

**Case 28/2008 – The Ombud had made a decision to drop and dismiss the case. The Claimant was successful in the appeal against dismissal. The question was whether the wrong use of the concept "selective mutism", inadequate language training and lack of follow-up regarding bullying was due to ethnic background, skin colour or language.**

The parents requested that the Ombud evaluate whether the daughter was discriminated against because of ethnic background, skin colour or language in the primary and lower secondary school. They referred to the fact that she was given inadequate language training. Neither did the school follow up in relation to bullying and had also used the concept "selective mutism" in relation to the daughter's language difficulties.

The Ombud dropped that part of the case which concerned the use of the concept "selective mutism".

The remaining parts of the case were dismissed.

The Tribunal evaluated the case in accordance with Section 3, subsection five, of the Equality and Anti-discrimination Ombud's power to drop or dismiss a case.

The Claimant was not successful where dropping the case was concerned. The Tribunal understood that a wrong diagnosis can be experienced as offensive and burdensome. It could not be ruled out that the wrong diagnosis was connected to the discrimination basis of language. The school, however, had apologized for the wrong diagnosis several times and had thereby admitted that an error had been committed when the expression "selective mutism" was used. It was therefore uncertain whether the Claimant could achieve any more through a trial on the merits of the complaint by the Ombud.

However, the Tribunal was of the opinion that it was wrong of the Ombud to dismiss the other parts of the case.

The Tribunal referred to the fact that the complaint included assertions of discriminatory treatment because of ethnicity, skin colour and language. The Claimant asserted that inadequate language training and lack of follow-up of bullying was due to the daughter's ethnic background, skin colour and language. Such assertions fall under the provisions of the Gender Equality Act which shall be enforced by the Ombud, cf. Section 1, subsection two, sentence 2, of the Equality and Anti-discrimination Ombud's Act. The evaluation of whether the Claimant's assertion can be successful is an evaluation of the merits according to the Gender Equality Act. The conditions for the Ombud to handle the case were thereby present, and the Ombud cannot dismiss the case.

The decision was unanimous.