

Promptness or Substantive Accuracy? The Duty to Investigate in Swedish Asylum Cases after the EU Pact on Migration and Asylum

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Abstract

The EU Pact on Migration and Asylum combines shorter procedural time limits with an express requirement for an adequate, complete and individual examination. This article examines how that duality affects the duty of the Swedish Migration Agency and the migration courts to investigate asylum cases. The analysis draws on Swedish general administrative law, the Asylum Procedure Regulation, the Qualification Regulation, and case law from the Swedish Migration Court of Appeal, the Court of Justice of the European Union and the European Court of Human Rights. It argues that promptness and substantive accuracy should not be treated as two equivalent interests that may be freely balanced against one another. In asylum cases, a legally sufficient level of investigation must first be reached; only then may the procedure be optimised in time. The Pact changes the pace of proceedings and expands the use of accelerated procedures, but it does not lower the requirements concerning current country-of-origin information, individual assessment of evidence, identification of vulnerability, or access to an effective remedy. To make this structure operational, the article proposes a risk-adapted investigation test. The test focuses on the consequences of the decision, information asymmetry, remaining outcome-determinative uncertainty, the need for special procedural guarantees, and the possibility of correcting an error through review. The model is not a new rule of law, but an analytical and documentation tool. It can help concentrate resources on uncertainties that can actually affect the outcome and ensure that a case leaves an accelerated track when a sufficiently reliable examination cannot be completed within its time frame.

1. Introduction

On 12 June 2026, Regulation (EU) 2024/1348 of the European Parliament and of the Council, referred to here as the Asylum Procedure Regulation, became applicable to applications for international protection lodged from that date.¹ On the same day, following a corrigendum to the original wording, Regulation (EU) 2024/1347 of the European Parliament and of the Council, referred to here as the Qualification Regulation, also became applicable.² The Regulations have replaced central parts of the previous directive-based framework with directly applicable rules on procedure, evidence and protection assessment. The principal Swedish supplementary provisions entered into force on 12 July 2026.³

The reform makes time an even more explicit legal variable. As a general rule, a regular examination procedure must be completed within six months, an accelerated procedure within three months, and a border procedure within a considerably more compressed period. Several categories of applications must be channelled into accelerated procedures, and the border procedure acquires greater practical importance.

¹ Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (the Asylum Procedure Regulation), Article 79(2)-(3).

² Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU (the Qualification Regulation), Article 42, second paragraph, as corrected by OJ L, 2025/90926, 25.11.2025.

³ Government Bill 2025/26:262, pp. 1-2, and Committee Report 2025/26:SfU30, pp. 1-2. The Riksdag approved the committee proposal on 9 June 2026.

At the same time, the Asylum Procedure Regulation requires the examination to be objective, impartial and individual. It also expressly states that time limits may not override the requirement for an adequate and complete examination.⁴

The tension is easy to formulate but more difficult to resolve. If every conceivable piece of information must be clarified, procedural time limits risk losing their steering function. If, by contrast, the time limit is treated as a ceiling on the investigation, a complex protection claim may be forced into a procedure that is unable to identify the decisive circumstances. The problem is particularly acute in asylum cases. The applicant often has the best access to the personal narrative but poorer access to documents, official information and medical evidence. The authority has access to professional country-of-origin information and investigative resources but lacks direct knowledge of the individual's experiences. An erroneous rejection may, moreover, have irreversible consequences.

This article analyses what the duty to investigate requires when the new EU framework makes faster processing part of the structure of the procedure. Its starting point is that promptness has an independent rule-of-law value. Uncertainty, detention, restrictions on freedom of movement and prolonged waiting may cause significant harm. The question is therefore not whether swift handling should be pursued. The question is at what point speed begins to presuppose an impermissible simplification of the factual basis for decision-making.

The article's thesis is that the relationship between promptness and substantive accuracy should be understood sequentially. First, the level of investigation required by the nature of the case, EU law and the protection against *refoulement* must be reached. Within that framework, the authority should then organise its work as simply and quickly as possible. The time limit may govern prioritisation, planning and concentration, but it may not replace the assessment of whether a decisive uncertainty has been clarified. Where an accelerated track cannot accommodate the necessary investigation, the case should leave that track.

1.1 Purpose and research questions

The purpose is to specify how the Swedish duty to investigate should be applied after the Pact on Migration and Asylum. The analysis addresses three questions. First, what minimum requirements for the decision-making basis follow from Swedish administrative law and directly applicable EU law? Second, in what way do accelerated and border procedures alter the organisation of the investigation without changing its legal endpoint? Third, can these requirements be translated into a practical test that helps the Swedish Migration Agency and the migration courts identify when the time saved is no longer legally defensible?

The term substantive accuracy is used here to describe the objective that a decision should rest on a sufficient and legally relevant factual basis. It does not imply a requirement of absolute certainty. Asylum determination concerns forward-looking risk and must often be carried out despite limited evidence. Nor does the concept mean that the authority must investigate every conceivable circumstance. The investigation must be sufficient in relation to the question to be decided and the risks arising from error.

The article is limited to the examination of an application on the merits. Questions concerning the Member State responsible, reception conditions and enforcement are considered only where they affect the intensity of the duty to investigate or the possibility of an effective remedy. The article does not analyse how many cases will in practice be processed under each procedure. Because the new system has only recently begun to apply, there is not yet stable Swedish practice concerning its overall effects.

1.2 Method and materials

The analysis is doctrinal and normative. The applicable law is identified through legislation, EU regulations, *travaux préparatoires* and case law from the Swedish Migration Court of Appeal, the Court of Justice of the European Union and the European Court of Human Rights. The Swedish principle of official investigation and the requirements of the Administrative Procedure Act are read together with the special rules

⁴Asylum Procedure Regulation, Articles 34(1)-(4) and 35(3)-(4).

of EU law. Case law delivered under the previous asylum instruments is used where it expresses more general principles concerning evidence, country-of-origin information, vulnerability or the court's duty to investigate and has not lost relevance under the new regulatory framework.

The normative part consists of a risk-adapted investigation test. The test systematises requirements found in several legal sources; it does not purport to constitute an independent legal rule or an exhaustive statement of the law. Its function is to make visible which uncertainties must be addressed before a negative decision can be taken in a time-compressed procedure.

An AI-based tool was used for search and structural support. All legal sources, references and substantive claims were subsequently checked against the original sources cited in the footnotes. The tool is not used as a source.

1.3 Structure

Section 2 addresses Swedish general administrative law and the particular risk profile of asylum cases. Section 3 explains how the Pact on Migration and Asylum combines procedural time limits with requirements of a complete and individual examination. Section 4 specifies the content of the duty to investigate in four recurring problem areas: country-of-origin information, the personal narrative, medical investigation and special procedural guarantees. Section 5 develops the risk-adapted investigation test. Section 6 discusses the implications for the Swedish Migration Agency and the migration courts. Section 7 summarises the conclusions.

2. Legal starting points

2.1 Promptness and the duty to investigate under the Administrative Procedure Act

Under section 9 of the Administrative Procedure Act (2017:900), an administrative matter must be handled as simply, quickly and cost-effectively as possible without compromising legal certainty.⁵ The provision does not set out two independent objectives that the authority may freely rank. Simplicity and speed are obligations within an express rule-of-law framework. The preparatory works emphasise that efficiency may not be decisive on its own and that the form of the procedure must be adapted to the character of the individual case.⁶

The duty to investigate follows from section 23 FL. The authority must ensure that a matter is investigated to the extent required by its nature. At the same time, the individual must participate by submitting, as far as possible, the material on which he or she wishes to rely, while the authority must use questions and observations to encourage the party to clarify or supplement the submission. The provision expresses a flexible allocation of responsibility. The scope of the investigation cannot be determined solely by the fact that the matter is formally application-based. The intrusive character of the decision, the parties' actual possibilities and the authority's access to information affect the allocation of responsibility.⁷

The preparatory works describe the deciding authority as ultimately responsible for ensuring that the outcome is substantively correct. At the same time, the strength of the principle of official investigation varies between types of cases. A matter in which a party seeks an economic benefit may justify a different division of labour from a matter in which the state is considering an intervention with far-reaching consequences. Asylum cases contain elements of both categories: the individual applies for protection, but a refusal may be followed by state-enforced removal to an environment in which serious rights violations are alleged. This supports a more active duty than the label "application matter" alone would suggest.

The Administrative Procedure Act applies subsidiarily. If another act or regulation contains a divergent provision, that provision applies.⁸ Following the Pact, the detailed rules of the Asylum Procedure Regu-

⁵Section 9 of the Administrative Procedure Act (2017:900) (*förvaltningslagen*, FL).

⁶Government Bill 2016/17:180, p. 293.

⁷Section 23 FL and Government Bill 2016/17:180, pp. 148-150 and 306.

⁸Sections 4-5, 13, 25 and 32 FL.

lation must therefore be applied directly. FL nevertheless remains relevant where EU law leaves national discretion or where its general principles can be applied without conflict. In particular, section 5 FL on legality, objectivity and proportionality, section 13 on interpretation and translation, section 25 on communication with the party, and section 32 on reasoning provide a national framework for a transparent and reviewable investigation.

The corresponding duty of the court follows from section 8 of the Administrative Court Procedure Act (1971:291). The court must ensure that the case is investigated to the extent required by its nature and must, through questions and observations, seek to remedy ambiguities and deficiencies in the parties' submissions.⁹ An adversarial procedure therefore does not mean that the court may always confine itself to the material that the parties have spontaneously chosen to submit.

2.2 The particular risk profile of asylum cases

The case law of the Migration Court of Appeal has long proceeded from the premise that protection cases require particular care. In MIG 2006:1, the Court emphasised that the possible consequences of the decision are irreversible and that an error may expose the individual to serious violations. Where documents could be authentic and credibility was decisive, the Migration Court was considered obliged to clarify uncertainties, for example through an oral hearing.¹⁰ The judgment does not mean that the court should take over the party's case. It does, however, show that the procedural form must not conceal a decisive uncertainty that is capable of being investigated.

MIG 2006:7 concerned deficiencies in the handling of a case involving immediate enforcement. The judgment underlines that a requirement of speed does not make communication, country-of-origin information and an adequate examination dispensable.¹¹ In MIG 2012:18, the responsibility for country-of-origin information was specified. The parties have a responsibility to present material supporting their positions, but the court must ensure that it has access to the country information necessary for the examination.¹² Later, MIG 2021:4 made clear that the court's duty to investigate is particularly strong where country information and the other material indicate that the applicant belongs to a specific risk group.¹³

This risk profile is reinforced by the fundamental-rights framework. Articles 4, 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union protect, inter alia, against inhuman or degrading treatment, recognise the right to asylum, prohibit removal where there is a serious risk, and require an effective remedy. Article 3 of the European Convention on Human Rights is absolute.¹⁴ These protections set a substantive lower boundary for the degree of uncertainty that a rejection decision may leave unresolved.

The case law of the European Court of Human Rights allocates responsibility between the individual and the state. As a starting point, the applicant must submit circumstances giving substantial grounds for believing that return would entail a real risk. Once such material exists, the state must dispel the doubts that have arisen. Previous persecution or serious harm may have particular significance for that allocation.¹⁵ If the authority is aware of facts capable of exposing the individual to a risk under Articles 2 or 3, it must in certain situations examine that risk of its own motion, even when the applicant has not formulated it in legally complete terms.¹⁶

Prompt determination is at the same time part of a rights-compliant process. Prolonged uncertainty can make evidence harder to obtain, worsen mental health and reduce the practical value of a positive decision. The relevant opposition is therefore not between speed and legal certainty in general. It is between, on the

⁹Section 8 of the Administrative Court Procedure Act (1971:291) (*förvaltningsprocesslagen*, FPL).

¹⁰MIG 2006:1.

¹¹MIG 2006:7.

¹²MIG 2012:18.

¹³MIG 2021:4.

¹⁴Charter of Fundamental Rights of the European Union, Articles 4, 18, 19(2) and 47; Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950, Article 3.

¹⁵*J.K. and Others v. Sweden* [GC] (59166/12), judgment of 23 August 2016, paras. 91 and 96.

¹⁶*F.G. v. Sweden* [GC] (43611/11), judgment of 23 March 2016, para. 127.

one hand, a well-organised and concentrated examination and, on the other, a time-driven procedure that ends before the central uncertainty has been addressed.

2.3 Burden of proof, cooperation and the authority's responsibility for knowledge

The Qualification Regulation is based on cooperation. The applicant must submit the circumstances at his or her disposal, cooperate and remain available to the authority. The determining authority must then assess the relevant elements in accordance with the Asylum Procedure Regulation.¹⁷ Shared responsibility means neither that the authority must prove every part of the personal narrative nor that it may refrain from obtaining material that it alone can reasonably access.

Article 4(5) of the Qualification Regulation governs when statements that are unsupported by documentary or other evidence nevertheless do not require further confirmation. The assessment includes, among other things, whether the applicant has made a genuine effort, submitted available relevant information, explained deficiencies and provided a coherent and plausible account that does not conflict with available specific and general information. The provision presupposes an overall assessment. The absence of documents is a circumstance, not an independent ground for refusal.

In Case C-756/21 X, the Court of Justice stressed that the determining authority must have access to relevant information concerning both the general situation and the individual's personal circumstances. Country-of-origin information must be precise and up to date. Where necessary for an appropriate assessment, the authority may need to obtain expert or medical evidence.¹⁸ The Court also held that credibility must be assessed individually and contextually; an incorrect statement that has been withdrawn or explained cannot by itself support the conclusion that the applicant generally lacks credibility.¹⁹

Some questions lie more clearly on the authority's side. Under Article 8(3) of the Qualification Regulation, the determining authority bears the burden of proving that an internal protection alternative is available. This is consistent with MIG 2009:4, in which the Migration Court of Appeal held that the Swedish Migration Agency must identify the area said to constitute a relevant and reasonable internal flight alternative and demonstrate that the conditions are fulfilled.²⁰ Lack of time therefore cannot be shifted to the applicant through a general assertion that safety exists somewhere else in the country of origin.

3. The Pact: faster tracks without a lower standard of examination

3.1 The ordinary time frame

The Asylum Procedure Regulation provides that the examination must be objective, impartial and individual. It must cover the applicant's statements and documents, relevant, precise and current country-of-origin information, and the individual's position and personal circumstances. Staff examining the application must have the necessary training and access to expertise where required.²¹ These requirements define the quality of the decision-making basis before the Regulation addresses how quickly a decision is to be taken.

For an ordinary procedure, the general rule is six months from the lodging of the application. The Regulation permits extensions, *inter alia*, where there is a disproportionate number of simultaneous applications, complex factual or legal issues, or a lack of cooperation by the applicant. The central formulation is that the time frame applies without prejudice to the requirement for an adequate and complete examination.²² The time limit is therefore a requirement of organisation and capacity, not a rule of evidence. It indicates when the authority should normally be finished, but not that an unresolved decisive issue becomes irrelevant once six months have elapsed.

¹⁷ Qualification Regulation, Articles 4(1) and 4(3).

¹⁸ Case C-756/21 X, EU:C:2023:523, paras. 54-61.

¹⁹ Case C-756/21 X, EU:C:2023:523, paras. 92-95.

²⁰ Qualification Regulation, Article 8(3), and MIG 2009:4.

²¹ Asylum Procedure Regulation, Articles 34(1)-(4).

²² Asylum Procedure Regulation, Articles 35(4)-(7).

This does not mean that every difficulty justifies an extension. The authority must plan interviews, country-information searches and any expert input at an early stage. Measures that cannot affect the outcome should be avoided. The legal question is whether further investigation has a realistic possibility of changing the assessment of the protection need or the quality of the reasoning. A concentrated examination may be both faster and better than a process involving late and unsystematic supplementation.

3.2 The accelerated examination procedure

An accelerated procedure must be completed as soon as possible and no later than within three months. Article 42(1) identifies several situations in which the procedure is to be used. These include applications containing only circumstances irrelevant to the protection assessment, clearly inconsistent or implausible statements, misleading information about identity, applications made to delay removal, certain security cases, subsequent applications, and applications from countries with a Union-wide recognition rate of no more than 20 per cent, subject to specified exceptions.²³

The selection criteria are procedural signals, not final evidentiary assessments. A low statistical recognition rate says something about group-level probability but does not determine whether a particular journalist, religious minority member or victim of violence has an individual need for protection. Similarly, an inconsistency may indicate a fabricated account, but it may also result from interpretation problems, trauma, memory difficulties or a misunderstood question. If the criterion is used as a presumption against credibility, the decision risks becoming circular: the case proceeds quickly because the account appears weak, and the account appears weak because there was insufficient time to investigate it.

The Regulation contains an important corrective mechanism. If the factual or legal circumstances are too complex to be examined in an accelerated procedure, the determining authority may continue the examination under the ordinary procedure.²⁴ This provision should be understood as more than administrative convenience. It concretises the obligation to adapt the procedural form to the needs of the investigation. Complexity may emerge only after the interview, for example where new country information, a medical certificate or information about religious conversion changes the risk picture. The choice of procedural track must therefore remain open to reconsideration throughout the handling of the case.

3.3 The border procedure

The border procedure may be used at the external border or in a transit zone to examine whether an application is admissible and, in certain cases, whether it should be granted on the merits. This procedure too is subject to the fundamental principles and guarantees in Chapter II of the Regulation.²⁵ In its supplementary legislation, Sweden has chosen a broader field of application than the situations in which EU law makes the border procedure mandatory.²⁶

As a starting point, the total period regulated by Article 51(2) may not exceed twelve weeks. The same provision states that the procedure must be as short as possible while still allowing a complete and fair examination.²⁷ The concentration of time heightens the need for early triage. Language, vulnerability, documentary needs and any medical issues must be identified before large parts of the period have been consumed.

The border procedure also creates practical conditions that may affect the investigation. Access to legal representatives, healthcare and external sources of evidence may be more difficult. A short adjournment to obtain a document may therefore have greater importance than in an ordinary procedure. Uniform time targets can in this way have different substantive consequences depending on where the applicant is located and which resources are actually available.

²³ Asylum Procedure Regulation, Article 42(1).

²⁴ Asylum Procedure Regulation, Article 42(2).

²⁵ Asylum Procedure Regulation, Articles 43(1)–(2).

²⁶ Government Bill 2025/26:262, pp. 190–194, and Committee Report 2025/26:SfU30, pp. 1–2.

²⁷ Asylum Procedure Regulation, Article 51(2).

3.4 Special procedural guarantees and effective remedies

The Asylum Procedure Regulation requires an individual assessment of whether the applicant needs special procedural guarantees. The assessment must begin as soon as possible, normally be completed within 30 days, and be reconsidered when new relevant circumstances arise. A person with such needs must receive the necessary support throughout the procedure. If adequate support cannot be provided in an accelerated or border procedure, that procedure must not be applied or must cease.²⁸

The rules establish a clear relationship between time and quality. Vulnerability as such does not always exclude rapid handling. What matters is whether the design of the procedure makes it possible to provide the support required for genuine and effective access to the examination. A well-adapted procedure can sometimes be fast. A procedure that lacks time for interpretation, medical assessment or an adapted interview, however, must change track.

Appeal is not a general cure for a thin first-instance investigation. Article 67(3) requires a full examination of the current protection need in relation to both facts and law, at least before the first judicial instance. Even where national law lays down time limits for the court's examination, those limits may not jeopardise a sufficient and complete review.²⁹ The court must therefore be capable of correcting errors, but the system is not built on the assumption that the court should routinely perform the investigation that the determining authority ought to have carried out.

4. The concrete content of the duty to investigate

4.1 Current and individualised country-of-origin information

Country-of-origin information serves two different functions. It describes, first, the general situation in a country or region and, second, whether the applicant's individual statements are consistent with known conditions. To perform those functions, the material must be current, relevant to the alleged risk and sufficiently precise. A general report on a country's political development says little about the authorities' treatment of a particular local group. A report concerning the capital may be insufficient where the alleged threat exists in a peripheral region.

Article 34 of the Asylum Procedure Regulation makes relevant, precise and current country-of-origin information a mandatory part of the individual examination. The case law of the Migration Court of Appeal points in the same direction. MIG 2012:18 shows that the court cannot be satisfied with insufficient or one-sided country material where it is decisive for the outcome. MIG 2021:4 shows that country information may also activate a more extensive duty to investigate by revealing a particular risk group.³⁰

In an accelerated procedure, country information should be organised around the questions that carry the decision. If an application is refused because a social group is not considered to face a risk, the material must address the situation of that group. If an internal protection alternative is invoked, the information must concern both safety and reasonableness in the identified area in light of the individual's circumstances. The authority should state which information was decisive, its date, and how conflicting material was assessed. This is not merely a matter of reasons. Such an account makes it possible to detect whether the decision-making basis contains a geographical, temporal or thematic gap.

Statistics require particular caution. The threshold of a Union-wide recognition rate of no more than 20 per cent in Article 42(1)(j) may determine which procedure is used, but it cannot replace current country information. The Regulation itself provides exceptions where there are significant changes in the country and where the applicant belongs to a category for which the average is not representative.³¹ The duty to investigate thus also includes the question whether the statistics that triggered the accelerated track are applicable to the individual's profile at all.

²⁸ Asylum Procedure Regulation, Articles 20(1)-(3), 21(1)-(2) and 53(2).

²⁹ Asylum Procedure Regulation, Articles 67(3) and 69.

³⁰ MIG 2012:18 and MIG 2021:4.

³¹ Asylum Procedure Regulation, Article 42(1)(j); see also recital 56.

The time limit should lead to an early and targeted search, not to lower requirements concerning source quality. If relevant information is lacking, the authority may need to seek support from the European Union Agency for Asylum or obtain other expertise. Where the security situation changes rapidly, a report that was current at the interview may be insufficient at the time of decision. The decisive point is the situation at the time of examination, not a static picture from the beginning of the case.³²

4.2 The personal narrative and credibility assessment

In many asylum cases, the personal narrative is the central form of evidence. The duty to investigate does not mean that the authority must accept the account, but it must create reasonable conditions for the account to be given fully and assessed in context. The interview should therefore focus on legally relevant events, allow room for explanations, and distinguish between a genuine inconsistency and a difference caused by the form of the question, translation or level of detail.

A concentrated interview may be effective if the case officer has identified the core issues in advance. It becomes deficient, however, if numerous control questions replace an open account or if information disclosed late is automatically treated as less credible. Shame, trauma, fear of authorities, sexual orientation or gender-based violence may affect when and how a circumstance is disclosed. The legal assessment must therefore distinguish between the manner in which information emerges and its substantive reliability.

The judgment of the Court of Justice in Case C-756/21 X is important here. Credibility must be assessed as part of an individual overall evaluation. An incorrect statement may be relevant, but without analysis it may not contaminate the entire account. The authority must examine the explanation, the significance of the statement for the protection claim, and its relationship to the other evidence.³³ The same approach follows from Article 4(5) of the Qualification Regulation, which requires a holistic assessment of effort, available material, explanations, context and general credibility.

In practice, a negative credibility assessment should be able to answer three questions. Which specific statement is problematic? Why is the problem material to the protection assessment? Which reasonable alternative explanations have been considered? If the third question cannot be answered, the remaining uncertainty may require a supplementary question or a new interview. The fact that this takes time is not in itself a reason to turn an uncertainty into evidence against the applicant.

Communication and documentation are part of the investigation. Under section 13 FL, the authority must use an interpreter and translate documents where necessary for the individual to safeguard his or her rights. The applicant must also be given an opportunity to respond to information of significance before the decision, and the reasons for the decision must make it possible to understand which circumstances were decisive.³⁴ Where a case is processed rapidly, the possibility of correcting a mistranslation or misunderstanding becomes particularly important because later stages have less time to detect the error.

4.3 Medical investigation and alleged previous ill-treatment

Medical evidence illustrates why the duty to investigate must be risk-adapted. A medical certificate may be general and lack a clear connection to the protection grounds. It may also contain findings consistent with torture or other serious ill-treatment and thereby alter both the assessment of evidence and the forward-looking risk assessment.

In MIG 2014:21, the applicant had submitted a medical certificate indicating that he might have been subjected to torture or other ill-treatment. The Migration Court of Appeal held that the certificate triggered the Swedish Migration Agency's duty to investigate.³⁵ The significance of the judgment lies in the activation threshold. The individual did not first have to prove torture in full before the authority was required to act. A sufficiently concrete indication made further investigation legally relevant.

³²MIG 2013:15.

³³Case C-756/21 X, EU:C:2023:523, paras. 92-95.

³⁴Sections 13, 25 and 32 FL; see also Asylum Procedure Regulation, Articles 13-14.

³⁵MIG 2014:21.

The Asylum Procedure Regulation allows the determining authority to arrange a medical examination for signs that may indicate previous persecution or serious harm where the authority considers this relevant to the examination. If the authority does not arrange such an examination, the applicant must be informed of the possibility of obtaining one on his or her own initiative.³⁶ This provision should be read together with the Court of Justice's statement that expert or medical evidence may be necessary for an appropriate assessment.

An accelerated procedure must not make this possibility illusory. If a concrete medical indication emerges near the end of the time limit, the authority should consider three alternatives: an immediate relevant examination, transfer to the ordinary procedure, or, if the material is already sufficient, a decision without further action. The legally problematic alternative is to refrain from a possible investigation and at the same time use the absence of medical support against the applicant.

Previous ill-treatment may also affect the practical allocation of the burden of proof. The European Court of Human Rights has stated that information concerning previous treatment contrary to Article 3 may provide a strong indication of future risk and require the state to dispel doubts that return would nevertheless be safe.³⁷ It is therefore insufficient to treat a medical certificate as an isolated annex. It must be related to country information, the reach of the alleged actors of persecution, and the applicant's individual profile.

4.4 Vulnerability and special procedural guarantees

Vulnerability is not a uniform category. A child, a person with a cognitive disability and a person subjected to sexual violence may require entirely different forms of support. The duty to investigate therefore concerns both whether a need exists and which measure will make participation effective. Examples may include a specially trained case officer, more frequent breaks, an interviewer of a particular gender, the presence of a representative, adapted information, or medical and psychological expertise.

The assessment under Articles 20 and 21 of the Asylum Procedure Regulation is continuous. A negative finding at registration does not close the issue. Signs may emerge only during the interview or through a later document. This requires a feedback mechanism: the person who identifies a need must be able to have the procedural form changed before the decision is taken.

Documentation is central in this respect. The file should indicate which signal was observed, which assessment was made, what support was offered and why that support was considered sufficient. Merely ticking a box stating that vulnerability has been "assessed" makes subsequent review difficult. At the same time, sensitive personal data should not be documented more extensively than the examination requires. The aim is traceable legal relevance, not a general mapping of the individual.

The best interests of the child must be a primary consideration in actions concerning children under Article 24(2) of the Charter. In a time-bound procedure, this means, among other things, that child-sensitive adaptations may not be postponed until the time limit has almost expired. A rapid examination may be in the child's interests, but only if the child has been able to express views in a manner appropriate to age and maturity and the decision is based on an individual assessment.³⁸

5. A risk-adapted investigation test

5.1 Starting point and legal function

The applicable law specifies several quality requirements but does not provide a single method for weighing them against the time frame in a concrete case. To reduce the risk of both over-investigation and under-investigation, this article proposes a risk-adapted investigation test. The test consists of five factors: consequence, information asymmetry, outcome-determinative uncertainty, special procedural needs, and the possibility of effective correction.

³⁶ Asylum Procedure Regulation, Articles 24(1)-(6).

³⁷ *J.K. and Others v. Sweden* [GC] (59166/12), judgment of 23 August 2016, paras. 99-102.

³⁸ Charter of Fundamental Rights of the European Union, Article 24(2), and Asylum Procedure Regulation, Articles 22(1)-(5).

The test rests on a simple premise. The intensity of the investigation should increase where an error is serious and difficult to repair, where the authority has a clear informational advantage, or where there is a concrete uncertainty capable of changing the outcome. The intensity may decrease where the relevant issue has already been clarified, where additional material has no realistic significance, or where a minor deficiency can be corrected without worsening the individual's position.

The model does not alter the standard of proof and does not entitle the applicant to every requested measure. Instead, it helps the decision-maker explain why the investigation is sufficient at the present stage. It may be used when selecting the procedural track, after the interview, when new material is received, and before a negative decision. In court, the same factors can be used to assess whether the first-instance investigation was adequate or whether the case requires supplementation or remittal. The test should therefore not be applied as an independent norm or replace the assessment required by the applicable legal sources; its function is to structure how those requirements are identified, assessed and documented in the individual case.

5.2 Factor 1: consequences and irreversibility of the decision

The first factor concerns the seriousness of the harm and the possibility of restoring the situation. A decision capable of leading to persecution, torture or other treatment contrary to Article 3 ECHR requires particular caution. This starting point already follows from MIG 2006:1 and the principle of non-refoulement. The factor does not mean that every allegation automatically triggers the maximum level of investigation. There must be a connection between the alleged harm and the investigative measure.

The question should be formulated concretely: What error is the measure intended to prevent, and can that error be repaired after enforcement? If the answer is that a central risk may remain undetected and that the harm cannot be undone, the factor weighs heavily in favour of further investigation or a change of procedural track.

5.3 Factor 2: information asymmetry and actual access to evidence

The second factor concerns who can reasonably obtain the information. The applicant bears responsibility for his or her narrative and available documents. The authority, however, has better access to quality-assured country information, official contacts and certain expert resources. It cannot require a person to obtain a document from the authority that is alleged to persecute him or her where doing so is dangerous or practically impossible.

The assessment should also take account of time and place. A document may in theory be obtainable but not within a short border procedure. The authority must then assess whether the document's probable evidentiary value justifies waiting, whether the information can be checked in another way, or whether the case should move to the ordinary procedure. The fact that evidence cannot be obtained within the target time is not the same as saying that it is irrelevant.

5.4 Factor 3: remaining outcome-determinative uncertainty

The third factor is the core of the model. Not every uncertainty needs to be eliminated. The question is whether there remains a factual or legal ambiguity that is decisive for the outcome and can reasonably be clarified. A peripheral uncertainty about a date need not be investigated where the event itself is immaterial. By contrast, uncertainty about the reach of an alleged persecutor may be decisive both for the need for protection and for an internal protection alternative.

The factor requires the decision-maker to distinguish between three situations. In the first, the material is sufficient and further investigation would merely repeat what is already known. In the second, uncertainty exists but cannot reasonably be clarified; it must then be handled through the applicable rules of evidence and transparent reasoning. In the third, there is a decisive ambiguity that can be investigated through a proportionate measure. A negative decision without that measure is the most difficult to reconcile with the

duty to investigate.

5.5 Factor 4: special procedural needs

The fourth factor concerns whether the applicant has been able to participate effectively. A file may appear complete yet still be unreliable if the interview was conducted without the necessary adaptation. The assessment should therefore ask whether language, health, age, trauma or other circumstances have affected the ability to provide and correct information.

If the need for support can be met immediately, the procedural track does not always need to change. If an appropriate case officer, interpreter or break makes the interview effective, speed and quality can be combined. If, however, the support requires medical investigation, a representative or more extensive adaptation that cannot be accommodated within the procedure, Article 21 must have a practical consequence: the accelerated track should not be used or should cease.

5.6 Factor 5: possibility of effective correction

The fifth factor concerns whether a possible error can be detected and repaired before it has serious consequences. Access to a court is relevant, but a formal right of appeal is insufficient. The individual must understand the decision, have actual access to legal assistance and be able to submit material within the time limit. The court must have the time and competence to conduct the full review required by Article 67(3).

An error at first instance is more risky where the right to remain pending appeal does not apply automatically or where the individual has very little time to request it. In certain accelerated and border-related situations, Article 68 specifically governs how the right to remain is to be assessed.³⁹ The first-instance duty to investigate therefore cannot be reduced by a general reference to the possibility that the court may later supplement the case.

5.7 A procedural decision point before refusal

The five factors can be brought together in a procedural decision point before a negative determination in an accelerated or border procedure. Before refusal, the decision-maker should be able to establish the following: there is no uninvestigated circumstance that is both decisive and reasonably capable of clarification; country-of-origin information is current and individualised; the applicant has been able to respond to material weighing against the application; the need for special guarantees has been assessed and met; and the possibility of review is practically meaningful.

If one element is not fulfilled, it does not automatically follow that the application should be granted. The consequence is primarily procedural: supplement the investigation, adapt the procedure, or change track. The model thereby distinguishes between uncertainty about the need for protection and uncertainty about the sufficiency of the investigation. The former is handled through the assessment of evidence. The latter must be addressed before the evidentiary assessment can support a negative decision.

The test can be documented briefly. A structured note identifying the principal risks and the measures taken will often be sufficient. The purpose is not to create a new checklist to be completed mechanically. Its value lies in requiring the decision-maker to articulate why a rapid determination nevertheless rests on a sufficient basis.

6. Implications for the Swedish Migration Agency and the migration courts

6.1 Early investigation plans and continuous reconsideration of the procedural track

For the Swedish Migration Agency, the analysis suggests that an investigation plan should be drawn up early and remain dynamic. At registration, the authority can identify language, the alleged risk category,

³⁹Asylum Procedure Regulation, Articles 68(3)-(5).

central evidentiary issues, possible vulnerability and the need for external investigation. After the interview, the plan should be reconsidered: Has a new risk emerged? Is the country information sufficiently specific? Is there an inconsistency that is actually decisive?

Such planning is compatible with promptness. It reduces the risk that a medical issue or an information need is discovered only when the time limit is close to expiring. It also makes it possible to close the investigation once it is clear that further measures would be immaterial. Risk adaptation therefore does not always mean more investigative measures. It means the right measure at the right time.

The decision to use an accelerated procedure should not be treated as irreversible. Article 42(2) and the rules on special procedural guarantees presuppose an ongoing possibility of leaving the accelerated track. Internally, there should therefore be clear decision points and clear responsibility for who may change the procedural form. Reclassification should be documented, but not made so administratively burdensome that it itself creates delay.

6.2 Reason-giving as quality control

A well-reasoned decision is not merely an end product. The work of giving reasons may reveal gaps in the investigation. If the decision-maker cannot explain why certain country information is relevant, why an explanation for an inconsistency is rejected, or why a medical certificate does not require further action, the investigation may not be complete.

In a refusal decision, it should be possible to trace the connection between the legal question, the decisive factual assessment and the source material. General statements that the narrative is vague or that country information does not provide support should be replaced by a concrete explanation. This is particularly important in accelerated tracks, where the applicant and the court may otherwise have difficulty understanding what must be answered within a short period.

The communication duty under section 25 FL and the procedural guarantees of EU law should be used to correct decisive misunderstandings before the decision. This does not mean that every preliminary assessment must be communicated. But external material or a new circumstance that becomes decisive and of which the applicant is unaware should normally be open to response.⁴⁰

6.3 Judicial control of the sufficiency of the investigation

The Migration Court must conduct the full and current examination required by Article 67(3). It cannot confine itself to a historical review of whether the Swedish Migration Agency had grounds for its decision on the material then available. At the same time, the court must decide when a deficiency should be remedied in court and when the case should be remitted.

MIG 2006:1 and MIG 2021:4 show that the court has a particular responsibility where credibility or membership of a risk group is decisive and the material is insufficient. Remittal may be justified where a central part of the first-instance examination is missing, for example where the authority has failed to investigate a concrete indication of torture or where the applicant has never had an effective opportunity to explain a new protection ground. In other cases, the court may supplement the case through an oral hearing, questions to the parties or current country information.⁴¹

The choice should be influenced by the function of the system of instances and by time. Remittal may secure a complete examination at two levels but may also prolong uncertainty. The fact that a court can repair a deficiency does not mean that it should always do so; the fact that the case is urgent does not mean that the court should decide it on an insufficient basis. The risk-adapted test can help the court identify the significance of the deficiency, the possibility of correcting it, and the consequences of each procedural option.

⁴⁰Section 25 FL; cf. Asylum Procedure Regulation, Articles 12(2) and 14(3)-(4).

⁴¹Section 8 FPL, MIG 2006:1 and MIG 2021:4.

6.4 Monitoring quality, not only time

The new system will naturally be monitored through processing times, numbers of completed cases and capacity in the border procedure. Such metrics are necessary but insufficient. A system may meet time targets by shifting investigative work to the courts or by producing more remittals. Real efficiency may then deteriorate even as first-instance statistics improve.

Quality monitoring should therefore include at least rates of amendment and remittal, reasons for supplementation in court, late identification of vulnerability, use of medical expertise, transfers from accelerated to ordinary procedures, and cases in which outdated or overly general country information has had to be replaced. The data should be analysed with due regard to the fact that a changed outcome does not always imply an earlier error; new circumstances may have arisen.

The central measure is not the maximum amount of investigation but the durability of the decision. An early and relevant measure can shorten both the administrative and judicial process. A rapid but deficient decision may instead create a longer total procedure. The Pact should therefore be evaluated across the entire chain from application to final determination, not only by the time taken to reach the Swedish Migration Agency's first decision.

7. Conclusions

The Pact on Migration and Asylum strengthens the time management of the asylum procedure. It makes accelerated procedures mandatory in more situations and gives the border procedure greater significance. At the same time, it repeats and specifies requirements of an objective, impartial, individual, adequate and complete examination. There is therefore no legal basis for treating a rapid procedure as a simplified protection assessment.

Promptness and substantive accuracy should be understood in a particular order. First, the decision-making basis must reach the level required by the case. The procedure should then be optimised so that unnecessary measures and delays are avoided. The time limit may govern the allocation and concentration of resources, but it cannot turn a decisive uninvestigated question into an irrelevant one. Where the necessary investigation cannot be accommodated within an accelerated track, the procedure must be adapted.

The proposed risk-adapted investigation test brings together five circumstances: the consequences of the decision, information asymmetry, remaining outcome-determinative uncertainty, the need for special procedural guarantees, and the possibility of effective correction. The test is not a new evidentiary rule. Its contribution is to distinguish between measures that would merely make the file more extensive and measures that can actually alter the protection assessment or make it legally reliable.

For the Swedish Migration Agency, this entails a need for early investigation planning, continuous reconsideration of the procedural track, and reasons showing how central uncertainties have been addressed. For the migration courts, it means that the full current examination must be combined with an independent assessment of whether the lower-instance investigation was sufficient and whether a deficiency should be remedied or lead to remittal.

The most efficient asylum examination is not the one that always uses the shortest time at first instance. It is the one that identifies the correct question early, gathers the evidence that is actually needed, and reaches a decision that withstands review. In that sense, substantive accuracy is not an obstacle to promptness. It is the legal limit on what promptness may cost.