Legal assistance and representation - Sweden

Overview

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Relevant EU legislation

Sweden is bound by the recast Asylum Procedures Directive, the recast Reception Conditions Directive and the Dublin III Regulation and has transposed their provisions through the Aliens Act (SFS 2005:716 with further amendments) | Utlänningslag (2005:716).

National legislation

Sweden transposed the recast Asylum Procedures Directive, the recast Reception Conditions Directive and the Dublin III Regulation through the Aliens Act (SFS 2005:716 with further amendments) | Utlänningslag (2005:716).

Other relevant legislation on legal assistance in Sweden includes:

The Swedish (1996:1619);

The (1996:1620).

Section 48-49 of the .

Competent authority and stakeholders

Disclaimer: ‘Competent authorities’ are the persons as “admitted or permitted under national law” including all possible titles provided under national law, for example legal advisers, legal counsels and lawyers (see also Recital 23 and Article 21 of the recast APD).

Area	National authority/stakeholder

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Provision of legal and procedural information on the applicant's rights and obligations	Migration Agency's staff at the nearest reception centre Appointed lawyer
Legal assistance at first instance determination	Public assistant from the list administered by the Migration Agency Lawyers in private practice Swedish Refugee Law Center (Asylrättscentrum) Swedish Red Cross
Legal counselling provided by civil society organisations or other organisations	Swedish Refugee Law Center (Asylrättscentrum) Swedish Red Cross
Legal assistance at second instance determination	Lawyers appointed by the Swedish Migration Agency
Legal assistance for other related procedures	State-funded legal assistance is available for procedures related to the Dublin procedure, detention, reception conditions and return. According to the Aliens Act (Kap 18), the risk of being expelled from Sweden and being in Sweden are the two main requirements to obtain state-funded legal assistance. Legal assistance is always state-funded when a lawyer is appointed by a state authority regardless of the procedure.

Access to legal assistance and representation

Provision of information on legal assistance and representation

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The Swedish Migration Agency informs applicants about the possibility of having a legal counsel appointed throughout the entire asylum procedure. A lawyer who is appointed and financially compensated by the state must be assessed to have suitable qualifications.

Access to premises

Applicants in Sweden generally do not reside in limited areas, so a public counsel can always reach their client and schedule a meeting. Likewise, the applicant can contact their public counsel. In detention, there are certain restrictions, but the applicant always has access to their public counsel.

Applicants have the possibility to communicate with UNCHR. If requested, the Swedish Migration Agency can provide the contact details. It is the applicant who must make the contact themselves.

Requirements: Means test and merits test

Requirements will change with the amendments of the Alien Act that are foreseen for autumn 2025. Information will be updated when the amendments enter into force.

Modalities to submit a request for legal aid

Free legal aid at first instance is granted in all asylum cases in the regular procedure, unless it is assumed that there is no such need (according to Aliens Act, Chapter 18, Section 1). The applicant can request a specific lawyer on the list administered by the SMA and this choice must be respected (provided that the lawyer meets other requirements set out in the Legal Aid Act).

The Public Assistants Act (1996:1620) contains the general provisions on public assistants. Section 2 states that the competent authority or court that deals with the case on the merits decides on matters of public assistance.

Normally, the SMA informs the applicant of their right to free public counsel during the initial interview. At that time, the SMA also ask if he/she wishes to request a specific counsel, and if not, whether he/she has any preferences on the gender of the counsel to be appointed. Sometimes applicants require more time

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to consider their preference for public counsel, which is generally granted by the SMA.

Legislation does not specify a timeline to apply for legal aid in the international protection procedure. However, it is recommended to appoint a lawyer as soon as possible in order to schedule the interview and move the case forward.

According to the Legal Aid Act, Section 3, the applicant can also apply for legal aid in writing. If so, he/she must provide the information requested by the authority (SMA).

Outcome of the request for legal aid

The legal representative is assigned and designated by the SMA or the respective court.

An asylum seeker may request a specific person to be designated, a request which is normally granted if the lawyer meets the requirements set out in the Legal Aid Act and any other set up in the legal position document in the area. The criteria for the appointment of a legal counsel take into consideration whether the counsel is located close to the office responsible for handling the case, but this is not an absolute criterion if the applicant has requested a specific lawyer (source: AIDA Report Sweden, Update 2023). The Migration Court of Appeal ruled that the choice of a lawyer by the applicant must be respected even if the lawyer is located at a distance or is not available at the preferred time of the SMA for an interview.

The request to change or appoint a specific legal assistant is based on Article 26 of the Legal Aid Act. According to the Migration Court of Appeal judgment of 22 June 2006, a revocation of a power of attorney for public counsel should be considered as a request for a change of counsel.

The SMA uses a dedicated platform (e-service) for registration of public assistants, communication with them, appointments and exchanges.

Legal assistance and representation at first instance determination

Service provider

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State-funded

The Swedish Migration Agency (SMA) manages the list of public assistants who can be appointed to provide free legal aid in asylum cases. A public assistant can be appointed by the SMA for an applicant for international protection when the case officer deems it necessary.

The SMA announced a new working method with public assistants starting on 1 May 2023, with the aim of reducing the waiting time. The objective is for the SMA to reach a processing time of 6 months, as provided by the recast APD.

The SMA schedules an investigation session with the applicant and the public assistant as soon as possible after the application and upon appointment of the public assistant. The SMA aims to complete the asylum investigation phase within 5-14 working days from the application. The public assistant has the obligation to submit written submissions that are received no later than 14 days after the completion of the asylum investigation. A strict approach is implemented for granting deferments.

In order to ensure the quality of the oral investigation, the SMA conducts asylum investigations with the involvement of all parties at the Agency's premises.

Civil society organisations

There are two civil society organisations that provide legal assistance and counselling in the asylum procedure: Swedish Refugee Law Center (Asylrättscentrum) and the Swedish Red Cross.

The Swedish Red Cross offers legal support through a hotline and by appointment. The Red Cross prioritises cases concerning family reunification, persecution due to a risk of torture and gender-based persecution.

Scope of legal assistance

The legal counsel attends the oral interview and subsequently makes a submission which incorporates views on the oral transcript and any supplementary information on the substance of the case. *(Source: AIDA Report Sweden, Update 2023).*

The legal representative participates in the personal interview, which is organised by an SMA case officer.

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The SMA indicates a specific date, usually 2 weeks, by when comments and additional information must be submitted by the applicant or the legal counsel. In some cases, it also occurs for the interview report to be read aloud to the applicant on site, giving them the opportunity to add information or point out any errors in translation or interpretation. In this way, the reading of the transcript does not need to take place at the office of the public counsel.

Compensation for legal advisers is determined on an individual base. Guidelines for compensation are:

Hourly cost standard: applies, but the hourly compensation may deviate from the hourly cost standard in certain cases *(see Section 5 of the Act [1996:1620] on public assistance with reference to, among other things, Section 27 of the Legal Aid Act [1996:1619]).*

According to the Ordinance (2009:1237) on hourly cost standards in the legal aid area, the hourly cost standard in 2025 is 1,586 SEK (with F-tax) and 1,207 SEK (without F-tax).

Waste of time: is repealed in accordance with the Swedish Courts Administration's regulations on waste of time (DVFS 2024:15).

Expenses: not regulated in any regulation. Compensation for expenses is determined in accordance with Section 5 of the Act (1996:1620) on public assistance with reference to, among other things, Section 27 of the Legal Aid Act [1996:1619] to Section 27 of the Legal Aid Act (1996:1619).

Procedural aspects

The Aliens Ordinance Act, Section 9c, Chapter 8 provides that the applicant can request an interpreter and a case officer of the same gender.

The SMA is not obliged to use authorised legal interpreters (changes in law regulating this aspect will enter into force in January 2026). In asylum interviews it may happen that interpreters do not provide a detailed account of what the applicant said, and this may lead to an assessment by the case officer that the applicant replied vaguely about events, which may affect credibility. It is then up to the legal representative to expand on the attached translations when the written submissions are mailed after examining the transcript of the interview. Applicants may have the option to provide a detailed account in their own

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language but only the interpretation is attached into the official transcript.

The legal counsel is appointed after the application has been lodged.

Representation

Same rules as for legal assistance apply.

Aspects related to special procedures

Information is not currently available.

Aspects related to applicants with special needs

The SMA makes an individual assessment in each case regarding the right to public counsel. Factors such as special needs are always taken into account.

The legal advisor/counsel may be also appointed as a legal guardian of an unaccompanied minor until the legal guardian is appointed. The legal guardian and the legal advisor are in regular contact. The legal guardian will accompany the child to the public counsel.

Changes are expected in this area as part of the amendments to the Aliens Act which are expected to enter into force in autumn 2025. Information will be updated once the changes are implemented.

Legal assistance and representation in appeals

Service provider

Generally the applicant keeps the same public counsel during the appeal phase as in the initial phase. If the applicant does not have a public counsel at the time of the appeal, one will be appointed to them. If it is a migration case, the SMA is responsible for appointing the counsel, although other authorities may also do so.

It is the appointed counsel who represents the applicant in court. Lawyers from civil society organisations can also be appointed. In addition to the appointed counsel, the applicant may have other representatives (Ombudsperson).

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All counsels appointed by the SMA or the courts must be approved to represent asylum seekers.

If the applicant has received an appointed public counsel in first instance, this appointment remains valid in the second instance. If no public counsel has been appointed in first instance, the Migration Court can appoint a public counsel after receiving an appeal on the same grounds as appointments in the first instance. Just like in the first instance, the court normally appoints a public counsel within the private sector or a civil society organisation who has been vetted in advance.

In first instance an applicant can receive an appointed public counsel linked to the assessment of a possible expulsion order or application for residence permit on the basis of international protection. However, when an appeal is made against a decision on status determination, the applicant should receive an appointed public counsel for the court case if the applicant requests a public counsel, is in Sweden and it is not obvious that the appeal will overturn the status determination decision made by the SMA.

Just as in the first instance, the applicant has the right to select their own legal representative in the appeal process. However, the Migration Court can dismiss a legal representative if the court assesses that the representative does not possess the required skills and understanding to legally represent the appellant or is in other ways unsuitable to be a legal representative in the case.

Changes are expected in this area as part of the amendments to the Aliens Act which are expected to enter into force in autumn 2025. Information will be updated once the changes are implemented.

Scope of legal assistance

For applicants who have received an appointed public counsel, free legal aid is provided to appeal to the Migration Court. Legal aid is also provided by the state to the same category of applicants through a public counsel to lodge a request for leave to appeal to the Migration Court of Appeal. If the leave to appeal is granted, further legal aid is provided for the court process.

Asylum applicants in the regular procedure have access to free legal aid and are usually called to a meeting with the lawyer to prepare the appeal to be submitted before the Migration Court. The applicant is explained the reasons for the first instance rejection and has an opportunity to provide new evidence or arguments

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to support their case. An interpreter financed by the state is available at this meeting.

The public counsel is entitled to reasonable compensation for work performed, loss of time and disbursements incurred in connection with the assignment *(see Section 27 of the Legal Aid Act (1996:1619) and Section 5 of the Act on Public Counsel (1996:1620))*. Reasonable compensation is based on the scope of the legal assistance provided. What constitutes 'reasonable', and thus the actual scope, is defined through case law.

Procedural aspects

Appeals are submitted in writing to the SMA by the appointed public counsel. The SMA assesses if the appeal was submitted in accordance with the applicable statutory time limit (normally 3 weeks from the day the applicant was informed about the decision) and if the appeal warrants a change of the decision. Such a change can only be made in a positive direction for the applicant, and even if the change is made, the appeal and the new decision still must be handed over to the Migration Court by the SMA. Appeals must be handed over by the SMA to the Migration Court within 7 calendar days from the day the appeal was received. In reality, majority of appeals are handed over with 2 working days.

An asylum seeker can actively refrain from appealing the decision by signing a form and withdrawing the claim.

An appointed public counsel can be relieved of the assignment either through a request by the applicant or the public counsel. At the appeals stage, the Migration Court assesses and makes a decision on such a request. The Migration Court can also *ex officio* decide to relieve a public counsel of the assignment if the counsel shows a lack of required skills and understanding to legally represent the appellant or is in other ways unsuitable to be a legal representative in the case.

Type of appeal

A decision by the SMA on an asylum application can be appealed to a Migration Court. A decision by the Migration Court can be appealed to the Migration Court of Appeal, which must provide a leave of appeal before the appeal is assessed. Free legal aid can be provided for both appeals. Once the decision can no longer be appealed within the Swedish court system, the possibility for free legal aid for

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that particular decision is no longer possible. This means that free legal aid cannot be provided for an appeal to the Court of Justice of the EU.

Representation

An appointed public counsel acts as a legal representative for the applicant with regards to the asylum application and in interactions with the SMA and the courts linked to the application. The applicant normally signs an agreement with the public counsel to act on behalf of the applicant as a legal representative. The public counsel can only receive compensation from the Swedish government for the work, loss of time and disbursements that are directly linked to the assignment. However, they are free to make other arrangements with the applicant to represent them on other matters without any compensation from the Swedish government.

A public counsel who does not establish an agreement with the applicant to act as a legal representative can only assist the applicant and not act on behalf of the applicant.

Aspects related to applicants with special needs

Same rules apply for legal aid in the appeal stage as in the first instance. For people with special needs, a public counsel must always be appointed to minors who have applied for asylum and who do not have a legal guardian in the country (Aliens Act (2005:716), Section 1a(2), Chapter 18). In addition, a guardian is appointed by the municipality where the minor resides to represent the interests of the child in economic and legal matters in the absence of a legal guardian. A guardian does not need to be appointed if it is manifestly unnecessary, in which case the public counsel takes on the responsibilities of a guardian for a minor. The appointed public counsel and an appointed guardian should not be the same person.

There is no other specific aspects or procedural safeguards for the provision of legal aid to applicants with special needs.

A part of the public counsel’s compensation includes disbursements for interpreters. This includes sign-language interpreters as part of legal aid.

Right to counselling in the Dublin procedure

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Requirements are about to change with the amendments of the Alien Act that are foreseen for autumn 2025. Information will be updated when the amendments enter into force.

Access to legal aid while in detention

Under current legislation, detained asylum applicants are informed of the rules of the detention facility and have the right to communicate with other people including family members, legal advisers/counsellors, UNHCR and NGOs, as provided under the Aliens Act, Chapter 11, Sections 1, 3, 4 and 10 *(Source: Dublin factsheet, April 2023).*

According to Chapter 18, Section 1 of the Aliens Act, public assistance must be ordered for people who were held in detention for more than 3 days and the application was rejected. In this case, assistance is provided unless it is presumed that the person is not in need of assistance.

A public counsel who is appointed in a case concerning a detention measure has the duty to appeal a decision on a supervised visit, as provided by the Aliens Act, Chapter 11, Section 4. The Migration Court of Appeal ruled in a judgment of 22 June 2020 that the public adviser is thus entitled to compensation for the work carried out within the framework of the appeal of the decision.

Quality assurance

Selection, qualifications and training

In the Tidö Agreement between the parties in the new government and the Swedish Democrats, it is stated that a review of the asylum procedure will be conducted to enhance its quality, consistency and legal certainty. The review will also assess criteria for legal representatives, interpreters and lay judges.

The Legal Aid Act contains the general provisions on public assistants. Section 2 states that the competent authority or court that deals with the case on the merits decides on matters of public assistance. Section 5, which refers to Section 26 of the Legal Aid Act (1996:1619), provides that a lawyer, a lawyer at a law firm or someone else who is suitable for the assignment may be appointed as a

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public counsel. If the claimant has proposed a suitable person, he/she shall be appointed, unless there are special reasons for not doing so.

The SMA manages the registry of public assistants who can be appointed by the Agency to give counselling or legal assistance to asylum applicants, unaccompanied minors, applicants in detention, applicants against whom a return decision was adopted, and other applicants in immigration-related matters. The SMA Judith system is an internal decision-making support, and the Agency lays down objective criteria to be appointed. The SMA distributes cases according to the availability of public assistants on the list. Eligible public assistants can register their interest in public assistance at the SMA. The registration is through the e-service by submitting a form. The SMA uses the e-service to communicate documents to public assistants when they are appointed. The applicant, cost statement and other documents are sent digitally through e-service, and thus access to the calendar and bookings are granted.

The Administrative Procedure Act can only be applied in a specific case. The Migration Agency has a Legal Positioning Paper, made by the Head of the Legal Department RS/021/2020 (version 2.0), which is based on the Supreme Administrative Court ruling of 22 June 2020. The SMA has the right to reject a counsellor who has made several errors for an extended period of time, until the behaviour is corrected, for example through training.

The SMA has conducted a competence assessment and examination of diplomas from school law, course certificates and other documents that are relevant to prove the competence in migration law and children’s rights. Lawyers that are members of the Bar Association do not need to submit a diploma from a law school.

The Supreme Administrative Court ruled on 22 June 2020 that the SMA has been mandated by law to appoint public assistants in certain specific situations but there is no constitutional regulation on how this appointment shall be carried out. The appointment has the purpose to ensure that the beneficiary of assistance can defend their rights properly. To ensure that tasks such as public assistance are only given to people who are suitable, the SMA maintains a list for decision-makers within the authority. The list is an internal decision support for the Migration Agency's decision-makers. A person who registers an interest in being appointed as a public assistant is entered on the list if they are suitable. Correspondingly, a person who is no longer considered suitable can be removed. In all type of measures, the authority must observe general principles of

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objectivity. The Supreme Administrative Court clarified that since the list of persons constitutes an internal decision-making support for the decision-makers of the Agency, the measures to remove a person or not to record a person who expresses interest does not constitute an administrative decision subject to an appeal. The Supreme Administrative Court further ruled that the list is not binding for SMA decision-makers. A person (lawyer, lawyer at a law firm or other) who is not on the list can still be appointed.

There are specific requirements of knowledge and experience for public assistants to represent children. They must have knowledge of the UN Convention on the Rights of the Child and its implementation in Swedish law. Knowledge about children's development and the needs and rights of children are also required. A person who has not reported his/her knowledge in this part cannot be appointed as a public counsel for children in matters of the Swedish Migration Board.

There are specific arrangements for assistance to detainees and on-call operations. The SMA clarified that although the matter of public assistance in detention is not specifically regulated in the Aliens Act, Chapter 18, Section 1 or its preparatory work, return and detention are included in cases of rejection or deportation, as derived from Chapter 18, Section 1, first paragraph, 1, 2 and 3. For persons applying to be appointed as public assistants in cases of detained applicants, the SMA clarified that public assistants can mark their availability in the submission form and they need to consider the following requirements:

The Swedish Migration Agency appoints public assistance in cases where it is likely that the foreigner will be rejected/deported, as well as in cases concerning the enforcement of legally binding decisions on rejection/deportation, if/when the foreigner is held in custody.

- A foreigner can be subject to detention in order to prepare or secure a Dublin transfer. These people need an assistant who can attend meetings at short notice and outside office hours. The same conditions apply to foreigners whose case is handled by the SMA's duty station at Arlanda Airport.
- The SMA strives to appoint assistants according to the principle of geographical proximity and with high availability by telephone, even outside office hours. This is due to the fact that, in relation to custody cases and cases handled by the on-call operations at Arlanda Airport, it is important that the public counsel can quickly attend and familiarise with the case.

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- Assistants appointed within the framework of on-call activities may also be asked to submit opinions on the outcome of a case at very short notice.
- For the best possible contact, a mobile number that can be reached during on-call hours needs to be entered in the list and notified in connection with registration.

Training

In June 2023, the Swedish Refugee Law Center published the list of training sessions dedicated to lawyers, legal professionals and other professionals in the field. The training is online and meets the requirements set up by the Bar Association guidelines for professional training of lawyers. Participation in one of the training sessions corresponds to a full-day training and a certificate of participation is obtained after completion of the training.

The topics of the training sessions include:

· The best interests of the child in the migration process

· The examination of asylum cases - focus Afghanistan

· Revocation and termination

· Obstacles to enforcement.

On 2 December 2022, the Swedish Refugee Law Center organised with UNHCR a full-day training in refugee law, on three overarching themes: Proceedings in international bodies, deepening in assisting certain particularly vulnerable groups in the asylum process, and protection assessments regarding Afghanistan. Participants included lecturers from the Asylum Rights Centre, European Council on Refugees and Exiles (ECRE) and UNHCR. The training was free of charge, conducted online and primarily aimed at those who represent asylum seekers as public counsel or agents but is also open to other participants who work in the field.

Mechanisms for quality assurance

On 17 November 2020, the Swedish Migration Agency published a legal position on quality requirements for public assistance - RS/021/2020 (version 2.0).

On 10 February 2023, the Swedish Migration Agency published a revised legal position on quality requirements for public assistance. The revision was in

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response to the National Audit Office's review report RiR 2022:14. The government has stated that the suitability requirement for public advisers is the same even when the individual proposes a specific legal adviser, and a balance between the suitability requirement and the free choice of adviser should not be made. They considered that there is therefore reason to tighten the quality requirements at the SMA and the suitability requirements also apply when the individual wishes specific assistance.

The revised legal position mentioned that the National Audit Office published a report in June 2022 where it found deficiencies in the appointment of public assistants because administrative authorities and court-appointed public assistants lacked basic legal competence. The audit found that the administrative authority does not consider that they can impose a higher requirement for assistance as requested by an individual or appointed by the court. The administrative authority justified the approach by the principle of the individual's right to choose counsel. The National Audit Office underlined that the legislator's intention was for suitable requirements to be the same, irrespective of the way of appointment.

Based on the National Audit Office report, the government recommended that the suitability requirement for public assistants is the same regardless of whether or not the individual has proposed a particular person and no balance between the suitability requirement and the free counselling choice should be made. The suitability requirement also applies when the individual proposes a particular person as it is expressly stated in Section 26 of the Legal Aid Act.

The government initiated an inquiry to examine certain aspects of public counsels. The results of the inquiry were published in June 2023 *(Source: Swedish Government Office, June 2023, A review of certain issues of public assistance; PDF of the report).* The investigator proposed mainly the following changes:

- To tighten the eligibility requirements for public assistants in migration matters;
- To declare ineligible to take part in matters of the SMA the unsuitable representatives and assistants;
- To require special permission for a public assistant to be allowed to put someone else in place;
- To introduce competence requirements for interpreters and translators in migration matters.

The proposed changes to the law entered into force in January 2025.

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In July 2023, the Ministry of Justice referred the proposal "A review of certain matters relating to public assistance" to specific authorities, including administrative courts, legal interpreters, municipalities, police, the asylum law centre, the Chancellor of Justice and the National Audit Office. The responses are public on the government website.

The SMA's Annual Report 2022 mentions that it followed up 330 cases between 1 January–30 April 2022. It found that public assistance was dismissed based on Section 26 of the Legal Aid Act (1996:1619). The follow-up showed a lack of quality with regard to three situations:

- documentation of requests for replacement of assistants in the event of a dismissal;
- justification of a dismissal when the applicant submitted a request for another counsel;
- an investigation when the appointed counsel wanted to be dismissed for reasons of lawyer ethics.

In about half of the cases, the assistant had been dismissed because the applicant wanted to change counsel. In more than half of these cases, the SMA had not noted that the reason for the dismissal of the appointed counsel was a change of assistant and the decisions lacked a statement of reasons. The follow-up showed a need for training on the provisions of the Legal Aid Act. The SMA will develop a training package in this regard.

Inter-institutional cooperation

Information is currently not available.

Legal assistance and representation for related procedures

Reception conditions

Free legal aid is not provided in reception and accommodation centres. However, several NGOs provide legal services for free for applicants in reception centres.

Family reunification

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The Swedish Red Cross provides legal assistance for family reunification applications.

Temporary protection procedure

Applicants and beneficiaries of temporary protection are not included under the free legal aid scheme of the SMA. However, the Swedish Bar Association coordinated free legal advice by some lawyers to displaced persons from Ukraine.

In 2022, the government decided on a budget of SEK 68.8 million on grants to civil society organisations supporting displaced persons from Ukraine seeking protection in Sweden, including legal support. The Swedish Agency for Youth and Civil Society awarded grants to organisations, including the Sweden City missions, Swedish Red Cross and Swedish Refugee Law Center.

Beneficiaries of international protection

Legal Aid is only provided according to Chapter 18 of the Alien Act.

The Swedish Refugee Law Center provides legal support to beneficiaries of international protection.

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