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## Summary

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# Compensation to legal counsel in criminal cases

## – serious deficiencies in follow-up and control

### Summary

Expenditure on legal counsel has increased sharply in recent years, which places high demands on good cost management. The Swedish National Audit Office (Swedish NAO) has therefore audited whether the district courts and the National Courts Administration exercise adequate control over the handling of compensation to public defence counsel and injured party counsel in criminal cases. Adequate handling of compensation claims by courts is important for public confidence in the judicial system.

### Audit findings

The audit shows that the district courts do not exercise adequate control over the handling of the compensation. This is mainly due to the fact that internal control is not appropriately designed at the district courts. The Swedish NAO considers that internal control is deficient in all five components of the COSO model (control environment, risk assessment and management, control activities, information and communications and monitoring).

The system for managing the compensation is out-dated. Nowadays, only a fraction of the compensation for legal counsel in criminal cases is paid through the criminal case tariff (13 per cent), which has probably contributed to the sharp increase in costs. In addition, most of the counsels' working hours take place before the main hearing during the preliminary investigation, and this is work that

the court has less insight into and therefore finds it more difficult to assess the fairness of the claims for compensation.

The system is not designed to contribute to sound management of public funds. The court's examination of claims for compensation often takes place under time pressure at the very end of the deliberations that take place immediately after the main hearing has been concluded. The court also largely lacks guidelines on how the work input of counsel should be assessed. This makes it difficult to assess the fairness of compensation claims when the court decides on the issue of compensation. However, the Swedish NAO considers that the Swedish National Courts Administration has the capacity to support the courts to a greater extent in order to exercise stronger cost control.

In the opinion of the Swedish NAO, the problems and deficiencies that the audit presents are serious. The Government has a responsibility for the system for managing compensation to counsel. Therefore, the Government should have taken the initiative earlier to improve the system of compensation and analyse the cost development.

## **Recommendations**

### **To the Government:**

The Swedish NAO considers that the time is ripe for the Government to review the entire regulatory framework for compensation to legal counsel in criminal cases. In particular, the following points should be included in this review.

- Explore the possibilities of extending the scope of the criminal case tariff to include substantially more negotiation time than the current three hours and forty-five minutes and a greater number of defendants, injured parties and counsel.
- Review the design of the external, statutory controls that the Chancellor of Justice and the Swedish Prosecution Authority are responsible for.
- Consider allowing only legally qualified judges to decide on the question of compensation, thus relieving the lay judges of the task.
- To the Swedish National Courts Administration
- Develop guidelines that facilitate the assessment of the fairness of legal counsel's compensation claims.
- Start work to assist district courts with continuous feedback on the outcome of compensation of legal counsel.
- Investigate whether it is possible in the long term to replace the cost statements with a digital system used by all appointed legal counsel. This is

in order to allow the National Courts Administration to assume an increased overall responsibility for following up the compensation of legal counsel.