

## Sweden's answer to the questionnaire concerning "Preventing backlog in administrative justice"

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### I. Techniques for limiting the number of appeals

*1) Must those wishing to refer a matter to the Supreme Administrative Court be represented by a lawyer? If so, are there any dispensations to this requirement? Are there any criteria regarding the lawyer's qualifications or seniority?*

There is no requirement that those referring a matter to the Supreme Administrative Court must be represented by a lawyer. In fact, in most cases in the administrative courts the parties are not represented by a lawyer. This is, probably, a consequence of the fact that it is the court that shall ensure that a case is as well investigated as its nature requires, see Section 8 the Administrative Court Procedure Act (SFS 1971:291) (ACPA). If necessary, the court will direct how the investigation should be supplemented.

*2) Is the Supreme Administrative Court's jurisdiction limited to points of law ("administrative cassation") or can it also rule as an appeals court with cognizance of points of fact?*

The Swedish administrative courts may in most cases, there are exceptions, examine not only the legality of appealed decisions, judicial review, but also make a full intensity review, a correctness review, that is that the court is entitled to consider the entire decision and even replace it, not only to cancel it and send the case/matter back to where it came from.

*3) Is the right of appeal to the Supreme Administrative Court an absolute right or are there limitations? If there are, under what circumstances? Provide a short summary of how your Court interprets these limitations.*

A decision may be appealed against by the party to which it relates, if it has gone against him. However, a decision by an administrative court of appeal to grant leave to appeal may not be appealed against. If an appeal has been dis-

missed owing to its late submission and a court, following the appeal, has considered this decision or refused leave to appeal as regards such an appeal, the decision of the court may not be appealed against (see Section 33 ACPA). From the latter provision, there are some exceptions regarding cases concerning social insurance.

*4) Are there any penalties for abuse of appeals (e.g. fines for rash or persecutory appeals)? If so, are they applied at the request of the respondent or by the court as a matter of course? Does the procedure respect the principle of the right to be heard? Are reasons provided for the decision? Is the session heard by several judges or just one?*

There are no penalties for abuse of appeals.

*5) Do appeals have to go through an admission or authorization procedure before being brought before the Supreme Administrative Court? If so, describe the procedure and the main conditions that would lead to an appeal being refused admission or authorization ("leave of appeal").*

In a majority of the cases brought before the Supreme Administrative Court, 92 % more specifically, leave to appeal has to be granted in order to get a trial by the Court. Last year leave to appeal was granted in only 2 % of these cases. According to Section 36 ACPA leave to appeal may be granted in two situations; when it is important for the application of law that the appeal is considered, i.e. when lower courts need guidance in a matter of law, or when there are otherwise extraordinary reasons to consider the appeal. The vast majority of cases granted leave to appeal is on the basis that it is considered important for the application of law that the appeal is reviewed, i.e. that a precedent is needed.

Some cases do not require leave to appeal. One example of such cases is the cases from the Attorney-General (JK) and the Parliamentary Ombudsmen (JO) concerning breaches of discipline or withdrawal or restriction of legitimation of doctors or other personnel within the health care services. Neither does the Attorney-General need leave to appeal to review cases concerning licences for security cameras. Other cases where leave to appeal is not necessary are cases from the Council for Advanced Tax Ruling (Skatterättsnämnden).

## **II. Techniques to speed up proceedings**

*1) Are there accelerated procedures for emergency situations (apart from proceedings for interim relief, which do not issue preliminary rulings on the*

*merits of the case)? If so, describe the main conditions (whether these are adversary procedures, the reasoning behind the decision, whether the session is heard by one or more judges, whether the advisory body – if there is one – is involved, whether there is an investigation, whether there is a hearing, shorter deadlines for submitting documents or statements, etc.).*

There are no rules in the ACPA concerning accelerated procedures for emergency situations. However, according to special provisions in certain laws some types of cases are to be handled promptly. With those special provisions serving as a guideline, the Supreme Administrative Court has, in its rules of procedure, listed cases that are to be handled with priority. Apart from the priority, the cases listed are to be handled in the same way as other cases. Thus, there are no special rules concerning deadlines for submitting documents or how many Justices (the judges of the Supreme Administrative Court) that shall decide in the cases etc.

The cases listed in the Court's rules of procedure that are to be handled with priority are the following.

- cases concerning free access to public documents,
- cases concerning orders referring to the enforcement of a decision that should otherwise be complied with immediately,
- cases where the appeal has been withdrawn or that immediately should be rejected,
- cases concerning preliminary ruling in tax cases regarding taxation,
- tax cases, if the outcome is of signification for a preliminary investigation that has been initiated concerning a crime according to the Tax Crime Law (SFS 1971:69) or prosecution that is instituted for such a crime,
- cases concerning extension of time for paying taxes,
- cases according the Securement of Payment for Taxes, Customs and Fees Act (SFS 1978:880),
- cases according to the Special Coercive Measurements in Tax Assessment Procedure Act (SFS 1994:466),
- cases concerning the responsibility for representative of legal person according the Swedish Tax Collection Act (SFS 1997:483),
- cases concerning care, provision of care or termination of care according to the Care of Abusers Act (SFS 1988:870) and according to the Care of Young Persons Act (SFS 1990:52),
- cases concerning the Compulsory Mental Care Act (SFS 1991:1128) and the Forensic Mental Care Act (SFS 1991:1129),
- cases concerning the decision of a Minister regarding detention according to the Aliens Act (SFS 2005:716), and

- cases according to the Public Procurement Act (SFS 2007:1091) and the Act on Procurement within the Water, Energy, Transport and Postal Services Sectors (SFS 2007:1092).
- Also other cases where there is a question that should be settled speedily are handled with priority.

*2) Are there accelerated procedures for appeals that are clearly founded, unfounded or inadmissible? If so, refer to the questions listed under II, 1.*

There are no rules in the ACPA concerning accelerated procedures for appeals that are clearly founded, unfounded or inadmissible. However, during the two last years the Supreme Administrative Court has elaborated a new working method within the Court. One vital part of the method is that all new cases are carefully examined by a handful specially designated Judge referees (assistant judges in the Supreme Administrative Court) in order to see in which cases it is obvious that leave to appeal should not be granted. Such “easy” cases are determined by one Justice as soon as the time limit for appeal has expired. In this way, the Supreme Administrative Court quickly can adjudicate “easy” cases and focus on more complicated cases and its main task, i.e. creating precedents.

*3) Are there accelerated procedures for cases that should be straightforward? If so, refer to the questions listed under II, 1.*

See question II, 2.

*4) Other than for proceedings for interim relief that do not issue preliminary rulings on the merits of the case, are there sessions where appeals are heard by a single judge and if so, for what kinds of cases? Can this single judge refer the case to be heard in a session presided over by several judges?*

As mentioned in question II, 2 cases where it is obvious that leave to appeal should not be granted can be decided by one Justice. Also cases that, at first sight, may not seem obvious, but after a closer examination turns out to be so, can be decided by one Justice. If that Justice finds that the case in question so demands, the Justice can refer the issue of leave to appeal to be decided by two or three Justices.

*5) Can the obligation to provide grounds be relaxed? (e.g. relaxation of the obligation to respond to all arguments or statements; grounds provided simply by referring to the relevant provisions, etc.)*

According to Section 4 and 5 ACPA an appeal shall state what is requested and also the circumstances that are adduced in support of the request. If an appeal document is so incomplete that it cannot form the basis for considering the matter on its merits, the court shall order the appellant to rectify the inadequacy within a specified time, on pain of his action otherwise not being

taken up for consideration. There are no exceptions from this rule. However, there is no requirement for how detailed and precise the grounds given by the appellant must be. In cases where the appellant is an individual and where he does not have a counsel or an attorney, the grounds can be very simple. In such cases the court shall, according to Section 8 ACPA, ensure that a case is as well investigated as its nature requires. If necessary, the court will direct how the investigation should be supplemented.

The obligation to provide grounds is mainly stated in the second paragraph, Section 30 ACPA, which states that the court's decision shall state the reasons that determined the outcome. The reasons that determined the outcome may very well be provided by referring to the relevant provisions and the court's interpretation of these provisions. The legislative history in relation to Section 30 ACPA states that the obligation to state the reasons that determined the outcome not necessarily means that the court is obliged to provide a detailed argumentation. It is sufficient that the reasons appear evident through the statement of facts in the case, which may be the case, for instance, when the case or an issue of fact is no longer controversial to the parties involved. Furthermore, if a court of a higher instance merely affirms a judgement made by a lower court, it is not necessary for the court to state the reasons therefore. In these cases, however a copy of the judgement appealed against must be enclosed. Furthermore, the Supreme Administrative Court does not have to provide grounds for its decision to grant, or not to grant, leave of appeal, or for its decision to reject an application for a new trial or restitution of time.

*6) Is it possible to conduct procedures entirely in writing, with no need for a hearing?*

The general rule in the ACPA is that the procedure shall be in writing, i.e. the court decides the case on the basis of correspondence between the parties. However, where it may be assumed to be advantageous for the investigation or promote the expeditious determination of the case, the procedure may include an oral hearing (Section 9 ACPA). An oral hearing shall also be held in the county administrative court and the administrative court of appeal, if a private party bringing an action in the case so requests and the hearing is not unnecessary and there are no special reasons for not holding one. The European Convention on Human Rights must also be taken into account. In certain types of cases an oral hearing shall normally be held, e.g. in cases concerning the taking into care of children or drug-abusers and psychiatric care. In cases concerning payment of tax surcharges, an oral hearing shall be held by the county administrative court and the administrative court of appeal, if the taxable person requests so.

*7) Can any party not cooperating with the procedure be penalised?*

In Section 14 ACPA it is stated that a private party may be ordered to attend personally to an oral hearing subject to a default fine (or on pain that his absence does not constitute an impediment for the further processing and deter-

mination of the case). Section 20 ACPA refers to Chapter 38 Section 4 and 5 in the Swedish Code of Judicial Procedure. According to the latter provisions the court may, when somebody is obliged to produce a written document as evidence, order him to produce it. The person obliged to produce the document may be compelled to perform his duty under penalty of a fine.

It should also be said that the Supreme Administrative Court very seldom uses the possibility of imposing a fine.

*8) Do judges raising legal arguments of the court's own motion always have to order deliberations to be begun again or do they have to authorise the parties to submit new conclusions?*

The court has to ensure that a case is as well investigated as its nature requires (see Section 8 ACPA). If, during such an investigation, a judge raises a legal question that is of importance for the outcome of the case, the parties have to get an opportunity to answer such questions.

*9) Does the procedure allow the deadlines for submitting statements and documents to be shortened?*

There are no deadlines prescribed by law. The parties are free to give in statements etc. as long as the case is not adjudicated. However, the Supreme Administrative Court has some internal rules. The Court finds it important that cases brought before the Court can be adjudicated as soon as possible. In cases where leave to appeal is required, the main rule is that the Court does not take any action concerning correspondence before the question about leave to appeal is settled. If leave to appeal is granted, the appeal document and associated papers are normally sent by the Court to the other party. The other party is normally ordered to answer within three weeks or one month, depending on which type of case it is (one month is used for cases concerning tax or social insurance, three weeks for the rest of the cases), on pain of the case being determined nonetheless. If the other party presents statements or documents, these shall be sent to the appellant, unless it is unnecessary. The appellant then has to answer the pleading within normally two weeks on pain of the case being determined nonetheless. It should be said that the deadlines mentioned just are main rules – exceptions can be made depending on the case in question. The Supreme Administrative Court has taken a rather restrictive approach in applying its internal rules on extension of time and communication of statements and documents. For instance extensions of time are only granted for a specific time and as short of a time as possible.

*10) Does the procedure allow the appeal, the statements, written submissions and the documents to be submitted electronically?*

An appeal against a decision shall be made in writing. If the appellant is a private party the appeal document has to be personally signed by him or his representative (see Section 3 ACPA). Internet cannot be used by a private party to submit an appeal. However, the parties can use the Internet in order to submit statements and submissions.

*11) Must statements, written submissions and documents be submitted in strict accordance with the deadlines, with the case being inadmissible if they are not submitted in time? If so, are there any exceptions to this rule?*

See question II, 9. As said before, exceptions can be made from the internal rules of the Supreme Administrative Court concerning deadlines. Thus, a party can be granted extension of time for submitting statements etc. Decisive of whether such extension is granted or not is why the party asks for extension and the importance of the announced statement or document. The fact that the party's counsel or attorney has an oppressive workload is not normally, in itself, sufficient for being granted extension of time.

*12) Is there a limit to the number of statements or written submissions that may be submitted? Can additional statements or written submissions and documents be submitted?*

There is no such limit. As long as the case not has been adjudicated, the parties can submit as many statements etc. as they wish. However, it should be observed that when the Supreme Administrative Court looks for cases suitable for creating precedents, the Court tries to choose cases that are as "clean" as possible, that is without too many irrelevant circumstances. A case with a lot of statements may then not be the most suitable choice.

*13) Is it compulsory to submit a summary statement closing the written submissions?*

It is not compulsory to submit a summary statement in order to close the written submissions.

*14) Once the investigation has been closed, is it possible to submit new documents, written submissions or written observations at the last minute?*

The parties are free to submit documents etc. as long as the case is not adjudicated. If the documents contains something that may have an effect on the outcome of the case, the Court has to investigate it and may also have to send the documents to the other party.

*15) Can new arguments be raised during the procedure?*

In cases for which leave to appeal is required, a circumstance or item of evidence that the appellant first adduces in the Supreme Administrative Court shall only be taken into account if there are special reasons. Chapter 10, Section 10 of the Local Government Act (SFS 1991:900) also contains regulations concerning impediments to taking into account or presenting new circumstances in certain cases.

*16) Can new arguments be raised on appeal?*

See question II, 15.

*17) Are there appeal channels for accelerating the course of the procedure or applying a penalty for exceeding “reasonable time”, in accordance with the judgement in the case of Kudla v. Poland, delivered on 26 October 2000 by the European Court of Human Rights?*

Previously, there has been no legal possibility for private persons for accelerating the course of the procedure. However, on 1<sup>st</sup> January 2010 the Act on Declaration of Priority (SFS 2009:1058) came into force. The law aims at ameliorate the possibilities for private persons of accelerating the course of the procedure in the courts. An application for declaration of priority can be made in all types of cases and matters in the ordinary courts, the administrative courts, the Market Court, the Labour Court and the Court of Patent Appeals. If the procedure has been unreasonably delayed, the case or the matter shall be declared to have priority over other cases that not are to be handled with priority.

For many years there has also been a possibility to apply to the Attorney-General (JK) or to address the Parliamentary Ombudsmen (JO). However, the Attorney-General can only oblige the State/Government to pay financial compensation for the time delay of the procedure and the Parliamentary Ombudsmen can only criticise the court for faulty procedures. Thus, those authorities cannot accelerate the procedure in the court.

*18) What does the court understand by “reasonable time” for a hearing within the meaning of Article 6 of the European Convention on Human Rights? If applicable, mention some cases where sanctions were applied because a hearing did not take place in reasonable time.*

It is hard to say, from a general point of view, what the Supreme Administrative Court understands by “reasonable time” for a hearing – it depends on the circumstances of the case. Case-law from the European Court of Human Rights is taken into account. As mentioned above (see section II, 17), the question of sanctions based on a breach of Article 6 of the European Convention on Human Rights falls within the competence of the Attorney-General, and in some cases The Supreme Court. Within the scope of an on-going case, however, the Supreme Administrative Court can take such a violation into consideration. For example, in RÅ 2006 ref. 43 the Supreme Administrative Court stated that a total period of six and a half year, out of which three in the Supreme Administrative Court without any measurements taken, meant that a violation of Article 6 of the European Convention had occurred. In the specific case, the Court reduced the special charge by half. Questions like these will due to the new Act on Declaration of Priority perhaps appear more frequently.

### III. Performance criteria

*1) Are there quantitative and qualitative criteria for measuring the “performance” of court activity? What is the judicial value of these criteria and what body issued them?*

The Swedish National Courts Administration<sup>1</sup> provides a computer programme for report and analysis of statistics concerning the cases that are handled within the courts. For example, it is possible to see how many cases that have been adjudicated by a certain court within a certain time, and what the average time of the cases adjudicated has been.

There are no qualitative criteria offered by the Swedish National Courts Administration for measuring the performance.

The Supreme Administrative Court has in its internal plan of business for the year of 2010 set out certain goals concerning the Court's performance. For instance, 75 % of the decisions not to grant leave of appeal should be adjudicated within four and a half months if it is decided by one Justice, and within six and a half months if the case is determined by more than one Justice. Regarding cases where leave to appeal has been granted and cases where leave to appeal is not required, the time before adjudication should for 75 % of the cases not exceed eleven and a half months. The Court shall, in order to meet the goals, adjudicate the same number of cases that comes before the Court.

*2) Are there statistical data on the average length of proceedings in the Supreme Administrative Court and the average length of a procedure from the court of first instance to the final decision by the Supreme Administrative Court?*

As mentioned in question 1, III the Supreme Administrative Court has access to a computer programme for report and analysis of statistics concerning the cases that are handled within the Court. By means of the programme it is possible to get statistical data on the average length of proceedings in each instance. However, the programme does not admit measuring the average length of a procedure from the court of first instance to the final decision by the Supreme Administrative Court.

*3) Are there significant differences in the length of procedures depending on the nature of the case?*

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<sup>1</sup> The Swedish National Courts Administration is a state authority reporting to the Government and functions as a service organisation for the Swedish courts. The Swedish National Courts Administration does not have any powers to make decisions over the final judgements or decisions of the courts. The function of the Swedish National Courts Administration is to be responsible for overall coordination and common issues within the Swedish Judiciary.

Yes, there are. As mentioned under question 2, II the Supreme Administrative Court has elaborated a new working method within the Court. Cases where it is obvious that leave to appeal should not be granted are determined by one Justice as soon as the time limit for appeal has expired. In this way, the Supreme Administrative Court quickly can adjudicate “easy” cases. In general, the length of procedure is longer in complex cases or cases of considerable proportions, for example cases regarding taxes, the social insurance scheme, building permissions, or town and country planning. In cases where a question on application of European Community law arises, the Court may also have to make a referral to the European Court of Justice for a preliminary ruling, which prolongs the procedure considerably.

4) *During proceedings, are lower courts authorized to request the Supreme Administrative Court’ opinion on a new point of law in the aim of guaranteeing judicial security and preventing an influx of disputes?*

There is no such possibility for the administrative courts.

5) *What is the ratio between the number of judges in the Supreme Administrative Court and the number of cases settled each year?*

For answers, see the table below. Please note that the number of judges and assistants is given in workers per year.

<b>Year</b>	<b>Number of judges (Justices)</b>	<b>Number of assistant judges (Judge referees)</b>	<b>Number of cases settled</b>	<b>Ratio judges/cases settled</b>	<b>Ratio judges/assistants</b>
2007	19	37	9 188	484	0,51
2008	18	39	10 346	575	0,46
2009	18	41	10 117	562	0,44

6) *What is the ratio between the number of judges and the number of assistants?*

See question 5, III.

7) *Are there specialized judges within the Supreme Administrative Court who only deal with a certain kind of cases? Does this specialization have a basis in law or is it a result of internal work distribution?*

There is no form of specialising in which certain types of cases are allocated to certain Justices. However, of course a Justice who is professor in Tax Law is more skilful in cases concerning taxes than in cases concerning social insurance. Such specialist knowledge is being used in an internal form of working within the Supreme Administrative Court, the so called cabinets. The system with cabinets was founded in 2002 in order to strengthen the contact between Justices and Judge referees. Each cabinet is directed by one Justice. Normally three or four Judge referees are included, but there also are some cabinets that consist of two or four Judge referee. In the cabinets we try to bring together Justices and Judge referees who are good at, and interested in, the same types of cases. The Judge referees give cases they estimate can be determined by one Justice, to “their” head of cabinet. The way in which the Judge referees report the cases varies. Since the co-operation between the Justices and the Judge referees becomes very close within the cabinets, the Judge referees soon learn in what way the Justices want to have the cases reported. Perhaps it sometimes is enough with a small note about the case, while other cases need a more profound presentation.