

THE PROBLEM OF SECURING INTERESTS OF PERSONS WITH DISABILITIES IN ACCORDANCE WITH PROVISIONS OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

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Abstract

The Polish society is unprepared to integrate people with disabilities into the labor market. This is due to inadequate state promotion of existing legislation in this area, which accounts for the lack of preparation of entrepreneurs in the context of the problems of people with disabilities and their knowledge of the hiring. Often unpreparedness leads to violations of basic human and worker rights. Previous attempts to include people with disabilities have been considered as insufficient. In order to prevent the marginalization of people with disabilities in the labor market it is necessary to make further attempts to integrate them into the labor market, despite the many difficulties involved. Special obstacle are the costs incurred by businesses related to the employment of people with disabilities, resulting from the need to adapt workplaces to their needs and to remove architectural barriers.

Keywords: *employment of people with disabilities, the Convention on the Rights of Persons with Disabilities, the rights of an employee with a disability.*

1. Introduction

The aim of the study is to determine the degree of preparation of Polish entrepreneurs (in the context of the problem and knowledge) to implement the provisions of Convention on the Rights of Persons with Disabilities. It is worth noting that the most important role in shaping the knowledge of the provisions of the Convention is that of the state.

One of the most serious challenges related to issues of diversity in the workplace is the issue of inclusion of people with disabilities to the group of employees and providing them with decent working conditions. The

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paper deals with the problems of ensuring the right conditions for businesses employing people with disabilities in line with the Convention. It is important for enterprises to promote the implementation of the Convention and emphasize the importance of its provisions.

Companies often unknowingly abuse human rights while employees do not know the provisions of the Convention, which is why it is important that the state should take responsibility for their promotion. The author was interested in the issues presented in the article while working in a company employing people with disabilities, which did not take into account the provisions of the Convention. This problem resulted from the management's ignorance of its provisions.

The article is theoretical in nature and refers to the provisions of Convention on the Rights of Persons with Disabilities, which should be used by employers.

2. The principles of the Convention on the Rights of People with Disabilities

The rights of persons with disabilities are subject to regulations approved by international organizations and relate to around 650 million people around the world. People with disabilities are therefore a significant part of the population, which translates into a problem of their treatment in the workplace. So it becomes necessary to comply with laws relating to fundamental human rights. The legal basis for defining them is the UN Convention on the Rights of Persons with Disabilities.

The Convention was adopted by the UN General Assembly December 13, 2006, signed by the Polish government on 20 March 2007, and the ratification of the Convention by Poland, which took place after September 6, 2012 (*Convention on the Rights of Persons with Disabilities*, 2006, p.1). It is the first international legal instrument which refers to the complex issues of how disabled people should function in the society and to contribute to the improvement of their situation, by allowing them to reach full and equal enjoyment of all human rights and fundamental freedoms on an equal basis with other citizens.

The shape of respect for people with disabilities in the workplace in our country is affected by the following regulations:

- 1) International (arising from Polish organizations with international scope) - regulations applicable to all countries belonging to the organization. Our country belongs to the UN (United Nations) and ILO (International Labor Organization). The purpose of the UN is, among others, the promotion of human rights in the countries

belonging to it. It is this organization which has developed, among others, Convention on the Rights of Persons with Disabilities. In contrast, the ILO deals with problems of workers and the protection of the rights of workers, improving living and working conditions, job creation and training. To those produced by it we must include the Code of Practice - Managing Disability in the Workplace,

- 2) European - regulations covering EU Member States. Among them we can find the new strategy of the European Community with regard to people with disabilities,
- 3) Polish - legal regulations in force only in our country, which include: Polish Constitution, Labor Law Code and the Law on Vocational and Social Rehabilitation and Employment of Disabled Persons, the Law on Higher Education.

International law offers our country the membership in the United Nations General Assembly. In terms of respect for the dignity of persons with disabilities, citizens of our country are obliged to observe the rules of, inter alia, the Convention on the Rights of Persons with Disabilities. The Convention is the culmination of all previous organizations established by the legislation in the field of disability.

In the preamble to the Convention its creators confirm the fact that in society there is a need to guarantee the full enjoyment of fundamental human rights by persons with disabilities. These persons are entitled to full enjoyment without any acts of discrimination on grounds of disability, because they shall be considered a violation of human dignity and value. The provisions of the Convention recognize that people with disabilities, especially women and girls are often exposed to various forms of discrimination (*Convention on the Rights of Persons with Disabilities*, Preamble paragraph q, 2006, p.1). It also recognizes that disability is the result of interaction between people affected by problems in the sphere of health, and barriers resulting from the attitudes and environment that make it difficult in terms of total social participation of persons with disabilities, on an equal footing with others. What is also important is the diversity of persons with disabilities and their significant contribution to the varied form of society. It should be emphasized that the role is to meet the Convention for stimulating the activity of people with disabilities in key areas of everyday life: civil, political, economic, social and cultural. Convention here refers to the important legal regulations of the Constitution, which say that no one shall be discriminated against in political, social and economic life for any reason (*The Polish Constitution*, article 32, paragraph 2, 1997, p.7). The Convention emphasizes the importance of self-reliance and independence of people with disabilities and the need to create opportunities to engage them in all kinds of decision-making. It is important to offer health care, education and bring jobs to disabled persons.

The aim of the Convention is to promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms by all persons with disabilities (*Convention on the Rights of Persons with Disabilities*, article 1, 2006, p.1). The Constitution also emphasizes the equality of all citizens before the law (*The Polish Constitution*, article 32, paragraph 1, 1997, p.7).

A person with a disability is a person with a physically or mentally disturbed character. In combination with various barriers this may hinder the achievements of the disabled people in the society on an equal basis with others. Therefore, employing a variety of in terms of efficiency, i.e. people without disabilities and people with disabilities, be sure to enter the elements of the management concept of mutual acceptance and integration.

Specific actions toward people with disabilities improve their existence, both in society and at the level of a company, as article 3 of the Convention states:

- respect for the dignity and autonomy of persons with disabilities,
- the freedom to make choices,
- non-discrimination,
- active participation in social life,
- respect for diversity and mutual acceptance, because they are all part of humanity and have equal rights and opportunities for the existence and development.

3. The provisions contained in the Convention supported by Polish regulations

The provisions of Convention on the Rights of Persons with Disabilities refer to a wide audience, ranging from the regulation of the government, and ending with the regulations relating to ordinary citizens of the state. In addition to the universal dimension, which means that the law applies to all spheres of life of people with disabilities at the same time, they have records of commitment to people with disabilities from the website:

- 1) state,
- 2) local services,
- 3) employers.

It should be emphasized that the formation of state policy towards disabled people has significantly been affected by conditions in the Polish companies. Therefore, the provisions of the Convention apply in enterprises and it is necessary for the government policy to be directed at promoting its provisions.

3.1. Obligations of the State

The Convention, in its regulations has also regulated the duties of states. Member States are obliged to refrain from engaging in activities incompatible with the Convention. The provisions of the Convention do not impose a requirement to take measures to eliminate discrimination on the basis of disability by individuals, organizations and private companies, as well as undertake or promote research and development and to promote the availability and use of new technologies. In addition, states have an obligation to organize, consult and mutually co-operate with persons with disabilities or organizations representing them in the process of creating and implementing legislation and policies to implement the provisions of the Convention (*Convention on the Rights of Persons with Disabilities*, article 1, 2006, p.1). Member States are obliged to take steps to the maximum of available resources in the field of economic, social and cultural rights, the recurrent use of international cooperation in order to achieve their implementation, without prejudice to those obligations which, in accordance with international law, shall have immediate effect.

Poland is obliged to implement the Convention's standards of conduct in order to ensure that persons with disabilities to exercise their rights in the society around them. Its priorities are:

- 1) promotion of the rights of persons with disabilities to dignity and respect,
- 2) the ability to customize the environment of persons with disabilities, to become free of barriers, and the right to obtain information and use of communications services,
- 3) support non-governmental organizations, associations of persons with disabilities through the Voluntary Trust Fund for Persons with Disabilities, in the implementation of the provisions of the Convention. The Fund supports organizations to raise awareness of disability, the exchange of experiences and dissemination of technologies to facilitate the functioning of persons with disabilities,
- 4) inclusion of disability issues relating to the socio-economic development of the state.

Convention on the Rights is an international agreement, which means that after its ratification in all countries that have signed it, it is to call the records specified in its legal effects (Kędziorska, 2007, p. 21).

People with disabilities are equal before the law, together with non-disabled people. They have legal capacity. The state, under regulations contained in the Convention, adopts solutions to support the exercise of legal capacity and protection against fraud (*Convention on the Rights of Persons with Disabilities*, article 12, 2006, p.1).

Convention on the Rights of Persons with Disabilities also guarantees equal political rights with others. It presupposes that participation in political and public life. People with disabilities can use both active and passive voting rights. They also serve all public functions at all levels of management, including through facilitating the use of assistive and new technologies (*Convention on the Rights of Persons with Disabilities*, article 29, 2006, p.1).

At the same time, keep in mind that in relation to people with disabilities, as to the general public basic human rights are related, such as the protection of personal data, the prohibition of unlawful infringement of the honor and reputation of or interference with the private life of a disabled person (*Convention on the Rights of Persons with Disabilities*, article 22, 2006, p.1). persons with disabilities as other citizens have the right to be loved and happy. They have the right to marry, start a family, making decisions about the number and spacing of their children and to acquire information concerning assistance in the upbringing of children. The provisions of the Convention prohibit any acts of discrimination in this sphere.

For the gradual implementation of the provisions of the Convention it is important to cooperate with other countries and international organizations in support of national efforts.

Laws of the Constitution oblige public authorities to provide health care, among others, to persons with disabilities (*The Polish Constitution*, article 68, paragraph 3, 1997, p 15). The good health of a person can be achieved through the process of rehabilitation. Rehabilitation consists in taking certain actions, which mainly aim to enable, to obtain and maintain full physical, intellectual, social and professional care (*Convention on the Rights of Persons with Disabilities*, article 26, 2006, p.1). The Law on Vocational and Social Rehabilitation and Employment of Persons with Disabilities defines the purpose of social and vocational rehabilitation. The aim of social rehabilitation is to enable people with disabilities to participate in social life (*The Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities*, article 9, paragraph 1, p 3). In contrast, vocational rehabilitation is to facilitate the person with a disability to obtain and maintain suitable employment and career advancement by allowing the use of vocational guidance, vocational training and job placement (*The Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities*, article 8, paragraph 1, p. 3).

Disabled persons with must have a number of specific needs satisfied. The Convention provides for the financing of these expenditures. Co-financing such expenditure in our country is dealt with by State Fund for Rehabilitation of Persons with Disabilities.

3.2. Commitment on the part of local services

The Convention includes a number of provisions in relation to the rights of persons with disabilities who form a significant part of our society. Just as the Constitution, the Convention advocates for equality and the protection of the rights of all people (*The Polish Constitution*, article 32, paragraph 1, 1997, p.7). The provisions of the Convention require the creation of conditions for use of the rights of persons with disabilities on an equal basis with other non-disabled persons and the introduction of solutions specifically targeted to people with disabilities. It prohibits any form of discrimination on grounds of disability (*The Polish Constitution*, article 32, paragraph 2, 1997, p.7). Prohibition of discrimination was also underlined by the Laws: Labor Code, the Act on employment promotion and labor market institutions and the European Council Directive No. 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Social policy towards people with disabilities creates a set of actions of public bodies and non-governmental organizations, aimed at balancing unjustified differences in social functioning and to create opportunities for people with disabilities in all areas of economic and social life, to enable their full integration into society (Kurzynowski, 1996, p. 44).

Family plays an important role in the life of a young person with a disability. It is the family that determines the life chances of disabled people, their educational, professional and sociable activity. However, the family often cannot cope with the problems of disability and institutional support is insufficient. As a result, some of the young disabled people have low self-esteem and sense of isolation. In adulthood this often results in a reluctance to change their fate, lack of social or professional activity (Raszeja-Ossowska, 2012, p.6). In accordance with the provisions of the Convention, persons with disabilities should have access to support services in the community, and to be widely available to prevent social isolation.

The Convention indicates the need to combat stereotypes, prejudices and harmful actions in relation to persons with disabilities. It is a common civic duty to combat the symptoms of different ways to dislike. You can contribute to this in different ways depending on the capabilities of the data groups. The reluctance can be overcome by advertising campaigns in the media and training in enterprises. The provisions of the Convention refer to the need to ensure access to the physical environment, to transportation, to information and communications.

People with disabilities have the right to keep living independently in the community, with choices equal with others. They can participate fully in the

life of society around them with the right to full integration. The new strategy of active social inclusion of people with disabilities has become necessary to change the conditions of socio-economic development and as a result of fundamental changes in institutional governance, which are associated with widespread adoption of the doctrine of equal treatment as the basis of disability policy and recognizing the rights of people with disabilities as an integral part of human rights. The first set of factors causes that people with disabilities must begin to be treated as human resource, as economic agents whose inclusion in market relations becomes necessary due to the ability of a society to cope with the contemporary development challenges. This second factor is the need to reform the regulatory and institutional system, so that they can cope with the implementation of policies and social integration of people with disabilities (Gąclarz, 2014, p. 8).

People with disabilities in everyday life seek to maximize independence. They try to do most of the tasks themselves, even if they are sometimes difficult for them. Often, however, they need different types of facilities in different areas, specific to their disability. The provisions of the Convention state that a possible way to take measures to enable them to personal mobility with the greatest possible independence is by facilitating their access to high quality assistance to support movement, devices, assistive technologies and forms of live assistance and intermediaries from other people and even animals.

The provisions of the Convention shall guarantee to persons with disabilities access to all activities in the field of culture, development and use of their creative, artistic and intellectual skills. Nowadays, there are many events organized to promote the culture of persons with disabilities: Krakow Integration Days organized since 2007 by the Office for Persons with Disabilities Cracow universities, or the Festival of Poetry Migan popularizing the culture of deaf people.

3.3. Commitment on the part of employers

The UN Convention on the Rights of Persons with Disabilities is an excellent source of information for employers who want to adapt the workplace to the needs of the disabled persons. The company employees - people with disabilities, and supervisors are not always able to adequately manage the staff. This is due to ignorance of the regulations regarding persons with disabilities and their needs and directing the stereotypes prevalent in society. It is therefore important that supervisors have an appropriate knowledge in this field.

Provisions of the Constitution require public authorities to pursue a policy aimed at full, productive employment by implementing programs to combat

unemployment, including organizing and supporting guidance and training (*The Polish Constitution*, article 65, paragraph 5, p 14). People with disabilities have the right to choose work and to receive adequate remuneration from it in an open, inclusive and accessible work environment, along with the adaptation of the workplace to their individual needs.

In accordance with European regulations contained in the *Code of good practice in the employment of people with disabilities* in the European institutions responsible for ensuring the necessary improvements in the workplace. It covers all areas of employment: recruitment, selection and appointment, career development, training, career development, interpersonal relations (*Employing disabled*, 2014, p.23). Information on the employment of people with disabilities and the responsibilities and powers of the establishments in this field is also provided by the Law on Vocational and Social Rehabilitation and Employment of Persons with Disabilities.

Many of the obstacles people with disabilities face when looking for work and in the workplace results in a great degree from social barriers rather than their actual inability to work (Kantyka, 2010, p. 41). The main barriers associated with the opening of the employers on a variety of workers are ignorance and fear of the unknown (*Absent in the labor market*, 2013, p.1). Employment of people with disabilities from the perspective of employers brings a number of problems and hence the cost. Problems related to employment may arise from relationships between employees with disabilities and the rest of the workforce. Employers do not recognize that people with disabilities are equally valuable employees, doors open to new perspectives and horizons expanders as other employees. Another problem is the phenomenon of discrimination. Discrimination on grounds of disability, according to research is one of the most common in our country, the situation of unequal treatment (37% of respondents in the survey “Discrimination in the European Union in 2012” Eurobarometer). The criterion of disability is according to 29% of Polish respondents the main reason for the rejection of a candidate or candidates to work (*Discrimination in the European Union - the results of 2012*, p.1).

Convention advocates the adaptation of buildings and workplaces for people with disabilities, which will significantly facilitate the existence of people with disabilities in the workplace. Therefore, it becomes important to verify the current forms of amenities and facilities for helping people with disabilities on the market. Thus, if the company employs people with disabilities, it is necessary to supply the place of work with facilities for them and with modern technologies. (Hasse, 2011, pp. 194-202). They will serve them to improve their work, and thus their work will become effective and remain profitable company.

In light of the existing provisions in Polish enterprises, where people with disabilities are working their non-discrimination on grounds of disability. Law Labor Code prohibits discrimination, inter alia, on the grounds of disability, and also because of the employment, fixed-term or indefinite full-time or part-time work (*Law Labor Code*, article 11, 1974, p.4).

The employer according to regulations contained in the Convention should refrain from ill-treatment and punishment of employees. The Convention also prohibits employers issuing any opinion on the parenting of people with disabilities, even if they were contrary to their views on the subject.

People with disabilities are often subjected to acts of psychological violence. The employer should provide assistance in the form of the creation of working conditions while ensuring a good atmosphere in the workplace. On the field, the company can apply the broad integration of employees with disabilities with other employees, to prevent their isolation within the company. The activity of disability superiors can be stimulated through various techniques of motivation. The best technique is the ability to present and implement the ideas of employees, motivating them to do, to be reported and rewarding them for it. In this way, employees will gain self-esteem, which usually positively stimulates their efficiency. Implementation of new ideas can become crucial for the successive actions of the company on the market and gaining new customers, and thus achieving a competitive advantage over rival firms in the same industry. Companies should also have knowledge of the various forms of social communication (*The Polish Constitution*, article 69, 1997, p 15), as it is significantly easier for people with disabilities to communicate freely, and thus to increase the effectiveness of their work in the company. This fact should be well-known to both managers in a company employing workers with disabilities, as well as to managers of companies whose services can benefit people with disabilities. By providing enterprise services they should take into account the fact they not only provide consumers efficiently, but these customers are disabled. The company has a chance to not only gain new customers, but to be a company providing services to all. This, in turn, publicized by the media, could build respect in the eyes of existing customers and increase their loyalty to the brand. The company may also encourage other private entities providing services to the general public, to adjust to the needs of people with disabilities.

The Convention provides people with disabilities with the right to education to improve their communication with one another and with the public. Communication with people with disabilities on the basis of the company is very important due to the fact that it significantly facilitates the work efficiency in the enterprise. Therefore, to simplify it, it becomes essential to send or organize training courses. The need for education can

also be applied to learning something new arising from the need to perform the job. Educational institutions of persons with disabilities should implement a mechanism for training of staff at all levels of education and a training system to create a trigger that allows the integration of workers with disabilities at all levels of education.

If the disabled person has an established right to a pension, there is the possibility of employment on the basis of flexible forms of employment in the selection of an employment contract or a civil contract (Kantyka, 2010, p. 81-83). However, if the person does not have a right to a pension they should be employed under a contract of employment, because only then they have the right to health insurance. Insurance, as we know, helps people with disabilities to strive for a satisfactory state of health through access to free health care. People with disabilities have the established right to a pension, which ultimately reduces the cost of their employment. Work and pension create a source of financial and social security in the event of inability to work due to chronic illness (*The Polish Constitution*, article 67, paragraph. 1, p.15).

4. Enforcement of regulations

All countries of the UN are to undergo continuous control of implemented provisions of the Convention at the national level. In Poland, keeping control of all disability provisions is dealt with Government Spokesperson for Persons with Disabilities. This is done through an independent mechanism for monitoring the implementation of the Convention. Its mission is to promote, protect and monitor implementation of the Convention. The process of promoting the provisions of the Convention in our country is insufficient, because a few of people with disabilities know the rules, let alone other citizens in the entrepreneur. These people are the most educated people, and as we know in our country in 2013, only 7.7% of disabled people had higher education (*Education of Persons with Disabilities*, 2013, p.1). The source from which they most often learn about the Convention is the special media, which is only at the stage of development.

At international level, countries that have introduced the principles of the Convention are obliged to submit the first report on the implementation of the Convention within two years, and then prepare it every four years. These reports are reviewed by the Committee on the Rights of Persons with Disabilities, composed of independent experts.

All matters relevant to the implementation of the Convention and proposals to amend the Convention are dealt with at the conference of the

Member States, organized at least every two years (*Convention on the Rights of Persons with Disabilities*, article 22, 2006, p.1).

5. Conclusion

Convention on the Rights of Persons with Disabilities is a valuable source of information for the states to the local environment, as well as businesses that employ people with disabilities around the world. It obliges all people to respect the rights of others, treatment of employees with disabilities on an equal footing with non-disabled, to adapt the workplace to the needs of employees with disabilities against discrimination in the workplace and the integration of employees. It should be stressed that the diversity of employees translates into their diverse experience, which may benefit and affect the actions of the company. In this way, businesses have the opportunity to create an integrated team of efficient employees with the prospect of success.

The aim of this study was to prepare the Polish entrepreneurs (in terms of awareness and knowledge) to implement the provisions of Convention on the Rights of Persons with Disabilities. An important role for the development of knowledge of the provisions of the Convention shall be played by the state since the regulatory framework affect the validity of the provisions in enterprises.

Taking into account all aspects of the situation of young people with inefficiencies, it should be noted that comprehensive support is required in this group - starting with the treatment and rehabilitation, by facilitating and adaptation in education, psychological support, to the support of the development of educational and professional paths.

Poland needs significant reforms in the area of the existing legislation on disability. The government began by reducing working time of persons with disabilities to seven hours a day. It should be noted, however, that this provision was not consulted with the disabled, so you cannot assume that it will be a good solution. The entry rule is delayed and put on after a long time of waiting for passing it. Slowness of the government in matters of amendments to the provisions relating to persons with disabilities harms their interests both in society and the place of employment.

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