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NEWS REPORT

Country:	The Netherlands
Title:	NIHR: competence to receive complaints regarding general duty of gradually realizing access for disabled people
Date:	27 June 2018
Expert:	Titia Loenen
<u>Context</u>	
Issue at stake:	General duty of gradually realizing access for people with disabilities
Ground of discrimination:	Disability
Source:	National equality body
Field:	Access to goods and services
Applicable law:	Art. 2a Act on Equal Treatment on the Ground of Disability or Chronic Illness (DDA)

Content

Case: A deaf man rented a video film through a video-on-demand rental shop. As it was a children's movie, the video was dubbed but no subtitles were provided. As a consequence, the applicant could not understand the film. He asked the rental shop to provide him with the subtitled film, but the rental shop did not fulfil this request, claiming it was not allowed to add subtitles because of intellectual property law and because the technical costs involved would constitute a disproportionate burden. The film was distributed without subtitles by 'Twin Video' distributor. The applicant subsequently brought two complaints to the NIHR claiming a violation of the Act on Equal Treatment on the Ground of Disability or Chronic Illness (DDA)¹ for discrimination on grounds of disability. One complaint was directed against the rental company for its refusal to provide subtitling to him and another against the distributor 'Twin Video' for the omission to include subtitling before distributing the film in the Netherlands.² Several months after the applicant had rented the video it became available with subtitles.

Decision of the Court: The NIHR assessed the complaint against the video rental company under the duty to provide reasonable accommodation as provided for in article 2 (1) DDA. As it considered the arguments put forward by the rental company valid it concluded that the company did not violate the DDA. As far as the distributor was concerned the NIHR did not assess the complaint under the same provision, as the deaf man had not approached the distributor with a request for subtitles, as he had done in respect of the rental shop, article 2(1) was not applicable in this particular case. Instead, the NIHR addressed the complaint under Article 2a DDA, which entails a general duty to

¹ The NIHR is a quasi-judicial body which issues non-binding Opinions. Its opinions are followed by the conventional courts in the majority of cases.

² Opinion 2018-56 and opinion 2018-55.

gradually realize accessibility for persons with a disability. The NIHR considered that making subtitling available upon release of the movie and distribution would optimally achieve the goal of providing general access for hearing impaired people, but it also acknowledges that Article 2a DDA specifically provides for gradual realization of such access. As the subtitling had become available several months later, the distributor cannot be considered to have violated this provision.

Key points of analysis: Opinion 2018-55 is the first opinion of the NIHR on the general duty to realize at least gradually ('geleidelijk') accessibility for persons with disabilities, unless this creates a disproportionate burden (article 2a DDA). This duty entered into force on 1 January 2017. What is most remarkable in this opinion is not the substantive outcome of the case, but the fact that the NIHR apparently considers itself competent to hear a complaint regarding the general duty to gradually provide access for disabled people to start with. This is not self-evident, as Article 12 of the DDA provides explicitly for supervision by the NIHR of complaints under article 2 DDA, which contains the duty of reasonable accommodation, but does not mention article 2a DDA, which contains the general duty to gradually realize access. The NIHR does not provide any explanation for this approach. For disabled people this opinion is highly significant, as it means they can bring complaints regarding a wide range of general accessibility issues to the NIHR.

Internet link source: NIHR Opinion 2018-55 and 2018-66 can be found at:
<https://mensenrechten.nl/publicaties/oordelen/2018-55/detail>,
<https://www.mensenrechten.nl/publicaties/oordelen/2018-56/detail>.