



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	France
<b>Title:</b>	Conseil d'Etat, 22 February 2018, n°397360
<b>Date:</b>	21 March 2018
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	Legality of 'solutions of equivalent effect' implemented in derogation to the obligation to ensure accessibility to persons with disability of newly built housing
<b>Ground of discrimination:</b>	Disability
<b>Source:</b>	National court decision
<b>Field:</b>	Housing
<b>Applicable law:</b>	Decree n° 2015-1770 of 24 December 2015

### **Content**

**Case development:** A number of NGOs have challenged the legality of the provisions of Decree n° 2015-1770 of 24 December 2015 (articles 3, 4, and 6 par. 1) allowing that alternative solutions to regulated technical requirements to meet accessibility standards be put in place in newly built private housing.

In a decision of 3 February 2016 (n°386951), the Conseil d'État (Council of State, Supreme Administrative Court) had previously decided that, with regards to existing buildings receiving the public (precisely defined by various decrees and executive orders), provisions allowing that accessibility requirements be met by implementing 'solutions of equivalent effect', were legal.

Solutions of equivalent effect would be the installation of a lift instead of a ramp, the design of a rotating disk on the floor instead of the required space to turn around a wheel chair, access through a separate door instead of redesigning the main entrance to a building, etc...

**Decision of the Court:** In February 2018, the Council of State (acting as Supreme Administrative Court) ruled that 'solutions of equivalent effect' were legal with regard newly built buildings that are private housing.

The Court held that the provisions relating to 'solutions of equivalent effect' in newly built private housing are meant to allow the implementation of technological innovations with the objective of attaining comparable results as technical norms stated in the regulations relating to accessible design, and that they do not *per se* put into question the principle of accessibility.

NGOs raised the risks related to the applicability of the legal rule of implicit acceptance which provides that in the absence of explicit reply by the public service after a two

months delay, the derogation request is accepted. They allege that experience shows that they are in fact seldom duly evaluated by the mandated service.

The Court replied that this argument was not determining given that in this decree, said derogation requests only applied to private persons in relation to private premises destined to private housing.

**Key points of analysis:** NGOs are pressuring Government to ensure the effective implementation of accessibility requirements which have systematically been postponed since the 70's. They feel that operators seek all possibilities to alleviate the burden of implementing accessibility requirements, that 'solutions of equivalent effect' are a mean to multiply derogation requests that will not be seriously scrutinized, and that the rule of implicit validation of derogation requests has had a major impact on effective implementation of accessibility requirements.

This decision intervenes in a context of documented saturation of the capacity of the public service to analyse each and every demand, given that all requests were submitted simultaneously as a result of the deadlines imposed by the law.

In this decision, the Supreme Administrative Court completely closes the door to any challenge of the provisions opening the possibility to derogate to accessibility requirements by requesting implementation of 'solutions of equivalent effect'.

However, although the Court validates the applicability of the principle of implicit acceptance in the absence of explicit refusal, it does so by expressly referring to the purview of this decree, limited to private housing as opposed to buildings receiving the public. Thus, it opens the door to challenges that would raise the risks related to the applicability of the principle of implicit acceptance to derogation requests related to newly built buildings receiving the public.

**Internet link source:**

[https://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CE\\_TATEXT000036637082&fastReqId=929507833&fastPos=20](https://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CE_TATEXT000036637082&fastReqId=929507833&fastPos=20).