

Recommendation of the Public Defender of Rights regarding the execution of the right to equal treatment during the establishment of reserved parking spaces on local roads

Introduction

The establishment of reserved parking spaces is one of the measures that help disabled persons to live independently and to participate fully in all aspects of life. Reserved parking enables disabled persons to park as close as possible to their homes, which prevents complications resulting from necessity to cover larger distances. A decision on reserved parking is in particular subject to a consent of the owner of a local road – municipality. A number of complainants turned to the Defender with a complaint regarding the procedure of municipalities in giving (or not giving) such consent since complainants often perceive it as unjustified and discriminatory.

The aim of this recommendation is to point out the most frequent problematic issues arising during the process of allowing reserved parking and to describe the main principles that municipalities should follow in this process. It is intended in particular for municipalities and persons that make decisions about reserved parking but also for persons with disabilities who are interested in the establishment of reserved parking, and also for the general public as part of raising public awareness.

Legal regulation and basic fundamentals

Legal regulation related to reserved parking

Vehicles displaying a parking card for persons with disabilities (hereinafter only the “parking card”)¹ may stop at and stand on “general” reserved parking areas² (usually at shopping centres, offices etc.), as opposed to other vehicles. Further, upon a request by a person who was issued the parking card, a road administration authority may establish an individual parking space at place of residence solely for the person’s use.³

A reserved parking space is stipulated in the Roads Act⁴ and it constitutes the so-called “**special use of roads**”, i.e. a use of roads in a way other than the one for

¹ Previously, they were marked with O 1; amended effective from 1 August 2011 by Act No. 133/2011 Coll., which amends Act No. 361/2000 Coll., on Road Traffic and the Amendment to some other Acts (the Road Traffic Act), as amended, and some other laws.

² The provision of Sec. 67 (8) of Act No. 361/2000 Coll., on Road Traffic and the Amendment to some other Acts (the Road Traffic Act), as amended.

³ The provision of Sec. 67 (9) of Act No. 361/2000 Coll., on Road Traffic and the Amendment to some other Acts (the Road Traffic Act), as amended.

⁴ Act No. 13/1997 Coll., on Roads, as amended.

which they are generally intended.⁵ Therefore it is subject to an approval of a road administrative authority (hereinafter only an “authority”), and in particular of the owner of a local road – municipality.⁶

Legal regulation related to prohibition of discrimination in access to services

Antidiscrimination legislation concentrates especially on taking down various social barriers that prevent persons with disabilities from integrating into society.⁷ The right to equal treatment and prohibition of discrimination in relation to the Charter of Fundamental Rights and Freedoms and relevant international treaties⁸ is defined in the Anti-discrimination Act⁹ in a number of areas, among others in the area of services.¹⁰ The Anti-discrimination Act also defines the concept of discrimination and gives a complete list of causes that may not give rise to unjustified discrimination between persons in the area of services,¹¹ and disability is one of the causes. In addition, the Anti-discrimination Act regards a refusal or a failure to adopt such reasonable measures so as to enable a person with a disability to use services intended for the public as (indirect) discrimination arising from disability, unless the measures impose a disproportionate burden.¹²

Disability is defined in the Anti-discrimination Act 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 (lasting for at least a year); its characteristic features include a certain degree of damage to the individual’s health, which could put him or her at a disadvantage compared to others, and a long-time character (permanency) of this damage.¹³ The treatment of disability in the Anti-discrimination Act stems from the so-called social model of disability.¹⁴ Such a concept arises from and relates to the concept of disability included, among others, in the Convention on the Rights of Persons with Disabilities (hereinafter only the “Convention”),¹⁵ which is based on principles of respecting inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons, non-discrimination, accessibility and full

⁵ The provision of Sec. 25 (1) of the Roads Act.

⁶ C.f. the provision of Sec. 9 (1) of the Roads Act: “Motorways and class I roads are owned by the state. Class II and III roads are owned by a region on whose territory the roads are located, and local roads are owned by a municipality on whose territory the local roads are located. Roads that serve a certain purpose are owned by a legal entity or an individual”.

⁷ Alongside the social security law, which uses measures to compensate persons with disability for the health damage itself.

⁸ E.g. the UN Convention on the Rights of Persons with Disabilities.

⁹ 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).

¹⁰ The Anti-discrimination Act prohibits discrimination in access to services including accommodation, if they are offered to the public or while they are provided.

¹¹ C.f. the provision of Sec. 2 (3) of the Anti-discrimination Act; discriminatory reasons include race, ethnic origin, nationality, gender, sexual orientation, age, disability, religion, belief or opinions.

¹² The provision of Article 2 of the Convention defines “reasonable accommodation” as necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms...

¹³ C.f.: Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. Antidiskriminační zákon. Komentář. 1st edition. Praha : C. H. Beck, 2010, p. 208

¹⁴ While the medical model of disability is based on an assumption that problems related to disability arise out of a medical defect, the social model sees problems especially in bad social environment, which is not adjusted to the needs of disabled persons.

¹⁵ The Convention became valid for the Czech Republic on 28 October 2009.

and effective participation and inclusion in society.¹⁶ By acceding to the Convention, contracting states undertake to take measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, transportation, information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, with an aim to enable persons with disabilities to live independently and participate fully in all aspects of life.¹⁷ Contracting states shall also ensure that *public authorities and institutions* act in compliance with the Convention.

Disability is characterised by a certain **degree of damage to health and a long-term character of this damage**. The Anti-discrimination Act considers a person disabled according to the **factual condition** (see characteristics) and **not on the basis of a decision** of a state administration body.

The Anti-discrimination Act prohibits discrimination of persons with a disability in access to **services** if they are offered or intended for the public, i.e. for an *unspecified circle of persons*.¹⁸ The use of roads represents a service intended for the public. “The public character” follows from the nature of this “service” given the fact that the statutory owner of a local road is always a public entity. The use of parking spaces at place of residence can be thus regarded as a service within the Anti-discrimination Act; therefore the Anti-discrimination Act is a regulation that regulates the authorization of reserved parking spaces.

In comparison with other characteristics protected by the anti-discrimination law, it is desirable to take action in the case of a disability; passivity can prevent persons with a disability from having equal access to services with regard to the character of the disability.¹⁹ This specific feature is manifested in the institute of a **reasonable measure**, which has to be implemented by a provider of services. What measure will be involved needs to be considered from case to case.

A provider is not obliged to adopt a measure which imposes a **disproportionate burden**. The antidiscrimination regulation takes into consideration possible obstacles preventing the adoption of a measure.²⁰ A specific measure may constitute a disproportionate burden with respect to **1)** the degree of benefit from implementation of the measure for a disabled person, **2)** the financial burden of the measure on a person that should implement it, **3)** the availability of financial and other aid to implement the measure, and **4)** the capability of alternative measures to satisfy the needs of a disabled person.²¹

The use of parking spaces at place of residence is a service, and therefore the owner of a road is **obliged to adopt a reasonable measure** so that a person with a disability can use the service (e.g. establishment of reserved parking). The mentioned entities do not have to adopt a measure only if it imposes a **disproportionate burden**.

¹⁶ C.f. Article 3 of the Convention.

¹⁷ C.f. Article 9 of the Convention.

¹⁸ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. Antidiskriminační zákon. Komentář. 1st edition. Praha : C. H. Beck, 2010, p. 168

¹⁹ Boučková, P., Havelková, B., Koldinská, K., Kühn, Z., Kühnová, E., Whelanová, M. Antidiskriminační zákon. Komentář. 1st edition. Praha : C. H. Beck, 2010, p. 162

²⁰ E.g. not every provider of services has funds to implement a measure.

²¹ See the provision of Sec. 3 (3) of the Anti-discrimination Act.

For the reserved parking to be authorized, a **consent of the owner of a road** is needed, i.e. a manifestation of willingness to dispose of the object of ownership; *within the scope of law* the owner (of a road) is entitled to hold the object of ownership, use it, enjoy its fruits and proceeds and dispose of it.²² No legal regulation directly obliges the owner to consent to a special use without anything further; however, the owner has to respect a statutory prohibition of discrimination. Furthermore, the owner of a local road is a municipality, i.e. a public corporation, which “only” “*has private-law personality and capacity to act in relationships governed by private law,*”²³ performing a number of duties of a public character.²⁴ Therefore a municipality may not be, not even as a participant in civil relationships, exempted from requirements imposed on the administration of public affairs.²⁵ Moreover, local roads represent property that is necessary for securing the needs of the entire society.²⁶ Therefore the decision-making of an owner regarding the disposal of a local road may not contain elements of arbitrariness and may not be discriminatory.

Procedure of an owner during consideration of giving or not giving consent to the establishment of reserved parking

The owner of a road is obliged to adopt reasonable measures, provided they do not constitute a disproportionate burden. If the owner does not consent to the special use, there must be an apparent reason why the measure consisting in establishing reserved parking imposes a disproportionate burden on the owner.

If a public corporation makes decisions about the disposal of public property, it should always consent to the establishment of reserved parking spaces, provided this is not prevented by an obstacle complicating the exercise of ownership rights.

The most frequent reason a municipality does not consent to the establishment of reserved parking for every applicant is insufficient capacity of parking areas. A municipality protects the interests of all citizens in the municipality and thus it works on the assumption that in case of insufficient capacity of “standard” parking areas not all applications for individual reserved parking spaces may be approved.

If not all applications for the establishment of reserved parking can be approved, the **degree of benefit** of a reserved parking space for a specific applicant should be examined. The degree of benefit certainly stems, among others, from the character of disability of an applicant, or from the fact whether he or she is the driver of the vehicle (and parks the vehicle). However, it may not be omitted that the Road Traffic Act gives all holders of cards for disabled persons (ZTP cards) or cards for disabled

²² See the provision of Sec. 125 of Act No. 40/1964 Coll., the Civil Code, as amended.

²³ Josef Vedral, Luboš Váňa, Jan Břeň, Stanislav Pšenička. Zákon o obcích (obecní zřízení), 1st edition, Praha 2008, p. 219

²⁴ Pursuant to the provision of Sec. 35 (2) of Act No. 128/2000 Coll. on Municipalities (the Municipal Order), as amended, within the independent competence in its territorial district and in accordance with the local conditions and local customs, a municipality attends to the fostering of conditions for the development of social care and to the satisfaction of the needs of its citizens.

²⁵ C.f. e.g. the judgment of the Supreme Court of the CR of 8 April 2009, file No.: 28Cdo 3297/2008.

²⁶ Within Article 11 of the Charter of Fundamental Rights and Freedoms; also c.f. David Slováček, Karel Čermín: Obrana proti nesouhlasnému stanovisku obce jako vlastníka infrastruktury, [Bulletin advokacie 6/2010, p. 43]

persons and accompanying persons (ZTP/P cards) the right to apply for reserved parking, regardless of the character of their disability.²⁷

It follows from the above mentioned facts that the owner of a road may take into consideration e.g. the character of disability of an applicant; however, it may not do so in violation of law – in particular in violation of the purpose of the institute of special privileges and the Anti-discrimination Act. The owner often issues criteria pursuant to which municipal bodies make decisions whether to approve a specific application for the establishment of reserved parking spaces – most frequently criteria classifying disabilities or criteria according to which the owner gives consent only if an applicant is the driver of the vehicle. The criteria help to achieve transparency of the “process” since an applicant has at least an idea whether the municipality will give consent or not. Nevertheless, relevant municipal bodies that decide about giving or not giving consent should evaluate each application individually, and this fact must be also evident from the criteria.

General and formal application of criteria evaluating a disability creates different categories of persons with a disability outside the scope of law, which is inadmissible. Similar conclusions also apply to other potential criteria imposed on applicants.²⁸

A disproportionate burden in establishing reserved parking

The owner of a road is not obliged to adopt measures that impose a disproportionate burden (see above). A measure may be disproportionate only if its adoption is prevented by an objective obstacle on the part of a service provider. Only then does it make sense to examine the usefulness of the measure for a person with a disability and an alternative measure. (In practice it means that the owner of a road should approve an application for a reserved parking space provided this is not prevented by financial or other obstacles; e.g. insufficient capacity of parking areas.)

If no obstacle (financial, insufficient capacity in the locality etc.) prevents the establishment of reserved parking, a disabled person should **always** be accommodated. Only if not all applicants can be accommodated due to **objective obstacles**, may the owner consider other circumstances, e.g. the type and degree of disability.

The degree of benefit from reserved parking places

The main purpose of reserved parking spaces is to enable a person with a disability to park as close as possible to his or her place of residence. On the general level, the degree of benefit is different for the following three “groups” of people.

A person with a motor disability who is the driver of the vehicle is dependent on the establishment of reserved parking. Such a person drives (and parks) mostly by himself or herself and a motor disability more or less prevents him or her from covering larger distances. The establishment of reserved parking ensures that these

²⁷ With the exception of persons suffering from a total or profound hearing loss; it can be inferred that if lawmakers wanted to categorize applicants for reserved parking, they would do so explicitly. C.f. Sec. 67 (2) of the Road Traffic Act.

²⁸ Reserved parking is often allowed only when an applicant holds a driving licence or owns a vehicle, or both. This is a case of categorization of persons, which is not based on law. It may not be omitted that reserved parking can serve a person with a motor disability transported by a relative etc.

persons will be always able to park as close as possible to their homes. In essence, there is no adequate alternative measure to the establishment of reserved parking.

A person with a motor disability who is not the driver of the vehicle is prevented from covering larger distances (the degree of disability may be also the reason why the person cannot drive the vehicle) by his or her disability. Such person does not drive by himself or herself; however, he or she is always accompanied by at least the driver of the vehicle, who can help the disabled person to some extent, i.e. stop before the house and park the vehicle.

Persons with other than a motor disability have also the right to require the establishment of reserved parking at place of residence. They include persons suffering from e.g. sensory or mental disabilities. Physically, they do not have to have a problem covering a larger distance; on the other hand, they may suffer from orientation disorders etc., which may be the reason for applying for the establishment of reserved parking. In this case, a certain number of adequate alternative measures can be also considered.

The evaluation of the character of disability

Since the Anti-discrimination Act is based on the facticity of disability in a specific situation, when evaluating the degree of benefit it is important to take into account not just for what disability a disabled person has been granted special privileges but also whether a person suffers from e.g. a motor disability in reality. Therefore if a motor disability is stated by a disabled person (and proven), the special use of a road may not be disallowed solely with reference to the fact that a motor disability was not the reason for granting special privileges.

Example:

An applicant for reserved parking had been already granted special privileges of II degree for a vision disability. Subsequently, she had several operations on the spine and lower limbs, as a result of which she moved with difficulty using forearm canes. When filing an application for the establishment of reserved parking, she stated this fact and supported it with a medical report. Despite that her application was not approved because the parking was approved only for persons with a motor disability and the applicant had been granted special privileges for a vision disability.

However, special privileges of II degree represented only a title based on which reserved parking could be required. From the point of view of the Anti-discrimination Act (and therefore also the degree of benefit), it is the facticity of disability that is important, and from this perspective the applicant is a person with a motor disability.

Criteria and forms

The criteria of the owner of a road, which generally outline the conditions for consenting to the establishment of reserved parking, are desirable in essence (they help to achieve transparency of the procedure). However, they may not be applied across the board and in a formal way (due to the abovementioned reasons). Each application has to be considered separately, not just in respect of existence of a

burden but also in respect of the degree of benefit from reserved parking for an applicant. It is completely inadequate when municipal bodies create a closed form on the basis of which they give or do not give formal consent since in practice even the most elaborate form does not enable individual evaluation of the applicant's needs in an adequate way, and the obligation to adopt an adequate measure cannot be fulfilled without anything further.

Example:

A complainant – an applicant for reserved parking – suffered from an internal illness, which considerably affected his motor skills. In addition, he suffered from osteoporosis and other illnesses that adversely impacted his overall condition. He drove a vehicle by himself and travelled to school, which he attended, every day. Since the parking lot at his place of residence was full, he parked his vehicle over half a kilometre away.

When he asked for reserved parking, he had to fill in a form upon which the municipal council made decisions about giving or not giving consent of the owner. The form was closed and contained a limited number of motor disabilities on the basis of which an applicant could obtain consent of the owner (e.g. an anatomic loss of one lower limb, an anatomic loss of both lower limbs etc.). If applicants did not “fit” in the parameters of the form, they had no chance of getting a reserved parking space. This was also the case of the applicant. He had been repeatedly applying for consent of the owner for several years, attaching medical certificates confirming his bad health but despite that he was not approved, solely due to formal reasons (not meeting the parameters of the form).

In the given case, the form a priori ruled out the fulfilment of an obligation to adopt an adequate measure. Given the disability of the complainant, which affected his motor skills, the establishment of reserved parking was desirable. Nevertheless, the owner of the road evaluated the situation solely in a formal way, and therefore discrimination occurred.

Capacity of alternative measures

The degree of benefit needs to be always considered along with the “capacity of alternative measures to satisfy the needs of persons with disabilities”. Even if the degree of benefit of a specific measure is lower than in case of a different group of disabled persons, consent to the special use may not be refused if there is no alternative measure in place of reserved parking with the capacity to satisfy the needs of a disabled person. By contrast, if the traffic situation in a specific locality enables disabled persons to use another adequate method, it will not be always necessary to establish reserved parking. Seeking alternative measures is possible only if there is an obstacle preventing the establishment of reserved parking. Moreover, alternative measures have to have the capacity to satisfy the needs of an applicant in fact; a purely theoretical possibility may never have the capacity to be an alternative measure.

If there is an obstacle preventing the establishment of reserved parking, the existence of alternative measures can be taken into account. The evaluation of the degree of benefit of a measure for a disabled person needs to be based on the **factual health condition of an applicant**. Simultaneously, an alternative measure may be the reason for not establishing reserved parking only when it has the **capacity to satisfy the needs of an applicant**.

Some alternative measures

✓ As a last resort, a person with other than a motor disability can park at a reserved parking space further from place of residence if covering larger distances does not cause him or her more physical difficulties than it causes a person without a disability. In regulating the number of reserved parking spaces due to a shortage of parking spaces, the use of “**standard parking**” may be sufficient in the extreme case.

✗ However, if there is really a big shortage of parking spaces in a locality, it is possible that a disabled person will have a problem using them. The need of a disabled person to park a car is always higher than the need of a person without a disability. (Therefore the lawmaker gives these persons an opportunity to apply for reserved parking.) Thus if it is problematic or virtually impossible to use “standard” parking, such alternative measure is not adequate.

✓ There is an analogy between the above solution and the use of “**general reserved parking**” (i.e. not tied to the number plate of a vehicle). This alternative presents a solution if such parking is available close enough to the place of residence of an applicant, and in specific cases such parking could be also used by a person with a motor disability (if the person is not the driver of the vehicle).

Example:

An applicant for reserved parking was rejected with respect to the fact that she suffered from a vision disability and not a motor disability; she was the driver of the vehicle. During an inquiry it was found that there were few parking places at the place of residence of the applicant considering the number of residents; however, it was possible to use standard parking even in the afternoon, although not always directly in front of the house entrance. In addition, general reserved parking was established nearby, which the applicant could use. Alternative measures were therefore sufficient and discrimination did not occur.

✗ If applications for the establishment of reserved parking in a certain locality accumulate, they cannot be all rejected with reference to the fact that there is (for example) one “general” reserved parking space in the location. Such practise would only cause disabled persons compete with each other for the use of the parking space; however, this should certainly not be the purpose of an alternative measure.

✓ If a driver (accompanying a disabled person) can stop **in the immediate proximity of the disabled person’s place of residence for the purpose of the**

person's getting in/getting out of the vehicle (in front of an entrance to a block of flats), it could be an alternative measure. How far from the house the driver actually parks the car does not affect the disabled person. However, there have to be factual conditions in the given locality enabling the use of this measure. The width of a road in particular must enable the standing of a vehicle.

Example:

An applicant has a motor disability but the vehicle is driven by her son. There are not enough parking spaces in the locality; however, the road in front of the house of the applicant is wide enough for the son to be able to stop every time and help her get in or out of the vehicle and lead her to the entrance. Then he can park the vehicle farther from the house. With respect to this fact, the applicant does not have to be approved if there is a shortage of parking spaces.

✓ The above given options can be potentially used in narrower streets, where **standing is prohibited** – if urgently needed, in specific cases the driver of a car displaying the parking card does not have to observe the no-standing rule resulting from legislation or the no-standing rule resulting from a traffic sign;²⁹ at the same time, safety and fluency of the road traffic may not be jeopardized.

✗ As in case of any alternative measures, an exception to the no-standing rule must have factual capacity to satisfy the needs of an applicant. It needs to be clearly confirmed that an applicant may stop at place of residence on the basis of an exception.

Example:

In the case under scrutiny the owner of a road did not consent to the establishment of reserved parking with reference to an exception to the no-standing rule. At place of residence of the complainant it was found that even if it were otherwise possible to stop the vehicle in front of the house entrance, it was prohibited by the "B 28" traffic sign – No stopping." The exception to the no-standing rule (resulting from legislation or from a traffic sign) of course does not apply to the no-stopping rule, and therefore this exception did not constitute an adequate alternative measure, and thus indirect discrimination occurred.

✓ If standing of a vehicle with a disabled person is prevented by a traffic sign, an **additional sign** may be attached to it as an alternative measure, restricting its effect.

²⁹ **To stop** means to bring a vehicle to a standstill for a time necessary for transported persons to immediately get in or get out of a vehicle; **to stand** means to bring a vehicle to a standstill for a period **longer than permissible for stopping**.

To stop and to stand on the side of a road is possible if not prohibited by a traffic sign, provided at least one traffic lane at least 3 metres wide remains available for each driving direction; after stopping at least one traffic lane at least **3 metres wide for both driving directions** has to remain available.

Example:

The no-stopping rule resulting from the traffic sign “B 28 – No stopping” may be restricted by means of an additional sign E 13 containing suitable accompanying text, e.g. the commonly used: “EXCEPT FOR SUPPLY VEHICLES”, or “EXCEPT FOR SERVICE VEHICLES”. A traffic sign with an additional sign “EXCEPT FOR SUPPLY VEHICLES” or “EXCEPT FOR SERVICE VEHICLES” does not apply, among others, to vehicles marked with No. O1 (now displaying the parking card).

Procedural defence

Special use permits (the establishment of reserved parking) are issued by road administration authorities (municipal authorities having local jurisdiction). A negative decision of an authority can be fought by means of standard remedial measures according to the rules of administrative procedure (or subsequently by an administrative action). However, if an authority does not permit the establishment of reserved parking due to a disagreement of the owner of a road, these defensive measures will not be effective. If the owner of a road does to give consent, an authority may not permit the special use. An authority does not examine whether the owner of a road is obliged to adopt an adequate measure, i.e. to consent to the establishment of reserved parking. Nor can it disregard a disagreement of the owner of a road.³⁰

If the owner of a road does not consent to the establishment of reserved parking although it is an adequate measure within Sec. 3 (2) of the Anti-discrimination Act, it commits indirect discrimination, which can be fought by an “*antidiscrimination action*”³¹ in civil court proceedings. An action for the removal of continuing effects of discrimination is possible. The statement of a claim must specify the action that a discriminating entity needs to take to remove continuing discrimination. In the above mentioned cases a claimant – a person with a disability – would demand the establishment of reserved parking.

Summary and conclusion

The purpose of the provision of the Road Traffic Act, according to which a disabled person (a holder of the parking card) may require the establishment of reserved parking at place of residence, is to help these persons overcome barriers caused by a disability; it is one of possible measures to enable the persons to participate in standard social life. Therefore, persons with disabilities should be accommodated (by both the owner of a road and state administration bodies) to the largest possible extent.

³⁰ C.f. a judgment of the Regional Court Ústí nad Labem of 19 March 2009, File No. 59 Ca 94/2008, published under No. 1867/2009 Coll. NSS, which touches a related area – consent of the owner of a road to the connection of property to the road.

³¹ Sec. 10 of the Anti-discrimination Act.

Despite the above mentioned facts, it is evident that an applicant does not always have to be accommodated if it is prevented by objective conditions. However, at present the owner of a road is also bound by the Anti-discrimination Act, which imposes a duty to provide adequate measures regarding access to services to a person with a disability. The option not to accommodate an applicant is limited by the purpose of regulation in the Road Traffic Act and by the character of the institute of an adequate measure. A person with a disability does not have to be accommodated only if there is an objective obstacle to the establishment of reserved parking, and even then it is necessary to consider the benefit of reserved parking for an applicant and the existence of other relevant options that can be used in place of reserved parking.

The aim of the presented recommendation was not to describe all possible situations that occur in practise; model examples illustrate basic principles based on which persons participating in the process of permitting reserved parking should make decisions.

JUDr. Pavel V a r v a ř o v s k ý
Public Defender of Rights

Annex – procedure of the owner in considering whether to give or not to give consent to the establishment of reserved parking

1. Acceptance of an application

The first phase of the process involves an application for consent of the owner of a road. If no obstacle exists, consent should be given to an applicant.

2. Existence of an obstacle

- **The owner of a road**, in an ideal case, should always consent to the establishment of reserved parking provided no obstacle exists, in particular an obstacle that complicates the exercise of its rights.
- An obstacle is not, without anything further, a reason for not giving consent to an application but it is only a reason for a thorough consideration of an application (i.e. sections 3 and 4).

3. Assessment of health condition

- The character of disability results from e.g. a decision on awarding special privileges. To determine the facts of a case to the fullest possible extent, it is also possible to ask an applicant to supply additional information.
- **Facticity of a disability:** To evaluate a case, the actual disability is always given a priority; if an applicant submits a document (e.g. a medical certificate) that shows a motor disability, the applicant should be considered person with a motor disability, even if this disability was not the reason for awarding special privileges.

4. Determination whether an alternative measure exists

- An alternative measure needs to be considered in connection with the character of disability.
- Alternative measures do not constitute statutory exceptions for holders of parking places without anything further. Whether an exception may be in fact used at place of residence of an applicant is important.
- **Local inquiry:** In case of doubts about insufficient capacity of parking areas at place of residence of an applicant or about the possibility to actually use statutory exceptions, ascertainment should be carried out directly at place of residence of an applicant.

5. Positive or negative opinion

- The opinion should contain all facts related to an obstacle, health condition and alternative measures. Evaluation should be included and the facts should be placed in a logical framework. If an applicant is not accommodated, it must be clear why.