CHAPTER 2


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1 Introduction

Children have the right to social security and an adequate standard of living. This follows from Articles 26 and 27 of the United Nations (UN) Convention on the Rights of the Child (CRC), but also from a series of other international conventions regulating social rights for all, including children. For many countries, combating poverty and economic vulnerability – often with a focus on supporting parents as being responsible for their children – has been and remains a clear objective, articulated for example in the UN sustainability goals. Eliminating poverty has been a central aspect in the construction of Sweden's modern welfare state, and a cornerstone of the Swedish ‘folk home’ that emerged in the 20th century, with its strong emphasis on self-sufficiency through labour. In addition, various types of support were introduced for families with the purpose of achieving equality and good health in the population. A particular objective in this case was that children should grow up under favourable circumstances and be given equal opportunities.

The ambition of the Swedish welfare state to create fair living standards for the nation's residents is ultimately manifested in Chapter 1 Section 2 of Sweden's constitution – the Instrument of Government (Regeringsformen).

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1 We want to thank colleagues Laura Carlson, Aoife Daly and Johanna Schiratzki for valuable comments on earlier drafts on this chapter. An article dealing with the same theme and questions as this chapter has been published by the authors in Swedish. See Holappa, T. & Leviner, P., ‘Barns villkorade rätt till skälig levnadsstandard – om rättsligt osynliggörande av barn i ärenden om ekonomiskt bistånd’, Förvaltningsrättslig tidskrift, no. 2 (2022): 239–263.


According to this section, the state is to particularly ensure the right to employment, housing, and education, as well as endeavour to provide social security and the prerequisites for good health. The same section also states that the rights of children are to be respected. This is now further emphasized by the 2020 incorporation of the CRC into Swedish law. According to the Swedish government, the incorporation stresses the importance of ensuring that the rights of children are realized in Sweden. Overall, Sweden often strives to be considered as one of the most child-friendly countries in the world.

Consistent with the ambitions of the Swedish welfare state, a series of various general (or in other words universal) support initiatives and subsidies are offered to all families with children, including child subsidies, childcare cost ceilings, and free school meals. More selectively focused, means-tested benefits also exist. These welfare support benefits function as a social safety net, and individuals who cannot support themselves in any other manner may apply for economic support from municipal social services.

This comprehensive social safety net might appear to be in accordance with the CRC’s requirement on ratifying states to ensure that children have an adequate standard of living as well as the aim stated in Sweden’s Instrument of Government to prevent poverty and economic vulnerability for children in Sweden today. Nevertheless, while Sweden is one of the world’s wealthiest countries on a per-capita basis, child poverty is still a problem. Against this background, this chapter poses these questions: What do the regulations in the international conventions and in Swedish law concerning the right to an adequate standard of living actually mean in Sweden today? How, more concretely, is this right for children constructed in Swedish law, and how does the law relate to the general regulations in the Swedish constitution and the CRC? Are there legal challenges that can explain the economic vulnerability

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5 See Legislative Bill 2017/18:a86 Inkorporering av FN:s konvention om barnets rättigheter.
6 The goal of being the absolutely best country in which to grow up has been mentioned, for example, by Prime Minister Stefan Löfven in the Government Declaration given during the fall of 2014. This was one of the reasons for the CRC incorporation, The Government of Sweden, ‘Regeringsförklaringen’. Accessed 7 March 2021, www.regeringen.se/49b6d2/contentassets/436960c05f524109b8a02ob879ef756b/regeringsförklaringen-3-oktober-2014. However, it can be noted that according to UNICEF’s child wellbeing measurement, Sweden ranks only tenth after countries such as the Netherlands, Norway, Denmark, Switzerland, and Finland – see UNICEF Innocenti, ‘Worlds of Influence: Understanding what shapes child well-being in rich countries’, Innocenti Report Card 16 (UNICEF Office of Research, Innocenti, Florence, 2020).
6 The terms ‘poverty’ and ‘economic vulnerability’ are discussed further below.
of some children in Sweden, and the inequalities that have emerged between different groups of children?

The chapter focuses on the outermost social safety net and the responsibility of the municipal social services – in other words, the means- and needs-based focused support that can be provided to families when general welfare contributions are not sufficient, and therefore offer support to the most economically vulnerable children in Sweden. Children's right to an adequate standard of living and the legal regulation of a social safety net for the individual child are analysed from a critical legal perspective that draws on childhood sociology to problematise the realization of children's rights in the Swedish context. We frame this theoretical exploration within literature on welfare conditionality and welfare-state typologies. The objective is to reveal underlying assumptions in the law that create a risk of undermining the realization of children's rights, and which can even create a type of silent acceptance of how certain children are poor in one of the world's richest countries. Sweden is used here as an example of how the welfare state, with its ideological premises and 'child-friendly self-image', is challenged by the requirement of realizing children's rights, not least in terms of the **CRC**'s principle of non-discrimination. Although the focus is on Sweden, the discussion and findings are of broader interest as the realization of children's right to an adequate standard of living entails inherent challenges in any legal system of a welfare state.

The chapter starts with a description of theoretical starting points that guide our analysis and conclusions. This is followed by a short summary of previous research and reports regarding child poverty in Sweden and the social services' administration of municipal economic support to families with children. The legal regulations are then analysed against this background. The focus is on the **CRC** and its significance in Swedish law, the rights and responsibilities of parents as guardians, and municipal economic support according to the Social Services Act. The chapter concludes with a discussion of legal challenges with respect to achieving an adequate standard of living for children through rights.

2 Theoretical Premises

The legal analysis in this chapter is carried out through a social justice lens that focuses on risks connected to viewing children and childhood in unjust ways.\(^8\) Such a perspective underscores the 'age order' in society, in which

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\(^8\) For further explorations on the conditions of childhood from a child rights perspective, see Mayall, B., *Towards a sociology for childhood: thinking from children's lives* (Buckingham: Open University Press, 2002). Conditions of childhood and unjust treatment
childhood risk being regarded primarily as a preparatory phase to adulthood, and that children, rather than being seen as independent actors, are viewed largely as belonging to a family and parents in a process that has been referred to as ‘familization’. As will be discussed further in this chapter, through such familization processes in the decision-making by public authorities and courts, children risk being rendered invisible, which can lead to discriminatory practices. Such discrimination of children because they are children is sometimes referred to as ‘childism’.

Against the back-drop of these viewpoints and perspectives we examine how the legal regulation “handles” children’s right to an adequate standard of living and how the law can ascertain that children in practice are seen as independent rights holders. In line with this view, we also invoke the perspective encouraged in critical children’s rights studies: acting as ‘critical proponents’ when it comes to children’s rights. Simply emphasizing children’s rights, for example by reference to the CRC, is not sufficient to create adequate living standards for children and therefore, the role of research must be to analyse more closely the impediments to the realization of an adequate living standards for children. Here, legal research in child law has an important

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Childism can be described as having two sides: 1) childism to describe discrimination; compare with sexism; and 2) childism to describe the struggle for equality and empowerment; compare with feminism. See further Adami’s contribution in this book, but also Young-Bruehl, E., Childism: confronting prejudice against children. (New Haven: Yale University Press, 2012), as in contrast to Wall, J., ‘From Childhood Studies to Childism: Reconstructing the Scholarly and Social Imagination’, Children’s Geographies 20, no. 83 (2022): 257–270. See also Daly, A., Thorburn Stern, R. & Leviner, P., UN Convention on the Rights of the Child, Article 2 and Discrimination on the basis of Childhood: The CRC Paradox?, Nordic Journal of International Law, Volume 91, 2022, s. 419–452.

task in detecting legal impediments – both in the formulation of rights and in
the regulations that impose responsibility for the realization of these rights.\footnote{12}

The understanding that different welfare systems have diverse focus and
structures that influence how the actualization of different rights can occur –
in this case in the Swedish context – forms a basis for the analysis in this chapter.
According to Esping-Andersen’s oft-cited work, \textit{The Three Worlds of Welfare
Capitalism},\footnote{13} and in later literature seeking to define different typologies of
welfare states, the Swedish welfare system differs from liberal systems’ (in
countries such as the US and Great Britain) and ‘conservative systems’ (as in
Germany and France). The Swedish welfare system is defined with Esping-
Andersen’s terms as ‘social democratic’, characterized by the focus on generous,
broad, and non-needs-tested social initiatives for the citizens of the country.
Equality among people is the central theme in this type of system (although
generally not achieved by claiming rights) and efforts are put into giving citi-
zens a relatively high degree of independence by limiting their dependence on
the family and the market.\footnote{14} In this type of welfare state, there is a particular
risk of poverty being associated with shame as there is an expectation that
everyone is to contribute jointly to the system by working and paying taxes,
and that individuals who do not pull their weight are a burden. It is thus gener-
ally held that today’s Swedish welfare state is based on the work/support policy
(\textit{arbetslinjen}).\footnote{15} Being self-sufficient is the goal, and consequently, imposing
requirements on those applying for support is viewed as correct and reason-
able. The idea that welfare support systems are conditional in different ways is
not unique to the Swedish system, and in international research this has been
referred to as welfare conditionality.\footnote{16}

In this chapter, we investigate potential effects on children resulting from
the conditions placed on receiving welfare support in the Swedish system,

\begin{thebibliography}{9}
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\bibitem{12} See, for a discussion on the role and objectives of child law research in the Swedish context,
\bibitem{13} Esping-Andersen, G., \textit{The Three Worlds of Welfare Capitalism} (Princeton, Princeton
\bibitem{14} However, as we show in this chapter, children are dependent to a significant degree on
their parents for actualizing the right to an adequate standard of living, which in itself can
lead to discrimination.
\bibitem{15} Fernqvist, S., et al., \textit{Barnfattigdom: barnfamiljers och professionellas perspektiv} (2nd ed.).
(Lund: Gleerups, 2020).
\bibitem{16} See Watts, B., and Fitzpatrick, S. \textit{Welfare conditionality} (Abingdon: Routledge, 2018) and
the website for the large British research project on the theme: Department of Social
Policy & Social Work, University of York ‘Welfare Conditionality’, accessed 7 March 2022,
www.welfareconditionality.ac.uk.
\end{thebibliography}
for example the requirement on parents to submit a certain number of job or residence applications. We argue that these requirements risk leading to situations where children whose parents do not live up to the conditions and requirements will not get or lose their municipal economic support. Children in this situation become subjected to a sort of legally accepted discrimination that may violate the principles of non-discrimination and equal treatment, and which risk rendering invisible the specific needs of these children.

3 Briefly on Child Poverty in Sweden and the Administration of Municipal Economic Support to Families

What poverty and economic vulnerability constitutes and how the terms should be defined is not self-evident. The terms absolute and relative poverty are sometimes used to distinguish different types of economic vulnerability. Absolute poverty refers to a situation where the household income is not sufficient to pay for housing and necessary living expenses, while relative poverty concerns living in considerably worse economic circumstances (a lower income) in comparison to the median income of the population.17 Both terms – poverty and economic vulnerability – are used in this chapter.

According to a recent report from the Swedish Social Insurance Agency, 8 percent of households with children live in absolute poverty. Among households with a single parent the number is 17 percent. Apart from households living in absolute poverty, 17.8 percent of households with children live in relative poverty.18 The statistics reveal that children who live with a single parent (the mother) and children with a foreign background are the most vulnerable.19

As research on this in Sweden is limited, it is difficult to measure what it means for a child to grow up in poverty and what the resulting immediate and long-term consequences for children are. One difficulty in measuring child poverty is that poverty is often measured based on the parents’ resources, thus

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17 The threshold is usually at 60% of the median income in Sweden. For a further discussion on the term ‘poverty’, see Fernqvist, S., et al. (2020), 14 ff.
obscuring the actual situation of children.\textsuperscript{20} What we do know from research is that poverty is a risk factor in that long-term poverty increases risks for both social and health-related problems.\textsuperscript{21} Economically vulnerable children also live to a higher degree in unsafe environments, and in uncertain and short-term housing, with less access to food, clothing, play, and leisure time than other children.\textsuperscript{22} It has also been observed that children to parents receiving economic support have a considerably greater risk of being placed in out-of-home care than other children.\textsuperscript{23}

Different types of support exist, as noted, to assist parents economically, and the economic support administered by Swedish municipal social services is envisioned as an outermost social safety net. Several studies have examined whether a child perspective has been taken into account in economic support cases. For example, one study of administrative court judgments regarding municipal economic support to families with children shows that even where it was demonstrated that a child had needs that the support could fulfil, the child was seldom considered an independent actor. The child’s own views and capabilities were not discussed to any great extent, in what could be viewed as a process of ‘familization’ where the child was simply considered as part of a family.\textsuperscript{24} Similar conclusions are found in studies of the municipal social services’ administration of economic support cases.\textsuperscript{25} Studies focusing on children’s participation in such cases show that children are very seldom given the opportunity to be heard, and the conclusion is that children are made invisible in such cases.\textsuperscript{26}

By way of conclusion, studies on economic vulnerability in Sweden show that certain groups of children are affected more than others and we also know that to a significant degree, children are rendered invisible in municipal economic support cases. In the next section, we discuss how children’s right to an

\textsuperscript{20} C.f. Fernqvist, et al. (2020), 16.
\textsuperscript{22} C.f. Fernqvist, et al. (2020), 27; and Barnombudsmannen [The Ombudsman for Children in Sweden]. Inget rum för trygghet (2016).
\textsuperscript{24} Fernqvist, et al. (2020), 211.
adequate standard of living is legally constructed and how the right is legally conditioned, and by way of extension, we examine the legal aspects that can explain the process of familization.

4 The Right to an Adequate Standard of Living According to the CRC

Under Article 27 of the CRC, ratifying states are to recognize each child’s right to a standard of living as required for the child’s physical, psychological, spiritual, moral and social development. Parents, in their role as guardians, have the primary responsibility for realizing the child’s right, but states are obligated to take suitable measures to assist parents and other guardians in a manner that is consistent with national circumstances and within the framework of states’ resources. The states shall also provide material support and support programmes when needed, particularly when it comes to food, clothing, and housing, but also to ensure the child’s right to a standard of living as required for the child’s physical, psychological, spiritual, moral, and social development.

It should be noted that the obligations according to Article 27 are arguably also central to fulfilling the requirements of Article 6 CRC – one of the general principles of the Convention – which states the right to life, survival, and development. Adequate living conditions are evidently also a premise for other rights, such as the right to an education and to good health.

The UN Committee on the Rights of the Child has not published any general comments giving specific guidance as to the various obligations on ratifying states based on Article 27 (nor Article 6) CRC, but the Committee has referred to this article in several general comments on other topics. For example, the Committee has stated that Article 27 is applicable to all children, regardless of migration.

27 UN Committee on the Rights of the Child, however, has interpreted Article 27 in such a manner that it does not prohibit an obligation for the states to give support, when necessary, directly to children, for example for children living on the streets, without guardians, or in violent family circumstances. UN Committee on the Rights of the Child. General comment No. 21 (2017) on children in street situations, CRC/C/GC/21, para. 49.


status.\textsuperscript{30} Important to note in this context is also that states are obligated in accordance with Article 4 to use their resources to the fullest extent to take the necessary measures to realize CRC rights.

By emphasizing in Article 27, that states must recognize all children’s right to a necessary standard of living, this article is consistent with Article 2 on equal treatment and non-discrimination. According to this general principle of the Convention states are to respect and ensure that each child within their jurisdiction can exercise the rights in the Convention without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic, or social origin, property, disability, birth, or other status. The Committee has emphasized that Article 2 means that no discrimination of any kind may occur, by for example pointing specifically to the rights of children residing in a country without legal permission.\textsuperscript{31} The Committee has also noted the importance of positive treatment of particularly vulnerable groups, as well as the need to combat prejudices and stigmatization.\textsuperscript{32}

These statements by the Committee with respect to Article 2—which could have great significance for the application of Article 27—can seem clear. However, while the principle of non-discrimination is one of the four general principles of the Convention, its actual content has not received much

\begin{footnotesize}
\begin{enumerate}
  \item For example, the Committee issued a principally important statement in the concluding observation with respect to Norway in 2000 that a State’s responsibility includes all children within the jurisdiction, see \textit{CRC/C/15/Add.126}. Thereafter, in its General Comment No. 6 (2005), the Committee emphasized that no discriminatory treatment of children on the basis of nationality, citizenship, migrations status, or statelessness may occur, see UN Committee on the Rights of the Child. General Comment No. 6 (2005), para. 12.
\end{enumerate}
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attention in the Committee’s statements, periodic state reports, or in legal literature. Article 2 has also been described as problematic because it was both poorly drafted (‘not well written’) and difficult to understand owing to some confusion concerning the principle of non-discrimination (‘people make too much of the right, while at the same time making too little of it’).

A reasonable interpretation of Article 27 in light of Article 2 would be that states need to direct particular support to children who are most vulnerable and in the greatest need. In line with this, the principle of non-discrimination means that in addition to prohibiting discrimination, states also need to ensure that all children can enjoy their rights under the Convention. In other words, ‘those groups of children that are most disadvantaged in enjoying their rights, for example living in poverty, ’require the highest standard of protection’.

From a more general non-discrimination perspective, it is also important to question whether states accept a system in which children are discriminated against in a non-legitimate manner, because they are children and compared to how adults are treated. As has been pointed out earlier, studies show that too often, children in economic support cases are considered only in the...
context of the family rather than as individuals with rights of their own. This can be seen as discrimination against children.\textsuperscript{39}

5 Parental Primary Responsibility and Gatekeeping Function in Swedish Law

Just as in the \textit{crc} – and most likely the majority of legal systems in the world – Swedish law is based on parents, in their role as guardians, serving as the first-hand fulfillers of children's rights and needs. Chapter 6 Section 1 and 2 of the Swedish Parental Code (\textit{föräldrabalken}) state that children's guardians have the responsibility for the child's personal circumstances and needs, ensuring that the child receives the necessary supervision, and ensuring that the child has sufficient support and education.\textsuperscript{40}

In line with parent's responsibility as guardian according to Chapter 6 Section 11 of the Parental Code, the rights and responsibilities on deciding issues concerning a child's personal matters are also included, but guardians are to make greater consideration for the child's views and wishes in keeping with the child's increasing age and development. As shown in the next section, this also means that the guardian is the one who must apply for family support benefits, and it is up to the guardian to determine how any financial resources are to be distributed within the family.

Thus, guardians have the primary responsibility for ensuring that their children's basic needs are met and that they receive the appropriate support, while the ultimate responsibility for the situation and living circumstances of children lies with the municipal social services. This can be seen in Chapter 2 Section 1 and Chapter 4 Section 1 of the Social Services Act (\textit{socialtjänstlagen}), which state that the municipal social services are responsible for ensuring that all persons – including children – who reside in the municipality and who cannot provide for themselves in any other manner are given various types of support to achieve a reasonable standard of living as set out by law.

\textsuperscript{39} See further Adami, R., Chapter 6 this volume.
\textsuperscript{40} Non-guardian parents also have a responsibility for support, and to the degree a parent fails to pay maintenance for their children, maintenance support can be paid to the other parent by the Swedish Insurance Agency. The support responsibility is regulated in Chapter 7 of the Parental Code, and the regulation of maintenance by the Swedish Insurance Agency is found in the Social Insurance Code (2010:110) (\textit{Socialförsäkringsbalken}). The support responsibility of parents remains in place until the child has completed a high school education, but can be extended to when the child reaches 21 years of age, see Chapter 7, Section 1(2) of the Parental Code.
specific responsibility of the social services for children and youth is set out in Chapter 5 Section 1 of the Social Services Act, which states (among other things) that this responsibility – in addition to preventive and supportive measures at home – also includes placing children outside the home if doing so is necessary to protect children from harm and will serve the best interests of the child.

A basic premise for all social services is that they are to be voluntarily available – in other words, consensual. It is only when children are at risk of serious harm in certain specific circumstances that the social services can act without consent and thus against the will of the guardian. As long as the requirements in the Care of Young Persons Act (lag med särskilda bestämmelser om vård av unga, LVU) are not fulfilled, it is the guardian who decides whether to apply for and accept support, both economic and other types of measures. This follows from Chapter 6 Section 11 of the Parental Code as mentioned above. According to Chapter 11 Section 10 of the Social Services Act, children have legal standing when they reach the age of 15 years, which gives children and youths certain possibilities to apply on their own for and consent to certain types of support from social services.

Nevertheless, even if older children have legal standing in these issues, the fact remains that a child’s independent right is limited to a large extent by parents’ authority in their role as guardians to decide over their children. This authority means that in their roles as guardians, parents act as gatekeepers, choosing whether to apply for municipal economic support and even reject any offered support. It also lies within the authority of parents in their role as guardians to use the received economic support as they wish; in other words, there is no guarantee that the municipal economic support will benefit the children. The question is then whether this outermost social safety net – in the form of the social services’ responsibility – is truly designed to guarantee children a reasonable standard of living. This question is examined in the next section.

41 See Chapter 3 Section 5 of the Social Services Act.
42 See the Care of Young Persons Act.
The Social Services (Act) Guaranteeing but Conditioning the Outermost Social Safety Net

As described above in the introduction, the Swedish welfare system offers various types of support to families with children. The right to an adequate standard of living according to Article 27 CRC does not provide a basis for a claim; that is, children (or parents) cannot use this Article to make a claim for support from the social services. This is not changed by the fact that the CRC was incorporated into Swedish law in 2020. Instead, the right is to be realized through more concrete, legally regulated support. For those who are most vulnerable, the thought is that adequate standard of living is to be achieved through the municipal economic support regulated by the Social Services Act.

As already mentioned, municipal economic support is conceptualized to serve as an outermost social safety net when all other possibilities for support are exhausted. Individuals who cannot support themselves or cannot meet their own needs in any other way have the right to receive such support to achieve and maintain a reasonable standard of living. Self-sufficiency is nevertheless the goal and, as noted, this support can be conditioned in different ways and the objective is to provide the support only during a short period.

With respect to families with children, the municipal economic support is adjusted in order to meet the basic needs of the children, but the starting point remains: parents are to support their children, and in their role as guardians, parents are responsible for applying for support for their children. When seeking support, parents are also expected to demonstrate the child’s need of support in the application and during the investigation by social services.

An important aspect to emphasize here is that the regulations on economic support in the Social Services Act are based on principles of consent and self-determination. No one can be forced to accept support. Children (and their families) can therefore have a need and may formally fulfil the requirements for support according to the Social Services Act, but if the parents do not apply for support nor demonstrate the child’s needs, support to which the child (and the family) would have been eligible for will not be given.

In addition to this extension of parents’ responsibility to apply for support, the right to support must be viewed primarily in relation to the entire household. This means that when a parent applies for economic support for

44 Chapter 4 Section 1 of the Social Services Act.
46 Ibid., 259.
47 This has been emphasized by the Supreme Administrative Court in case, HFD 1995 ref 79.
themselves and their children, the household is assessed as a unit and not on the basis of its individual members. A child's individual needs are certainly a basis for the form of the support – primarily in terms of the amount of municipal economic support the household is to receive – but in general, qualification for municipal economic support is assessed in relation to the household as a whole. Consequently, the legal construction of how the right to support is to be assessed is characterized by an adult perspective, in which the child can clearly be said to be rendered invisible through what has been called a ‘familization process’.48

When it comes to requirements for being eligible for economic support from the social services, applicants only have the right to municipal economic support if they cannot support themselves economically in another way, for example through employment, unemployment benefits or sickness benefit. Furthermore, in cases where support is granted, the support is not given without fulfilling certain conditions.49 These conditions are justified by the goal that individuals who receive municipal economic support in the long term are to become self-sufficient.50 The conditions are set out in the Social Services Act and stipulate (among other things) that as a main rule, the individual receiving municipal economic support must be at the disposal of the labour market. This basically entails doing whatever is necessary to get a job. The social services can also require the applicant’s participation in adult education such as Swedish-language courses for immigrants.51 The intent in the Social Services Act is thus that conditions should be placed on the benefits recipient, and there are no exceptions from this conditionality when the person applying for support has children.

In addition to these conditions, the social services can place requirements on the support recipient which are not directly regulated in the Social Services Act.52 One example of added requirements involves persons who receive

49 This follows, as we will show below, from how the text of the legislation is formulated. See further Socialstyrelsen, *Ekonomiskt bistånd Handbok för socialtjänsten* [National Board of Health and Welfare: The handbook for the Social Services on economic support] (2021). A part of the support that children who live with separated parents receive is the maintenance subsidy or maintenance support the guardian under certain conditions has the right to.
50 Socialstyrelsen (2021), 81.
51 Such requirements are however not imposed if the person for some reason, for example for health reasons, cannot be at the disposal of the labour market.
help with housing through the social services. Sweden does not have a social housing sector, and individuals who cannot arrange housing on their own are instead directed to apply to the social services for support. However, no explicit right to housing exists in the Social Services Act. Nevertheless, case law from the Administrative Supreme Court shows that individuals who are entirely without housing and who have specific difficulties in arranging housing on the housing market have the right to housing under the Social Services Act. In practice, such arrangements are conditioned upon different requirements, for example the acceptance of supervision by the social services or specific obligations to attempt to arrange housing on one’s own in the housing market by viewing available dwellings.

An example of such specific obligations (or in other words conditionality), is found in a case dealt with by the Administrative Court of Stockholm concerning a single mother with three children. In the case, the social services had required the mother to demonstrate that she had applied for twenty apartments in one week in order to continue living in the apartment that the social services had provided for her and her children. The mother had applied for significantly fewer apartments during a two-week period and the social services almost immediately terminated the family’s housing. The mother appealed the decision, which was upheld by the court because the mother did not fulfil the requirement for receiving support in the form of housing, ‘even taking into consideration the perspective of the best interests of the child’.

This case illustrates how the conditions and requirements imposed on parents in the Social Services Act trump children’s best interests and their right to an adequate standard of living – even when it comes to such a fundamental need as suitable housing. Other examples of requirements and conditions placed on single parents include the obligation to apply for housing throughout the entire country, which by way of extension means that the child’s right to housing is pitted against the right to contact and visitation with a

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53  HFD 1990 ref. 119 and HFD 2004 ref. 130.
55  For an in-depth study on how alike conditions effect single mothers, see Samzelius, T., A vicious circle of silent exclusion Family homelessness and poverty in Sweden from a single-mother perspective (Malmö University, 2020).
56  The Administrative Court of Stockholm’s judgment case number 1894–18, 14 March 2018. There is no information available about what happened to this family. To our knowledge there are no studies having looked at what happens to families who are denied support. See further Schiratzki, J., Chapter 1 in this volume about the Swedish court system.
non-custodial parent, or for that matter other important care-givers. This is also illustrative of how the proportionality and suitability of conditional welfare can be questioned from a child’s perspective.

In this context, it is important to note that when it comes to children in Sweden who lack a residence permit, which is a very vulnerable group, there are no clear regulations on the right to municipal economic support according to the Social Services Act. This has been confirmed by a 2017 judgment from the Supreme Administrative Court. The judgment, which has been debated, concerned a single mother with three children who had applied for and had been denied permanent residency in Sweden. After being denied residency, the family remained in the country without permission and hid in order to avoid deportation. The mother applied for support for herself and her children, but this was ultimately denied by the Supreme Administrative Court. For children in Sweden, the right to an adequate standard of living is consequently conditioned on legal status and their parents’ decision to remain in the country without permission. This is in contrast to the statement of the UN Committee on the Rights of the Child, that children should enjoy the rights in the Convention regardless of migration status.

It is interesting and important to note that the conditional character of the right to a reasonable standard of living is not concretely affected by the principles of the best interests of the child and the child’s right to participation according to Articles 3 and 12 CRC, also found in the Social Services Act (Chapter 11 Section 10 and Chapter 1 Section 2). These principles mean that a child’s needs and interests are to be taken into consideration when authorities make decisions in cases concerning children. However, the conditions discussed above

58 Supreme Administrative Court, HFD 2017 ref. 33. See further Schiratzki, J., Chapter 1 in this volume.
60 CRC/C/15/Add.126 and UN Committee on the Rights of the Child. General comment No. 6 (2005), para. 12. See also the Joint General comment No. 4 (2017) of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, and the UN Committee on the Rights of the Child. No. 23 (2017) on the states’ obligations regarding the human rights of children within the framework for international migration in the countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, section G.
are more concretely regulated, which means that as long as no clear statement is set out in the law, stipulating that a different assessment is to be made when it comes to families with children, the conditions on parents trump children’s needs, best interests and rights to municipal economic support. This can be seen as a clear example of ‘welfare conditionality’ described above. As noted, conditioning welfare seems justified either through the idea that everyone should – or at least try to – contribute to society and not be a ‘burden’ on it, or the idea that it is in the recipients’ best interest to support themselves, as this encourages individuals to become self-sufficient.\(^\text{61}\) One central question in this context, is whether the conditions imposed on parents are reasonable and proportionate from a child’s perspective. We return to this discussion in the last section of this chapter.

Our analysis shows that the conclusions drawn in the research described above on how the social services’ handles applications of economic support can be seen as being confirmed or even sanctioned by the legal system. The notion that children are rendered invisible in the practices of the social services is thus consistent with how legislation is formulated and applied. It is clear that the outermost social safety net for children – and by extension children’s right to an adequate standard of living – is conditional. This situation has been referred to as ‘[un]deserving parents make children undeserving of society’s support’.\(^\text{62}\) Even if ensuring that children are heard in the procedures for economic support (for example by social workers speaking with children) would provide a clearer child perspective in the legislation and subsequent practices, the result would probably be the same unless the conditions for support were changed. Whatever children say, the requirements and conditions have so far been given stronger weight and, in other words, trump children’s right to an adequate standard of living and the strive for economic equality.

In cases where a guardian does not take parental responsibility and fails to apply for support when children require it, or does not fulfil the conditions imposed on them by social services, there is currently no possibility for the social services to give support directly to children.\(^\text{63}\) The authority to intervene with support and protection for children who are at risk of serious harm is regulated as described above in the Care of Young Persons Act and is tied to types of deficiencies in the home other than poverty. In general terms, the Care of


\(^\text{63}\) Only in exceptional cases can support be paid out directly to youths over 18 but under 21 years of age who are still covered by the guardian’s duty to support; C.f. Socialstyrelsen (2021), 154–155. C.f. Näsman, E. (2019).
Young Persons Act concerns parental abuse and neglect and not economic vulnerability. Only if there is a tangible risk that a child can be seriously harmed can the social services intervene without the guardian's consent (according to the Care of Young Persons Act), and such interventions mean that the child will be placed in a family home or an institution. There is no known case law concerning out-of-home placement solely on the basis of the consequences of poverty, at least from an appellate court, but it is not impossible that such cases will arise in the future. It should be noted, however, that as mentioned above, children in families who receive support are overrepresented among those children who are placed in social care outside the home.

In summary, regulations concerning the care of children are constructed on the premise that the ‘system’ is to ensure that families have sufficient economic means to meet basic needs such as housing and food. However, when we know that children’s right to an adequate standard of living is conditioned by how ‘deserving’ their parents are, and when poverty is an increasing problem in Sweden, the question is this: what does this situation mean for the child protection system? Should child protection regulations be adjusted so that children to a higher degree can be placed in out-of-home-care due to economic vulnerability, to guarantee the right to an adequate standard of living? Many would oppose to such regulations and there are probably better ways of ensuring an adequate and equal standard of living for children. The next section offers reflections on how the present system could be challenged and what changes are needed.

Conclusions – Layers of Conditions and Legal Invisibility

As can be seen from the examination and analysis in this chapter, there is a discrepancy between the legal ambition of ensuring on the one hand, that everyone in Sweden – and not least children – can enjoy an adequate standard of living, and on the other hand, the hard reality that there are children in Sweden who live in economic vulnerability. Beyond the studies mentioned earlier demonstrating that it is not unusual for children in Sweden to live in poverty, we do not know much about either the consequences of poverty or how authorities and courts handles and reasons when assessing needs and when deciding on the eligibility of municipal economic support for families with children who are living in economic vulnerability. As described, there are some studies showing that children are largely invisible in the management of and decisions in such cases. Legal academic research in Sweden in this area is
generally lacking, as is more systemic legal academic review of the case law. We have only scratched the surface here by including a few illustrative cases.

Our overall conclusion is that the invisibility of children described in previous research on the case-management and decisions by the social services and courts is not surprising. Instead, this invisibility can be seen as accepted by the legal system. As we have shown, the current Swedish regulations impose a series of requirements and conditions which, from a child’s perspective, entail clear limitations as to the possibility to realize children’s right to an adequate standard of living. This state of affairs can be described as layers of problematic assumptions and conditions that risk rendering children’s specific needs and rights invisible.

Children’s rights in this respect are actualized primarily through their parents, with support and contributions based on the parents’ application for support and acceptance of offered contributions. Above all, support to families with children is made conditional through specific requirements imposed on parents, and from a child’s perspective these requirements can be both unreasonable and disproportional. In this manner the above-mentioned depiction by Näsman that ‘[un] deserving parents can make children undeserving of support’ can be said to be sanctioned and reproduced by the legal system.64

The objective of this chapter has been to discuss how the Swedish legal structure handles the most economically vulnerable children’s right to an adequate standard of living. The basic assumptions, requirements and conditions that we have revealed and examined here pierce a hole in the Swedish outermost social safety net. As we have shown, this give rise to a (silent) acceptance of a situation in which not all children are ensured an adequate standard of living and that children are discriminated against (compared to adults) based on the ability and capacity of their parents to ensure that standard of living.

The principle of the best interests of the child and children’s right to participation are intended in part to address the fact that children in Sweden currently lack an independent, claimable right to an adequate standard of living. However, as long as the legal regulations entail that the described requirements and the conditionality involved, continually trumps children’s rights, the principle of the best interests of the child and children’s right to participation as such do not have sufficient ‘legal effectiveness’ to challenge the limitations of the right to an adequate standard of living. This has not changed by the fact that the CRC is incorporated in Swedish law. However, the legal regulations can be challenged from a child’s perspective. It would be desirable to receive

64 Näsman, E. (2019).
clarification from the Swedish legislator regarding what a child's right to an adequate standard of living means in practice in Sweden today, and how that right should be fulfilled. In the absence of such political initiatives, the hope is that cases will be brought to the courts.

Our child protection system – in other words, the authority and obligation to intervene to protect children who are at risk for serious harm – does not adequately address children who are living in poverty, and it is generally accepted that children should not be placed in out-of-home care based on poverty. At the same time, society cannot silently watch and accept that children are affected by the short- and long-term consequences to which poverty can lead. There is no self-evident solution for the problems that have been described here, and the way forward is not clear. One immediate shift could be for the social services to properly assess the proportionality when setting conditions on parents applying for municipal economic support. In such assessments of children's rights, the best interest of the child and the child's needs must be taken into consideration. One thing, however, is certain: there are good arguments supporting the view that the current system does not create reasonable and equal living conditions for all children in Sweden today, despite the country's status as one of the world's wealthiest nations and its child-friendly self-image. Therefore, the definition of the right to an adequate standard of living for children in Sweden today must be clarified, and the corresponding responsibility of society must be more accurately defined.

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