



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Sweden
Title:	New legislative proposal
Date:	6 January 2017
Expert:	Per Norberg
<u>Context</u>	
Issue at stake:	Legislative changes to increase protection against discrimination
Ground of discrimination:	All grounds (including gender)
Source:	Parliament inquiry
Field:	All fields
Applicable law:	Discrimination Act and School Act

Content

In January 2014, the government appointed an inquiry with the task to suggest improvements of the organisation of the anti-discrimination work. It was given six concrete problems to work on:

- Review of the role and responsibilities of the Equality Ombudsman.
- Review of the organisation of efforts to combat discrimination at regional and local level.
- Analysis of whether a different procedure from the one currently used for monitoring and promoting equal treatment can help to ensure effective action to combat discrimination.
- Analysis of the rules on burden of proof under the Discrimination Act.
- Analysis of who should be responsible for monitoring action to combat discrimination in schools – the Equality Ombudsman or the Swedish Schools Inspectorate.
- Analysis of whether the regulations on protection against discrimination in public sector activities need to be amended.

The result of this inquiry has been presented on 14 December 2016 in the Government White Paper (SOU) 2016:16. It is 666 pages long but contains only minor suggestions. These suggestions have not been discussed in the main media.

The proposals contain small suggestions on how the Equality Ombudsman should handle individual complaints, how local anti-discrimination bureaux should report back to the government and how the county councils should have a duty to work with antidiscrimination in a general way (but not to deal with individual complaints).

With regard to the burden of proof rule, there is a suggestion of a new wording of Section 6:3 of the Discrimination Act. The suggested amendment would be an improvement to

the current wording but would have little practical effect.¹ The section is proposed to be divided into two passages and the first passage ends with the words "if so discrimination shall be presumed". The second passage deals with the alleged discriminator breaking this presumption. The idea behind the new wording is to emphasize the difference of the two steps, the first being when the claimant shows a case for prima-facie discrimination and the second when the alleged discriminator tries to break the presumption.

The School Inspectorate should be given sole responsibility for bullied pupils, even if all bullying is connected to a discrimination ground. The inquiry suggests legislative changes to make this clear. Currently, the responsibility for dealing with cases of bullying in schools falls upon both authorities (if the case is connected to a discrimination ground). However, informally persons are steered towards the School Inspectorate.

The inquiry finds that the protection against discrimination in public sector activities does not need to be changed.

The suggestion that really could change Swedish anti-discrimination practice is the creation of a new Anti-Discrimination Board. However, this suggestion is not backed up by a concrete legislative proposal, as the white paper only describes general principles for the creation of such a Board. Such a board would have the possibility of making judgements (called decisions when made by such a board) and awarding discrimination awards above the threshold of 22.500 SEK (2250 Euro) without the claimant bearing the risk of having to pay the opposite party's legal costs.

Internet link source:

<http://www.regeringen.se/4af295/contentassets/b42c019548304be987083fb37f73d74f/battre-skydd-mot-diskriminering-sou-201687>.

This link goes to the whole government white paper. Pages 31-39 contain an English summary which is the best way to get a short overview of its contents.

¹ Making it into two separate steps does not help the courts to deal with every-day situations. A counter evidence from the alleged discriminator can be put into the first step and seen as disproving a similar situation or in the second step and break a presumption which had arisen from the proof of a similar situation and a disfavour. Therefore, the new rules will probably have little practical effect.