



NEWS REPORT

Date: 25 October 2010
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Title: Accessibility of Court Houses to disabled members of judicial professions
Country: France
Context
Issue at stake: The Council of State (Conseil d'Etat), in plenary session, adopted a decision on the obligations and liability of the State in relation to access to Court Houses to disabled members of judicial professions disability
Ground of discrimination:
Source: national court decision, Conseil d'Etat, Assembly, 22 October 2010, Mme B., no 301572
Field: Employment
Legislative provisions: Articles 2, 3 and 5 of Directive 2000/78 and Article 3 of the Law of 31 December 1971 no 71-1130 on Judicial Professions

Content

Case: Ms B. is a disabled person and uses a wheel chair most of the time and cannot take the stairs. She has filed a claim for damages against the State alleging insufficient adequate accommodation preventing her from accessing some Court Houses under the jurisdiction of the Bar of Bethune in the North of France, where she practises her profession as a lawyer. Among a number of incidents, she in particular raised that this situation forced her to be lifted by the Court personnel in order to access the Court House or to have hearings held in the parking lot.

The Law of 11 February 2005 on the Rights of Disabled Persons provides that the State will determine by decree the timeframe within which public buildings will have to be made accessible to disabled persons. The State has adopted such a Decree on 17 May 2006, which provides for accessibility of all public buildings to be completed before 1st January 2015.

The first instance courts held that, since the deadline for implementation of accessibility works runs until 2015, there can be no liability of the State for



lack of access to Court Houses and that there is no specific obligation towards lawyers in this respect.

Decision of the Court: Article 3 of the Law of 31 December 1971 no 71-1130 on judicial professions provides that lawyers are '*judicial official*' (*'auxiliaire de justice'*).

The Council of the State considered that the lower courts erred in fact and in law by relying on the sole deadline for insuring accessibility provided by the Decree of 17 May 2006 that runs until 2015 to dismiss liability of the State, without evaluating whether Directive 2000/78 imposes a specific obligation towards lawyers as access to Court Houses is concerned, and whether the State met its duties in this respect. In addition, they should have verified whether the *de facto* inequality before public charges of lawyers confined to wheel chairs during this period was such as to engage liability without fault on the part of the State.

Evidence shows that, to this date, the State has made implementation efforts that are sufficient to meet its legal obligation towards Ms. B.. Therefore, the State has committed no fault that can trigger its liability on the ground of insufficient transposition of Directive 2000/78 (Law of 2005, *supra*).

However, the fact that Ms. B. is not a simple beneficiary but a judicial official could trigger the liability without fault of the State on the ground of the *de facto* inequality before public charges resulting from the inaccessibility to a number of Court Houses. Evidence shows that the situation exceeds reasonable inconveniences that should be borne by a disabled person, and that the resulting difficulties for Ms. B. impede her professional practice. However, in the absence of evidence of financial loss, the Council awards Ms. B. 20, 000€ in non-material damages.

Internet link source and additional information:

<http://www.conseil-etat.fr/cde/node.php?articleid=2151>