

# H.M. v Sweden

The Committee on the  
Rights of Persons with Disabilities  
(Communication no. 3/2011)

 **Disability Rights  
Resource Network**

<http://disabilityrights.law.hku.hk>



## Quick Facts

**Applicant:** H.M.

**Member State:** Sweden

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

**Date Decided:** Communication adopted by the Committee on the Rights of Persons with Disabilities at its 7<sup>th</sup> session 16 to 27 April 2012

**Issue:** Whether refusal to grant an exception to the city development plan to allow the construction of a hydrotherapy pool for the rehabilitation of a person with a disability satisfied the requirement of “reasonable accommodation” as outlined in the Convention on the

Rights of Persons with Disabilities?

**Case Synopsis:** H.M. is a Swedish woman whose physical disability causes her to be housebound. Hydrotherapy is the only available therapy for her condition and she cannot safely be transported to government-run facilities. H.M.’s request for approval to build a hydrotherapy pool at her home was rejected because it would require deviation from the zoning plan. The Committee found that this refusal was inappropriate and amounted to discrimination because Sweden had failed to make reasonable accommodations such that the person with disabilities could enjoy their rights.

# Procedural Background

## Domestic Remedies

On 17 December 2009, H.M. filed an initial application at the Örebo County Council. The application was rejected. H.M. appealed to the Local Housing Committee to the Örebo County Council on 3 April 2010, and the appeal was rejected. H.M. then appealed to the Karlstad Administrative Court on 28 April 2010 and the appeal was granted. The Court found that the pool should be given preference, given its essentiality to H.M.'s quality of life, in a balance of interests in accordance with the Building and Planning Act. The case was referred back to the Örebo County Council for a new hearing.

The Municipality of Örebo filed an appeal to the Administrative Court of Appeal (Gothenberg) on 1 July 2010 and the appeal was granted. The Court of Appeal found that deviation from the building plan was not acceptable. The application for planning permission was thus refused. On 5 August 2010, H.M. appealed to the Supreme Administrative Court (Stockholm). Leave to appeal was refused.

## Admissibility

H.M. filed for appeal to the Supreme Administrative Court. Leave was rejected; there is no further arena for appeal in Sweden.

The matter had not already been considered by the Committee and all domestic remedies were exhausted in accordance with article 2(c) and 2(d), respectively, of the Optional Protocol.

The Committee found claims in relation to articles 9, 10, 14 and 20 were not sufficiently substantiated and were therefore inadmissible under article 2(e) of the Optional Protocol. The remaining claims arising under articles 3, 4, 5, 19, 25, 26 and 28 were considered.

## Case Summary

H.M. is a Swedish woman whose physical disability causes her to be housebound. Hydrotherapy is the only available therapy for her condition and she cannot safely be transported to government-run facilities. H.M.'s request for approval to build a hydrotherapy pool at her home was rejected because it would require deviation from the development plan.

The Committee considered the facts in this matter, as presented in the communication, and determined that H.M.'s health condition was critical and that access to an in-home hydrotherapy pool was essential and would meet her health needs. The Committee noted that Sweden did not argue that deviation from the development plan would constitute a "disproportionate or undue burden" and that the legislation permits departure from the development plan in order that people with disabilities may enjoy all their rights. On that basis the Committee determined that it could not conclude that deviation from the development plan would impose a "disproportionate or undue burden" on Sweden.

The Committee found that Sweden failed to satisfy the requirement of "reasonable accommodation" in order to realise the rights of a person with a disability, because this was a situation in which making reasonable accommodations would not cause "undue burden". This refusal was inappropriate and amounted to discrimination because Sweden did not take steps to ensure a person with a disability could enjoy their rights.

The Committee found that Sweden failed to apply the principle of proportionality in weighing H.M.'s interest in the hydrotherapy pool against the community interest in preserving the land in compliance with the development plan. Equal application of the Planning and Building Act to people regardless of disability led to the indirect outcome of discrimination against persons with disabilities. It further noted that in refusing the applicant's request, it didn't take into account the particular circumstances of her case and her disability specific needs.

Additionally, the Committee found that refusal to grant an exception to H.M. would mean H.M. would eventually need to enter a specialised institution which would violate her right to live in the community under 19(b).

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## Significance

The case highlights the measures states need to take in order to satisfy the requirement of reasonable accommodation as required in Article 2 of the CRPD. The case is important because it clarifies the meaning of discrimination in the Convention. It makes clear that it is not acceptable to apply law or policy in a uniform manner across a population when this will result in discriminatory treatment of people with disabilities.

It also clarifies the importance of the principle of proportionality. The principle of proportionality should prevent states from blindly observing policy without consideration of the impact it has on the wellbeing of people with disabilities.

## Context

The fact that this case took place in Sweden is interesting because Sweden holds itself out as taking a human rights approach, rather than a social welfare approach, to persons with disabilities. The Swedish government disability services website explains that people with disabilities can apply for home modification grants from municipal councils. The policy document highlights the fact that the Planning and Building Act has provisions which deal directly with the rights of people with disabilities – this is likely in response to the finding of the CRPD in this case.

## Cases and Resources

- *H.M. v Sweden* (Communication No. 3 / 2011)
- Lanet E. Lord and Rebecca Brown, “The Role of Reasonable Accommodation in Securing Substantive Equality for Persons with Disabilities: The UN Convention on the Rights of Persons with Disabilities”, *Critical Perspectives on Human Rights and Disability Law*, ed. M. H. Rioux, L. Basser and M. Jones (Leiden / Boston, MA: Martinus Nijhoff/Brill Academic, 2011), p 273