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VOCATIONAL ACTIVITY OF PERSONS WITH DISABILITIES – THE UN CONVENTION AND THE POLISH REALITY

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Abstract. Poland, for many years has been engaged in activities aimed at equalising life chances of people with disabilities. They relate, among other things, to access to work and its durability. The unquestionable example of it is the ratification of the UN Convention on the Rights of Persons with Disabilities. The essence of the article is to search for answers to the question whether and to what extent the standards defined in the Convention relating to the issue of supporting the employment of people with disabilities, are reflected in the Polish reality?

Keywords: persons with disabilities; vocational activation; the UN Convention on the Rights of Persons with Disabilities.

Introduction

Article 30 of the Polish Constitution states that "the inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of man and citizen. It shall be inviolable, and respect and protection of it is the obligation of public authorities" [6]. This means that damage to the body resulting in a decrease in functional capacity should not serve to limit civil liberties. Unfortunately, disability is often the cause of discrimination and challenging the fundamental rights in Poland, as well as other countries. This situation encourages public authorities and social organisations to take action to improve the quality of life of people with disabilities. The UN Convention on the Rights of Persons with Disabilities can be an example.

1. Labour and employment of people with disabilities in terms of the UN Convention

Article 27 of the UN Convention on the Rights of Persons with Disabilities [7] is devoted to the problems of labour and employment of persons with disabilities. The essence of this standard is the recognition of the rights and autonomy of people with disabilities in vocational decision-making and work and the obligations of support by the public authorities of countries which ratified the document.

Under section 1 of Article 27 of the Convention, States ratifying the Convention commit themselves to the fact that "they recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right for the opportunities to earn a living by job freely chosen or accepted

in a labour market and in work environment which is open, inclusive and accessible to persons with disabilities. The state will protect and promote the implementation of the right to work, including those who become disabled during employment, by taking appropriate steps through legislation. "

Analysis of the contents of paragraphs A to K of section 1 Article 27 indicates that the fulfilment of the undertaken obligations in the process of ratification brings many challenges in ensuring conditions for people with disabilities to take autonomous professional decisions, creation of individual career paths, access to work and its durability on an equal basis with other citizens.

In order to equalise employment opportunities for people with disabilities Countries ratifying the document make a commitment to support members of the community in the process of career development and acquiring employment by providing them with access to the "general programs of specialised and vocational consultancy, job placement services and vocational training and continuous education" (Article 27, section 1, paragraph D), and "support in finding, obtaining and maintaining employment and return to employment" (Article 27, section 1, paragraph E).

Recognising the freedom of choice of people with disabilities in terms of the path of professional activation, States agree to create conditions enabling them to take jobs in different forms and segments of the labour market. This means that public authorities are responsible for supporting the economic activity of people with disabili-

ties "self-employment, entrepreneurship, creation of cooperatives and starting their own businesses" (Article 27, section 1 paragraph. F)), and "employment in the public sector" (Article 27, section 1 paragraph G) and "private sector" (Article 27, section 1 paragraph. H).

It also means the obligation to provide possibility of "application of reasonable improvements for persons with disabilities in the workplace" (Article 27, section 1, paragraph I), "supporting people with disabilities in acquiring professional experience in an open market environment" (Article 27, section 1, paragraph. J) and supporting programs of vocational rehabilitation, employment stability and return to work of those people (Article 27, section 1 paragraph. K) .

In accordance with section 2 of Article 27 of the Convention, States ratifying the Convention also agree to guarantee freedom to their citizens with disabilities, namely that they will not be "held in slavery or servitude and will be protected from forced or compulsory labour on an equal basis with others".

2. The UN Convention and the Polish reality

Vocational activation, in addition to social integration for many years has been a pillar of Polish social policy for people with disabilities. Its effects, unfortunately, do not bring satisfactory results. Considerations on reasons therefore indicate that it is a complex problem, and its sources are located on both the prospective (and actual) employees with disabilities, as well as their legal environment, socio-cultural, economic and material. In these areas

the factors, referred to in the literature as barriers to professional activation are located [1, p. 263–274; 2, p. 195–226; 10, p. 63–123]. In order to find the answer to the question, which of them hinder the process of implementation of the provisions of the Convention in the part devoted to the processes of employment and labour in Poland, comparison of standards specified in Article 27 of the Convention and realities in our country will be used.

2.1. Analysis of the legislative acts

In Poland, issues concerning discrimination of people with disabilities, their right to work in an open, inclusive and accessible work environment, autonomy, career decisions and obligations in this respect by the public authorities are regulated by many acts. Polish Constitution of 2 April 1997 is of key importance in this regard [6]. The content of Article 32 indicates that all citizens are equal before the law and are entitled to equal treatment; no one can be discriminated for any reason in the social and political life. Article 65 guarantees all citizens the freedom to choose an occupation and place of employment and caring out work, and obliges at the same time public authorities to undertake actions to "full, productive employment by implementing programs eliminating unemployment, including organisation and support of counselling and training as well as public works and intervention works". Moreover, paragraph 3 of Article 68 obliges them to provide special health care to people with disabilities, and Article 69 to assist them in securing their subsistence, adaptation to work and social communication.

A further piece of legislation is the Act of 26 June 1974 – the Labour Code [15], which plays a key role in the regulation of employment relations, because it determines the rights and obligations of employees and employers and sets out a hierarchy of sources of labour law. Under Article 113 of the Labour Code, "any discrimination in employment, direct or indirect, in particular with regard to gender, age, disability, race, religion, nationality, political opinion, trade union membership, ethnic origin, sexual orientation, as well as due to employment for a definite or indefinite period or full or part-time work is unacceptable". Basically, the whole chapter II A of the Labour Code is devoted to the issue of equal treatment in employment. Article 18.3 included there states that "employees should be treated equally as regards the establishment and termination of employment, conditions of employment, promotion and access to training in order to raise occupational qualifications, particularly regardless of sex, age, disability, race, religion, nationality, political opinion, trade union membership, ethnic origin, sexual orientation, and regardless of employment for a definite or indefinite period or full or part-time work".

The Act of 20 April 2004 on promotion of employment and labour market institutions (hereinafter referred to as the Law on Promotion of Employment) [14] also serves an important role in the context of issues under consideration. Under Article 2A of this Act its provisions protect "the principle of equal treatment in access and use of labour market services and instruments of the labour market re-

ardless of gender, race, ethnicity, nationality, religion, creed, belief, disability, age or sexual orientation". Subsequent chapters of this Act (2 – devoted to labour market policy; 4 – the public employment services; 5 – the issues of registration of the unemployed and job seekers, and forms of support; 10 – services and 11 – instruments of the labour market and subsequent) describe in detail the legal availability guarantees of services and labour market instruments supporting people with disabilities in the process of vocational services including enabling the improvement of professional qualifications or their adjustment to the needs objectively present on the labour market.

The issues of equal employment opportunities for Poles with disabilities are also regulated by the Charter of Rights of Persons with Disabilities of 1997 [12], whereby "people with disabilities have the right to work in the open labour market according to their qualifications, education and opportunities, and to benefit from career counselling and brokering and when disability and health status requires it – the right to work in conditions adapted to their needs (section 1 point 6).

Another piece of legislation is the Act of August 1997 on vocational and social rehabilitation and employment of disabled persons [16]. Its prototype was the Act of 9 May 1991 on employment and vocational rehabilitation of people with disabilities [13]. It was the first document in Polish history so comprehensively rearranging the approach to disability issues and support for people with disabilities. The formula adopted in it was the result of

system changes reflecting a move away from previously prevailing paradigm towards solutions characteristic of democratic systems, free market economies of developed countries. The first version of the law turned out to be "imperfect"; mainly due to the negligence of social in favour of economic policy in the first years of the system transformation process, resulting from the underestimation of its role in the transition from a centrally planned economy to free market economy and a democratic society [9, p. 87]. In the 25 years, in order to increase the efficiency and effectiveness of the support system, the content of the Rehabilitation Act was amended many times, and in August 1997 it was reedited again. The Law on the rehabilitation included detailed regulations defining the nature, scope and instruments supporting the process of granting equal opportunities to members of this community. The practical dimension of the Act, is a quota system of supporting employment functioning in our country, which is based on a formula applying legal and financial nature of incentives and penalties. These instruments support the processes of vocational activation of people with disabilities through self-employment, employment on the open and protected labour markets and in the form of co-operatives. A wide range of operating instruments provides the ability to create and customise the environment and workplaces, to implement reasonable improvements and to raise and adapt skills of workers with disabilities and to adjust the scope of the workload for reduced functional capacity of the em-

ployee through compensation of the increased employment costs.

2.2. Statistical data analysis

Although the functioning regulations theoretically guarantee equal rights in terms of economic activity to persons with disabilities and the public authorities support this process through the legal and financial instruments, the professional activity of the members of this population remains low. It is evidenced by the size of activity rate of the disabled Poles of working age, over a period of 22 years it has increased by 4.0 percentage points (pp) only, from 21.9 % in 1993 to 25.9 % in 2015. The employment rate increased in this period, by 3.7 p.p. only (from 18.8 % to 22.5 %) and the unemployment rate decreased by 1.3 p.p. (from 14.3 % to 13.0 %). Unfortunately, we have not seen any improvement of the situation in the four years since the ratification of the Convention and it has been proofed by the fact that in 2012–2015 the volume of employment of Poles with disabilities has been reduced [1 page 65; 11].

Reasons behind this are complex and associated with both people with disabilities, as well as the surrounding reality. Among those on the side employees, causing their low competitiveness on the labour market, excluding functional limitations, one can include:

- reasons of disability and the time when it was established (in particular difficulties in the labour market relate to people with intellectual and mental disabilities, epilepsy, pervasive development abnormalities, blind and moderately visually impaired; often the consequences resulting from acquired

disability are less intrusive in occupational matters compared with the consequences of congenital disability);

- the relatively low level of education;

- lack of knowledge of their rights and enforcement capacity;

- lack of compatibility between educational qualifications and the needs of the labour market (in particular local / regional) and the functional capabilities of individuals and their interests;

- character, personality, attitude (passivity in search of work and enforcing ones rights, low levels of social competence – submission combined with demanding attitude, resistance to entering into social relationships, low level of skills in personal communication);

- age (the number of people with disabilities increases in older age groups, which is directly proportional to the decline in the openness of employers for the recruitment).

Characteristics of people with disabilities indicated above co-determine their "defeat" in the labour market. It should be noted, however, that they are shaped not only by genetic factors and causes of disability, but also by the processes of socialisation, rehabilitation and education, the quality of which is developed by the members of the society providing care and personal and institutional support, social services of general and special purpose and by the decision-makers.

Polish economic situation is also the source of difficulties for the achievement of the objectives of the Convention, in particular with regard to the labour market. The unemploy-

ment rate in our country is relatively higher comparing to many EU countries, e.g. in 2015. Poland reached the level of 9.6 % [4], in Germany 6.3 % (2016) it was also lower in Hungary or in the Czech Republic [5]. In case of imbalance in the labour market characterised by inappropriately large supply of labour resources relative to the demand, one can observe the growing requirements for potential employees, in competition with which people with disabilities often lose. Unfortunately, one can also notice that their right to work is sometimes questioned, in particular it applies to people receiving disability benefits (the amount of which is much lower with respect to the EU, absolutely insufficient for a decent life, an example of which is the size of social pension, which from 1 March 2016 is on the level of 741.35 PLN gross or pension paid due to partial inability to work amounting to 676.75 PLN gross) [4]. Yet one more fact leads to reflection in terms of the influence of the unemployment in the processes of vocational activation of people with disabilities, namely that, while dimensional differences in the unemployment rate for the overall population reach several percent, in the case of people with disabilities – just a few percent (Status and the structure of unemployment, 2016).

Further weakness can be traced in the policy and instruments of the labour market, an example of which is the low efficiency of vocational training, difficulties in accessing services in the field of guidance and counselling (as seen in the statements of employees and vocational counsellors, responsible for servicing clients in la-

bour offices, the average possible time spent per customer is 15 minutes only!). However a quota system to support employment seems to be the most important factor hindering the process of implementation. Its effectiveness and efficiency raises a lot of doubts, the basis for which one can acknowledge both in level of indicators characterising the economic activity of Poles with disabilities discussed earlier and relevant changes and size of unit costs of rehabilitation and relationships occurring between the amount of expenditure incurred on vocational activation and level of employment. The amount of expenditure of PFRON in the period of 2005–2005 calculated per professionally active person increased by 39.0 %, and per working person by as much as 56.9 % [11].

The level of expenditures incurred to support the vocational activation of people with disabilities has also increased in that period by 36.3 %. Unfortunately, this increase is not reflected in the size of employment of the members of this group, which was reduced by 13.2 % in the analysed period [11].

Still continuing dominant share of protected labour market in the process of vocational activation of people with disabilities indicates lack of compatibility of native system solutions (the quota system) in relation to art. 27 of the Convention. These proportions are the result of legal solutions that differentiate the size of financial instruments to support the employment of people with disabilities in favour of the protected market (which faces higher requirements for support of people with disabilities). As late as 2014 the num-

ber of sheltered workshops (ZPCh) employing persons with disabilities registered in the Service System for Supplementary Financing and Reimbursement Compensation (SODiR) of PFRON amounted to 1278 and the number of workshops of open market employing members of this group – 22 039 [11]. The number of people with disabilities employed in sheltered workshops reached the level of 147.8 thousand, while the enterprises of open market at the level of 103.0 thousand, which is by 3.5 % less in relation to the protected market. Volume of expenditures on the promotion of employment in sheltered workshops (ZPCH) was at the time 1971 million PLN, while the enterprises of open market 985 million PLN. Equating on 1 April 2014 the size of grants to salaries addressed to employers of open and protected markets (Monthly grant in 2016) resulted in change of ratio and increasing the share of open market in the process of vocational activation of people with disabilities. It was evidenced by the fact that already in 2014 the number of people with disabilities employed in ZPCh [11] decreased.

Problematic, though fitting within the regulations of Polish and EU laws is diverse approach to promoting of self-employment and salaried employment. The main difference in this regard, for the benefit of employers (most efficient!) is that they are entitled to a refund of higher costs of labour of disabled worker they employ. Unfortunately, this instrument is not available for disabled entrepreneurs who employ themselves (many of them engage in single economic activi-

ty, of which – farmers are the best example). First, the issue is the reflection on the unequal treatment of the self-employed disabled people and those taking salaried employment, secondly, that the resources allocated to support the vocational activation of people with disabilities, despite the subject that is supported, confer benefits to employers mainly (in fact, efficient ones!). In order not to oversimplify these relationships, it should be emphasised that the employers of people with disabilities are often required to shorten working time of persons with disabilities and they cannot make them work at nights and provide the disabled with longer vacation period. But if the size of the instruments levelling the cost of those burdens is determined solely by the degree and type of disability (and not the requirements of profession / job or discomfort symptoms), it would mean that the degree and type of disability do not generate higher costs of caring their own business people with disabilities.

Conclusions

The analysis undertaken in this paper is not exhaustive, however, it allows to draw conclusions relevant to the implementation of standards relating to labour and employment, as defined in Article 27 of the UN Convention on the Rights of Persons with Disabilities in Polish conditions:

1) the United Nations Convention on the Rights of Persons with Disabilities is of normative and educational character. This means that the ratification of the Convention which is a set of standards defining the objectives, the nature, scope and lines of action necessary to equalise life chances (in-

cluding professional) people with disabilities requires ratifying States to their implementation;

2) a review of domestic laws concerning aspects of equal rights and career opportunities of disabled people in our country indicates that they exclude the possibility of discrimination of citizens on grounds of disability and oblige public authorities to take action aimed at equalisation of their life chances in terms of professional activation;

3) analysis of statistical data and those relating to the promotion of the processes of vocational activation of people with disabilities by public authorities proves, unfortunately, that the economic activity of people with disabilities living on Polish territory remained for many years on a low level, and that problems in this area are growing;

4) the reasons for the social inequalities affecting persons with disabilities in access to employment and its sustainability are complex. Their source constitutes the society and culture; economic situation, in particular the imbalance in the labour market; space and its development and law and not efficient system solutions.

The level of generality of the analysis in this paper encourages reflection, that the process of implementation of the provisions of the Convention should be based on reliable diagnosis and analysis of the existing situation, which is necessary to identify problem areas and items requiring adjustment, ways to modify them and to estimate the cost of the planned activities. Apart from this, it seems that the process of implementation of the standard 27 of the Convention, and thus the equalisa-

tion of opportunities of people with disabilities will contribute to:

– withdrawal of the quota system in favour of anti-discrimination law and ensuring introduction of effective instruments of its enforcement;

– individualisation and rationalising of instruments supporting vocational activation of people with disabilities by adapting their scope and size to the needs of reduced functional capacity, the situation on the labour market and the requirements of the workplace and assigning it to the subject of support (i.e., disabled person)

– improvement of law by unifying the system, streamlining procedures in jurisdiction in order to increase their usefulness in the process of programming the degree of necessary support, as well as rationalisation of terminology;

– increasing the availability of services in the field of vocational guidance and counselling.

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