



# Convention on the Rights of Persons with Disabilities

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## Committee on the Rights of Persons with Disabilities

### Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 45/2018\*, \*\*

<i>Communication submitted by:</i>	Richard Sahlin (represented by the Swedish Association of the Deaf, the Swedish Youth Association of the Deaf and the non-governmental organization Med Lagen som Verktyg)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Sweden
<i>Date of communication:</i>	23 January 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 70 of the Committee's rules of procedure, transmitted to the State party on 27 February 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	21 August 2020
<i>Subject matter:</i>	Recruitment process and appropriate modification and adjustments to the workplace
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Equality and non-discrimination; equal recognition before the law; work and employment; facts and evidence
<i>Articles of the Convention:</i>	3, 4 (2), 5 (2) and (3), and 27 (1) (b), (g) and (i)
<i>Articles of the Optional Protocol:</i>	2 (d) and (e)

1. The author of the communication is Richard Sahlin, a national of Sweden, born on 23 June 1967. The author is deaf. He claims to be a victim of violations of his rights under articles 3, 4 (2), 5 (2) and (3), and 27 (1) (b), (g) and (i) of the Convention. The Optional Protocol entered into force for the State party on 14 January 2009. The author is

\* Adopted by the Committee at its twenty-third session (17 August–4 September 2020).

\*\* The following members of the Committee participated in the examination of the communication: Ahmad Alsaif, Martin Mwesigwa Babu, Danlami Umaru Basharu, Monthian Buntan, Imed Eddine Chaker, Gertrude Oforiwa Fefoame, Mara Cristina Gabrielli, Amalia Eva Gamio Ríos, Ishikawa Jun, Samuel Njuguna Kabue, Rosemary Kayess, Kim Mi Yeon, László Gábor Lovász, Robert George Martin, Dmitry Rebrov, Jonas Ruskus, Markus Schefer and Risnawati Utami.



represented by the Swedish Association of the Deaf, the Swedish Youth Association of the Deaf and the non-governmental organization Med Lagen som Verktyg (“With the law as a tool”).

## **A. Summary of the information and arguments submitted by the parties**

### **The facts as submitted by the author**

2.1 The author obtained a doctorate in public law in 2004. Since then, he has been working on short-term contracts at different universities. He currently works as a lecturer at Umeå University. He teaches in Swedish Sign Language, which is interpreted into spoken Swedish.

2.2 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 expenses as a means of guaranteeing the author’s right to employment on an equal basis with others. The cost of the requested interpretation was assessed at 520,000 Swedish krona (\$55,341) per year. The university has a staff budget that exceeds half a billion Swedish krona per year, and in 2016 it had a budget surplus of 187 million Swedish krona (\$20 million). Further inquiry as to alternative forms of work adaptations or reasonable accommodation, including adapted work tasks that would not require interpretation, such as supervising and examining students and web-based instruction, were not contemplated by the university at any stage of the recruitment process.

2.3 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 (2008:567). On that basis, the Discrimination Ombudsman claimed that the author was entitled to 100,000 Swedish krona (\$10,695) compensation for the discrimination he had suffered.

2.4 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 amounting to 520,000 Swedish krona per year despite the size of its staff budget. The Court is the final instance in cases tried under the Labour Disputes (Judicial Procedure) Act.

### **The complaint**

3.1 The author alleges that the State party has failed to provide him with an equal right to work and reasonable accommodation in employment in contravention of its obligations under articles 5 (2) and (3) and 27 (1) (b), (g) and (i) of the Convention. He considers that the violation could have been prevented if the State party had not placed the duty to provide reasonable accommodation solely on the employer. The State party should have provided specific funding from its budget, or should have ensured that State universities and public authorities had the financial preconditions and clear obligation to provide reasonable accommodation for the employment of persons with disabilities. In his case, it would not have been disproportionate or unreasonable to require the State party to provide the reasonable accommodation that was necessary to enable him to carry out the functions corresponding to the position for which he had applied.

3.2 The author further claims that the State party has exceeded its margin of appreciation as it has not respected the standards of the Convention in its interpretation of national legislation. The judgment of the Labour Court does not fulfil the requirements of the Committee’s general comment No. 2 (2014), according to which persons with

disabilities cannot effectively enjoy their work and employment rights, as described in article 27 of the Convention, if the workplace itself is not accessible. Workplaces therefore have to be accessible, as is explicitly indicated in article 9, paragraph 1 (a), of the Convention. A refusal to adapt the workplace constitutes a prohibited act of disability-based discrimination.

3.3 The author also claims that the State party has failed to protect his rights under article 4 (2) of the Convention: both the State party and Södertörn University had a budget surplus for the 2016 fiscal year,<sup>1</sup> and it was therefore not unreasonable to require them to cover the expenses for sign interpretation. The margin of appreciation does not extend to behaviour that neglects individual rights, as the State has not shown that the surplus was used for another more pressing social need regarding the obligations under the Convention.

3.4 The author further claims that the university failed to assess whether other measures of reasonable accommodation could have been adopted to enable him to perform the functions corresponding to the position for which he had applied. After deciding that sign language interpretation would be too costly, Södertörn University did not analyse whether it would have been possible for the author to perform alternative work assignments that would not have required sign language interpretation, such as supervising students, examining student performances or administering student matters, including through online chatting. If the work had been adapted in that way, the total costs would have been reduced significantly compared with the amounts presented by the university. Such measures cost approximately 100,000 Swedish krona annually (\$10,695). The State party failed to provide sufficient evidence or analysis to support the conclusion that all accommodations, including alternative work duties, would constitute an undue burden.

3.5 The author also considers that while assessing the reasonableness of the requested accommodation, the State party failed to consider the benefits of employing the author as a senior lecturer. As the author has a disability and possesses knowledge of disability rights, he could have provided a valuable contribution to Södertörn University, showing that it is open and inclusive for all kinds of underrepresented groups. Having a senior lecturer with a disability would enable students to interact with persons with disabilities in a professional way. Not to have done so amounts to a violation of the State party's obligation to raise awareness of people with disabilities, in violation of article 8 of the Convention.

3.6 The author finally submits that the violations referred to must all be read in the light of the general principles enshrined in article 3 of the Convention, in particular subparagraphs (b) on non-discrimination; (c) on full and effective participation and inclusion in society; (e) on equality of opportunity; and (f) on accessibility. By cancelling the recruitment procedure, the State party did not respect the author's right to equal opportunity for public employment, in violation of articles 4 (2), 5, 9 and 27, read alone and in conjunction with article 3, of the Convention.

#### **State party's observations on admissibility and the merits**

4.1 On 4 July 2018, the State party submitted its observations on admissibility and the merits, considering that the communication should be held inadmissible for lack of substantiation, and for non-exhaustion of domestic remedies.

4.2 The State party makes reference to the national legislation related to equality and non-discrimination. According to chapter 1, article 2, of the Constitution of Sweden, public institutions shall promote the opportunity for all to attain participation and equality in society, and public institutions shall combat discrimination of persons on grounds of, inter alia, disability. Domestic provisions of relevance to the present case are found in the Discrimination Act. Under chapter 1, section 4, of the Act, inadequate accessibility is considered as a form of discrimination. This provision entered into force in January 2015. It is aimed, inter alia, at aligning the Discrimination Act with the Convention.

4.3 A first necessary precondition of the prohibition of discrimination is that an individual has been "disadvantaged". This means that the person e.g., a job applicant is

<sup>1</sup> [www.regeringen.se/sveriges-regering/finansdepartementet/statens-budget/statens-budget-i-siffror/](http://www.regeringen.se/sveriges-regering/finansdepartementet/statens-budget/statens-budget-i-siffror/).

placed on a less favourable footing or misses out, inter alia, on an improvement, benefit or service measure. The decisive factor is that a negative effect occurs. Another criterion is the failure to take accessibility-enhancing measures. It may also mean that the measures taken are inadequate. The “comparable situation” criterion is also crucial. It means that a comparison must be made between the situation for a person with a disability and the situation for others without such disability. In working life, the comparison primarily concerns the ability of a person with a disability to do a given job, compared with other job applicants or employees who do not have the same disability. The employer is not allowed to take account of restrictions to the ability to do the job that may be caused by the disability if the effects of the disability can be eliminated or reduced by taking reasonable measures.

4.4 According to the State party, a measure can only be considered reasonable if the operator is able to bear its cost. It should be possible to finance it within the framework of regular public or private activities. Appropriate measures may include the procurement of occupational assistive devices or adjustments to the workplace. They may also involve changing working hours, tasks or the method of work organization.

4.5 The Equality Ombudsman is responsible for monitoring compliance with the Discrimination Act. It can also take legal action on behalf of a person who feels that he or she is a victim of discrimination. This procedure has no cost for the individual. The Ombudsman must also ensure that discrimination linked to disability does not occur in any area of society, and that individuals enjoy equal rights and opportunities regardless of disability.

4.6 Chapter 6 of the Discrimination Act contains provisions on the procedural rules to be applied in disputes under the Act. Disputes are dealt with under the Labour Disputes (Judicial Procedure) Act, and these cases are normally brought before the Labour Court either directly as the first and only instance – as in the case in question – or before the District Court as the first instance with the possibility to appeal to the Labour Court.

4.7 Swedish protection against discrimination is also based on various European Union Council directives on non-discrimination, including Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. The Directive was implemented in Swedish law through, inter alia, the Discrimination Act. Its article 5 states that employers are to take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. Recital 21 states that to determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organization or undertaking and the possibility of obtaining public funding or any other assistance.

4.8 In the present case, the Labour Court calculated the costs of interpretation, including a wage subsidy and support for everyday interpretation<sup>2</sup> that the Swedish Public Employment Service may provide in compliance with regulation 2017:462, on special measures for persons with a disability that impairs their capacity to work and who need to find employment or to strengthen their opportunities to retain employment. Employers can apply for such subsidies when they employ a person with a disability that impairs their work capacity. The person must be unemployed and registered as a job seeker with the Swedish Public Employment Service, which can then cover part of the salary during the period of employment. Wage subsidies are intended to compensate for any adaptations that may be necessary at the workplace, and its level depends on the adaptation and support the person needs. Together with the employer, the Swedish Public Employment Service draws up a plan to increase the employee’s work capacity. The employee must have a wage and other benefits that are in line with collective agreements in the industry. The level of a wage subsidy is affected by the wage costs and work capacity of the person the employer wants

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<sup>2</sup> The State party refers to the information contained under the headline of the judgment: “Costs in accordance with the framework of public procurement contract”.

to employ. A development allowance is also possible to finance measures that contribute to developing the person's work capacity. In 2016, more than 90,000 persons with disabilities were employed with different kinds of financial support from the Public Employment Service. Of those, around 29,270 were employed with wage subsidies.

4.9 Moreover, the Budget Bill for 2018 states that it is important that the skills of everyone in working life be utilized. In order to accomplish that, functioning communication between employers and employees is required. In that context, the Government intends to increase the availability of interpreting services in working life to strengthen labour market opportunities for deaf or deaf-blind people. To that end, 15 million Swedish krona have been set aside per year for the period 2018–2020.<sup>3</sup> There is also a targeted government grant of 75 million Swedish krona annually for interpreting services, allocated to county councils by the National Board of Health and Welfare. The county councils also set aside approximately 156 million Swedish krona of their own resources.

4.10 The State party notes that the university decided on 17 May 2016 to cancel the employment process concerning the author, who appealed the decision to the Higher Education Appeals Board. The author requested that the Board revoke the university's decision and claimed that the university had violated the prohibition of discrimination in the form of inadequate accessibility. He also stated that the university had not examined whether redistribution of working tasks or technological solutions could reduce his need for interpretation and that, according to the *travaux préparatoires* to the Discrimination Act, the university was obligated to strike a careful balance between his legitimate claim to equal treatment and the university's financial conditions. The author furthermore requested that in case it would conclude that it was not competent to examine his appeal, the Board should submit his appeal to the Administrative Court. In that connection, the State party notes the author's argument that matters of public employment concern civil rights according to the European Court of Human Rights case law and that the matter should also be seen in the light of the prohibition of discrimination in article 14 of the European Convention on Human Rights.

4.11 On 1 July 2016, the Board dismissed the appeal and submitted it to the Administrative Court in Stockholm. On 26 January 2017, the Administrative Court dismissed the author's action and stated that a person to whom a decision concerns may, according to section 22 of the Administrative Procedure Act, appeal against it provided that it affects him or her adversely and that it is subject to appeal. Appeals can be made to a general administrative court, but this does not apply to decisions concerning employment matters. Södertörn University's decision concerned an employment matter, and it could therefore not be subject to adjudication by an administrative court under these provisions. However, according to section 3 of the Administrative Procedure Act, the provisions on appeals in the Act shall always apply in case it is necessary to provide for everyone's right to a fair trial in the determination of their civil rights or obligations as laid down in article 6.1 of the European Convention on Human Rights. The university's decision does not, according to the Court, concern a civil right within the meaning of the European Convention on Human Rights. Accordingly, the author's action was dismissed.

4.12 Subsequent to the cancellation of the employment process, the author reported the university's decision to the Equality Ombudsman claiming that he had been subject to discrimination. The Ombudsman decided to initiate supervision. In this context, he wrote to the university on 16 June 2016, asking several questions, including about its views on the author's statements to the Ombudsman. One question was whether it was possible for the university to offer the author alternative work tasks that would incur lower interpreting costs. The Ombudsman also reported that the author had suggested that he could teach in ways other than via classroom instruction, including supervising and tutoring students by email; conducting examinations and teaching groups via online chat-rooms; and recording his lectures. The Ombudsman also stated that the author had suggested that he could perform administrative and research tasks. The university replied on 8 July 2016. It stated that it had announced a position as a lecturer in public law, which is a position that mainly consists of teaching. It further stated that it was not consistent with its recruitment needs to

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<sup>3</sup> Government Bill 2017/18:1.

change the duties of the current position, or to redistribute the working tasks of teaching to other employees at the university, in order to significantly reduce the costs of interpretation. Further, the absolute majority of the teaching must, for financial reasons, take place in large groups and not by distance supervision of individual students. Conducting teaching via online chat-rooms or through recorded lectures would involve excessive, far-reaching changes to the public law programme at Södertörn University, which could not be considered reasonable. Even if some of the changes could be made, they could not be expected to produce a significant change in the need for interpretation support.

4.13 On 16 November 2016, the Equality Ombudsman brought an action against the State before the Labour Court. The Court held a preparatory hearing on 4 April 2017, lasting one hour. The main hearing was held on 30 August 2017. In addition to the five judges and the court secretary, two Equality Ombudsman litigation lawyers, a university attorney, the author and two sign language interpreters were present. The hearing lasted for 1 hour and 50 minutes.

4.14 The State party further submits that the author's reference to the alleged "unused contributions" of 187 million Swedish krona as a university surplus for the year 2016 is incorrect. "Unused contributions" refer to payments, made principally for research purposes from external sources, which have not yet been used in the university's activities. They are intended for specific research projects and are accordingly already earmarked and cannot be used for other purposes. The author also makes note of the university's agency capital, which is the surplus that may accrue when a public university does not make use of all the public research and educational funding it receives. The agency capital is not an annual source of income and it must be used for the purpose for which the university received it. Finally, when the author refers to what he calls "a surplus" of 36.5 billion Swedish krona in the central government budget for 2016, it should be noted that one key element of the fiscal policy framework is the legislated, disciplined central government budget process, in which different expenditures are set against each other. Measures to promote and protect the rights and possibilities of persons with disabilities are found within several different expenditure areas in the budget. In 2016, the country's national debt amounted to 1.292 billion Swedish krona (\$137.62 million).

4.15 Regarding the admissibility of the complaint, the State party submits that it is not aware of the present matter having been, or being, subject to another international procedure of investigation or settlement.

4.16 As to the exhaustion of available domestic remedies, the State party notes that the author appealed the Administrative Court's decision to the Administrative Court of Appeal in Stockholm, which on 7 April 2017 decided not to grant leave to appeal. The Administrative Court of Appeal's decision could be 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. Nothing suggests that such an appeal would have had no prospect of success or would have been unreasonably prolonged. The State party therefore considers that the author did not exhaust all available domestic remedies.

4.17 Irrespective of the outcome of the Committee's examination relating to articles 2 (c) and (d) of the Optional Protocol, the State party maintains that the communication is manifestly ill-founded and thus inadmissible pursuant to article 2 (e) of the Optional Protocol. In that regard, the State party refers to its arguments on the merits of the case, as developed below.

4.18 Should the communication not be declared inadmissible in its entirety, the State party submits that part of the communication should still be declared inadmissible. The author of a communication must have brought a substantive complaint in the domestic courts in respect of any allegation subsequently brought before the Committee.<sup>4</sup> In the

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<sup>4</sup> *Deperraz and Delieutraz v. France* (CCPR/C/83/D/1118/2002), para. 6.4; and *Van Marcke v. Belgium* (CCPR/C/81/D/904/2000), para. 6.3.

present communication, the author claims that the denial of satisfactory inquiry in regards to other possible adjustments to his needs and employment conditions was a violation of the right to a reasonable accommodation in itself. However, the Labour Court's judgment clearly shows that the author did not raise any issue relating to that claim before national jurisdictions. The dispute before the Court exclusively concerned the costs and reasonability of deaf interpretation. In other words, as the Committee has noted,<sup>5</sup> the parties agreed on what accommodation was necessary, but disagreed on their costs and on whether they would constitute a disproportionate or undue burden. Employees are obligated to inquire into possible accommodation measures that can include changing how work is organized, working hours or tasks. However, the Labour Court can only adjudicate on issues raised by the parties to the dispute.<sup>6</sup> In the present case, the author did not raise any issue regarding a lack of inquiry into accommodation measures before the Labour Court, which was therefore precluded from assessing whether the university should have made such inquiries. Nothing suggests that invoking these circumstances before the Labour Court would have had no prospect of success or made the process unreasonably prolonged. Invoking the lack of inquiry before the Labour Court could have led to a finding that the author had been subject to discrimination. Accordingly, the author's claim related to the alleged lack of inquiry into accommodation measures should be held inadmissible.

4.19 As to the merits, the State party considers that the central point of the author's complaint is that the country's inability to finance and identify clear obligations concerning reasonable accommodation was a contributing factor to the alleged violations. In that connection, the State party refers to the Committee's statements that the terms "disproportionate or undue burden" refer to the idea that the request for reasonable accommodation needs to be bound by a possible excessive or unjustifiable burden on the accommodating party,<sup>7</sup> and that potential factors to be considered include financial costs, resources available (including public subsidies), the size of the accommodating party (in its entirety), the effect of the modification on the institution or the enterprise, third-party benefits, negative impacts on other persons and reasonable health and safety requirements.<sup>8</sup> Recalling the content of article 27 of the Convention, the State party submits that the main question in the present communication is whether the Labour Court's proportionality assessment of the deaf interpretation measures amounts to a violation of the author's rights under articles 5 and 27 of the Convention.

4.20 In that regard, the State party refers to the jurisprudence of the Committee.<sup>9</sup> It further submits that the proceedings before the Labour Court involved not only written submissions from the two parties (Södertörn University and the Equality Ombudsman), but also an oral preparatory hearing and an oral main hearing before the Court. Both sides presented their views and provided the evidence at their disposal, and all the case material was taken into account by the Court. Furthermore, the Equality Ombudsman acted as a plaintiff in the proceedings at the request of the author. His case was thus pursued by a public authority specialized in the subject of discrimination, which ensured that his views and interests were properly voiced and safeguarded. Additionally, the Labour Court is a specialized court with expertise in assessing claims concerning discrimination. Five members of the Labour Court reached the unanimous conclusion that the claims of the Equality Ombudsman should be rejected.

4.21 As regards the examination and assessment of the Labour Court, the State party highlights that it made a thorough survey of relevant national and European Union law and jurisprudence, the Convention and the Committee's Views. The Court then proceeded with the question of the interpretation costs and made its subsequent proportionality assessment on the basis of the cost of 520,000 Swedish krona (\$55,341) annually, asserted by the Equality Ombudsman. The Court subsequently concluded that three facts led to a demand of greater accessibility measures in the present case: the university is a State authority; it

<sup>5</sup> General comment No. 6 (2018), paras. 25 (a) and (b).

<sup>6</sup> See chapter 5, section 3, of the Labour Disputes (Judicial Procedure) Act, and chapter 17, section 3, of the Swedish Code of Judicial Procedure.

<sup>7</sup> General comment No. 6, para. 25 (b).

<sup>8</sup> *Ibid.*, para. 26 (e).

<sup>9</sup> *Jungelin v. Sweden* (CRPD/C/12/D/5/2011), para. 10.5.

has a large budget for personnel; and the employment in question was intended to be full-time. However, the university's annual cost for interpretation services would in practice correspond to the pre-tax salary of the author, excluding employer's fees. The Court moreover emphasized that it was not a question of a one-time expense and that the measure would not benefit other workers with disabilities.<sup>10</sup> Finally, the Court held that it could not find that the Convention, the Employment Equality Framework Directive or the Discrimination Act and the *travaux préparatoires* supported finding it reasonable to require an employer, in a situation such as the present one, to take on accommodation measures of the current type at an annual cost of about 500,000 Swedish krona. It concluded that the accommodation measures that the university would have had to take in order to employ the author were not reasonable, and that the university had therefore not discriminated against him.

4.22 The assessment made by the Labour Court was done on the basis of the same kind of proportionality test that the Committee would have had to apply in an assessment under articles 2, 5 and 27 of the Convention. This assessment required the scrutiny of economic factors and an element of balancing the different interests involved. As regards the author's argument relating to what he considers to be the negative consequences of the judgment for all deaf persons applying for employment in Sweden, the State party considers that such a far-reaching interpretation of the judgment is not warranted since the Court clearly based its judgment on the specifics of the author's case. In addition, it was limited to the circumstances on which the Ombudsman had chosen to base the claim of discrimination.

4.23 In view of the above, the State party concludes that the domestic proceedings before the Labour Court and the Court's assessment maintained a high standard, and that there is no indication that they were arbitrary or otherwise flawed, or amounted to a denial of justice. Nor is there any indication that they failed to protect the author against discrimination. The fact that the ruling of the Labour Court was to the author's disadvantage has no bearing on this conclusion. Accordingly, the Committee should accept that the Labour Court's conclusion did not amount to a violation of the author's rights under articles 5 and 27 of the Convention.

4.24 Regarding the author's claim of lack of funding, the State party considers that there are no indications of a specific connection between the suggested lack of funding and the Labour Court's conclusion. This part of the communication therefore concerns State funding of accommodation measures in general and is better suited to the reporting procedure under articles 35 and 36 of the Convention. Should the Committee come to a different conclusion, the State party considers that it should enjoy a particularly wide margin of appreciation on this issue.<sup>11</sup>

4.25 The State party further 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 wage subsidy would cover nearly 30 per cent of the annual interpretation costs, or 220,000 Swedish krona (\$23,414) out of 740,000 Swedish krona (\$78,755). Thus, the State funding in the author's case must be considered sufficient, especially considering the wide margin of appreciation that should be enjoyed by the State in that regard.

4.26 The State party further 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,

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<sup>10</sup> The Court referred to the dissenting opinion in *Jungelin v. Sweden* (CRPD/C/12/D/5/2011), appendix, para. 5, stating that the benefit for other employees with disabilities must also be taken into account.

<sup>11</sup> European Court of Human Rights, *James and Others v. the United Kingdom*, Case No. 8793/79, 21 February 1986, para. 46; and *Hatton and Others v. the United Kingdom*, Case No. 36022/97, Judgment, 8 July 2003, para. 97. See also Human Rights Committee, *Kitok v. Sweden*, communication No. 197/1985, para. 9.2; and *Love et al. v. Australia* (CCPR/C/77/D/983/2001), para. 8.2.



and also did not question the extent of those measures, the Court was precluded from considering the possibility of other funding measures.

4.27 The State party then notes the author's claim that his rights have been violated since the university failed to inquire into adjustment measures other than deaf interpretation. While reiterating that this part of the communication should be held inadmissible, the State party refers to the university's reply of 8 July 2016 to the Equality Ombudsman, where it concluded that the proposed measures would involve disproportionate changes to the advertised post as lecturer. The State party therefore considers that the present communication reveals no violation of the Convention.

#### **Author's comments on the State party's observations**

5.1 In his comments of 15 January 2019, the author confirms 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.

5.2 The author further submits that the State party did not describe all the work duties for the advertised position as lecturer. One is that the lecturer enjoys research opportunities after two years of employment. In addition, 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. Not all aspects of the work require interpretation. Some allow the lecturer to use a computer as an auxiliary aid. The author further considers that the State party is mistaken when considering that his teaching cannot take place in large groups, both with or without sign language interpreters, such as through the use of online teaching and a flipped classroom. More and more universities have introduced this kind of online teaching. Moreover, out of all forms of teaching, most lecturers prefer seminars to supervising students' memorandums and exam essays. There is therefore no formal barrier for the university to redistribute work duties. These facts have relevance to the long-term costs, as the costs would gradually be reduced as the career of the author would have progressed in the given employment.

5.3 The author welcomes that the State party has made clarifications regarding "unused contributions" in the annual report of 2016, which are earmarked for teaching and research. However, he argues that the university had a reported net surplus of nearly 12 million Swedish krona (\$1,277,107) for the 2016 fiscal year, which could have been used to fund any costs the university had in its activities. This surplus is a result of the net difference between income and costs for the 2016 fiscal year.

5.4 The author further recalls that the university failed to warn the author that State-funded measures were insufficient prior to the decision to terminate the recruitment, a fact that was not noted by the State party. The author alleges that he immediately contacted the university after the final decision to discuss alternative measures that required less interpretation costs, but that the university ignored his suggestions. The author then contacted the competent authorities to inquire whether they could approve an exemption from its ordinance that entitled the Swedish Public Employment Service to exceed the cost ceiling of 18,300 Swedish krona (\$1,948) per month for work subsidy. The State party referred the author to the Swedish Public Employment Service, which later told him that they could not do anything. Moreover, the author contacted the County Council in Stockholm asking whether they could grant the university everyday interpretation up to 20 hours a month to enable him to teach students. The Council replied that, owing to current practices, nothing could be done.

5.5 As for the State party's arguments regarding the admissibility of the communication, the author reiterates that he did not appeal the decision of the university to discontinue the cancellation of the employment procedure. However, the administrative courts are not authorized to order the university to employ him or to compensate him for unlawful discrimination. Instead, as noted by the State party, the administrative courts could have revoked the decision to terminate the recruitment procedure.

5.6 In that connection, the author submits that, in line with the jurisprudence of the European Court of Human Rights, he only had to exhaust one of several parallel remedies.<sup>12</sup> He chose to pursue civil action against the university as a means of redress. The author considers that he cannot be expected to exhaust other remedies that run parallel with one another. The lawsuit carried out in the Labour Court was a sufficient remedy for the purposes of allowing the Committee to address his complaint. Furthermore, the author submits that he only had to raise an issue in substance, and not in the exact legal qualifications of the Convention.<sup>13</sup> The principle of *jura novit curia* stands in Sweden, as reflected in Supreme Court judgment NJA 1993 s. 13, where it held that the courts are not bound by the legal qualifications of the facts presented by the parties to the proceedings. The author considers that in his case, the Labour Court legally qualified the facts of the case under Swedish law in its judgment, through which the author exhausted available domestic remedies.

5.7 As to the argument of the State party that at least the part of the communication relating to a lack of inquiry into accommodation measures should be declared inadmissible, the author agrees that the proceedings in the Labour Court did not focus on this issue. The Labour Court was able to make an independent assessment of the circumstances, irrespective of the legal qualifications of the parties to the proceedings, especially taking into account that the lack of inquiry was clearly brought to the attention of the Equality Ombudsman through correspondence and of the Labour Court through the proceedings. Therefore, the author's allegations related to the lack of inquiry into accommodation measures should be declared admissible.

5.8 The author further considers that his case is different from that of *D.L. v. Sweden* because of the civil proceedings that he has exhausted. He argues that if there had been no civil remedy, and if the Equality Ombudsman had not discouraged him from appealing to the Supreme Administrative Court, he would probably have appealed the decision. However, such an appeal would probably not have been effective in his case.

5.9 With regard to the argument of the State party related to the broad margin of appreciation, the author does not question the general merit of this principle. However, such margin may not be awarded to a State to such an extent that it would result in a systematic violation of the rights enshrined in the Convention. The author refers to the Committee's general comment No. 6 (2018), according to which tackling discrimination requires cross-cutting obligations of immediate realization, which are not subject to progressive realization. Providing reasonable accommodation and securing non-discrimination in employment cannot be subject to a broad margin of appreciation and should have been immediately realized to prevent a violation of the author's rights.

5.10 Referring to the jurisprudence of the Committee, the author considers that the negotiations on reasonable accommodation that took place in his case do not comply with the standards of the Convention. 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.

5.11 The author reiterates that the Labour Court did not take into account the positive impact that hiring a deaf lecturer could have had on the attitudes of students and co-workers by promoting diversity and reflecting the composition of society. A lecturer can also be a role model for younger persons with disabilities. The Labour Court did not analyse the potential consequences of its judgment on the author and other deaf professionals. As a result, all employers may rely on the judgment to dismiss deaf applicants from jobs requiring substantial communication.

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<sup>12</sup> European Court of Human Rights, *Karakó v. Hungary*, Case No. 39311/05, and *Marinkovic v. Sweden*, Case No. 43570/10.

<sup>13</sup> European Court of Human Rights, *Castells v. Spain*, Case No. 11798/85, Judgment, 23 April 1992, para. 32; *Fressoz and Roire v. France*, Case No. 29183/95, Judgment, 21 January 1999, para. 37; *Vučković and Others v. Serbia* (Grand Chamber), Judgment, 25 March 2014, paras. 72, 79 and 81–82.

5.12 The university's failure to provide funding is one important aspect of the case, but the State's failure to implement reasonable accommodation in a State-run university is a considerable denial of justice. As argued by the State party, 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 asked the university if they could check with external donors about the possibility of covering the costs required by the reasonable accommodation measures he needs, without any success.

### **State party's additional observations**

6.1 On 4 October 2019, the State party provided additional observations, maintaining its position and sharing additional information.

6.2 With regard to the author's claim that the university's net surplus of nearly 12 million Swedish krona could have been used to fund any costs the university has in its activities, the State party reiterates 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.

6.3 Regarding the author's argument that he was not required to appeal the decision by the Administrative Court of Appeal in order to exhaust all domestic remedies, the State party maintains its position that the author should have made use of all judicial and administrative avenues that offered him a reasonable prospect of redress.<sup>14</sup> With regard to the author's argument that he cannot be blamed for not exhausting that remedy since the Equality Ombudsman encouraged him not to appeal, the State party argues that the author did not provide any evidence in that regard. It further submits that according to chapter 6, section 9, of the Discrimination Act, an action for compensation based on a decision on employment that has been announced by an employer in the public sector may not be examined before the employment decision has become final and non-appealable. According to the legislative history, this provision does not prevent such an action being brought despite an employment decision not having become final and non-appealable. In other words, notwithstanding this provision, the Equality Ombudsman could have brought an action for compensation for discrimination at the Labour Court even if the employment decision had not become final and non-appealable. The only limitation is that the Labour Court could not have ruled in the case until the employment decision had become final and non-appealable. The State party therefore considers that the author did not exhaust all available domestic remedies.

6.4 The State party then maintains its position that the author's allegations concerning the suggested lack of inquiry into accommodation measures should be declared inadmissible. Taking note of the author's claim that the suggested lack of inquiry was brought to the attention of the Labour Court through the proceedings, and that it could have ruled on this issue according to the principle of *jura novit curia*, the State party submits that merely bringing an issue or a fact to the Labour Court's attention does not enable the court to base its judgment on that issue or fact. According to chapter 17, section 3, of the Swedish Code of Judicial Procedure, the judgment may not be based on circumstances other than those pleaded by a party as the basis of their action. "Circumstances" refers only to legal facts, namely the allegations claimed by a party to lead to a legal remedy that he or she wants to achieve in the proceedings. The court is not permitted to elaborate on or supplement any shortcomings in the citing of legal facts. It is the parties who set the framework for the proceedings. It is up to each party to state which parts of the procedural material form the basis of its action, and to which the court should limit its examination. The parties must categorize the procedural material into facts, and it is irrelevant whether the court considers that other circumstances should have been taken into account in terms of a particular legal remedy if the parties have not cited it as a basis of their actions. In the present case, as the author did not raise any issue relating to a lack of inquiry into accommodation measures before the Labour Court, the Court was precluded from assessing whether the university should have made such inquiries. The State party also questions

<sup>14</sup> *Crochet v. France* (CCPR/C/100/D/1777/2008), para. 6.4.

whether the author can be considered to be absolved from the obligation to exhaust domestic remedies by referring to his representative. If the author was dissatisfied with the Ombudsman, he could have revoked his consent and taken legal action by himself or by counsel.

6.5 The State party further submits that the author's statements regarding online teaching, a flipped classroom and redistribution of work duties concern the same issue of an inquiry into other accommodation measures, and considers that they have already been responded to. The Equality Ombudsman's position before the Labour Court was that the annual cost of sign language interpretation was 520,000 Swedish krona. He did not cite any legal facts that were claimed to reduce the long-term costs. The State party therefore considers that this part of the communication should also be declared inadmissible for lack of exhaustion of domestic remedies.

6.6 The State party then notes that the author seems to raise a new claim related to "inadequate implementation". In that regard, the Discrimination Act and the different forms of prohibited discrimination therein are based on European Union law. Of particular importance is Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. Recital 20 of the Directive states that appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability.

6.7 With regard to the author's claim that the lecturer enjoys research opportunities after two years and that all universities are legally obliged to offer a career programme for lecturers with an opportunity to apply for a position as a professor, the State party submits that they 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. The Labour Court based its judgment on the cost of sign language interpretation asserted by the Equality Ombudsman. That cost was calculated by reducing the annual cost by a wage subsidy amounting to the annual funding cap of almost 220,000 Swedish krona contained in the Ordinance on special measures for people with disabilities that impair their capacity to work. Funding caps in Swedish regulations on subsidies are a result of governmental financial considerations and political priorities. Moreover, although an exemption may be approved, this power is only used restrictively as an exceptional measure. It would apply for example in cases where a government agency for some reason cannot fulfil, for a given year, a reporting obligation regulated in an ordinance. The State party therefore contends that the present communication reveals no violation of the Convention.

## **B. Committee's consideration of admissibility and the merits**

### **Consideration of admissibility**

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether the case is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 2 (c) of the Optional Protocol, that the same matter has not already been examined by the Committee and nor has it been or is it being examined under another procedure of international investigation or settlement.

7.3 The Committee notes that the State party first considers that the author did not exhaust all available domestic remedies as he did not appeal the 7 April 2017 decision of Administrative Court of Appeal before the Supreme Administrative Court, 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. The Committee further notes that according to the State party, nothing suggests that such an appeal would have had no prospect of success or would have been unreasonably prolonged. However, the Committee also notes that, as informed by the State party, chapter 6 in the Discrimination Act contains provisions on the procedural rules to be applied in the disputes under the Act. Disputes are dealt with under the Labour Disputes (Judicial Procedure) Act. They are either brought directly before the Labour Court as the first and only instance, as in the present case, or before the District Court as the first instance with the possibility to appeal to the Labour Court. Additionally, according to section 22 of the Administrative Procedure Act, a person may appeal the decision adopted by the Labour Court provided that it affects him or her adversely and that the issue at stake is subject to appeal. According to section 22a of the same Act, appeals can be made to a general administrative court, but this does not apply to decisions concerning employment matters (see para. 4.11 above). In the present case, as concluded by the Administrative Court, the author's claim clearly relates to employment matters and cannot be considered as a civil claim. As reported to the author by the Equality Ombudsman – a public authority specialized in the subject of discrimination (see para. 4.20 above) – an appeal to the Supreme Administrative Court was therefore unlikely to bring effective relief.

7.4 The Committee further notes the State party's argument that the author's complaint should be held partially inadmissible insofar as it considers that the author did not literally raise the issue of a lack of inquiry into accommodation measures before the Labour Court, which was therefore precluded from assessing whether the university should have made such inquiries. In that connection, the Committee also notes the author's agreement with the position of the State party that the proceedings in the Labour Court were not focused primarily on a lack of inquiry. 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 and of itself systematically implies an analysis of the extent to which alternative measures have been contemplated by the employer. In compliance with the principle of *jura novit curia*, the failure to literally raise a point of law therefore cannot by itself be considered as preventing the jurisdiction seized to address the issue that is obviously part of the subject matter of the complaint, provided that it does not look beyond the claims made in the communication. In view of the above, the Committee concludes that the author exhausted all available domestic remedies, in compliance with article 2 (d) of the Optional Protocol.

7.5 The Committee then notes the State party's argument that the author's complaint should be held inadmissible under article 2 (e) of the Optional Protocol for lack of substantiation, as the State party considers that "the domestic proceedings before the Labour Court and the Court's assessment maintained a high standard, and that there is no indication that they were arbitrary or otherwise flawed, or amounted to a denial of justice. Nor is there any indication that they failed to protect the author against discrimination". Nonetheless, the Committee also 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 reasonable accommodation measures suggested by the author to the university. In view thereof, the Committee considers that the author has sufficiently substantiated his complaint for purposes of admissibility and proceeds with its examination of the merits.

### **Consideration of the merits**

8.1 The Committee has considered the communication in the light of all the information it has received, in accordance with article 5 of the Optional Protocol and rule 73 (1) of its rules of procedure.

8.2 In the present case, the question is whether the decisions of national authorities adopted with regard to the recruitment process in which the author took part amount to a

violation of his rights under articles 5 and 27 of the Convention. The Committee notes the author's allegations that he was considered to be the most qualified candidate for the position by the State-run university to which he had applied, but that 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. The Committee further notes that this assertion has not been contested by the State party.

8.3 The Committee also 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. Additionally, the Committee notes the author's assertion that the university failed to warn him that State-funded measures were insufficient before deciding to terminate the recruitment.

8.4 The Committee recalls that, in accordance with article 27, paragraphs (a), (e), (g) and (i), of the Convention, States parties have the responsibility to prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions; to promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment; to employ persons with disabilities in the public sector; and to ensure that reasonable accommodation is provided to persons with disabilities in the workplace. The Committee further recalls that under article 2 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 to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.<sup>15</sup>

8.5 The Committee likewise recalls that article 5 of the Convention prohibits all forms of discrimination against persons with disabilities, including the denial of reasonable accommodation as a prohibited form of discrimination that is not subject to progressive realization.<sup>16</sup> This means that all forms of discrimination are equally contrary to the Convention, and it is inappropriate to differentiate between contraventions of the right to equality and non-discrimination in terms of their so-called degree of seriousness. The Committee also recalls that reasonable accommodation is an *ex nunc* duty, meaning that accommodation must be provided from the moment that a person with a disability requires access to non-accessible situations or environments, or wants to exercise his or her rights.<sup>17</sup> To that end, the duty bearer must enter into dialogue with the individual with a disability, for the purpose of including the individual in the process of finding solutions for better realizing their rights and building their capacities.<sup>18</sup>

8.6 The Committee also recalls that when assessing the reasonableness and proportionality of accommodation measures, States parties enjoy a certain margin of appreciation. It further considers that it is generally for the courts of States parties to the Convention to evaluate facts and evidence in a particular case, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>19</sup>

8.7 In the present case, the Committee notes that various State authorities were involved, each with their respective mandate and responsibilities: the State-run university that published the vacancy and cancelled the recruitment process; the Equality Ombudsman that was seized by the author to represent him before the competent national jurisdictions; the Higher Education Appeals Board; the Labour Court; the Administrative Court; and the Administrative Court of Appeal. With regard to the university, the Committee considers that its failure to inform the author that State-funded measures were insufficient to finance

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<sup>15</sup> *Jungelin v. Sweden* (CRPD/C/12/D/5/2011), para. 10.4.

<sup>16</sup> General comment No. 6 (2018), para. 12.

<sup>17</sup> *V.F.C. v. Spain* (CRPD/C/21/D/34/2015), para. 8.4.

<sup>18</sup> General comment No. 6 (2018), paras. 26 (a) and 67 (h).

<sup>19</sup> *Jungelin v. Sweden* (CRPD/C/12/D/5/2011), para. 10.5.

the adjustments that were necessary to enable him to perform the functions of the position to which he had applied prevented any process of consultation and consideration of alternative measures of accommodation. In other words, 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.

8.8 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. In this way, the Labour Court analysed: the cost of sign language interpretation in relation to the employer's ability to pay for them; the effect of the measures taken on the author's ability to do the position in question; the duration of the employment; the impact of the measures adopted in favour of the author on other persons with disabilities; and some State-funded measures from which the employer and employee could have benefited. After examining these issues, the Labour Court concluded that the adjustments would have been too costly.

8.9 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.<sup>20</sup> 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. In the present case, the Committee notes that the author intended on various occasions to suggest alternative measures of accommodation to the university and the Equality Ombudsman, hoping that this specialized public authority would raise the issue before the courts. In this context, the Committee also takes note of the State party's statement that considerable funding measures were available to facilitate the author's employment through everyday interpretation and an annual wage subsidy. The Committee also 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 (see paras. 4.26 and 4.27). Through such a statement, the State party recognizes the responsibility of its 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 does not express a view as to the outcome of a proper inquiry of the alternative accommodation measures and of the "other funding measures". However, it considers that the authorities involved failed to take all measures available to promote the realization of the right to work of persons with disabilities.

8.10 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 possible future candidates with hearing impairments. In that regard, the Committee welcomes that the Labour Court addressed the issue of the benefit that the employment of the author could have had for other employees with disabilities. However, it also notes the Court's conclusion that the sign language interpretation provided to the author would not have benefited other potential employees with hearing impairment. The Committee considers that this reasoning focused on the specific measure taken for the author, but failed to take into account the negative impact of the Court's assessment in more general terms, by discouraging potential employers from considering the possibility of employing individuals with hearing impairment for positions similar to the one for which the author had applied.

8.11 In the light of the above, the Committee considers that the decisions and interventions of the authorities of the State party limited the possibility for persons with disabilities of being selected for positions requiring the adaptation of the working environment to their needs. In particular, it considers that the Labour Court's assessment of

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<sup>20</sup> *V.F.C. v. Spain* (CRPD/C/21/D/34/2015), para. 8.7.

the requested support and adaptation measure upheld the denial of reasonable accommodation, resulting in a de facto discriminatory exclusion of the author from the position for which he applied, in violation of his rights under articles 5 and 27 of the Convention.

### **C. Conclusion and recommendations**

9. 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:

- (a) Concerning the author, the State party is under an obligation to:
  - (i) Provide him with an effective remedy, including reimbursement of any legal costs incurred by him, together with compensation;
  - (ii) Publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population.
- (b) In general, the State party is under an obligation to take measures to prevent similar violations in the future, including by:
  - (i) Taking concrete measures to ensure that the employment of persons with disability is promoted in practice, including by ensuring that the criteria applied to assess the reasonableness and proportionality of the accommodation measures is assessed in alignment with the principles enshrined in the Convention and the recommendations contained in the present Views, and that a dialogue with the person with disability is systematically carried out to enable the realization his or her rights on an equal basis with others;
  - (ii) Ensuring 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, including on the promotion of employment of persons with disabilities in compliance with the Convention, in particular articles 9 and 27.

10. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party should submit to the Committee within six months, a written response, including information on any action taken in the light of the present Views and the recommendations of the Committee.

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