



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

NEWS REPORT

Country:	Sweden
Title:	NGO enforcement of inadequate accessibility in relation to service provision
Date:	9 July 2018
Expert:	Paul Lappalainen
<u>Context</u>	
Issue at stake:	Inadequate accessibility even outside of working life is a form of discrimination in Sweden. LW was refused access to a bus due to his wheelchair. The Equality Ombudsman did not take the case to court so LW turned to an NGO. The NGO took the case to court and won. This is one of the first cases where an NGO took on the full legal risks of enforcing the law
Ground of discrimination:	Disability
Source:	Gävle District Court judgment 2018-06-11 (Mål nr T 240-16)
Field:	Goods and services / inadequate accessibility
Applicable law:	Discrimination Act (2018:557) (also with a reference to Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport)

Content

Case: LW was refused service on a bus due to his wheelchair. The bus driver pointed out that even though the bus was equipped with a step lift, he was not trained to use it. As the Discrimination Act includes inadequate accessibility as a form of discrimination according to Chapter 1 § 4 pt 3, and among other things the EU Regulation No 181/2011 concerning the rights of passengers in bus and coach transport points out that people with disabilities, like other people, should have comparable accessibility, LW asserted that the refusal of service constituted discrimination. A complaint was submitted to the Swedish Equality Ombudsman (DO). Although concluding that discrimination may have occurred, the DO chose to not pursue the case. The precise reasons for the DO's lack of action are unclear. However, as pointed out in general on the DO's website – the DO decides which cases will be given priority based, for example, on if the case involves an issue of principle importance and if it is determined that the case can lead to a judgment that is of broader importance. It is also pointed out that it can often be more effective with a non-compulsory supervisory decision as opposed to taking a case to court. LW then turned to DHR (Delaktighet, Handlingskraft, Rörelsefrihet - a disability organisation). DHR determined that they would take on the case as an NGO on behalf of LW. This also meant that they would take on the cost risks in case the case was lost.

Decision of the Court: The District Court determined that the facts shown by DHR were sufficient to shift the burden of proof to the Region (the regional government responsible for bus traffic). The Region was unable to show that discrimination had not occurred and

was thereby found to have violated the Discrimination Act. The compensation for discrimination ordered by the court amounted SEK 16 000 (8 000 for the violation of integrity and 8 000 as a preventive addition). The parties have until 2 July 2018 to appeal.

Key points of analysis: The key issue here was the initiative and courage shown by a civil society organisation (DHR) in taking the case even though Swedish Equality Ombudsman (DO) was unwilling to act. The risks would have even been greater for LW. Civil society has little tradition of enforcing civil laws in Sweden. DHR's success may contribute to the increasing interest of civil society in enforcement as part of a new tradition concerning advocacy.

Internet link source: Law as a tool for social change website

<https://lagensomverktyg.se/wp-content/uploads/sites/4/2018/06/Gävle-TR-T-240-16-Dom-2018-06-11.pdf>.