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## **Vocational Integration of the Disabled Persons on the Labour Market** – **Selected Legal Aspects**

Rights of disabled people are regulated by a number of international organizations, both those of global ranges and those of regional character. Poland ratified the majority of international human right instruments inclusive of those documents whose provisions regard right of disabled persons; solutions applied in the regulations are aimed at getting them involved in social life in a wider scope (B. Szczupał, 2007; Z. Wasiak, 2004).

An elementary regulation ensuring right to non-discrimination is included in the *Constitution of the Republic of Poland* of 2<sup>nd</sup> April 1997. Article 32 of the organic law stipulates that “All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities” (paragraph 1); “No one shall be discriminated against in political, social or economic life for any reason whatsoever” (paragraph 2) (*Konstytucja...*). This is of particular importance with respect to the situation of the disabled – a person with an impaired function of organs or senses has the right to be treated in a fair manner, and to equal life chances notwithstanding the causes or time of origin of their disability (T. Sienkiewicz, 2007). In Article 65, the *Constitution* guarantees everybody freedom in the choice of occupation and place of work, while in Article 69 it obligates public authorities to provide to the disabled “aid to disabled persons to ensure their subsistence, adaptation to work and social communication” (*Konstytucja ...*). The organic law also ensures all citizens the right to social security i.a. whenever incapacitated for work by reason of sickness or invalidism (Article 67 paragraph 1), and it also obligates public authorities to ensure special health care to handicapped people (I. Poliwczak, 2007; T. Sienkiewicz, 2007).

A document of importance for the disabled is the *Charter of Rights of Disabled People* passed on 1<sup>st</sup> August 1997 by the Sejm of the Republic of Poland, ensuring members of that social group the right to lead an independent, self-sufficient and active life free of discrimination symptoms (B. Szczupał, 2007; Z. Wasiak, 2004). Section 6 of the Chart ensures members of that social group the right to “work in open labour market according to qualifications, educational level and possibilities and to use vocational consultancy and employment agency” and to “work in conditions adjusted to the needs of the disabled” (*Karta Praw...*).

The *Labour Code (Kodeks pracy)* defines rights and duties of employees and employers. Pursuant to regulations of that act, everybody has the right to a free choice of employment: nobody

(except for cases defined in said act) can be prohibited to perform an occupation (Chapter II, Article 10 paragraph 1), and any direct or indirect discrimination in employment relationship (particularly on account of disability) is inadmissible (Article 11 paragraph 3) (I. Poliwczak, 2007; Z. Wasiak, 2004).

The *Act on Employment Promotion and Labour Market Institutions* of 20<sup>th</sup> April 2004 (*Ustawa o promocji zatrudnienia...*) stipulates sanctions for failure to observe regulations prohibiting discrimination referring both to employment agencies and persons who have refused to employ a candidate on a free workplace or offer vocational training on account of their disability (A. Guranowski, 2008; I. Poliwczak, 2007).

Services and instruments of labour market policy effected in Poland with relation to the disabled are regulated by three legal acts:

- *The Act on Vocational and Social Rehabilitation and Employment of Disabled Persons* of 27<sup>th</sup> August 1997 (*Ustawa o rehabilitacji zawodowej...*). These are some of the services rendered to the disabled: vocational consultancy including assessment of work ability and enabling the choice of a suitable vocation and training, vocational preparation taking into account employment prospects, and selection of a suitable workplace. As far as instruments are concerned, they comprise different forms of partial funding (i.a. from the National Fund for the Rehabilitation of Disabled Persons – *Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych* – *PFRON* resources) of disabled persons' employment and supporting employers inclusive of protected labour business entities and institutions of vocational activity;
- *The Act on Promotion of Employment and Labour Market Institutions* of 20<sup>th</sup> April 2004 (*Ustawa o promocji zatrudnienia...*). Provisions of said act focus on the potential of unused labour resources, shaping tasks for public employment services; however, the services and instruments (training courses, intervention work, public works, different forms of partial funding) can be used solely by those disabled persons who are able to start work at a minimum scope of statutory employment performance and have the status of an unemployed person or a work seeking person. For everybody, however, the following services are available: employment agency, vocational consultancy, vocational enquiries, and assistance in obtaining suitable employment in compliance with the right to a free labour movement in the European Union (the *EURES* network).
- *The Act on Social Employment* of 13<sup>th</sup> June 2003 (*Ustawa o zatrudnieniu socjalnym*); however, possibilities of using social employment by the disabled was not introduced until amendment of 15<sup>th</sup> June 2007 was effected to said act. The main target of social employment is to prevent social exclusion of the disabled by vocational reintegration – reconstructing and upholding the ability to render work independently (A. Guranowski, 2008; I. Poliwczak, 2007).

The right to work represents a universal good that should be available to every citizen of a democratic state; however, in a free market economy employment is subject primarily to economic rules and constitutes one of exchangeable goods on labour market in compliance with the supply and demand law (A. Barczyński, 2008; A. Guranowski, 2008; A. Nowak, 2002; B. Szczupał, 2004).

It is impossible to indicate unambiguously reasons for a low index of vocational activity of the disabled. Legal provisions offer determined employment possibilities but their choice depends on the decision of the legal parties – a disabled person seeking employment and an employer. This freedom, however, depends on numerous factors both of legal and psychological nature (commonly functioning prejudices and stereotypes) (A. Barczyński, 2008; I. Poliwczak, 2007).

The attitude displayed by the disabled persons themselves and a low level of education of the majority of people in that social group represent a serious problem, which in conditions of an economy based on knowledge and of decreasing supply of workplaces for people with low vocational qualifications considerably reduces their chances for employment. (A. Guranowski, 2008). Unfortunately, the transformation period in Poland was not accompanied by systemic modifications in the model of vocational training of disabled persons; it is still more subjected to resources of educational institutions than to needs of the labour market. This results in these persons' shortages in the scope of vocational and social skills (necessary for active job seeking), hampers the process of permanent education and requalification. An enhancement of the access to education of the disabled persons and adaptation of their vocational profile require elaboration of mechanisms of adequate collaboration between the educational system, employment bureaus, employers and supporting institutions, inclusive of the PFRON (J. Bartkowski et.al. 2007).

When identifying causes of low vocational activity of the disabled and problems constituting an obstacle on the way from exclusion to integration, different factors exerting influence on the appearance of barriers and their burdensome character, their considerable diversification and sensitivity to external conditions can be specified. The most importance vocational growth barriers for disabled people as indicated by employers are connected with the vocational activation system environment (complex procedures for financial assistance, absence of legal stability, absence of stability of financial support conditions, complicated legal regulations, requirements concerning preparation of business facilities, etc.). Whereas the following methods and tools are recognized to be the most effective in favouring employment growth of the disabled: economic tools (efficiently functioning system of partial remuneration funding, tax relief and exemption for employers employing the disabled), activities in the field of education (increasing general and vocational qualifications of the disabled, economic consultancy for employers, training courses for local administration and employers, re-skilling and retraining of disabled persons. It is also important to simplify legal regulations and guarantee stability thereof as well as initiate integration tools at the

level of local communities and work establishments and particularly overcoming vocational passivity (A. Barczyński, 2008).

Decentralization and statutory shifting of decision-taking and competence-related powers regarding jurisdiction, public education, health service, social welfare, vocational activation and social rehabilitation have all contributed to the fact that at present social policy with respect to the disabled is performed at the level of communes and districts, however, the primary responsibility of preventing marginalization is still incurred by the state which shapes the social security system (A. Nowak, 2007). Territorial self-government entities, however, play an important role in the implementation of labour market policies on the commune, county and province levels, since they execute tasks resulting from the hereinabove presented acts concerning support for employment of disabled persons (I. Poliwczak, 2007).

Due to activities directed at giving equal opportunities to the disabled on labour market resulted in elaboration of numerous forms of supporting their employment both on the open and protected labour markets. An entire system has been established of facilities aimed at improvement of vocational status of said social group and increasing their employment on the open labour market. These facilities consist primarily in state intervention on the labour market and most frequently they appear in the three basic forms: the so-called quota system (imposed by the legislator level of the disabled employment index in open market work establishments); the system of material incentives for employers who decide to employ disabled persons and reserving by the employer of certain positions and vocations for the disabled (A. Barczyński, 2008; A. Nowak, 2002; I. Poliwczak, 2007).

The fact of continuing to seek new, innovative forms of work organization affects numerous phenomena occurring on the employment market, which requires seeking solutions which would support flexible employment on the labour market simultaneously ensuring a suitable social protection level for groups threatened by the risk of job loss (A. Nowak, 2007). A new approach to relations between the labour market and social security are defined as *flexicurity* (a combination of words *flexibility* and *security*) policy (J. Bartkowski et.al. 2007). Flexible employment (e.g. part-time work, telework, task-dependent working time, as well as voluntary work) facilitates disabled persons finding employment, enables adaptation of work organization to his state of health, facilitates social rehabilitation (learning how to function socially in work environment, shaping abilities to cooperate with fellow workers), enables acquiring necessary vocational experience thus increasing their chances to find traditional employment in the future). Flexible employment enables the employer better adaptation to current economic situation on the labour market. There are, of course, negative implications of flexible employment: the risk of feeling a lack of vocational

stabilization, insufficient protection of workers' rights and a low level of social insurance as well as limited development and promotion possibilities (J. Bartkowski et.al. 2007).

Polish legislature embraces a wide range of services and instruments favouring vocational rehabilitation and employment of disabled persons. These are frequently modern solutions but they are used with relatively low frequency. Decentralization of tasks connected with execution of labour market policy for the disabled and delegating thereof onto territorial self-government entities should synergically link employment promoting activities with other social policy tasks under execution (A. Nowak, 2002; Z. Wasiak, 2004).

A great potential can be found in the sector of non-governmental non-profit organizations playing the role of employer in the development-prone public services sector and being able to productively take over public sector tasks connected with employment of disabled persons (J. Bartkowski et.al. 2007). These organizations represent a characteristic emanation of the local community, so they are able to support vocational integration process. The *Act on public benefit and voluntary work activities* passed in 2003, frequently referred to as “a constitution of the third sector” set up a new standard of implementation of public services (i.e. social benefit tasks) (*Ustawa o działalności pożytku publicznego...*). Its provisions comprise a number of legal facilities in the activity of non-governmental organizations (NGO) inclusive of fiscal facilities/incentives (exemptions from tax, and treasury and court fees), preferences in using or purchasing real property originating from the assets of the State Treasury or territorial self-government – provided that they are used for statutory activities in the following areas: charity, science, welfare, culture, education, research and development, sport or tourism (A. Guranowski, 2008).

Supporting social policies implemented in the course of institutional pluralism by state institutions together with a number of social partners (non-governmental organizations, self-governments, churches, trade unions and vocational organizations, etc.) leads to practical application of the subsidiarity principle. The role of the state consists in focusing on the implementation of the allocation, distribution and stabilization functions; whereas, support on the part of local authorities and effect of the human environment acting for the benefit of the disabled favours establishment of new initiatives and the totality of social policy realized with respect to people with disabilities creates part of an image of a local community “without barriers”.

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