



Summary

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Waiting for a judgment

– migration courts' processing time in asylum cases

Summary

The Migration Courts took over the handling of migration appeals from the Aliens Appeals Board in 2006. The new rules of court hierarchy and rules of judicial procedure should be designed so as to meet the requirements of prompt processing. The Swedish National Audit Office (Swedish NAO) has audited whether the processing of asylum cases is effective.

The Swedish NAO considers that the processing of asylum cases has inefficiencies. Waiting times for judgments have increased since 2016 and vary greatly between Sweden's four migration courts. The audit finds that the courts have different conditions, and that external circumstances contribute to variations in processing times. The Swedish NAO considers it problematic that the waiting times for judgments vary between different parts of the country, since this may affect the outcome of the cases.

Audit findings

The migration courts are far from reaching the Government's target to settle 90 per cent of asylum cases within four months. At the same time, there are considerable differences between the courts. Since 2013 only the Migration Court in Stockholm — in isolated years — has been close to reaching the target.

About half of the processing time in an asylum case consists of dormant time, when there is no active processing of the case. The dormant time increased between 2015 and 2020, and varies from one court to another. The court with the

longest processing time — the Migration Court in Gothenburg — also has the longest dormant time.

Dormant periods can occur in different parts of an asylum case. It has been noted in the past that cases become dormant when they are ready for a decision. This audit also indicates such dormant time. However, it is not this dormant time that has increased the most. Nor is it this dormant time that varies most between courts. Rather, dormant times earlier in the cases have become a bigger problem. This form of dormant time — which occurs when new asylum cases are left dormant while the courts are working on older cases — is assessed by the Swedish NAO to be mainly linked to an increased inflow. In some cases, the new cases will be dormant for more than two years.

Oral hearings can be crucial in assessing the credibility of an asylum seeker. The existence of an oral hearing did not significantly affect the processing times of the asylum cases in 2015. However in 2020, depending on where in the country the asylum seeker is located, an oral hearing may be crucial to how long it takes before the court makes its decision. The Swedish NAO notes that at the Migration Court in Gothenburg the waiting time for an oral hearing is about 800 days (2020). At the Migration Court in Malmö, the wait is about half as long, and at the courts in Luleå and Stockholm it is about a quarter as long. It is problematic that the waiting times for oral hearings and judgments in cases vary between different parts of the country, since this may affect the outcome of the cases. The wait also entails costs for society and may also be stressful for the asylum seekers.

The possibility of holding oral hearings is not entirely in the hands of the courts. The National Courts Administration is responsible for the migration courts' premises. And as regards the Migration Court in Gothenburg, shortage of space leads to difficulties in holding hearings. Staff shortage is also a bottleneck. To remedy the latter, there is the National Courts Administration's backup force to support courts with human resources. However, the Migration Court in Malmö — with the second longest processing times — has not accessed much support from the backup force. The Swedish NAO considers that the efforts of the backup force can be optimised. Furthermore, the Swedish NAO notes that the National Courts Administration, with the help of more complete documentation from the Migration Agency, could develop the forecasting work in order to optimise the allocation of resources between the migration –courts. In this way, differences in processing times can be evened out.

However, the Swedish NAO considers that, even if the allocation of resources is optimised, the problem remains that three out of four migration courts are far from reaching the Government's target to settle 90 per cent of the asylum cases within four months. The audit also shows that the Government has topped up the appropriation to the migration courts on several occasions. However, the resource top-ups have been short-term. The courts have thus had difficulties in making full use of the top-ups to reinforce permanent staff. There is a real risk that the human resources of the migration courts will not match up to the target set. The Swedish NAO thus considers that there is a need to review the long-term competency management at the migration courts. The example calculation by the Swedish NAO shows that the dormant time is costly for society, in the form of expenditure for the reception of asylum seekers. Thus, a longer-term resource enhancement to migration courts need not be a cost driver for overall public finances.

Finally, the Swedish NAO notes that the work of the Government — as well as the National Courts Administration and the migration courts — on the transfer of asylum cases has been effective. As a result of the large number of incoming asylum cases, the courts were given the opportunity to transfer cases to each other. A large number of asylum cases has been transferred from the Migration Court in Gothenburg to the courts in Stockholm and Luleå. This would not have been possible if the Government had not created the necessary conditions. Nor would it have worked without the goodwill of the receiving migration courts.

Recommendations

The Swedish NAO's recommendation to the Swedish National Courts Administration:

- Ensure that an uneven distribution of resources between migration courts is avoided. This can be done, for example, by developing the forecasting work and by considering offering backup force resources more extensively to those migration courts whose results are furthest from the Government's target.

The Swedish NAO's recommendation to the Government:

- Ensure that the conditions of the migration courts for long-term competency management match up to the Government's target of settling 90 per cent of asylum cases within four months.