

## Equal Treatment Authority

File:EBH/418/ /2007/  
In charge: Dr. Tamás Kádár

At the initiative of the **Client**, the Equal Treatment Authority (“ETA”) entered the following

### **D e c i s i o n**

against the **Hungarian State Railway CC** (“HSR”) in the proceeding initiated **for the violation of the requirement of equal treatment** as the step-free access to train for people with mobility disability is only available if the passenger announces his intention to travel 7 days before the event.

**The ETA hereby orders that the unlawful situation be terminated within 3 months and that the final and enforceable decision determining the violation be made public for 6 months.**

This decision shall not be appealed within a public administrative proceeding.

This decision may be appealed within 30 days of its delivery by a claim addressed to the Metropolitan Court of Budapest but submitted to the ETA in 3 copies.

Filing a claim shall not have a delaying force on the enforcement of this decision, in the claim, however, the suspension of the implementation can be requested.

No procedural fees were incurred during the proceeding.

### **J u s t i f i c a t i o n**

The Client lodged his complaint to the ETA against HSR because the respondent’s practice towards people with mobility impairment violates the requirements of step-free access to train.

He complained that passengers in wheelchair had to announce when they wanted to travel and return 7 days prior to the events so that HSR can prepare to lift the passenger in wheelchair into the train. On the basis of such announcement HSR advises the trained personnel to lift the passenger into the train with the mobile lift that can be found at each station. The Client thinks this situation is humiliating and often makes the organisation of his schedule very difficult and excludes spontaneous travels. The primary grievance of the Client is not the low level of accessibility of HSR trains or railway stations, but the necessary personnel and clerical work that are inseparable from the travel. Despite the good faith and helpfulness of the HSR employees, these facts prevent the immediate or prompt travels. Regarding all these viewpoints the Client had sent a letter to HSR and the Prime Minister of Hungary asking for solution and the supervision of the regulations and training the conductors to use the mobile lifts.

After investigating the case ETA started the proceeding and asked HSR to submit a written declaration.

In the declaration HSR described in details the present accessibility and the strategy of planning the future observing the European standards as well.. Their aim is to provide completely equal chances of full step-free accessibility of the trains, platforms vehicles and instalments. ETA investigated the declaration primarily from the viewpoints of disabled passengers. On the passage-ways for disabled

people the stairs, those doorsteps that are higher than 50 mm and all the obstacles have to be eliminated, on opening or closing doors, photocells have to be applied. The corridors, toilets and cash desks have to be accessible. up to now there have been accessible toilets at 36 places. The accessibility of the platforms have been solved or will be solved through special doorways sometimes with the assistance of a HSR employee, sometimes lifts, a chairlift, an escalator or a moving walkway solves or will solve it.

Presently HSR has 98 mobile lifts at 93 places but as for now even if the passengers order them in advance, they can only be used at 40 spots. It is not detailed in the declaration why the technical devices are not given at each spot. The declaration says moving these lifts from platform to platform is difficult because of their size and weight, their operation needs so much strength that in some cases they cannot be used at all. Groups of disabled people can book two special carriages, individuals can use 108 main-track carriages, on side-tracks they can use luggage-vans. The newly purchased Desiro, Flirt and Talent electric trains provide complex services. HSR does not provide any other services for mobility impaired people.

According to the declaration travels of disabled people have to be booked in a written form at the Passenger Train Branch Operational Department 7 days before the travel. The booking is usually only accepted for main-tracks. 70% of the bookings are from a railway station in the capital to a railway station in the country.

According to the declaration The passenger transport activity of HSR will be taken over by HSR-START CC who promised to build step-free accesses, to simplify the bookings, the regulation and the modified time-table will appear on the internet along with the timetable of the trains with a step-free access. HSR planned to simplify the booking system investigating the necessary technological and administrative changes to shorten the compulsory seven day advance booking system.

The respondent attached to its declaration service regulation 44/1997 ( in HSR Newsletter) which contains the facts mentioned above (“Regulation”). The attachment contains the regulation to operate the wheelchair lifts. It turns out that the wheelchair lifts can only be operated by trained operators over 18 who are entitled to move among the rails by a credential and participates in a work protection training every year.

Summarizing the relevant parts of the Regulation, the respondent recognized that mobility disabled people had to book their travel in advance.

ETA sent the respondent’s declaration to the Client for observation. who maintained his complaint, and said his main problem was not the way the step-free accessibility could be achieved but the advance booking.

### **Regarding the facts mentioned above ETA found the complaint well founded.**

Based on Section 19a) of ETPE Act No. CXXV of 2003 the grievant has to prove that he has been discriminated as a person of protected characteristics listed in Section 8) ETPE Act. The respondent can be exempted if he can prove that the complaint was not founded, he acted legally or he was not bound to abide by the law.

In the present case the Client’s mobility impairment is his protected characteristic and the disadvantage he suffered was the limitations of using HRS trains. During the procedure ETA investigated if the respondent was able to deny the circumstances of the complaint or he could find a legal way of exemption.

The respondent emphasized that it would be very expensive to achieve all round step-free accessibility of HRS trains, it can only be achieved gradually. This argument is doubtfully justified, HRS cannot be expected to develop step-free accessibility on all the trains even in small villages

years before the legal deadline. But the grievance the Client found very disadvantageous was that the present equipment is not fully used and it was very difficult to book accessible trains.

The respondent said that the existing but not operated mobile lifts were very difficult to move. But according to the attached Regulation a mobile lift can also be operated by women and the utmost display of strength is 200 Newton for women and 500 for men.

The booking 7 day before the travel was justified by securing the necessary paperwork and organization to make the operational staff available. ETA accepted this excuse only in those cases where no mobile lift is available at the railway station, people with mobility impairment can only travel to these places in carriages with step-free access.

Based on the Regulation ETA entered the conclusion that the operation of the mobile lifts at a railway station is not such a complicated task that could not be done by trained employees at each station which possesses the lift. It is not justified that there are places where the lifts are not used.

### **When ETA entered its decision the following legal regulations were concerned:**

With Act XCII of 2007 Hungarian Parliament –among the first countries- ratified the optional minutes of the Convention about the Rights and Dignity of Persons with Disabilities made by the United Nations in New York on 13 December 2006.

Countries that join in the Convention engage themselves to guarantee that persons with disability enjoy inherent life to dignity and accessibility on an equal basis with others.(Article 3)

On the fundamental issue of accessibility (Article 9), the Convention requires countries to eliminate obstacles and barriers and ensure that persons with disabilities must be able to have access to residential and commercial support services, **transportation**, public facilities, and information and communication technologies both in cities and in the country. These measurements include the identification of barriers and obstacles and their elimination and they shall be applied for transportation too.

The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.

*Section 1) Article 70/A of the Constitution of Hungary says: The Republic of Hungary guarantees that each person who stays in its territory shall enjoy the citizen's or human rights without any discrimination of race, colour, sex, language, religion, political or other opinion, national- or social origin, financial situation, position of birth or other position." According to Section 2): "Any sort of discrimination according to the characteristics enlisted in Section 1) is strictly sanctioned by the law."*

According to Section 8) of ETPE Act CXXV. of 2003 a direction is qualified as directly discriminative if a person or a group of people is treated less favourable because of their disability or imagined disability than other people in a comparable situation.

Pursuant to Section 2) ETPE Act 7 there is a general exemption "*if the act does not provide otherwise the attitude, provision, condition, default, instruction or practice does not violate the principle of equal treatment in the following cases:*

*a) if it is unavoidable to limit the basic human right of a person in order to let another basic human right be enforced provided that the limitation is suitable and proportional to achieve the target,*  
*b) in cases where a) is inoperative and the exemption is reasonable and interrelated with the given legal relationship."* In this case the basic human rights were not in conflict, but ETA

concluded the respondent was unable to prove that according to objective consideration the discrimination was directly interrelated with the given legal relationship. The requirement of using the existing mobile lifts is not a disproportional burden for the respondent.

Act XXVI. of 1998 about securing the rights and equal chances of disabled persons (“DA”) has particular significance in this case, pursuant to Section 2) Act 3 “During the planning and deciding phases the necessities of disabled persons have to be regarded and it has to be taken into consideration that accessibility is a main problem for them.” Section 4) Act 2 says ”When the decisions are made that concern disabled people it has to be understood that they are equal members of the society and local communities, they have to be given all the means by which they can participate in social life.” DA Section 3) gives authorization to give privileges in order to meet the requirements of the principles. DA Section 8) says the traffic system, public transport, traffic facilities – including signs and the information system- have to be suitable for safe use. Those transport systems that operated when DA entered into force shall gradually meet the requirements of Section 8) with a deadline of 1 January 2010.

Although public vehicles shall be fully accessible by 1 January 2010, Section 1) DA 29 prescribes that full accessibility shall be gradually reached, ETA also investigates the progress of the procedure. Concentrating only on the deadline and neglecting the principle of gradualness contradicts good faith. When ETA investigates gradual implementation, the proportion of accessibility is not investigated, but the applicable means have to be used.

*Taking the above statutes into consideration ETA entered the conclusion that when the respondent’s applicable means could only be used in an unreasonably long time after the booking, the principles of equal treatment were violated.*

When ETA sets sanctions , they have to be preventive, beyond banning the present practice of violation, the decision shall be made public. ETA considered the large number of disabled people who had been able to travel only after advance booking. In the same time there were no doubts the respondent endeavoured to shorten the time of advance booking and to achieve higher degree accessibility. Regarding these facts and the deadline of full accessibility in 2010 ETA did not set a fine.

Based on the detailed rules of the operation of ETA 362/2004 and Section 2 b) Government Decree 9 no hearing was held.

This decision may be suspended based on Section 110) of Act No.CXL of 2004 on the General Rules of Procedures by Administrative Authorities.

Based on Section 1) ETPE Act No.17 this decision shall not be appealed.

Based on Section 3) ETPE Act No. 17 this decision may be appealed by a claim addressed to the Court.

The ETA entered this decision based on Section 1 a) Act 15 ETPE Act No. CXXV. of 2003.

Budapest, 15 August 2007

Dr. Judit Demeter  
chairwoman

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