



NEWS REPORT

Date: 6 April 2010
Expert: Rikki Holtmaat
Title: Apartments Owners Association obliged to provide reasonable accommodation to disabled person
Country: The Netherlands

Context

Issue at stake: First ETC Opinion on reasonable accommodation for disabled persons in the area of housing
Ground of discrimination: Disability

Source: Decision national equality body ETC Opinion dd 5 March 2010, 2010-35.

Field: Housing

Legislative provisions: Articles 1, 2, 3 and 6 a-c of the Disability Discrimination Act (DDA)

Content

Case law: In 2007, the scope of the DDA was extended to (inter alia) the field of housing.¹ In March 2010, the Equal Treatment Commission (ETC) for the first time gave an opinion on this new provision. It concerned a case against a private Association of Owners of an Apartment complex. The applicant (who owned an apartment in the complex) had suffered from a stroke and from then on had to use an electric scoot mobile as the only possible means for his own transportation. He requested the board of the Owners Association to get permission to park this vehicle near his own apartment's front door, or (preferably) on a vacant spot in the joint car parking garage of the complex, previously used by someone to park two motor vehicles there. This permission was denied to the applicant. The applicant was told that the house regulations prohibited parking any vehicles on the landings / near people's own front doors, and that vacant spot in the garage could not be used for parking a scoot mobile because this might cause trouble for two cars that were parked nearby. The applicant objected against this policy, but to no avail. The Board then send out a questionnaire to all owners, in which they could indicate whether they agreed with either parking a scoot mobile near the front door or in a person's own storage room. A majority of the person who responded, choose the second option. On this basis, the applicant was instructed that he should park his scoot mobile in his own storage room (which for that purpose would need to be reconstructed) or outside the building.

The applicant filed complaints at the Equal Treatment Commission, stating that this policy of the Owners Association constituted discrimination on the ground of disability.

The ETC first considered that the defendant's appeal to the Constitutionally guaranteed freedom of association was not valid, since the defendant's decision did not refer to offering goods and services (in which case the General Equal Treatment Act (GETA) applies, which makes an exception for this purpose), but to housing. In that area, the legislator has made it explicit that Owners Association's are among the organisations to whom the (personal) scope of the DDA extends. Regulations made by Owners Associations, based on Article 5:111 sub d of the Civil Code, are explicitly

¹ Staatsblad 2009-101, Wet van 19 jan. 2009, (effective from 1 August 2009) 'Wijziging van de Wet gelijke behandeling op grond van handicap of chronische ziekte in verband met de uitbreiding met onderwijs als bedoeld in de Wet op het primair onderwijs en de Wet op het voortgezet onderwijs en met wonen' (= Amendment to the Disability Discrimination Act concerning the extention to primary and secondary education and housing).

mentioned in Article 6c DDA. These regulations should not directly or indirectly discriminate on the ground of disability (Art. 1 DDA) and should leave room for making reasonable accommodations (Art. 2 DDA). This includes providing immaterial accommodations, like – as the Explanatory Memorandum to the Bill explained by way of example – giving permission to place a scoot mobile in the public areas of a jointly owned apartment building. The ETC leaves in the middle whether the refusal to make the required accommodation constitutes direct or indirect discrimination on the ground of disability. However, it applies a justification ground explicitly written for direct discrimination. Article 3 of the DDA leaves room for justifying a case of direct discrimination whenever the contested rule or measure is necessary for health and safety reasons. Refusing to grant permission to the applicant to put his scoot mobile on the landing near his own front door could be reasonable when this would lead to serious risks, e.g. the risk that people would be obstructed to leave the building in case of fire. It is the applicant's duty to make clear that he needs a reasonable accommodation and which accommodation would be appropriate and necessary, which in this case was done properly. The defendant then has to prove that the required accommodation is not reasonable (i.e. is not appropriate and necessary and/or putting an undue burden on the defendant). The latter may be also the case when the accommodation is not feasible for health and safety reasons. The defendant had argued that it was only obliged to provide an accommodation when the applicant had proved that he himself could in no way find a proper solution. This is not a correct understanding of the law. The applicants own means to solve the problem do come into play within the framework of the proportionality test, but they are not decisive. The suggestion that the applicant could rebuild his own storage room therefore was not reasonable, since there existed another (less costly and more convenient – for not taking away the applicant's possibilities to store things) possibility to park the scoot mobile in the garage. The ETC stated that the Owners Association should have properly investigated this solution, and by not mentioning it in the questionnaire had prematurely rejected this possibility. Also, the Owners Association had not substantiated its claim that parking in the garage would create a precedent and that parking on the landing would create a risk in case of fire.

Decision of the ETC:



The Commission held that the Owners Association had discriminated on the ground of disability by refusing to co-operate to find a reasonable accommodation for the applicants parking problems.

Internet link source and additional information: ETC Opinion 2010-35, dd 5 March 2010. To be downloaded from:

<http://www.cgb.nl/node/15071/volledig> (Last accessed on 6 April 2010.)