

Communication to the Committee on the Rights of Persons with Disabilities under the Optional Protocol to the Convention on the Rights of Persons with Disabilities

This communication entails a request to the Committee on the Rights of Persons with Disabilities (the Committee) that the Committee recognises that Sweden has violated the rights under the Convention on the Rights of Persons with Disabilities (the Convention) of Richard Sahlin.

1. Submitting organisations

- Sveriges Dövas Riksförbund (Swedish Association of the Deaf)
- Adress: Rissneleden 138, 174 57 Sundbyberg.
- E-mail address: isabella.hagnell@sdr.org

- Sveriges Dövas Ungdomsförbund (Swedish Youth Association of the Deaf)
- Adress: Rissneleden 138, 174 57 Sundbyberg.
- E-mail address: laith@sduf.se

- Law as a Tool, non-profit association.
- Adress: Med lagen som verktyg (MLSV)
c/o Independent Living Institute
Storforsplan 36, 10 tr
123 47 Farsta
- E-mail addresses: adolfratzka@independentliving.org (chair), andrea.bondesson@funktionsratt.se (vice-chair), and info@mlsv.se

The Swedish Association of the Deaf will manage further administrative matters concerning the complaint. The Swedish Youth Association of the Deaf and Law as a Tool wish to be included in correspondence nonetheless.

2. Information concerning the alleged victim(s)

The victim Richard Sahlin is the co-author of this communication. Richard Sahlin is deaf. He received his PhD in public law in 2004, and has been working on short term contracts at different universities as a teacher, including at Södertörn University. He is currently employed at Umeå University as a lecturer (associate professor).

- Family name: Sahlin

- First name(s): Richard
- Date and place of birth: 23 June 1967, Stockholm
- Nationality/citizenship: Swedish
- Sex: Male
- Other relevant personal identification data (if any of the above details are not available)
- Present address: Brännkyrkagatan 118, 1 tr., 117 27 Stockholm, Sweden;
Alternatively:
Tvistevägen 9 C, 1507, 907 29 Umeå, Sweden
- Mailing address for confidential correspondence (if other than present address)
- E-mail: richard.sahlin@kramnet.se and richard.sahlin@umu.se

3. Information on the State party concerned

Sweden; the State authority Södertörn University.

4. Subject matter of the communication

Denial of reasonable accommodation (including failure to satisfactorily investigate reasonable accommodation other than sign language interpretation and the undue burden test not completed by the state); discrimination; violation of equal opportunities to public employment.

5. Nature of the alleged violation(s)

The circumstances of the case

Södertörn University provides education and conducts research in four academic schools; Historical and Contemporary studies, Culture and Education, Social Sciences, and Natural Sciences, Technology and Environmental studies. It is a public university funded through the state budget. During the fiscal year of 2016, Södertörn University had 70 academic programmes and around 250 courses to offer students. It had 695 full-time staff, of which 64 were professors, 74 employed as doctoral students and 39 library staff. 64% of the teaching staff have PhDs. The results of the fiscal year of 2016 was reported by Södertörn University as summarised:

Financials: Income: 769 617 000 SEK
 Costs: 757 677 000 SEK
 Change in capital: 11 939 000 SEK
 Authority capital: 117 752 000 SEK
 Unused contributions: 187 404 000 SEK

Södertörn University advertised a permanent position as a lecturer (associate professor) in public law, with a focus on social law, in spring 2015. Richard Sahlin was considered the most qualified applicant by the recruiters. He had previously been temporarily hired at Södertörn University, and he was offered the opportunity to give a trial lecture as a step in the recruitment process. Despite his qualifications, and the university knowing of his needs for sign language interpretation, Södertörn University cancelled the recruitment procedure on May 17 2016.

Södertörn University claimed that they found it too expensive to finance sign language interpretation expenses as a means to guarantee Richard Sahlin's right to employment on an equal basis as others. Although the university staff budget exceeds half a billion SEK per year, and having had a surplus of 187 million after 2016, Södertörn University considered it too expensive financing sign language interpretation expenses amounting to roughly half a million SEK per year. Further inquiry regarding alternative forms of work adaptations or reasonable accommodation including adapted work tasks that do not cause any interpreting cost such as supervising and examining students and web-based instruction was not presented to Richard Sahlin, neither before the cancellation of the recruitment procedure, nor at any later stages.

Richard Sahlin appealed the decision before the University Appeals Board based on that it was founded on lacked investigation. However, the Board dismissed the appeal because it could not be appealed because of administrative law limitations.

Richard filed a discrimination complaint based on the circumstances to the The Discrimination Ombudsman (DO). The DO decided to bring a civil suit in the Labour Court against the state with the consent of Richard Sahlin. The DO claimed that Richard Sahlin, due to the decision to cancel the appointment of the position, was subjected to discrimination in accordance with Chapter 1, Section 4:3 and in contravention of the prohibition against discrimination in Chapter 2, Section 1 of the Discrimination Act (2008:567). Therefore, the DO claimed that Richard Sahlin was entitled to 100 000 SEK in discrimination compensation according to the Discrimination Act.

The Swedish Labour Court found in a judgment on October 11 2017 that Södertörn University did not discriminate against the Richard Sahlin when it cancelled the appointment. The Labour Court accepted that the cancellation was based on the fact that it was too expensive for Södertörn University to finance sign language interpretation expenses

to compensate the author's deafness. Despite the size of the university's staff budget, the Labour Court found that it was not reasonable, according to inter alia the Discrimination Act, to demand that Södertörn University financed interpreting expenses amounting to 520 000 SEK per year.

Sweden has violated Richard Sahlins rights under the Convention

The State of Sweden (the State) has failed to provide equal right to work and reasonable accommodation in employment in contravention of the obligations of the State party according to the Convention, primarily under article 27.1 b), g) and i), and article 5, paragraph 2 by failing to guarantee persons with disabilities equal and effective legal protection against discrimination, and paragraph 3 by failing to take all appropriate steps to ensure that reasonable accommodation was provided.

The failure of the State to guarantee reasonable accommodation lead to Richard Sahlin not being employed despite being the most qualified applicant for the advertised position. To not be employed while being the most qualified is a violation of the right to work on an equal basis with others, unless the State party can prove that there was a legitimate reason for it. The Labour Court judgment 51/17 is not sufficient to show that Sweden has fulfilled its obligations under the Convention.

To the contrary, the violation could have been prevented by the State party either by specifically funding reasonable accommodation directly from the State budget, or specifically ensuring that state universities and public authorities have the financial preconditions and clear obligations provide reasonable accommodation. By having placed the duty to provide reasonable accommodation solely on the employer and applying the undue burden test disproportionately to the disadvantage of the victim, the State has violated the rights of Richard Sahlin. The undue burden test carried out by the State has not shown that it would have been disproportionate or unreasonable to demand that the State provided for the necessary adjustments.

The Margin of Appreciation that States enjoy has been exceeded in the light of the circumstances. For example, where the Labour Court could have used a technique of interpretation to align Swedish law with the rights under the convention, it clearly did not explicitly analyse and apply the standards in the Convention. Particularly, the Labour Court failed to uphold the rights under the rights of the Convention while it held that [Authors' emphasis]:

“The Labour Court cannot find that the UN Convention, the EU Equal Treatment in Employment Directive, the Discrimination Act or its

preparatory works support finding it reasonable to require an employer, in a situation such as the present one, to take on accessibility measures of the current type at an annual cost about SEK 500,000. *The Court has also taken into consideration that the case involves a permanent employment at a government agency with a large personnel budget.* Nor does the 2001 regulation support the claim that, according to the Discrimination Act, the university can be required to undertake the measures discussed.

The Labour Court's conclusion is therefore that the accessibility measures that the university would have had to take in order to employ R.S. are not reasonable and therefore the university has not discriminated against R.S. when it cancelled the recruitment process. The DO's lawsuit must therefore be dismissed.”

The present judgment by the Labour Court stands in stark contrast to the requirements of the Convention, and is illuminated by what the Committee states in its General Comment no 2 on article 9: Accessibility, para. 41, [Authors’ emphasis]:

“41. Persons with disabilities cannot effectively enjoy their work and employment rights, as described in article 27 of the Convention, if the workplace itself is not accessible. Workplaces therefore have to be accessible, as is explicitly indicated in article 9, paragraph 1 (a). A refusal to adapt the workplace constitutes a prohibited act of disability-based discrimination. Besides the physical accessibility of the workplace, persons with disabilities need accessible transport and support services to get to their workplaces. *All information pertaining to work, advertisements of job offers, selection processes and communication at the workplace that is part of the work process must be accessible through sign language, Braille, accessible electronic formats, alternative script, and augmentative and alternative modes, means and formats of communication.* All trade union and labour rights must also be accessible, as must training opportunities and job qualifications. For example, foreign language or computer courses for employees and trainees must be conducted in an accessible environment in accessible forms, modes, means and formats.”

Further, Sweden has failed act in within its Margin of Appreciation because it has not shown that the State has acted in accordance with the general obligation to take measures to the maximum of its available resources to guarantee Richard Sahlin’s social rights, article 4.2 of the Convention. The State Party has presented a surplus in the state budget of 2016¹, and strikingly so did Södertörn University. As presented

¹ <http://www.regeringen.se/sveriges-regering/finansdepartementet/statens-budget/statens-budget-i-siffror/>, retrieved January 8 2018.

earlier in the communication, the University's budget had a surplus of 187 million SEK for the fiscal year of 2016. The Margin of Appreciation does not extend to behaviour that neglects individual rights, while the State has not shown that the surplus is used for another more pressing social need regarding the obligations under the Convention.

The denial of satisfactory inquiry in regards to other possible adjustments to Richard Sahlin's needs and employment conditions is a violation of the right to reasonable accommodation in itself. Södertörn University failed to inquire whether the Richard Sahlin could perform alternative work duties after it decided that sign language interpretation would be too costly to provide. Such adaptations of work could be to let Rickard Sahlin work with supervising students, examining student performances, administering student matters and online chatting with students. If the work had been adapted, the total costs would be significantly less than the amounts presented by Södertörn University. A rough estimation is a total of 100,000 SEK annually. If the tasks were to be decided to not include direct contact with the students, the teaching would not incur any large interpreting costs, if any at all. This is one key issue that a satisfactory inquiry would have mapped, which would have led to a fair decision based on the right information in the end. The State Party failed to provide sufficient evidence or analysis to support the conclusion that that all accommodations including alternative work duties would constitute an undue burden, see CRPD cases *Beasley v. Australia* (para. 8.5) and *Michael Lockrey v. Australia*.

The application of all Convention Rights should be read especially in the light of the general principles enshrined in Article 3; (b) Non-discrimination; (c) Full and effective participation and inclusion in society; (e) Equality of opportunity; (f) Accessibility. It is therefore aggravating that Sweden has failed to implement these principles in the case of Richard Sahlin when Södertörn University cancelled the recruitment procedure, denying him equal opportunities for public employment.

As the Convention explicitly recognises that sign language interpreting is a typical adaptation for all deaf people, the Labour court did not explore the consequence that denial can have on the conditions for all deaf people who apply for any employment in Sweden that requires communication in spoken language. Without sign language interpreting and other alternative work duties deaf people cannot enjoy any employment right that requires spoken communication with people. Subsequent employers may refer to the Labour court judgment 51/17 to deny all deaf applicants. Therefore, this case cannot be compared with the CRPD case of *Marie-Louise Jungelin v. Sweden*, as that case was a

considerably higher cost for adapting the computer system. The Committee based its finding on a cost figure amounting to between 10-15 million SEK for the adaptation.

The United States has chosen to explicitly regulate sign language interpreting as a typical accommodation measure for deaf (see the ADA and case-law see *Searls v. Johns Hopkins Hospital* (JHH (D.Maryland 1/21/16 and *Smith v. Loudoun County Public Schools* (E.D. Virginia 2/18/16). The Swedish government has ignored a proposal from a State Public Inquiry that all employers should be granted more public subsidy to cover interpreting expenses in work life (SOU 2011:83).

Neighbouring countries including Denmark provide public subsidy to cover interpreting costs for deaf employers up to 20 work hours a week (see SOU 2011:83). The government has always ignored the Swedish Deaf Association's struggle for more public subsidies to cover interpreting costs. The government is aware about this problem but ignore that many deaf do not get a professional job due to interpreting expenses despite that the Government of Sweden is presenting a surplus of 36,5 billion SEK. One positive thing that the government does is to redistribute its resources to cover expenses for some people with certain impairments (act 1993:387) in for example work life (personal assistance etc). The negative aspect of that act is that it does only cover some impairment. The Convention stresses that the discrimination prohibition can apply when one disability group is discriminated against compared to another group with other types of impairments. In lack of a State strategy to guarantee reasonable accommodation in employment of deaf people, Sweden has violated the rights under the Convention of Richard Sahlin.

Lastly, Sweden has failed to consider the benefits of the author as a senior lecturer while assessing the reasonableness of requested accommodation. As the author has a disability and knowledge of disability rights, he can provide a valuable contribution to Södertörn University that it is open and inclusive for all kinds of underrepresented groups. By having a senior lecturer with a disability, it will facilitate the students to meet persons with disabilities in a professional way. Therefore, the case has a dimension concerning art. 8 on awareness-raising.

6. Steps taken to exhaust domestic remedies

After Richard Sahlin filed a discrimination complaint, the DO decided to offer to represent him in court proceedings for claims of discrimination compensation for lack of accessibility as a form of discrimination in the Labour Court. The DO brought the case as a civil

labour dispute in the Labour Court. A public hearing was held on August 30, 2017, and a final judgment was delivered on October 11, 2017. The Labor Court found that Södertörn University did not discriminate against the victim when it interrupted the recruitment procedure due to costs required to hire the victim.

The Labour Court is the final instance in cases tried under the Labour Disputes Judicial Proceedings Act (SFS 1974:371), and the Discrimination Act (2008:567) Chapter 6, Section 1.

No other effective remedies are available for cases like this one, whereby domestic remedies have been exhausted, and the complaint may be declared admissible.

7. Other international procedures

The same matter has not been examined or is it being examined under another procedure of international investigation or settlement.

8. Specific requests/remedies

The authors request that the Committee declares that the action of the State party, including denial of reasonable accommodation by Södertörn University and judgment no 51/17 by the Labour Court, violates Richard Sahlin's rights under article 27 in combination with articles 3, 4 and 5 of the Convention; damages including costs of procedure in the Committee.

9. Date, place and signature

Date of communication: January 2017

Place of signature of communication:

Signature of author(s) and/or alleged victim(s):

10. List of documents attached

Labour Court's judgment no 51/17, English translation.
Authorisation.
