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NEWS REPORT

Country:	Romania
Title:	Court of Appeal Bucharest issues unprecedented decision on duty to ensure accessibility of taxis for persons using wheel chairs
Date:	9 November 2015
Expert:	Iordache, Romanița
<u>Context</u>	
Issue at stake:	Duty of taxi companies to ensure means of transportation for persons using wheel chairs which cannot be packed
Ground of discrimination:	Disability
Source:	National court decision – Decision 2547 from 12 October 2015 of the Court of Appeal Bucharest
Field:	Access to goods and services
Applicable law:	Art. 10 letter g of the Government Ordinance 137/2000, Romanian Anti-discrimination Law

Content

Case development: The complainant is the mother of a young man immobilized in a wheel chair. They called a taxi service to go to school. The cab driver refused to take them stating that the wheel chair would not fit in the trunk as his car run on gas and it had a special compressed-gas bottle occupying all the trunk. He called two companies he was working with and asked them to send an adapted car.

The plaintiffs filed a complaint against the cab driver and one of the cab companies before the National Council for Combating Discrimination (NCCD) claiming discrimination in access to services. In its decision 126 from 25 February 2015, the NCCD ruled that the behaviour of the cab driver does not amount to discrimination as the plaintiffs did not specify the need for an adapted car when making the initial call and the car driver refusal was justified by the physical impossibility of fitting the wheel chair in the trunk. The petitioners challenged the NCCD decision before the Court of Appeal Bucharest seeking the annulment of the NCCD decision.

Decision of the Court: On 11 October 2015, the Court of Appeal Bucharest, section VIII Administrative and Fiscal Litigation annulled in part the NCCD decision. The court maintained the NCCD decision regarding the conduct of the cab driver. By extending the scope of the petition, the Court of Appeal found that the refusal of the two taxi companies amounts to discrimination as provided in Art. 10 letter g of the GO 137/2000 law and issued a fine for each of the two companies of RON 10000 (approx. € 2250). The court also ordered the two companies to redress the situation of discrimination by owing at least one car specially adapted to be used exclusively for persons with disabilities who are using electric wheel chairs which cannot be packed. The court also ordered Bucharest municipality, the General Direction for Social Assistance and the Agency for Payments

and Social Inspection from Bucharest to redress the situation of discrimination by taking all administrative measures provided by the legislation in order to oblige all companies authorised for taxi services to have at least one vehicle adapted for persons with disabilities who are using electric wheel chairs which cannot be packed. The decision is not final and can be challenged before the High Court of Cassation and Justice. No information regarding the appeal is available so far as the reasoning of the decision was not communicated to the parties yet.

Key points of analysis:

The case is particularly interesting as it introduces clearly the argument that failure to pre-emptively take all measures in order to ensure reasonable accommodation in public transportation amounts to discrimination in access to public services. The court maintained the NCCD decision in regards of the cab driver on the initial facts presented by the complainant but looked at the systemic challenge of accessibility. As in their action the complainants also introduced a more general claim, the court accepted as defendants not only the two taxi companies, but also the local public administration through Bucharest municipality, the General Direction for Social Assistance and the Agency for Payments and Social Inspection from Bucharest. Under this more general set of facts, specific orders had been issued by the court in regard of these defendants in relation with their duty to ensure compliance with the accessibility and accommodation requirements for all taxi companies. The Court of Appeal used the Anti-discrimination Law in order to sanction the failure to observe the requirements of the legislation on the rights of persons with disabilities, Law 448/2006. Law 448 provided in Art. 62 the duty of local authorities to ensure adaptation of public transportation by 31 December 2010, including taxis. Also, in Art. 64 (2) it established a six months period for all taxi operators to ensure at least one car adapted for persons using the wheel chair. In Art. 64(3) Law 448/2006 defines as discrimination the refusal of the taxi driver to ensure transportation for the person with disabilities and the wheel chair used; and sanctioned it with a fine of RON 6000-12000 (approx. €1350-2700). The enforcement of Law 448/2006 falls under the mandate of distinct entities, the national authority for the rights of persons with disabilities and the Social Inspection. Given the failure of these institution to sanction non-compliance, the NCCD issued in the past sanctions against them.

Internet link source: Legal history of the case available on the portal of the Court of Appeal Bucharest:

http://portal.just.ro/2/SitePages/Dosar.aspx?id_dosar=200000000319018&id_inst=2.

A presentation of the history of the case is available here:

<http://www.digi24.ro/Stiri/Digi24/Actualitate/Social/Castig+in+instanta+pentru+un+copii+discriminat+de+un+taximetrist>, both last accessed 9/11/2015.