

THE SPREAD OF ANTI-BEGGING MEASURES AND THE ABSENCE OF FREE MOVEMENT RIGHTS IN SWEDEN

The transposition of the free movement directive into Swedish law in 2006 kickstarted a debate about Sweden's responsibility for EU citizens residing in their country; in particular giving way to the introduction of a number of anti-begging laws at municipal level and the proposal of a national anti-begging law. Martin Enquist Källgren explains why these laws do not provide a solution and what Sweden should do instead.



By **Martin Enquist Källgren**, Legal counsel and Operations Development Officer on access to social rights, Stockholms Stadsmission, Sweden

FREE MOVEMENT & RESPONSIBILITY

Following the Swedish transposition of the free movement directive¹ in April 2006, EU citizens have been able to move to and reside freely within Sweden. Along with an increasing number of EU citizens invoking their right to free movement, a public debate has emerged around Sweden's responsibility for the destitute EU citizens who reside in the country. In particular, a discussion about whether begging should be prohibited has attracted much political and media attention. Until recently, the issue has been a political debate upheld primarily by *Sverigedemokraterna* (Sweden Democrats) but, due to a recent decision from the Supreme Administrative Court, the political and legal landscape has changed rapidly.

ANTI-BEGGING LAWS FIND GROUND

The debate about prohibiting begging in Sweden has been going on for several years. In 2011 *Sverigedemokraterna* proposed a ban on begging to the *Riksdagen* (Swedish Parliament).² In 2015 and 2016 the party made further attempts to persuade the parliament to prohibit begging, suggesting discriminatively that only foreign nationals should be prohibited from begging.³ The proposals have consequently been rejected by the parliament's judicial committee, who state that begging is not a criminal offence in Sweden, but

1 Directive 2004/38/EC.

2 Parliament proposal: motion 2011/12:Sf344.

3 Justitiekommitténs betänkande 2015/16:JuU20, p. 73 and Justitiekommitténs betänkande 2016/17:JuU18, p. 84.

also recognize that it could be possible for municipalities to prohibit begging under the Act on Public Order.⁴

In December 2018 the Swedish Supreme Administrative Court ruled that a local begging prohibition, introduced by the municipality of *Vellinge* in the south of Sweden, was lawful under national law with reference to public order.⁵ While the court's decision was a strict legal assessment of whether the local regulation was compatible with the Act on Public Order,⁶ it must also be viewed as the judiciary's response to the ongoing debate about Sweden's responsibility for destitute EU citizens.

ANTI-BEGGING LAWS - A DEVELOPING TREND

Following the decision from Sweden's Supreme Administrative Court, claims for implementation of anti-begging measures are now being brought to the fore by a wide range of community actors. At least ten more municipalities have implemented anti-begging measures and several municipalities are planning to adopt similar frameworks.⁷ In addition, the leading opposition party, *Moderaterna* (Moderates), has now proposed to criminalise begging and requested the parliament adopt a national prohibition.⁸ The bill will be decided upon in *Riksdagen* on the 13th of May.

4 *Ibid.*, p. 85

5 HFD 2018 ref. 75.

6 Ordningslag (1993:1617).

7 Länsstyrelsen i Stockholm, 2020, Uppdrag om nationell samordning avseende utsatta EU/EES-medborgare som saknar uppehållsrätt i Sverige – SLUTRAPPORT, p. 73 – 74.

8 Justitiekommitténs betänkande 2019/20:JuU25, Motion 2019/20:3066.



WHERE ARE HUMAN RIGHTS IN ALL OF THIS?

The motives asserted in favor of implementing anti-begging measures can generally be divided in to three categories, or a combination of the three. Firstly, with reference to public order,⁹ secondly, with regard to the risk for people in destitution to be subject to exploitation,¹⁰ and thirdly, due to the conception that it is the member state of origin that should take responsibility for destitute EU citizens residing in Sweden.¹¹ Notwithstanding the validity of these arguments, anti-begging measures are reported to worsen the vulnerability of already destitute people. Moreover, criminalising or prohibiting the act of asking for help constitutes a serious violation of human rights.¹² In that respect, it is problematic that neither the Supreme Administrative Court's decision, nor any of the municipality decisions scrutinized for the purpose of this article, include an impact assessment as to the effectiveness of the asserted aims or a compatibility assessment with regard to human rights.¹³

⁹ See in that regard, Bromölla kommun, 2019-03-19, Tjänsteskrivelse 2019/175.

¹⁰ See in that regard, Motion 2019/20:3066.

¹¹ See in that regard, Eskilstuna kommun, KSKF/2017:386 bilaga B Yrkande 2018-01-30.

¹² The European Roma Rights Centre, Third-party intervention Lacatus v Switzerland, p. 7 – 9. http://www.errc.org/uploads/upload_en/file/third-party-intervention-lacatus-v-switzerland-22-august-2016.pdf

¹³ Regulations from, Bromölla kommun, Katrineholms kommun, Lidingö kommun, Eskilstuna kommun, Danderyd kommun and Kungsbacka kommun.

“If the free movement directive were implemented correctly, there would be better and real opportunities for destitute EU citizens to establish themselves in Sweden, and less EU citizens would be forced to beg.”



THE FREE MOVEMENT DIRECTIVE - A FLAWED TRANSPOSITION

Furthermore, the Swedish application of the EU free movement *acquis* contains major inconsistencies, which limit the possibilities for EU citizens to establish themselves in Sweden. There is a knowledge gap among Swedish agencies on how to assess the right of residence in coherence with EU law.¹⁴ In addition, the notion of “worker” is applied inconsistently at governmental agencies and in administrative courts, in particular by the Tax Agency whose interpretation of the notion of “worker” is incompatible with the CJEU’s case law since it excludes workers with short-term contracts from registering as residents.¹⁵ Similarly, neither the Swedish implementation nor the agencies’ application of the “job-seeker” concept fulfills the criteria as established by the CJEU’s landmark decision in Antonissen.¹⁶

These errors of key free movement legislation undermine the principle of equal treatment and lead destitute EU citizens, who often work in precarious jobs with atypical employment contracts, to experience severe difficulties in accessing the welfare state and claiming their

14 Länsstyrelsen i Stockholm, 2020, Uppdrag om nationell samordning avseende utsatta EU/EES-medborgare som saknar uppehållsrätt i Sverige – SLUTRAPPORT, pp. 16 and 87.

15 Fabrizio Vittoria and Martin Enquist Källgren, Fitness check report for Sweden, 2020, p. 19.
https://www.feantsa.org/public/user/Activities/projects/Prodec/Prodec_Legal_Fitness_Check_Sweden.pdf

16 Ibid., 8.

rights under EU law.¹⁷ In that regard, the deviating implementation of the free movement *acquis* consolidates the destitution of EU citizens who beg in Sweden. On the other hand, if the free movement directive were implemented correctly, there would be better and real opportunities for destitute EU citizens to establish themselves in Sweden, and less EU citizens would be forced to beg.

ANTI-BEGGING LAWS - NOT THE SOLUTION

These aspects make a clear argument for the removal of anti-begging measures at municipal level and for stopping the proposed prohibition on national level. Rather than violating human rights law by banning people from asking for help, the Swedish legislator should focus on its responsibility to ensure free movement rights for EU citizens. This approach would better safeguard EU citizens from the risk of exploitation, provide relevant accountability, and result in fewer EU citizens living in destitution.

17 Ibid., pp. 12 – 19.

