

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

Stockholm
23 May 2023

Comments on the State party's response
To Communication No. 98/2022

Paul Lappalainen – Legal Counsel
Stellan Gärde – Legal Counsel

On behalf of Ms. Saga Lööf

With the support of

- Disability Rights Defenders Sweden
- Discrimination Litigation Fund (Talerättsfonden)
- Swedish Dyslexia Association
- Swedish section, International Commission of Jurists

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 23 March 2023 a letter to us, with an attached copy of the State party's observations dated 17 February 2023 on the admissibility and merits of communication No. 98/2022, which we submitted to the Committee on the Rights of Persons with Disabilities for consideration under the Optional Protocol to the Convention on the Rights of Persons with Disabilities, on behalf of Ms. Saga Lööf. We were asked to submit her comments on the observations no later than 23 May 2023.

2. Our response in the following will be in regard to each paragraph of the

State Party's response to Communication No. 98/2022 – assuming a response is needed. The responses to the Swedish Government's various points are in italics.

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').

There are clear violations of the Convention. Especially since the system in place, due to the failure to allow pupils to use their ordinary, daily assistance aids and devices, will necessarily lead to inaccurate and lower test scores that in turn lead to lower grades for pupils with dyslexia. This treatment not only will undisputedly and obviously result in lower grades, but, possibly more importantly, will result long term effects such as lower self-esteem among pupils and lower trust levels concerning the educational system.

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.

The Law

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.

While it is correct that anyone, in principle, can bring an action in court, among other factors, the rules of procedure present a major obstacle for most people. The loser pays rule in practice means that a complainant in a normal case, if they lose, risks being required to pay the legal fees of the responding party. Few people have the means to take a case on their own and risk paying, e.g. SEK 100 – 200 thousand in legal fees to the winning party, in addition to their own legal fees. This is the reason that e.g. Disability Rights Defenders Sweden and the Discrimination Litigation Fund have provided both legal and strategical support to this case. If a complainant has the support of the Swedish Equality Ombudsman (DO) or a union, they enter the case as the named party, and thus take on the cost risks. Nevertheless, the DO and the unions file only a handful of cases annually. Even fewer are filed by NGOs and/or individuals.

Judicial provisions within the educational sector

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.

In all of the court cases trying the issue of the removal of devices as a condition for taking the national exams, it was undisputed that the pupils, including Saga Lööf, were disadvantaged, and it was obvious to those involved that the result of the process would be lower grades related to pupils who have a disability, dyslexia. The Government itself states by law (Chapter 10, Section 20 (a) of the Education Act): "the national tests should be given particular consideration when the grade is determined."

While the Government's statement above seems to allow for disregarding the results of national exams, "if there are special reasons", the statement is contradictory. On the one hand the results SHOULD BE GIVEN PARTICULAR CONSIDERATION when the grade is given. The term SHOULD, in this context, will be interpreted by most teachers as SHALL. However, this can be ignored, in theory, according to the Government, by a teacher by referring to all available information about the pupil's knowledge in making a comprehensive assessment, an assessment that is a key to receiving a passing grade.

Ms. Saga Lööf was notified by her teacher that the result of the national test would affect her grade negatively. The poorer performance by Saga Lööf was a result of her not being allowed to take the test with her ordinary devices.

If the pupil has accepted the idea of taking the tests without her aids, which is presumably what happens in most cases, the teacher should in principle ignore the results of the national tests knowing test does not reflect the pupil's skills concerning reading comprehension and that the pupil performs better with her ordinary devices. If the teacher does this, is the teacher then failing to properly understand and test decoding and comprehension in the classroom, since in the classroom, the assistance devices are not removed? Or are there other means for testing that apply outside the tests? If there are, they ought to be a part of the national tests so that pupils with dyslexia are not disadvantaged/discriminated against through the national exams.

If the pupil has insisted on taking the national tests with the help of her aids, even after being informed that the National Agency for Education has said that this will mean that the results are no longer valid, how is the teacher to determine a grade through other factors? If other factors are used, is the teacher then failing to properly understand and test decoding and comprehension in the classroom or through other means?

If the pupil simply refuses to take the national tests without the help of her aids, which is a possibility, the teacher can in theory use other available information for making a comprehensive assessment concerning the pupil's knowledge. But again, this available information will presumably be based on situations where the pupil is allowed to use their aids, the use of which, according to the National Agency for Education, will undermine the evaluation of decoding and comprehension.

In the court cases trying the matter it was undisputed that Ms. Saga Lööf was disadvantaged and affected negatively, and as far as she was concerned the result of the national test was lower grades due to the lack of her devices. In

another similar case, the courts accepted that lower grades were one of the disadvantages that the pupils were subjected to.

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.

To say that the grades for year 6 have no significance when it comes to admission to upper secondary education after compulsory school is misleading in regard to any pupil's overall education, and presumably, particularly in regard to pupils with a disability such as dyslexia.

While the grades for year 6 may not be of direct significance when it comes to admission to upper secondary education, receiving a poorer grade than was deserved in year 6, for many if not most, will result in lower self-esteem among pupils and lower trust levels concerning the educational system and of course violate the right not to be discriminated at any level during compulsory education. This will presumably also have a significant effect on the grades they achieve in year 9. And the grades in year 9 will definitely play a significant role in admission to upper secondary education.

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.

When the Swedish government asserts that the tests provide benefits in this situation other than grading or assessment, the assertions are illogical and do not take into account facts that are undisputed.

Some years before the national test, Ms. Saga Lööf was diagnosed with the disability dyslexia. This was certified by a speech therapist who determined that the assistance devices, her reasonable accommodations, were necessary for her to have access to and obtain the mandatory knowledge needed during her education. The local municipality was informed and had budgeted for the additional costs related to the accommodations.

In fact, by claiming there is some added benefit, the school and the National Education Agency actually compound the problem and add to the damage that is caused by the removal of the reasonable accommodations.

If you take away the reasonable accommodations that a pupil is known to need, i.e. accommodations used in ordinary tests in school in order to be able to decode texts, how are the poorer results that inevitably are due to the removal of the accommodations during the national test going to provide further accurate and relevant information concerning future education needs?

The local municipality and the school already knew about the reasonable accommodations that Ms. Saga Lööf's future education required. Removal of a pupil's ordinary accommodations that support the ability to decode texts, will necessarily lead to results that the pupil's actual reading comprehension will be affected very negatively. The fact that the national exam tests both the ability to decode text and as well the pupil's actual reading comprehension at the same time cannot be understood as being logical. When the pupil cannot decode texts as pupils with dyslexia cannot, it will of course very negatively affect the actual reading comprehension. For Ms. Saga Lööf this was in itself very damaging, and she felt deeply discriminated.

The same applies to the assertion that the tests can be relevant to planning for resource allocation and training needs – the needs are already known. If other tests and diagnoses may provide indications of other needs related to determining what is best for the individual pupil, then that is something that has to be individual and external to the national tests and require, among other things, assessments by others such as special education teachers and certified speech

therapists. The national exams are only assessed by teachers, teachers who are not experts in the field.

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.

Here again the Swedish Government asserts "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." Formally there is no direct effect. But asserting that the results and grades in year 6 have no impact is misleading and indicates a clear misunderstanding of the long-term negative impacts that can result from deficiencies in the tests and grades. What is the psycho-social effect when a pupil performs poorly on the tests due to the removal of her normal accommodations, the ones she uses daily in school, even for taking exams? What are the effects long term on her self-esteem, and, in practice, on her future grades? What happens to the pupil's trust in their schools and teachers that on the one hand know and accept that the accommodations are reasonable and necessary, but that also remove the accommodations only for national tests, with the knowledge that the tests are to impact the results and their grades? What are the long-term effects on future teachers' perceptions of the pupil, assuming the tests and grades did not accurately reflect the pupil's knowledge levels? It is common knowledge that a new student's prior grades and test results inform and affect at least the initial perceptions and expectations teachers have as to new students. These initial perceptions and expectations often have long lasting effect. It should be noted that the grades in year 9 do affect the pupil's opportunity to choose schools and access education. Is the Swedish Government actually asserting that tests and grades in year 6 have no impact in year 9?

In this case it is obvious and undisputed that Ms. Saga Lööf was disadvantaged and that as far as she was concerned the result of the national test was lower grades related to her disability, dyslexia. This had a significant effect resulting in lower self-esteem for her and lower trust levels concerning the educational system.

The national tests in more detail

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.

Again, the Government asserts that the national tests can be a reason to investigate a pupil's need for special support.

Concerning the situation of a pupil with dyslexia who is provided with reasonable accommodations for daily use in school, due to a known diagnosis, all of the relevant parties already undisputedly know about the pupil's need for special support.

All of the involved parties knew that Saga Lööf's test results would turn out poorly once she was forced to take the tests without her accommodations. For Saga Lööf, her parents, and the teachers involved at the local level, it is incomprehensible how this can be useful at all concerning the need for special support. These same people question why this measure is used and how the conclusion of such an analysis can be anything more than that the pupil needs the reasonable accommodations they are already using? For everyone involved, the Government's reasoning is lacking in logic.

On the Admissibility

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 of the Optional Protocol. In that regard, the State party refers to its arguments on the merits of the case, as developed below.

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

27. According to article(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).

The Merits

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.

Note that nothing is said about individual communications with pupils with dyslexia or their parents. There was no dialogue. There is information on the accommodations that the Government will allow. The Swedish Government through the National Agency for Education has decided that certain accommodations can be made, but these are clearly not individualised accommodations. In years 3 and 6, pupils who need accommodations in the form of extended test times can have that. However, according to the Agency, if the pupil instead listens to the text, the pupil's ability to decode the text is not tested, so this is not allowed.

The Agency does not seem to understand and accept that some people read with their ears, e.g., persons with dyslexia.

The tests given in Sweden to persons who are blind are given in braille (punktskrift). They read with their fingers. Reading with your ears is also a means of decoding and comprehending a text.

To summarize, in giving the tests, there is no dialogue concerning reasonable accommodations for persons who the Government already knows have dyslexia. At best there is one-sided communication concerning accommodations that are not relevant to the individuals involved.

The government fails to understand and accept that there are different ways of reading, some read with their eyes, some read with their ears, and some with their fingers.

The system used today, not allowing ordinary accommodations during the national tests, effectively prevents Ms. Saga Lööf from demonstrating her understanding of texts and her analyses of texts due to the removal of her ordinary accommodations that support the ability to decode the texts. The government illogically fails to focus on the pupil's actual reading comprehension. For Ms. Saga Lööf, this is a violation of her right not to be discriminated due to her disability - it is not an acceptable situation, and it is not understandable.

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.

Again, the Swedish Government chooses to not understand that there are different ways of reading, some read with their eyes, some read with their ears, and some with their fingers.

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.

Here the Government makes a strange leap between the idea that in year 6 the test tests "decoding and understanding of the text" at the same time, while the reading comprehension in year 9 tests only the pupil's ability to process and analyse the text.

This difference leads to the fact that in year 9, the Agency has no problem with the pupil using their ordinary aids/accommodations. This is done at the point where the test and the grade will again definitely have an effect on the pupil's future.

As is pointed out on the Agency's website "The reading comprehension tests in Swedish and Swedish as a second language in grades 3 and 6 test decoding and comprehension of text. In grade 9, it is assumed that the student has developed the ability to decode and understand text and the student can therefore listen to the texts in the sub-examination, as accommodation. But in grades 3 and 6, such an adaptation means that the test no longer tests what the test is intended to test." (My translation)

("Läsförståelseproven i svenska och svenska som andraspråk i årskurs 3 och 6 prövar avkodning och förståelse av text. I årskurs 9 förutsätts att eleven har utvecklat förmågan att avkoda och förstå text och eleven kan därför få lyssna till texterna i delprovet, som anpassning. Men i årskurs 3 och 6 innebär en sådan anpassning att provet inte längre prövar det som provet är avsett att pröva" at <https://www.skolverket.se/undervisning/grundskolan/nationella-prov-i-grundskolan/anpassa-prov-i-grundskolan>).

Ändrad fältkod

*To sum up, the Government assumes that the pupil has somehow developed the ability to decode and understand text since year 6 and has somehow overcome the limitations resulting from dyslexia by year 9, when it is enough to test the pupil's ability to process and analyse the text. Given the Government's thinking about tests in year 9, the Government fails to ask itself a pertinent question – if **only comprehension**, processing and analysing texts is sufficient in year 9, why is it not sufficient in year 6? Or vice versa, if the ability to decode and understand text, in the Government's terms, is so important in year 6, why is it not important in year 9?*

The differing explanations as to the accommodations allowed do not make sense. The Government also fails to explain how it has been determined that the ability

to decode and understand has come about after year 6. Presumably this has not been tested concerning the pupils with dyslexia again, as the whole time they have had a diagnosis and have been allowed to use their ordinary accommodations.

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.

While the general ambition expressed here is of interest, the Government has failed to ask pupils who have dyslexia about their sense of inclusion and perception of equality when the schools they attend remove their ordinary daily reasonable accommodations when the pupils are to take the national tests.

When they are given a choice between taking the exams, without their ordinary accommodations, or taking the exams with their accommodations, while knowing that the tests will not count, does not make for an inclusive environment. On this point Ms Saga Lööf states that this regulation violated her right not to be discriminated due to her disability, that this is not an acceptable situation and that this is for her not understandable. This is also something that has been underlined by e.g. the Swedish Dyslexia Association and the Swedish Dyslexia Foundation in Bilaga 15 and in our response to paragraph 42 below.

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).

The definitions in the Discrimination Act may in principle be consistent with the Convention. The issue in this case is if they are consistent in the manner in which they are applied in practice. For example, in the Sahlin case, the CRPD concluded that the violation of CRPD was, e.g., based on the failure to engage in a dialogue concerning reasonable accommodations with Sahlin. According to our reading of the case, the failure to have such a dialogue meant that the duty

to provide a reasonable accommodation was violated. Similarly, there was no dialogue here. Information about the only available accommodations was provided, but there was no dialogue, in particular concerning the accommodations that Ms Saga Lööf considered to be necessary. At least today the requirement of an individual dialogue has to be interpreted into the Discrimination Act. But due to the decisions in courts in this case it is clear that the courts did not implement the Act.

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.

Regarding indirect discrimination, as stated in the judgment (pp. 2-3 of the English translation) "The Court of Appeal agrees with the district court's assessment that Ms. Saga Lööf has been disadvantaged in this way and that she was caused anxiety, a feeling of inferiority, stress and worse test results, and that the rules that the municipality applied, disadvantaged in particular people with dyslexia." Although the Court of Appeal accepted the disadvantage of worse test results, etc., it did not accept the idea that a lower grade was part of the disadvantage that was proven. This was in spite of the clear statement from Ms Saga Lööf that she was informed that she received a lower grade due to the results of the exam, the fact that the Municipality did not contest this in court, and the fact that 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, unless there are special reasons against it. It is worth noting that in a similar court case in Sweden, the court determined that lower grades due to national exams were part of the disadvantage directed at pupils with dyslexia. In the case, Karabeleska v. Malmö Municipality, the appeal court stated "Malmö Municipality has not questioned Lea Karabeleska's claim that her grade in Swedish was lowered as a result of the results on the national exams", (The appeal court Hovrätten över Skåne och Blekinge, FT 3697-19, 2020-06-17).

This is what Saga Lööf experienced as well. In her case, the municipality remained silent on this matter and did not object to the statement that the test results resulted in a lower grade for Saga Lööf.

In any case, given that Ms. Saga Lööf was disadvantaged, it was then up to the “municipality to show that these rules that were applied had a legitimate purpose and that the rules and actions were appropriate and necessary to achieve that purpose. In this part, the municipality referred to the National Agency for Education’s guidelines for how national examinations are to be conducted with pupils with reading and writing difficulties.”

The burden of proof had shifted to the municipality. An important issue here is the Court’s failure to demand that the municipality prove that the rules had a legitimate purpose of the rules, and that the rules and actions were appropriate and necessary to achieve that purpose. There was only a reference to the guidelines, which asserted a potentially legitimate purpose, but the guidelines did not, on their own, prove anything other than that the guidelines referred to what might be a potentially legitimate purpose. See Bilaga 1 which contains a translation of Education Agency’s information for teachers concerning accommodations and national exams.

The Court of Appeal went on to determine that the existence of the guidelines, and the reasoning they contained, with no analysis, was sufficient to prove that the municipality had a legitimate purpose in refusing to allow Ms. Saga Lööf to use her assistance devices, and that this action was thus also appropriate and necessary. The Court also assumed or accepted that the accommodations allowed for were reasonable – with no analysis. The Court essentially accepted the idea that since the National Education Agency issued the guidelines, they MUST have a legitimate purpose, and they MUST also be appropriate and necessary. Since the STATE in the form of the National Education Agency issued the guidelines, according to the Court, they seemingly had to be true, without any further proof. The Court chose at the same time to disregard any and all evidence that was in conflict with the government guidelines: “The fact that the Swedish Agency for Special Needs Education, the Swedish Dyslexia Association and the Swedish Dyslexia Foundation have a different view of what is meant by the term reading and reading comprehension is irrelevant in this regard.” This meant that the courts did not actually examine if the purpose was legitimate, and did not examine if the legitimate purpose was proportional in relation to the negative effect on Ms. Saga Lööf, nor if the measures applied were appropriate and necessary.

Given the failure of the courts to properly examine these issues, for Ms. Saga Lööf this created an unacceptable lack of legal certainty and resulted in an unfair trial in violation of the Convention on the Rights of Persons with Disabilities.

The National Education Agency was assumed to be correct in the conclusions it presented in the instructions. The conclusions drawn in the Agency's instructions were presented and accepted by the Appeal Court. There was no underlying scientific basis presented to the Court by the municipality, there was no analysis of the evidence presented by the complainant, nor apparently any need for the Court to weigh the evidence presented.

Note that the National Education Agency was not called in to testify as to the contents of the guidelines. Cross-examination was thus not a possibility. As no scientific basis for the National Education Agency's assertions were presented by the municipality, it is hard to know what they were based on. This is especially problematic given the evidence dismissed by the Appeal Court as irrelevant in the form of expert opinions delivered by the Swedish Agency for Special Needs Education, the Swedish Dyslexia Association and the Swedish Dyslexia Foundation and Professor of Clinical Psychology and Specialist in clinical and educational psychology, Idor Svensson.

See Bilaga 13x in English (appendix 13). Here the Swedish Agency for Special Needs Education clarifies that for visually impaired persons, reading is tactile, via the fingertips. For a person with dyslexia, the ears are the channel in and for most it is the eyes that take in the text content via letters on paper. The end result will be the same, the reader recreates a performance content. In other words, on this point the Swedish Agency for Special Needs Education (the experts on special needs) has an expert opinion that is in conflict with the Swedish Agency for Education.

See Bilaga 14x in English (appendix 14). Here Professor of Clinical Psychology and Specialist in clinical and educational psychology, Idor Svensson, underlines the damage done to pupils with dyslexia if they are not allowed access to their assistance devices, particularly noting the need for access to such devices/aids/accommodations so that they are able to participate and perform on the same terms as pupils who do not have dyslexia.

See Bilaga 15 in English (appendix 15). Here the Chairpersons of the Swedish Dyslexia Association and the Swedish Dyslexia Foundation underline their long-standing dispute with the National Education Agency and the Ministry of Education regarding the right of pupils to use their regular aids, reading support, during the national tests in year 3 and year 6 respectively. The background is

scientific as well as being a reaction to the negative effects that the absence of aids has proved to have on pupils with dyslexia. They point out that the Agency's view is not based on the science in the field. They also underline the negative effects that the Agency's rules have on pupils with dyslexia, as described by the pupils' own teachers.

Finally, it is noteworthy that the Appeal Court, without analysis, repeats the idea stated in the guidelines that that the test results, in addition to assessing the pupil's knowledge, also aim to provide information for the continued teaching of the pupil and that the test results can form the basis for planning resource allocation and additional training needs. Without further thought, the Appeal Court states its opinion that this constitutes another legitimate purpose concerning the municipality's application of the National Agency for Education's guidelines. The Appeal Court, on the one hand knows that Ms. Saga Lööf will be disadvantaged through the removal of her reasonable accommodations, thus leading to a worse result on the test, while on the other hand somehow expecting or believing that a worse performance will provide the teacher, the school or the education system a basis for continued teaching of the pupil, as well as providing information regarding future resource allocation and additional training needs. In other words, the Court believes that worse test results will lead to this knowledge.

Again, years before the national test, Ms. Saga Lööf was diagnosed with the disability dyslexia. This was certified by a speech therapist who identified the accommodations that were necessary for her to have access to obtaining the mandatory knowledge during her education. The local municipality was informed and had budgeted for the additional costs related to Saga Lööf's accommodations.

It should also be noted that the Court essentially dismissed the references to international law, including the CRPD.

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.

Again, see e.g. the discussion above and Bilaga 13, Bilaga 14 and Bilaga 15. The Courts conclude, based solely on the opinion asserted by the municipality that the National Education Agency's instructions must be reliable concerning the idea that the accommodations offered put Ms. Saga Lööf in a comparable

situation with pupils without dyslexia, while at the same time ignoring or disregarding all contrary evidence as irrelevant.

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.

Normally, the national rulings should be given considerable weight, at least assuming that the Court of Appeal addressed the specific circumstances and the Ms. Saga Lööf's particular disability-related needs in conformity with the Convention. Unfortunately, this is not what happened.

The Courts failed to examine all of the issues in the case, since the assertions expressed in the guidelines concerning testing and accommodations were accepted as necessarily true. In this case the Courts specifically disregarded as irrelevant the contrary evidence presented on behalf of Ms. Saga Lööf. The Courts also accepted as true that tests leading to worse results for Ms. Saga Lööf, as well as all other similarly situated pupils, contained some sort of future benefit for those same pupils. This meant that the courts did not examine if the legitimate purpose was proportional in relation to the negative effect for Ms. Saga Lööf, nor if it was appropriate and necessary. For Ms. Saga Lööf, this created an unacceptable lack of legal certainty and thus an unfair trial in violation of her convention rights to a fair trial according to CRPD.

Furthermore, there was no dialogue with Ms. Saga Lööf or her parents concerning reasonable accommodations, at least not a dialogue concerning meaningful options. As is apparent from the municipality carrying out the tests, there is no room for dialogue if the pupil wants to take the test and have access to their ordinary assistance devices.

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.

The results of the case, and the case itself point in the opposite direction.

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.

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.

Again, we can refer the committee in particular to Bilaga 15 in English (appendix 15) in which the Chairpersons of the Swedish Dyslexia Association and the Swedish Dyslexia Foundation clearly contradict the assertions by Sweden and the National Agency of Education.

We can also refer the Committee to the statement by the National Agency for Special Needs Education and Schools in Bilaga 13. The two Agencies may cooperate closely, but they apparently have conflicting views on the topic of reading comprehension.

In addition, it is possible that the National Agency for Education regular discussions with various disability organisations. Whether or not such meetings can be characterised as a dialogue, especially on this topic, is lacking in substance. As recently as 23 August 2022 the National Dyslexia Association met with Sweden's Minister of Education, Lina Axelsson Kihlblom, to discuss the issue of reasonable accommodations and fairness in national tests. As part of the meeting, the Association turned over a petition with 4,400 signatures.

There were two demands

- That the Minister of Education ensures that the legislation will be changed so that students with dyslexia have the right to use their aids on the entire national exam. Norway has introduced that change, and we therefore see no reason why it should not also work in Sweden.

- That the Minister of Education appoints a group of independent experts who can quickly implement digitized tests that are adapted for children and young people with dyslexia.

It is pointed out that when pupils are not allowed to use their ordinary reasonable accommodations, they are denied a fair chance to demonstrate their ability to understand the texts. (Dyslexia Association's website at <https://dyslexi.org/forbundet/vi-kraver-rattvisa-nationella-prov/>)

Ms. Saga Lööf's lawsuit and communication, and the support and encouragement of the Dyslexia Association, Disability Rights Defenders Sweden, the Swedish section of International Commission of Jurists and the Discrimination Litigation Trust, are a result of the failure of the Agency to engage in a dialogue with civil society. This was also a reason for the outreach to the Minister of Education. Various forms of outreach have taken place long before this lawsuit was initially filed in 2018.

To sum up, the dialogues referred to here were similar to the dialogue between the school giving the national test and Ms. Saga Lööf and her parents - one-sided.

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

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.

In summary on behalf of Ms Saga Lööf

- 1. The national exam in theory tested Ms Saga Lööf's lack of ability concerning the decoding of texts. Her difficulties decoding texts had been known for years. Nevertheless she was required to take a national exam testing this issue, an exam that did not include any specialists for analysing the results.*

2. The national exam tested Ms Saga Lööf's ability to decode texts at the same time as it tested her ability to comprehend, process and analyse the text. Obviously, the lack of ability to decode texts will strongly negatively affect the comprehension of the text and make that part of her test worthless. This means that the test does not show her real ability to comprehend texts.

3. Due to the fact that the national exam by law should be given particular consideration concerning the grade in the subject, for Ms Saga Lööf this was very damaging and a violation of her rights when the state did not allow her to use her ordinary approved accommodations which prevented her from being able to decode texts and comprehend, process and analyse the text. This also meant that she was not allowed to demonstrate her capability and knowledge. This resulted in her receiving a lower grade.

4. Furthermore, there was no dialogue with Ms. Saga Lööf or her parents concerning reasonable accommodations, at least not a dialogue concerning meaningful options. The support provided by the Dyslexia Association, Disability Rights Defenders Sweden, the Swedish section of International Commission of Jurists and the Discrimination Litigation Trust, are a result of the failure of the Agency to engage in a meaningful dialogue with civil society. This has gone on for years.

Conclusion

Ms Saga Lööf rights not to be discriminated during her education due to her disability dyslexia, are violated and her rights not protected. An acceptable situation has not been reached neither at the municipality or state level nor in her search for protection in the Swedish courts.

Other points to be made on behalf of Ms. Saga Lööf

When this process started Ms. Saga Lööf was 12. Today she is 18. She still carries the wounds inflicted on her and the damages caused by the national exams and the lack of trust that this instilled in regard to her teachers and schools. She is hoping that the CRPD Committee's decision will give her justice, compensation, and support, as well as ensuring that pupils with dyslexia are no longer subjected to this type of discriminatory treatment in the future. Otherwise we refer to the original communication.

Also note the English translations of three key pieces of evidence submitted to the courts on behalf of Ms. Saga Lööf, Bilaga 13x), Bilaga 14x, and Bilaga 15x. The originals are included after the translations. To provide additional information on the Education Agency's information for teachers concerning accommodations

Formaterat: Indrag: Vänster: 1,27 cm, Ingen numrering

tog bort:

tog bort: h

formaterade: Teckensnitt: 14 pt, Kursiv

formaterade: Teckensnitt: Kursiv

and national exams, an English translation has been provided in Bilaga 1x, which also contains the original in Swedish.

Legal Counsel Paul Lappalainen

Legal Counsel Stellan Gärde