

## **Equal Treatment Authority Advisory Board**

### **Viewpoints 384/1/2008 about Accessibility**

**The amendment of Act XXVI of 1998 about disabled people (“DA”) in 2007 changed the rights of disabled people and the number of those who are obliged to make their public places accessible and the deadlines of accessibility. The deadline does not mean that the places can remain untouched before it expires. If the owner thoroughly changes the environs of his premises, he cannot refer to the deadline. Public services which started to function after 1<sup>st</sup> April 2007 have to be accessible too.**

**Those institutions which were founded before 1<sup>st</sup> April 2007 shall apply the decrees brought before that date.**

The Advisory Board disclosed its opinion in viewpoints 10.007/3/2006 about the rules of accessibility. Act XXIII of 2007 (“Amendment”) amended Act XXVI of 1998 about the rights and equal chances of disabled people. The Amendment of 1<sup>st</sup> May 2007 included the rights of the disabled people and the number of those who had to observe the deadline of accessibility.

The rights of disabled people

The amendment of DA extended the rights of disabled people:

- Environs Disabled people shall have accessible, sensible environs that is built safe which is particularly true for transport and direction. ( Section 5 )
- Communication Disabled people, their family members and their helpers have right to access public information and information about their rights and services. Information is accessible if disabled people can sense and understand it (Section 6 AD). Personal help and information are particularly important for communicatively impaired people. disabled people have equal right to get information from social services. (Section 7)
- Equal right to public services Public services have to be available according to the needs of differently impaired people. (Section 7/A AD)
- Transport The transport system, public vehicles, traffic centres, signals and the information system shall be suitable for safe use. (Section 8 AD) If certain disabled people are unable to use the public transport a transporting network can be operated. (Section 9 AD) In public parking lots there shall be enough parking places for disabled people (Section 10 AD).
- Supporting service and aid shall reasonably be given to impaired people (Section 11 AD).

### **The obligation to give equal rights to accessibility and public services**

According to the Amendment public services are equally available to disabled people if they are accessible, calculable, understandable and sensible especially for physically disabled, visually impaired, have a weak sight, mentally handicapped or communicatively impaired. The premises of public services is accessible, can easily be left, their equipment and services can be used by everybody (Section 4h AD).

The idea of accessibility basically has not changed: the built environs is accessible if it meets the requirements of Section 1) 2 of Act LXXVIII of 1997, if it is comfortable and safe for everybody including disabled people who need this institution or equipment.

According to Section of AD) the following services are qualified as public:

fa) all the activities of public authority – all the governmental, administrative, justice, parliamentary activities, the activity of the constitutional court, ombudsmen, state attorneys, police and army.

fb) state supported public programme, public collection, educational, cultural, scientific, social, welfare, social, child protection, health, health, sport and employment services, care or activities.

fc) the activities of local and minority governments especially the activity of authorities and administration, the services and activities of each publicly financed institution .

fd) The activities of public services

fe) each activity of public services based on the licence or obligation of the authority with an unlimited public use that serves the supply of the locality.

Failing to build accessibility is the violation of law which is in force in the Equal Treatment Act that qualifies it as direct discrimination because disabled people are given less favourable treatment than others. The applied rules for equal treatment shall be coordinated with the directions of AD and Equal Treatment Act. If the duty of building accessibility is dismissed, the Equal Treatment Act shall be put in force. As the accessibility of public services shall also be in force (Section 7/A AD), the defaulting authorities are also culpable.

### **Deadlines of Accessibility**

AD designates the following deadlines of exemption (Section 7/B 29):

1. Based on Section 29 the following tasks have to be completed by 1<sup>st</sup> January 2005:  
the premises and staff for the teaching of disabled people as it is regulated in (Section 13 and 3 AD)  
the provision of special working place for disabled people as it is regulated AD 16  
The deadline of the above activities has expired.

2. Based on 29 AD by 1<sup>st</sup> January 2010:  
-traffic systems, public vehicles, traffic centres, signals and information shall meet the requirements of Section 29) 3 AD  
- transport network has to be built to meet the requirements of AD 9  
- hostels housing disabled students have to be altered so that the students can live there with some assistance and they can form a small community, seriously impaired people have to be given full board and assistance in a newly equipped building (Section 2 AD 29).

3. Based on Section 1) AD 7/B public services that existed on 1<sup>st</sup> April 2007 shall be accessible on 31<sup>st</sup> December 2010.

4. Based on Section fc ) AD 4 those public services that operated on 1<sup>st</sup> April 2007 have to provide equal accessibility gradually scheduling improvement each year. If the scheduling is not abided by a proceeding can be started by the court or the Authority of Equal Treatment.

5. Based on Section fd) AD 4 public services that operated on 1<sup>st</sup> April 2007 and are visited by the public shall be accessible by 31<sup>st</sup> December 2013.

The institutions mentioned above are not fully released from meeting their obligations of building accessibility even before the deadlines. As for employment there is no exemption period. Before the deadline institutions are not bound to start building accessibility. Nevertheless if the

renewal or altering of the public building is on accessibility has to be included in the building plan even if the rebuilding is before the deadline. In this case the public authority is only exempt if it is proved that their default is agreeable with Section 2) of Equal Treatment Act 7. It means that the basic right of a disabled person cannot be enforced because of the enforcement of another basic right, that is acceptable. If the default is questionable the exemption can undergo a constitutional test. This deed, however, is not constitutional because the protection of the disabled person is of a lower level than the authority's who does not practise its basic right.

### **Public Services That Did Not Exist on 1<sup>st</sup> April 2007**

According to the Disability Act there is a difference between public services that operated on 1<sup>st</sup> April 2007 and those who did not exist that time. The latter ones are not exempt from the Accessibility Act. If a public building is significantly altered after 1<sup>st</sup> April this case the operator of the building cannot refer to the deadline. If the building permit was given to the authority before 1<sup>st</sup> April 2007, it is equal to those buildings that operated before that date.

### **Pending Cases before the Amendment Entered into Force**

In the cases that had been pending before the amendment of AD entered into force the decrees that were in force before the amendment have to be applied.

### **The accessibility of places where disabled people are employed**

According to Section 2) of AD 15 the employer shall make the building, the place and the equipment accessible where disabled people are employed. The employer can apply for support to complete the necessary alterations. If the employer fails to meet his obligation, the employee can start a procedure. The same act applies to the person whose employment is refused because the place of work is not made accessible. AD does not define which the legal relations are where the obligation is sustained. However, 2 of the Equal Treatment Act puts the obligation in force for all sorts of employment that are in operation under the Equal Treatment Act.

According to 5 of EU Employment Framework of 2000/78 “ Reasonable measures shall be applied to employ disabled people according to the principle of equal treatment. It means that employers have to take the necessary measures to employ disabled people with proper promotion prospects and training unless their employment is ill-proportioned difficult for the employer. This duty, however, cannot be regarded disproportionately difficult if it is duly compensated by the social policy of the member state.” Section 2) Para 7 of the Equal Treatment Act can be applied in because the exculpation is for creating conditions to employ a disabled person, not for the employment.

### **Possibilities for assertion of claims**

The Equal Treatment Authority has jurisdiction to proceed for default in accessibility cases if the violation is under the force of the Equal Treatment Act. The discriminated disabled person or organization can start a procedure at the Equal Treatment Authority and the case can also be brought up for trial.

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