

# Differential Deportability and Contradictions of a Territorialised Right to Education

A Perspective from Sweden

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**Abstract:** How is it possible to argue that one group of children should be excluded from education when it has been defined as a fundamental right of all children residing in Sweden? In this article, we explore this question through a comparative reading of two different sets of government reports: the first establishes that »children who reside in Sweden without permission« should have an unrestricted right to education, while the second proposes that so-called »children of vulnerable EU-citizens« should not. These positions appear incommensurable. We suggest, however, that they are thoroughly entangled. Under the current regime of migration control, deportation and deportability is what makes it possible for the Swedish government to grant rights on the basis of territorial presence without abandoning its commitment to regulate residence. Thus, the notion that »vulnerable EU-citizens« cannot easily be deported is mobilised to argue that they should be excluded from the right to education. We see this as an expression of how rights are integral to the governance of migrations to and through the European Union.

**Keywords:** migration, children's rights, education, deportability, ethical territoriality

In this article, we examine and problematise contrasting arguments on the right to education for different categorisations of migrant children. In 2013, the Swedish parliament extended the right to education to all »children who reside in the country without permission« (Proposition 2012/13:58).<sup>1</sup> This was celebrated as an important victory for migrant justice movements, and marked one of the first times that irregular migrant children were recognised as rights-bearing subjects by the Swedish state (Neilsen 2016). Three years later, in February 2016, a government inquiry on so-called »vulnerable EU-citizens«<sup>2</sup> proposed, in contradistinction to the 2013 decision, that »children of vulnerable EU-citizens« do not have a self-evident right and

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1 | Equal authorship. All translations are our own.

2 | In short, the Swedish government defines them as EU-citizens who have no right of residence in Sweden. More specifically the label refers to poor, racialised and otherwise margina-

should be denied access to education in Sweden (SOU 2016:6). Meanwhile, in 2016 the government also introduced extraordinary border controls, and swore to intensify their efforts to deport refused asylum seekers and other irregular migrants.<sup>3</sup>

These developments raise a number of questions. First, how is it possible to argue that one category of children should be excluded from what has previously been defined as a fundamental right of all children residing in Sweden, regardless of their legal status? Second, how, in this case, is the distinction between »all children who reside in Sweden without permission« and »children of vulnerable EU-citizens« made? Third, how does this reflect back on the conception of rights that was set out in the 2013 decision on the right to education for »all children«, particularly in terms of the geography and territoriality of this right? And finally, what does all of this tell us about the relationship between rights and strategies of migration control, including deportation and deportability?

In an attempt to answer these questions, we present a critical comparative reading of three government reports. The first two were prepared in 2007 (SOU 2007:34) and 2010 (SOU 2010:5) and served jointly as the basis for the decision to grant all »children who reside in Sweden without permission« an unrestricted right to education (SOU 2007:34; SOU 2010:5). The third report was the outcome of the 2016 government inquiry proposing that »children of vulnerable EU-citizens« should be denied access to education in Sweden (SOU 2016:6).

One of our starting points in engaging with these reports is that the rights of children, and issues pertaining to education more specifically, are of particular importance to the analysis of larger political processes related to migration and migration control. Children have been somewhat overlooked in migration research (White et al. 2011), where they are often seen as passive »luggage« to migrating adults (Dobson 2009). Yet, contestations over the rights situation of migrant children, particularly regarding education, are often at the centre of struggles for migrant justice and against the attempts of states to regulate and restrict migration.

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lised persons who beg and live rough, many of whom are Roma from Bulgaria and Romania. More on this below.

**3** | Sweden's centre-left government has cut access to housing and social assistance for refused asylum seekers, and ordered the police to intensify their efforts to deport irregular migrants. In November 2015, it introduced extraordinary border controls, and, in June 2016, the parliament approved a set of laws that eliminate the possibility for asylum seekers to obtain a permanent resident status, and impede family reunification. It was promised that these would be temporary measures, but there are now indications that they might become permanent fixtures of the system.

The proposal to exclude »children of vulnerable EU-citizens« from education can be interpreted as a violation of the universal right of children to access education as defined in the *Convention on the Rights of the Child* (hereinafter CRC). However, such interpretations often fail to account for the ways in which various conceptions of rights are embedded in regimes of migration control, and are contingent upon governance practices, such as deportation and deportability. The purpose of this article is not to evaluate whether the current and proposed policies meet human rights standards. Neither is it to determine, in positive terms, what the right to education for irregular migrant children and »vulnerable EU-citizen« children really is. Instead, we seek to engage with the argumentative logics and the conceptions of rights that underlie the seemingly opposite positions on the right to education for migrant children with ambiguous or irregular statuses in the two sets of reports.

Throughout the article, we use the term »irregular migrant children« to refer to the categorisation of children that was articulated in the 2010 government inquiry (SOU 2010:5). That is, »all children who reside in Sweden without permission«. These are understood to be rejected asylum seekers, irregular entrants who have never applied for asylum, and visa overstayers. The term »vulnerable EU-citizens« is used by the Swedish government to refer to EU-citizens who beg and live rough in the country. A large portion of these citizens self-identify as Roma (Hammarberg 2015) and the population as a whole is intensely racialised as such. To us, the term »vulnerable EU-citizens« obscures the particular experiences and histories of the persons who are labelled as such, including experiences and histories of anti-Roma racism. As this article centres on an analysis of government discourses, we have nevertheless opted against replacing the term »vulnerable EU-citizen« with the term »Roma« so as to not conflate a category which primarily reflects the perspective of the government with a term (Roma) that better refers to the subjective self-definition of certain ethno-cultural communities in Europe. We hope that the quotation marks will remind the reader that the term »vulnerable EU-citizens« is contested and questioned by us.

Moreover, our choice to use the term does not mean that we do not recognize or take seriously the importance of anti-Roma racisms in Sweden and in the EU. Rather than focusing on the cultural ideology of anti-Roma racism, we choose to emphasise the consequentialist and territorial logics, and the salience of discourses of national sovereignty, which cut across the governance of different categorisations of poor people on the move to and through the EU. Our hope is that this will add to, rather than distract from, important academic and non-academic conversations on anti-Roma racism.

We continue this article with a few brief remarks on the relationship between citizenship and education. We then provide a theoretical discussion of the connections

between status, territory, and rights in relation to migration control and deportability. This is followed by a section on material and method that provides a segue into our analysis, which begins with a discussion about how the different reports address norms regarding international children's rights. Then, we ask *where* the different reports assume or suggest that the right to education should be realised, and, in doing so, call into question the different conceptions of rights as well as the relationships between status, territory, and rights that are articulated in the empirical material. We conclude with a discussion about the implications our analysis of the differential categorisation and deportability of migrant children has for movements seeking to defend and promote the rights of migrants to and through the European Union.

## **THE RIGHT TO EDUCATION: CITIZENSHIP AND RIGHTS**

Education is set out in international human rights law as a fundamental and universal right. In light of this, Vandenhoe et al. conclude that irregular migrant children must not be denied the right to education (2011: 619). Still, this right remains an unfulfilled promise for many children in Sweden and elsewhere; even where non-status children have formal entitlements to education, their practical access to, and quality of, education remains precarious and highly dependent upon on local practices (Quennerstedt 2015; Strange/Lundberg 2014).

Indeed, human rights are generally understood as rights that should be provided to all regardless of their citizenship-status and without any discrimination. Reflecting on the predicament of all those who were displaced and rendered stateless during World War II, Hannah Arendt (1951) famously argued that the intrinsic problem with human rights is that they tend to fail precisely those for whom they were formulated: those that lack the fundamental »right to have rights« that comes from being recognised as a legitimate member of a political community. One way to interpret this is to say that human rights are a secondary construction of civil rights in the nation-state.

The association between education and the nation-state also extends beyond the dimension of rights: The school is an important institution and site of citizenship formation, a space where »citizens-in-the-making« are simultaneously disciplined and enabled (Foucault 1995; Staeheli 2011) and »national consciousness« is instilled into children (Scourfield et al. 2006: 1). Importantly, the school has been, and continues to be, a vehicle for the exclusion, social differentiation, and assimilation of Roma in Sweden and elsewhere. In Sweden, Roma children were barred from accessing the public school system well into the 1960s, and, even after Roma obtained a for-

mal right to education, they continued, and still continue, to face systemic barriers to accessing education (DS 2014:8; Sjögren 2010).

## **THE RIGHT TO EDUCATION: LEGAL ENTITLEMENTS AND CATEGORISATIONS**

In Sweden, education is not just a positive right, but school attendance is compulsory for all legalised children. The 2013 decision to extend the right to education to irregular migrant children made it possible that these children attend school. Unlike their legalised counterparts, however, they have no obligation to do so. The so-called »children of vulnerable EU-citizens« have a more uncertain right to education. These children straddle at least three different legal categories: they might either have a *temporary* or a *continued* right of residence, or *no* right of residence at all. According to EU-law, those children whose parents have a legal right of residence in another member state also have the right to access the primary and secondary education system of that country. This right, however, typically does not accrue to children whose parents have no right of residence, or whose legal status is precarious or undetermined according to EU-law (Skolverket 2014). In practice, these categories are all but clear-cut. For instance, someone might be in and out of work, which could mean that they and their children would also oscillate between having and not having a legal right of residence. To complicate the picture even further, in October 2015, a court ruled that an EU-citizen who had lost their employment in Sweden should be allowed to maintain their right of residence on the basis that their children have settled and attend school in Sweden (Förvaltningsrätten i Malmö 2015). Thus, while a child's right to education typically flows from their parents' resident status, in certain situations it can also be that the parents' resident status accrues from their child's school enrolment.

The 2007 and 2010 reports on irregular migrant children do not explicitly address the legal right to education for EU-citizens with or without a continued right of residence, but they do mention that their recommendations should not extend to tourists and temporary visitors (SOU 2010:5: 69). In January 2016, however, the Swedish Schools Inspectorate issued a landmark decision (Skolinspektionen 2016), which established that school-aged EU-citizens who have no right to education based on EU-law belong to the category of »children who reside in the country without permission« and thus have a right to education on the same terms as all other children belonging to this category. Legally speaking, the decision defined »children of vulnerable EU-citizens« as irregular migrant children. Although this decision predated the publica-

tion of the 2016 report on »vulnerable EU-citizens«, the report fails to acknowledge the decision and its implications. Instead, it cautions against an »all too extensive interpretation« of the universal right to education (SOU 2016:6: 55). If the »National coordinator for vulnerable EU-citizens«, or the government, wanted to formally restrict the right to education for certain EU-citizens, they would have to roll back the 2013 decision in some measure. Instead, they seem to take a political and rhetorical stance where »children of vulnerable EU-citizens« have no self-evident right to education in Sweden, and where they should somehow be set apart from the category of »all children who reside in Sweden without permission«. This highlights that the categorisation of children based on their circumstances and migration histories is a fundamentally political process.

## HERENESS – A BASIS FOR RIGHTS AND FOR EXCLUSION

The 2013 decision to extend the right to education to irregular migrant children was significant in that it represented a break with previous status-based conceptions of migrant's rights. Indeed, it marked one of the first times that irregular migrants were recognised by the Swedish state as rights-bearing subjects (Nielsen 2016). While the decision foregrounded a language of universal children's rights, the conception of rights that it put into law was a *territorial* rather than a *universal* one. Arguably, it was based on something akin to what Linda Bosniak has called »ethical territoriality«: »the conviction that rights and recognition should extend to all persons who are territorially present within the geographical space of a national state by virtue of that presence« (Bosniak 2006; 2007: 389–390). This is a conception of rights that treats membership in a political community as a social fact rather than a legal formality, and which typically centres on an ethic of inclusiveness and equality. According to Bosniak, this makes it preferable to status-based approaches as an argument for migrant's rights.

Yet, at the same time, ethical territoriality has a constitutive exclusionary element; it presupposes the existence of a bounded territorial community within which inclusion is to take place. As such, it can easily be taken up as an argument for hardened borders at the perimeters of territory, as well as for the proliferation of internal borders (Balibar 2004: 190). Under current regimes of migration control and border securitization, this creates a situation in which the *hereness* that brings migrants into »national normative concern« (Bosniak 2007: 390), and that serves as a basis for territorial rights claims, simultaneously subjects them to potential territorial removal and renders them deportable (Bosniak 2006:139).

Deportation, in Nicholas de Genova and Nathalie Peutz's words, is »the coercive reversal of migratory movements« (2010: 50): a »routine statecraft« (ibid.: 34) through which states control who is allowed to remain within their territories. Deportation functions not only through the actual removal of bodies, but also through the deterrent effect that it is thought to have on irregular migration. Also, it is a »formative practice of citizenship« (ibid.: 51) through which the citizen is defined in relation to the »non-citizen«. Importantly, deportability is not the same as the complete exclusion of irregular migrants from the economic, social and political spaces of the state. And just as legal citizenship exists on a continuum (Bosniak 2006), deportability tends to affect people differently based on their legal and economic status (Heyman 2008). The targeting of racialised communities, including practices of racial profiling, also renders certain bodies more susceptible to arrest and deportation than others (Hydén/Lundberg 2004).

## **DIFFERENTIAL STATUS, DIFFERENTIAL DEPORTABILITY**

To put it simply, irregular migrant children are deportable because they have no legal right to remain in the country. In the reports on the right to education for irregular migrant children, as well as in much of the research that these reports build upon, irregular migrants are primarily assumed to be refused asylum seekers from outside of the EU who are absconding deportation orders and have gone into hiding. The fact that they are children does not render them any less deportable than adults. In 2014, almost 500 children were involuntarily returned from Sweden to their, or their parents', country of origin (Bieniaszewski Sandberg 2015). During 2016, the Swedish government came to an agreement with Afghanistan that enables the deportation of thousands of unaccompanied minors as they turn 18, and different authorities and societal actors are encouraged to collaborate in their increasing efforts to find and deport those who abscond from childcare institutions (By 2016).

»Vulnerable EU-citizens« blur the line between citizens and migrants: EU-citizenship is fundamentally a citizenship for people on the move in that it is only activated through cross-border movement (Chatty 2015). The European Union (EU) Free Movement of Citizens Directive 2004/38/EC gives every EU-citizen the right to travel to and reside in another member state for up to three months. During this period, they essentially have the same legal status as tourists. To qualify for a continued right of residence EU-citizens have to either be formally employed, or have »sufficient economic resources« and health insurance so as to not become a burden on the host member state. In Sweden and elsewhere, EU-citizens who do not meet

these conditions are more or less entirely restricted from accessing social benefits and services, and, in many cases, also health care. Yet, in practice, it is difficult for the authorities to control the length of stay for EU-citizens in Sweden. By crossing a border to one of Sweden's neighbouring countries and then re-entering the country, EU-citizens can technically initiate a new three-month period of temporary residence. From this follows that »vulnerable EU-citizens«, although they have an ambiguous and precarious legal status, are still significantly less deportable than irregular migrants.

Sardelić (2016) suggests that Eastern European Roma EU-citizens, in spite of their *de jure* citizenship, are routinely *irregularised* and denied access to the rights and privileges available to other EU-citizens (Van Baar 2015). As an example of how Roma EU-citizens are irregularised, Sardelić cites the controversial expulsions of several thousand Roma from France in 2009 and 2010. These expulsions were largely substantiated through a language of security (Parker 2012; Aradau 2015). In Sweden, the governance of »vulnerable EU-citizens« is similarly dependent on securitisation. For instance, in 2010 the Swedish Police expelled over sixty Eastern European beggars on suspicion of crime (Persson 2010). That said, as our analysis below suggests, restrictions on access to social services and welfare appears to be playing an increasingly important role in attempts to curb the migration of »vulnerable EU-citizens« to Sweden.

## **MATERIALS AND METHODOLOGY**

Our empirical material consists of three so-called Swedish Government Official Reports (SOU): First, a 2007 report entitled »Education for children facing a deportation order« (SOU 2007:34); second, a 2010 amendment to this report entitled »Education for all children« (SOU 2010:5); and third, a 2016 report of the »National coordinator for vulnerable EU-citizens« with the title »Future wanted« (2016:6).

A SOU is prepared by a government inquiry to make policy suggestions with respect to particularly complex or controversial issues. While the government defines the problem to be investigated and sets out the terms of reference for the inquiry, an external inquiry chair or committee is usually appointed to carry out the actual investigation and write the final report. A SOU will often contain recommendations for legislative- and policy change. Mostly, such recommendations are put into official policy by the government. It happens sometimes, however, that the government or the parliament will reject the recommendations of an inquiry. Furthermore, it seems



that the inquiry process in some cases is used as part of a strategy to deflect from a political issue or to postpone formal decisions (Sahlin 2004).

The 2007 and 2010 reports served as the basis for the 2013 decision to pass proposition 2012/13:58, which stated that »children who reside within the country without permission« should be entitled to education. The inquiry that resulted in the 2007 report was initiated based on allegations from the UN Committee on the Rights of the Child (UNCRC 2005), which claimed that irregular migrant children were being discriminated against by the Swedish authorities. The main recommendation of the report was that children who have been refused asylum should have a right to education while they await deportation. This, however, received criticism from consultation bodies such as children's rights organisations who argued that the report failed to take into account several categorisations of irregular migrant children, including children who have entered irregularly and never applied for asylum. In response to this criticism, a follow up government inquiry was initiated that resulted in the 2010 report, which re-defined the category of children that should be entitled to education to »all children who reside in the country without permission«.

The 2016 report on »vulnerable EU-citizens« came about as a response to growing public alarm over the presence of Eastern Europeans who beg and live rough in Sweden, and in the midst of intense controversies over their entitlement and access to education, health care, shelter, and various other social services. A »national coordinator for vulnerable EU-citizens« was assigned by the government in 2015 to support authorities and organisations that work with this group, and »to spread knowledge about [EU-citizens'] rights as they reside temporarily in Sweden without a legal right of residence« (Kommittédirektiv 2015:9). The 2016 report is the outcome of the coordinator's work. It suggests that the reason why the presence of »vulnerable EU-citizens« has become so controversial is because people in Sweden are not used to seeing misery and poverty in the streets: this has »caught many with surprise and made them upset« (SOU 2016:6: 20).

In contrast to the 2007 and 2010 reports on irregular migrant children, the 2016 report on »vulnerable EU-citizens« does not propose any legislative changes. It also puts forward few concrete policy suggestions. What it does do is to give an account of the legal status and rights of »vulnerable EU-citizens«, and to present a series of arguments, of which some have rather strong moral overtones. For instance, it urges the public not to give money to beggars and proposes a zero-tolerance approach to unauthorised migrant settlements. No ban on begging is suggested in the report, although it is being discussed by the current centre-left government as well as by the conservative opposition.

While the 2007 and 2010 reports on irregular migrant children led to legislative changes celebrated by many as an advancement of migrant's rights, the 2016 report on »vulnerable EU-citizens« has received a fair deal of criticism from human rights professionals and migrant justice activists alike (Mikkelsen 2016). Representatives of a number of community- and solidarity organisations together with long-time Roma rights activists have suggested that the 2016 report's recommendations are counter-productive and »repressive« (Andersson et al. 2016). Some have also criticised the report for failing to consider the historical complicity of the Swedish state in the persecution of Roma, highlighting that the report lends legitimacy and support to contemporary currents of xenophobia and racism (Abrahamsson et al. 2016).

For this article, we have carried out a critical comparative reading of the government reports, with a focus on the different arguments and lines of reasoning. In doing so, we have paid attention to differences and continuities between, as well as contradictions within and across the reports. We have also, albeit to a lesser extent, observed some of the textual features of the reports. In this respect, our methodology is inspired by Political Discourse Analysis (Van Dijk 1997), which highlights the need to connect discourse analysis with the political context.

Of course, the reports that we analyse do not exist in a vacuum. They are the products of thoroughly political processes. They are also influenced by competing discourses on immigrant rights that extend beyond the legislative- and policy process. Yet, we believe that focusing on the content of the reports – their arguments, logics, and discursive features – allows us to elaborate on the contradictions within and across them. We believe that an analysis of the kind of governmental reports that we have chosen to study can provide insight into the argumentative logics and discourses of lawmakers and governmental bodies that construct and reproduce how children's rights are mobilised for the management of migration.

Early on in the process, we identified three themes that seemed particularly salient to the reports' contrasting logics and conclusions, and they structure our analysis below: first, how the reports relate to, and address, international human rights standards; second, their reasoning about the geography and territoriality of rights; third, how they propose to balance the right to education in relation to the imperatives of migration control.

## **IRREFUTABLE OR INCONVENIENT RIGHTS?**

A significant difference between the 2007 and 2010 reports on irregular migrant children and the 2016 report on »vulnerable EU-citizens« is how they relate to, and ad-

dress international human rights standards. It was explicitly stated in the government instructions for all three reports that they should consider the CRC. However, they do so in markedly different ways.

The 2007 initial report on irregular migrant children centres on an extensive discussion of the CRC and its implications for the rights of the children in question. In fact, the entire first section of the report addresses the CRC. The report also responds to a series of arguments against implementing a right to education for irregular migrant children on the basis of its stipulations. For example, the report refutes the arguments that allowing irregular migrant children the right to education would be wrong, in principle, since it implies a partial tolerance of irregular migration. The report argues that when it comes to the right to education, the stipulations of the CRC and the criticism from the UN Children's Rights Committee towards the Swedish government outweigh any imperative to control migration. Furthermore, it emphasises that »the right to education is an essential human right, rather than a social benefit« (2007:34: 141). Therefore, it would be morally indefensible and a violation of international children's rights standards to withhold this right for the purpose of reducing government spending.

This is not the only argument that the report puts forward, however. It also engages in a rather lengthy discussion about the so-called »welfare-magnet-« or »pull factor« hypothesis. In short, this is the assumption that granting irregular migrants a right to education would attract more immigrants to Sweden, as well as encourage families in irregular situations to remain in the country. Interestingly, the report refutes this hypothesis, not in principle, but based on a lack of empirical evidence that there would exist such a »relationship between an increased right to social benefits or other rights and more people living clandestinely« (2007:34: 140). Even if this refutation offers support for the report's overall recommendation it seems somewhat inconsistent with its normative standpoint. One may ask: What if the decision to extend the right to education did prove to have an impact on migration rates; would this be grounds for withdrawing it?

In contrast to this, the 2016 report on »vulnerable EU-citizens« barely mentions the CRC, except to caution against what it calls »an all too extensive interpretation of it«, which would »put public servants and politicians who handle questions related to vulnerable EU-citizens in difficult situations« (SOU 2016:6: 54). Furthermore, it suggests that there exists a direct relationship between the decisions of certain municipalities to provide access to shelter, food services, and education to »vulnerable EU-citizens«, and the presence of children in those municipalities (SOU 2016:6: 51). On this basis, the report concludes that municipalities should not set up activities that could attract more EU-citizens. The report furthermore suggests that there are goals

of governance – supposedly, to reduce the presence of EU-citizens who beg and live rough in Sweden – that must not be hindered by impractical interpretations of human rights standards. Indeed, the 2016 report quite explicitly calls for the denial of children’s rights to be used as a strategy to discourage »vulnerable EU-citizens« from bringing their children to Sweden.

## WHERE IS THE RIGHT TO EDUCATION?

The fact that the 2016 report on »vulnerable EU-citizens« engages minimally with the CRC, however, does not mean that it ignores the question of children’s rights and access to education. Quite the opposite, this question is – at least rhetorically – posed as one of its central concerns. The report seems to suggest that the proposal to deny so-called »children of vulnerable EU-citizens« a right to education in Sweden should not be interpreted as an affront to international human rights standards. On the contrary, it is supposed to promote and uphold these standards. If they can go to school *here*, they will not go to school *there*.

The 2016 report assumes that a majority of all »vulnerable EU-citizens« in Sweden are parents of young children whom they have left behind in Romania and Bulgaria (SOU 2016:6: 23). These parents are described as people who are so desperate to support their families that they are willing to selflessly endure the »degrading« experience of begging in the streets (SOU 2016:6: 29). The report is also preoccupied with the idea that the EU-citizens who beg in Sweden do so because they have little education and therefore little opportunity to obtain work. This, it suggests, is to a large extent an effect of anti-Roma racism within the Romanian and Bulgarian educational systems. Thus, to break the cycle of poverty and exclusion, it is extremely important that »children of vulnerable EU-citizens« obtain an education. However, the report argues, their presence *here* (in Sweden) has a detrimental effect on their children’s ability to obtain an education *there* (in their countries of origin):

»Many who beg in Sweden leave their children in the home countries. But the parents need to be present *there* to make sure that the children attend school. The risk is otherwise that the vocation [begging] will be passed down the generations, and that the growing generation will get the idea that beggary is the only possible and natural way to support oneself.« (SOU 2016:6: 91, our emphasis)

This is a consequential logic which arguably adds a layer of humanitarianism to discourses that see the presence of »vulnerable EU-citizens« in Sweden as a problem.

According to this logic, the problem is not, in fact, mainly that they are present *here*, but more so that they are absent *there*. Thus, preventing children from accessing education *here* is presented as a strategy to aid and support them *there*.

In a similar vein, the report suggests that if the so-called »children of vulnerable EU-citizens« are allowed to attend school in Sweden, then there is a risk that children who are already in school in Romania and Bulgaria will interrupt their studies to travel to Sweden along with their parents. It is claimed that the »Swedish society, in accordance with human rights standards, should act to ensure that all the children of Europe can go to school«, but that this does not mean that they should be »taken into Swedish schools«. »The first option should be that the children complete their education in the home countries, in the environments where they are at home, and in the languages that they know« (SOU 2016:6: 55). This is, of course, an argument that is rarely made in relation to other, more privileged groups of international students.

In contrast, the reports on the right to education for irregular migrant children seem to take for granted that »no other country can provide access to education« for the irregular migrant children »during the time the child is living in Sweden« (SOU 2007:34: 138). In a nutshell: there is no *there* where the children could, alternatively and realistically, go to school. Even if they could at some point, in the past or in the future, access education in their own or their parents' country of origin, what matters is that they are territorially present *here* now, and thus the right to education should be fulfilled *here*, where they have their lives (SOU 2007:34: 140).

Both the reports on irregular migrant children and the report on »vulnerable EU-citizens« highlight the responsibility of the state to guarantee the safety and wellbeing of children. The 2016 report suggests that they most probably will not be able to maintain a liveable life in Sweden, and emphasises that they will likely end up living under unacceptable conditions, in trailers or in a tent camp. It also suggests that »children of vulnerable EU-citizens« may have to be apprehended by the state, if they do so. According to the report, existing laws and guidelines on the responsibility of the state to protect and uphold the wellbeing of children require that the state apprehends children in substandard living situations. The report points out that, if the state were to act according to these rules, this would ultimately have negative consequences for the children and their parents. The argument is essentially that »children of vulnerable EU-citizens« should not be given a right to education in Sweden because they have few other rights here, and thus it is likely that they would be apprehended, if they came here with the purpose of accessing the Swedish school system.

In contrast, the 2007 and 2010 reports explicitly suggest that giving irregular migrant children who are »hidden« the right to attend school could be a positive way to break the children's presumed isolation, and make it possible for the authorities

to come in contact with children who would otherwise be outside of their purview (SOU 2007:34: 133). Thus, both sets of reports arguably contain paternalistic narratives about different categories of migrant parents. In the 2016 report, the conclusion seems to be that parents fail in their duties by leaving their children *there*, but that they definitely should not bring them with them *here*. In the 2007 report, the argument is instead that the children are already *here*, and therefore the Swedish authorities have to protect them from the consequences of their parents' choice to stay.

## DEPORTABILITY – A BASIS FOR RIGHTS?

As discussed earlier, deportation is a primary instrument of states to control unwanted migration. The territorial presence of irregular migrant children is ultimately defined and delimited by their potential deportability. Deportation connects *here* with *there* in one of the crudest ways possible. In comparison, the perceived threat of »vulnerable EU-citizens'« unrestricted mobility is linked to the fact that they are relatively less deportable.

As previously mentioned, the 2007 report is entitled »Education for children facing a deportation order«, and defines irregular migrant children as right bearers specifically on the basis of their deportability. An important premise of the report is that giving irregular migrant children the right to education does not make them any less deportable. To precede criticism, a whole chapter in the report is dedicated to a discussion about what implications the right to education could have for the ability of the police to track down irregular migrants. The report suggests that schools should not be given the status of »sanctuaries« or »safe zones« where the police would not be allowed to arrest children due for deportation based on an argument of practicality. The argument relies on information from the police authorities that the police may call schools, ask for specific children, and arrest children on their way to and from school, but that they never arrest children *inside* schools since this is not deemed to be in accordance with the principle of proportionality. Also, the report recognizes that the police typically prefer to arrest whole families together (SOU 2007:34: 202). Therefore, the report argues, the creation of »school sanctuaries« would be problematic since it would mean that schools and the police would be »required to operate in different directions« (SOU 2007:34: 204). Also, police are allowed to pick up children in schools for other reasons, and the report therefore argues that limiting the police from arresting deportable children in schools would be contradictory to other legislation.

Whereas the 2007 report argues that children in irregular situations need to be prepared for whatever the future holds for them »regardless of where he or she will live« (SOU 2007:34: 138), the 2016 report stresses that the primary responsibility to address the situation of the so-called »children of vulnerable EU-citizens« lies with the Romanian and Bulgarian states. Since »children of vulnerable EU-citizens« are assumed to be here only temporarily, the report suggests that it would not be practical for the Swedish authorities to provide them with education and other support. Yet, at the same time, the 2016 report implies that the right to education for their children needs to be limited in order to keep the numbers of »vulnerable EU-citizens« down, and their presence in Sweden a short-lived phenomenon. Since this group of migrants cannot as easily be expelled or deported, denying them and their children access to social rights and education is proposed as a strategy to uphold their highly precarious status and to guarantee a temporary stay in Sweden.

There is a paradox at play here. Temporality is frequently described as a hindrance to the realisation of rights. At the same time, temporality is upheld systematically through direct and indirect migration policies. For irregular migrant children, deportability means that they are held in a position of extended impermanence, and they can have the right to education since it is only to be provided temporarily. For »vulnerable EU-citizens'« children, the right to education is withheld in order to prevent their permanent settlement.

## CONCLUSIONS

Based on the government reports from 2007 and 2010, we have shown in this article that the 2013 decision to provide irregular migrant children with the right to education in Sweden, although it hinged on a definition of this particular right as a universal right, has always been and still remains a territorially based right that is contingent upon the children's deportability. Under the current regime of migration control, deportation and deportability are the mechanisms that make it possible for the Swedish government to grant rights on the basis of territorial presence without abandoning its commitments to regulate migration. The 2016 report on »vulnerable EU-citizens« essentially operated with a similar logic, but came to a different conclusion: It claims that the state cannot afford to uphold principles of ethical territoriality, if it cannot formally control who goes in and out of its territory. The recommendations of the 2016 report, of course, run counter to the 2013 decision. We suggest, however, that these recommendations and the 2013 decision are two sides of the same coin: a contradictory relationship between processes of inclusion and exclusion (Mezzadra/Neilson

2010). The deportability of irregular migrant children allows and enables their entitlement to education. This is a form of inclusion that is fundamentally premised on exclusion. In contrast, it is suggested that the children of »vulnerable EU-citizens«, who are less deportable, should, for this precise reason, be excluded from the right to education. This is a form of exclusion brought about as a response to, and meant to curtail, their inclusion.

»Children of vulnerable EU-citizens« are disenfranchised and restricted from accessing rights and privileges available to other EU-citizens. This is partly related to the fact that EU-citizenship makes social and other rights conditional upon economic status. Mapped onto a social landscape where Roma are economically and socially disadvantaged due to a long history of persecution and systemic racism, EU-citizenship and its associated configuration of rights arguably has the effect of entrenching Roma marginalisation. While Sardelić (2016) suggests that Eastern European Roma are routinely irregularised in the EU, our research gives an example of how the Swedish government attempts to keep »children of vulnerable EU-citizens« distinct and separate from the category of irregular migrant children so as to prevent them from accessing rights that are guaranteed to irregular migrant children. Altogether, this provides some perspective on how rights are mobilised in the governance of migrations to and through the European Union.

Our analysis also highlights some of the contradictions of ethical territoriality: while it takes us beyond status-based conceptions of rights, it can easily be taken up as an argument for hardened borders. Ethical territoriality also does not challenge the broader regimes of deportation and migration control. Rather, it allows for the temporary inclusion of migrants who are currently here, while future migrants continue to be seen as a threat. Territorial logics can evidently also be mobilised to argue that certain migrants who are *here* should actually be *there* – within the geographical territories where they are seen to belong.

Given that hard won principles of ethical territoriality are coming under challenge, we also need to ask, if they are worth fighting for, or, if perhaps we need to rethink these principles and claims. Is ethical territoriality still the best argument for immigrants' rights – or can we imagine a more radically inclusive basis for migrant justice? What would it look like to demand more radical changes to current citizenship and migration orders? Should we base rights claims on territoriality, and, if so, how does this limit our ability to imagine forms of non-territorially based rights and global justice? How might struggles for migrant rights include those who are *here* as well as those who are not *here*, but *there*?



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