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Employees with disabilities from the perspective of global and European standards

Abstract

This article is devoted to the influence of the United Nations, including the International Labour Organization and the Council of Europe, on the creation of standards in the area of protection of the rights of employees with disabilities. The aim of this article is to verify how much the standards of the International Labour Organization and the Council of Europe correlate with the each other in terms of the protection of employees with disabilities. The most important conventions and institutional systems involved in this are discussed. Focus is also given to the monitoring procedure for how Member States fulfil their commitments. This study employs the method of investigation of the law in force and the comparative method.

Keywords: employees with disabilities, women with disabilities, AI and persons with disabilities, employment of persons with disabilities

Introduction

Building tolerant and inclusive societies, such that do not exclude anyone, is an immense challenge our civilisation is facing. Social exclusion may happen for a number of reasons, not only disability, but also for reasons of ethnic origin,

religion, age, gender or any other individual features, and is dangerous for the excluded persons and for the rest of society alike.

The aim of this article is to verify how far standards of the International Labour Organization and the Council of Europe correlate in terms of protection of employees with disabilities. Do the actions taken by the International Labour Organization matter for improving the situation of these persons? If so, which actions are key to outlining the direction of changes? Do the actions of the Council of Europe, an organization of values that creates standards in the realm of human rights, democracy and the rule of law, also address the situation of employees with disabilities? Is the system for monitoring compliance with the standards developed by both these organizations effective? How far does the synergy of actions between these organizations go?

The article presents a systemic analysis and an analysis of the content of conventions, reports and studies drafted by these organizations. The interpretation of the law in force and legal comparison are the main research methods employed in this study. It is limited to the analysis of the achievements of the ILO as an international organization (UN agency) and of the Council of Europe, since the author believes these two organizations have similarly strong influence. This means that, contrary to the EU law, there are no strong monitoring mechanisms in place for Member States' compliance with standards.

It needs to be noted that while there are plenty of studies on professional and social rehabilitation and employment of persons with disabilities, there is a shortage of studies on relevant international standards, especially studies that take a comparative angle. An article devoted to an investigation of standards of the International Labour Organization and the Council of Europe in the context of employees with disabilities will fill this scientific lacuna

Employees with disabilities – definition

Employees with disabilities are persons who due to their psycho-physical features have difficulty in performing certain tasks. It is only one of employee groups that may be discriminated in the labour market.¹ These persons need acceptance,

¹ A. Ludera-Ruszel, *Dyskryminacja ze względu na niepełnosprawność w zakresie zatrudnienia*, in: J.R. Carby-Hall, Z. Góral, A. Tyc, (eds.), *Różne oblicza dyskryminacji w zatrudnieniu*, Warsaw 2021, pp. 21–27.

understanding and support.² Such support, from the state and sometimes from non-governmental organizations, should be provided in many spheres of life. Access to the labour market and an opportunity for a person with disabilities to find their place in it is actually the very end of the journey. Before that, in order for such a person to be able to make themselves visible, they should most of all be ensured support in access to education. For this reason, one cannot write about the status of employees with disabilities disregarding international standards and obligations intended to increase access to education for such persons. Disability has many different faces and has been treated differently over the years. Only after World War II, in the course of fighting for human rights, dignity and acceptance, were persons with disabilities noticed as those who need help not only in existing, but also in access to the labour market. Developed societies tended to define disability on the basis of a bio-psycho-social model. This means that disability was recognized as a normal aspect of social life which in certain circumstances may cause occurrence of barriers and difficulties in fulfilling social roles and tasks.³

Standards of the International Labour Organization

Employees with disabilities who are excluded or at risk of exclusion make up between 3% to 7% of the global labour market. There are approximately one billion persons with disabilities worldwide in total (15%), 80% of whom are of working age.⁴ The International Labour Organization (hereinafter also ILO) was established in 1969 as the first ever independent global organization with the aim to protect labour and employees and to build social justice. After WWII, ILO became an affiliated United Nations agency.⁵

The 1945 Charter of the United Nations⁶ only mentioned prohibition of discrimination for reasons of race, sex or religion. The Universal Declaration of Human Rights⁷ provided a springboard for the development of international

2 J. Śliwak, *Psychospołeczne problemy niepełnosprawności*, in: E. Rutkowska (ed.), *Pracownik z niepełnosprawnością*, Lublin 2007, pp. 23–24.

3 M. Paluszkievicz, *Wolność pracy osób z niepełnosprawnościami jako wartość prawnie chroniona*, Łódź 2019, p. 31.

4 ILO, *Disability Inclusion Strategy and Action Plan 2014–17. A twin-track approach of main streaming and disability-specification*, Geneva 2015, p. 1.

5 J.W. Follows, *Antecedents of the International Labour Organisation*, Oxford 1951, p. 17.

6 The Charter of the United Nations done at San Francisco on 26 June 1946, XV UNCIO 355.

7 Universal Declaration of Human Rights, adopted by the UN General Assembly in Paris, 10 December 1948, 217 A (III).

non-discrimination standards in various aspects.⁸ A general principle of the right to work is laid down in Article 6 of the International Covenant on Economic, Social and Cultural Right, which guarantees that everyone should have the right to freely take up work as a source of earning a living.⁹ The 2006 Convention on the Rights of Persons with Disabilities along with its Protocol¹⁰ is a starting point for a discussion on global standards in protecting rights of employees with disabilities. The objective of the Convention is to counteract discrimination of persons with disabilities in general, not only in professional life.¹¹ Pursuant to Article 3 of the Convention, persons with disabilities (including children) have the right to respect for their dignity, independence, autonomy, participation and inclusion in society. They have the right to difference and acceptance and also to equal treatment and accessibility. The latter entail such accessibility and equal treatment in the labour market. The Convention imposes an obligation on States Parties to put provisions in place that will ensure access to education to persons with disabilities and to lifelong learning at all levels (Article 24). It is the development of potential and creativity of persons with disabilities and assuring them from the very young age that they are part of society and not outside of it that may give positive effects in this group being active in the labour market. A lot depends on learning a trade and recognizing opportunities and thus career counselling at the stage of very early education may prove pivotal. In future, these persons will know their strengths which will minimise the risk of exclusion in the labour market. Effective education of persons with disabilities may take place only where schools and the academic circles employ competent teachers who are supported with adequate tools to enable school children and university students with disabilities to overcome barriers. It needs to be pointed out that in 2018 in the European Union, that is a well-developed area, only 29.4% persons with disabilities aged 30–34 had university degrees. In comparison, this index was 43.8% for their peers without disabilities.¹² This shows how great the disproportion

8 M. Domańska, *Standard ochrony przed dyskryminacją wielokrotną w systemie Organizacji Narodów Zjednoczonych*, in: M. Domańska (ed.), *Zakaz dyskryminacji ze względu na więcej niż jedno zabronione kryterium*, Warsaw 2019, p. 169.

9 International Covenant on Economic, Social and Cultural Rights of 16 December 1966, UN General Assembly Resolution 2200A (XXI).

10 UN General Assembly, Convention on the Rights of Persons with Disabilities and Optional Protocol, 13 December 2006, A/RES/61/106, Annex I.

11 S. Fraser Butlin, *The UN Convention on the Rights of Persons with Disabilities: Does the Equality Act 2010 Measure Up to UK International Commitments?*, "Industrial Law Journal" 2011, No. 40, p. 429.

12 Fundación ONCE and ILO Global Business and Disability Network, *An inclusive Digital economy for people with disabilities*, 10.02.2021, p. 8.

still is and how effective barriers at the very beginning of a professional career are. A system of education (also tertiary) adapted to the needs of persons with disabilities is only the first step to equal opportunities of persons with disabilities in the labour market.¹³

Article 27 of the Convention specifies that States Parties should ensure freedom for persons with disabilities in taking up employment, promotion of employment in the public sector and establishing social economy enterprises. Persons with disabilities should be guaranteed the possibility to enjoy all rights, including the right to career advancement and professional development, like other employees.

Nonetheless, the Convention specifies fundamental rights of employees from this social group. It is important that implementation of and compliance with the Convention is being monitored on an on-going basis¹⁴. The Committee on the Rights of Persons with Disabilities as a body of independent experts, draws up a report every half a year.¹⁵ The second monitoring mechanism involves reports filed by States Parties – the first report after two years and each subsequent report – every four years. The Committee recommendations take the role of final comments.

On the other hand, the ILO has adopted a number of other conventions, recommendations and studies that are to ensure equal access and treatment in the labour market. One of the first was the 1958 Discrimination (Employment and Occupation) Convention,¹⁶ which laid down for the first time that no person should be discriminated against in employment on the basis of race, colour, sex, religion, political opinion, national extraction or social origin. However, Article 5 stipulated that States Parties may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special requirements for persons with disabilities be put in place. Therefore, while this Convention did outline an appropriate trend, it still left room for certain measures that allowed unequal treatment and exclusion of this social group. A breakthrough only came in 1983 when the Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) was opened for signature.¹⁷ It accommodated provisions

13 J. Podworska, *Osoby z niepełnosprawnościami w społeczności akademickiej*, in: K. Grzybczyk (ed.), *Kultura akademicka i relacje uniwersyteckie w XXI wieku*, Warsaw 2021, p. 69.

14 A. Bodnar, A. Śledzińska-Simon, *O potrzebie ratyfikacji Konwencji ONZ o Prawach Osób z Niepełnosprawnościami*, "Europejski Przegląd Sądowy" 2012, No. 5, p. 6.

15 Optional Protocol to the Convention on the Rights of Person with Disabilities, UN, A/RES/61/106, 13.12.2006.

16 C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

17 C159 – Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).

binding on States Parties that an obligation to implement a policy that facilitates access to the labour market to person with disabilities and also to ensure their rehabilitation and an obligation to implement adjustments for them to become active in the labour market. This convention was extended to include the 1983 Recommendation concerning Vocational Rehabilitation and Employment (Disabled Persons).¹⁸ Its importance is paramount as it expressly concretizes specific actions that state governments should take.¹⁹

One of the most important studies issued by the ILO regarding employees with disabilities is certainly its Code of Practice – managing disability in the workplace.²⁰ The aim of this study is to present good practices for employers (public, private and social alike) to create working conditions for persons with disabilities through coordinated action. It discusses the role of the employer and organizations of employers and employees and also public authorities. It addresses the situation of employees who acquired a disability while being employed. It is recommended that each employer develop a policy that is consistent with standards and provisions of the national law for handling such employees and also employees that care for disabled family members. The study points to the very important question of non-discrimination in the recruitment process. It is at this stage when undesirable actions take place most often. There are two reasons for why this happens: not knowing the candidate and barriers that he or she faces due to their disability and prejudice that should not take place and which does happen in practice. The internal recruitment procedure which stipulates that persons with disabilities may apply for jobs may limit unequal treatment among recruiters. The last important recommendation formulated in the Code is the requirement to evaluate the efficiency of the implemented procedures.

The ILO, individually or in cooperation with other actors, promotes many solutions for employers and public authorities in soft skills, intended to get persons with disabilities to become active in the labour market and to protect them against unequal treatment. Current and new problems, such as digital exclusion, are pointed out.²¹ Digitisation of community life, education and the work sphere may be both an opportunity for employees that experience

18 R168 – Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168).

19 Cf. L. Mitrus, *Niepełnosprawność jako przedmiot regulacji prawa pracy*, in: M. Bosak (ed.), *Prawo a niepełnosprawność. Wybrane aspekty*, Warsaw 2015, p. 4.

20 ILO, *Managing disability in the workplace: ILO Code of Practice*, Geneva, 13.02.2002.

21 See Fundación ONCE and ILO Global Business and Disability Network, *An inclusive ...*, p. 20.

barriers and an obstacle. New technologies and the digital revolution may help such persons in finding a job. Such is the case, for example, of persons who due to their health also experience communication-related exclusion and new technologies may help them find employment in a place other than where they reside as they facilitate working fully or partially remotely. Nevertheless, new technologies bring numerous threats too. Persons with disabilities must first have access to equipment which must often be adjusted to their needs (e.g. blind persons or persons with visual impairments), they must have access to education, they must learn, at least to a basic extent, to use new technologies, and, most importantly, they should have access to the internet. The state's immense role needs to be emphasized as it must employ various support programmes to ensure adequate assistance to these persons.

The impact of artificial intelligence is also signalled. Similar to digitisation, it may prove very helpful in getting persons with disabilities active in the labour market and in their vocational rehabilitation. On the other hand, it may also pose a threat,²² by, for example, continuing communication without empathy or using cliché, repeated manoeuvres. Meanwhile, each person with disabilities in a given organization may need an individual approach. It is worth noting that this problem was addressed in the Council of Europe's draft convention on artificial intelligence (Article 3 and 20).²³

Getting employees with disabilities active in the labour market entails the notion of social economy enterprises, such as cooperatives, non-profit companies, associations, foundations or sheltered workshops. It is these entities that give an opportunity to many persons with disabilities to gain knowledge and qualifications, allow them to do apprenticeships or work placement, and they also give them employment within their structures. ILO promotes such entities in its Resolution concerning decent work and the social and solidarity economy, (III, l. f).²⁴ Its continuation is given in ILO's another study: Follow-up to the resolution concerning decent work and the social and solidarity economy.²⁵ This document points to the need for the legal circles to promote and support the operation of social enterprises as places where excluded persons or persons at risk of

²² Ibidem, p. 13.

²³ The revised "Zero Draft" [Framework] Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law, CAI(2023)01, Strasbourg, 6.01.2023.

²⁴ Resolution concerning decent work and the social and solidarity economy, ILC.110/Resolution II, 10.06.2022.

²⁵ Follow-up to the resolution concerning decent work and the social and solidarity economy, GB.346/INS/3/2, ILO, Geneva, 29.09.2022.

exclusion (person with disabilities fall under this category) may find employment and support in overcoming barriers to a larger extent than in regular enterprises.

Summing up, the activities of the UN, including ILO, are greatly important for setting out standards of getting persons with disabilities active in the labour market and for protecting employees who acquire a disability or who care for a person with disabilities at home. ILO conventions and recommendations and the monitoring procedure for the Convention on the Rights of Persons with Disabilities have a great global significance, especially for poorly developed countries where social awareness and understanding and a difficult economic situation may not encourage removal of differences. Promoting good practices is also crucial. Its virtue boils down to addressing problems and challenges that may occur unexpectedly, such as the situation of employees with disabilities during the COVID-19 pandemic or the spread of artificial intelligence.

Council of Europe's standards for the rights of persons with disabilities

The Council of Europe as an organization of values creates, promotes and monitors implementation of international standards in the sphere of human rights at the regional – European – level. Naturally, the most important document that addresses work and prohibition of forced labour, including work and forced labour of persons with disabilities, is Article 4 in conjunction with Article 14 of the Convention for the Protection of Human rights and Fundamental Freedoms²⁶. The Council of Europe has issued three other fundamental documents that concern persons with disabilities in the context of employment. However, there is no convention that is modelled on the Convention on the Rights of Persons with Disabilities. This does not mean that the Council of Europe approaches the care for the rights of these persons and their decent treatment negligently.

The 1961 European Social Charter (ESC)²⁷ is a treaty that includes a number of provisions concerning this social group, especially in terms of their vocational engagement and rehabilitation. It lays down in Article 15 that the Contracting Parties should provide a training system of these persons, create a legal framework for sheltered employment, organize specialist career counselling and employment agencies. In 1996 a twin charter – European Social Charter (revised) was opened for signature and entered into force three years later.²⁸ The Revised European Social

²⁶ Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005).

²⁷ European Social Charter (ETS No. 035).

²⁸ European Social Charter (revised) (ETS No. 163).

Charter along with its Additional Protocol²⁹ is in effect along with its predecessor. The goal of the Revised European Social Charter (RESC) is to ensure decent economic and social conditions to the citizens of Europe.³⁰ The RESC specifies the right of persons with disabilities to independence, social integration and participation in the life of the community. Article 15 of the RESC is significantly more comprehensive compared to the analogous provision in the ESC. It includes provisions on the obligation to ensure career counselling and specialist training under general education programmes. It places an obligation on the Contracting Parties to promote employment in all establishments, both in the public and private sector. Whereas for those persons who are unable to work in such places as it is impossible for them to overcome certain barriers by reason of the disability, the state must create legal conditions for creating sheltered workshops. Further provisions of Article 15 refer to ensuring help to persons with disabilities in removing barriers to communication, transport, housing and cultural activities. It emphasizes full social integration of such persons.

Both charters supplement two conventions: The European Code of Social Security (ECSS) opened for signature in 1964³¹ and its successor, the Revised European Code of Social Security (RECSS) opened for signature in 1990.³² Contrary to the Revised European Social Charter, the Revised European Code of Social Security has not entered into force yet. It is open for signature but has only been ratified by the Netherlands. This results, as is the case with the RESC, from the draft's very restrictive provisions. It is worth noting on the side that it was problems with ratification of the RECSS that meant that less rigour was employed when the Council of Europe was creating other conventions. To sum up, the ECSS and the RECSS do not, at least for now, operate in parallel and only the ECSS has entered into force.

Nevertheless, the provisions of the ECSS refer to social security involving health care and benefits for sick and unemployed persons, but they do not have direct regulations on the situation of employees with disabilities. However, the RECSS has standards that specify the role of the state in terms of placing persons with disabilities in employment and their social security (Article 42, 53, 58 and 62).

29 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS 158).

30 P. Siejak, *Ochrona praw społecznych w systemie aksjologicznym Rady Europy i procedury monitorowania ich realizacji*, in: J. Jaskiernia, K. Spryszak (eds.), *Wyzwania dla europejskiego systemu ochrony praw człowieka u progu trzeciej dekady XXI wieku*. Vol. 2, Toruń 2021, p. 304.

31 European Code of Social Security (ETS No. 048).

32 European Code of Social Security (Revised) (ETS No. 139).

The monitoring over how Member States comply with the social standards is carried out by the European Committee of Social Rights. Its actions are supplemented by the European Committee for Social Cohesion (CCS). It replaced the European Committee for Social Cohesion, Human Dignity and Equality (CDDECS) that had operated until 2016 and the European Social Cohesion Platform (PECS) that had operated until 2022. CCS is an intergovernmental committee of the Council of Europe authorised to work in the area of social cohesion, especially standards set up in the European Social Charter. Institutional changes in the Council of Europe in terms of monitoring and promoting standards of social rights are dictated by increasing efficiency and responding to new challenges. One of such areas in which CCS took up some actions is drawing attention to digital exclusion of persons with disabilities.³³ It is a problem that now implicates occupational exclusion. We do not need to explain that skills and access to means of digital communication and to artificial intelligence systems are necessary in taking up employment and boosting qualifications.

The procedure for monitoring the European Social Charter is carried out by the European Committee of Social Rights, which verifies reports submitted by the Contracting States. The Committee of Ministers oversees conclusions formulated in the report. These conclusions have two components: a yearly compilation of general recommendations and recommendations made towards individual states. The role of the European Committee of Social rights is to verify, among other things, whether the standards of access and functioning of persons with disabilities in the labour market are fully satisfied.

The activity of the Council of Europe and its institutions in the area of protection of persons with disabilities in the labour market is not limited to the ESC, RESC and RECSS discussed above. The Ad Hoc Committee on Persons with Disabilities also operated within this organization. Its main objective was to develop a Council of Europe strategy for disability for 2017–2023.³⁴ A study published by this committee points to a few important aspects such as multi-discrimination, that is discrimination of persons on different intertwined levels. For example, discrimination, also in a workplace, not only due to disability, but also due to origin, skin colour or gender.³⁵

³³ G. Tavits, A. Sargsyan, *Report on the Impact of Digitalisation and IT Developments on Social Rights and Social Cohesion*, European Committee for Social Cohesion (CCS), CCS(2022)4, Strasbourg, 5.08.2022, p. 39.

³⁴ Cf. *Disability Strategy 2017–2023*, Council of Europe, Strasbourg, 1.03.2017.

³⁵ R. Pomarańska, *Mentoring kobiet z niepełnosprawnością w środowisku pracy*, "Człowiek–Niepełnosprawność–Społeczeństwo" 2021, No. 1, p. 43.

Protection of persons with disabilities rests with the Council of Europe Commissioner for Human Rights. In quarterly and yearly reports on his activity, he has addressed multiple times the question of disability and the need for change, also change relating to social inclusion of these persons, especially their engagement in the labour market. In his 2022 report, the Commissioner for Human rights places great emphasis on the occurrence of discrimination on two planes: for reason of gender and age. The report claims that women with disabilities are much more discriminated against than men. This discrimination also refers to limitations in the labour market.³⁶ The activity of the Commissioner for Human rights does not only boil down to general theme reports. It is a Council of Europe institution that operates in the field, then creates reports on respecting human rights in individual countries, and then formulates recommendations. When it comes to employees with disabilities, the last such activity concerned Georgia and its changes in the law, especially liberalization of supervision over labour law, and thus deterioration of the situation of employees with disabilities in the labour market. The Commissioner referred in his conclusions and recommendations to changes in legislation that are going in the right direction, but there is still no strong support for vocational education and training for employees with disabilities. Georgia should also sign and ratify a number of ILO conventions, such as: the Minimum Wage Fixing Convention,³⁷ which could also limit to a certain degree differences between the remuneration of employees without disabilities and those with disabilities, the Violence and Harassment Convention³⁸ and the Protocol amending the European Social Charter.³⁹ The case of Georgia as a state where the report of the Commissioner for Human Rights addressed the question of protection of employees with disabilities is very interesting. It is because we can see synergy of actions of various organizations, here: ILO and the Council of Europe. This cooperation spans many dimensions and is not always direct, as is the case here, but the correlation is still clear. Where the Council of Europe has not yet worked out directly its standards and has not issued a convention for its Member States, it may, in its conclusions, in post-monitoring recommendations, refer to legislative acts and standards of other

³⁶ Commissioner for Human Rights of the Council of Europe. Annual Activity Report 2022, Com-mHR(2023)11, 24.04.2023.

³⁷ ILO, Minimum Wage Fixing Convention (No. 131).

³⁸ ILO, Violence and Harassment Convention (No. 190).

³⁹ Protocol amending the European Social Charter (ETS No. 142).

organizations.⁴⁰ There is no rivalry here – the organizations complete each other, which is for the benefit of citizens of Member States of the Council of Europe.

The Commissioner has also published a number of publications in which he addresses and emphasises good practices and also points to current human rights-related problems. A number of such studies concerned persons with disabilities in the context of labour law. One of them addresses a very important problem of remuneration of employees with disabilities. They are obviously paid less than their colleagues without disabilities. This dissonance in remuneration results from two reasons. First, persons with disabilities are in a weaker position already at the level of education and training and cannot achieve as much as their peers. Thus, differences in remuneration appear as a result of positions held. Simply, employees without disabilities have higher chances of career advancement and from the start are hired to take more senior posts. With adequate regulations and national policy in place and with the support of local governments and/or non-governmental organizations, this phenomenon may be minimised in the long run. If the state supports education of persons with disabilities, subsidises vocational training, facilitates access to schools and universities by systemic schemes, then differences in wages may blur. In turn, the second aspect of economic discrimination of employees with disabilities has non-institutional causes. It does not result from laws or absence of institutions, but from bad social attitudes, including attitudes of employers who may be afraid to employ persons with disabilities for fear of potential absence, greater outlays on adjusting a workplace or other prejudices.⁴¹ However, the reality shows that adjusting a workplace for a person with disabilities is in practice very rare and does not require substantial investment.⁴² Only education and long-term actions that spread knowledge among employers of the private and public sector may bring effects in this case.

The studies published by the Commissioner for Human Rights point to the fundamental question, that is the capacity to perform acts in law by persons with certain kinds of disability.⁴³ A change in the attitude to persons with disabilities,

⁴⁰ Council of Europe Parliamentary Assembly, Resolution 1642 (2009), Access to rights for people with disabilities and their full and active participation in society, Strasbourg, 26.01.2009.

⁴¹ Council of Europe Commissioner for Human Rights, *Human Rights and disability: equal rights for all*, CommDH/IssuePaper(2008)2, Strasbourg, 20.10.2008, p. 6.

⁴² ILO, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, *Equality at work: Tackling the challenges*, 2007, p. 44.

⁴³ Council of Europe Commissioner for Human Rights, *Who Gets to Decide? Right to legal capacity for persons with intellectual and psychosocial disabilities*, CommDH/IssuePaper(2012)2, Strasbourg, 20.02.2012, p. 15.

treating them as persons, requires (which seems a right and necessary direction) that they have as a rule full capacity to perform acts in law and also full employment capacity, that is the capacity to enter into an employment relationship.

The Commissioner recommends in the same study extensive changes in Member States' legal systems. The major change involves removal of the institution of full incapacitation and the other changes are to concern ownership rights, the right to vote and, finally, the right to enter into an employment relationship. Treating persons with disabilities as employees with full rights and partners, not as persons who only deserve care, seems a right direction.

Conclusions

Summing up, both the International Labour Organization and the Council of Europe have made enormous contribution to the development of standards of accessibility and functioning in the labour market of persons with disabilities. The ILO, as a specialized global entity, must focus its actions globally, though taking into account world-wide determinants. The foundation for its actions is mainly the Convention on the Rights of Persons with Disabilities along with its Additional Protocol. It does not refer solely to matters of employment of persons with disabilities and is of fundamental importance. Its monitoring mechanism is also important. It may be enjoyed only by citizens of countries that have ratified the Additional Protocol. If a complaint is filed at the Committee on the Rights of Persons with Disabilities, the Committee refers the complaint to the Contracting Party and issues a decision after six months. The decision should be implemented by the country but it may also be submitted to the European Committee of Social Rights if the state is a member of the Council of Europe and Contracting Party to the European Social Charter. The monitoring mechanism developed by the ILO is still not perfect. There are no legal instruments that would ensure full implementation of the Convention's decisions. Not all countries have signed the Additional Protocol either.

The Council of Europe has developed an extensive institutional system in the realm of protection of employees with disabilities. It includes a few conventions, such as the European Convention on Human Rights, the European Social Charter, the Revised European Social Charter and the European Code of Social Security. The system for monitoring European standards is multi-layered. It is made up of the European Court of Human Rights in Strasbourg for the European Convention on Human Rights and the European Committee of Social Rights, monitored by the Committee of Ministers, for the European Social Charter and related conventions. The Council of Europe Commissioner for Human Rights carries out

independent thematic monitoring and has the right to formulate recommendations and conclusions.

Both organizations make up the system of protection of employees with disabilities and complement each other's activity, though this is not always coordinated. The Council of Europe has still not created a convention that would specify rights of persons with disabilities in one act, though it has issued a number of conventions that safeguard those rights and provide instruments for their protection. Both organizations face an important challenge to outline a framework for the functioning of employees with disabilities in the era of new technologies and immensely dynamic changes. It is important that in the light of the axiological systems developed by both organizations employees with disabilities be treated as social partners.

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Pracownicy z niepełnosprawnością z perspektywy standardów globalnych i europejskich

Streszczenie

Niniejszy artykuł poświęcony jest wpływowi Organizacji Narodów Zjednoczonych, a także Międzynarodowej Organizacji Pracy i Rady Europy na tworzenie standardów w obszarze ochrony praw pracowników z niepełnosprawnością. Celem niniejszego artykułu jest zweryfikowanie, jak bardzo standardy Międzynarodowej Organizacji Pracy oraz Rady Europy korelują ze sobą w zakresie ochrony pracowników z niepełnosprawnością. Omówiono najważniejsze konwencje i systemy instytucjonalne, jakie są zaangażowane w tym obszarze. Zwrócono uwagę na procedurę monitorowania wypełniania zobowiązań przez państwa członkowskie. W pracy wykorzystano przede wszystkim metodę prawno-dogmatyczną oraz komparatystyczną.

Słowa kluczowe: pracownicy niepełnosprawni, kobiety niepełnosprawne, AI i niepełnosprawni, zatrudnienie osób niepełnosprawnych

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