody of the child are responsible for paying the damages (chapter 3 section 5 Tort Liability Act (1972:207)). Thus, the enforcement takes place against the parents' property.

Measures to protect the parties from harm include restraining orders. The same provisions on restraining orders apply to children as to adults. A restraining order may be issued if, due to special circumstances, there is a risk that a certain person will commit violations, stalk or otherwise harass a child.

Under Swedish law, children cannot be subject to the coercive measure of detention.

### **6.2.2. Family law cases**

The Children and Parents Code contains provisions on the enforcement of judgement or decisions on custody, residence and contact, as well as other decisions under the Code. The best interests of the child should be of primary consideration when enforcing such judgements or decisions. Account shall be taken to the child's wishes, with regard to the child's age and maturity (chapter 21 section 1 Children and Parents Code). If a child has reached such age and attained such maturity that his or her wishes should be taken into account, the court should not enforce a judgement or decision against the child's wishes unless it is necessary with regard to the best interests of the child. Furthermore, enforcement must be refused if it is clear that it would not be compatible with the best interests of the child (chapter 21 section 6 Children and Parents Code).

The collection of, or taking charge of, or any other measure affecting a child shall be carried out with greatest possible consideration for the child. If the child cannot be moved due to illness or any other special circumstances, the measure can be postponed (chapter 21 section 9 Children and Parents Code). If there is any danger of the child being taken out of the country or if the matter is urgent for some other reason, the court may immediately order the child to be taken charge of by the social services or in any other appropriate manner. If it is not possible to wait for such decision, the police authority may, irrespective of whether any legal proceedings have been commenced, take such immediate measures as can be taken without harm to the child. The measures that have been taken shall immediately be reported to the court, which shall consider without delay whether they shall stand (chapter 21 section 10 Children and Parents Code).

When collecting, or taking charge of a child, a child support person must be present. However, in urgent matters, necessary measures in order to protect the child may be taken without having such a support person present. If possible, a paediatrician, child psychiatrist or child psychologist must participate when collecting or taking charge of a child (chapter 21 section 11 Children and Parents Code).

There are no special provisions stipulating that the enforcement of a decision should be suspended where a risk to the child has been identified. However, the Children and Parents Code stipulates that when enforcing a decision, the child's best interest should be of primary consideration. Thus, if it is not in the child's best interest, the decision should not be enforced.

Decisions in family law cases may not be enforced until after the judgement has become legally binding, i.e. after the time for appeal has expired unless otherwise provided (chapter 21 section 1 Children and Parents Code).

## **6.3. Administrative justice**

### **6.3.1. General provisions**

The general rule, applicable to adults and children alike, is that any decision in which an administrative court determines a case must be sent to the parties (with any dissenting opinion attached). Where a child who is a party has procedural capacity, the decision will be communicated to them directly (or to any lawyer or 'advocate' acting on their behalf). Where a child who is a party lacks procedural capacity, the decision will be sent to their parent (or to any lawyer or 'advocate' acting on their behalf).

Any such decision which can be appealed should include information about how to appeal, and any information explaining about the fact of, and grounds for, securing permission to appeal if this is needed (Administrative Proceedings Act (1971:291), section 31). Otherwise, there are no special provisions on informing the child on the enforceability of judgements and how, or on the language to be used, beyond those which apply generally to the court's communications with individuals.

As a starting point, the general rule is that the nature of the administrative decision, which is the subject of the appeal, determines when an administrative decision takes effect. Thus, the general rule is that where an appeal concerns an administrative decision which will not take effect until appeal rights have been exhausted, this applies even after the administrative court has reached its decision in the case. Where an appeal concerns an administrative measure that takes effect immediately, the administrative court decision will also take effect immediately. However, the administrative courts have the power to make interim decisions and also the general

power to decide that the decision under appeal (which would otherwise take effect immediately) will not take effect until appeal rights have been exhausted (Administrative Proceedings Act (1971:291), section 28).

However, it should be noted that in the case of newly identified risks (E.g., Act (1990:52) with Special Provisions on Care of Young People, section 1 sub-section 2; section 6 sub-section 1), or decreased (E.g, Act (1990:52) with Special Provisions on Care of Young People, section 9 sub-section 3; section 21) risks, fresh administrative action can be taken in the event of altered circumstances even in cases concerning placement in care and compulsory psychiatric treatment. Where such fresh administrative decisions are capable of being appealed, they will in principle form the subject of new administrative court proceedings.

### **6.3.2. Asylum and migration proceedings**

In the migration and asylum field, there are detailed and complex provisions for authorities, either of their own motion or on an application by the individual concerned, to suspend the enforcement of removal or deportation orders. These are designed particularly to guard against the risk of removal based on a judgement taken at a time when conditions in the receiving country were safe, when country conditions have subsequently worsened. However, suspensions can also take place in view of a child's health, or other altered personal or family circumstances. Suspensions can either be temporary, or can ultimately result in a fresh decision being taken which grants the child legal immigration status to remain in Sweden (Aliens Act (2005:716), chapter 12).

### **6.3.3. Health proceedings**

Judgements in the context of compulsory psychiatric care are immediately enforceable, unless otherwise provided (Compulsory Psychiatric Care Act (1991:1128), section 45).

### **6.3.4. Placement into care**

Administrative court judgements concerning immediate placement in care take effect immediately (Act (1990:52) with Special Provisions on Care of Young People, section 40 sub-section 1).

### **6.3.5. Use of force as a measure of last resort**

Family cases (i.e. disputes litigated by and between family members) are dealt with in civil proceedings before the general courts, not in administrative proceedings before the administrative courts (which are concerned with challenges to administrative decision making). In terms of administrative court proceedings, the Act with Special Provisions on Care of Young People, makes clear that the primary obligation is for social services to carry out interventions for children with the consensus of the child and his or her custodians (i.e. without force) (Act (1990:52) with Special Provisions on Care of Young People, section 1 sub-section 1). Measures can only be taken without the consent of the child or custodian (i.e. with force) if:

- because of physical or mental abuse, unwarranted exploitation, failings in care, or some other circumstance in the home, there is a clear risk of harm to the child's health or development (Act (1990:52) with Special Provisions on Care of Young People, section 1 sub-section 1 with section 2), or
- if the child him or herself is subjecting his or her health or development to a clear risk of harm thorough abuse of addictive substances, criminal activity, or some other socially disruptive behaviour (Act (1990:52) with Special Provisions on Care of Young People, section 1 sub-section 1 with section 3 sub-section 1).

## **7. Access to remedies**

### **7.1. Criminal justice**

There is a general right, i.e. not exclusive for child victims, to request a review of a decision not to prosecute. However, only concerned parties can make such a request. The request for a review should be sent to the local public prosecution office.

#### **7.1.1. Compensation**

Child victims, as well as adult victims, can seek compensation from the offender (damages). If the offender cannot pay or has not been identified, then the victim can seek compensation from his/her insurance company (insurance). In case the victim is not insured, he or she can seek compensation from the Swedish Crime Victim Compensation and Support Authority (criminal injuries compensation).

### **7.1.2. Statute of limitations**

General rules apply regarding limitation periods for young adults who wish, after they reach the age of majority, to pursue their claims about violations of their rights that occurred when they were children. As a general rule, no claim may be brought after ten years 'from its accrual', unless the period of limitation is interrupted prior thereto (Limitations Act (1981:130) section 2). According to the Penal Code, the limitation period for certain offences, such as certain sexual offences committed against a child, must be calculated from the date the child victim attains or would have attained 18 years of age (chapter 35 Section 4 Penal Code(1962:700)).

## **7.2. Civil justice**

As children in general do not have procedural capacity, they can only access complaint, legal appeal or judicial review mechanisms through their legal representative (chapter 11 section 1 Code of Judicial Procedure). There are no provisions prohibiting the legal representative from making submissions or appeal a decision of the court without the consent of the child. However, if the child and his or her parents have conflicting interests, there is a possibility to appoint a special representative (god man) for the child. If there is a risk for the child to be harmed, the social services are obliged to act as they have a special responsibility for children and youth in the society.

### **7.2.1. Appeal against certain court decisions involving children by a child care authority**

This is not possible in cases concerning custody, residence and contact.

## **8. Family life**

### **8.1 Procedure for adoption, including international adoption.**

#### **8.1.1 General rules on adoption (of a child or an adult)**

Decisions on adoption are made by the court. Application is made by the person/persons who wish to adopt. The court shall examine whether the adoption may suitably take place.

The application must not be granted if on either side a consideration has been given or promised. Permission for adoption of a child must not be given unless the adoption is found to be to the benefit of the child.

#### **8.1.2 Addition rules on international adoption of a child**

Families who wish to adopt a child from another country shall apply for consent from the local social welfare committee. A social worker carries out an investigation of conditions in the prospective adoptive family. The investigation is presented in a home study report and the committee grants consent if the family is found suited for adoption. Before the committee can make a decision the family must attend a parental course.

### **8.2 Different types of adoption**

All adoptions decided in Sweden are so called full adoptions, implying the cessation of the legal relationship between the person who has been adopted and her or his original relatives (as opposed to so called simple or weak adoption).

The adoption procedure differs slightly depending on whether the adoption relates to an adult or a child and in the latter case, the procedure is also dependent on whether the adoption is national or intercountry (see question no. 1). Intercountry adoptions are in most cases carried out through an authorised association. However, the Family Law and Parental Support Authority may under certain conditions grant permission allowing an adoption to take place without such mediation ("private adoption"). Sweden is a party to the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (the 1993 Hague convention), which means that the rules and procedures of that convention are followed when the convention is applicable. Further, certain rules apply in relation to the other Nordic countries.

### **8.3 Measures in place to ensure that the child's best interests are taken as the paramount consideration**

Permission for national or intercountry adoption must not be given unless the adoption is found to be to the benefit of the child. The court shall obtain an opinion regarding whether the adoption is in the best interest of the child, from the social welfare committee in the municipality where the applicant is registered and from the social welfare committee in the municipality where the person who has the custody of the child is registered. In cases of intercountry adoption, a social worker shall also carry out an investigation of conditions in the

prospective adoptive family before the procedure is initiated, taking into account the best interest of the child (see question no. 1).

#### **8.4 Measures in place to respect the child's right to be heard in adoption cases**

A person who has attained the age of twelve years may as a main rule not be adopted without his or her own consent. In deciding whether it is appropriate for the adoption to take place, the court shall, even where the child's consent is not needed, take the child's wishes into account, with due regard to the child's age and maturity. The social welfare committee shall as a main rule endeavour to clarify the child's standpoint and communicate the same to the court. In cases where the 1993 Hague Convention applies, the provisions and procedures regarding the best interest of the child in that convention apply.

#### **8.5 Competent authorities for adoption (national/international)?**

Decisions on adoption are made by the court. However, if the adoption relates to a child, the social welfare committee is always involved in assessing whether the adoption is in the best interest of the child. In cases of intercountry adoption, decisions can be made either by Swedish court or by a court or agency in the child's country of origin.

#### **8.6 Possibility for an adopted child to have access to information held by the competent authorities on his or her origins**

Information about national and intercountry adoption may be available in multiple public records, such as the population register, court files and social welfare committee files. According to the principle of public access to information, the information is accessible. However, due to secrecy provisions some information may be available to the child only after he or she turns 18. General information on the possibilities for a person adopted from another country to search for his or her biological family is provided by the Family Law and Parental Support Authority ([www.mfof.se](http://www.mfof.se)).