



## H.M. v. Sweden

Communication No. 3/2011; U.N. Doc. CRPD/C/7/D/3/2011

**Country:** Sweden

**Region:** Europe

**Year:** 2012

**Court:** Committee on the Rights of Persons with Disabilities Committee on the Rights of Persons with Disabilities

**Health Topics:** Chronic and noncommunicable diseases, Disabilities, Health care and health services

**Human Rights:** Freedom from discrimination, Right to health, Right to life

### Facts

The petitioner had a chronic connective tissue disorder, Ehlers-Danlos Syndrome (EDS), due to which she could no longer leave her house nor could she be transported to the hospital because of the increased risk of injury. The only type of rehabilitation available to her was hydrotherapy via an indoor pool at her house. Accordingly, the petitioner applied for planning permission to extend her house on her privately piece of land. A large portion of the proposed extension was on land where building was not permitted pursuant to Sweden's Planning and Building Act.

The Local Housing Committee rejected her request for building permission. She appealed the decision, which ultimately ended up in the Administrative Court of Appeal. The Court of Appeal refused her building proposal on the grounds that it went against the regulations of the city's development plan.

After the Supreme Administrative Court refused to hear an appeal of the decision, the petitioner filed a complaint with the Committee on the Rights of Persons with Disabilities (the Committee). She claimed that she was discriminated against by the decisions of the State party's administrative bodies and courts because they failed to take into account her rights to equal opportunity for rehabilitation and improved health. She claimed that her right to a worthwhile quality of life had been infringed and that the administrative bodies' refusals of her petition were based on the public's interest in preserving the development plan. Given the exceptional nature of her case, however, the petitioner claimed that there would be essentially no risk of repeated similar requests and that the health and well-being of a person with a disability should come above the public interest of not allowing any buildings on land that has been marked as a prohibited area. The Committee was asked to decide whether the petitioner's needs for rehabilitation and care due to her disability take primary consideration over the public interest as protected by the Local Housing Committee.

### Decision and Reasoning

The Committee held that the petitioner's rights under articles 5(1), 5(3), 19(b), and 25 of the Convention on the Rights of Persons with Disabilities (the Convention) and the State Party's obligations under article 26 of the Convention, along with articles 3 (b), (d), (e), and 4(1) (d) of the Convention had been violated. The Committee found that the State Party failed to apply the principle of proportionality in weighing the interests of the petitioner against the general interest in preserving the land in strict compliance with the development plan. Furthermore, the Committee held that the State's actions were discriminatory as defined under article 1, paragraph 3, of the Convention. The State's decisions resulted in a discriminatory effect that adversely affected the petitioner's access to the health care and rehabilitation required for her specific health condition.

### Decision Excerpts

The Committee takes note of the author's allegations of discrimination in view of the fact that the State party's competent authorities, when considering her application for permission to build a hydrotherapy pool that would meet her rehabilitation needs, failed to apply the principle of proportionality and weigh her interests in using the plot of land that she owns for the construction of the hydrotherapy pool against the general interest in preserving the area in question in strict compliance with the development plan. Para. 8.2.

The Committee observes that a law which is applied in a neutral manner may have a discriminatory effect when the particular circumstances of the individual to whom it is applied are not taken into consideration. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention can be

violated when States, without objective and reasonable justification, fail to treat differently persons whose situations are significantly different.â€• Para. 8.3.

â€œThe Committee therefore considers that the decisions of the domestic authorities to refuse a departure from the development plan in order to allow the building of a hydrotherapy pool were disproportionate and produced a discriminatory effect that adversely affected the authorâ€™s access, as a person with a disability, to the health care and rehabilitation required for her specific health condition. Accordingly, the Committee concludes that the authorâ€™s rights under articles 5(1), 5(3), 25 and the State Partyâ€™s obligations under article of the Convention, read alone and in conjunction with articles 3 (b), (d), and (e), and 4(1) (d) of the Convention, have been violated.â€• Para. 8.8.

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