

*Summary*

To appeal to the administrative court  
(RiR 2014:6)



## To appeal to the administrative court

The National Audit Office has reviewed the administrative courts' handling of appealed decisions regarding sickness benefit, sickness or activity compensation, and social assistance. The audit focused on processing times and information for individuals.

### Audit background

A person who appeals an official decision concerning their own livelihood needs to have this examined within a reasonable time frame and in a predictable and consistent manner. Long processing times and an uncertainty regarding when the case can be adjudicated can have negative consequences for the individual's livelihood, and can create undue stress on the individual's private economy. It is also important that information, conduct and support are formulated so that the individual understands the process and is able to manage it. The purpose of the audit is to examine whether the handling of appealed official decisions affecting the individual's livelihood and private economy is efficient and legally secure. By "efficient" we mean that the cases are adjudicated within a reasonable time frame, and "legal security" entails that the process and the administration of cases are predictable and consistent.

The administrative courts handle cases that primarily concern disputes between private individuals and public authorities. The administrative courts have for years had problems with achieving the Government's operational goal, which stipulates that 75 per cent of the cases in the administrative court shall take at most six months to adjudicate. There is also a significant regional variation in processing times among the country's twelve administrative courts. The Parliamentary Ombudsmen has criticised the administrative courts' backlogs on several occasions over the past few years.

The audit is based on both quantitative and qualitative methods. The National Audit Office has conducted a file study in order to identify the composite elements of the processing time. Furthermore, the National Audit Office has conducted a telephone interview survey with individuals who have previously had a case which was adjudicated under administrative law and which falls within the three categories of cases we have examined. The National Audit Office has also conducted interviews with the administration at six administrative courts, and representatives at various levels within the Swedish National Courts Administration and the Swedish Social Insurance Agency as well as the Ministry of Justice. We have also interviewed officials of the Parliamentary Ombudsmen, the National Council for Crime Prevention, the Legal Bureau of the Swedish Trade Union Confederation and five municipalities. The audit also draws on document studies and operational statistics.



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## Audit results

The National Audit Office's assessment is that the administrative courts need to establish a clearer citizen perspective in their operations by developing the information provided to the appellant and reducing the long processing times. The lack of relevant information can lead to the appellant not being given adequate opportunities to understand and manage the process, which is ultimately a question of rule of law. The audit shows that the cases are often ready for adjudication for a long period before they are adjudicated, and there is therefore potential for increased efficiency without affecting the quality of the adjudications. The National Audit Office's assessment is that a lack of resources has not been a major problem in the administrative courts. The handling process can be streamlined by developing their working methods and reviewing the organisation. The National Courts Administration can also improve its support to the administrative courts in the development of information and more efficient work processes. The Government can be clearer in its endeavours to achieve greater efficiency by reviewing the administrative courts' operational goal.

### *The information provided to the appellant is insufficient*

The processing in the administrative court is mainly written work. Oral proceedings rarely occur in the types of cases that are included in the audit. The National Audit Office's audit reveals that the information and support that an individual receives after appealing a decision to the administrative court is insufficient. The audit shows that the appellant primarily wishes to receive information on what is happening in their own case. But none of the surveyed administrative courts send out information – such as a notification that the appeal has been received or information on the estimated processing time – in conjunction with the appeal being received by the court.

Many individuals in the National Audit Office's telephone interview survey indicated that it was difficult to find out what was expected of them during the process in the administrative court, and the audit also shows that the appellant does not always understand their role in the process. The majority said that it would have made matters easier if they had received information in writing at the beginning of the process. Since the administrative courts do not provide information to the appellant, they are obliged to search for information on their own. The general information that the National Courts Administration provides on its website does not, however, give a completely accurate picture of the nature of the process.

According to the National Audit Office, inadequate information for the appellant entails a risk of reduced legitimacy for both the process and the ruling in the case.

### *The waiting time has consequences for the appellant*

There are major differences in processing times between administrative courts. In 2013, the processing times varied between 4.9 and 12.6 months. In 2013, the processing time for social insurance cases was almost 11 months on average for the administrative courts in total. Even in



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this case, the differences between the administrative courts are significant – between 6.6 and 16.1 months.

An individual who is appealing a decision does not have the option to choose which administrative court will handle the case. The location where the appellant lives is therefore a major factor in determining how long they have to wait for a ruling. Many of those who responded to the National Audit Office's telephone interview survey felt that the processing time at the administrative court was too long, and that it was difficult to know how long the process was expected to take. Three quarters of those who had appealed a decision regarding sickness benefit, sickness compensation or activity compensation received reduced financial support during the administrative court's processing of the appeal. In order to get by financially, they mainly had to live off their savings. Many also reported that they were supported by a relative or that they borrowed money.

The National Audit Office's conclusion is that the time it takes to process an appeal, and the uncertainty as to when the adjudication will be made, impacts the appellant's ability to plan for their livelihood and life situation in general, regardless of the outcome of the case.

*Most of the processing time is dormant time*

The administrative court instruction stipulates that a case in the administrative court shall be adjudicated as soon as possible. According to the Parliamentary Ombudsmen, this means that cases that are ready for adjudication cannot become dormant for a long period.

In the file study, we investigated how much of the total processing time is active time, i.e., time that drives a case process forward, and how much is so-called dormant time. The audit shows that the processing times at the administrative courts are mostly dormant time, for all case types examined and in all six administrative courts that were covered by the audit. Dormant time constitutes over 70 per cent of the processing time for cases regarding sickness benefit, sickness compensation and activity compensation. For cases relating to social assistance, the dormant time represents almost 60 per cent of the total processing time. The National Audit Office's assessment is that these long dormant times are not acceptable.

*The handling process can be streamlined*

The National Audit Office's assessment is that the long and variable processing times are partly explained by the administrative courts' working methods and organisation. There are significant differences between the administrative courts in terms of how they work with the preparation of cases and how the drafting organisation is designed.

The administrative court has an explicit investigative responsibility and shall ensure that there is sufficient supporting documentation in the case for it to be adjudicated. By communicating with the parties, the administrative court may provide them opportunities to supplement – or submit a statement on – the supporting documentation. The audit shows that there are large variations between administrative courts in how often they choose to communicate with the parties. The



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communication tends to increase the processing times for two of the case types covered by the audit. The divergent communicating pattern also entails the risk that similar cases are not handled in a consistent manner, and is thus also a question of rule of law.

To achieve an efficient handling process, it is important to conduct a qualified assessment of the case when it comes in. This increases the chances that the case will be managed correctly from the start, with less risk that communication will need to be resumed.

The audit shows that all administrative courts have divided up the process' various elements among several case officers and judges. The division leads to more people needing to insert themselves in the case than if fewer were involved in the handling process. The division also risks leading to too much focus on performing the individual steps in the processing, and that no one assumes overall responsibility for the cases.

The case types in the audit are processed and adjudicated in order of age, with some exceptions. This principle applies regardless of whether the cases will be investigated through communication or assessed as ready for adjudication directly. For cases that are ready for adjudication directly, the entire processing time thus essentially becomes dormant time.

Since the influx of cases can vary, the administrative courts need to be able to deploy their human resources in a flexible manner so that they can be quickly diverted when the influx of a specific case type increases. All administrative courts have introduced specialisation for the bigger case categories of social insurance cases and tax cases, but the degree of specialisation varies, and thus the flexibility. According to the National Audit Office's assessment, an excessively high degree of specialisation can lead to resources becoming locked and not being utilised in a flexible way when the need arises.

*The National Courts Administration could be more proactive in its support*

The National Courts Administration provides service and support to the administrative courts in order to enable the courts to meet the targets set by the Government and Parliament. This body has no right of decision over the courts' judicial operations. The National Courts Administration's steering of the administrative courts is therefore limited and occurs primarily through the allocation of resources.

In this audit, the National Audit Office has not found that a lack of resources has posed a major problem in the administrative courts. The National Courts Administration has, however, provided extra resources for the past four years in the form of a lump sum paid to the administrative courts to cover costs for clearing the backlog of cases, among other things. The National Audit Office considers this avenue for extra resources to be important in reducing the processing times, but at the same time it should be seen as complementary to the administrative courts' own work to improve efficiency.



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The National Courts Administration's role as a supporting service organisation without right of decision can be difficult to manage. However, the administrative courts view the National Courts Administration as a good source of support, and would like to see the body taking further initiatives in different areas. The administrative courts are particularly interested in more effective operational support. The National Audit Office's opinion is that the National Courts Administration can also become more proactive in providing information about what support they can offer, and can increase support to the administrative courts in organisational issues, for example.

*The Government can be clearer in its endeavours to achieve greater efficiency*

The National Audit Office considers the Government's operational goal for processing times to be clearly defined, but finds it to be too wide in scope and blunt from an efficiency point of view. The four administrative courts that achieved the Government's operational goal in 2013 simultaneously had processing times for individual case types, such as social insurance cases, which took much longer than the target of six months. Furthermore, administrative courts can be productive by reducing the backlog of older cases while still appearing to be less efficient due to the fact that this work involves an increase in the overall processing time.

There is a risk that the operational goal will lose its significance due to its overly broad scope. The audit shows that the administrative courts view the operational goal as a steering target to varying degrees. Some see it as more of a vision or objective rather than a target that the court actively aims to achieve.

The audit also reveals that some of the initiatives that the Government has recently taken to streamline the administrative court process appear thus far to have had little significance for the administrative courts' efficiency and working methods.

## **The National Audit Office's recommendations**

*Recommendations to the administrative courts*

- Develop the information regarding estimated processing time
- Streamline the handling process

*Recommendations to the National Courts Administration*

- In collaboration with the administrative courts, develop the information provided in the process and review the general information
- Initiate measures to achieve greater consistency in the communication that takes place in the cases
- Develop the case management system Vera



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- Support the administrative courts in the development of more efficient processes

*Recommendations to the Government*

- Review the current operational goal in the appropriation directions

