Case summary:[[1]](#footnote-1) *D.L. v Sweden*

Case code: CRPD/C/17/D/31/2015

Communication no 31/2015

Date of communication (initial submission): 8 July 2015

Date of adoption of Views: 24 March 2017

Invoked provisions of the Convention: Articles [2](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#2), [3](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#3), [4](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#4), [5 (2) and (3)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [9](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#9), [12](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12), [21](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#21), [24](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#24)

 and [25](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#25)

Provisions of the Optional Protocol: Articles [2(d)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#2)

Keywords: non-discrimination, access to education, facilitated communication, legal capacity, freedom of expression and opinion, access to information, exhaustion of domestic remedies

Decision: Inadmissibility under article [2(d)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#2) of the Optional Protocol

Full decision in HTML format (webpage): [Arabic](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssBJ9E3UTYMV65MVabAyM%2fQIjU%2fjuaI3xqWjPzD9mY9kMG35X%2fgslV71B1llBMvxfID6BTj1%2bC3rOuCyOeN7K2QZi%2bKYdabDSl7s06oyAwZreLcYZ3vxHBJEUCaAEzFmAQ%3d%3d), [Chinese](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssBJ9E3UTYMV65MVabAyM%2fQIjU%2fjuaI3xqWjPzD9mY9kMG35X%2fgslV71B1llBMvxfMNKM4%2fJHCcIsZnN6BY%2bXr5umUqBFqIiGGqWsObXvP82%2b8ZBjmHcUXvYYx8RUjbfPw%3d%3d), [English](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssBJ9E3UTYMV65MVabAyM%2fQIjU%2fjuaI3xqWjPzD9mY9kMG35X%2fgslV71B1llBMvxfLN%2bgRjZ1nWS3mq6Vtedhl0e%2bnukOtOUyhNoh5Dfu1kOBopcYfA8QWQthjNL1C8Wog%3d%3d), [French](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssBJ9E3UTYMV65MVabAyM%2fQIjU%2fjuaI3xqWjPzD9mY9kMG35X%2fgslV71B1llBMvxfMdRrYnl9XNSKj0%2b8ytIJuuLDrHBsIMY33%2fYsnIdu1Zv%2bw%2b5umSl4BnN8PyLo%2f16Dg%3d%3d), [Russian](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssBJ9E3UTYMV65MVabAyM%2fQIjU%2fjuaI3xqWjPzD9mY9kMG35X%2fgslV71B1llBMvxfJOo83YVawUKTLnj5JZ%2bk3lSV%2f2Kuq4ov6o%2bPZaGGL6bbyQ6%2bUwQc%2bz%2bChprLtSy4Q%3d%3d) and [Spanish](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssBJ9E3UTYMV65MVabAyM%2fQIjU%2fjuaI3xqWjPzD9mY9kMG35X%2fgslV71B1llBMvxfM2t%2frvh15HNbk%2bIVHmLT61nPIl3o6cTrPf2faK7brYwiEMqaFRQFK7mBqaXwp%2bfbw%3d%3d)

For full decision in PDF and/or Word format in UN official languages search in <https://documents.un.org>, fill the blank space after ‘Symbol’ with the CRPD case code mentioned above and then click on ‘Details’.

Facts

The author has been diagnosed with “autism with a moderate development disorder”. He is a student in a school for children with special needs and he used the “facilitated communication” method as a tool of communication to interact with staff and other students. On 19 December 2014, the Swedish Schools Inspectorate ordered the municipality of Gothenburg to ensure that facilitated communication was not used in any of the municipality’s operations. The municipality implemented that decision. The author alleged that decision amounts to a violation of his rights to education and to legal capacity, and has an impact on his health and on his freedom of expression. Since the prohibition of that facilitated communication, he has faced barriers to participate in teaching sessions, to express his will to the staff at the school, and his health has been deteriorated by the prescription of one or two pills of Valium, a heavy narcotic drug, per day.

The author argues that decision does not comply with the Convention and the Committee’s general comment No. 1 (2014) on equal recognition before the law. He appealed the Schools Inspectorate’s decision to the Administrative Court in Stockholm. On 21 January 2015, the court decided that the Schools Inspectorate was not subject to appeal according to the Education Act and could be appealed under the Administrative Procedure Act, if the decision is necessary to satisfy the right to judicial proceedings under article 6.1 of the European Convention for the Protection of Human Rights and Fundamental Freedom. However, as the use of facilitated communication was not considered as a civil right referred to article 6.1 of the European Convention for the Protection of Human Rights and Fundamental Freedom, the decision of the Schools Inspectorate could not be appealed. The author appealed the decision of the first instance court. On 13 February 2015, the Administrative Court of Appeal rejected his request for leave to appeal.

The complaint submitted to the Committee

The author claims that State has breached its obligations under Articles [5](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [24](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#24) and [25](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#25), in conjunction with Articles [2](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#2), [3,](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#3) [4](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#4)[, 9](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#9), [12](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12) and [21](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#21) of the CRPD.

Regarding Article 24 as read in conjunction with article 2, 9, 12 and 21, he argues that he has been denied the right to make a choice on an individual basis as to his method of communication, due to an error in the categorization of facilitated communication as a teaching method, which results a disability-based discrimination. Further, he stresses the obligation of States parties to facilitate diverse forms of communication by respecting the choice done by persons with disabilities between different modes of communication in order to respect an inclusive approach.

Regarding 5(2) and (3), he argues that his chosen method of communication would not constitute a “disproportionate or undue burden” for the State party, as before the decision of 19 December 2014, he was using facilitated communication. He added that there is discrimination between persons with disabilities and other persons, as there is no scientific basis to assess the validity of the communication preferences of the latter.

Regarding 25, the author argues that his behaviour due to a lack of communication leads him to take medicine containing potentially addictive substances and put his and others health at risk. Therefore, the author requests the Committee to ensure that State party provides him with an opportunity to communicate through facilitated communication at his school.

State party’s observations on the admissibility and merits

The State submits that submits that the author **failed to exhaust available domestic remedies** as he did not appeal to the Supreme Administrative Court. Therefore, the State considered that communication should be declared inadmissible under article 2(d) of the Optional Protocol and rule 68 of the Committee’s rules of procedure. Further, the State argues there is nothing to suggest that an appeal to the Supreme Administrative Court would have been unreasonably prolonged or unlikely to bring effective relief.

The author’s comments on the State party’s observations

The author rejected the State’s contentions that her communication is inadmissible pursuant to article 2(d) of the OP. The author argues that the proceedings would have been unreasonably prolonged and unlikely to bring to effective relief referring to the practice of the Supreme Administrative Court and the jurisprudence of the Committee.

The author alleged that, according to the website of the Supreme Administrative Court, it would only grant leave in 2 per cent out of the 8,000 applications, and “**in practice, the administrative courts of appeal are the final instance in most cases**”.

Concerning the jurisprudence of the Committee, in particular the communication on *A.F. v. Italy[[2]](#footnote-2)*, the author argues that the two restricted categories for appeal to the Supreme Administrative Court are similar to the four exceptional cases which the Italian Court of Cassation had jurisdiction. Finally, the author notes the hypothetical possibility to exhaust domestic remedies would have extended the grave suffering.

State party’s further observations

The State considered that there is a difference between the Italian and the Sweden legislations. Indeed, the Sweden Supreme Administrative Court is able to re-examine the merits of the case. Therefore, there is still a possibility to appeal a decision not to grant leave to appeal to the Supreme Administrative Court.

Issues and proceedings before the Committee

Consideration of admissibility

First, the Committee ascertained that the same matter has not already been examined by it and has not been or is not being examined under another procedure of international investigation or settlement, as required by [article 2(c) of the OP](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx).

Regarding inadmissibility for non-exhaustion of domestic remedies, the Committee notes the State party’s argument that the complaint should be declared inadmissible, as the author failed to appeal the decision of the Administrative Court of Appeal to the Supreme Administrative Court. Further, it notes the author’s argument that an appeal to the Supreme Administrative Court would have been unlikely to bring effective relief. It also notes that the two categories of cases for which the Supreme Administrative Court may grant leave to appeal, namely: (a) if it is of importance for guidance in the application of the law that the appeal is examined; or (b) if there are extraordinary reasons for such an examination, such as a cause for a judicial review, or if the outcome of the case in the Administrative Court of Appeal was obviously due to a gross oversight or error.

The Committee recalls, “that domestic remedies need not be exhausted if they objectively have no prospect of success[[3]](#footnote-3), but that mere doubts as to the effectiveness of those remedies do not absolve the author from the obligation to exhaust them[[4]](#footnote-4)”.However, the Committee considered the elements provided are not sufficient to conclude that the author’s case could not have fallen within of the two categories of cases to grant a leave to appeal, and to conclude that the proceedings would have been unduly prolonged, notably compared to the delay he had to appeal the decision of the Administrative Court in Stockholm to the Administrative Court of Appeal.

Conclusion

The Committee concluded that the communication is inadmissible under article 2(d) of the Optional Protocol.

1. This summary has been prepared by the International Disability Alliance. For more information on how to lodge individual communications under the Optional Protocol to the CRPD, visit [IDA’s disability rights litigation website.](http://www.internationaldisabilityalliance.org/es/node/105)  [↑](#footnote-ref-1)
2. [CRPD/C/13/D/9/2012](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshZEsQpq2VmlaFuT3ws7ySHCTEgTV5sR1RZCLJXy3JufUrbnEQz50vHPf5j2HvZ8cIBYGiRaLO6kkkDgCI5ErqWF%2fURDQtd%2bBqf%2fTNpcwCC%2f0CHn7KBxty9UCOgXiMm8Clz%2bk%2bHxDfhwZkIuUxM9gCw%3d), *A.F. v. Italy*, Views adopted on 27 March 2015, para. 7.7. [↑](#footnote-ref-2)
3. [CRPD/C/16/D/7/2012](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshZEsQpq2VmlaFuT3ws7ySF0ibEBPqk6YvHXUF0XH5Y9bht%2fHFNoUnI7mHzT9ZNVlI6Q7VMDuFoP9Q6mMnVDhTwAcLKUFW9%2fIJBNclMnXbcbzBjBfaI7Rc%2b4GBn1JSVHGjTwdShqIQrVL8CVzr1q80I%3d), *Noble v. Australia*, Views adopted on 2 September 2016, para. 7.7 and Human Rights Committee communication [No. 941/2000](http://hrlibrary.umn.edu/undocs/941-2000.html), *Young v. Australia*, Views adopted on 18 September 2003, para. 9.4. [↑](#footnote-ref-3)
4. Human Rights Committee communication [No. 674/1995](http://hrlibrary.umn.edu/undocs/html/IDEC6745.htm), *Kaaber v. Iceland*, decision 5 Nov 1996, para. 6.2. [↑](#footnote-ref-4)