



NEWS REPORT

Date:	19 October 2011
Expert:	Per Norberg
Title:	Case on Concept of Disfavour
Country:	Sweden
<u>Context</u>	
Issue at stake:	Concept of disfavour and equal situation
Ground of discrimination:	Sexual orientation
Source:	National court decision: Stockholm Municipal Court Case T 7374-10, The Equality Ombudsman V. Stockholm County Council, Judgment 2011-10-13.
Legislation	Chapter 1 Section 4 point 1 of the Discrimination Act (2008:568)

Content

In Sweden assistance to childless adults is given in two steps. For heterosexual couples basic medical tests are carried out at the local health care centre (testing for instance HIV, hepatitis and syphilis), followed by tests to determine the appropriate treatment to undergo. The treatment as such is generally performed by specialist fertility clinics. For female same sex couples only in vitro fertilisation treatment with donated sperm is possible. Such treatment is generally offered by a specialist fertility clinic. In addition, counselling is provided to help them to deal with the unbalance that may occur in their relationship, due to the fact that only one of the two will become the biological mother of the child. U.P was a woman in a same sex marriage. She and her partner phoned the fertility clinic and were told that they could either contact their local health clinic or a specialised gynaecology clinic for bi- and homosexual women. They then phoned the local clinic where the midwife in charge replied that they should start at the specialised clinic, as the local clinic thought (as a matter of policy) that U.P would receive better care there. U.P asked if heterosexual couples were turned away as well, and insisted on going to the local centre. Some days later the local centre accepted her. However, she still felt disfavoured within the meaning of Chapter 1 Section 4 point 1 of the Discrimination Act, because she believed that she had to make her case before the local centre accepted, unlike heterosexual persons.

U.P filed a complaint with the Equality Ombudsman which decided to go to court on her behalf. The Ombudsman argued that this was a case of disfavour.

To seek specialised care implies that childlessness for homosexuals is a specific problem differing from heterosexual childlessness, where treatment starts at the local health clinic. To needlessly treat someone differently based on a discrimination ground is disfavour, even if the treatment itself objectively is as good as the one given to the majority group.

Stockholm County Council (who is responsible for the local clinic) argued that there was no disfavour within the meaning of the Discrimination Act. The specialist gynaecology clinic did not have longer waiting times and was geographically close to the local health clinic of U.P. Not fulfilling someone's mere preference for being treated in the same clinic as heterosexual couples should not be regarded as a disfavour. Furthermore, when the local health clinic became aware of how strongly U.P. felt about this, they gave her the possibility to pass the basic medical tests. They also argued that U.P. was not in a comparable situation to heterosexual couples since there were differences in the care service given to the two groups.

The municipal court agreed with the Equality Ombudsman. Because the first step of the medical process consisted only of the medical testing for the same diseases as for heterosexuals, U.P. was in a comparable situation. It was regarded as a disfavour to ask U.P. to go to the gynaecology specialist clinic for bi- and homosexual women. She was awarded 15.000 SEK (1650 Euros).

Internet link source and additional information:

<http://www.dagensjuridik.se/2011/10/vardcentral-diskriminerade-homosexuell-kvinna>

<http://www.do.se/sv/Press/Pressmeddelanden-och-aktuellt/2011/Dom-i-Stockholms-tingsratt-Vardcentral-diskriminerade-lesbisk-kvinna/>