



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

FLASH REPORT

Country:	Sweden
Title:	Strategic litigation concerning discrimination of pupils with dyslexia during school exams
Date:	16 December 2019
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<u>Context</u>	
Issue at stake:	Disability discrimination of pupils with dyslexia by schools (local governments)
Grounds of discrimination:	Disability
Field of application:	Education
Source:	National court decision (Three separate trial court decisions based on similar fact patterns. One successful two unsuccessful.)
Applicable law:	Discrimination Act (2008:567)

Content

Case/law: Swedish schools give national exams to students in the third and sixth grades. During such exams, students with dyslexia are not allowed to use the accessibility devices that they normally use, due to guidelines established by the National Agency for Education. It was determined by representatives and lawyers for several civil society organisations (Dyslexiförbundet – Dyslexia association, Föreningen lagen som verktyg – Law as a tool for social change association, Talerättsfonden – Fund for Discrimination Case Law) that strategic litigation was needed, particularly since even some schools saw a problem with the guidelines they felt compelled to apply. The organisations identified three claimants who each brought their case before the competent district courts (in three different parts of Sweden), at the same time. The cases were filed as small claims cases in order to limit the prohibitive financial risks involved in Swedish procedural law. The coordinated filing presumably contributed to the media impact.

Decisions of the courts: Judgements have been issued in the three cases. The decisions from the Södertörn and Malmö district courts were unfavorable with the courts holding that the schools, and thus the local governments, had not violated the prohibitions in the Discrimination Act related to discrimination due to inaccessibility and indirect discrimination, nor the right to an education and non-discrimination in the European Convention on Human Rights. The courts held a) while the procedure put persons with dyslexia at a disadvantage, the procedure had a legitimate purpose and the means were appropriate and necessary, b) that the accessibility measures that were allowed, such as additional time, were sufficient to place the claimant in a comparable situation with that of a person without the disability, and c) that there was no violation of the European Convention.¹ On the other hand, on essentially the same facts and arguments, the Örebro

¹ Malmö District Court judgment of 12 November 2019, case No. FT 7843-18; Södertörn District Court judgment of 27 June 2019, case No. FT 11836-18.

Court held that the claimant had been subjected to both indirect discrimination as the means were not appropriate and necessary, as well as discrimination in the form of inaccessibility due to insufficient reasonable accommodation, and awarded discrimination compensation of SEK 10 000 (EUR 950). Given this result, the Örebro court found it unnecessary to examine the issue of alleged violations of the European Convention.²

All three cases have been appealed. The two unsuccessful claimants have appealed the judgments, as has the respondent in the third case (Örebro local government).

Key points of analysis: There are various key points related to these cases. As the courts within the ordinary legal system have come to very different conclusions, the issues raised presumably underline the need for a clear precedent concerning key issues such as reasonable accommodation, inaccessibility and indirect discrimination. As the cases will be taken up by different courts of appeal, there is also the potential for a decision by the Supreme Court.

An issue that will be pursued in a different context is the national government's responsibility for the application of guidelines that lead to discriminatory behaviour that local governments are liable for, at least assuming that the Örebro decision holds up on appeal. According to the civil society organisation involved in the cases, thousands of students with dyslexia throughout Sweden are affected every year.

The cases also demonstrate on the one hand, the ability and potential of civil society concerning strategic litigation, and the difficulty that others such as the Equality Ombudsman, the National Agency for Education and the Chancellor of Justice seem to have concerned structural discrimination. On the other hand, they also highlight the economic and legal risks for individuals and/or civil society organisations in trying to enforce rights related to equality and non-discrimination. This can also call into question the effectiveness of the EU's anti-discrimination directives.

Internet link sources:

Dyslexia Association (Dyslexiförbundet) <https://www.dyslexi.org>;

The law as a tool (Lagen som verktyg) website

<https://lagensomverktyg.se/2019/rattsnyhet-orebro-kommun-diskriminerade-elev-nar-hjalpmedel-vid-nationella-proven-inte-tillats/>;

The Discrimination Case Law Fund (Talerättsfonden) <https://www.talerattsfonden.se>.

² Örebro District Court judgment of 14 November 2019, case No. FT 4411-18.