

A replacement may also be necessary if there are strong disagreements between the asylum seeker and the counsel. An assessment must be made based on the circumstances of the case in question. It may be the case that an asylum seeker does not trust his/her counsel and does not dare explain his/her reasons for seeking asylum. In order to have a replacement, the applicant's grounds for seeking asylum must be such that it is considered understandable that the applicant does not explain them to his/her counsel. A replacement is permitted, for example, in a case in which the applicant had fled persecution from the religious group to which the counsel belonged. If the applicant has informed the Swedish Migration Board of the problem at an early stage, special reasons can be considered to exist.

It will generally require more than difficulties in cooperation in order to be allowed to make a replacement. For example, it requires more than the asylum seeker not liking his/her counsel, not feeling that the counsel is working hard enough or not feeling that they have sufficient contact. An assessment must always be made in each individual case. Even though it is difficult to replace a counsel, there is no obstacle to applying to do so.

How can the Swedish Red Cross help?

The Swedish Red Cross offers migration advice by phone on Tuesdays, Wednesdays and Thursdays from 09:30-12:00. The phone number (toll-free number) is 020-415 000. Migration advisors speak Swedish and English. If a person calling the advice line has a public counsel, the advisor can provide general information, but will often refer to the counsel for more detailed advice. As a general rule, the Swedish Red Cross's lawyers do not act as public counsels and have a policy of not recommending specific lawyers. Nor can the Swedish Red Cross help with a request to replace a public counsel. In some cases, the Swedish Red Cross can offer assistance if there is no public counsel, for example in connection with family reunification and enforcement obstacles.

Swedish Red Cross

Box 17563, Hornsgatan 54, SE-118 91 Stockholm, Sweden
Telephone +46 (0)8 452 46 00, Fax +46 (0)8 452 46 01
Email: info@redcross.se | Visit our website www.redcross.se

Legal assistance in the Migration process

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What is a public counsel?

A public counsel is a lawyer, legal associate at a law firm or any other person deemed suitable for the task of representing the asylum seeker or detainee. The applicant can suggest a public counsel himself/herself. This person must be appointed unless there are special reasons against it. The public counsel is appointed by the Swedish Migration Board or the court. The public counsel must observe a duty of confidentiality.

Who is entitled to a public counsel?

An asylum seeker is usually entitled to a public counsel if one is needed. This is assessed in each individual case. There may be no need if it is evident that a residence permit will be granted or if the application is considered manifestly unfounded and the residence permit is unlikely to be granted. Special consideration must, however, be given to mental ill health and the like, which can affect the ability to safeguard a person's rights. Unaccompanied minors who are seeking asylum are always entitled to a public counsel. In cases involving family reunification and work permits, for example, when the applicant is not at risk of deportation, there is no right to a public counsel. Nor is there such a right in connection with an application for impediment to enforcement, i.e. when new reasons for protection may have arisen after a person has received a final rejection in the asylum process. On the other hand, a person who has been granted a review after having reported the impediment to enforcement on the grounds of new reasons for protection is entitled to a public counsel.

The role of public counsel during the asylum process

The public counsel must safeguard the interests of the asylum-seeker and offer support during the asylum process. The counsel must be present at the asylum investigation and at any oral hearing in court. The applicant must be kept informed of the case. If the applicant has been rejected and the decision can be appealed, the counsel must assist with the appeal if the applicant so wishes. The appeal must be made in writing. The counsel must explain the rejection so that the applicant understands the reasons why the residence permit has not been granted and how they may be dealt with in an appeal. The counsel's assignment ends when the asylum process is terminated, which can be when a residence permit is granted or when the applicant is neither willing nor able to appeal. Once the assignment has been completed, the counsel is no longer obliged to help the client.

Public counsel in connection with detention

When a person is detained by being taken into custody, a public counsel may be appointed to assist the detainee during the detention process. In the case of detention pending enforcement relating to the enforcement of refusal of entry or deportation, where the person has been detained for more than three days, a public counsel must be appointed. In other cases where a person has been detained for more than three days, a public counsel should be appointed. If a person has been detained under the Dublin Regulation, a public counsel may sometime also be appointed.

What is included in the public counsel's assignment?

The State pays the public counsel, but only for work that relates directly to the assignment, i.e. anything relating to either asylum or detention. The counsel will not as a rule be paid for other work such as social support for the client or for assistance with other legal work. The counsel will therefore often be unable to meet all of the client's expectations.

When does a person have the right to replace a public counsel?

A request to replace a public counsel is submitted either to the Swedish Migration Board or to the Migration Court, depending which body is responsible for hearing the asylum case. To be able to replace a counsel, the applicant is required to show that there are special reasons for the replacement. It is difficult to have a replacement approved, and becomes more difficult, the longer the process has been under way. If the counsel is a lawyer, a complaint about misconduct may also be submitted to the Swedish Bar Association. The Swedish Bar Association is charged with the task of supervising lawyers in Sweden and ensuring that lawyers observe generally accepted legal practice. It is the Swedish Migration Board, the Migration Court or the Migration Court of Appeal that makes decisions on the replacement of a public counsel, but the Swedish Bar Association's assessment of whether a lawyer has acted in breach of generally accepted legal practice may have an impact on the case. Special reasons for switching may be that the applicant or the counsel moves home, resulting in a large geographical distance between them, or that the counsel is unable to perform the assignment due to illness. It may also be the case that a family has applied for asylum together, but conflicting interests have emerged during the process that require different counsels in order to safeguard the interests of all family members.