



Ministry for Foreign Affairs
Department for International Law, Human Rights
and Treaty Law

Committee on the Rights of Persons
with Disabilities
Office of the High Commissioner
for Human Rights
Palace of Nations
CH-1211 GENEVA 10
Switzerland

Communication No. 98/2022

Ms Saga Lööf v. Sweden

Dear Members of the Committee,

1. The Secretariat of the United Nations (High Commissioner for Human Rights) transmitted, on 22 August 2022, a Note to the Permanent Mission of Sweden to the United Nations Office at Geneva concerning the abovementioned communication, submitted to the Committee on behalf of Ms Saga Lööf (hereinafter ‘the complainant’), under the Optional Protocol to the Convention on the Rights of Persons with Disabilities (‘the Optional Protocol’).

2. In the Note mentioned, the Committee requested that the Swedish Government provide written information and observations in respect of both the admissibility and the merits of the complaint by 18 February 2023. In response to this request, I have the honour to submit the following on behalf of the Government.

1. The Complaint and the Government’s Position

3. Initially, the Government wishes to emphasise that it is taking the issue raised by the Committee seriously. Protecting the rights of persons with disabilities is a priority issue for the Government.

4. The complainant has claimed that Sweden has failed to provide an equal right to education and an equal and effective legal protection against

discrimination in violation of articles 4, 5 and 24 of the Convention on the Rights of Persons with Disabilities ('the Convention').

5. The Government holds that the present communication reveals no violation of the Convention.

6. The Government's position regarding the admissibility and the merits will be further elaborated upon below. Before that, the Government will provide some information concerning the pertinent Swedish legislation and the facts.

2. The Law

2.1 The Discrimination Act

7. The prohibition of discrimination in the Discrimination Act (*Diskrimineringslagen*, 2008:567) is applicable to several sectors of society. According to Chapter 2, Section 5 of the Discrimination Act, any natural or legal person conducting activities referred to in the Education Act (*Skollagen*, 2010:800) or other educational activities may not discriminate against any child, pupil or student participating in or applying for the activities.

8. The prohibition of discrimination covers various forms of discrimination, e.g. indirect discrimination and inadequate accessibility (see Chapter 1, Section 4, points 2 and 3). Each form of discrimination includes different criteria that must be considered when assessing whether discrimination exists.

9. Indirect discrimination means that someone is disadvantaged through the application of a provision, criterion or procedure that appears to be neutral, but which may particularly disadvantage people with e.g. a certain disability.

10. However, the prohibition does not apply if the provision, criterion or procedure has a legitimate purpose and the means used are appropriate and necessary to achieve that purpose. To determine whether an individual is indirectly discriminated against, there must be an assessment of three criteria: disadvantage, comparison and weighing up interests. Firstly, it must be established whether there has been a disadvantage. Then, comparisons must be drawn and interests weighed up. 'Disadvantage' means that someone suffers actual harm, discomfort or another disadvantage. A comparison must be made

between the disadvantaged group and a non-disadvantaged group. In the weighing up of interests, there must be a legitimate purpose that is required to be both objective and acceptable. Lastly, the action must be appropriate and necessary. If there are other non-discriminatory action alternatives, disadvantage in principle constitutes indirect discrimination in violation of the law.

11. 'Inadequate accessibility' means that a person with a disability is disadvantaged through failure to take measures for accessibility to enable the person to come into a situation comparable to that of persons without this disability. The measures must be reasonable on the basis of accessibility requirements in law and other statutes and with the consideration to financial and practical conditions, the duration and nature of the relationship or contact between the operator and the individual and other circumstances of relevance.

12. Anyone who considers that they have been discriminated against under the provisions of the Discrimination Act can bring an action in court. Anyone who violates the prohibition of discrimination must pay discrimination compensation to the victim.

2.2 Judicial provisions within the educational sector

2.2.1 General regulations

13. According to Chapter 9, Section 21 of the Compulsory School Ordinance (*Skolförordningen*, 2011:185) national tests in Swedish are conducted for pupils in years 3, 6 and 9 of compulsory school. The national tests in Swedish consist of various subtests and pupils must participate in all of these. However, if there are special reasons for it, the principal may decide that a pupil does not have to participate in a test or part of a test. According to Section 5, third paragraph of the Ordinance with instructions for the National Agency for Education (*Förordningen med instruktion för Statens skolverk*, 2015:1047), the National Agency for Education shall be responsible for and continuously develop national tests and analyse the results of these tests.

14. Section 19 of the National Agency for Education's regulations on handling and conducting national tests (*Skolverkets föreskrifter om hantering och genomförande av nationella prov*, SKOLFS 2013:19) states that pupils should complete a test in the manner specified in the teacher information for the test. Section 17 of the

same regulations states that the conduct of a test may be adapted to a pupil with a disability. It is up to the principal to decide whether – and if so how – the conduct of a test would be adapted.

15. The teacher information for the reading comprehension tests for the academic years 2017/2018 stated that the implementation of the subtest could be adapted to pupils with reading and writing difficulties by e.g. giving the pupil more time to complete the test, carrying out the tests in a smaller group or enlarging the text. It was also stated that the booklet with the texts that belonged to the reading comprehension tests were not recorded for listening purposes, and that the texts were not to be read aloud to the pupil.

16. Chapter 10, Section 20 (a) of the Education Act states that the results of the national tests should be given particular consideration when the grade is determined. The provision does not apply if there are special reasons against it.

17. However, the results from the national tests are not the only basis for grading. According to the curriculum for compulsory school, preschool class and out-of-school centres that was applicable during the years in question, the teacher must use all available information about the pupil's knowledge in relation to the national knowledge requirements and make a comprehensive assessment of this knowledge (*Förordningen om läroplan för grundskolan, förskoleklassen och fritidshemmet*, SKOLFS 2010:37). According to Chapter 10, Sections 19 and 20 of the Education Act, the teacher must make a summary assessment of the pupil's knowledge in relation to the knowledge requirements that apply to the subject and assign the grade that best corresponds to the pupil's knowledge. However, all requirements for the grade E (*pass*) must be met for the pupil to receive a passing grade.

18. According to Chapter 7, Section 4 of the Upper Secondary School Ordinance (*Gymnasieförordningen*, 2010:2039) the final grades obtained in compulsory school can be used when applying for further education. Final grades are obtained when the education in a subject is completed. Since the grades for year 6 are not final grades, they are of no significance when it comes to admission to upper secondary education after compulsory school.

2.2.2 The national tests in more detail

19. The curriculum is the basis for the national tests in compulsory schools. The national tests are compiled on the basis of the syllabuses' aims and central content, and the assessment is based on the knowledge requirements in the syllabuses. In the knowledge requirements for years 3, 6 and 9, the terms 'reading with fluency', 'reading strategies', and 'reading comprehension' are used to describe the reading ability of pupils.

20. In the test for year 3, pupils' basic reading comprehension is tested by the pupils themselves reading familiar and pupil-friendly texts. In addition, they are tested on whether they can read part of a text reasonably fluently, for example. In the test for year 6, pupils' reading comprehension is tested by the pupils themselves reading longer texts.

21. The tests in years 3 and 6 include an analysis of the pupil's knowledge that, in addition to the stated purpose to support grading or the assessment of achieved knowledge requirements, can also provide information concerning future education needs so that the pupil will develop as far as possible. The test results can also form the basis of planning for resource allocation and training needs. The tests can be used together with other tests and diagnoses to determine what is best for the individual pupil. In year 6, the partial test results are weighed together into a test grade. In year 3 the subtests are not weighed together into a single test result. On the other hand, the subtests each provide important knowledge for the teacher about where the pupils are in their reading and writing development at the end of years 3 and 6 respectively.

22. The results of a national test in a subject are part of the assessment basis that is to be taken into account when grades are determined in years 6–9, but it is not the only basis for this assessment. It can also be added that the results of national tests and grades in year 6 do not have any impact on the pupil's opportunity to choose schools or access education.

3. The Facts

23. Most of the facts of relevance to the present communication are stated in the Svea Court of Appeal judgment of 13 March 2020, the District Court judgment of 27 June 2019 and the Chancellor of Justice decision of 28 October 2019. The Committee has been provided with an English version of these

rulings by the complainant (appendix 3 and 5 to the communication) and the Government therefore refers to these rulings concerning the facts of the case.

24. However, at this juncture, the Government finds it appropriate to give an account of some additional information that does not appear in the rulings.

25. As of 29 June 2018, Chapter 9, Section 20 of the Compulsory School Ordinance stipulates that the purpose of the national tests is to support grading, except in grade 3 where the purpose is to support the assessment of achieved knowledge requirements. However, this does not prevent the tests also providing information for the continued teaching of the pupil, or test results forming the basis of planning for resource allocation and additional training needs. For example, Chapter 10, Section 21 of the Education Act states that results of national tests can be a reason to investigate a pupil's need for special support.

4. On the Admissibility

4.1 Not sufficiently substantiated and manifestly ill-founded

26. The State party maintains that the communication is not sufficiently substantiated and is manifestly ill-founded and thus inadmissible pursuant to article 2 (e) of the Optional Protocol. In that regard, the State party refers to its arguments on the merits of the case, as developed below.

4.2 Subject to another procedure of international investigation or settlement, and exhaustion of domestic remedies

27. According to article 2 (c) of the Optional Protocol, the Committee shall consider a communication from an individual inadmissible when the same matter has been or is being examined under another procedure of international investigation or settlement. The Government is not aware of the present matter having been, or being, subject to any other such investigation or settlement. It is assumed, however, that this will be ascertained by the Committee in the course of its examination of the admissibility of the present communication.

28. The Government does not contest the fact that all available domestic remedies have been exhausted in the present matter (article 2 (d) of the Optional Protocol).

5. The Merits

5.1 The main Complaint

29. Should the Committee conclude that the present communication is admissible, the issue before the Committee is whether the refusal to allow the complainant to have the subtest read to her was in violation of articles 5 and 24 of the Convention. Furthermore, the complainant claims that the Government failed to take appropriate measures, in violation of article 4 of the Convention. The Government rejects these claims, a position that will be further elaborated upon below.

30. The Government holds that the complainant has had her right to education met in the same way as other pupils. As for the reading comprehension tests, the teacher information contained different possibilities for making accommodations in the tests. There was also information available on the National Agency for Education website. The accommodations were designed in such a way that the tests in question could still test the knowledge and skills they were intended to test, e.g. through extended test time or splitting the test across several occasions. It was also possible for the principal to decide – if there were special reasons – that a pupil did not have to participate in a national test or in any or some parts of such a test.

31. When the implementation of a test is adapted to a pupil with a disability, this needs to be done in such a way that the test still tests the pupil's knowledge in relation to current knowledge requirements. In the subtests that relate to reading comprehension in the national tests in Swedish for years 3 and 6, the aim is to test e.g. the part of the knowledge requirements that relate to the ability to read fluently. For such a test to be meaningful, it is necessary, in the case of pupils with disabilities, that the adaptations used do not lead to the aims and objectives of the assessment not being achieved. In other words, it is necessary that adaptations be made in such a way that it still remains one and the same test. If the tasks that are designed to test reading ability are read to the pupil (as happens when the complainant uses her aids), the pupil's reading ability is no longer tested. A pupil who has had a reading comprehension test read to them cannot demonstrate reading ability.

32. Furthermore, the complainant has emphasised an accommodation whereby the texts are read aloud is permitted in the subtests that relate to

reading comprehension in the national test in Swedish for year 9. However, the different accommodations available reflect the need to adapt the accommodations in a way that still allows the purpose of the test to be met. While the test in year 6 tests decoding and understanding of the text, the reading comprehension in year 9 tests the pupil's ability to process and analyse the text ([Åk9 - Nationella prov i svenska och svenska som andraspråk – Uppsala universitet](#)). The accommodations available to the complainant are therefore proportional in relation to the purpose of the reading comprehension test.

33. Additionally, the Government holds that the current national rules provide for an environment that promotes inclusion and guarantees equality for students with disabilities in their education, in compliance with the general comments referred to by the complainant.

34. The Committee has previously observed that a law that is applied in a neutral manner may have a discriminatory effect when the particular circumstances of the individuals to whom it is applied are not taken into consideration. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention can be violated when States, without objective and reasonable justification, fail to treat differently persons whose situations are significantly different (*H.M. v. Sweden, Communication No. 3/2011, Views adopted on 19 April 2012*, para. 8.3). Article 2, paragraph 3 of the Convention states that discrimination “includes all forms of discrimination, including denial of reasonable accommodation”. Pursuant to article 2, paragraph 4 of the Convention, reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”. These definitions are consistent with the Discrimination Act (see para. 7–12 above).

35. The Government finds it pertinent to reiterate the national rulings in the complainant's case.

36. In the national proceedings, the Svea Court of Appeal established that the complainant was disadvantaged by the rules not allowing her to use her regular assistance devices and accommodations when she carried out the part of the national test in Swedish that concerned reading comprehension. Thereafter, the

Court of Appeal examined whether the rules had a legitimate purpose and whether the rules and actions were appropriate and necessary to achieve that purpose. Since an accommodation that means that the texts are read aloud to the pupil means that the test no longer tests what the test is intended to test and the result of the test can be used for forward-looking planning for the individual pupil, the Court of Appeal found that the municipality had had a legitimate purpose. In addition, the decision to not allow the complainant to use her devices was appropriate and necessary because the test result could not otherwise have been the basis for an assessment of her reading comprehension, based on the definition of reading comprehension that the National Agency for Education applied.

37. Regarding accessibility, the Court of Appeal stated that the accommodations offered to the complainant put her in a comparable situation with pupils without dyslexia. It would not have been reasonable to demand that the municipality make other accommodations considering that the purpose of the test in that case would not have been achieved.

38. In light of what has been submitted in the preceding paragraphs, the Government holds that considerable weight must be attached to the national rulings. The Court of Appeal addressed the specific circumstances and the complainant's particular disability-related needs in conformity with the Convention. The Government thus notes that the complainant has had her case examined in Sweden and that the application does not reveal any new circumstances in this regard.

39. Under these conditions, the complainant should be considered to have failed to substantiate, for the purpose of admissibility, the claim of failure to provide an equal right to education and an equal and effective legal protection against discrimination in violation of articles 4, 5 and 24 of the Convention. Thus, and in accordance with article 2 (e) of the Optional Protocol and rule 68 (1) of the rules of procedure, the Government requests that the complaint be declared insufficiently substantiated and manifestly ill-founded.

40. In view of the Government's observations above, the Government holds that the complainant has failed to demonstrate that she was discriminated against and considers that the present complaint does not reveal a violation of the Convention.

5.2 Other Claims

41. With regards to the claim that Sweden has failed to “closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations”, in the adoption and implementation of the guidelines of the National Agency for Education, the Government would like to state the following.

42. The National Agency for Education does have regular discussions with representative organisations for persons with disabilities on various topics, including the national tests. Extensive dialogues were also held in connection with the introduction of the new national tests for year 3 in 2010, which led to adjustments in how the reading comprehension test was constructed. The Agency has also participated in conferences held by representative organisations for persons with dyslexia and explained the Agency’s position, how it interprets the concept of reading and how reading skills are tested in the subtests on reading comprehension. There have also been discussions on how the syllabuses on reading comprehension should be constructed. In addition, the National Agency of Education cooperates closely with the National Agency for Special Needs Education and Schools regarding the national tests and the adaption of these tests for pupils with disabilities.

43. Therefore, Sweden dismisses all claims of breaches against the Convention also in this regard.

6. Summary

44. Concerning the **admissibility**, the Government holds that the communication should be declared inadmissible as being insufficiently substantiated and manifestly ill-founded under article 2 (e) of the Optional Protocol.

45. Concerning the **merits**, the Government holds that the present communication reveals no violation of the Convention.

Please accept, Members of the Committee, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'D. Gillgren', with a stylized flourish at the end.

Daniel Gillgren

Deputy Director