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FLASH REPORT

Country:	Denmark
Title:	Tort compensation
Date:	4 February 2020
Expert:	Pia Justesen
<u>Context</u>	
Issue at stake:	Denial of tort compensation for unjustified loss of a social service
Grounds of discrimination:	Disability
Field of application:	Social protection
Source:	Eastern High Court judgment of 22 January 2020 ¹
Applicable law:	Section 26 of the Act on Damage Liability [Erstatningsansvarsloven] ²

Content

Case: The case dealt with a young woman with a mental disability. She was a swimmer and had done well in disability sports, both in Denmark and internationally. She used a personal assistant for social-education support when she was participating in swimming competitions. According to several decisions from the Social Appeals Board, the municipality had wrongly taken away the funding of her personal assistant when she turned 18 years of age.

The young woman took the case to the civil courts and claimed that the failure of the municipality to comply with the decisions of the Social Appeals Board had caused significant consumption of resources and significant inconvenience to herself and her family. She argued that she was entitled to tort compensation under Section 26 of the Act on Damage Liability [Erstatningsansvarsloven] or according to the European Convention on Human Rights, Additional Protocol 1, Article 1 (a violation of her 'property' – her right to receive social benefits).

On the basis of the decisions by the Social Appeals Board, the Eastern High Court found that it was a mistake that the woman did not receive the social-educational support from a personal assistant when she was attending swimming competitions after she turned 18 years of age. However, following the evidence, the Court found that there was no basis to establish that the inconveniences for the young woman had been of such magnitude or character that it had violated her self-esteem or reputation. The Court therefore concluded that there was no basis for granting compensation for tort in accordance with Section 26 of the Act on Damage Liability. The Court also concluded that according to case law of the European Court of Human Rights on the right to social benefits, the municipality's decisions did not violate the woman's rights under the Additional Protocol 1, Article 1. Thus the European Convention on Human Rights also did not provide a basis for tort compensation.

¹ Eastern High Court Case No. BS-12019/2019.

² Consolidated Act No. 266 of 21 March 2014 with later amendments.

The Eastern High Court upheld the ruling from the city court and acquitted the municipality.

Key points of analysis: The ruling illustrates that if an individual has a disability and a need for support and if the municipality illegally refuses or deprives the assistance, it is not possible for the individual with a disability to get financial compensation. In other words, according to Danish law, an individual with a disability does not have a right to financial compensation for an unjustified loss of service or welfare. It leaves the individual with a disability in an insecure place if his or her local municipality issues wrong decisions and illustrates the narrow scope of the Danish tort legislation.

Internet link source: A summary of the judgment can be found on the website of the Eastern High Court:

http://www.domstol.dk/oestrelandsret/nyheder/domsresumeer/Pages/Kommunefrifundet_iensagomtort.aspx.