



# Convention on the Rights of Persons with Disabilities

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## Committee on the Rights of Persons with Disabilities

### Interim follow-up report under article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities, adopted by the Committee on the Rights of Persons with Disabilities at its tenth session (2–13 September 2013)

#### A. Introduction

1. The present report is submitted in compliance with article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities and rule 75, paragraph 7, of the rules of procedures of the Committee on the Rights of Persons with Disabilities. Article 5 of the Optional Protocol reads as follows: “The Committee shall hold closed meetings when examining communications under the present Protocol. After examining a communication, the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.” Rule 75, paragraph 7, reads as follows: “The Special Rapporteur or working group shall regularly report to the Committee on follow-up activities.”

2. The present report sets out the information received by the Special Rapporteur for follow-up to Views of the Committee between the ninth and tenth sessions pursuant to the Committee’s rules of procedure, and the analyses and decisions adopted by the Committee during its tenth session. The assessment criteria were as follows:

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#### *Assessment criteria*

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##### **Reply/action satisfactory**

A Reply largely satisfactory

##### **Reply/action partially satisfactory**

B1 Substantive action taken, but additional information required

B2 Initial action taken, but additional information required

##### **Reply/action not satisfactory**

C1 Reply received but actions taken do not implement the Views/recommendations

C2 Reply received but not relevant to the Views/recommendations

**No cooperation with the Committee**

D1 No reply to one or more of the recommendations or part of a recommendation

D2 No reply received after reminder(s)

**The measures taken are contrary to the recommendations of the Committee**

E The reply indicates that the measures taken go against the Views/recommendations of the Committee

**B. Communications**

**Communication No. 3/2011, *H.M. v. Sweden***

3. The Committee's Views were adopted on 19 April 2012 and the State party's follow-up response on the actions taken in the light of the Views and recommendations of the Committee was received on 26 October 2012. The comments from the author's counsel on the State party's follow-up response were received on 1 February 2013.

<i>H.M. v. Sweden</i>	No. 3/2011
<b>Views</b>	19 April 2012
<b>First reply from the State party</b>	Due 19 April 2013; received 26 October 2012
<b>Comments of author's counsel</b>	1 February 2013

**Paragraph 9.1**

The State party is under an obligation to remedy the violation of the author's rights under the Convention, including by reconsidering her application for a building permit for a hydrotherapy pool, taking into account the Committee's Views. The State party should also provide adequate compensation to the author for the costs incurred in filing this communication.

**Summary of State party's reply**

In 2011, the Government adopted a national strategy for disability policy which aims at implementing the Convention. Sweden submitted its initial report to the Committee in 2011.

Under the Swedish Constitution, local authorities are responsible for local and regional matters of public interest on the principle of local self-government (chap. 14, art. 2, Instrument of Government). Swedish courts are independent of the Riksdag (the Swedish parliament), the Government and other authorities. Neither the Riksdag nor a public authority (and thus not the Government) may determine how a court of law shall adjudicate an individual case. The Government is thus prevented from affecting decision-making in individual planning permission cases.

H.M. can submit a new request for a building permit or apply for a planning notification from the municipality to try to change the detailed development plan that would be examined under the Planning and Building Act (2010:900) of May 2011. The principle of proportionality requires that a fair balance is upheld between the benefits of a decision on an issue and the

consequences the decision may have for opposing private interests.

According to the Act on Housing Adaptation Grants, it is possible to receive a grant for costly measures connected with a purchase or change of housing, provided that there are special grounds. Special grounds may include a dwelling that is close to a care institution to which the person with disabilities should have access, or cases in which the person with disabilities has been unable to find suitable alternative accommodation.

With regard to the recommendation of the Committee to the Government to provide adequate compensation to the author for the costs incurred in filing this communication, the State party is not under any international obligation to compensate the author for costs incurred under the complaints procedure.

#### **Summary of the comments of the author's counsel**

The reference to the national strategy for persons with disabilities and the Government's comment that it cannot intervene with any judicial body due to Swedish constitutional law leaves H.M. without support for the implementation of the Committee's decision. The Government of Sweden must take ultimate responsibility for change and intervene when a person with disabilities demonstrably cannot get his/her statutory rights met.

The Government asks H.M. to make a new planning application, while the chairman of the local committee for planning permission has clarified that this body is not in a position to approve the planning permission case on grounds of disability. It is not in a position to take an objective decision to balance the interests of the person with disabilities against the right to obtain planning permission where a detailed plan already exists.

As to the proposal to modify the detailed plan, the locally responsible manager has personally explained the difficulties in justifying changes to a detailed plan on the basis of the needs of the person with disabilities. Preparation of and amendment to a detailed plan is also an extensive and very lengthy process with several parties involved and it is very uncertain whether the amendment process would be settled in favour of H.M.'s need.

The Government and national authorities have not taken responsibility for the case, thereby discriminating against the person with disabilities.

H.M. established her residence several years ago with a municipal grant to modify the dwelling. Since then, her health has seriously deteriorated and she can only be attended and rehabilitated at home to avoid further injury. The Government states that H.M. can apply for a new housing grant in the event that she moves for "special reasons", such as proximity to a health-care institution. However, a new adaption of the dwelling would not benefit, unless it is accompanied with the authorization to build the swimming pool required for H.M.'s treatment. If nothing is done, H.M. will have to become resident in a specialized care institution. She should not need to leave her home because of the authorities' inability to take measures for the disabled.

The costs incurred throughout the procedures carried out amounted to 35,000 Swedish krona (4,035 euros approximately). The Government's refusal to provide adequate compensation to the author for these costs further violates H.M.'s rights, as she needs to meet the costs of her medical treatments and to adapt her house to her needs. Additional costs would also have to be faced in case of a new application for planning permission, while the costs of such permission have considerably risen since H.M.'s first application. The person with disabilities should not have to suffer financially because of the authorities' unreasonable decisions.

The Government has not made efforts to deal with the matter promptly, although speedy handling was requested due to the case's distinctive nature and needs. The national strategy for persons with disabilities unfortunately does not reach the persons with disabilities in need of support and help. The State party continues to violate the Convention.

#### **Committee's evaluation**

**[C1]: The actions taken have not addressed the situation under consideration.**

The Committee will request a meeting with the Permanent Mission of the State party to clarify its position on the Views and highlight that the reply provided is not satisfactory. In preparation for that meeting, a letter will be sent to the State party, renewing the request for information on steps taken to implement the Views.

#### **Paragraph 9.2**

The State party is under an obligation to take steps to prevent similar violations in the future, including by ensuring that its legislation and the manner in which it is applied by domestic courts is consistent with the State party's obligations to ensure that legislation does not have the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise of any right for persons with disabilities on an equal basis with others.

#### **Summary of State party's reply**

A starting point in the examination of complaints under the Optional Protocol to the Convention should be that the burden of proof of an alleged violation, at least initially, must rest with the complainant. The Committee's Views do not deal with this issue as raised by the State party in its comments.

The complainant has not been able to provide evidence of the factual circumstances on which she bases her claim. She has not shown that her statutory right to medical care and rehabilitation has not been met by the county council.

Swedish legislation is consistent with the articles of the Convention invoked by the complainant. The compatibility of Swedish legislation with the articles of the Convention cannot be assessed only with regard to the Planning and Building Act, which has a purpose other than to uphold the right to health of persons with disabilities. Other more relevant acts must be taken into account, such as the Health and Medical Services Act. Swedish legislation, as a whole, is compatible with the articles invoked by the complainant. The Committee's Views do not give occasion to change Swedish legislation.

The Swedish Constitution prevents the Government from influencing decision-making in individual planning permission cases.

#### **Summary of the comments of the author's counsel**

No comment on this point.

#### **Committee's evaluation**

**[C1]: The information provided does not address the situation under consideration.**

The Committee reminds the State party that the obligations of the Convention in general are binding on every State party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level — national, regional or local — may engage the responsibility of the State party. The executive branch, which generally represents the State party internationally, including before the Committee,

may not argue that an action incompatible with the provisions of the Convention was carried out by another branch of government as a means of relieving the State party from responsibility for the action and consequent incompatibility. This understanding flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties, according to which a State party “may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.

With regard to the State party’s assessment of the compliance of the Planning and Building Act with the Convention, the Committee reminds the State party that all legislation has to be implemented in such a way as to be compatible with international human rights standards, taking all the necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden on the State party, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

The Committee requests the State party to provide additional information on: (a) the measures taken to ensure the implementation of its Views and recommendation in the case *H.M. v. Sweden*; and (b) the possibility, within the national and local planning legislation, to grant an exceptional building permit in compliance with the principle of reasonable accommodation.

#### **Paragraph 10**

In accordance with article 5 of the Optional Protocol and rule 75 of the Committee’s rules of procedure, the State party shall submit to the Committee, within six months, a written response, including any information on any action taken in the light of the Views and recommendations of the Committee. The State party is also requested to publish the Committee’s Views, to have them translated into the official language of the State party, and circulate them widely, in accessible formats, in order to reach all sectors of the population.

#### **Summary of State party’s reply**

The Committee’s recommendations have been translated into Swedish and sent to the complainant’s representative and to representatives of the disability organizations. The Government verbally informed on the Views during a consultation meeting on the Convention on 31 August 2012. The Committee’s Views (original and translated) have been available on the Government’s human rights website since 10 September 2012 and will shortly be available as accessible PDFs and Microsoft Word documents.

The translated recommendations will also be made available in easy Swedish. A summary of the Committee’s Views in its entirety is currently being produced by the Ministry for Foreign Affairs and will also be published on the Government’s human rights website in accessible formats. Upon request, the documents may also be translated into other accessible formats.

#### **Summary of the comments of the author’s counsel**

No comment on this point.

#### **Committee’s evaluation**

**[B2]: Initial action taken, but additional action and related information are required** to ensure the full implementation of the measures announced by the State party.

**Follow-up recommendation**

Follow-up dialogue ongoing, with findings of C1/C1/B2 (unsatisfactory and initial measures taken).

A letter will be sent to the State party, reflecting the analysis of the Committee and inviting the Permanent Mission to a meeting with the Special Rapporteur for follow-up to Views, the Special Rapporteur on new communications and the Chair of the Committee.

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