

Recommendation of the Public Defender of Rights regarding access of guide and assistance dogs to public areas

I. Introduction

The presented recommendation was created for the purpose of fulfilling the task entrusted to the Public Defender of Rights by the provision of Sec. 21b (c) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended, pursuant to which the Defender issues recommendations on issues related to discrimination.

The recommendation is intended for offices, healthcare facilities, schools, employers, carriers, facilities providing services to the public and other relevant entities. A secondary target group comprises people with disabilities who use dogs with special training to compensate for their disadvantage.

Discrimination generally means unequal treatment. In the examined agenda of the rights of disabled persons, ensuring equal treatment means securing equal opportunities so that these persons can have an opportunity to take active part in the life of a society. Persons with disabilities may be viewed from different perspectives; they may be perceived as passive recipients of privileges or they may be regarded as equal members of a society. Failure to ensure access for disabled persons to public areas will lead to their exclusion from participating in the life of a majority society and also from the labour market. In compliance with the principle of non-discrimination, persons with disabilities should be enabled to use fully their abilities. In order to that, unjustified barriers, which only lead to passivity and deepen exclusion, need to be removed. Ensuring the participation of disabled persons in all spheres of life on a non-discriminatory basis will help upset prejudices about their incapacity and lack of independence.¹ Therefore reasonable measures need to be adopted enabling persons with disabilities to take part in the life of a society in a similar way as persons without disabilities do. If such reasonable measures are not adopted, the right of persons with disabilities to equality of opportunity will not be guaranteed, and thus they will be discriminated against compared to persons without any disability.²

¹ Meenan, H. Equality Law in an Enlarged European Union, p. 231 - 247.

² For more about the concept of equality see e.g. Bobek, M., Boučková, P., Kühn, Z. (eds.). Rovnost a diskriminace. Prague: C.H.Beck, 2007, p. 3 – 22. Regarding the equality of persons with disabilities see Comparative Study of Definitions of Disability, Brunel University, 2003. p. 67-68.

II. General recommendations of the Defender

Persons with disabilities have the right to individual autonomy and independence in the same extent as non-disabled persons. A dog trained to accompany a person with a disability is perceived as an essential part of a person with a disability enabling the person to exercise the right to free movement, self-reliance and mobility. To avoid discrimination of disabled persons, the requirement of ensuring that persons with disabilities have access to all activities that may be performed by persons without disabilities needs to be kept in mind in all areas of social life. Therefore the special status of assistance and guide dogs needs to be respected with regard to their special training as a part a person with a disability. If there is no exception to a ban on dogs in public places for dogs specially trained to accompany persons with disabilities, which serve as compensation aids, it is indirect discrimination on the grounds of disability.

Indirect discrimination on the grounds of disability is in violation of the Anti-discrimination Act³ and other regulations as well as the Charter of Fundamental Rights and Freedoms, European law regulations and international treaties that the Czech Republic is bound by.

To avoid effectively discrimination of persons with disabilities, it would be appropriate to modify the rights of access for disabled persons accompanied by a dog to public places. At the same time, access rights need to be ensured also for dog trainers⁴ who are conducting special training to teach dogs to accompany persons with disabilities. Legal regulation of access rights to public places is standard at the European level.⁵ Public places where disabled persons should have access mean in particular buildings and their vicinity serving the needs of the public administration, relating to access to justice, culture, public education, secondary and higher education, science, healthcare, social care, bank services, trade, gastronomy, services, tourism, sports, attending to passengers in railway, road, air, sea and river transport, ensuring postal or telecommunication services, as well as to other publicly accessible buildings intended for securing similar functions, which includes buildings of offices and social facilities. The right to access has to be guaranteed also with respect to the means of railway, road, air and water transport, as well as in other means of public transport.

Persons with disabilities should not be obliged to put a muzzle on dogs or keep them on a lead, or otherwise the function for which the dogs were trained would be significantly limited, which would put disabled persons at a disadvantage in comparison with non-disabled persons. Simultaneously, however, disabled persons would not be discharged from liability for damage caused by dogs.

³ Act No. 198/2009 Coll., on Equal Treatment and Legal Means of Protection against Discrimination and on Amendments to some Laws (the Anti-discrimination Act).

⁴ A trainer or an instructor is a person who trains dogs, i.e. teaches a dog how to move in places and other activities so that a dog can accompany a person with a disability.

⁵ See e.g. the provision of Sec. 20a of the Polish law of 27 August 1997, o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych, which was incorporated in this law by an amendment as of 1 January 2009, effective from 19 June 2009 – for the selected part please see the Annex, French law of 31 July 1987, the provision of Article 1 of Italian law of 25 August 1988; for comparison of access rights for dogs trained to accompany persons with disabilities from the European perspective, see e.g. <http://www.euroblind.org/fichiersGB/dogsaccess.htm>.

Equipping a dog with a prescribed standardized harness as well as the possibility to show other documents confirming the status of a specially trained dog should contribute to easy identification of specially trained dogs and subsequent effective securing of rights of disabled persons.

Subsequently, staff and other persons that are entitled to remove a dog or can have a dog removed from buildings, means of transport or other publicly accessible places need to be trained on the rights of disabled persons accompanied by a dog with special training.

The prohibition of discrimination on the grounds of disability needs to be also respected by municipalities when issuing bylaws (i.e. in particular when regulating the movement of dogs in public areas, cemeteries etc.)

A dog trained to accompany persons with disabilities should be removed from the above described places only in cases that are objectively justified. If, for serious reasons, the movement of a dog in a building is not possible and operating conditions permit, it is necessary to provide a place where the dog can be left or possibly provide a personal assistant for the disabled person.

With respect to the fact that a dog with special training is considered an essential part of a person with a disability, special fees for dogs (entrance fees or accommodation fees) cannot be required. As a special aid, a dog is equal in character to e.g. prosthesis or a wheelchair. Requiring a special payment for these dogs would mean an unjustified and disproportionate burden for disabled persons, a disadvantage compared to persons without disabilities and thus their discrimination.

III. Terms

Accessibility

The principle of accessibility is a fundamental requirement that takes down barriers preventing an effective exercise of rights of persons with disabilities. Without securing access to buildings and to other estate, not only is the movement of disabled persons restricted but the enjoyment of other rights is prevented too.

It is a principle that is reflected in the content of specific rights of persons with disabilities and at the same time it is also an independent right, i.e. a right of disabled persons to have access to everything that is commonly accessible to non-disabled persons (this includes access to places as well as access to services, access to employment, information technologies etc.).

Discrimination

Discrimination in general means unequal treatment based a prohibited discriminatory reason (in the case under scrutiny a disability is the reason) in certain areas.

Direct discrimination

Direct discrimination is an action (including an omission) when one person receives less favourable treatment than another person does or would receive in a comparable situation on the basis of a prohibited reason.

Indirect discrimination

Indirect discrimination is an action or a lack of action when one person receives less favourable treatment than another person on the basis of a criterion that is seemingly neutral. Indirect discrimination can be justified by a reasonable goal if the means for achieving such goal are proportionate or necessary.

In the examined area, this type of discrimination will be considered because an unexceptional ban on dogs from various places constitutes a seemingly neutral criterion on the basis of which disabled persons using guide or assistance dogs are excluded and therefore discriminated against.

Equality of opportunity

Regarding the agenda of the rights of disabled persons, to ensure equality means to secure equal opportunities so that disabled persons can take active part in the life of a society. To ensure equality of opportunities for disabled persons, it is necessary to adopt reasonable measures that will enable them to take part in a social life in a similar way as non-disabled persons. If such reasonable measures are not adopted, the right to equality for disabled persons will not be ensured and therefore they will be discriminated against in comparison with non-disabled persons.

Disability

For the purpose of this text, a disabled person shall mean a person who is limited in his or her ability to perform daily activities as a result of health damage. To overcome these obstacles, a disabled person uses a specially trained dog.

Compensation (special) aid

These are aids that disabled persons need in order to remove, mitigate or overcome the effects of their disabilities. Special aids also include dogs with special training.

A dog with special training

A dog with special training can be considered an aid that enables or helps individuals with severe disabilities to perform activities that they would not be able to do by themselves without using it, or the performance of these activities would be connected with an excessive physical strain or a disproportionate length of duration of an activity, or a disabled person would depend on another person for help. Assistance dogs can be used by persons with vision disabilities as well as by persons with other types of disabilities (physical disability, hearing disorders or balance disorders). Dogs with special training include guide dogs for persons with vision disabilities and assistance dogs for persons with other types of disabilities (including signal dogs for persons with hearing disorders or balance dogs for persons with balance disorders).

Public places

Public places mean all buildings, public areas and other places to which persons unaccompanied by a dog have common access.

Mainstreaming

In European law, the principle of so-called mainstreaming is applied (participation in the mainstream). Mainstreaming means paying systematic attention to special needs of persons with disabilities, which need to be respected when taking any measures in connection with the support of employment.⁶ The mainstream should be joined by everybody who can do so and in every area where it is possible. Segregation in specialized facilities for disabled persons is considered undesirable. Well accessible leisure and cultural facilities are also very important in the area of improving the quality of life and increasing the participation in social and cultural environment. Accessible public transport is an inseparable part of accessibility in a wider sense.⁷

⁶ Disability mainstreaming in the European Employment Strategy, EMCO/11/290605 (2005), p. 2-3.

⁷ COM (2003) 650 final, p. 6, 13, 22.

IV. Rights of persons with disabilities and equal treatment of disabled persons who use a dog with special training to accompany them

1. Definition of disability – medical model vs. social model

In the following text, we shall deal with the rights of persons with disabilities. First of all, it needs to be stated what a disability means for the purpose of the anti-discrimination law. Disability can be evaluated from a medical point of view or as a social phenomenon. According to the medical point of view on disability, problems that disabled persons face in everyday life are caused mainly by damage to their health. On the other hand, the social model sees problems in social barriers and barriers related to the environment. The legal definition of disability differs depending on the legal area. The law of social security regards disabled persons as passive recipients of privileges⁸ while the anti-discrimination law tries to ensure their general active participation in the life of a society.⁹ Equal treatment is therefore offered not just to those in need (i.e. persons with a certain degree of damage to their health, which requires compensation), but to all persons potentially threatened by discrimination.¹⁰ In the area under examination, the concept of disability as a social phenomenon is manifested by the fact that persons who could fully assert themselves in broadly defined areas of life when accompanied by a dog with special training are denied this fulfilment with reference to an unconditional ban on dogs. The hurdle is not the disability itself but unjustified barriers in the society.

The anti-discrimination law works with the social model of disability. **Persons with disabilities are thus entitled to the active creation of conditions respecting their different situation**, which means the creation of specific conditions not needed by other persons. **This is not a case of the so-called “positive action” because it does not involve the creation of more advantageous conditions.** The aim of positive action would be to prevent or counterbalance disadvantages resulting from affiliation of a person with a disadvantaged group, which is left to discretion. However, proportionate measures aimed at persons with disabilities cannot be regarded as positive action and therefore their adoption is necessary.¹¹ On the contrary, failure to take into account the needs of disabled persons may constitute impermissible discrimination.¹²

⁸ The medical model of disability is reflected in the treatment of severe disability, which establishes an entitlement to allowance for special aids pursuant to the provision of Sec. 33 of Decree No. 182/1991 Coll., which implements the Social Security Act, as amended.

⁹ The Czech Anti-discrimination Act also works largely with the social model. The provision of Sec. 5 (6) defines a disability for the purpose of the anti-discrimination legislation as: “*a physical, sensory, mental or other disability that prevents or might prevent persons from exercising their right to equal treatment in areas stipulated by law, provided it is also a long-term disability that has lasted or is expected to last for at least one year, according to the knowledge of the medical science*”; a similar view is offered in the Convention on the Rights of Persons with Disabilities (Communication of the Ministry of Foreign Affairs No. 10/2010 Coll. of international treaties), according to Article 1 of the Convention, persons with disabilities mean persons with long-time physical, metal or sensory disabilities, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

¹⁰ Degener, T. Definition of Disability. E.U. Network of experts on disability discrimination. p. 4-10.

¹¹ Disability Mainstreaming in the European Employment Strategy, Brussels, European Commission, EMCO/11/290605 (2005), p. 3.

¹² C.f. Boučková, P. Rovnost a sociální práva. Prague: Auditorium, 2009, p. 148-149.

2. Regulation of the rights of disabled persons in the Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (hereinafter also “the Convention”) was signed on behalf of the Czech Republic in New York on 30 March 2007.¹³ The Convention became valid for the Czech Republic on 28 October 2009. It is a new, crucial document comprehensively regulating the rights of persons with disabilities, recognizing the diversity of persons with disabilities.

The purpose of the Convention is to protect, promote and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Among others, the Convention is based on the principles of individual autonomy and independence of persons, non-discrimination, equality of opportunity, full participation and inclusion in society and accessibility.¹⁴

The provisions of the Convention reflect the principle of participation and inclusion of persons with disabilities in society so that they can have the same opportunities as persons without disabilities. In order for disabled persons to exercise the right to inclusion, they use various special aids which serve to compensate for their disabilities. Using a compensation aid does not mean that a disabled person becomes non-disabled but only that he or she will be able to participate in the life of a majority society in the same way as persons without disabilities. Moreover, an adequate compensation aid eliminates the need for assistance from another person. In a situation when a disabled person is not dependent on help from another person, his or her right to an independent way of life is fulfilled. **A dog with special training can also be a compensation aid. It compensates for help from other persons so that disabled persons can fully exercise the right to an independent way of life as well as personal mobility.**

Countries are obliged to adopt such measures so as to, among others, prepare and declare minimum internal standards and norms to ensure accessibility to facilities and services available to or provided for the public and to check the compliance therewith, and further to ensure that private entities that operate facilities and provide services available to or provided for the public take into consideration all aspects of accessibility for persons with disabilities. **For persons with disabilities who use a specially trained dog to accompany them, the right to access includes in particular the possibility for the dog to accompany them to places where dogs in general do not have access.**

The Czech Republic has not acceded to the Optional Protocol to the Convention on the Rights of Persons with Disabilities. This means that it did not recognize the competence of the Committee on the Rights of Persons with Disabilities established by the Convention to receive and consider communications from individuals or

¹³ Communication of the Ministry of Foreign Affairs No. 10/2010 Coll. of international treaties, the Convention on the Rights of Persons with Disabilities.

¹⁴ In accordance with the provision of Article 9 of the Convention on the Rights of Persons with Disabilities, the exercise of rights to access means the adoption of appropriate measures “to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”

groups of individuals who claim to be victims of a violation by that state party of the provisions of the Convention. The Convention is thus a binding document; however, since the Czech Republic has not acceded to the Optional Protocol, an individual cannot call upon the said Committee making claims on the basis of the Convention's provisions. As a result, the protection of the rights of disabled persons in the Czech Republic is weakened in comparison with the protection of the rights of disabled persons in countries that have acceded to the Optional Protocol.

3. European law impacting access rights of disabled persons

Since the Czech Republic joined the European Union, European law rules have become binding for the Czech Republic too. European rules are binding for the Czech Republic as a state and a certain type of rules (regulations) is directly applicable to relationships between citizens and takes precedence over the national (i.e. Czech) law. European rules binding for the Czech Republic explicitly state an obligation to make the Czech legal order compatible with European law.

The recognition and protection of people with disabilities is one of the priorities that the European Union pursues. The provision of Article 19 of the Treaty on the Functioning of the European Union (earlier Article 13 of the Treaty establishing the European Communities) empowers the Union to submit legislation aimed at combating discrimination based on, among others, disability. In connection with the provision of Article 19, the Council passes European law rules, so-called directives.¹⁵ Subsequently, Member States are obliged to make their legal order compatible with directives. The provision of Article 21 of the Charter of Fundamental Rights of the European Union also generally prohibits discrimination based on disability. The provision of Article 26 specifically recognizes the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community as a fundamental right of persons with disabilities.¹⁶ The provisions of the Charter of Fundamental Rights of the European Union are intended for institutions and other entities of the EU, including Member States, if they apply the EU law.¹⁷

4. National regulation of rights of persons with disabilities and protection against discrimination

The principle of equality of people in their dignity and in their rights as well as the guarantee of their rights without any discrimination is contained on a constitutional level in the provisions of Article 1 and 3 of the Charter of Fundamental Rights and Freedoms. The right to increased protection of health at work and to special working

¹⁵ E.g. Council Directive No. 2000/78/EC of 29 June 2000, which establishes a general framework for equal treatment in employment and occupation; at present a new directive is being prepared regarding the implementation of the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation No. 2008/0140 (CNS). The proposal for a Council directive prohibits discrimination in the public and private sectors outside the labour market, namely it concerns social protection including social security and healthcare, social advantages, education, and their supply.

¹⁶ The fact that European law envisages reinforcing the rights of persons with disabilities is stated in Equal opportunities for people with disabilities: A European Action Plan (COM /2003/ 650 final). This action plan defined as a priority access to and retention in employment including the fight against discrimination, and accessibility to the public built environment to improve participation in the work place and integration into the economy and society.

¹⁷ See Article 51 of the Charter of Fundamental Rights of the European Union.

conditions for disabled persons is regulated in the provision of Article 29 of the Charter of Fundamental Rights and Freedoms within the so-called social rights.

Duties regarding the right of disabled persons to equal treatment following from the membership of the Czech Republic in the European Union were implemented in the Czech legal order by Act No. 198/2009 Coll., on Equal Treatment and Legal Means of Protection against Discrimination and on Amendments to some Laws (the Anti-discrimination Act). The Anti-discrimination Act is a general legal regulation prohibiting any discrimination in the area of employment, business, education, social care, healthcare, providing goods and services.¹⁸

The Anti-discrimination Act prohibits indirect discrimination based on disability. Indirect discrimination in general means such action or omission when on the basis of a seemingly neutral provision, criterion or practice a person is put at disadvantage compared to others due to a disability, unless such provision, criterion or practice is objectively justified by a legitimate goal and the means for reaching the goal are adequate and necessary. Banning dogs from public areas without any exception is a seemingly neutral provision, which disproportionately affects persons with disabilities who use a dog with special training to accompany them.

The Anti-discrimination Act further follows the above mentioned principles; the provision of Sec. 3 considers a refusal or an omission to adopt adequate measures indirect discrimination based on disability. Adequate measures are necessary to ensure access for a person with a disability to certain employment, performance of work activity or to functional or other advancement at work so as to enable the person to take advantage of work counselling or to take part in other professional training or to use services intended for the public. A duty to adopt adequate measures does not apply if such measure would impose an undue burden. In accordance with the provision of Sec. 3 (4), a measure which an individual or a legal person is bound to take pursuant to a special legal regulation is not considered undue burden. According to the provision of Sec. 7 of the Anti-discrimination Act, a difference of treatment is not considered discrimination due to disability if it is objectively justified by a legitimate goal and the means to achieve the goal are adequate and necessary.

a. Legal means of protection against discrimination

Legal means of protection against discrimination are defined in the Anti-discrimination Act, namely in Sec. 10 and Sec. 11. The Anti-discrimination Act in particular specifies conditions upon which an individual may seek court protection against discrimination, and entrusts the Defender of Rights with certain powers in connection with the protection of the right to equal treatment. They include duties of the Defender stipulated in the provision of Sec. 21b of Act No. 349/1999 Coll., on the Defender of Public Rights, as amended, according to which the Defender in particular provides methodological assistance to victims of discrimination in lodging their proposals for commencement of proceedings concerning discrimination in relation to

¹⁸ Apart from this law, equal treatment in some areas is regulated by special legal regulations, in particular by Act No. 561/2004 Coll., on Pre-school, Basic, Secondary, Tertiary Professional and Other Education, as amended, Act No. 262/2006 Coll., the Labour Code, as amended, Act No. 634/1992 Coll., on Consumer Protection, as amended.

equal treatment of disabled persons. If victims to discrimination decide to assert their right to equal treatment in access to public places by a lawsuit against a private entity, the district court of a defendant (i.e. a potentially discriminating person) will have jurisdiction in the first instance.¹⁹ Victims of discrimination have the right to demand discrimination be stopped and effects of discrimination be removed and to be given appropriate satisfaction. In specific cases, they have a right to monetary compensation for non-proprietary damage.

Another option to fight discriminatory conduct is to turn to the relevant controlling or supervisory body. This means that if discrimination is committed e.g. by an employer while selecting applicants for a job, an applicant may address the labour office with a complaint.²⁰ If discrimination is committed by an employer against an employee, an employee may turn to a labour inspectorate with a complaint.²¹ Likewise, an employee may turn to the superior and notify him or her that some employee is committing discrimination. An injured consumer may turn to the Czech Trade Inspection Authority.²² State check on adherence to legal regulations which relate to provision of education and school-services control is performed by the Czech School Inspectorate.²³ If an injured person decides to file a complaint, he or she can usually no longer interfere in the procedure of an authority and it is up to the authority how the case will be dealt with. In this way a defective condition may be removed but reasonable satisfaction or monetary compensation for property or non-property damage cannot be demanded.

¹⁹ C.f. a statement of the Public Defender of Rights regarding some procedural aspects of the Anti-discrimination Act, in particular the subject-matter jurisdiction of courts, available at www.ochrance.cz.

²⁰ Pursuant to Act No. 435/2004 Coll., on Employment, as amended.

²¹ Pursuant to Act No. 251/2005 Coll., on Labour Inspection, as amended.

²² Pursuant to Act No. 634/1992 Coll., on Consumer Protection, as amended.

²³ Pursuant to the provision of Sec. 174 (2) (d) of Act No. 561/2004 Coll., on Pre-school, Basic, Secondary, Tertiary Professional and Other Education (the Education Act), as amended.

V. Dogs designated to accompany persons with disabilities

Disabled persons use dogs with special training as compensation aids,²⁴ which help to remove, mitigate or overcome the effects of disabilities.²⁵ **A dog with special training needs to be above all regarded as an aid.²⁶ Only then should the dog be viewed as an animal (a living creature) and the related specifics taken into account.²⁷ A dog trained to accompany a disabled person is regarded as an indispensable part of a person with a disability, enabling the person to exercise fully the right to free movement, independence and mobility.²⁸**

The nature of a dog as a living creature can have an impact on the assessment of responsibility for damage that a dog could cause. According to the present legal status, responsibility for such damage will be assessed according to the general regulation of the prevention of damage and of the responsibility for damage in the Civil Code.²⁹

To ensure the full function of assistance and guide dogs, e.g. in retrieving things that have been dropped, it is legitimate to require that the dogs do not have to wear a muzzle even in places where it is usually required for security's sake. At the same time, in some cases the character of a disability completely excludes or significantly hinders the possibility to handle a muzzle. A risk of causing damage is to a big extent eliminated by special training that the dogs undergo.

The use of guide dogs for blind persons is considered common; however, in practice a dog with special training is used not just by blind persons but also by persons with different types of disability.³⁰ The company of a dog can be further used by persons with physical disabilities, persons with hearing defects (so-called signalled dogs are

²⁴ Pursuant to Sec. 33 (9) of Regulation No. 182/1991 Coll., which implements the Social Security Act and the Act of the Czech National Council on the Competence of Bodies of the Czech Republic in Social Security Matters, as amended, a guide dog for blind persons is a special aid that people with severe disabilities need in order to remove, mitigate or overcome the effects of their disabilities.

²⁵ The issue of the necessity of legal regulation was addressed by Zdeňka Galetová. See Galetová, Z. *Problematika asistenčních psů*. Prague: VÚPSV, 2008, p. 128.

²⁶ C.f. the provision of Sec. 24 (2) of Slovak Act No. 447/2008 Coll., on Financial Allowances to Compensate for Severe Disability and on Amendment to Certain Laws.

²⁷ Pursuant to Act No. 40/1964 Coll., the Civil Code, as amended, a dog as an animal is a thing in the legal sense. In accordance with the proposal of a new civil code, a living animal is no longer a thing. With respect to the fact that a dog is a living thing, its protection against mistreatment needs to be ensured. Therefore the regulation in Act No. 246/1992 Coll., on the Protection of Animals against Cruelty, as amended, and the provision of Act No. 166/1999 Coll., on Veterinary Care and Amendments of Some Related Acts (the Veterinary Act), as amended, also need to be taken into consideration.

²⁸ C.f. Paragraph 4.1.4 of the Opinion of the Economic and Social Committee on the Proposal for a European Parliament and Council Regulation concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

²⁹ Pursuant to the provision of Sec. 2795 of the proposal of a new civil code, if an animal functions as an aid for a person with a disability, the owner is released from a duty to pay compensation provided that he proves that in supervising the animal he did not neglect necessary care or that damage would have occurred even if necessary care had been exercised.

³⁰ E.g. pursuant to the provision of Sec. 2 (11) of Polish Act of 27 August 1997, o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych, an assistance dog is a dog trained and specially identified, used to accompany blind or partially blind persons, or a dog that helps a person with a physical disability actively participate in social life. Pursuant to Sec. 25 of Slovak Act No. 447/2008 Coll., on Financial Allowances to Compensate for Severe Disability and on Amendment to Certain Laws, dogs with special training include guide dogs, assistance dogs and signal dogs.

used) and persons with balance disorders (so-called balance dogs are used).³¹ **In the following text, a guide dog shall mean a dog designated to accompany persons with vision disabilities and an assistance dog shall mean a dog that is designated to accompany persons with other types of disabilities** (i.e. a general category comprising assistance dogs for persons with physical disabilities, signal dogs for persons with hearing defects or balance dogs for persons with balance disorders). The possibility of dog assistance is also stipulated in some legal regulations regulating the reliefs for disabled persons and the rights of disabled persons.³² The Czech legal order does not explicitly regulate the status and conditions of the training of dogs designated to accompany persons with disabilities. The law says nothing about the regulation of access rights of persons accompanied by a dog with special training.

1. Dog training – reflection de lege ferenda

At present, the training of guide dogs is not regulated by any legal regulation in the Czech Republic.³³ Dog training is provided by organizations directed at the rights of persons with disabilities, be it vision or other disabilities, more or less spontaneously and also with respect to the fact that at present dog training for these purposes is a free trade.³⁴

As a result, the training of guide dogs intended for persons with disabilities follows the same regime as the training of dogs for other purposes.³⁵ However, specific requirements are laid on guide dogs for persons with disabilities, which should be also reflected in the training. However, there is not any board or an independent body recognized nationwide in the Czech Republic that would assess the quality of dog training or the professional capacity of trainers. Considerable sums are spent on dog training and so it would be appropriate to ensure supervision over the way training is conducted.

2. Identification of dogs

According to the legislation in force, potential measures related to permanent identification of dogs are fully in the competence of municipalities.³⁶ It is up to a municipality whether it will proceed to take this measure or not. The regulation of dog

³¹ See Galetová, Z. *Problematika asistenčních psů*. Prague: VÚPSV, 2008, p. 128.

³² E.g. Act No. 565/1990 Coll., on Local Fees, as amended.

³³ The training of guide dogs was regulated by Methodological Instruction OP 20/93 for the operation of district offices in the Czech Republic regarding the regulation and certification of the training of dogs for blind citizens. This regulation was not formally repealed but it may not be applied with respect to the termination of operation of district offices as at 31 December 2002.

³⁴ See Annex 4 of Government Decree No. 278/2008 Coll. on the Content of Individual Trades. This means that pursuant to the provision of Sec. 25 of Act No. 455/1991 Coll., to Regulate Trades (the Trade Act), as amended, no professional or other competence needs to be demonstrated to operate such trade. To obtain the Trade Licence Certificate, only general conditions need to be met (i.e. minimum age of 18 years, legal competence and clean criminal record).

³⁵ Professional competence is required only in case of training for the purpose of artistic performances.

³⁶ In compliance with the provision of Sec. 13b (2) of Act No. 246/1992 Coll., on the Protection of Animals against Cruelty, as amended, a municipality may impose in a bylaw a duty on breeders to have dogs that are not yet identified permanently identified by a person professionally competent to perform this professional veterinarian activity according to the Veterinarian Act (166/1999 Coll.), especially by means of tattoos or chips. A municipality may further impose in a bylaw a duty to register dogs in a registry and regulate the elements and the method of record-keeping of identified dogs and their breeders.

identification is inserted in the Act on the Protection of Animals against Cruelty mainly due to the control of the population of stray and abandoned animals.

The identification of guide dogs for persons with disabilities should serve a different purpose, i.e. to establish as fast as possible that it is a dog with special training and to find its owner. No legal regulation uniformly regulates visible identification of dogs with special training to make it clear at the first glance that a dog is designated to accompany a disabled person. In practice this mainly concerns the colour and the style of harness. It would be also appropriate if a person with a specially trained dog could provide a relevant identification card confirming the status of the dog. Visible and permanent identification of dogs as well as identification cards for owners would help to identify easily dogs with the status of special aids for disabled persons, which would lead to an easier exercise of access rights and subsequent elimination of discrimination in this area.

VI. Access to public places with a dog specially trained to accompany persons with disabilities

The principle of access is an essential requirement taking down barriers preventing an effective exercise of rights of persons with disabilities.

The practice of restricting access of animals to buildings and other public places is very common, according to the Defender's experience. The requirement that animals not move freely in buildings and public places is undoubtedly legitimate. In most cases, however, it is not distinguished whether a dog is an ordinary companion or a specially trained dog designated to accompany a disabled person. It is not taken into consideration that a guide dog or an assistance dog is specially selected and trained, therefore characterized by different qualities and behaviour than dogs without training. As a result of restricting access for dogs, access of persons with disabilities is prevented too.

1. Access to office buildings

Access of animals to office buildings is usually restricted. The requirement that animals not be present in buildings is legitimate in itself. Nevertheless, administrative bodies have a duty to proceed in compliance with laws and other legal rules and also with international treaties that are parts of the legal order.³⁷ Preventing access of dogs specially trained to accompany persons with disabilities interferes with several areas in which equal treatment of disabled persons has to be ensured and breaches individual rights guaranteed by the Charter of Fundamental Rights and Freedoms and the Convention on the Rights of Persons with Disabilities.

If a disabled person using a guide dog with special training is applying for a job at an office, preventing dog access could constitute indirect discrimination in the area of access to employment, and thus be in violation of the Anti-discrimination Act.

Further, administrative bodies have a duty to respect the regulation of prohibition of discrimination stipulated directly in the Charter of Fundamental Rights and Freedoms³⁸ and the right to participate in political and public life, declared in the Convention on the Rights of Persons with Disabilities.³⁹ For that reason, the right of disabled persons to participate in administrative proceedings needs to be ensured on a non-discriminatory basis. Accessibility of stations of the Police of the Czech Republic to disabled persons is necessary for ensuring the right to legal protection.⁴⁰ As regards labour offices, their accessibility is necessary for ensuring the right to work or employment, and e.g. the right to adequate material welfare in case of incapacity to work, etc.

³⁷ The provision of Sec. 2 of Act No. 500/2004 Coll., the Rules of Administrative Procedure, as amended.

³⁸ Namely the provision of Article 1, 3 and 4 of the Charter of Fundamental Rights and Freedoms.

³⁹ The provision of Article 29 of the Convention on the Rights of Persons with Disabilities.

⁴⁰ The provision of Article 36 of the Charter, the provision of Article 13 of the Convention on the Rights of Persons with Disabilities.

Moreover, the right to vote and be elected needs to be ensured on a non-discrimination basis.⁴¹ Failure to ensure accessibility to voting rooms as well as to rooms intended for holding office for a person accompanied by a dog with special training would constitute unallowable discrimination of persons with disabilities.

2. Access to court buildings

The state has a duty to ensure effective access to justice for persons with disabilities on an equal basis with others in order to facilitate their effective role as direct and indirect participants and witnesses in all legal proceedings, and this also applies to investigative and other preliminary stages.⁴² If a court completely prevents access of dogs to a building by an internal regulation without excluding specially trained guide or assistance dogs from this prohibition, it also restricts access of disabled persons to court, which might constitute a breach of the principle of equality in exercising a fundamental right, i.e. the right to judicial protection and access to justice. Simultaneously, to exercise this right effectively, members of the Judicial Guard need to be informed about the rights of persons with disabilities because members of the Judicial Guard have power to banish individuals from a court building or a court room, and persons entering a court building are obliged to follow the orders of members of the Judicial Guard.

The exclusion of dogs from court buildings is probably due to an effort to ensure order and maintain dignity of court proceedings. In such cases it is, however, necessary to approach individual cases separately. This means that access of a dog to a building should be restricted or a dog should be banished from a courtroom only if it disturbs order in the building or during the court proceeding. General restriction of access of dogs to court buildings and courtrooms is ruled out in view of a duty to respect the rights of persons with disabilities since it would constitute their discrimination.

3. Access to healthcare facilities

The right to protection of health is one of the fundamental rights and access to healthcare should be ensured on a non-discrimination basis.⁴³ Further, the prohibition of discrimination in access to healthcare and during the provision of healthcare is regulated on a legislative basis by the Anti-discrimination Act. In the area of healthcare any sort of discrimination due to disability is therefore prohibited. The exclusion of dogs, including dogs with special training, from healthcare facilities leads to indirect discrimination of persons with disabilities. A restriction needs to be justified by a legitimate goal, and the means to achieve this goal need to be proportionate and necessary. Dog access to healthcare facilities could be prevented by hygienic and epidemiological measures; however, such measures are not regulated by any legal regulation. At the same time, restrictive measures are legitimate only in certain areas

⁴¹ The provision of Article 21 of the Charter, the provision of Article 29 of the Convention.

⁴² The right to judicial and other legal protection is stipulated in Article 36 and subseq. of the Charter of Fundamental Rights and Freedoms. The right to access to justice is also stipulated in Article 13 of the Convention on the Rights of Persons with Disabilities.

⁴³ The right to protection of health is stipulated in the provision of Article 31 of the Charter of Fundamental Rights and Freedoms. The prohibition of discrimination in access to healthcare services is further stipulated in the provision of Article 25 the Convention on the Rights of Persons with Disabilities.

of healthcare facilities.⁴⁴ In other areas the presence of an assistance dog or a guide dog cannot be excluded. In any case, the dogs should be allowed in waiting rooms. Healthcare facilities should therefore regulate what areas may be accessed by assistance and guide dogs and in what areas their presence is not possible with respect to hygiene requirements and other circumstances. If dog access to specified areas is restricted due to a legitimate reason, it is necessary to ensure the possibility to leave a dog at a designated place and ensure supervision over it and also to provide an assistant to accompany a disabled person as a substitute. As regards e.g. a long-term hospital stay, it can be assumed that the care of medical staff will fully substitute for the assistance of a dog to a disabled person. With respect to potential problems with providing living necessities to a dog, it would be adequate to require that not even dogs with special training be present in these areas.⁴⁵

4. Access to educational facilities

The right to education is also one of the fundamental rights.⁴⁶ The prohibition of discrimination in access to education and in the provision of education is implemented at a statutory level by the Anti-discrimination Act and also by the provision of Sec. 2 of Act No. 561/2004 Coll., on Pre-school, Basic, Secondary, Tertiary Professional and Other Education (the Education Act), as amended. The regulation in the Education Act is based on equal access to education without any discrimination, including discrimination due to health condition or other status. Since health condition cannot be identified with disability for the purpose of the anti-discrimination law,⁴⁷ although these two reasons may overlap in specific situations, disability will represent so-called other status, which cannot be a reason for discrimination in access to education. However, the regulation in the Education Act does not have an impact on university study,⁴⁸ and therefore providing university education has to be based on a non-discrimination basis, according to the general regulation of the prohibition of discrimination in the Anti-discrimination Act.

By restricting dog access to school buildings, access to education for disabled persons accompanied by dogs with special training could be limited. Specific cases when the presence of a dog could cause problems should be dealt with separately and with respect to specific circumstances. This concerns in particular an objection of possible allergy to animal fur. Such circumstances cannot be regarded as legitimate if they are presupposed, and thus they become a reason for excluding dogs. In case of allergy, this circumstance should be first dealt with by restricting contact between a dog and a potentially allergic person (i.e. placing the dog in another room, using

⁴⁴ Other legitimate measures concern restriction of dog access to e.g. intensive care units, waiting rooms at allergists' offices, dentists' offices, inpatient wards of postoperative care, etc.

⁴⁵ Inspiration could be drawn e.g. from the provision of Sec. 29 (2) of the Bill on Health Services. According to the provision, a patient would have a right to the assistance and presence of a guide dog or an assistance dog at a healthcare facility, with respect to current health condition and pursuant to internal rules and in a manner that does not violate the rights of other patients. The bill was withdrawn on 28 April 2009. See parliamentary print No. 688/0.

⁴⁶ Following from the provision of Article 33 of the Charter of Fundamental Rights and Freedoms. Declaration of the right to education for disabled person is also contained in the provision of Article 24 of the Convention on the Rights of Persons with Disabilities.

⁴⁷ See the judgment of the European Court of Justice (Grand Chamber) in a case *Sonia Chacón Navas vs. Euresť Colectividades SA* (judgment No. C-13/05) of 11 July 2006.

⁴⁸ This area is regulated by Act No. 111/1998 Coll., on Higher Education Institutions and on Amendments and Supplements to some other Acts (the Higher Education Act), as amended, which does not contain special regulation of the prohibition of discrimination.

different routes in a building). The exclusion of a dog is a possibility only if a specific problem emerges and if another solution is not possible, but it should not be applied as prevention. Complications could emerge in exercising the right to employment, i.e. if a teacher is a disabled person using a dog with special training (for access to employment, see hereinafter).

Educational facilities include not just schools and school facilities. Other facilities can also be used for educating adults and improving their qualification.⁴⁹ The area of education is treated within the scope of the right to employment and access to employment, or to special training for the performance of a profession and to further education, as well as within the scope of equal treatment in employment. Equal treatment in this area is stipulated in the Anti-discrimination Act and Act No. 435/2004 Coll., on Employment, as amended. Specifically, it concerns education within the so-called retraining (the provision of Sec. 109 of the Employment Act), improving and upgrading qualification (Sec. 230 and subseq. of Act No. 262/2006 Coll., the Labour Code, as amended).

5. Access to employment

The principle of prohibition of discrimination in access to employment is regulated in the provision of Sec. 4 of Act No. 435/2004 Coll., on Employment, as amended. The prohibition of discrimination in employment is regulated by Act No. 198/2009 Coll., on Equal Treatment and Legal Means of Protection against Discrimination, as amended, referred to in Act No. 262/2006 Coll., the Labour Code, as amended. The provision of Sec. 3 (2) of the Anti-discrimination Act imposes a duty on an employer to adopt adequate measures to ensure access to employment for a person with a disability, unless such measure presents an undue burden. A measure on the basis of which assistance dogs and guide dogs will be allowed in the employer's building usually does not constitute such undue burden (i.e. no construction and technical adjustments need to be made; it is sufficient to inform reception staff). Thus, if the presence of a dog in the employer's building is not excluded by another legal regulation, it is not possible to restrict access of dogs and their presence in buildings.

6. Access of persons accompanied by a specially trained dog to services

a. Transport of dogs by means of transport

The statutory regulation of transport of dogs with special training is relatively most elaborate,⁵⁰ although guide dogs in particular are taken into consideration, rather than assistance dogs. Dogs that do not have the status of a guide dog or an assistance dog are commonly allowed in vehicles; nevertheless, on a condition they wear a muzzle. For persons with disabilities accompanied by a guide dog or an assistance dog this means a limiting factor because one of the tasks of these dogs is to retrieve things for persons with disabilities. When the dog is wearing a muzzle, such use is completely ruled out. Simultaneously, in case of some physical

⁴⁹ As a fundamental right within the right to employment, this area is regulated by the provision of Article 26 of the Charter of Fundamental Rights and Freedoms. The education of adults with disabilities is taken into account in the provision of Article 24 (5) and Article 27 (1) (d) the Convention on the Rights of Persons with Disabilities.

⁵⁰ A duty to arrange access to transport for disabled persons can be further found in the provision of Article 9 of the Convention on the Rights of Persons with Disabilities as well as in EU regulations.

disabilities, it is impossible for a disabled person to put a muzzle on the dog or take it off. If ensuring safety is pursued, a risk of harm is limited particularly by the special training undergone by assistance and guide dogs.

In practice, misunderstanding often occurs as a result of insufficient training of drivers or other employees in transportation. A person accompanied by an assistance dog or a guide dog is prevented from using transport although a legal regulation stipulates the impossibility of his or her exclusion from transport. A common problem is when a driver or another employee insists on the dog's wearing a muzzle. However, the fact that a guide (assistance) dog is not wearing a muzzle cannot be a reason for its exclusion (and exclusion of a disabled person) from transport. At the same time, it is apparent that with respect to insufficient regulation of the identification of assistance and guide dogs e.g. by means of a special signal harness, it may not be immediately apparent to drivers of vehicles that the dog is a dog with special training.

i. Public rail and road transport

Rail transport means railway, tramway, trolleybus and cableway transport, pursuant to Sec. 1 of Act No. 266/1994 Coll., on Rail Systems, as amended. Road transport is, pursuant to the provision of Sec. 2 of Act No. 111/1994 Coll., on Road Transport, as amended, a sum of activities whereby, among others, transport of persons is ensured. This involves in particular public line passenger transport, shuttle service, occasional passenger transport service and taxi service.

The transport of living animals in railway and road lines is regulated by the provision of Sec. 23 of Decree No. 175/2000 Coll., on Transport Rules for Public Rail and Road Passenger Transport, as amended.⁵¹ Pursuant to Sec. 23 (5), a guide dog accompanying a blind person may not be excluded from transport or denied transport. A guide dog may not be excluded from transport even if it is not wearing a muzzle. However, only a guide dog accompanying blind persons is explicitly mentioned and not an assistance dog for persons with disabilities. The owner of a dog is not discharged from liability for damage which a dog without a muzzle may cause.

ii. Air transport

According to the provision of Sec. 37 (5) of Decree No. 17/1966 Coll., on Air Transport Rules, as amended, a blind man's dog can be transported free of charge if it is accompanying a blind person dependent on it and if it is wearing a muzzle and appropriate harness and is trained by an officially authorized organization. Such dog may be transported in passenger areas and not as other animals, i.e. as cargo in a kennel in the cargo department. Without regards to the fact that the regulation uses the term "blind man's dog, which is no longer appropriate, its **provision cannot be practically applied** since no officially authorized organization engaged in dog training exists. Since the training of dogs that are used to accompany persons with

⁵¹ Pursuant to the provision of Sec. 23 (3), passengers do not have to carry a dog in a crate (pursuant to Sec. 1) if it is wearing a secure muzzle, is on a short lead and is not transported on a seat. Pursuant to the provision of Sec. 4, a carrier may restrict or exclude in its contractual transport conditions the transport of animals on some lines or restrict the number of dogs on a lead transported simultaneously in a vehicle, and an authorized person may deny transport of a dog not placed in a crate due to the occupancy of a vehicle and in order to ensure safety of passengers.

vision disabilities takes place spontaneously as a free trade, none of the dogs trained in this way on our territory fulfils the conditions stipulated in the above mentioned decree. The imperfection would be removed by regulating the training and identification of dogs designated to accompany persons with disabilities.

In addition, the regulation regarding free transport again concerns only transport of guide dogs belonging to persons with vision disabilities, which restricts the rights of persons with other than vision disabilities who also use a dog to compensate for their disability.

The conditions of air transport are among others regulated by directly applicable European law rules. They are regulations of the same legal force as national laws and they take application precedence over laws. In case of conflict between the national law and the regulations, the regulations, and not the law, are applied. The regulations include Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91,⁵² and Regulation (EC) No 1107/2006 of the Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.⁵³ Again, the provision concerning dogs specially trained to accompany persons with disabilities **cannot be applied in practice** because both regulations relate to dogs with an official certificate that would prove that they have been specially trained to accompany persons with disabilities.

iii. Regulation of free transport of dogs accompanying disabled persons

In accordance with the provision of Sec. 86 of Act No. 100/1988 Coll., on Social Security, as amended, persons with severe disabilities are granted special privileges. Pursuant to Sec. 31 of Decree No. 182/1991 Coll., which implements the Social Security Act and the Act of the Czech National Council on the Competence of Bodies of the Czech Republic in Social Security Matters, a holder of the ZTP/P card for disabled persons and accompanying persons is entitled to special privileges of III degree. According to Article 3 (c) of the Annex to the Decree, special privileges of III degree given to persons with a total or a profound loss of vision include the right to free transport of a guide dog if the persons are not accompanied by an assistant. Simultaneously, a blind person has a right to a reserved seat in public transport vehicles for regular mass passenger transport except for buses or trains where a seat reservation ticket is mandatory.⁵⁴ The stated regulation corresponds to the concept

⁵² This Regulation establishes minimum rights for passengers if they are denied boarding against their will, in accordance with the provision of Article 11 of the Regulation, operating air carriers shall give priority to carrying persons with reduced mobility and any persons or certified service dogs accompanying them.

⁵³ This Regulation establishes rules for the protection of and provision of assistance to disabled persons and persons with reduced mobility travelling by air, both to protect them against discrimination and to ensure that they receive assistance.

⁵⁴ This right is specified in Communication of the Ministry of Transport of the CR No. CV 07/2004 Coll., samples of travel tickets and cards enabling their holders to travel free of charge or purchase special fare tickets within the notice of the Ministry of Finance of the CR No. 01/2004, as amended, according to which all carriers operating regular national public passenger railway transport and national public passenger bus network transport are obliged to grant free transport to guide dogs of blind holders of the ZTP/P card in the 2nd class in regular domestic passenger railway transport and in domestic public passenger bus network transport; further, in the notice of the Ministry of Finance No. 1/2010, giving a list of goods with regulated prices, as amended, according to which

according to which a guide dog is regarded as an essential part of a person with a vision disability, and therefore a special payment for the dog is not required. However, an assistance dog trained to accompany persons with other than a vision disability is of the same character, although it is disregarded by the Act or the Decree. The possibility to transport dogs free of charge means exercising the right to equality of opportunities for disabled persons, which is ensured by the use of a dog as a compensation aid.

iv. Stops, stations, waiting rooms

When considering access to transport for persons accompanied by dogs, attention should also turn to access of persons to buildings, i.e. places where a ticket can be purchased, waiting rooms etc. This area is explicitly addressed e.g. by Commission Decision of 21 December 2007 concerning the technical specification of interoperability relating to “persons with reduced mobility and orientation” in the trans-European conventional and high-speed rail system. According to the Convention on the Rights of Persons with Disabilities, access to these areas falls within the sphere of ensuring access to transport. Restricting access for persons accompanied by a dog with special training to transport service buildings would constitute unallowable restriction of their rights.

b. Access to catering facilities

Preventing guide or assistance dogs from accessing the eating area of a catering facility is discriminatory in respect of persons with disabilities in the area of access to services.⁵⁵ It constitutes discrimination of a consumer, in violation of the provision of Sec. 6 of Act No. 634/1992 Coll., on Consumer Protection, as amended, and the provision of Sec. 3 of Act No. 198/2009 Coll. Sb., on Equal Treatment and Legal Means of Protection against Discrimination, in the area pursuant to Sec. 1 (1) (j).⁵⁶

c. Access to shops

i. Grocery shops

An explicit regulation of access of persons accompanied by a guide dog or an assistance dog to catering facilities and grocery shops has been repealed without replacement,⁵⁷ which lowered the already recognized standard for persons with severe disabilities using dogs as a compensation aid. The regulation was repealed

public transport in cities and in suburbs operated within the public transport, holders of the ZTP/P card including their assistant and a dog (i.e. guide dog for blind persons) are transported free of charge,

⁵⁵ The fact that preventing assistance or guide dogs from entering the eating area of a catering facility is common practice can be illustrated by an example that was investigated by the Czech Trade Inspection Authority in the course of 2009. The Czech Trade Inspection Authority found discrimination of a consumer in a situation when a blind person accompanied by a guide dog was banished from a restaurant.

⁵⁶ Access of persons accompanied by dogs specially trained to accompany a person with a disability to catering facilities was regulated in the now repealed provisions of Decree No. 137/2004 Coll., on the Hygiene Requirements for Catering Services and the Principles of Operational and Personal Hygiene during Serious Epidemiological Activities. This regulation stipulated the impossibility to banish specially trained dogs from these premises.

⁵⁷ This concerned the provision of Sec. 10 (5) of Decree No. 347/2002 Coll., on the Hygiene Requirements for Sale of Food, as amended. The regulation contained in the decree allowed the entry of a guide dog accompanying a blind person and of an assistance dog accompanying a person with a severe disability to shopping areas.

inadvertently in connection with other legislative changes. However, there is no doubt that the standard has been lowered since both regulations explicitly declared the right of entry of a disabled person accompanied by a dog, saying that an assistance dog or a guide dog could not be banished from business premises or shops.

Preventing guide or assistance dogs from accessing grocery shops is indirectly discriminatory in respect of persons with disabilities in the area of access to services. It constitutes discrimination of a consumer, in violation of the provision of Sec. 6 of Act No. 634/1992 Coll., on Consumer Protection, as amended, and the provision of Sec. 3 of Act No. 198/2009 Coll. Sb., on Equal Treatment and Legal Means of Protection against Discrimination, in the area pursuant to Sec. 1 (1) (j).

ii. Non-grocery shops

As regards access to other than grocery shops, restriction of access for dogs cannot be justified by hygiene rules. Failure to admit a person accompanied by an assistance dog or a guide dog constitutes indirect discrimination of persons with disabilities in access to services. In any case it is necessary to proceed individually and with respect to specific circumstances.⁵⁸

d. Social services

So-called social services according to Act No. 108/2006 Coll. on Social Services, as amended, are a special type of services. The provision of Sec. 2 (2) of the Social Services Act stipulates that the extent and form of the assistance and the support provided through social services have to preserve human dignity of persons, that social services have to be provided in the interest of a person and in due quality, in manners always strictly ensuring compliance with human rights and fundamental freedoms of persons. Beyond the scope of the statutory anti-discrimination law, the providers of social services are also bound by a duty to avoid discrimination, the prohibition of which is stipulated in the Charter of Fundamental Rights and Freedoms. With respect to the matter under scrutiny, we shall focus on stay-in services provided in accordance with the provision of Sec. 33 of the Social Services Act. These services mean services connected with accommodation in social services facilities.⁵⁹ In social services facilities, whether they are provided to disabled persons or e.g. to senior citizens, there may be persons possessing an assistance dog or a guide dog as a special aid.⁶⁰ The prohibition to have a specially trained dog in facilities with reference to a ban on dogs is disproportionate because it does not respect the special character of a dog with special training as a compensation aid that helps persons with disabilities to exercise their fundamental rights. As regards a conflict with the rights of other clients in a facility (e.g. objections related to allergies), it is necessary, above all, to resolve this situation in a different manner. A client with an allergy may be e.g. accommodated in a different area or it can be ensured that the person suffering from an allergy and the dog do not meet.

⁵⁸ This means that a dog could be banished in case it behaves uncontrollably or e.g. makes the area dirty.

⁵⁹ Week-care centres, homes for persons with disabilities, homes for senior citizens, homes with special regime, sheltered housing and social services provided in healthcare facilities of institutional care.

⁶⁰ Within his powers, the Defender has encountered a case when a blind senior citizen was not allowed to move in a home for senior citizens with a guide dog, the reason being that pets were not allowed in the home according to the home rules.

e. Access to cultural facilities (museums, galleries, theatres, cinemas, concert halls, historical buildings)

The opening of historical buildings and museum and gallery collections as well as the visit to a theatre, a cinema, a concert hall etc. is a service pursuant to the provision of Sec. 1 (1) (j) of the Anti-discrimination Act. Simultaneously, it constitutes the exercise of the right of disabled persons to participate in cultural life, stipulated in the provision of Article 30 of the Convention on the Rights of Persons with Disabilities. Further, ensuring access to all services follows from the requirement of participation of disabled persons in the mainstream (see above), as defined by European law. Unconditional exclusion of assistance and guide dogs from buildings where this type of services is provided would constitute indirect discrimination of disabled persons accompanied by specially trained dogs. Potential problems always need to be dealt with in the light of specific circumstances and not by means of generalization.

i. Access to museums, galleries, libraries and historical buildings

In this case, interest in the protection of collections in these buildings could be a legitimate goal. To prevent discrimination of persons with disabilities, it is appropriate, with respect to operating conditions, if free movement of dogs is ruled out, to leave the dog at a designated place (e.g. in a cloakroom) while supervision over it is ensured, and to provide an assistant for the disabled person if needed.

ii. Theatres, cinemas, concert halls

In case of this type of services, it could be conceivable that the reason for excluding these animals is to ensure safety and peace. However, dogs designated to accompany persons with disabilities have undergone special training, which, among others, made them indifferent to certain types of stimuli. With respect to this fact, access to these services should not be prohibited for specially trained dogs in general and their exclusion is possible only with regard to a specific situation. For example, if a programme were disrupted or if it emerged that the dog is not disciplined as soon as it entered the place.

f. Access to other facilities where services are offered

The provision of Sec. 51 of Decree No. 137/2004 Coll., on the Hygiene Requirements for Catering Services and the Principles of Operational and Personal Hygiene during Serious Epidemiological Activities, as amended, regulates the principles of operational hygiene for the manufacture of cosmetic preparations, barber trade, hairdressing, pedicure, manicure, cosmetic services, massage services, for the operation of trades which involve breaking the integrity of skin and trades that use special tools for body treatment (e.g. solarium, myo-stimulation).

Pursuant to the provision of Sec. 51 (1) (e) of the Decree, access of unauthorized persons or animals to the facilities of an establishment needs to be prevented, with the exception of a guide dog of a blind person and a dog specially trained to accompany a person with a severe disability.

Failure to admit persons accompanied by a guide dog or an assistance dog to the premises would be not only discriminatory in the area of access to services but it would be also in violation of the provision of Decree No. 137/2004 Coll., on the hygiene requirements for catering services and the principles of operational and personal hygiene during serious epidemiological activities, as amended.

In the interest of fulfilling the right of disabled persons to participate fully in recreation and leisure activities, it is desirable to ensure that disabled persons accompanied by an assistance dog or a guide dog have access to premises where other services are provided, such as sports facilities, swimming pools, hotel accommodation, and recreational and tourist facilities.⁶¹ This also applies to banks, post office buildings and buildings where telecommunication services are provided, and also to accountant, attorney and insurance offices. Accessibility to these services is fully in compliance with the mainstreaming principle (i.e. participation of disabled persons in the mainstream), as stated above.⁶²

7. Access of dogs to public places

In accordance with the provision of Sec. 34 of Act No. 128/2000 Coll., on Municipalities (the Municipal Order), as amended, public places mean all squares, streets, marketplaces, pavements, public green areas, parks and other places publicly accessible without restriction, i.e. places serving for public use regardless of the ownership of such places. Pursuant to the provision of Sec. 24 of Act No. 246/1992 Coll., on the Protection of Animals against Cruelty, as amended, a municipality may regulate by by-laws the movement of dogs in public areas and specify areas for free running of dogs.

In case of restricting access of dogs to some public places, the special character of dogs designated to accompany persons with disabilities needs to be kept in mind. As mentioned above, a dog trained to accompany a person with a disability is perceived as a part of a disabled person, and therefore such dog should have access also to places where access for other dogs is restricted. Since a municipality is bound by the Charter of Fundamental Rights and Freedoms in issuing by-laws, the provision of a by-law also has to comply with the principle of prohibition of discrimination on the basis of disability. It is necessary for an assistance dog or a guide dog to have access to all places that are freely accessible to people. Thereby the right of a disabled person to equal treatment will be fulfilled.

a. Parks, public green areas and playgrounds

Additionally, access of dogs to places is restricted in order to ensure safety, cleanliness and order in these places. As stated above, assistance and guide dogs are considered to be a part of persons with disabilities, who use them to compensate for their disability. Simultaneously, such dogs are specially trained, which eliminates

⁶¹ The States Parties to the Convention on the Rights of Persons with Disabilities acknowledged the definition of the right stipulated in Article 30 of the Convention.

⁶² In this areas, not admitting dogs with special training e.g. to a sauna or indoor swimming pool premises could be considered legitimate.

the danger of occurrence of damage. Restricting access of assistance and guide dogs to places would de facto prevent the access of persons with disabilities too.

b. Cemeteries

In accordance with the provision of Sec. 16 of Act No. 256/2001 Coll., on Funeral Services and on Amendments to Certain Acts, as amended, the management of public burial grounds is a service in the public interest provided by a municipality with separate powers or by a registered church or a religious society. The rules for public burial grounds in accordance with the provision of Sec. 19 (2) (c) of the Funeral Services stipulate in detail the duties of visitors of public burial grounds in connection with order at a public burial ground and maintenance of dignity of the place, and the manner and rules for using the facilities of a public burial ground (e.g. ceremony rooms). The restriction of access of dogs to the premises is one of measures that could be contained in the rules. The exclusion of assistance and guide dogs would mean restriction of access of people with disabilities to this service.

c. Zoological gardens

In accordance with the provision of Sec. 2 of Act No. 162/2003 Coll., on the Conditions for the Operation of Zoological Gardens and Amendments to Certain Laws (the Zoological Gardens Act), as amended, a zoological garden means a permanent facility where free-living animals or also domestic animals are kept and exhibited for the public. Restricting access of dogs to zoological garden premises is common practice. The main arguments for the measures include the danger of spreading infection, the need for security and peace for the animals kept and also the possibility of making the place soiled. If dogs are allowed in zoological gardens, an entrance fee is required. The fact that it is possible to find a zoological garden where dogs are commonly allowed speaks for weakening the above mentioned arguments about the danger of spreading infection. Additionally, free-living animals that are not under veterinary supervision may spontaneously enter zoological gardens and thus present a greater risk for the animals kept there. Since a dog specially trained to accompany a person with a disability is regarded as a part of the person, it is not legitimate to require a separate entrance fee for this dog. Requiring an entrance fee would put persons with disabilities at disadvantage compared to persons without disabilities, and therefore constitute discrimination in access to services in violation of the Anti-discrimination Act.

d. Amusement parks, open air festivals

In public places, other services, falling in the category of amusement parks or open air festivals, may be provided. They are often events taking place in enclosed places. An organizer monitors who is entering the area and can also restrict the possibility of dog access. If this restriction is also applied to dogs specially trained to accompany persons with disabilities, this practice may lead to indirect discrimination of disabled persons to services. A higher level of noise, which may annoy these animals, and the need for security are usually given as reasons for this restriction. The special dog training should eliminate the worries since the dogs are trained, among others, to be indifferent to certain types of stimuli. Moreover, a person with a disability is not discharged from liability for damage caused by the animal and is also subject to the

legal regulation of the protection of animals against cruelty (this means that a person should not expose the animal to environment that could harm it). Therefore it would be suitable to leave the assessment whether the presence of a dog in the area is appropriate to the holder of a dog with special training.

VII. Conclusion

With the utmost respect for the ensuring of the rights of persons with disabilities, the Defender recommends proposing a legal regulation that would replace the current incomplete, insufficient and fragmented legislative regulation of dogs with special training. At the same time, he recommends that the fact that dogs are used to accompany persons with other than a vision disability be respected. Therefore, the regulation should not be limited to guide dogs but should encompass assistance dogs too (signal, balance dogs).

It is necessary to regulate by law places where access may not be denied to a person accompanied by a dog specially trained to accompany persons with disabilities. Since sale of groceries and likewise access to catering facilities serve to satisfy one of the fundamental human needs, it would be appropriate to regulate explicitly the impossibility to restrict access of guide and assistance dogs to grocery shops and catering facilities.

A legal regulation of the training of dogs designated to accompany persons with disabilities (assistance and guide dogs) as well as a regulation of the position of an entity that would assess the quality of dog training and issue certificates declaring the status of a guide dog and an assistance dog, would help improve the quality of dog training and thus help achieve more effective compensation for health damage related to disability.

Unified marking and identification of dogs with special training, i.e. in particular the colour and the style of harness, as well and an identification card for dogs with special training, are necessary for the exercise of the rights of persons with disabilities in practice.

Further, the Defender recommends accession to the Optional Protocol to the Convention on the Rights of Persons with Disabilities so that persons with disabilities can exercise effectively the rights guaranteed by the Convention on the Rights of Persons with Disabilities.

VIII. Annexes

1. Excursus – Slovak regulation in Act No. 447/2008 Coll.

Slovak Act No. 447/2008 Coll. on Financial Allowances to Compensate for Severe Disability and on Amendment to Certain Laws can serve as inspiration for legislation. In accordance with the provision of Sec. 25 of this Act, dogs with special training include guide dogs, assistance dogs and signal dogs. The special training of a dog is proved by an individual with a severe disability by an identification card for a dog with special training and by a visible dog tag. An identification card for a dog with special training, a dog tag and a certificate are issued to a person with a severe disability by a professionally competent person. An identification card for a dog with special training states the name and permanent address of an individual or the corporate name, seat, identification number and legal form of a legal entity that has trained the dog, activities for which the guide dog, the assistance dog or the signal dog has been trained, the date of a test undergone by the dog, the name, surname and permanent address of the individual with a severe disability, the name of the dog, its identification number identical with the number on the dog tag, the race and colour of the dog and its age. A tag states that it is a dog with special training, specifying the type of training in the Slovak language and the English language as “an assistance dog, a guide dog, a hearing dog”, and contains an identification number identical with the number given in the identification card for a dog with special training.

According to the mentioned law, a guide dog provides assistance to an individual with a severe disability suffering from a vision disability or other severe disability in everyday activities, in particular in independent movement, retrieving things and safe coping with obstacles in space. An assistance dog helps an individual with a severe disability suffering from a physical disability or other severe disability with everyday activities, in particular with carrying specific things, changing clothes, positioning, opening and closing doors and fetching essential help in case of danger. A signal dog helps an individual with a severe disability suffering from a hearing disability or other severe disability with distinguishing acoustic signals, including in particular door bell signals, telephone, fax machine, baby cry, human voices, alarm clock, danger alert and the calling of the name of the hearing impaired person.

Pursuant to the Slovak regulation, a person professionally competent to train a dog with special training means a person that has training of dogs with special training as the purpose of his activity and that is a member of an international organisation associating training schools or a person that has been granted accreditation by an international organisation associating training schools. The condition of membership in an international organisation associating training schools is considered fulfilled also when a person that has training of dogs with special training as the purpose of his activity submitted an application for a member of such organisation, and this shall apply for no more than five years after filing the application.

2. Excursus – regulation of access rights in the Polish Act of 27 August 1997

As indicated above, it would be appropriate to regulate in a complex manner the access rights of persons accompanied by dogs with special training. The Polish law of 27 August 1997, o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych (on Vocational and Social Rehabilitation and Employment of Persons with Disabilities) can serve as inspiration. Access rights are regulated in the provision of Sec. 20a, which was inserted in the law by an amendment, which became effective on 19 June 2009. According to the law, an assistance dog means a guide dog for blind and purblind persons and an assistance dog for disabled persons enabling easier active participation of disabled persons in social life.

Places where access of persons accompanied by an assistance dog may not be restricted are enumerated in a list. They include buildings and their vicinity which serve public administration needs, relate to access to justice, culture, public education, higher education, science, healthcare, social care, bank services, trade, gastronomy, services, tourism, sports, attending to passengers in railway, road, air, sea and river transport, ensuring postal or telecommunication services, as well as to other publicly accessible buildings intended for securing similar functions, which includes buildings of offices and social facilities. The right to access has to be guaranteed also with respect to the means of railway, road, air and water transport, and also in other means of public transport. A person with a disability is not obliged to put a muzzle on a dog or keep in on a lead.

However, the stipulation of the possibility to enter the above mentioned buildings does not discharge a person with a disability from liability caused by an assistance dog. A person with a disability may use the above described privileges on condition he or she has his or her assistance dog in harness and owns a certificate showing the assistance dog status and a proof of required veterinary vaccination. The regulation of access rights simultaneously applies to the trainers of dogs that are undergoing assistance dog training.

RNDr. Jitka Seitlová
Deputy Public Defender of Rights