

**Position No. 10.007/3/2006. TT.
of the Equal Treatment Advisory Board
on the obligation of providing accessibility**

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Act XXVI of 1998 (hereinafter called: Disability Act) does not limit the obligation of providing accessibility to the built environment but also extends to the rights necessary for the provision of accessibility. The provisions of Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (hereinafter called: Equal Treatment Act) may be applied to the persons and legal relationships falling under its scope in the case of failure to observe the obligation of providing accessibility. As regards public buildings and the services stipulated in the Disability Act, the period of relief already expired, thus in terms of all public buildings the legal responsibility of the obliged parties has been existing since January 2005. The Disability Act applies to both public and private sectors. As the provisions of the Equal Treatment Act shall be applied to the obligation of providing accessibility, on the basis of Article 7(2) the obliged party may be partly or fully relieved of its legal responsibility.

The obligation of providing accessibility and the obliged parties

The obligation of providing accessibility is stipulated by Article 5(1) of Act XXVI of 1998 on the rights and equal opportunities of persons with disabilities (Disability Act). It states that "people with disabilities have the right to have a built environment, which is accessible, as well as perceptible and safe for them". This right is *especially* applicable to the orientation possibilities connected to transport and the built environment (Article 5(2)).

Nevertheless, Disability Act does not limit the idea of accessibility to buildings or the built environment. Although the requirement of having equal opportunities regarding the access to public utilities is not expressly stated in the Act, Article 5(1) of the Disability Act ensures the rights pertaining to accessibility, too. For example, regarding the deadlines for accessibility it establishes rights in terms of means of public transport, passenger traffic facilities, special transport network, special education, etc. The idea of accessibility shall be, therefore, broadly interpreted; it must not be, in any way, limited to the provision of accessibility of buildings.

Pursuant to Act LXXVIII of 1997 on the formation and protection of the built environment (hereinafter called: Building Act) the built environment is accessible if it may be used comfortably, safely and independently by all people, including those individuals or groups with health damage needing special facilities, means, or technical solutions for that (Article 2(1)). In the case of publicly used buildings the unimpeded accessibility must be also provided for persons with limited mobility (Article 31(1)).

The Disability Act does not distinguish between public and private sectors, and does not limit the range of obliged parties in any other way. The main accessibility rule of the Disability Act, i.e. Article 5(1) stipulates the obligation for the 'built environment' in general. Article 29 of the Disability Act, dealing with the deadlines for providing accessibility, stipulates the obligation for public buildings but does not describe the notion of a public building. Article 31 of the Building Act does define the idea of 'publicly used buildings', which – lacking the definition of the idea in the relevant Act – shall be taken into account when defining a public building. On the basis of the Building Act, a publicly used building is a building (part of a building):

- which includes a function serving the settlement or a part of the settlement, and
- the use of which is not limited or cannot be limited (e.g. parts of buildings serving elementary, secondary and higher education, health protection, healing, social, cultural,

sport, financial, commercial, insurance purposes or the provision of services, that may be used by everyone), and

- the use of which is compulsory or inevitable in certain cases (e.g. parts of public administration, jurisdiction, prosecution buildings that may be used by everyone), and
- which is defined as a publicly used building by any Act or governmental decree (Article 2(9)).

So the Building Act defines the range of the obliged parties and does not exclude the enforcement of the obligation in terms of the private sector. The obligation of providing accessibility may not be limited to the public sector as none of the above pieces of legislation allow for such an interpretation of the public building, or the publicly used building. Thus the obligation of providing the accessibility of buildings is mandatory as regards the publicly used buildings stipulated in Article 2(9) of the Building Act.

Failure to provide the unimpeded entry and accessibility results in the infringement of equal treatment, therefore the failure to provide accessibility falls within the scope of the Equal Treatment Act. According to Article 8 of the Equal Treatment Act, the failure to observe the obligation of providing accessibility shall be considered a direct negative discrimination because disabled people receive less favourable treatment, compared to those without any disability, due to the hindrance and restriction of their movement and access to services. The failure to observe the obligation of providing accessibility shall be considered a direct negative discrimination because it means the infringement of a constitutional obligation.

The provisions regarding the requirement for equal treatment stipulated in various pieces of legislation, for instance in the Disability Act, shall be applied in accordance with the Equal Treatment Act. Accordingly, in the case of failure to observe the obligation of providing accessibility, the provisions of the Equal Treatment Act shall be applied to the range of persons and legal relationships falling within its scope.

Temporal scope on the basis of the Disability Act

The Disability Act distinguished the public buildings that had existed before its entry into force on 1 January 1999 from other ones. The Disability Act provided relief for every obliged party for ensuring the accessibility of the public buildings existing before the entry into force of the Act until 1 January 2005. The Disability Act provided relief from the legal responsibility for these buildings because the immediate provision of accessibility could not have been expected due to the low ratio and the high costs thereof. Consequently, the relief provided an opportunity to distribute the costs over a longer period of time.

The buildings not existing at the time when the Disability Act came into force were not relieved of the obligation of providing accessibility even before 1 January 2005. Thus no public building enjoyed the relief from the responsibility, which was built, rebuilt or refurbished after the entry into force of the Act. During the construction, reconstruction, refurbishment of public buildings, authorities issue a building permit before the commencement of the works, and later a usage permit for taking the building into use. Taking into consideration all the above, buildings shall be considered to have existed before the entry into force of the Disability Act if no building permit had been issued by that time for the construction, reconstruction, refurbishment thereof. Consequently, before 1 January 2005, the difference between the two groups of public buildings described above was that the legal responsibility was enforceable by legal proceedings or any other legal way only in the case of public buildings for which a building permit was issued after the Disability Act entered into force.

Two deadlines for relief are stipulated by the Disability Act: 1 January 2005 and 2010.

Until 1 January 2010:

- the transport systems, means of public transport, passenger traffic facilities, including the signalling and information equipment, already in place at the time of enactment have to be

in compliance with the provisions of Article 8 of the Disability Act (Disability Act Article 29(1)),

- the establishment of the network providing the transport possibility stipulated in Article 9 of the Disability Act has to be ensured (Disability Act Article 29(2)),
- the institutions providing permanent lodging for people with disabilities have to be restructured in a way that the care of the people with disabilities capable of running their private lives with personal assistance be performed in boarding homes giving lodging to small communities; furthermore, more humane and modern institutional care must be provided to people with severe disabilities who are in need of such care (Disability Act Article 29(2)).

As this deadline has not expired, no problems emerge in connection with the application of these rules.

Until 1 January 2005:

- the public buildings already existing at the time of the enactment of the Act have to be made accessible (Disability Act Article 29(6)),
- the material and personal conditions of the special education of people with disabilities stipulated in Article 13 of the Disability Act have to be established (Disability Act Article 29(3)),
- the conditions of the employment of people with disabilities at special workplaces stipulated in Article 16 of the Disability Act have to be established (Disability Act Article 29(4)).

So, the deadline of January 2005 has already expired with regard to public buildings and services detailed above. The act on the amendment of the various laws relating to equal opportunities, also modifying the above deadlines (T/18902.), has not entered into force. Pursuant to the provisions of the Disability Act currently in force, since 1 January 2005 the legal responsibility of the obliged parties may be enforced both for public buildings existing before the Act entered into force, and for those opened subsequently.

Possible relief on the basis of the Equal Treatment Act

Since the provisions of the Equal Treatment Act have to be applied for the obligation of providing accessibility, based on Article 7(2) the obliged party may be relieved of legal responsibility. The default, e.g. the failure to provide accessibility, for which – on the basis of unbiased consideration – there is a reasonable cause directly connected to the legal relationship in question does not infringe the requirement of equal treatment.

On the basis of unbiased consideration, the sole reasonable cause for failing to comply with or irregularly fulfilling the obligation of providing accessibility directly connected to the legal relationship in question cannot be that the obliged party is not or just partially able to fulfil its obligation for financial reasons. This exemption needs to be interpreted in relation to other circumstances in order to avoid the obligation of providing accessibility losing its meaning. Similarly, this circumstance may be hardly ever accepted as an excuse in the case of the making historic buildings accessible. Even in such a case, all the circumstances of the case must be examined, including possible technical solutions, and the mere reference to financial reasons may not result in the relief of the obligation even in such circumstances. According to *Article 19 of the Equal Treatment Act* the obliged party is bound to provide evidence of the exact costs of ensuring accessibility and whether it presents a disproportionate burden compared to its resources. Providing accessibility may be accomplished in several ways, so all possible solutions have to be included in the proving of excuse. If the obliged party proves that all possible solutions present a disproportionate burden for him, he may be relieved of the legal responsibility.

On the basis of Article 7(2) of the Equal Treatment Act, providing partial accessibility may also result in the relief of legal responsibility, if the way of providing accessibility is in compliance with the aim of the Act.

During reconstruction works the obliged party may bring up as an argument that they have not fulfilled the obligation of providing accessibility because the reconstruction is still

underway. If the reconstruction is performed over a long period and the provision of accessibility presents a small fraction of the reconstruction costs only, years after the commencement of the reconstruction the obliged party may not be relieved of the legal responsibility on the basis of Article 7(2) of the Equal Treatment Act.

Possibilities for enforcing claims

The scope of authority of the Equal Treatment Authority (EBH) includes the cases due to the failure to provide accessibility if the party in breach belongs to the scope of the Equal Treatment Act. On top of the EBH procedure, the person whose rights were injured or the organisation entitled to actio popularis may initiate a lawsuit under personal law against the obliged party.

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