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NEWS REPORT

Country:	France
Title:	Case regarding the systematic disability discrimination of Easyjet
Date:	20 January 2016
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<u>Context</u>	
Issue at stake:	Air transport carriers obligation to provide access to air transport to disabled persons with reduced mobility and the scope of opposable safety requirements
Ground of discrimination:	Disability
Source:	National court decision
Field:	Access to goods and services
Applicable law:	Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air Articles 225-1 and 225-2 of the Penal Code

Content

Case:

Regulation (EC) No 1107/2006¹ forbids, in article 3, the possibility for air transport carriers to refuse to embark a disabled person on the ground of disability or reduced mobility. However article 4 provides that an air carrier may refuse boarding "in order to meet applicable safety requirements established by international, Community or national law or in order to meet safety requirements established by the authority that issued the air operator's certificate to the air carrier concerned".

In the absence of precise regulations defining "applicable safety requirements" some air transport carriers have implemented restrictive policies that result in systematically requiring disabled persons with reduced mobility to be accompanied, thereby refusing boarding to unaccompanied disabled persons with reduced mobility.

Easyjet adopted such a policy, formally instructing its subcontractor who took care of the boarding in Paris Charles De Gaulle Airport to systematically refuse boarding to disabled unaccompanied travellers because the flight personnel "is not trained to manage and

¹ Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

assist disabled persons”.

Three disabled persons who were denied the right to embark on the ground that they were not accompanied filed penal complaints against Easyjet.

On 13 January 2012, the Bobigny Correctional Court found that the systematic refusal of the Company to allow unaccompanied disabled persons to board a plane without verifying their concrete capacity to travel alone in consideration of security requirements constitutes discrimination on the ground of disability.

Easyjet appealed this decision.

In a decision of 5 February 2013, the Court of appeal of Paris maintained the Bobigny Correctional Court decision of 13 January 2012, and condemned Easyjet to a fine of EUR 70 000 and to publish the decision in the journal “Le Monde”. The subcontracting operating company was condemned to a fine of EUR 25 000. Both companies were also jointly condemned to compensate Plaintiffs of an amount of EUR 2000 each in damages and a symbolic EUR 1 to the NGO Association des Paralysés de France.

Easyjet lodged recourse before the Cour de cassation.

Decision of the Court:

The Court of cassation maintained the position of the Court of appeal: Cour de cassation, Criminal chamber, 15 December 2015, no 13-81586, Easyjet vs. Gianmartini et al.

Key points of analysis:

The decision not to train its personnel, and the systematic refusal of the company to allow disabled persons to board a plane without verifying their concrete capacity to travel alone constitutes an overall policy based on disability. Considering that practice of the industry show that other companies provide such assistance to disabled persons, the airplane company and its subcontractor executing its instructions cannot use the personnel restrictions argument to justify these security requirements and systematically refuse a service to disabled persons without committing discrimination.

The Court of cassation specifically states that the European regulation does not provide for a safety requirement denying access to persons on the ground of disability, and Easyjet did not establish the existence of such safety standard recognised the national or international authorities.

In addition, Article 11 of the European Regulation provides for an obligation on the part of air transport carriers to train their personnel that has been transposed in French regulations by decree n°2008-1445 of 22 December 2008, and sanctioned by an administrative fine.

Internet link source:

<http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEX T000031658282&fastReqId=2131939514&fastPos=2>

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