

Record Card

File number	2587/2015/VOP
Area of law	Discrimination – housing
Subject	activities of housing co-operatives
Type of finding	Report of discrimination found – Section 21b
Result of inquiry	Discrimination found
Relevant Czech legislation	198/2009 Coll., Section 1 (1)(j), Section 3 (2), Section (3)(3)
Relevant EU legislation	
Date of issue	24 June 2016
Date of filing	20 April 2015

Headnote

(I) A housing co-operative as a service provider in the broader sense of the word has the duty to adopt appropriate measures for a member and, simultaneously, tenant of the co-operative with a disability within the meaning of Section 3 (2) of the Anti-Discrimination Act, unless such measure represents an unreasonable burden for the housing co-operative.

(II) A videophone can be an appropriate measure for a person with a hearing impairment as it serves him/her for using doorbells the same as audio doorbells serve the other co-operative members.

Note: The headnote is not necessarily included in the Defender's opinion.

Document:

Brno, 24 June 2016
File No.: 2587/2015/VOP/EN

Report on inquiry concerning failure to purchase a videophone for a co-operative member with a hearing impairment

Ms M. S. (hereinafter the "Complainant") approached me because a co-operative had not reimbursed her for the costs of a videophone. The Complainant lives in a common household with her son; they both have a hearing impairment. The co-operative reimbursed the Complainant only for a light-signalling device but refused to install and fund a videophone. The audio doorbell installed does not serve the needs of the Complainant and her son. She considers the failure to take into account the needs of her family discrimination on the grounds of disability.

A – Subject and conclusions

The Public Defender of Rights Act[1] has entrusted to me competence *inter alia* in the area of the right to equal treatment and protection against discrimination.[2] Therefore, I assessed the objections raised by the Complainant from the viewpoint of a potential violation of the Anti-Discrimination Act.[3]

The Anti-Discrimination Act imposes *inter alia* on housing providers the active duty in relation to persons with disabilities to adopt appropriate measures to achieve conditions equal with others. If they fail to do so, they are guilty of a special form of indirect discrimination, unless adopting the measure would, in the given case, place an unreasonable burden on them.

Both the Complainant and her son have a hearing impairment and live in a co-operative flat. The system of doorbells in the building where they live has been restored and newly enables the connection of videophones (two way video communication devices, i.e. “video doorbells”). However, the housing co-operative refused to establish for them a videophone instead of an audio doorbell after the above-mentioned restoration; the co-operative only reimbursed them for an overhaul of the light-signalling device as the original device was not compatible with the new system. The reason given by the housing co-operative was that purchasing videophones for all 80 members would be too costly.

I examined whether the housing co-operative was guilty of indirect discrimination when it refused to install a videophone in the flat of the deaf members (and, simultaneously, tenants) at the co-operative’s expense.

I concluded that the housing co-operative was, beyond any reasonable doubt, guilty of indirect discrimination on the grounds of disability against the Complainant and her son, each of them with a hearing impairment, by refusing to purchase for them a videophone, which in the case at hand constituted an appropriate solution for achieving conditions equal with others and would have constituted a reasonable burden on the co-operative:

(1) For people with hearing impairment, a videophone represents an appropriate solution ensuring they can use the doorbell in the same way the other co-operative members use audio doorbells. The duty to adopt appropriate measures is related only to people with disabilities; the housing co-operative has no duty to purchase videophones for the other members of the co-operative.

(2) Purchasing a videophone for the Complainant and her son would not place an unreasonable burden on the housing co-operative as the benefit is incomparably higher than the costs the co-operative would have to expend – a videophone is financially viable for a co-operative of 80 members – because the Complainant has not qualified for the allowance for a special aid from which the videophone could otherwise be covered and because no alternative solutions comparable to a videophone are available. I found no other reason why the adoption of an appropriate measure – purchasing a videophone for people with a hearing impairment – should place an unreasonable burden on the housing co-operative.

B – Findings of fact

The Complainant is a member of Housing Co-operative X (hereinafter the “housing co-operative”). The doorbells and their audio devices were restored and modernised at the end of 2013 in the building at XXX where the Complainant and her son live. Since the restoration, the main distribution lines in the building can carry video signal

for the eventuality that the members wish to purchase videophones; the doorbell board is newly equipped with a video camera. In other words, after the restoration, a separate video phone can be established for each individual flat.

However, the light-signalling device in the Complainant's flat was not compatible with the new system. In December 2013, A., s.r.o., with its registered office in YYY, offered the housing co-operative two possible solutions to the situation. One was to provide a light-signalling device together with a video phone for a price of CZK 7,217, the other was the light-signalling device with an audio doorbell for CZK 5,680. The company's assistant recommended that the housing co-operative consider the videophone option so the Complainant could see the persons she lets in.

At a members' meeting in November 2015, the housing co-operative approved the costs of the light-signalling device but not the videophone. The Complainant stated that the labour office would not grant an allowance for a special aid (videophone), and she informed the housing co-operative of this fact.[4]As regards the reasons why the housing co-operative did not approve the installation of a videophone and reimbursement of the costs, the chairman of the housing co-operative explained that the co-operative did not have funds to purchase videophones for all members; therefore, videophones could be purchased only at the expense of a member. He further stated that the costs of purchasing one videophone were CZK 8,139, and since the housing co-operative administered eighty flats, the total costs would reach CZK 651,120.

C – The Defender's assessment of the case

I concluded that the housing co-operative had beyond any reasonable doubt indirectly discriminated against the Complainant and her son by refusing to adopt an appropriate measure consisting in the purchase of a videophone for the Complainant and her son as people with disabilities. I reached this conclusion after a thorough deliberation for the following reasons.

C.1 Scope of the Anti-Discrimination Act

The case concerned falls within the scope of the Anti-Discrimination Act which I describe in more detail in the following paragraphs.

The right to equal treatment is stipulated in the Anti-Discrimination Act, which sets out a prohibition of discrimination in access to and provision of goods and services, including housing, where provided to the public.[5]

Under the Anti-Discrimination Act, discrimination is prohibited on explicitly listed grounds, including disability. Disability is defined by the Anti-Discrimination Act as a physical, sensory, mental, psychological or some other impairment which precludes or may preclude the right of persons to equal treatment in the areas defined by the Act; this must be a long-term disability (which lasts for at least one year) characterised by a degree of damage to health that can put the individual in a disadvantageous position and a long-term (lasting) nature of that damage.[6]

In the case at hand, the Complainant claimed discrimination by the housing co-operative because both she and her son had a hearing impairment.

The fact that both the Complainant and her son have a hearing impairment undoubtedly means that they can be regarded as people with disabilities under the Anti-Discrimination Act.

The real estate in which the Complainant and her son live is owned by the housing co-operative. The Complainant is a member of the co-operative and, at the same time, a tenant; therefore, the housing co-operative is a housing provider and is obliged to observe (amongst other things) the right to equal treatment and the prohibition of discrimination under the Anti-Discrimination Act.

C.2 Duty to adopt appropriate measures for people with disabilities

C.2.1 Active duty of a housing provider in relation to people with disabilities

A housing co-operative is a service provider in the broader sense of the word (housing) and thus has a duty to adopt appropriate measures for people with disabilities.

In addition to direct discrimination[7], the Anti-Discrimination Act distinguishes between two forms of indirect discrimination: general [8] and special.[9] Indirect discrimination in its special form pertains exclusively to people with disabilities. The special form of indirect discrimination consists in refusal or failure to take appropriate measures for a person with a disability to have access to employment or to be able to “use services available to the public”.

In my opinion, the phrase “to use services available to the public” covers goods and services, including housing, offered or provided to the public, as well as other public services (education, health care, etc.).[10] It is necessary to take account of the broader context of the statutory provision being interpreted.[11] A narrowing-down interpretation of the phrase “to use services available to the public” would lead to absurd consequences. If the duty to adopt appropriate measures for people with disabilities were not to include housing, providers of goods would also be exempted from this duty despite the fact that a service offered to the public is an equivalent to goods as it represents a performance provided (as a rule) for consideration.[12] In addition, the long-prepared proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation stipulates the duty to enable a person with a disability to access goods and services which are available to the public, including housing and transport, including by means of appropriate modifications or adjustments.[13]

The Public Defender of Rights has earlier interpreted the duty to adopt appropriate measures for people with disabilities e.g. in the establishment of reserved parking on local roads,[14] in connection with creating conditions for education[15] and also specifically in relation to housing.[16]

C.2.2 Videophone as an appropriate solution

In the case concerned, the videophone represents an appropriate solution which enables people with hearing impairments to use doorbells in the same way the audio doorbells are used by the other housing co-operative tenants.

The role of an appropriate solution is to satisfy specific needs of a person with a disability given by the nature and manifestations of the disability; consequently, an appropriate solution is always individual in nature.[17]

The purpose of an appropriate solution in general is not to favour a person with a disability over others but rather to overcome an obstacle which prevents them from having equal access to e.g. housing. In other words, it consists in establishing equal conditions for people with disabilities.

In the case concerned, the housing co-operative refused to establish a videophone for the Complainant (and her son) with a hearing impairment at the co-operative's expense, and ultimately the housing co-operative only paid for the light-signalling device. All the members of the housing co-operative use new audio doorbells. This means that when someone rings the doorbell, the tenant can use the system to check who is standing at the front door and why, and to decide whether or not to let the person in. On the other hand, the Complainant has an audio doorbell with a light-signalling device. As a person with a hearing impairment, she can tell that someone is ringing the bell based on the light signals, but with just the audio doorbell she has no way of finding out who is coming and why. The Complainant and her son cannot use the audio doorbell in the same way as the other tenants in the building; they would enjoy equal conditions if the housing co-operative established for them a videophone instead of the audio doorbell.

C.2.3 Unreasonable burden

Purchasing a videophone for the Complainant and her son would not place an unreasonable burden on the housing co-operative as the benefit is incomparably higher than the costs the co-operative would have to expend – a videophone is financially viable for the co-operative – because the Complainant has not qualified for the allowance for a special aid from which the videophone could otherwise be covered and because no alternative solutions comparable to a videophone are available.

The legal regulation of appropriate solution in the Anti-Discrimination lays down an exception, i.e. a situation where non-adoption of a solution for a person with a disability does not constitute discrimination. Prohibited discrimination is deemed to not exist when adoption of an appropriate solution would represent unreasonable burden e.g. for a housing co-operative.[18]

The above Act also details what should be taken into consideration when assessing unreasonable burden, specifically:

- the benefit for the person with a disability from implementation of the measure;

- affordability of the measure for the natural person or legal entity who is to implement the measure;
- availability of financial assistance or other forms of assistance in implementation of solutions;
- capacity of substitute solutions to satisfy the needs of the person with a disability.[19]

Regarding benefit: The benefit of a videophone for people with hearing impairments is beyond any doubt. In this section I refer to sub-chapter C.2.2 of the report, i.e. the conclusion that a videophone would enable the Complainant to use the doorbell in the same way the audio doorbells serve the other housing co-operative members.

Regarding affordability of the measure: A., s. r. o. expressly recommended already in December 2013 that the housing co-operative consider the videophone variant, which additional cost of CZK 1,537. Nevertheless, the housing co-operative chose the light-signalling device with audio doorbell for the flat in which the Complainant lives with her son. In its statement, the housing co-operative substantiated the failure to adopt an appropriate measure by a lack of funds to obtain videophones for all members. The costs of purchasing one videophone would be CZK 8,139 and the total costs for eighty members would reach CZK 651,120.

However, the duty to adopt an appropriate measure in the form of a videophone only concerns the Complainant and her son. I am not aware that the other members of the co-operative would need videophones for the same reasons. Therefore, I consider that the housing co-operative's argument concerning the financial burden of purchasing eighty videophones is irrelevant.

Consequently, in my opinion, the costs of one videophone for just the Complainant's household are not a financial burden for a housing co-operative of eighty members. In addition, I cannot ignore the fact that in December 2013 the housing co-operative had an opportunity to purchase a videophone for the Complainant for the additional cost of only CZK 1,537 – an negligible amount compared to the benefit the measure would bring to the Complainant and her son.

Regarding availability of financial and other assistance: If it is possible to obtain funds for a measure for a person with a disability from public means or if some other assistance is available, it is obviously possible to use that channel. It was legitimate that the housing co-operative wanted the Complainant to apply for the allowance for special aid. However, previously the Complainant did not even receive an allowance for a light-signalling device, and with that knowledge she claimed she would not qualify for a videophone (if applying for a special aid[20]). I agree with the Complainant that given she did not receive the allowance for a special aid for a light-signalling device, it is unlikely she would have received the same allowance for a videophone.

Regarding capacity of substitute solutions to satisfy the needs of the Complainant and her son: I am not aware of any substitute solution other than a videophone that would enable a person with a hearing impairment to communicate using a doorbell, and the housing co-operative has not proposed or attempted to introduce any alternative solution.[21]

D – Conclusions

It is my conclusion that the housing co-operative was guilty of indirect discrimination on the grounds of disability by refusing to adopt an appropriate solution in the form of a videophone in relation to the Complainant and her son. Within the meaning of Section 21b(c) of the Public Defender of Rights Act, I recommend that the housing co-operative purchase a videophone for the Complainant's household at the housing co-operative's costs.

I am sending this report to the chairman of the housing co-operative, Mr J. Š, and to the Complainant. If any of the parties wishes to comment on my conclusions, it should do so within 30 days of delivery.

Mgr. Anna Šabatová, Ph.D., signed
Public Defender of Rights

[1] Act No. 349/1999 Coll., on the Public Defender of Rights, as amended

[2] Section 1 (5) in conjunction with Section 21b of the Public Defender of Rights Act

[3] Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination and on amendment to certain laws (the Anti-Discrimination Act), as amended.

[4] The Complainant uses the services of an audio transcriber in contact with the housing co-operative; hence she documented this fact by submitting transcripts of the meetings.

[5] Section 1 (1)(j) of the Anti-Discrimination Act

[6] BOUČKOVÁ, P., HAVELKOVÁ, B., KOLDINSKÁ, K., KÜHN, Z., KÜHNOVÁ, E., WHELANOVÁ, M. Antidiskriminační zákon (Anti-Discrimination Act). Commentary. 1st edition. Prague: C. H. Beck, 2010. ISBN 978-80-7400-315-8, p. 208.

[7] Under Section 2 (3) of the Anti-Discrimination Act, direct discrimination means an act or failure to take action, where one person is treated less favourably than another in a comparable situation.

[8] A general form of indirect discrimination within the meaning of Section 3 (1) of the Anti-Discrimination Act means an action or conduct that relies on certain provisions, criteria or practices that may appear neutral on the surface, but ultimately put the person identified by the relevant grounds of discrimination at a disadvantage compared to other persons.

[9] Section 3 (2) of the Anti-Discrimination Act

[10] *If this were not to be the case, absurd situations would occur, where a private provider of a service would have the duty to adopt appropriate measures for a person with a disability and a primary school or medical facility would not.*

[11] *for more information, see WINTR, Jan. *Metody a zásady interpretace práva (Methods and Principles of Interpreting Law)*. Prague: Auditorium, 2013. Studie publications. ISBN 978-80-87284-36-0, str. 59*

[12] *KVASNICOVÁ, J., ŠAMÁNEK, J. et al. *Antidiskriminační zákon (Anti-Discrimination Act)*. Commentary. 1st edition. Prague: Wolters Kluwer, a. s., 2015. ISBN 978-80-7478-879-6, p. 178-179.*

[13] *Ibid, p. 178 - 179*

[14] *Public Defender of Right's recommendation regarding the fulfilment of the right to equal treatment in establishing reserved parking spaces in local roads of 21 May 2012, File No. 159/2011/DIS/JŠK, accessible at <http://eso.ochrance.cz/Nalezene/Edit/2628>.*

[15] *Public Defender of Rights' Report in Inquiry of 11 February 2015, File No. 105/2013/DIS/EN, accessible at <http://eso.ochrance.cz/Nalezene/Edit/2386>; Public Defender of Rights' Report in Inquiry of 17 February 2015, File No. 6928/2013/VOP/TG, accessible at <http://eso.ochrance.cz/Nalezene/Edit/2632>.*

[16] *Public Defender of Rights' Report on Inquiry of 25 February 2016, File No. 1307/2014/VOP/VB, available at: <http://eso.ochrance.cz/Nalezene/Edit/3702>.*

[17] *KVASNICOVÁ, J., ŠAMÁNEK, J. et al. *Antidiskriminační zákon (Anti-Discrimination Act)*. Commentary. 1st edition. Prague: Wolters Kluwer, a. s., 2015. ISBN 978-80-7478-879-6, pp. 179 - 180.*

[18] *Section 3 (2) of the Anti-Discrimination Act*

[19] *Section 3 (3) of the Anti-Discrimination Act*

[20] *under Act No. 329/2011 Coll., on granting of benefits to people with disabilities and amending related laws, as amended*

[21] *In my opinion, the proposal of a member of the co-operative that the Complainant should look out of the window to see who rang the bell and then shout at the visitor in the audio doorbell is not an acceptable alternative and I understand that the Complainant found the suggestion humiliating. I am glad that the housing co-operative to some extent distanced itself from this proposal in its statement.*