

## Working Sheet – Equal opportunities are too expensive

### Facts of the Case

Mr Vlatko Vasili runs a company, which is producing electronic parts of household products. One of his company's biggest clients, 'Housing Aid', a producer of household products such as hoovers and mixers, has been in huge financial troubles and was close to liquidation. In order to avoid bankruptcy, the company owners had decided to sell their business.

A consortium of interested tenderers, led by Mr. Vasili, is successful in buying the enterprise. Following the takeover, *inter alia*, the organisational set-up of the company is analysed, and a wide range of measurements are developed in order to lead the company out of the crisis.

Housing Aid had implemented a diversity strategy, according to which non-discrimination and the provision of equal opportunities had been an important part of the company's corporate identity. A variety of measures have been put in place in order to make these principles reality. Besides for example reasonable accommodation of genuine needs of employees based on their religion and encouraging applications from minority ethnic groups these included a specific focus on persons with disabilities:

- An active employment policy addressing persons with disabilities
  - Actively motivating people with disabilities to apply for a job
  - Technical equipment needed is provided by the company
  - Co-workers are trained in dealing with different forms of disabilities
  - Supervision for the whole staff is provided on a regular basis
  - All sites and premises of the company are fully accessible

Mr Vasili wants to stop this 'nonsense' like he calls it. According to his opinion it was exactly measures like these that caused the severe financial troubles.

When Mr Paolo Palova, who is blind, needs a new Braille computer as the old one is not functioning anymore, he is told that he should buy a new one himself. He could try to get some funding by the social welfare body in charge of such issues. Usually, about half of the costs for technical equipment are taken over by this body, but you never really know, because this depends on how many people apply for financial support.

Having applied for the job with 'Household-Aid' also because of their diversity policy, Mr Palova decides not to accept this change in his working conditions and goes to court.

## Questions to be discussed

- *Would you consider the refusal to buy a new Braille computer as discriminatory?*
- *What about the general decision to stop the company's measures aiming at more equality of opportunities?*
- *Is there any CJEU Case Law, which could be relevant in this case?*
- *Which Articles of the Charter might be of relevance?*
- *Does it make a difference, if you apply Charter rights and principles in assessing this case, as opposed to basing your case on domestic legislation?*
- *Discuss potential conflicts between different rights/principles and how they could be solved.*

*It might be interesting also to refer to national case law on similar issues in the discussion, if such is existent.*

## **Directive 2000/78/EC**

*Recital (20) Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources.*

*Recital (21) To determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance.*

### *Article 5 – Reasonable accommodation for disabled persons*

*In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.*