

Discrimination – education

File No. 3180/2016/VOP/EN – Equal treatment of people with hearing impairments in relation to their access to education at faculties of education of public universities

- I. The fact that the study programmes Music Education and Choral Conducting are inaccessible to people with hearing impairments does not constitute direct discrimination in the sense of Section 2 (3) of the Anti-Discrimination Act. This is an appropriate and necessary measure to achieve a legitimate objective (Section 7 (1) of the Anti-Discrimination Act), namely that graduates of music-related study programmes acquire the skills required.
- II. General exclusion of people with hearing impairments from the programmes Teaching at Kindergartens and Teaching at Lower Primary Schools constitutes direct discrimination. Even though such measure pursues a legitimate objective in emphasising mainstream education, it is neither appropriate nor necessary. Indeed, the Pedagogical Staff Act envisages education in these programmes as a possibility in terms of educating teachers at special schools. Moreover, a graduate with a hearing impairment can teach at an ordinary school, using an interpreter.
- III. Submission of a certificate proving the absence of a speech disorder or a certificate of a phoniatic examination required by some faculties of education of public universities is a neutral practice, which, however, has a greater negative impact on applicants with hearing impairments. Most people with hearing impairments suffer from a speech disorder, since they do not have auditory control over their speech, or they have a lower degree of such control.
- IV. The requirement of submitting a certificate proving the absence of a speech disorder or a certificate of a phoniatic examination for studying programmes specialised in teaching at kindergartens or at lower primary schools pursues a legitimate objective in that teachers of young children should be good role models in terms speaking skills. However, strict application of this requirement without the possibility of granting exemptions to people with hearing impairments is neither appropriate nor necessary to achieve the intended aim, thus constituting indirect discrimination on the grounds of disability (Section 3 (1) of the Anti-Discrimination Law).
- V. The requirement of submitting a certificate from a phoniatic or a speech therapist proving the absence of a speech disorder imposed on applicants for studying speech therapy does not constitute indirect discrimination of people with hearing impairments. The measure pursues a legitimate aim that students – future graduates of the study programme Speech Therapy have excellent pronunciation. Submission of the aforementioned certificates is an appropriate and necessary measure to achieve this objective.
- VI. The requirement of submitting a certificate from a speech therapist proving the absence of a speech disorder imposed on applicants for the study programme Teaching of General Subjects – Czech Language without the possibility of granting of an individual exemption for people with hearing impairment constitutes indirect discrimination. The measure does pursue a legitimate aim that teachers of the

Czech language should be role models for their pupils in terms of speaking skills; however, strict application of the requirement to submit a certificate from a speech therapist proving the absence of a speech disorder is neither an appropriate nor a necessary measure to achieve this aim.

Whereas the Public Defender of Rights had been informed of certain obstacles faced by applicants for study programmes in education with hearing impairments, she decided to approach eight public faculties of education with several enquiries. She then evaluated their answers from the perspective of legal regulations concerning equal treatment.

The Defender reached the following conclusions:

Support measures

Under the Anti-Discrimination Act, universities are obliged to take appropriate measures to enable people with disabilities to acquire professional education. Failure to fulfil this obligation constitutes indirect discrimination. Faculties of education fulfil this obligation to take appropriate measures for people with disabilities through their support centres for students with special needs. These are professional institutions that carry out their tasks very responsibly. They allow a number of students with disabilities who would not have been able to study in the past to enrol in various study programmes.

Inaccessibility of certain study programmes to students with hearing impairments

Accessibility of study programmes to students with hearing impairments differs at the individual faculties of education.

Assessment from the perspective of direct discrimination

The Defender assessed the study programmes inaccessible to persons with hearing impairments on the grounds of their disability from the perspective of direct discrimination. Direct discrimination means an act or a failure to act, where one person is treated less favourably than another is, has been or would be treated in a comparable situation, based on *inter alia* the grounds of disability in the context of access to education. Different treatment on the grounds of disability, provided it is objectively justified by a legitimate aim and the means of achieving it are appropriate and necessary, shall not be considered discriminatory.

At some faculties, this is the case of music-related study programmes due to the nature of the studies; at Masaryk University, this is the case of the study programme Teaching at Kindergartens and Teaching at Lower Primary Schools due to their emphasis on mainstream education.

The Defender reached the following conclusions:

- Making the study programmes Music Education and Choral Conducting inaccessible to people with hearing impairments does not constitute direct discrimination. This is an appropriate and necessary measure to achieve the pursued aim, i.e. that graduates of these programmes need to acquire the skills required. Good hearing is a prerequisite for studying these programmes.
- General exclusion of people with hearing impairments from the programmes Teaching at Kindergartens and Teaching at Lower Primary Schools constitutes direct discrimination. Even though such measure pursues a legitimate objective in emphasising mainstream education, it is neither appropriate nor necessary. Education in the programmes Teaching

at Kindergartens and Teaching at Lower Primary Schools can also be used at schools specialised in education of children with hearing impairments.

Assessment from the perspective of indirect discrimination

Indirect discrimination means an act or omission where a person is put at a disadvantage compared to other persons on the basis of an apparently neutral provision, criterion or practice, among others on the grounds of disability. Indirect discrimination does not occur if such a provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

When applying for certain study programmes offered by the faculties (Teaching at Kindergartens and Teaching at Lower Elementary Schools, Speech Therapy, and Teaching the General Subject of the Czech Language), the applicant must submit a certificate from a speech therapist proving the absence of a speech disorder (together with a certificate from phoniatric examination if applicable). The requirement to submit the certificate of absence of a speech disorder or certificate from a phoniatric examination (hereinafter also referred to as the “certificates”) affects applicants with hearing impairments more significantly than others. Most people with hearing impairments suffer from a speech disorders, since they do not have auditory control over their speech, or they have a lower degree of such control.

When the test of indirect discrimination was applied to the individual study programmes, the Defender reached the following conclusions:

- The requirement of submitting the certificates for study programmes specialised in teaching at kindergartens or at lower elementary schools follows a legitimate aim in that teachers of young children and pupils of young age should be good role models in respect of speaking skills. However, strict adherence to this requirement without any possibility of granting an exemption to applicants with hearing impairments is neither appropriate nor necessary to achieve the intended aim. Therefore, it constitutes indirect discrimination on grounds of hearing impairment.
- It is legitimate to require the certificates for study programmes focusing on speech therapy as the proper pronunciation is vital for such studies. To require the certificates in such cases is both appropriate and necessary and therefore does not constitute discrimination.
- The requirement that applicants for study programmes of Teaching the General Subject of the Czech Language submit the certificates without any possibility of individual exemptions for people with hearing impairments is a matter of indirect discrimination. Although this measure has a legitimate aim – making sure that teachers of Czech are role models for their pupils in respects of speaking skills, the strict requirement of a certificate from a speech therapist proving the absence of a speech disorder is neither appropriate nor necessary for achieving this aim.

Further development

The Faculty of Education of Jan Evangelista Purkyně University in Ústí nad Labem heeded the recommendation of the Defender and it will no longer globally require applicants with hearing impairments applying for programmes focusing on teaching at kindergartens and lower elementary schools to submit certificates of the absence of speech disorders. The University will assess the applications of these applicants individually. The Dean has promised that this change will be reflected in the general conditions of the admission procedure starting in the academy year 2019/2020.

The Faculty of Education of Masaryk University is ready to adopt changes that will support people with hearing impairments in their studies. The Dean of the Faculty will inform the Defender about the details by the end of June 2018.

The Faculty of Education of Charles University will discuss Defender's recommendations when preparing the conditions for the academy year 2019/2020. The Defender asked the Dean of the Faculty to keep her informed about the results.

The Public Defender will reach out to organisations associating people with hearing impairments with a request to check whether the promised changes are actually implemented.