

Record Card

File number	44/2015/DIS
Area of law	Discrimination – recommendation
Subject	recommendation
Type of finding	Recommendation (discrimination) – Section 21b
Result of inquiry	N/A
Relevant Czech legislation	198/2009 Coll., Section 1 (1)(j), Section 3 (1), Section (7)(1) 10/2010 Coll. of International Treaties, Article 9
Relevant EU legislation	
Date of issue	27 May 2016
Date of filing	2 April 2015

Headnote

(I) Accessibility is a basic prerequisite enabling people with disabilities to live independent lives and participate fully in all areas of social life. To the greatest extent possible, people with disabilities also need to be provided access to information contained in news broadcasting.

(II) In choosing a solution for making TV broadcasting accessible to people with sensory impairment, priority must be given to universal solution over creating special solutions for making broadcasting accessible to persons with disabilities (under the “disability mainstreaming” principle).

(III) If the TV broadcaster chooses instead of a universal solution a solution that adversely affects persons with visual impairment, it indirectly discriminates against people with disabilities. This is regardless of the fact that accessibility is to a certain extent provided for by a special technical solution.

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

Document:

Brno, 27 May 2016

File No.: 44/2015/DIS/JKV

Recommendation to the Czech Television concerning accessibility of the main newscast for persons with visual impairment

The Defender received a letter from Czech Blind United (known under the Czech abbreviation SONS), an advocacy organisation for blind and visually impaired people, pointing out the practice of Czech Television (Česká televize) which, since 2011, has been broadcasting foreign-language contributions in the main newscast in the original version with subtitles. Until 2011, these contributions had Czech voiceover, which is the standard practice of all other Czech television stations. According to SONS, this practice is at variance with Article 9 of the Convention on the Rights of Persons with Disabilities, as it prevents visually impaired persons from accessing information.

In accordance with my competence in the area of the right to equal treatment under Section 1 (5) in conjunction with Section 21b of the Public Defender of Rights Act[1], I decided to issue the following recommendation.[2]

A – Subject and conclusions

In the case at hand, the disputed practice on the part of Czech Television consists in translating verbal contributions of persons speaking in foreign languages in the main newscast (*Události*) solely by means of subtitles. Subtitling is a method of conveying information that is entirely inaccessible to visually impaired persons. Visually impaired persons can use the audio description technology (AD), which is also used in the newscast *Události*. However, this technology can only be used with the newer models of TV receivers and is not offered by all TV service providers. Where AD is available, its use in the newscast to read out the subtitles is problematic as in the time when the subtitles are being read out, AD does not serve its primary purpose, i.e. description of the environment and the other circumstances imperceptible to the visually impaired. Even reading out the subtitles using AD is not perfect as it cannot manage to read out all of the text and the transmission of information in this manner is of a lesser quality.

Based on the information provided by SONS, I addressed the following questions:

(1) Could the Czech Television practice constitute indirect discrimination of people with disabilities?

In order to draw conclusions in this matter, it is necessary to find answers to the following questions:

(2) Is there a legitimate goal for Czech Television to justify its dramaturgic composition consisting in using subtitles for foreign language sequences?

(3) Are the methods used to achieve this goal reasonably proportional and necessary?

Based on my findings, I have reached the conclusion that while Czech Television is free to choose the content and composition of the newscast, it must simultaneously respect the rights of persons with disabilities. With regard to people with disabilities, Czech Television does not only have to comply with its duties under the Czech Television Act[3] and the Radio and Television Broadcasting Act,[4] but must also respect the right of people with disabilities not to be discriminated against. In the case at hand, I came to the conclusion that Czech Television indirectly discriminated against people with disabilities since the seemingly neutral practice negatively affected persons with visual impairment. Furthermore, the procedure of Czech Television cannot be reasonably justified. For this reason, I recommend to Czech Television to stop using subtitles for foreign language sequences and thus end its discriminatory treatment of people with disabilities.

B – Findings of fact

B.1 SONS' communication with Czech Television, the Council for Radio and Television Broadcasting and Czech Television Council

SONS president contacted the General Director of Czech Television[5] and informed him that it is a common practice among news channels such as CNN and BBC, and the same was the case also with respect to Czech Television (Czechoslovak Television) from the start of its broadcasting in 1953 up until 2011, to provide a voiceover translation into the particular channel's native language over the muted down foreign language contribution. Since 2011, Czech Television abandoned this practice and began translating foreign language contributions exclusively by means of subtitles. This made the foreign language segments in newscasts inaccessible to persons who are blind or have other kinds of visual impairment as well as people who have difficulty with reading.

The Director of News[6] responded to these objections stating that “[Czech Television] strives to provide viewers with the most authentic experience, which includes the original voice of foreign-language speakers appearing on TV, thus enriching the moment with emotions, voice tone, mood etc.,” all of which is lost in a voiceover. He also stated that the use of subtitles is supposed to contribute to the improvement of the viewers' language skills. The Director further pointed out the exclusive nature of the main newscast, while most news bulletins are broadcast throughout the day also on ČT24, the Czech Television's news station, where voiceover rather than subtitles is used for foreign language contributions.

SONS disagrees with this CT statement[7] pointing e.g. to the facts revealed through an analysis of the main newscast[8], i.e. that the emotional component of the foreign-language speakers' utterances is less important in most foreign language contributions if compared to their contents. Concerning the declared intent to motivate viewers to learn foreign languages, SONS casts doubt on this argument and considers it purpose-driven as in the monitored period, utterances in 14 foreign languages appeared in the newscast, including Bengalese and Indonesian. SONS also claims that Czech Television is not consistent in its policy to preserve the original utterances since, for example, a report including Filipino and Indonesian housemaids in the USA, where parts of Filipino utterances were broadcast with English voiceover.

As further communication lacked substance, SONS complained to the Council for Radio and Television Broadcasting by the end of 2013. The Council for Radio and Television Broadcasting concluded it did not have any means to force Czech Television to comply with the SONS' request and referred the complaint to the Czech Television Council.[9] The chairman of the Czech Television Council responded that Czech Television was complying with its statutory duties under the Radio and Television Broadcasting Act,[10] i.e. it complied with its duty to make accessible to persons with visual impairment at least 10% of its programming using the audio description (AD) technology.

SONS objected[11] to this issue being associated with audio description. Audio description technology can provide reading of written subtitles, but it does not

manage to read them accurately. Its purpose lies rather in the description of the environment, so it cannot describe the scene displayed on the screen while it is reading the subtitles. The technology may be used only on certain types of television sets.

B.2 The Defender's communication with Czech Television

In relation to the complaint filed by SONS, I contacted Czech Television and asked it to clarify its dramaturgical intention. The Director of Production gradually responded to all the questions asked as follows.

He noted that the aim of subtitling utterances in foreign languages was to (1) uphold the design and dramaturgy of the *Události* news programme, which was different “from everything we show on ČT24”, and (2) let foreign languages be heard in said programme.

He identified the authenticity as one of the key attributes of good news reporting. Utterances which appear often have “appellative character, often with a considerable emotional charge which cannot, strictly speaking, be translated”. He also noted that there were certain viewers who suspected media of manipulating arguments by intentionally inaccurate translations.

Czech Television did not consider conveying an authentic feel by other means. Concerning the reactions to subtitling, there had been no other complaints.

Concerning the effort to improve the viewers' language skills, Czech Television did not consult the issue with language teaching experts. It only referred to a 2012 Eurobarometer survey[12] which showed that active knowledge of English among Czechs was the lowest of all EU member states. Czech Television further referred to a summer 2014 STEM survey for Czechinvest, which revealed that only 34% of the population could speak English fluently, as an evidence of the need to motivate Czech public to learn foreign languages.

As of the time of the communication, Czech Television was not evaluating the results of its steps to improve language skills among its viewers. It only noted the fact that the demand for subtitling of foreign language material was large.[13]

C – The Defender's assessment of the case

The Anti-Discrimination Act[14] stipulates the right to equal treatment and prohibition of discrimination against people with disabilities in access to publicly available goods and services. The Anti-Discrimination Act does not contain a definition of a service and the activities falling under this term. Based on literature[15], a service for the purposes of the Anti-Discrimination Act can be considered as an “act”, generally provided for consideration. The Anti-Discrimination Act substantively covers such a service if it is publicly available (i.e. offered to the public). Consideration or counter-performance are not necessary prerequisites.

Television broadcasting is a specific type of service as follows from the Czech Television Act,[16] which in Section 2 stipulates that: “Czech Television provides a public service by means of producing and disseminating television programming or other kinds of multi-media content and additional services in the entire territory of the Czech Republic...” Further, television broadcasting meets the definition of a service provided for consideration as it is funded[17] partially from television fees[18] paid by owners of television sets and partially from Czech Television’s own business activities including commercials broadcast to the viewers. In this case, it is not important that some people with disabilities are exempt from paying the fees[19] as the prohibition of discrimination also applies to situations in which services that are usually provided for consideration are provided for free.[20] People with disabilities, too, are recipients of commercial messages, thereby indirectly contributing to Czech Television’s income.

Pursuant to Section 3 (1) of the Anti-Discrimination Act, indirect discrimination means an act or omission where an apparently neutral provision, criterion or practice puts a person at a disadvantage compared to other persons based on any of the given discrimination grounds, which also include disability. Indirect discrimination does not occur if such a provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

To determine whether people with disabilities are discriminated against, the principles laid down by the Convention on the Rights of Persons with Disabilities shall be applied.[21] According to the Convention, people with disabilities need to be provided equal access to, *inter alia*, information and communication and other services available or provided to the general public. The Convention imposes obligations on the states, but likewise constitutes an important instrument for interpretation of national regulations since it lays down general principles that need to be taken into consideration in interpretation of certain unclear legal terms also present in the wording of the Anti-Discrimination Act.[22]

No generally binding legal regulation stipulates the specific objectives of news reporting and newscasts. The Czech Television Code[23], whose existence is anticipated by Section 8 of the Czech Television Act, identifies the primary task of Czech Television as “providing information in news and current affairs programmes”.[24] However, it further focuses just on the contents, rather than the form in which information is to be provided. These facts show that Czech Television has a lot of freedom to choose the form of news reporting. However, it must respect the above-indicated rules concerning non-discrimination of people with disabilities and the principle of accessibility,[25] including access to information.

In my assessment below, I will address the question of whether Czech Television could have indirectly discriminated against people with disabilities, starting from the general definition of indirect discrimination and proceeding to the special definition of indirect discrimination of people with disabilities. The assessment concerns exclusively the main newscast – *Události* – which contains the most important news of the day in a precisely allocated timeslot, not general broadcasting and its accessibility to people with various kinds of disability. The nature of *Události* as the main newscast distinguishes it from news and information aired continuously on the ČT24 news channel. Some of these news and information may appear in the main

newscast, but it may also contain information which have not appeared in other news bulletins aired throughout the day.

C.1 Indirect discrimination of people with disabilities

Czech Television, as the provider of a specific service, is bound by the Anti-Discrimination Act. The contested practice following from the dramaturgic objective involves translation of foreign language utterances appearing in the main newscast via subtitles instead of a Czech voiceover. In assessment of indirect discrimination, the presence of an intention to discriminate is not relevant. Even a completely neutral practice could have indirectly discriminatory impact in connection with the Anti-Discrimination Act. Such a practice may, however, only seem neutral as its effects may be unfavourable to people with visual impairment (and reading difficulties) since such persons are unable to read the subtitles. With respect to television, people with visual impairment are, generally speaking, only able to perceive the audio track, where the accessibility for these persons drops significantly if a person speaks in a foreign language. Broadcasting contributions in exotic languages only with Czech subtitles may make them completely inaccessible to the persons with visual impairment. All these facts constitute a disadvantage of the visually impaired in comparison to people without such disabilities.

The resulting disadvantage on the part of people with visual impairment is not removed by audio description used in *Události* since the technology is not available on all television sets. The function of audio description, i.e. to convey information on the scene and background, is limited in moments when the audio description is “reading out” the subtitles. Also of importance is the fact that reading using audio description reduces the contents of utterances, as reading out loud cannot, for objective reasons, be as quick as simple reading of the subtitles or a pre-made voiceover.

To avoid classification as indirect discrimination, this seemingly neutral practice would have to be justified by a legitimate objective and the means to achieve this objective would have to be proportional and necessary.

C.2 Objectives of subtitling and evaluation thereof

Czech Television mentioned the following objectives in its communication with SONS and the Defender:

- (1) dramaturgic intention, i.e. the effort to allow experiencing the news in the most authentic manner possible;
- (2) preventing doubts as to the accuracy of translations;
- (3) distinguishing from news programmes aired on ČT24;
- (4) letting foreign languages be heard in *Události* in order to contribute to the viewers' language skills.

The dramaturgic intention to provide the viewers with an authentic experience of unmodified foreign language utterances can be considered a legitimate goal as this is related to the objective nature and accuracy of news reporting. The same can be said about the objective consisting in the prevention of doubts as to the interpretation of the translated utterances.

The objective consisting in the effort to distinguish *Události* as the main newscast from all the other news programmes usually aired on ČT24 cannot be regarded as legitimate. Although fostering a certain degree of exclusivity of a newscast is directly related to the importance of news reporting in broadcasting, as specifically mentioned by the Czech Television Code, the effort to distinguish a programme is not in itself a legitimate goal that could justify the unfavourable impact on people with disabilities.

The airing of foreign language utterances unchanged to promote learning of foreign languages may also be regarded as legitimate, given Czech Television's functions, which including educating the public.

As three of the above objectives can be regarded as legitimate, it is further necessary to address the proportionality and necessity of the means to achieve these objectives. Given the specific objectives, it is further necessary to review^[26] the suitability of the selected solution, i.e. whether or not it is feasible in achieving its objective and whether there are some other solutions that could effectively achieve the same objective without negative impact on people with disabilities.

C.3 Proportionality and necessity of the means used in relation to the objectives

Airing foreign language utterances in the original is only a partially suitable solution to achieve an authentic experience associated with the effort to maintain accuracy of foreign language utterances. In some utterances, the emotional charge or tone of voice is not important at all, and in others it is only of secondary importance. In utterances where the tone of voice, only discernible in an authentic utterance, plays a role, there are doubts about the necessity of subtitling. There are other possibilities for conveying an authentic experience without affecting people with disabilities. One possibility is to delay the voiceover by several seconds and keeping the muted original audio track in the background.

With respect to preventing doubts as to the accuracy of interpretation of the translated utterances, subtitles instead of voiceover also offer only a partial solution. In more exotic languages, not even elementary knowledge can be expected among the viewers, which is why their ability to spot inaccuracies is limited as the viewers must rely on the subtitles, which can contain inaccuracies just as well as any voiceover might. Czech Television further noted that it does not commonly face such objections, which are usually raised by a small group of distrustful viewers. To satisfy these persons without disadvantaging people with disabilities, Czech Television could, for example, keep the original sound as a separate audio track or air these foreign language utterances in the original on the news channel as part of its programming.

The educational function of foreign language utterances in the main newscast is also doubtful. When evaluating its suitability, it is necessary to consider whether it can contribute to the desired objective. This question cannot be answered for certain as Czech Television did not consult the issue with language teaching experts. As concerns specific data, Czech Television points to the 2012 Eurobarometer survey,[27] which revealed that the active knowledge of English among Czechs is one of the worst in Europe. Even if it were accepted that subtitling of all foreign utterances can serve as a suitable impetus to learn foreign languages, doubts would remain as to whether this measure is suitable also for languages other than English. Suitability is further undermined by the fact that Czech Television does not evaluate the measure's effectiveness in any way, while the actual effectiveness of short sequences in foreign languages (shorter than a few minutes, usually less than 1 minute) in terms of improving foreign language skills is questionable. The measure chosen is not necessary for achieving this purpose either, as the objective would be served far better if longer utterances or even whole programmes were aired exclusively in foreign languages, while accessibility of the main newscast for people with disabilities would remain unchanged.

For the above-explained reasons, it must be concluded that the cited practice of Czech television constitutes indirect discrimination in the sense of Section 3 (1) of the Anti-Discrimination Act.

D – Conclusions

Accessibility is a basic prerequisite enabling people with disabilities to live independent lives and participate fully in all areas of social life.[28] Aside from providing people with disabilities with access to physical spaces and e.g. transportation, information must also be made accessible to the largest extent possible. I am aware that Czech Television has, in the long term, been complying with its statutory obligations in relation to people with disabilities,[29] however, putting the principle of accessibility in practice extends beyond compliance with positive obligations to people with disabilities that are explicitly stipulated by law. Czech Television as a public service medium should pay special consideration to this principle.

An ideal way of accomplishing the above-indicated principle is to select a solution that serves everybody, not just people with disabilities. This principle is called *disability mainstreaming*[30]. Mainstreaming should apply to everybody and in each area where it is possible. Mainstreaming entails systematic attention to the special needs of people with disabilities, where introducing special measures for making broadcasting accessible to people with disabilities while there is a universal solution available goes contrary to this principle.

Priority should be given to solutions following the *universal design* principle, which should ensure fully equal and unrestricted access for all potential recipients including people with disabilities in a manner respecting their dignity and diversity.[31] In decision-making concerning any changes or new solutions, attention should be paid to remove inequalities and avoid creating new barriers. I believe that a solution favourable for as many people as possible should be preferred in decision-making on

a specific dramaturgy that could affect accessibility for people with disabilities. I am aware that audio description maintains accessibility of the main newscast even for people with visual impairment, nevertheless, this solution does not respect the universal accessibility principle.

Accessibility of news reporting and the information it contains is closely related to the exercise of freedom of speech, the right to information and expressing one's opinions.[32] For this reason, news reporting and journalism deserve special attention in evaluating accessibility of television broadcasting.

Based on the above findings and considerations and my competence in the area of equal treatment, I concluded that the Czech Television's practice of subtitling foreign language utterances in the main newscast constituted indirect discrimination of people with visual impairment.

For this reason, I am exercising my power under Section 21b (c) of the Public Defender of Rights Act and recommend to Czech Television to end the practice of subtitling foreign language utterances in the interest of not only people with visual impairment, but also all people who have or could have problems with reading subtitles. In the interest of maintaining the above principle of accessibility, the potential adjustment of the practice must not affect the use of subtitles for the benefit of people with hearing impairment.

I am sending my recommendation to Czech Television and also for the attention of SONS, and request that Czech Television respond to my conclusions concerning indirect discrimination and the recommended steps 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] pursuant to Section 21b (c) of the Public Defender of Rights Act, stipulating that the Defender "publishes reports and issues recommendations on discrimination-related issues".

[3] Act No. 483/1991 Coll., on Czech Television, as amended

[4] Act No. 231/2001 Coll., on operation of radio and television broadcasting and on amendment to other laws, as amended

[5] by letter of 6 September 2012

[6] by letter of 19 September 2012

[7] in letter of 31 May 2013

[8] *from the week of 6-12 May*

[9] *On 19 February 2014, then-chairwoman of the Council for Radio and Television Broadcasting published in reaction to the complaint an article in the Referendum daily titled “Czech Television sets the bar high for the viewers” (ČT nastavuje divákům laťku vysoko).*

[10] *Section 32 (2) of Act No. 231/2001 Coll., on operation of radio and television broadcasting and on amendment to other laws, as amended*

[11] *In communication between a SONS representative and the authorised employee of the Office of the Public Defender of Rights (e.g. meeting of 2 November 2015 or statement to the Public Defender of Rights of 16 October 2015) as well as communication with Czech Television.*

[12] *Europeans and their languages [online] European Commission 2012 [retrieved on: 20 May 2016]. available at:*

http://webcache.googleusercontent.com/search?q=cache:dl8C1DNkjlJ:ec.europa.eu/public_opinion/archives/ebs/ebs_386_en.pdf+&cd=1&hl=cs&ct=clnk&gl=cz

[13] *As an example, it notes the 2013 initiative of the Czech High School Students Union requesting that subtitles be exclusively used for English-language television programmes.*

[14] *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*

[15] *KVASNICOVÁ, Jana, ŠAMÁNEK, Jiří et al. Antidiskriminační zákon (Anti-Discrimination Act). Commentary. Praha: Wolters Kluwer ČR, a.s., 2015, p. 73. ISBN 978-80-7478-897-6*

[16] *Act No. 483/1991 Coll., on Czech Television, as amended*

[17] *Section 10 of the Czech Television Act*

[18] *Act No. 348/2005 Coll., on radio and television fees and on amendment to certain laws*

[19] *Section 4 of the Radio and Television Fees Act*

[20] *KVASNICOVÁ, Jana, ŠAMÁNEK, Jiří et al. Antidiskriminační zákon (Anti-Discrimination Act). Commentary. Praha: Wolters Kluwer ČR, a.s., 2015, p. 73. ISBN 978-80-7478-897-6*

[21] *Communication of the Ministry of Foreign Affairs No. 10/2010 Coll. of Int. Tr., on adoption of the Convention on the Rights of Persons with Disabilities*

[22] *The Convention is primarily a document binding on countries, however the rights of people with disabilities it contains may, under certain circumstances, apply even in*

relations amongst private entities themselves (the so-called indirect horizontal effect). This concept, i.e. the “radiating” of fundamental rights through the whole system of laws, was enunciated by the Constitutional Court in its judgement of 24 September 1998, File No. III ÚS 139/98 (N 106/12 SbNU 93). It manifests as the duty on the part of public authorities to “interpret and apply law through the lens of protection of fundamental rights and freedoms”.

[23] *Czech Television Code approved by the Chamber of Deputies of the Parliament of the Czech Republic on 2 July 2003 [online]. Czech Television, (c)2003. [retrieved on: 20 May 2016], available at: <http://img.ceskatelevize.cz/boss/pages/english/pdf/ct-code.pdf>*

[24] *Article 5 of the Czech Television Code*

[25] *Defined in Article 9 of the Convention on the Rights of Persons with Disabilities*

[26] *As noted e.g. by KVASNICOVÁ, Jana, ŠAMÁNEK, Jiří et al. Antidiskriminační zákon (Anti-Discrimination Act). Commentary. Praha: Wolters Kluwer ČR, a.s., 2015, p. 177. ISBN 978-80-7478-897-6*

[27] *Europeans and their languages [online] European Commission 2012 [retrieved on: 20 May 2016]. available at: http://webcache.googleusercontent.com/search?q=cache:dI8C1DNkklJ:ec.europa.eu/public_opinion/archives/ebs/ebs_386_en.pdf+&cd=1&hl=cs&ct=clnk&gl=cz*

[28] *Accessibility is one of the main principles contained in the Convention on the Rights of Persons with Disabilities.*

[29] *I.e. Section 3 (1) of the Czech Television Act and Section 32 (2) of Radio and Television Broadcasting Act*

[30] *The principle of mainstreaming is contained e.g. in documents drafted by the European Union. See e.g. European Commission. Disability mainstreaming in the European Employment Strategy [online], 2005 [retrieved on: 25 May 2016]. Available at: http://unipd-centrodiritiumani.it/public/docs/emco010705_en_1.pdf, p. 2-3*

[31] *The issue is handled similarly by the UN Committee on the Rights of Persons with Disabilities in the commentary to Article 9 of the Convention on the Rights of Persons with Disabilities, i.a. par. 15. It admits that applying the universal design does not automatically exclude the need for special technical aid. See Committee on the Rights of Persons with Disabilities. General comment No. 2. Article 9: Accessibility [online]. 2014 [retrieved on: 25 May 2016]. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/033/13/PDF/G1403313.pdf?OpenElement>*

[32] *guaranteed by Article 17 of the Charter of Fundamental Rights and Freedoms and, especially for people with disabilities, in Article 21 of the Convention on the Rights of Persons with Disabilities.*