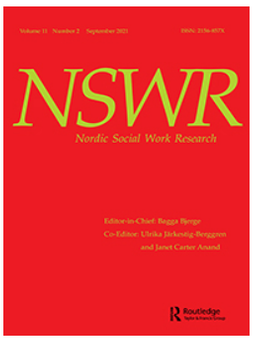

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Social work law in nexus with migration law. A legal cartographic analysis of inter-legal spaces of inclusion and exclusion in Swedish legislation

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ABSTRACT

This article departs from the promise frequently put forward, that Social work is a profession committed to human rights. In a Swedish context, this commitment is manifested in ethical guidelines as well as national law referring to rights such as the right to 'a reasonable living standard'. In recent years, politicized processes have allowed legislation guiding social work to interact deeply with other legal areas such as migration law which has a different raison d'être, focus and scope than social law (interlegality). This has greatly affected social workers opportunities to live up to its human rights commitment. In this article, we explore two critical incidents of interlegality in resent years, illustrated with two different empirical data sets and their intersection – a change in the *Act on the reception of asylum seekers and others* (1994:137) and a verdict by the Swedish Supreme Administrative Court concerning the ultimate protection net in the *Social Services Act* (2001, 453) (*HFD 2017 ref. 33*). Making use of cartographic analytical tools, we analyse transformations in the conditions set for access to a 'reasonable living standard' in Sweden. In particular, focus is on *what* the intersection of legal (vertical) scales and legal (horizontal) spaces perform, *qua* law, and *how* changes in one legal branch (migration law) deeply affect another area (social law). As a consequence, the *Social Services Act*, which is central to Swedish social work, may be constructed as a law about legal status rather than about needs and welfare rights. This has a profound impact on social work as a human rights profession.

KEYWORDS

Bordering practices; human rights; inter-legality; legal cartography

Introduction

Social work claims itself to be a human rights profession. This is stated in the global definition of social work as provided by the *International Federation of Social Workers* (IFSW 2000). This is also how it is defined in many national codes of ethics, including in Sweden (SSR 2014). While much focus has been directed towards the involvement of the profession in the development and strengthening of human rights (Dominelli 2004; Healy 2008; Ife 2012; McPherson and Mazza 2014), doubts have also been raised (e.g. Solas 2008; Murdach 2011; Mapp et al. 2019). The tension lies, to some authors, in that social workers can both function to strengthen human rights for the populations they work with, but also serve more restraining interests from the state's side. At the bottom line, this raises questions about the role of social workers, to promote the interests of governments or of the population they serve (Mapp et al. 2019, 261). Whatever the case, Swedish professional social work to a large degree is guided by national law which in turn take into account international commitments on human rights. Social workers in their legal

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interpretation and application are explicitly expected to consider human rights. Simultaneously, social work is sometimes affected when changes occur in legal areas with a different extent and scope which have an impact on how social laws are possible to use. This article is interested in *how* such changes come about, a question of great importance to social work and social workers. Our analysis deepens the understanding of legal materia connected to social work as a bordering vs. human rights profession.

Inspired by the legal scholar Boaventura de Sousa Santos, we shall make use of a legal cartographic approach, applied to two different Swedish legal spaces. Legal cartography, we argue, enables an analysis of how changes in one law may, sometimes occasionally and unintentionally, affect the scope of another law, with a profound impact on the *raison d'être* of the latter. In particular, our cartographic analysis allows for a disclosure of how underlying mechanisms embedded in legal settings may re-/invent or destabilize social works' promise to uphold human rights, more or less unnoticed. The article's empirical focus is an amendment in the *Reception of Asylum Seekers Act (Lagen 1994:137 om mottagande av asylsökande m.fl. hereinafter the Reception Act)*) together with the government bill that preceded this amendment, and a verdict adopted by the Supreme Administrative Court (*hereinafter SAC*) concerning access to social assistance under the *Social Services Act* (2001, 453). Our analysis will show how the amendment in the *Reception Act* affects the content and scope of the *Social Services Act*. This offers fertile grounds for continued discussions about human rights as guiding principles for social work.

In the following, we give a short background to our study including a more detailed introduction to the empirical data, followed by a description of the legal cartographic perspective and method. Then, we present our cartographic analysis of how changes in migration law undermines social work as a human rights profession, and finally, some reflections are presented on the implications for social rights in the welfare state.

Two legal sites

The first empirical site of our study, which aims to highlight the intersection of social and migration law setting the framework for social workers application of law, is a bill from the Swedish government for an amendment in the *Reception Act*, which was adopted by the parliament on 1st June, 2016, to strengthen the incentives among rejected asylum seekers to leave the country. The change meant that financial support to asylum seekers, which had previously been disbursed until the returnee left the country,[1] should be withdrawn immediately in the event of an asylum rejection (see sec 11). As early as November 2016, 3,500 people had been notified that they would no longer have a daily allowance. Six months after the amendment, the Swedish Red Cross reported a significant increase in people turning to their local associations for support and assistance. The situation was severe; the Red Cross reported that 90% of about 500 of the organization's help-seekers did not have food (Red Cross 2016). According to current statistics, between June 2016 and 23 October, 25,722 people had their daily allowance withdrawn (Migration Agency 2019).

Our second empirical site concerns a legal interpretation of the *Social Services Act* through a verdict by the SAC, which is the body that issues indicative judgements for the lower courts. Of importance is that decisions in SAC are adopted by the best experts within the current legal area. Moreover, the judges examine cases only after a special trial permit, which is granted if a verdict may provide guidance on how to evaluate other similar future cases.

The decision studied for the present article implies that asylum seekers who have received a final rejection and hence are categorized as returnees, are disqualified from access to social assistance – in terms of the law; 'a reasonable living standard'. The case concerned three children and their mother who lived clandestinely when they applied for assistance. The municipality's health and welfare committee rejected the application. Following an appeal to the administrative court, it was decided that the family was entitled to support. This court argued that since undocumented residents in Sweden actually are not entitled to assistance under migration law they should be entitled to such

assistance under social law in light of the principle of 'a right to social assistance while waiting for the right principal to take on responsibility' (2010/11:49, 25).

The Court of Appeal and later SAC made a different interpretation, and concluded that municipalities do not have discretionary power, nor an obligation, to aid someone whose asylum application has been rejected and who avoids expulsion. Furthermore, SAC argued that municipalities, notwithstanding an obligation to provide for all inhabitants staying in their municipality (ch 2, sec 1), have no responsibility for people falling within the scope of the *Reception Act*. Municipalities 'may', however, according to SAC, aid in situations of undocumentedness under a so-called optional provision (ch 4, sec 2). There is indeed a temporal conjunction between the two spaces, to which we will return, as a new interpretation of one law following the change in another. To allow an analysis of the interlegal alliance between the legislation on reception of asylum seekers, and regulations guiding professional social work in Sweden, we will first present our cartographic approach.

A cartographic theoretical approach to law

Inter-legality in the present study implies the nexus between distinct horizontal (migration vs. social law) as well as vertical, legal scales (international, national and local law). This relates to the promise of social work being a human rights profession elucidating legal choices that have an impact on people's equal opportunities and living conditions in their contact with social workers in Sweden. A broader ambition is to disclose structural forms of exclusion and hidden inequality dimensions of law (Reiz, O'Lear, and Tuininga 2018, 6) which arise when laws intersect and are created or applied (de Sousa Santos 1987, 299), through a legal cartographic analysis.

What does it mean to explore the politically and legally manifested equal right to a 'reasonable living standard' using *cartography* and why is this relevant to social work? Seeing the map as a literal metaphor for law, one discovers that law always both *guides* the practitioner and *represents* reality. This is because the law's rationale is based on the idea that maps (laws) adequately escort the users in the social world. The requirement of user-friendliness is one of the reasons why legal maps are always a distortion of what is represented (a map that completely corresponds to reality is an impossibility). Sometimes, guidance is a more important priority in the map than representation and sometimes it is the reverse. Think for example about international treaties stipulating that 'each and every one' has certain rights. The *Universal Declaration of Human Rights*' (hereinafter UDHR) stipulates an inalienable right to a standard of living which is adequate, including the following for each person:

> " … health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control" (UDHR art 25).

While the guidance here is reasonably clear, the representation of who has a right, where, when and why, is vaguer.

Then think of the formulation in the Swedish constitution, stating that no 'Swedish citizens' may, 'without consent', be registered 'solely because of their political views' (Swedish Instrument of Government 2011, 109, ch 2 sec 3). In this context the representation is clearer as it refers to Swedish citizens and registration, while guidance about when registration is permitted and when it is not leaves great room for discretion.

Whether representation or guidance is given priority depends on numerous things with more or less obvious effects that relate to power structures in society. de Sousa Santos (1987), who introduced the map as a literal metaphor for law, provides some important answers in this context, pointing to cartographic mechanisms which by necessity distort the social reality and affect the map's guiding qualities.

Legal scale levels

Scale concerns the ratio of distance on the map to the corresponding distance on the ground. The choice of scale is therefore a distinction with regard to detail. While geographical large-scale maps illustrate a smaller piece of land and present more details of the terrain, small-scale maps are less detailed in their representation of the world. Whether small or large scale, when a miniaturized representation of the social world is constructed in a mapping process, a selection has to be made of such details that are assumed to be meaningful and relevant, from the perspective of the user and what the law should do (de Sousa Santos 1987, 283). Choice of scale is hence a matter of qualitative distinctions between various levels of representations.

Examples of small-scale maps are *international treaties* and *state constitutions*. International human rights treaties provide the least detailed image of the social world. Human rights obligations establish an all-encompassing representation, assuming that individuals are 'born free and equal in dignity and rights' (art 1 UDHR, integrated into IFSW's codes of ethics in 1988). At this level, every single person is entitled to social, cultural, economic, civil and political rights. The only condition at this scale for having a right to such a thing as a 'reasonable living standard', is one's humanness. One practical reason for the low degree of detail in small-scale maps is the fact that these maps to a large extent are regulations of (larger scale) regulations, rather than regulations of social relations. In other words, when a medium-scale law is created, international treaties and state constitutions (which are closer to a medium-scale) function as a compass that points to the overall direction of national law. This can be compared to the function of a compass in orienteering. Not only how the map is drawn, but also how it is held, is crucial. Holding the map in the right direction is important both when drawing and applying the map. From the position of the social worker using law in their profession, international human rights obligations and state constitutions are a kind of a compass when applying more detailed regulations, especially in difficult cases.

At the medium-scale level under which social work mainly operates, regulations establish responsibilities, opportunities and obligations. Moreover, the *Social Services Act* is based on a subsidiarity principle, meaning that all other formally regulated ways to meet needs, as a rule, have priority over assistance under the Act. When a need for assistance with support of the law is identified, the assistance shall, according to national law, lead to a 'reasonable standard of living' (see ch 4, sec 1). The notion 'reasonable living standard' is not defined but has, for instance, been determined to equate to the level of low-income residents living in the same area, when it comes to housing (1996/97:124, 83/169). Whereas the *Social Services Act* does not provide an exhaustive list of needs that are covered by the law, some needs have been considered so fundamental that they are explicit in legal texts, such as housing, education, work, etc. (see ch 4, sec 1 and 3 and ch 3, sec 2). A lower-level compensation that falls short of a 'reasonable living standard' is available in emergency situation, for everyone staying in a municipality, normally including money for food,[2] accommodation and travel costs (prop 2010/11:49, 37; SAC Verdicts HFD 2014 ref. 37).

Furthermore, Swedish municipalities may also provide so-called 'optional assistance'. This is assistance to people who are not covered by the first section, for instance, when social assistance appears too limited to satisfy needs in an individual case. However, it is noteworthy that assistance under the *Social Services Act's* optional assistance (ch 4, sec 2) can never stipulate *a right to assistance*. Subsequently, decisions under the optional clause, cannot be appealed in the same way as assistance under the obligatory clause (cf. the Social Services Act, ch 16). Moreover, social workers in a municipality normally do not have a mandate to adopt legal decisions about the optional assistance. Instead, it is the Social Committee, which is politically appointed, that is mandated to do so.

Also on a medium-scale level, the *Reception Act* must ensure a 'reasonable living standard' for those who are, or have been, in the asylum process. This has been so since 1994 and before that was mandated in the *Act* (1988, 153) *on Assistance to Asylum Seekers and Others* (1988, 153). In the old law it was explicitly stated that asylum seekers have a right to a daily allowance which 'ensures

a reasonable standard of living' if they are in need of this (sec 9). In the *Reception Act*, asylum seekers who lack their own resources instead should have the right to assistance 'for their daily life' (sec 17). The *Reception Act* unlike the previous law, builds on the principle that the asylum reception is a state responsibility. Furthermore, those who fall within the scope of the *Reception Act* do not have a right to support from municipalities under the *Social Services Act* for assistance that supposedly is equivalent to the *Reception Act* benefits (sec 1). Important for the present analysis is that the *Reception Act* also includes those who have obtained a legally enforceable expulsion decision, although their entitlement to assistance under the Act after the amendment ceases earlier. This is a key issue in the amendment since it implies a loss of financial support for a large number of people staying in Sweden.

At the large-scale level, finally, details about how certain types of cases should be dealt with, who can make decisions and with what substance, and at what economic cost, etc., are numerous. In Sweden, such regulations may be produced by the National Board of Health and Welfare (*Socialstyrelsen*) or municipal authorities (such as the politically designed Social Committee) and the Migration Agency (managing migration). These policies normally refer to other regulations on other scale levels. For example, the city of Malmö's guidelines indicate that undocumented children staying in the city, which is the third largest city in Sweden, should be treated in the same way as other support-seeking families.

The above scales are an aspect of gliding vertical inter-legality. Selections of scale including their underlying assumptions are made from a certain perspective with a particular purpose. Santos discusses this with reference to geographical scholars, in terms of scale as 'coherent forgetting' (de Sousa Santos 1987, 284). Put differently, details as well as scale levels can be overlooked due to the different purposes they serve. To get a comprehensive understanding of these processes we also need to consider the other cartographic mechanisms; projections and symbols.

Legal projections

When the social world in terms of individuals, needs, circumstances, etc, is filtered through legislation and legal practice, a selection of what is considered *relevant* in a given situation is required. Representations in maps of what is considered relevant are the projections, which guide the map reader. For example, people who do not have their protection needs recognized in asylum procedures are represented in the UDHR in terms of human beings with equal rights. At a medium scale, in Swedish legislation, they are depicted as a 'previous asylum seekers' or 'applicants'. At large-scale level, detailed categories are used, such as 'legitimate' or 'non-entitled', 'foreigner', 'clients', 'children', etc. based on legal status or what they did or did not actually do and are required to do as individuals.

Projections are conditional upon what the law is expected to do. Thinking again about orienteering, the map's projections help the navigator. In a geographic context, this is done with different colours, whereas in a legal setting it is done through specific types of wording to portray the social world. It may, for instance, when social workers make use of law, be of great importance if an individual is portrayed as a 'human', 'applicant' or a 'deportee'. Such discretionary power is sometimes handed over to courts and/or, social workers who are expected to fill out semantic abstractions with content, considering individual factual circumstances. In other cases projections are, at least partly, filled out beforehand by the legislator or the SAC. This is when symbolizing, the third cartographic mechanism, becomes important.

Legal symbolization – coding

Symbolization processes are the most complicated procedures to capture in a cartographic analysis. We understand the use of signs (coding) as the way in which scale levels and projections are put to work. Santos distinguishes between two ideal types of symbolization (de Sousa Santos 1987, 295):

the first *instrumental* (formalized) technique is characterized by an operationalization of law which is linked to predetermined measuring points, for instance number of jobs applied for, legal status, etc. The second type of decision-making is completely different. Here, focus is on everyday life, and it is preoccupied with 'inscribing the discontinuities of legal interaction into the multi-layered contexts in which they occur' (de Sousa Santos 1987, 295). We understand this second ideal type as one which is more interested in judgement, justice and real access to human rights and the holistic view which constitutes a founding principle of the *Social Services Act* (prop 1979/80:1, 207). To exemplify, 'reasonable living standard' and the right to such a standard if interpreted with an instrumental technique, notions such as *asylum seeker, residence permit* and the applicant's whereabouts are important. A contextual symbolization, however, makes visible the representation of the social world from the *position* and *everyday situation* that someone is in, someone for example, who has been notified of an expulsion decision. If a person is undocumented it is more difficult for that individual to access basic services, due to a constant threat of being detected by the police. This circumstance is important in a contextual symbolization process, but not in an instrumental one, despite the fact that both processes departs from the same legal notion.

It should be noted that symbolization processes gradually changes the content of law over time and eventually also how various problems are framed in society. Therefore, symbolizing processes are an important temporal aspect of a cartographic analysis because they reveal something about social displacements and transformations of, for instance, social rights. We will now present a cartographic analysis of the legal notion 'reasonable living standard' in two legal spaces, which are of importance for what social work can do as 'human rights protectors vs. bordering officers'.

The withdrawal of daily allowance for rejected asylum seekers – a legal cartographic analysis of an amendment

The amendment in focus in the present article implies that financial support must be withdrawn in the event of a rejected asylum application, even though the affected person remains in the country. Besides the daily allowance, a rejection also implies loss of accommodation managed or paid for by the Migration Agency. The government proposed the change in the *Reception Act* to quickly make room for more people in accommodation and to push people who had had their asylum application rejected to leave Sweden. This rush also affected the legal history of the actual amendment. Rarely was any consequence analysis provided by the government and the preparatory work was hastily written. For our cartographic analysis of the bill, this implies that we will primarily highlight what was neglected with regard to a 'reasonable living standard'.

There were several scale levels at stake in the bill for an amended *Reception Act* but only one was chosen by the government in their preparatory work. Although there is a short reference in the Bill stating that the changes, 'of course', must be designed to ensure that someone who is likely to need a new review of their protection needs under the Aliens Act (2005) (refugee sur place) will also retain economic support in the new process (prop 2015/16:146, 9),[3] the human right to an adequate standard of living is ingenuously forgotten (cf UDHR article 25). The UDHR's definition of a 'reasonable living standard', since the postwar era has evolved into various instruments of international law, inter alia, the Covenant on Economic, Social and Cultural Rights (UN 1966, hereinafter ICESCR[4]), stating that everyone is entitled to an adequate standard of living, 'including adequate food, clothing and housing, and to the continuous improvement of living conditions' (art 11). In a General Comment (2009), which is to guide State Parties, the ICESCR committee (hereinafter CESCR) has explicitly stated that the Covenant's rights apply to everyone including non-nationals such as refugees, asylum seekers and stateless persons, regardless of legal status and documentation (CESCR 2009, para 30).[5] With regard to Sweden, the same committee has also explicitly stated that they are concerned about 'the increased number of children living in poverty in the State party, and that refugees, asylum seekers, Roma and Afro-Swedes are particularly affected by poverty' (CESCR 2016, para 35). Moreover, the Convention on the Rights of the Child (UN 1989,

see article 27) states that every child shall have a standard of living 'adequate for the child's physical, mental, spiritual, moral and social development', and that, while parents are responsible, they should get assistance to fulfil the child's entitlements when needed.

In the regional treaty, the European Social Charter (Council of Europe 1961), effective access to 'employment, housing, training, education, culture and social and medical assistance' is emphasized (art 30) as well as states' obligation to prevent and reduce homelessness (art 31). The expert committee monitoring compliance with the Charter has explicitly argued that the rights must apply without distinction. For example, when the situation in the Netherlands was discussed on the occasion of denied access to social assistance for undocumented migrants, the committee stated:

[A]nyone, irrespective of whether their stay in a country is lawful, has the right to an adequate standard of living for him/herself and his/her family, including adequate food, clothing and shelter, as required notably by Article 13 and Article 31 of the European Social Charter (revised).

The same committee furthermore specified that the provision of social assistance 'cannot be made conditional' upon the concerned individual cooperating in the enforcement of their own expulsion (Netherlands Decision 2014).[6]

International *small-scale level* human rights treaties are, in conclusion, absent in the proposed amendment. Obligations, which have greater relevance for welfare rights, that have been created to protect human rights treaties are neglected. Furthermore, practical barriers are neglected, except for a short statement that the *Social Services Act* 'also provides a right to social assistance that may be brought to the attention of the person without residency' (2015/16:146, 16). Through this wording, the government chose to 'forget' that the *Social Services Act* does not cover people included in the *Reception Act* (see sec 1), putting social workers in a most peculiar and contradictory position. On the one hand social workers are given the sole responsibility for access to human rights and on the other hand they are not allowed to meet the needs for people who have had their application for asylum rejected (see below for an extended discussion).

Another regulation which is ignored in the bill is the Swedish constitution. This states that the individual's welfare shall be a fundamental objective for public activities. In particular, the government at various levels must ensure the right to work, housing and education, and must promote social care and security and good conditions (*Instrument of Government*, ch 1, sec 2). These objectives of the Constitution point in a certain direction (orientation): The government should safeguard to the best of its ability that no person in the welfare state becomes destitute, everyone should have a 'reasonable living standard'.

The *Social Services Act*, which is found on *medium-scale level*, implicitly establishes the international treaties with its wide scope. Social Services should cover *all* people in Sweden (following ch 4 sec 1 together with, ch 2, sec 1 in the *Social Services Act*). The law's need- and rights-based legislation implies, among other things, that one may be entitled to social assistance under the law, even if the distress is self-inflicted. Support must also be given in cases where there is another accountable actor, for instance, another municipality that is refraining from helping (prop 2010/11:49, 25). This protection is applicable to all persons staying in a municipality, regardless of legal status. For someone with an expulsion decision, the social services are thus, formally speaking, responsible for the provision of basic support, as long as the individual is staying in the municipality and cannot have (emergency) needs to be satisfied in any other way. The basic argument for this arrangement, was to avoid destitution in the population and, in a longer perspective, to support general welfare (see prop 1979/80, 1).

Finally, for the purpose of clarifying and simplifying legal application, national and local authorities produce various *large-scale* guidelines to the law enforcer. With respect to asylum seekers, a judicial statement on the interpretation of the above amendment in the *Reception Act* by the Head of Legal Affairs of the Migration Agency states when it is manifestly unreasonable to withdraw economic support (SR 13/2016). This is so, for example, when a decision cannot be executed for practical reasons, even though the person is considered collaborative in the return

process. Being deemed ”non-collaborative” in the expulsion process means to be disqualified from access to basic support with support of the *Reception Act*.

Concerning Social Services, municipalities' guidelines on financial support differ significantly and it is thus not possible to present a coherent picture of how the concept 'a reasonable standard of living' has been interpreted on a high-scale level. Important here is that local guidelines are not binding from a strict legal perspective, even if they are sometimes treated as if they are. In conclusion, the amendment proposed by the government relates to all three legal scales, and when they are explored as a case of (vertical) inter-legality, it is clear that certain scale levels are not recognized.

The *projection* used in the government's argumentation for an amendment of the *Reception Act* had more to do with practical considerations (state needs) than human needs. For example, the need of the state to create vacancies in accommodations became completely superior to the fact that people whose asylum application had been rejected may require protection anew. The reasons that many people sought protection in Europe in 2015 were not mentioned at all, whereas the 'very big' (prop 2015/16:146, 6) pressure on the Swedish asylum system was accentuated. These depictions of reality highlight the needs, from the government's perspective, to re-draw the medium-scale legal map. This is of relevance for social workers in their application of the Social Services Act, which we will come back to.

Another projection in the preparatory work emerged through descriptions of the people affected by the amendment. They were depicted as 'foreigners'/'outlanders', a legal category of people who have forfeited the right to support, at the time of a rejection. A 'non-participating foreigner', the bill stated, can be detained or placed under surveillance as part of the 'removal' (prop 2015/16:146, 7). Someone who, conversely, 'intends to respect a rejection or expulsion decision', was not included in the target group of the bill (prop 2015/16:146, 11). Aspects that simultaneously were 'forgotten' are for example length of stay in Sweden and thereby adaptation.

What furthermore was scarcely mentioned in the bill was the inter-legal issue of what effect the amendment would have on the interpretation of the needs-based idea of a 'reasonable living standard' for everyone according to the *Social Services Act*. In the government's discussion about the consequences of the *Reception Act* amendment for municipalities, the government briefly referred to the fact that many more people may be expected to approach the municipal social services for support. The Swedish Association of Local Authorities and Regions and The National Board of Health and Welfare also pointed to this in their remarks on the bill. The answer to these predictions, from the government's side, is particularly relevant to our analysis and we, therefore, quote the government at length (including their reference to previous practice):

> In practice, there are examples of court decisions that foreigners with a rejection, in the absence of formal barriers to execution of the decision, were not considered eligible for assistance under Chapter 4, Section 1 of the Social Services Act … However, there is no clear ruling from the Supreme Administrative Court in the current area. It can be mentioned that the Social Services Act also provides a right to social assistance that may be brought to the attention of the person who is not authorised to be in the country (prop 2015/16:146, 14).

Before this, the government states in the bill that an individual assessment must always be conducted under the *Social Services Act*. Then, the government concluded that the proposed amendment was not deemed to lead to any significant costs for the municipalities, but that the government intended to 'closely monitor the consequences of the change' (prop 2015/16:146, 15). Again, this misreading was all but in favour of previous asylum seekers living in destitution. Of course, it was difficult to predict the future, but in retrospect (when the SAC now has adopted their decision), it may be concluded that the position that 'there is no clear ruling from the court in the current area', was heeded by the SAC, namely, in the case that we analyse below.

In the government's *symbolizing process*, finally, no contextual reasoning was provided on whether it was reasonable to withdraw the right to support earlier. Instead, a condensed and formalized reasoning was used. The changes were assumed to be necessary because of the pressures

on the asylum reception system (prop 2015/16:146, 8), due to a 'record high' influx of asylum seekers (prop 2015/16:146, 6). Furthermore, the bill implicitly stated that the contextualization of the requisite 'manifestly unreasonable', 'naturally' should be further developed in case law (prop 2015/16:146, 13). By doing so, the government transferred to individual judges and decision-makers including social workers, the responsibility to decide on boundaries of welfare. Looking at the amendment as a case of horizontal inter-legality, the result in retrospect is a forceful politics of deportation that relates to what is framed as an exceptional situation of a 'large influx of asylum seekers' (prop 2015/16:146, 6).

Reduced access to the social services for rejected asylum seekers – a legal cartographic analysis of a verdict

The Supreme courts in Sweden conduct a sort of 'super map reading'. These courts' rulings, besides judgements on individual circumstances, are also expected to have precedent power. The considerations, distinctions and management of various scale levels, projections and symbols, are hence highly relevant to legal considerations by lower instances and also in the next step for social workers.

In our case, a first interesting and obvious shift in the judgement has to do with the legal question. The family's claim for assistance was made at an (extremely) large-scale level, due to a lack of ability to meet basic needs. This was responded to by the SAC on a medium-scale level by reference to national law, but without an answer to the applicants' claim for help. Certainly, the SAC referred to the municipalities' ability to provide optional assistance, but they ignored the family's emergency situation. The family's lack of prospects for survival was not doubted by SAC, but it was a matter that was forgotten. Nor were small-scale regulations, for instance, human rights treaties, applied. The likely effect of this interpretation is that under certain circumstances children and their families are denied access to the most basic rights in Sweden. Rather, courts may abandon them without being challenged. One possible reason for this is the fact that SAC limited itself to a medium-scale level approach in its assessment. Another possible reason for the denial of access to basic rights is that SAC is treating the mother and her three children as one household instead of analysing the various needs and rights for every individual in the family. No such individual assessment was conducted of the needs and possible right to assistance of each one of the applicants.[7] The mother's decision to live clandestinely indeed affected the children (who were never heard). The children's vulnerable position was not mentioned at all in the verdict, nor their ages. If a separate assessment of the children's situation had been conducted, a conclusion might have been that children could not be held responsible for having ignored an expulsion order. Therefore, the children would be entitled support according to the *Reception Act*, and hence, assistance might be granted with the support of social services until the responsible actors (custodians or Migration Agency) assumed responsibility. Support for such an interpretation is found in the proposed bill analysed above (prop 979/80:1, 144, 184).

The distortion, the SAC got involved in, is an expression of what projections do, and the power potential they have. Despite a long tradition of presence (staying) as the basis for access to basic social rights (see Borevi 2002; Brochmann and Hagelund 2012; Hansen 2018; Sainsbury 2012), the projections chosen by the SAC implied that the children do not exist as subjects before law. Furthermore, a crucial point concerns the family's position of having been issued an expulsion order in the asylum process, compared to for instance families who never applied for asylum and who thus live completely outside the system. When the SAC interpreted the *Social Services Act* with reference to the *Reception Act*'s personae, they also stated that it was considered better to not have been part of *Reception Act* at all in regards to social rights.

Another projection emerging in the case that was also a distortion appeared in how the applicants were depicted. They were 'living in hiding' and held 'a rejected asylum application'. Nothing was revealed about the minimum core obligations corresponding to social assistance for

these municipal residents, three of whom were children. The fact that the legal map was limited, and necessarily distorted reality, did not change the terrain ('the social world'). The law was thus decisive for what the terrain covered, instead of vice versa; hence, the SAC created the reality it needed. Such an approach would imply major problems if used in the design of geographical maps, as these require some form of relationship between the map and the terrain (or the map simply ceases to function).

In the Court's *symbolizing process*, finally, the notion of a "reasonable living standard" was completely decoupled from the aim of human rights obligations and the *Social Services Act*. The SAC's interpretation of the scope of *the Reception Act* implies that living conditions or human needs may be ignored by social workers. Nor was the applicants' lack of help from other actors considered but instead, notions such as person scope and law enforcement were given primary consideration. Regardless of the fact that the government stated in their proposed change that *Social Services Act* is also applicable to those lacking formal residency (2015/16:146, 16), this law did not, in the eyes of the SAC, safeguard basic social rights. This act was thus constructed as a law about legal status and no longer about needs and welfare rights. The SAC thereby failed in the basic requirement of holding the map (compass) in the right direction. The implication is that social workers, whose professional life is about making individual needs assessments, will sometimes have to look away when they encounter destitution. Nevertheless, despite these interpretations, unpredictability arises as to what will actually apply in the future. This is illustrated not least by the considerably different decisions in the various lower judicial bodies involved in the case and before the mentioned preparatory work of *the Reception Act* change (prop 2015/16:146, 16). The presently unclear legal situation is also more complicated by the fact that each scale is conditioned by different regulatory patterns. In small-scale contexts such as human rights treaties, the sense of direction (orientation) is apparent through the clear emphasis on 'everyone'. Also, if we take the other end – a large-scale level such as when *Social Services Act* is applied by a social worker – representation can take a backseat to the orientation. This may occur if the map reader is absorbed by acting in accordance with local policy decisions which neglect the actual law and central principles. In a worst-case scenario, social workers may lose their compass and as a consequence end up with a completely useless map. Our point here is that more detailed regulations do not necessarily mean that the insecurity among practitioners ends. It can also imply greater doubt and loss of perspective, in other words, not seeing the wood for the trees.

Social work law in nexus with migration law – a conclusive discussion

Our cartographic analysis demonstrates how judicial institutions and by extension the social services and social workers have become involved in the bordering practices of Swedish return migration. The selected legal spaces and their inter-legalities also indicate how the Swedish legislator lets the ends justify the means, without looking at the consequences for access to human rights such as a 'reasonable living standard'.

It is certainly not a coincidence that the identified shifts took place when they did. The development in 2016–2017 was a combination of withdrawal of a daily financial allowance for a large number of people, alongside the restriction of the legitimate rights of this group to claim protection from the social services. This happened at a point in time when rights for undocumented migrants, for a number of years, had gradually been strengthened (see for example, Nielsen 2016). Pushing the conditions for access to the ultimate safety net was undoubtedly part of a longstanding tendency of general austerity politics (Kamali and Jönsson 2018; Scarpa and Schierup 2018; Therborn 2019), which in 2016 came to intersect with return migration politics.

That the Swedish government took this direction is perhaps not surprising, but when supreme courts fortuitously get involved in bordering practices, through more or less explicit choices of legal scale, projections and symbolizing processes, new and crucial transformations are at stake. This may, in the longer run, lead to a reversal of the constitution's statement that public institutions shall

secure social care and social security as well as favourable conditions for public health. For the social work profession, the development implies that they should neglect the needs and rights of people in destitute, and turn into border police.

In the analysed verdict, societies which are constituted by individuals living side by side with different legal statuses, were handled in a way that undermined equality. This was indiscriminately accepted – by both the legislator and the SAC – in what appears as an obscene alliance to handle the 'return migration problem'. Such instrumentality appears in the legislative bill by distortions of certain actualities (undocumented migrants do live in Sweden, and some cannot return) at the expense of other (signs of order in the management of migration). This also appears in the verdict, by which the basic purpose of the *Social Services Act* to safeguard against destitution (cf prop 2015/16:146, 16) takes a backseat. Among other things, the SAC disregarded statements in *Social Service Act's* preparatory work which, from the perspective of legal predictability, are of decisive importance for individuals who approach the social services. The reference in the bill to the overall right to social assistance (prop 2015/16:146, 16), shows that this legislation includes everyone residing in the municipality. Ignoring the relationship between preparatory work and the letter of the law, is an exercise of power with extensive consequences for anyone who could (possibly) be subject to an assessment of their right to a 'reasonable living standard'. The uneven distribution of power in (legal) society is noteworthy from this perspective.

Our analysis further reveals that the application of law in individual cases as well as when legislative amendments are proposed produce the realities needed. A court verdict (or a proposal for legal amendments), may actually precede the assessment (investigation). Notably, the SAC in our study might very well have reached a different conclusion within the discretionary power based on international definitions of a 'reasonable living standard'. Moreover, the choice of scale level gave legal notions such as 'reasonable living standards' a completely different substance, which had great consequences for the legal content. For example, both the legislator and the SAC, in our case, obliterated the small-scale level of binding international treaties. This both limits the scope of basic rights and signals to other judicial actors, and social workers who apply law, that it is unproblematic to disregard international obligations, although it certainly does not need to be this way. It should be noted that municipalities still have a discretionary power to interpret the *Social Services Act* in accordance with binding international conventions.

The significant differences in the content of the law at distinctive scale levels further reveal that the Swedish state can show a Janus face. This, as being a party to various international human rights conventions and having a self-image as a strong welfare society may play out in parallel with a medium-scaled gradual tightening of basic social rights. Officially, the Swedish state has readily committed to ensuring everyone's right to a 'reasonable living standard' without distinction. Silently, the state discriminates through categorizations in legislation in a way that empties international human rights of both content and legitimacy.

That the law produces boundaries in terms of legal personhood is not new, but after the changes in *The Reception Act* combined with the SAC's new interpretation, it may be questioned whether the new construction of the ultimate safety net of Swedish welfare, may be jeopardizing the legitimacy of the idea of the welfare state. Finally, the legal changes analysed above profoundly affects the possibilities for Swedish social work to be a human rights profession. Social workers are in their legal profession and due to the changes in the *Reception Act* expected to exclude when assessing the needs for some people who made claims for their basic rights.

Notes

1. The amount is 71 SEK per day, which should include food.
2. Around 50–60 SEK/day.
3. This refers to a regulation in the Aliens Act, ch 12, sec 19, stating that the entire case may be assessed anew due to the possible existence of new circumstances which may indicate new protection needs that have not

previously been assessed; between 2017 and 2019 the approval rate was 5–9% for these applications (Migration Agency 2019). It should be noted that there are many reasons why people who receive an expulsion order do not return to the designated recipient country. For some, it is practically impossible to return (see the state enquiry SOU 2017, 84).

4. ICESCR is the acronym for *International Covenant on Economic, Social and Cultural Rights*.
5. Also see General comment No. 30 (2004) of the ICESCR Committee.
6. This approach has been confirmed in a national context (medium-scale level) by the SAC, in their ruling that the right to assistance cannot be made conditional in any other way than that set out in the law (HFD 2014 ref 137; HFD 2011 ref 49). These cases were also ignored by the government in the bill.
7. This is noteworthy, considering the fact that individual assessments are stressed in preparatory work of the Social Services Act (prop 1979/80:1; prop 2000/01:80).

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