



UNHCR Europe NGO Consultation 2018 Regional Workshops – Northern Europe

Legal assistance and cooperation with civil society, with focus on Afghanistan (internal flight alternative) and cessation of international protection

Legal aid in the Nordic region

Scope of legal aid

Sweden guarantees free legal assistance throughout the entire asylum procedure, with the exception of Dublin cases (channelled in “Track 5”) and manifestly unfounded applications (channelled in “Track 4”). In these two cases, the applicant receives no legal aid at first instance but can request it when appealing a negative decision. Out of a total of 65,575 requests for legal aid submitted by asylum seekers in 2017, as many as 49,311 (75.2%) were accepted. The percentage was much lower for Dublin cases, however: only 183 out of 2,507 requests (7.3%) were accepted.¹

In Decision [MIG 2017:21](#) of 14 November 2017, the **Swedish** Migration Court of Appeal held that the choice of 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 Migration Agency for an interview.

Norway provides legal aid, including in accelerated and Dublin procedures where a “lawyer on duty” is established to ensure that appeals are lodged within the short deadlines. However, it excludes legal aid in some cases such as “upgrade appeals” to obtain refugee status instead of subsidiary protection, or appeals against “first country of asylum” decisions.²

Finland has restricted the right to legal aid as of September 2016. Lawyers’ participation in interviews is no longer covered, except when extraordinary reasons apply – e.g. if the applicant has special needs – or if the applicant is an unaccompanied child.³ While legal aid is also provided for accelerated procedures, lawyers working on those cases get a reduced fee.⁴

Asylum seekers can also approach NGOs for advice in **Sweden**. It should be noted that some NGOs have cut back their services to asylum seekers while others such as the Swedish Refugee Advice Centre for refugees and asylum seekers are expanding their services in cooperation with the Church of Sweden. The Swedish Red Cross offers legal support through hotline as well as by appointment, and its lawyers can act as legal counsel. The Red Cross prioritises cases concerning family reunification, persecution due to risk of torture and gender-based persecution.⁵

Qualifications of lawyers

¹ AIDA, Country Report Sweden, 2017 Update, March 2018, 26.

² ECRE/ELENA, *Legal Note on access to legal aid in Europe*, November 2017, 6-7.

³ *Ibid*, 5.

⁴ *Ibid*, 7.

⁵ AIDA, Country Report Sweden, 2017 Update, March 2018, 27.

In **Sweden**, the Parliamentary Ombudsman (JO) has stated in a decision that the Migration Agency is responsible for ensuring that the legal representative is sufficiently competent to perform his or her tasks; in practice, it seems sufficient for lawyers to have a law degree in order for them to be appointed by the Migration Agency or the courts. The JO has also declared that the Migration Agency should have a system where it monitors and documents the skills and/or deficiencies of legal aid providers. The previous system in Sweden – the keeping of a “black list” – was deemed not to meet legal standards. Due to JO criticism, the Migration Agency issued an internal instruction in 2017 on qualifications needed in order for the Agency to appoint a person as legal counsel.⁶

Cessation of international protection

In **Sweden**, there is no systematic review taking place in Sweden and there are not many decisions per year taken, to the authors’ knowledge. Known cases are often initiated when it comes to the authorities attention that, for example, a person has applied for and used the country of origin passport.⁷

With regard to Afghanistan, the Supreme Court of **Norway** noted in Case [2017/1659](#) of 23 March 2018 that the authorities had to establish a “significant and stable” change in circumstances in the country of origin. Such a change could not be inferred by the fact that the applicant, originating from Jaghori and arriving in Norway in 2011, was joined by her partner after receiving refugee status.

The internal flight alternative (IFA) vis-à-vis Afghanistan

The **Finnish** Supreme Administrative Court held in Decision [HFD:2017:74](#) of 5 May 2017 that the IFA comprises of an assessment of whether the applicant can lead a relatively normal life without unreasonable difficulties. The Court found that Kabul is a safe and reasonable alternative, including for some families with children.

The **Danish** Refugee Appeals Board held in a [Decision of 17 January 2017](#) that the internal flight alternative was not relevant or reasonable in the case of a minor without a network in Afghanistan.

Case law and practice from other European countries could be instructive. Countries including the Netherlands, Germany, Belgium, Slovenia and Austria have used IFA vis-à-vis Afghanistan. Interesting (and often conflicting) case law regarding the use of IFA regarding Kabul can be found below:

- **United Kingdom:** The latest country guidance case of the Upper Tribunal, [AS \(Safety of Kabul\) \[2018\] UKUT 118 \(IAC\)](#) of 16 April 2018, found that, given the conditions prevailing in Kabul, it would not be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul, even without specific connections or a network. However, the person’s age, nature and quality of support network must be assessed.
- **France:** The National Court of Asylum (CNDA) has taken the opposite view. In Decision [17045561](#) of 9 March 2018, the CNDA ruled that the level of intensity of indiscriminate violence in Kabul was such as to meet the threshold of Article 15(c) of the Qualification Directive. Accordingly, by his or her sole presence in the capital, an individual would be at risk of serious harm.
- **Switzerland:** The Federal Administrative Court found in Decision [D-5800/2016](#) of 13 October 2017 that Kabul cannot be considered an IFA in general. The current situation in Kabul is regarded as fundamentally life-threatening and thus unacceptable. However, this rule may be

⁶ Swedish Migration Agency, *Kvalitetschefens reviderade instruktion om standard för lämplighetsprövning av offentligt biträde*, I-35a/2017, 20 November 2017, available in Swedish at: <http://bit.ly/2FrNBOK>.

⁷ AIDA, Country Report Sweden, 2017 Update, March 2018, 77.

deviated from if there are particularly favourable factors which would prevent the returning person from being placed in a situation which would threaten his or her existence and on the basis of which, in exceptional cases, it can be assumed that expulsion is reasonable. According to the Court, the applicant's network must be able to guarantee "in particular economic progress and housing". Pursuant to the Court, it may exceptionally be reasonable for young healthy men with a sustainable social network to be deported to Kabul.

Recognition rates can be illustrative of practice, although claims by Afghan nationals may also be rejected for reasons other than IFA. The practice of countries in the region has evolved as follows:

Recognition rates for Afghan asylum seekers: 2016-2018			
Country	2016	2017	1 st half 2018
Denmark	∴	∴	∴
Finland	42.4%	45.4%	70.7%
Norway	30%	35.7%	61.2%
Sweden	45%	38%	31%
Lithuania	50%	87.5%	100%

Source: [Danish Immigration Service](#); Finnish Immigration Service; Norwegian Immigration Directorate; Swedish Migration Agency; Lithuanian Migration Department. These may differ from Eurostat statistics, in which rejections include inadmissibility decisions.

As indicated by the table above, protection rates have decreased steadily in **Sweden**. In **Finland** and **Norway**, however, 2018 seems to have marked a change in practice, with a substantial increase of protection grants to Afghans.

Given the persisting "asylum lottery" regarding claims from Afghanistan, protection rates in the Nordic regions are not remarkably different from trends elsewhere in the continent. In the first half of 2018, recognition rates for Afghan nationals ranged from 16.3% in **Bulgaria** and 38.5% in the **United Kingdom**, to 48.4% in **Germany** and 52.2% in **Belgium**, to 65.8% in **Austria**, 69.9% in **Greece**, 96.1% in **Switzerland** and 97.8% in **Italy**.

However, domestic courts have often ruled against transfers of Afghan asylum seekers to Nordic countries on the ground that individuals would be exposed to indirect *refoulement* on account of these countries' restrictive practice on Afghanistan. Examples of such judgments include:

- **France:** Administrative Court of Appeal of Lyon, [17LY02181](#), 13 March 2018 (Finland)
- **France:** Administrative Court of Lyon, [1702564](#), 3 April 2017 (Norway)
- **Italy:** Civil Court of Rome, [58068/2017](#), 5 June 2018 (Norway)