

Court users' contacts with the Swedish court system

Areas of interest and opportunities for improvement

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Foreword

This study analyses how different court users perceive their interactions with the courts and the courts' handling of their cases. The way that court users perceive the courts' working methods is amongst other things of significance for legal security in the examination of cases and for the legitimacy of the justice system. The objective of the study has been to develop more detailed knowledge of how the courts are perceived by witnesses, injured parties and defendants and the parties in administrative court proceedings. The experiences of professional user groups – legal counsel, prosecutors and judges – are also included in the analysis. The overarching objective has been that of improving the knowledge about the links between on the one hand the way the courts act in relation to users, and on the other the issues of legal security and court efficiency, and to propose concrete measures to assist the courts in their work in this area.

The Courts of Sweden formulated a special strategy for the reception of court users in 2010, which includes a range of measures. The current study constitutes one element in this strategy. At the same time, part of the role of the Swedish National Council for Crime Prevention involves providing methodological support to the agencies of the justice system. The National Council and the Courts of Sweden thus have common interests which have come together in the work conducted in this study.

The report has been written by Olle Westlund and Annika Eriksson at the Swedish National Council for Crime Prevention. Kerstin Nelander and David Shannon, also of the National Council, have also participated in the study. The report has been scientifically reviewed by Professor Eva Tiby of the University of Stockholm.

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Summary

This study analyses how different court users perceive their interactions with the courts and the courts' handling of their cases. These factors have been found to be of significance both for the issue of legal security and for the efficiency of the legal process.

The objective of the study has been to obtain more detailed and systematic knowledge about how the courts are perceived by different types of court users: witnesses, injured parties and defendants and by the parties in cases dealt with by administrative courts. The experiences of professional users – legal counsel, prosecutors and judges – are also included in the analysis. One overarching objective is, on the basis of the data collected in the study, to formulate concrete proposals that the courts can work with in the context of their continued efforts to develop the ways in which they interact with court users in order to provide a greater degree of legal security and to improve the efficiency of the legal process. The central idea in this context is that a well-balanced approach to interactions with court users will produce the support that non-professional users may need in order to present their cases in a coherent, nuanced and detailed manner. This in turn provides the courts with a better foundation on which to base their decisions,

and also decreases the likelihood that the information provided by court users will erroneously be dismissed by the courts as not being credible.

Method

As part of its study, the National Council for Crime Prevention has conducted a literature review, compiling existing research and other relevant documents relating to various aspects of the way courts interact with court users.

A semi-structured interview study has been conducted among court users at the district court (witnesses, injured parties and defendants) and the administrative court (appellants and petitioners). In addition to these user groups, legal counsel, prosecutors and judges working at district and administrative courts have been interviewed both individually and in focus groups.

The National Council has also had access to previous studies of court users that have been conducted at various district courts and courts of appeal. The results of these studies are also presented and analysed in the current study. In total, these studies include approximately 800 interviews with witnesses, injured parties and defendants.

Previous Swedish studies of court users

Since the mid-2000s, a number of court-user surveys have been conducted in Sweden, in which courts have employed questionnaires and interviews to ask their users about their experiences of the court. The National Council has compiled eight of these surveys, of which four were conducted at district courts and the remainder at courts of appeal. The questions included in these user surveys primarily focus on themes such as information prior to the trial, interactions with the court, and feelings of safety and security.

The studies show that court users would like to receive more information, on everything from concrete practical issues – such as how to find their way around the court building – to what will happen in the courtroom and who will be present.

According to these studies, the behaviour of the members of the court is important for whether or not users feel that they have been treated fairly. Users feel that it is easier to articulate the points they want to make if the judge asks follow-up questions and control questions, for example. This has also led to judges being perceived as both neutral and engaged in the case and to perceptions that there is a good atmosphere in the courtroom.

There are also examples of aspects of the reception users have been given by the courts that users have experienced as negative. One such example is that some lay judges have been perceived as being indifferent or disinterested.

The user studies also show that some court users may have difficulties understanding what is said in the courtroom. Users have said, for example, that the court has used difficult terminology, usually when legal professionals are talking to one another.

The studies include a range of proposals for improvements, such as the judges presenting themselves and the other actors in the courtroom at the start of the case, and providing a brief summary of how the court case will unfold. This is also something that was viewed as important by the professional users who were interviewed in connection with a number of the studies. Another proposal was to employ less formal language in the courtroom so that all court users are able to understand what is being said. Adapting information to the needs of users may contribute to the users feeling more at ease, and thus being better able to focus on their own role in the court case. This can be achieved first and foremost by providing information on several occasions and in different ways. Users with different needs are in this way given greater opportunities to obtain the same amount of information over the course of their contacts with the court. In turn, this contributes to a larger number of users having correct expectations and being adequately prepared, which may be assumed to improve the quality of communications and cooperation between users and the court. Giving this kind of consideration to users' needs also provides users with an opportunity to present what they have to say in a freer, more detailed and thus more correct manner. This contributes in turn to a better foundation for the decisions made by the court, and thus also to a greater likelihood of meeting the requirements of legal security.

The National Council's interview study – the district court

The National Council has interviewed 45 non-professional users at the Södertörn District Court – injured parties, witnesses and defendants. Half of those interviewed had previous experience of a court case at a district court.

The importance of information

Well-prepared court users are viewed as being able to contribute to a higher degree of efficiency and to a better foundation for the decisions made by the courts. A lack of information on what happens in the courtroom can lead to court users not providing all the information they could have provided, for example as a result of stress, anxiety or an expectation that they will be given additional opportunities to speak.

A small majority of those interviewed stated that they had received sufficient information about what would happen during the court case. The proportion who described themselves as being sufficiently

well-informed was approximately the same in all three groups of court users. However, only a small proportion of the injured parties and defendants had been provided with information by their legal representatives or by the prosecutor (primarily among the injured parties). Among the remaining injured parties and defendants, the primary source of information was having had previous experience of court cases (particularly among the defendants).

The interview responses indicate that further information is needed in addition to that which certain court users are given by their legal representatives. This might, for example, be achieved by further clarifying the court summons sent to the users, or by the judge informing users about certain aspects of the process in connection with the start of the court case. It is important that information is made available in different ways and on several occasions.

Perceptions of interactions with the court in the courtroom

The court users' perceptions of their respective judges were for the most part positive. Amongst other things, judges were described as having been calm and pleasant, but also with words such as respectful and professional. All of the injured parties and defendants interviewed also stated that they felt the judge had treated all parties equally.

The interviewed court users for the most part also had a positive view of their legal representatives and the prosecutor, although there were instances, particularly among the injured parties, where legal representatives had been perceived as being aggressive, unpleasant and as having treated them with suspicion.

The majority felt that they had been able to have their say, although there were also examples of court users who stated that they had not been given the opportunity to speak in the way they would have wanted to. This can sometimes feel very frustrating to the extent that the individual in question feels that he or she has been interrupted or that the opposing party has been untruthful.

A central element of the courts' interactions with court users, which is also significant for the issue of legal security, involves ensuring that the parties understand what is said in the courtroom. According to the court users interviewed, this is not always the case. Many of them (approximately half) stated that they had not understood everything that the judge, prosecutor and legal counsel had said during the court case. The principal reason for this was not having understood some of the words used by the judge or the legal representatives.

The interviews conducted with the court users included a direct question about what improvements they would like to suggest. Amongst other things, they proposed the following:

- Including more information in the summons, and that the summons should have a less threatening tone. That the summons should describe what the required testimony related to and also how the court case would proceed.
- Providing support prior to the court case. Being met and given personal information or personal support prior to entering the courtroom.
- Giving an introductory presentation. That the judge should welcome everybody to the courtroom and present the actors present and their various roles in the case.
- The behaviour of the legal representatives. That legal representatives should behave with the same neutrality as the judge, since these representatives were sometimes perceived to have acted disrespectfully and impolitely.
- Promoting understanding. That the actors in the courtroom should speak more slowly and use a simpler vocabulary, e.g. in cases involving parties whose native language was not Swedish.

The National Council's interview study – the administrative court

A number of users at the administrative court have also been interviewed. These were users involved in cases relating to social insurance or to having children taken into care in accordance with the Care of Young People (Special Provisions) Act (LVU).

An important difference in relation to the district court is that the administrative court's handling of cases primarily takes place in writing. This is true, for example, in relation to social insurance cases. In these cases, it is not unusual for users' contacts with the court to be limited to sending in an appeal against a decision made by the Social Insurance Agency to the administrative court, together with a doctor's certificate, and thereafter waiting for a decision. Those interviewed repeatedly described a lack of feedback from the court, which for many had led to feelings of uncertainty and frustration.

Many of those interviewed also described a feeling of uncertainty in relation to the processing of their cases at the administrative court, which was due to their lacking a frame of reference. They quite simply did not know what to expect of the administrative court or what was expected of them.

The interviewed court users involved in social insurance cases expressed a desire to be given more information, first and foremost on how the court works and also information and feedback regarding their own cases: that the administrative court had received

the relevant documents, information on who at the court was responsible for processing their case, and information on how the processing of their case was proceeding and the length of time this process could be expected to take.

Oral hearings at the administrative court

The interviewed users who were involved in on-going LVU-cases also expressed a desire for more information, in this case information about the oral hearing, which is the way these cases are usually handled by the court. For the most part, however, those interviewed were positive about the reception they had been given during the hearing. The judges were perceived as having been neutral, objective and at the same time attentive. Examples include users having stated that the judge treated the parties in the same way, focused on relevant questions and answers and maintained eye contact. For the most part, the users felt that they had been given the opportunity to convey what they wanted to say during the hearing.

Interviews with court professionals

The National Council has also interviewed a number of representatives of the professions who work in the courts: judges at district and administrative courts, lawyers with experience of administrative court cases and criminal cases, and prosecutors. The interviews with judges were conducted in the form of focus groups – one at the Södertörn District Court, one at the Administrative Court in Stockholm. Additional focus group interviews were conducted with groups of lawyers working with criminal and administrative cases respectively. In addition, a number of individual interviews have been conducted with both lawyers and prosecutors.

The courts' written communications

The courts' written communications with court users may constitute a central element in the courts' work to facilitate interactions with users. This is not least the case for the administrative courts, which primarily process their cases in writing. The administrative court judges interviewed in the study referred specifically to the writing of court judgements as an important part of the work in this area. The Administrative Court in Stockholm has worked to make the court's written judgements more accessible. Lawyers with experience of administrative court cases were also of the view that the written reasons given for the court's decision constitute an important part of the court's interactions with users. Providing users with the opportunity to see the court's reasoning gives them a better chance of understanding the decision reached.

Södertörn District Court has worked on the way court summonses are formulated as part of their work to facilitate users' interactions with the court. As emerged in the interviews conducted with court users, the tone of these summonses can be perceived as threatening

and cold. The judges interviewed argued, however, that it is important to strike a balance between a more friendly tone and conveying the seriousness of being summoned to appear in court.

Factors affecting the conduct of court cases

The importance of judges introducing themselves and presenting the other court actors is an issue that has emerged both in the current study and in earlier studies of court users. Opinions in the two groups of judges interviewed in the current study differed somewhat with regard to whether judges should present themselves and the rest of the court at the start of the court proceedings. The district court judges emphasised the importance of doing so and said that this was probably the most important result of the work their court had conducted in relation to interactions with court users, and also the most important aspect of the policy the court had formulated in the context of this work. Views on this issue were less clear cut among the administrative court judges, however, where the view was expressed that the authority of the court may be weakened if the judge becomes too personal. Concerns were also expressed on this point in interviews with prosecutors, not least in relation to the issue of security. Overall it would appear that a balance needs to be struck between maintaining a friendly tone and not becoming too personal.

The importance of creating the opportunity for court users to satisfactorily give their version of events by means of a well-balanced reception that puts the users at their ease was also emphasised by judges and legal counsel. The conditions and opportunities necessary for users to be able to present their version of events was also directly linked to the issue of legal security.

A number of issues relating to the use of interpreters were also discussed during the interviews. One such issue took the form of a desire to be able to have a better control of interpreters' suitability and competence. The interview subjects described how it can be difficult to know whether a translation is correct and how much of what is said is actually translated. There were examples of cases where it had been found that incorrect translations had been given.

Another problem that was mentioned by prosecutors and legal counsel with experience of criminal cases – who have experience of several different courts – was that there are certain judges who treat court users disrespectfully. This takes the form of behaviour that professional users perceived as being inappropriately unpleasant, indifferent or as the judge inappropriately exerting pressure to speed up the progress of the court case. The legal counsel expressed concerns that the experience of meeting such judges, even though they constitute the exception rather than the rule, may have a negative effect on the willingness of injured parties and witnesses to participate in possible future court cases. This issue was not mentioned at all in the interviews conducted with non-professional court users, which indicates that it is something that may be difficult to capture in user surveys of the kind usually conducted by courts.

The issue of maintaining order in the courtroom was raised by court professionals as an important part of the court's work to facilitate interactions with court users. The maintenance of order is seen as being important in order to create the atmosphere of calm that is required for court users to feel they are able to speak freely, which is of importance for the issue of legal security.

Attentiveness in relation to court actors

The National Council's interviews with court users show that they are very attentive in relation to court actors – they observe, note and interpret body language. The judges interviewed in the study were also aware of this. The legal counsel interviewed in the course of the study also noted that this subtle aspect of the courts' interactions with court users – body language, showing interest etc. – is important for their clients and for how they perceive the situation in court. Legal counsel with experience of cases at both administrative and district courts pointed specifically to the role of the lay judges in the district court, and to how these individuals are perceived. There were experiences of lay judges who manifest a sense of disinterest and who “at worst, simply fall asleep”. These perceptions of (certain) lay judges were also found in the interviews with injured parties, witnesses and defendants, which also contained examples of cases where lay judges had been perceived to have nodded off. The problem of disinterested lay judges has also been found and documented, as was noted earlier, in other studies of court users. This suggests that the problem is not limited to isolated incidents at specific courts.

Proposed measures

The final chapter of the National Council's report summarises a number of central findings with a focus on transforming these results into concrete proposals for measures that may be included in the courts' continued work to facilitate interactions with court users. The proposals relate to a) a model for the courts' work in this area, b) the groups whose experiences need to be taken into consideration in connection with this work, c) appropriate organisational structures for the courts' work in this area, and d) a number of specific, important problems that have emerged in the context of the current study.

Continuing the courts' work to facilitate interactions with court users

On the basis of the results of this study, the National Council would like to emphasise the importance of viewing the courts' work in this area as an on-going, open-ended process, rather than as a process with a definite conclusion. This has also been emphasised in the international literature, where it is noted that evaluations do not always result in practical measures. The importance of viewing the work to facilitate interactions with court users as an on-going

process has also been expressed clearly in the strategy and action plan adopted by Sweden's courts, and which they work in accordance with. The Swedish National Courts Administration has produced a handbook with advice and tips intended to assist the courts in implementing the activities described in the action plan in a systematic manner (Sveriges Domstolar 2011).

The process for working to facilitate interactions with court users can most simply be described as follows:

- Initial measurement phase in which various problems are identified
- Planning and implementation of measures
- Following up measures and identifying remaining problems, and possible new problems that may have arisen
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- Following up measures and identifying remaining problems, and possible new problems that may have arisen
- etc.

Questionnaire surveys should be supplemented with focus groups comprised of different groups of court users in order to identify possible new problems and to obtain a more detailed and comprehensive picture. Focus groups of this kind constitute a cost-effective and relatively quick and easy method of obtaining a more detailed understanding of a certain group's ideas and experiences.

Several different groups should be involved in the courts' work in this area

The National Council's view is that it is important to integrate the experiences of several different groups – including both non-professional court users and the courts' own staff. While the court contacts of non-professional court users are in many cases both personal and a one-off experience, other court users have on-going contacts with the courts, and their experiences are professional rather than personal. The research shows that there may be differences in the way the quality of the work of the courts is experienced by non-professional and professional court users respectively. Legal counsel and prosecutors, for example, have experience of different types of cases, different courts, different judges etc. This places them in a unique position that enables them to provide information on less common, but nonetheless important, problems in the way the courts interact with court users. It is likely to be very difficult to identify uncommon problems of this kind in the context of court-user studies that only include non-professional users.

In line with the findings of other research, the National Council's study shows that non-professional court users have different types of needs – the need for information, for example, is perceived differently by different individuals and groups. Given that “one size fits all” solutions are not appropriate, the National Council would like to emphasise the importance of work in this area – such as user

surveys, for example – including as broad a group of court users as possible. Varying, complex needs and experiences must be given the opportunity to manifest themselves in order for the work in this area to be responsive to the needs of both non-professional and professional court users. It is therefore important that survey methodologies are supplemented with in-depth interviews, i.e. with qualitative methods. The qualitative approach provides the interviewer with the opportunity to formulate follow-up questions in the individual interview situation and opens up for the development of a relatively sophisticated understanding of how court users perceive their interactions with the courts, which is not the case with quantitative methods that employ highly standardised questionnaires.

Structures for organising the work

On-going quality work requires a certain structure. Time and resources must be earmarked for the work and someone has to be prepared to assume the chief responsibility for the various measures that are to be implemented within the organisation.

The National Council does not propose any specific forms for organising the courts' work in this area. Deciding on such forms is best done on the basis of amongst other things the conditions and priorities at a specific court. On the basis of the results from the current study, and those from previous research, the National Council would nonetheless like to emphasise the importance of judges and other court staff coming together in different forums with the explicit task of discussing and learning from one another's experiences of contacts with witnesses, injured parties and defendants. As has been noted above, however, it is important that the effects of court interactions with court users are regularly and systematically evaluated and that the results are compiled and analysed in a way that contributes to a continuous development of the courts' work to facilitate these interactions. By extension, this will improve levels of both efficiency and legal security in the work of the courts.

A number of specific problems

Maintaining order inside and outside the courtroom

One problem that was first and foremost mentioned by professional court users with experience of criminal cases was that judges on occasion fail to maintain order in the courtroom. It is also important that improper influence is not exerted in other parts of the court building. This is viewed by professional court users as an important part of creating the conditions necessary for the various parties to speak freely in the courtroom.

One solution to this problem would be to formulate explicit routines in relation to the maintenance of good order. Routines of this kind could focus on a range of overarching issues relating to the maintenance of order both inside and outside the courtroom. At the Södertörn District Court, for example, routines have been formulated for how and when it is possible to receive study visits from schools. These routines could be included in the work to formulate local policies at individual courts.

Subtle signals

The interviews show the importance of court professionals manifesting respect, interest and neutrality in relation to those who come to court.

With regard to this factor, it may be a good idea for both the courts and lay judges to discuss the more subtle aspects of their interactions with court users – facial expressions, gestures, alertness etc. – and how these lead to individuals being perceived by court users. In some cases, more practical measures may be required – how should the problem of having to sit for long periods without moving be addressed, for example? There may also be a need to raise the awareness of professional court users about the effects that these largely non-verbal signals may produce. In the final analysis, the issue at stake is that of maintaining confidence in the courts and the justice process.

When the judge is disrespectful

It emerged in the interviews with prosecutors and legal counsel that there are individual judges who are more or less universally perceived as being unpleasant, disinterested and as inappropriately exerting pressure to speed up the progress of the court case. At the same time, it may be noted that descriptions of this kind were not found in the interviews conducted with witnesses, injured parties and defendants. This is likely to be due to a number of factors, not least the relatively small number of interviews conducted with non-professional court users, which makes it more likely that the interview subjects did not include individuals whose cases had been dealt with by a judge of this kind, or that those interviewed had little or no earlier court experience on which to base a comparison. In this context, it is worth repeating the point made earlier about the importance of including several different groups in court-user surveys in order to improve the chances of identifying less widespread problems, and problems that may be more difficult to identify outside the individual judge's courtroom for other reasons.

Feedback from the administrative court

A recurrent theme in the interviews conducted with individuals who had on-going social insurance cases at the administrative court was that of the lack of feedback. Those interviewed desired more clarity from the court in confirming receipt of the documents required in

the case, and also in relation to information concerning the approximate length of time it would take to process the case. From the court users' point of view, it would be valuable for the court to inform users about the type of information that the court is able and unable to provide. This is particularly important in relation to this type of case, since most of the users involved in these cases are not represented by legal counsel who would otherwise be able to clarify what they should write and what they should submit to the court. The court should at least be able to provide information in easily accessible language about how the individual's case will be processed. In combination with the often very long processing times associated with these cases, the lack of feedback provided by the court served to intensify the users' sense of powerlessness, which then manifested itself in the interviews.

In addition, it may be noted that the role of the administrative court may be perceived as rather diffuse, since many users lack a frame of reference in relation to this particular type of court. One of the goals of the Courts of Sweden's strategy in this area is that of ensuring that all those who participate in a court process know what is expected of them and are aware of the court's role and its function in society. In this regard, the administrative courts still appear to have a good deal of work to do. Examples of relatively simple measures that could be implemented include sending a receipt stating that documents have been received, informing users when a court officer has been assigned to process their case and providing contact information for this individual, and also providing a realistic approximate estimate of the time that it will take to process the user's case.