

EDITORIAL

Disability and justice

This special issue of the *Scandinavian Journal of Disability Research* addresses justice and the rule of law with regard to the situation for persons with disabilities. The intersection between these two thematic fields has been made topical in the Nordic countries in the implementation process for the UN Convention on the Rights of Persons with Disabilities, as well as the aftermath of two well-documented examples of serious miscarriages of justice in criminal cases where people with disabilities were falsely convicted. The five articles in this volume discuss different aspects of how the criminal justice system is applied in cases involving persons with disabilities. One of the articles outlines a theoretical background and provides an overview of relevant research, and four articles discuss findings from recent empirical studies of cases where pivotal safeguarding principles are at stake. The articles have been produced with grants from the Fritz Moen Research Fund.

The concept of criminal justice relates to the question of how the rule of law is applied in the functioning and practices of the criminal justice system, in both formal and informal practices. The concept of criminal justice also addresses different aspects of security and reassurance for victims and witnesses, as well as for defendants and those convicted. It also includes a series of basic principles, practices and institutions used by governments with the aim of maintaining social control, reducing crime or sanctioning persons who break the law with criminal penalties and rehabilitation. Persons accused of crimes have legal protection against abuses of investigatory and prosecutorial powers.¹

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), adopted in (2006), contains several articles that specifically address the judicial systems in the States Parties. The articles make specific demands on the states that ratify the Convention. States Parties are requested to take legislative, administrative and judicial measures to ensure that persons with disabilities are met and treated on an equal footing with other citizens. In particular, this applies to Article 12 (equal recognition before the law), Article 13 (access to justice), Article 14 (liberty and security of the person) and Article 15 (freedom from torture or cruel, inhuman or degrading treatment or punishment). These articles interfere both directly and indirectly with the practical functioning and application of the criminal justice system in the Nordic countries.

The judicial situation for persons with disabilities is of special interest in the Nordic countries at the present time, as the process of ratification and implementation of the UNCRPD is still ongoing in the Nordic countries. At the time of writing, the three Scandinavian countries (Denmark, Sweden and Norway) have all ratified the Convention, while Iceland and Finland have signed the Convention and are still in the process of ratifying it.² The implementation processes for the UNCRPD have undoubtedly

caused a certain interest in, and focus on, questions regarding the functioning of the criminal justice system in the three countries that have signed.

Rule of law is basically a principle which expresses the individual's possibility to estimate her/his legal status. This principle is a central feature of Western democracies and regulates the relation between the state and citizens in several areas of life, such as schooling, health services, care, employment and housing – just to mention a few. When we concentrate on the situation in the criminal justice system in this special issue, this is however just one of several areas where predictability and access to justice is of fundamental importance. Our hope is that this issue may contribute to broaden the research perspective on disability and different aspects of rights and justice matters, and that it may encourage further research into this field.

The case of Fritz Moen, Norway³

The situation in the Nordic countries with regard to disability and justice is also somewhat paradoxical. On the one hand, the Nordic countries are usually among the top 10 countries in international rankings of legal standards, such as the World Justice Project⁴ (Agrast, Botero and Ponce 2014). On the other hand, Norway and Sweden are responsible for the two best-known and serious miscarriages of justice in modern European judicial history. In both these cases disabled people were victimized. This situation provides the sad context for this issue. We will briefly outline the rather complex developments in these two cases.

It is now 35 years since Fritz Moen (1941–2005), a deaf Norwegian citizen, was convicted of the second of two murders that it was later proved he could not have committed. Moen was born during World War II as the illegitimate child of a Norwegian mother and a soldier from the German Wehrmacht. His identity as a 'German brat' in the public view put him in a highly stigmatized category, implying biological, moral and intellectual deficiency (Ericsson and Simonsen 2005a, 2005b). As a 'German brat', he was abandoned by his family and relatives and raised in orphanages and boarding schools for the deaf, never experiencing ordinary family life. His deafness was not detected until the age of 7–8. In his early years, generally regarded significant years for a child's language acquisition, Moen apparently lived with restricted communicative opportunities. Poverty is also an identity that applies to his case. The implications of these factors or multiple identities clearly made shifting impacts along his life trajectory within the changing societal contexts of his lifespan, leading up to his being convicted of two murders.

In 1978, Fritz Moen was convicted of killing a young woman in Trondheim, Norway. In 1981, he was convicted again for the killing of another young girl in the same town. Both killings bore the character of sexual murders. When Moen confessed to the killings to police, there was no sign language interpreter present. The inquiries were completed under severe pressure from the police. Viewed in retrospect, there were several serious problems with communication between Moen and the police investigators. These problems also apply to the court case (NOU 2007:7). Moen was sentenced to a total of 21 years in prison and served a total of 18 years under very severe conditions.

As a result of outside pressure, from the Norwegian journalist Tore Sandberg in particular, the two murder cases were reopened in 2001 (Sandberg 2007). In 2005 and 2007, Fritz Moen was acquitted of the two crimes. Unfortunately, and very sadly, Moen died in December 2005 and never got to experience the final acquittal.

After the final acquittal, the Norwegian Minister of Justice issued an official apology on behalf of the Norwegian State in memory of Fritz Moen for his wrongful conviction and for his sufferings. Compensation from the Norwegian government was paid to Moen's estate. A national committee was appointed by the Norwegian Ministry of Justice to examine the details of the two cases with a view to establishing what went wrong. The committee submitted its report to the Norwegian Ministry of Justice in 2007 (NOU 2007:7). It should also be noted that, seven years after this report, it has still not been followed up by a White Paper from the government to the Norwegian parliament, which is the usual procedure in similar cases.

The case of Sture Bergwall, Sweden

Up until 2012, Fritz Moen's case was the only known case of a double miscarriage of justice per se, not just for people with disabilities, and not just in Norway or the Nordic countries, but in the whole of European judicial history since World War II (Sandberg 2007). It might have been argued that the miscarriage of justice committed in the case of Fritz Moen could only happen in that particular historical situation, never to be repeated, but the case of Sture Bergwall in Sweden is a recent story that proves the opposite to be true.

Sture Bergwall (b. 1950) grew up in a Swedish lower-working-class family. He had a troubled adolescence, with mental problems that also affected his adult life. As a 19-year-old, he was convicted of sexually assaulting four underage boys and sentenced to sheltered psychiatric treatment with a diagnosis of antisocial personality disorder.⁵ In the years that followed, Bergwall committed several serious crimes and went in and out of psychiatric treatment. This treatment also resulted in Bergwall becoming addicted to strong medicinal drugs. In 1991, Bergwall was sentenced to sheltered psychiatric treatment for aggravated robbery.

In treatment at Säter hospital in 1994, now calling himself Thomas Quick, he began confessing to a series of murders that he claimed to have committed in Sweden, Denmark, Finland and Norway during the years 1964–1993. He confessed to more than 30 killings during police interrogations and psychiatric treatment. Between 1994 and 2001, Thomas Quick was convicted of a total of eight killings. All of them were unsolved murder cases that had attracted a lot of media publicity at the time. Quick confessed to the killings in treatment, with this being seen and treated as 'repressed memories' (Josefsson 2013). There was no physical evidence to link Quick to the killings. None of the court cases went before the appeal court. For the most part, the positions of prosecutor, interrogator and expert witness on repressed memories were held by the same key persons. Quick was sentenced to sheltered psychiatric treatment, still at Säter hospital.

While the court cases were being held, critical voices were raised in public debate about the reliability of the court verdicts. In a TV documentary broadcast in Sweden in 2008, Sture Bergwall (having reverted to his birth name) withdrew his confessions. In the period 2009–2012, eight requests for retrial were submitted and decisions were taken to reopen the cases. Bergwall was acquitted of the last of the convictions in November 2013.

While in psychiatric care, Bergwall became addicted to powerful drugs used in his treatment. In order to obtain these medicines, he seems to have learned to act in certain compliant ways. His behaviour matched well with the theories of suppressed memories that dominated treatment at the psychiatric institution where Bergwall served his

sentences.⁶ An official committee was set up by the Swedish Ministry of Justice in November 2013 to investigate this miscarriage of justice. The committee's work, which will investigate both the psychiatric institutions and the criminal court verdicts, is expected to be published by 2015. During spring 2014, Bergwall was transferred to psychiatric care with lower security.

The articles in this issue

The two serious miscarriages of justice victimizing persons with disabilities outlined above provide the point of departure for this issue of the *Scandinavian Journal of Disability Research*. The two cases illustrate the serious mistakes that criminal justice systems are in danger of making when inadequate precautions are taken in cases involving people with disabilities. To a large extent such failures seem to be the result of ignorance and a lack of interest among professionals working within the criminal justice system.

Several improvements have been made to these systems in Sweden and Norway since Moen and Bergwall were wrongly convicted (changes in forensic psychiatry, routines for sign language translation, precautions in police interrogations, etc.). Nevertheless, these cases should serve as a constant reminder that these failures may be repeated if the necessary precautions are not taken. In our opinion, implementing the UN Convention would be a major step in the right direction.

The first article, 'Disability in court: intersectionality and rule of law' by Camilla S. Lundberg and Eva Simonsen, outlines the theoretical background in this field and provides an overview of recent Nordic and international research literature. The article shows how the term intersectionality can serve as a theoretical approach to studying these issues. This approach allows process-oriented, empirical studies of how phenomena such as power/powerlessness, marginalization and discrimination are produced and reproduced in various forms. The article shows how the concept facilitates analysis of how disability and legal protection relate empirically to other relevant social categories, such as gender, language and forms of knowledge. The next article, 'Sign language, translation and rule of law – deaf people's experiences from encounters with the Norwegian criminal justice system' by Terje Olsen and Patrick Kermit, discusses the different experiences deaf people have of interacting with various representatives of the criminal justice system. Examples include reporting a crime, giving evidence in police interrogations, testifying in court, and being prosecuted or convicted in a criminal case. The article shows how a number of uncertainties and errors occur in the interpretation processes in this respect – uncertainties that are only subjected to systematic consideration by the professional actors in the criminal justice system as an exception. The article 'Being deaf in court', by Ingrid Rindal Lundeberg and Jan-Kåre Breivik, discusses aspects of language and power as they unfold in the courtroom. Using three specific cases involving deaf people, it studies how access to language – including spoken language, judicial language, body language and basic language comprehension – creates very specific conditions for interaction in court, conditions that usually remain tacit. The article also shows how access to courts and representation in court is unevenly distributed, and related to different forms of knowledge and resources. 'Sentencing disabled offenders', by Jane Dullum, is an article based upon a study of how Norwegian court sentencing unfolds in cases where people with disabilities have been convicted in criminal cases. The court takes into consideration a number of individual, social and contextual factors in

apportioning penalties. Disability is one of several factors, and the article analyses how the court balances its understandings of the defendant and the crime by showing the court's reasoning in specific cases. The last article in this issue, 'Punished and isolated: Disabled prisoners in Norway' by Hilde Haualand, is a study of the situation for persons with sensory or physical disabilities serving sentences in Norwegian prisons. The article shows how a lack of awareness of these prisoners' situations causes isolation and a decline in physical and mental health. The prison authorities' failure to develop knowledge systematically with regard to how prison conditions might be improved is in conflict with international law.

Although most of the cases presented in this issue are from the Norwegian criminal justice system, the questions and dilemmas they raise are of a far more general nature. Overall, this issue presents a picture of a criminal justice system with international obligations to strive for equal rights for all citizens, but with significant challenges to solve. Input from different fields, such as disability studies, law studies and criminology, can make a fruitful contribution to such development. In this context, intersectionality constitutes a key theoretical contribution to empirical studies of these processes.

In memoriam

All the articles presented in this issue are the result of research grants from the Fritz Moen Research Fund. On behalf of all the contributors, we would like to dedicate this special issue of the *Scandinavian Journal of Disability Research* to the memory of Fritz Moen.

The Guest Editors
Terje Olsen

Nordland Research Institute, PO Box 1490, Bodo Norway

Patrick Kermit

*Department of Social Work and Health Science, NTNU, Trondheim, Norway and;
NTNU Social Research, Trondheim, Norway*

Notes

1. Cf. http://criminologycareers.about.com/od/Criminology_Basics/a/What-is-criminal-justice.htm
2. <http://www.un.org/disabilities/countries.asp?navid=12&pid=166>
3. The presentation of the case of Fritz Moen was written by Camilla Lundberg and Eva Simonsen. See also their article in this issue.
4. <http://worldjusticeproject.org/>
5. The description of this case is based on two monographs by Råstam (2012) and Josefsson (2013).
6. This explanation is based on Josefsson (2013) and statements by psychologist and specialist in forensic medicine Dåderman (2012).

References

- Agrast, M. D., J. C. Botero, and A. Ponce. 2014. *The WJP Rule of Law Index 2014*. Washington, DC: The World Justice Project.
- Dåderman, A. 2012. *Interview in Psykologtidningen [The Psychology Paper]. Stort fokus på rättspsykiatri* [Big focus on forensic psychiatry]. 7: 4–10.

6 Editorial

- Ericsson, K., and E. Simonsen, eds. 2005a. *Children of World War II. The Hidden Enemy Legacy*. Oxford: Berg.
- Ericsson, K. and E. Simonsen. 2005b. "Introduction" In: K. Ericsson and E. Simonsen. (eds.) *Children of World War II. The Hidden Enemy Legacy*. 1–12. Oxford: Berg.
- Josefsson, D. 2013. *Mannen Som Slutade Ljuga* [The man who stopped lying.]. Stockholm: Lind & Co.
- NOU. 2007:7. *Fritz Moen og norsk strafferettspleie*. [Fritz Moen and Norwegian criminal justice. Report by a government-appointed commission.] Oslo: Departementenes servicescenter.
- Råstam, H. 2012. *Fallet Thomas Quick. Att skapa en seriemördare* [The Thomas Quick case. Creating a serial killer.]. Stockholm: Ordfront Förlag.
- Sandberg, T. 2007. *Overgrepet. Justismordene på Fritz Moen*. [Violation. The miscarriage of justice in the Fritz Moen case.]. Oslo: Damm.
- United Nations. 2006. *Convention on the Rights of Persons with Disabilities*. Adopted on 13 December 2006. New York: United Nations.