Case summary:[[1]](#footnote-1)  *Richard Sahlin v Sweden*

Case code: CRPD/C/23/D/45/2018

Communication no 45/2018

Date of communication (initial submission): 23 January 2018

Date of adoption of Views: 21 August 2020

Invoked provisions of the Convention: [3, 4 (2), 5 (2](https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx)) and [(3)](https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx), and [27 (1) (b), (g](https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx)) and [(i)](https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx)

Provisions of the Optional Protocol: [2 (d) and (e)](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx)

Keywords: Equality and non-discrimination; equal recognition before the law; work and employment

Decision: Violation of Articles [5](https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx) and [27](https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx) of the Convention

Full decision in PDF format: [Arabic](https://undocs.org/ar/CRPD/C/23/D/45/2018), [Chinese](https://undocs.org/zh/CRPD/C/23/D/45/2018), [English](https://undocs.org/CRPD/C/23/D/45/2018), [French](https://undocs.org/fr/CRPD/C/23/D/45/2018), [Russian](https://undocs.org/ru/CRPD/C/23/D/45/2018) and [Spanish](https://undocs.org/es/CRPD/C/23/D/45/2018)

**Facts**

The author is Richard Sahlin, a national of Sweden, born on 23 June 1967. The author is deaf. The author obtained a doctorate in public law in 2004. In spring 2015, Södertörn University, a public institution, advertised a permanent position as a lecturer (associate professor) in public law. The author had previously been temporarily hired at Södertörn University, whose authorities knew of his needs for sign language interpretation. He was considered to be the most qualified candidate for the position by the recruiters and was given the opportunity to give a trial lecture as a step in the recruitment process. Despite his qualifications, the university cancelled the recruitment process on 17 May 2016, claiming that it would be too expensive to finance sign language interpretation as a means of guaranteeing the author’s right to employment on an equal basis with others. Alternative forms of work adaptations or reasonable accommodation, including tasks that would not require interpretation were not considered during the recruitment process.

The author filed a complaint to the Discrimination Ombudsman, which brought a civil suit on his behalf before the Swedish Labour Court, claiming that the decision to cancel the position was discriminatory, in violation of chapter 1, section 4(3), and chapter 2, section 1, of the Discrimination Act. The Discrimination Ombudsman claimed that the author was entitled to 100,000 Swedish krona ($10,695) compensation for the discrimination he had suffered.

On 11 October 2017, the Court found that the university had not discriminated against the author, considering that the appointment had been cancelled because it was too expensive for the university to finance the required sign language interpretation. It found that it was not reasonable to demand the university to finance interpreting expenses despite the size of its staff budget.

**The complaint** **submitted to the Committee**

Regarding articles 5 (2) and (3) and 27 (1) (b), (g) and (i), the author alleges that the State has failed to provide him with an equal right to work and reasonable accommodation in employment in contravention of its obligations. He claims that the prevention of rights violation is the obligation of both the employer and the State. In his case, it would not have been disproportionate or unreasonable to require the State and employer to provide the reasonable accommodation that was necessary to enable him to carry out the functions in the position for which he had applied.

Regarding article 9, paragraph 1(a), workplaces have to be accessible, therefore, a refusal to adapt the workplace constitutes a prohibited act of disability-based discrimination.

Regarding article 4 (2), both the State and Södertörn University had a budget surplus for the 2016 fiscal year. Since the State has not shown that surplus covered other pressing needs, it was not unreasonable to require to cover sign interpretation. The author claims that the employer failed to provide alternative reasonable accommodation not requiring sign language interpretation.

Regarding article 8, he claims that the State failed to consider the benefits of employing him as a senior lecturer. As he has an impairment with expertise on disability rights, he could have provided a valuable contribution to the University, which would be inclusive of underrepresented groups.

Regarding articles 4 (2), 5, 9 and 27, in conjunction with article 3, by cancelling the recruitment procedure, the State violated the author’s right to equal opportunity for public employment.

State party’s observations on admissibility and the merits

The State maintains that the communication is manifestly ill-founded and that the authors failed to exhaust domestic remedies, rendering the communication inadmissible pursuant to article 2(d) and (e) of the Optional Protocol.

Regarding the exhaustion of available domestic remedies, the State notes that the author appealed the Administrative Court’s decision to the Administrative Court of Appeal in Stockholm, which decided not to grant leave to appeal. The Administrative Court of Appeal’s decision could have been appealed to the Supreme Administrative Court and included a reference to an annex with information on how to appeal. The author did not do so, despite the fact that such an appeal could have led to a finding that the author was entitled to appeal the decision of the university and, ultimately, to an examination of his claim that the university’s decision should be revoked.

Regarding alternative reasonable accommodation, the Court’s judgment clearly shows that the author did not raise any issue relating to alternative adjustments before national jurisdictions. The dispute before the Court exclusively concerned the costs and reasonableness of deaf interpretation. The author did not raise any issue regarding a lack of inquiry into accommodation measures before the Labour Court, which was thus precluded from assessing the issue.

Regarding financial support, the State submits that, in the case of the author, considerable funding measures were available to facilitate the author’s employment in the form of support through everyday interpretation and, more importantly, an annual wage subsidy. The State submits that even though the above-mentioned State-funded measures were the only ones involved in the Labour Court’s judgment, this does not necessarily mean that other funding measures were not available. Since the Equality Ombudsman did not question whether the costs of interpretation should be calculated with consideration of the support in the form of wage subsidy and everyday interpretation alone, and neither the extent of those measures, the Court was precluded from considering the possibility of other funding measures.

Regarding the modification of working responsibilities, the State notes the author’s claim that his rights have been violated since the university failed to inquire into adjustment measures other than interpretation. The State refers to the university’s reply to the Equality Ombudsman, where it concluded that the proposed measures would disproportionately change the advertised post.

The State thus considers the communication reveals no violation of the Convention.

**Author’s comments on the State party’s observations**

Regarding the exhaustion of available domestic remedies, the author claims that he did not appeal the Administrative Court of Appeal’s decision to the Supreme Administrative Court. He submits, however, that such appeal was not necessary to exhaust relevant domestic remedies. He submits that the Equality Ombudsman advised him not to appeal, in compliance with chapter 6, section 9, of the Discrimination Act.

Regarding alternative reasonable accommodation, the author claims, that he could not raise concerns about alternative accommodations, as the employment procedure was clearly focused on the need for sign language interpretation as the only appropriate and reasonable accommodation, and that accommodation was later denied by the employer. The author considers that the university should have continued the negotiations with him.

Regarding financial support, as argued by the State, considerable funding can be made available for accommodation such as everyday interpretation and wage subsidy. However, the author highlights that such funding cannot be claimed before courts, as it is not a legally enforceable act. The author unsuccessfully requested the university to check with external donors about the possibility of covering the costs required by the reasonable accommodation measures.

Regarding the modification of working responsibilities, the author submits that the State did not describe all the work duties for the advertised position as lecturer. First, the lecturer enjoys research opportunities after two years of employment. Second, all universities are legally obliged to offer a career programme for lecturers with an opportunity to apply for a position as a professor that requires less teaching as an ultimate goal. Finally, not all aspects of the work require interpretation. Some allow the lecturer to use a computer as an auxiliary aid.

**State party’s additional observations**

Regarding the exhaustion of available domestic remedies, the State claims that the author should have exhausted all judicial and administrative avenues that offered him a reasonable prospect of redress. As for the author’s argument that the Equality Ombudsman encouraged him not to appeal, the State party argues that the author did not provide any evidence in that regard.

Regarding alternative reasonable accommodation, the State claims that the Court is not permitted to elaborate on or supplement any shortcomings in the citing of legal facts. The author did not raise any issue relating to inquiring into accommodation measures before the Labour Court, which was then precluded from assessing whether the university should have made such inquiries.

Regarding university’s net surplus, the State notes that funds earmarked for certain purposes cannot be used for others, and that a university cannot be equated with a private company where funds can be redistributed.

Regarding the modification of working responsibilities, the State notes that the author’s claim about research opportunities and a career programme are incorrect. First, the job advertisement stated that the position could include research, provided that the necessary funds were obtained. Second, Swedish universities are not obligated to offer lecturers career programmes. Determining future requirements of the position, including interpretation needs, would therefore essentially have to be based on speculation. Regarding the author’s submission that not all aspects of the employment would require sign language interpretation, the State party submits that this argument was common ground between the parties to the Labour Court dispute, who agreed on the extent of sign language interpretation required by the position.

**Committee’s consideration of admissibility and the merits**

**Consideration of admissibility**

Regarding the exhaustion of available domestic remedies, as concluded by the Administrative Court, the author’s claim relates to employment matters, excluded from the possibility of appeal under section 22a of the Administrative Procedure Act. As reported to the author by the Equality Ombudsman – a public authority specialized in the subject of discrimination – an appeal to the Supreme Administrative Court was therefore unlikely to bring effective relief. Therefore, the author exhausted all domestic remedies.

Regarding alternative reasonable accommodation and the State’s argument that the related claim should be inadmissible as not raised in domestic proceedings, the Committee notes the author’s agreement with the position of the State that the proceedings in the Labour Court were not focused primarily on a lack of inquiry on alternatives. However, it also notes that the issue of a lack of inquiry was clearly brought to the attention of the Ombudsman, and that the subject matter of the author’s complaint was obviously raising the issue of reasonable accommodation, which in itself implies an analysis of whether alternative measures are contemplated by the employer.

Regarding the State’s argument that domestic proceedings maintained a high standard not revealing a denial of justice and thus the communication should be declared inadmissible, the Committee notes the author’s argument that the recruitment process of the position to which he applied was cancelled because of the cost of the sign language interpretation that would have been required for him to perform the functions of the position to which he had applied; that the alternative forms of work adaptations or reasonable accommodation other than sign language interpretation that he suggested, such as online teaching that is used by more and more universities, were not taken into account at any stage of the recruitment process; and that the Labour Court did not properly assess the accommodations suggested by the author.

Therefore, the Committee claims that the author has sufficiently substantiated his complaint for purposes of admissibility and proceeds with its examination of the merits.

**Consideration of the merits**

Regarding articles 5 and 27, the Committee notes the author’s argument that his rights have been violated because the university and the Labour Court made an erroneous proportionality assessment of the costs of sign language interpretation, and failed to inquire into other possible accommodation measures.

The Committee notes that the possibility of holding a dialogue for the purpose of evaluating and building the author’s capacities as a permanent lecturer was ruled out because the recruitment process was cancelled before any consultation and analysis of alternative measures of adjustment could be carried out. This absence of dialogue impacted the judicial proceedings throughout which the authorities focused their reasoning on the cost of sign language interpretation, without considering other possible adjustment measures. Further, the Committee recalls that the process of seeking reasonable accommodation should be cooperative and interactive and aim to strike the best possible balance between the needs of the employee and the employer. In determining which reasonable accommodation measures to adopt, the State party must ensure that the public authorities identify the effective adjustments that can be made to enable the employee to carry out his or her key duties.

Regarding financial support, the Committee notes that according to the State party, even though the above-mentioned State-funded measures were the only ones involved in the Labour Court’s judgment, that did not necessarily mean that other funding measures were not available, but that the failure of the Equality Ombudsman to raise this issue prevented the Court from considering the possibility of such funding measures. Through such a statement, the State recognizes the responsibility of public authorities to properly inform the parties involved in the judicial proceedings as to funding that could have been made available to support the author’s employment.

The Committee finally notes that according to the author, State authorities did not take into account the positive impact that hiring a deaf lecturer could have had on the attitude of students and co-workers to promote diversity and reflect the composition of society, but also for future candidates with hearing impairments. The Committee welcomes that the Labour Court mentioned the benefit that the employment of the author could have had for other employees with disabilities.

**Recommendations**

The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under articles 5 and 27 of the Convention. The Committee therefore makes the following recommendations to the State party:

Regarding the author,

(i) to provide him with an effective remedy, including reimbursement of any legal costs incurred by him, together with compensation.

(ii) to publish these views in accessible formats making them available to all sectors of society.

In general,

(i) to ensure that employment of persons with disability is promoted in practice, and that the criteria applied to assess the reasonableness and proportionality of the accommodation measures is in line with the Convention and these recommendations, and that a dialogue with the person with disability is systematically carried out to implement his or her rights on an equal basis with others;

(ii) to ensure that appropriate and regular training is provided to State agents involved in recruitment process and to legal servants, especially those of the Labour Court, on the Convention and its Optional Protocol, in particular on articles 9 and 27.

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)