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Report from the Polish scholarly conference "Social inclusion of persons with disabilities" Międzyzdroje, 23-24 September 2021

On 23-24 September 2021, the Polish Scholarly Conference “Social inclusion of persons with disabilities”, organized by the Faculty of Law and Administration, University of Szczecin, was held in Międzyzdroje. The purpose of the conference was to assess the relevant legislative acts, as well as to attempt to develop a complex model of protection of rights of persons with disabilities, as part of *de lege ferenda* postulates. The conference was attended by representatives of the legal, medical, pedagogical, sociological, economic and technical disciplines from many research areas as well as by representatives of organizations and institutions that act for the benefit of persons with disabilities. The event enjoyed the honorary patronage of: the Commissioner for Human Rights, the Government’s Spokesperson for Persons with Disabilities, the Marshall of the West Pomerania Voivodship, the President of the City of Szczecin and the Regional Bar Association in Szczecin.

The two-day conference was run in the traditional form as well as remotely by means of a live transmission on MS Teams. There were five discussion panels held on day one and another four on day two.

The inaugural presentation was given by Monika Wiszyńska from the Office of the Commissioner for Human Rights. She discussed the issues of implementing the Convention on the Rights of Persons with Disabilities in Poland. She referred to the laws in force and presented the role of and recommendations from the Commissioner for Human Rights as a body that monitors the implementation of the Convention’s provisions in Poland. Then the floor was taken by dr hab. Katarzyna Kotarska, professor of the University of Szczecin, Deputy Rector for Student Affairs of the University of Szczecin, who welcomed all, also in

sign language. The session was opened by dr hab. Ewelina Cała-Wacinkiewicz, professor of the University of Szczecin, Dean of the Faculty of Law and Administration of the University of Szczecin, introducing the participants to the conference's subject matter. Its scholarly significance was most of all influenced by the need to change the perspective of perceiving the status of persons with disabilities, which is evolving towards modern standards of protection of human rights, human dignity and the right to an independent and active life in the society, the essence of which lies in the legally desired social inclusion of this social group.

The first panel, "Introductory issues", chaired by dr hab. Ewelina Cała-Wacinkiewicz, professor of the University of Szczecin, was opened by dr hab. Iwona Wrońska (University of Białystok) with her presentation *Defining positive discrimination of persons with disabilities*. She presented this issue in the perspective of a special legal instrument that allows full implementation of the equality principle. Its main task is to make it easier for this group of people to function on an equal or similar stand with persons who do not have disabilities. The floor was then taken by prof. dr hab. Jacek Sobczak (University of Economics and Human Sciences) who presented his speech *The deaf in the labyrinth of law*, which was translated into sign language. He was pleased to have been able to speak at the International Day of Sign Languages and he referred to their classification. He focused on the discussion of provisions of the Polish civil code which regulate the situation of deaf persons. The next presentation, *Inclusion—discourse of anxiety*, was delivered by dr hab. Irena Ramik-Mażewska, professor of the University of Szczecin. She described basic concepts referring to the issues in question and also discussed their practical dimensions, such as promoting a move away from a nosological analysis of disability towards a functional analysis, thus breaking mental barriers towards persons with disabilities in the society, especially in the system of inclusive education. The last presentation, *Application of the SCOPE scale to measure social inclusion*, was given by dr hab. Łukasz Balwicki, professor of the Medical University of Gdańsk. He pointed to the definition of the concept of social inclusion, as well as its scale and tools to measure it, focusing on the Social and Community Opportunities Profile (SCOPE) scale. He presented research results and findings obtained through the application of this scale. The research was conducted in Poland on a selected group of psychiatric outpatients.

The second panel, "Social inclusion in international law", was chaired by prof. dr hab. Jacek Sobczak (University of Economics and Human Sciences). The first presentation: *Independence, integration and non-discrimination of persons with disabilities from the perspective of international law*, was given by dr hab. Agata Wnukiewicz-Kozłowska (University of Wrocław). She referred to the concept of a person with disabilities and discriminations resulting from the Convention on the Right of Persons with Disabilities, she spoke about the law's purpose and duties in ensuring equal functioning and enjoyment of human rights and fundamental freedoms to persons with disabilities. She also referred to the judicial decisions of the CJEU and ECtHR. Prof. dr hab. Jerzy Menkes (Warsaw School of Economics) presented "*Social inclusion*" through the prism of international human rights law. He focused on a relatively narrow stretch of this concept, that is the Convention on the Rights

of Persons with Disabilities and social inclusion from the international law perspective. He addressed the problem of discrimination of persons with disabilities and the need to level their opportunities in a social and legal perspective. He also shed some critical light on the Convention's provisions. The next presentation, *Equality and social inclusion of persons with disabilities in the normative acquis of the Council of Europe*, was brought by prof. dr hab. Tadeusz Gadkowski (Adam Mickiewicz University). He referred to regulations included in the European Social Charter and its system (including the activity of the European Committee of Social Rights), in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the decisions of the ECtHR as well as soft law regulations created on the forum of the Council of Europe. Prof. dr hab. Robert Grzeszczak (University of Warsaw) also spoke in this panel, presenting his *(Non)achievements of the European Union in social inclusion of persons with disabilities—assessment of EU powers, its legal status and selected activities*. He discussed the activity of this organization in the context of social inclusion of persons with disabilities implemented since the beginning of the 1970s under the subsidiarity principle. He pointed out that social inclusion of these persons is largely the responsibility of Member States, not the Union as an organization. However, he underlined the value of evolution of the EU activity and CJEU's decisions towards developing and respecting human rights. The next speaker, dr Anna Czaplińska (University of Lodz), delivered *Inclusion of persons with disabilities in the judicial decisions of the Court of Justice of the European Union*. She emphasized the Court's favourable attitude to these persons and thus exemplified the Court's judgements in cases relating to discrimination, employment and most of all Directive 2000/78, which specifies non-discrimination in employment. The second panel closed with the presentation from dr hab. Joanna Nowakowska-Małusecka, professor of the University of Silesia, who addressed the issues of *Inclusion of women and children with disabilities caused by armed conflict*. She presented two planes of discrimination against women and children who reside in an armed conflict territory – being part of particularly vulnerable groups and having disabilities. He discussed relevant regulations of international humanitarian law, mainly provisions of the Geneva conventions.

The third panel, "Social inclusion as an interdisciplinary issue – on-line session part I", was moderated by dr hab. Wojciech S. Staszewski, professor of the University of Szczecin, opened with the presentation by dr hab. Bernadeta Szczupał, professor of the Special Pedagogy Academy, *Anatomy as a determinant of dignity of persons with chronic diseases*. She pointed out that we have to address the needs of chronically ill persons to make autonomous decisions, as well as the subject matter of their incapacitation and the resulting problems that affect their self-esteem. The next paper, *Non(integrational) character of inclusive education of pupils with disabilities*, was presented by dr Jolanta Lipińska-Lokó (University of Wrocław) She discussed the current model of education of persons with disabilities functioning in Polish schools and signalled the need for cooperation here between children, parents, educators and public institutions to remove barriers that are still present. The next speech, *Social inclusion of persons with disabilities in Poland*, was given by dr Anna Daszewska (University of Warmia and Mazury). She addressed social exclusion as well as flaws in the implementation of the right to education of children and youth with disabilities in Po-

land. She referred to acts of national law in force and specialist literature. Dr Anna Nowicka-Skóra (Special Pedagogy Academy) presented her *Legal aspects of social policy towards persons with disabilities*. She pointed out the aim of conducting this policy, that is ensuring the welfare of those persons and their social participation as well as legal tools to implement this goal. In today's reality, the legislator aims to improve the social policy towards persons with disabilities in the individual and social context, by means of relevant acts of national and international law. Next, the presentation, *Social inclusion in rural areas*, was delivered by dr Małgorzata Ewelina Szymańska (Maria Curie-Skłodowska University). She invoked the definition of the concept under discussion, exemplified and discussed different types of social inclusion strategies. She pointed to community actions that are intended to serve the elimination of negative social phenomena, such as poverty or unemployment, in rural areas, focusing in particular on the provisions of the Social Cooperatives Law. The last paper, *Counteracting domestic abuse—procedure in the case of a suspicion of domestic violence against an adult patient*, was read by mgr Sylwia Trafna-Jurkiewicz (Voivodship Integrated Hospital in Toruń). She discussed the “abuse” clock in Poland, the number of lethal domestic abuse incidents, forms of this abuse and also international and domestic law documents that counteract abuse and support victim protection. She also presented good practices of a psychiatric hospital towards a person suspected to be a subject of family violence.

The fourth panel, “Rights of persons with disabilities in international law”, was chaired by dr hab. Joanna Nowakowska-Małusecka, professor of the University of Silesia. The first presentation, *Convention on the Right of Persons with Disabilities as a model for the future convention on the rights of the elderly*, was given by prof. dr hab. Barbara Mikołajczyk (University of Silesia). She referred to international law acts that address legal protection of the elderly, including soft law developed at the universal level and at the level of regional systems of human rights. She gave examples on the degree to which conventional solutions on inclusion of persons with disabilities might be used in the future convention of the rights of the elderly. The next speech was dr hab. Tomasz Kamiński's (University of Warsaw) *Convention on the Right of Persons with Disabilities and bringing inadmissible reservations*. He quoted provisions of the 1969 Vienna Convention on the Law of Treaties, the Commentary of the UN International Law Commission on its final version as well as the UN's 2011 *Guide to practice on Reservations to Treaties*. This was followed by a presentation from dr Agnieszka Wedeł-Domaradzka (Kazimierz Wielki University) on the subject matter of *The rights of persons with disabilities in the context of deprivation of liberty—conclusions from the ECtHR's case law*. She discussed the most significant relevant violations that occur in the Court's case law, mainly in its decisions under Articles 3 and 5 of the European Convention on Human Rights. In the first part of the presentation, she cited conclusions from judgments concerning persons with physical disabilities, whereas in the second part she focused on persons with intellectual disabilities. Dr Magdalena Półtorak (University of Silesia) shed light on the subject matter of *The situation of persons with disabilities from the perspective of the New Pact on Migration and Asylum*. She highlighted that even though this group of people is not directly named as a subject of regulations under this Pact, their needs and their access to the asylum procedure are not being ignored. She discussed these issues

in sections pertaining to new frontier procedures, the solidarity mechanism as well as supporting children and persons requiring special treatment. The next speaker, dr Karolina Sztobryn (University of Lodz), discussed *The legal position of persons with disabilities as consumers in the EU and in Poland*. She pointed to the problem of the lack of sufficient legal provisions at the national and EU level which address access of persons with disabilities to goods and services. The last speech in this panel, *The right to education of persons with intellectual disabilities in the time of the COVID-19 pandemic*, was given by dr Małgorzata Myl (University of Silesia). She quoted statistics on the number of persons with disabilities in the global and national scale, broken down by gender, age and disability type and she referred to human rights-related acts that regulate the questions of the right to education, including documents of the Committee on Economic, Social and Cultural Rights. She expressed criticism of the possibility to exercise this right during remote learning in the time of the coronavirus pandemic.

The fifth panel, "Social inclusion as an interdisciplinary issue—on-line session part II", was moderated by dr hab. Iwona Wrońska (University of Białystok). Dr Anna Drabarz (University of Białystok) was first to take the floor with *Ableism in the Polish scholarly world or on the need to accommodate the disability perspective in law studies*. She addressed the problem of discrimination due to disability – not only against persons directly affected by it, but also those indirectly concerned. She put forward a postulate that the relations between law and disability should be analysed whilst questioning ableism and emphasizing the need to determine a relevant rule of social justice. She was followed by mgr Cezary Pachnik (University of Białystok) with his presentation *The COVID-19 pandemic and social inclusion of persons with a schizophrenia spectrum disorder*. Mr Pachnik presented sources of rights enjoyed by these persons – both national and international, then he moved on to threats to their materialization that these persons face in the time of the pandemic and ways to solve the resulting problems. The next speaker, dr Zuzanna Kulińska-Kępa (University of Warsaw), delivered *The right to humanitarian aid for persons with disabilities in the light of public international law*. She discussed this issue analysing provisions of the Convention on the Rights of Persons with Disabilities and specific rights resulting from access to humanitarian aid and referred to recent events in the geopolitical arena. Mgr Justyna Adamczyk (University of Białystok) was the next panellist and spoke about: *The Committee on the Rights of Persons with Disabilities and its role in the light of provisions of the Convention on the Rights of Persons with Disabilities*. She explained procedural aspects of an inspection on the implementation of the Convention by individual countries, including criteria of admissibility of bringing complaints to the Committee. *Reception of foreigners with disabilities in the light of the EU and Polish law* was presented by dr hab. Anna Kosińska, professor of the Catholic University of Lublin. She discussed access to the procedure of granting international protection on the basis of the Polish law on granting protection to foreigners and guarantees in the Dublin procedure. She emphasized that in the light of legal regulations, refugees, migrants and persons awaiting decisions on their requests for protection, who are at the same time persons with disabilities, are a doubly vulnerable group. The subject matter of *Fatherhood of a man with disabilities – possibilities and limitations of the role in*

the perspective of social inclusion was talked about by dr Magdalena Wałachowska (Special Pedagogy Academy). She approached the problem from the perspective of special pedagogy and developmental pedagogy, referring to statistics that point out that a large majority of persons with disabilities are not married. Nevertheless, she pointed to their right to enter into marriage and their right to have children and to concerns and social obstacles faced by men with disabilities making a family. The last lecture, *Perception of social inclusion by persons with visual impairments*, was delivered by dr Małgorzata Bilewicz (University of Białystok). She showed results of her research conducted on such persons which confirmed the thesis that they are discriminated against and find it very difficult to play social roles when compared to persons that do not have disabilities. Their social inclusion is somehow illusory because persons with visual impairments integrate in the company of like-individuals. However, there has been great development in this regard in recent years, especially in the field of technology, digitisation and culture.

Day two of the debates was opened by the sixth panel, “Culture and education and rights of persons with disabilities in the Polish law” with prof. dr hab. Barbara Mikołajczyk (University of Silesia) as moderator. The first person to take the floor was dr hab. Maria Gołda-Sobczak, professor of the Adam Mickiewicz University with her paper *Participation of persons with disabilities in culture as an element of sustainable development*. She pointed to the problem of accessibility of cultural institutions in the context of the needs of children, especially those with impairment in vision. Dr hab. Ksenia Kakareko (University of Warsaw) was second and spoke about *Copyright in the creative activity and access to culture of persons with disabilities*. She noticed that the basic copyright conflict is the work of interpreters into sign language during TV broadcasts – does the interpreter create a work that is protected by copyright or is it only a technical activity? Pointing to an extensive debate among legal scholars and commentators, she noted inadequate conditions for the evaluation of a specific type of work done for the needs of persons with disabilities while an objective assessment of the specific nature of the work of sign language interpreters justifies recognition of their activity as a work under copyright. Dr n. med. Ewelina Lulińska (Gdańsk University of Physical Education and Sport) and Ms Agnieszka Lulińska (University of Warmia and Mazury) introduced participants in the realm of *Physical activity of a deaf child as a foundation of building social relations*. They talked about the key role of physical activity in the context of social inclusion of persons with disabilities, which at the same time is an essential element of building one’s self-esteem, especially among young persons. They quoted statements from children with disabilities under their care, which gave praise to the sporting challenges the children set for themselves. The next guest, mgr Paweł Robak (Catholic University in Lublin), spoke about *Guarantees of rights of students with disabilities under the law in force*. He noted that the situation of persons with disabilities in Polish universities is changing for the better, as seen in the increasing number of students with different disabilities enrolling at higher education institutions. The author discussed legal acts that guarantee persons with disabilities access to education at the tertiary level and referred to acts of international law, especially the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006, and also to the national legal order

– Act of 20 July 2018 – Law on higher education and science and Act of 3 December 2010 on implementing certain European Union laws on equal treatment. The paper *Algorithms – salvation or a curse for persons with disabilities? International law perspective* was brought by dr Dominika Iwan (University of Silesia). The speaker pointed out that international law today is not adapted to counteract and respond to violations of rights of persons with disabilities which are caused by the use of algorithms in the public and private sector. At the same time, she pointed out that the use of algorithm-based systems requires the understanding of the complexity of the system and needs of its end users. The last talk in the sixth panel was given by mgr Małgorzata Płoszaj (Pedagogical University) who shed light on the following issues: *Towards inclusive education of children with ASD. Effectiveness of training of teachers on ASD*. She noted that the countries of the European Union move away from special education towards inclusive schooling, whereby it is very important to prepare the teaching staff to work with pupils on the autistic spectrum. The model of professional training of teachers of mainstream schools for working with a child with ASD should, therefore, take into account the improvement of the work of those schools and should aim to gradually change teachers' knowledge, attitudes and thinking, to change the teaching practice and to focus on effects measurable by advancement of students' achievements.

The seventh panel focused on "The work and benefits of persons with disabilities against their rights in the Polish law". The debate, chaired by prof. dr hab. Tadeusz Gadkowski (Adam Mickiewicz University), opened with the talk *Social and professional inclusion of adults with intellectual disability* presented by dr hab. Beata Cytowska, professor of the University of Wrocław. She flagged up that publications on social and professional inclusion largely yield research on the realm of life related to cultural activity. Professional work is the second essential element in this context, especially in circumstances of the open labour market as it encourages the development of many social skills and the professional development of persons with disabilities. The floor was then taken by dr hab. Marcin Wujczyk (Jagiellonian University), who read his paper *Employer's obligation to ensure necessary reasonable accommodation as a form of inclusion of employees with disabilities in the workplace*. The author presented regulations included in the Act of 27 August 1997 on professional and social rehabilitation and employment of persons with disabilities, which stipulated the obligation to ensure necessary reasonable accommodation and commented on this provision both from the employer's and from the employee's perspective. Dr Urszula Torbus (University of Silesia) presented a talk *Achieving equality of opportunity of employees with disabilities through reasonable accommodation*, pointing to the key significance of promotion of staying active on the labour market under the Strategy for Persons with Disabilities 2021-2023. Referring to the employer's obligation to ensure reasonable accommodation, dr Torbus recognized the reactive nature of this measure – the obligation arises the moment needs are reported to the work-giving entity, which should make efforts to ensure that the working conditions of a person with disabilities are adequate to their impairments while failure to take such efforts will mean discrimination. Dr hab. Katarzyna Małysa-Sulińska, professor of the Jagiellonian University and dr hab. Magdalena Małecka-Łyszczek, professor of the Cracow University of Economics, discussed *Benefits for carers of persons with*

disabilities and similarities of three kinds of benefits that are especially important: the care benefit, the special care allowance and the carer's allowance. The speakers believed that the model of current regulations requires a broad discussion, in particular on the legitimacy of maintaining all types of benefits and on the premises for granting them. The next subject matter, *A person with intellectual (dis)abilities but fully able in professional life – achieving success on the labour market among graduates of the Special Vocational School*, was examined by dr Iwona Wrycz (Care and Education Centre in Słupsk). She spoke about the special importance of work for persons with disabilities due to the rehabilitation impact of taking up professional activity. Graduates of the Special Vocational School are prepared to act in supporting roles in hotel facilities and the data collected during the research shows that almost all graduates are employed in the open or protected labour market. The last paper in the panel devoted to work and benefits, *Refund procedure. A comparative look focused on people living with diabetes*, was read by mgr Marta Hylewska (Jagiellonian University). She noted that diabetes is included among social and lifestyle diseases and its treatment depends on the type of the condition. She talked about the procedure of obtaining specialist medical equipment (such as an insulin pump) and about the fact that the degree of funding depends on the patient's age.

The eighth panel of the conference was given the title “Legal and non-legal determinants of accessibility in Poland” and was moderated by dr hab. Magdalena Małecka-Łyszczek, professor of the Cracow University of Economics. The opening paper, *Empathy, egoism and economics, or how to implement accessibility based on universal design*, was delivered by dr hab. inż. arch. Marek Wysocki, professor of the Gdańsk University of Technology. He highlighted that accessibility is important to persons with disabilities for their integration, self-reliance and independence and for their exercising of human and civil rights. Additionally, all people benefit from accessibility while universal design promotes employee diversity. He also referred to regulations included in the Act of 19 July 2019 on ensuring accessibility to persons with special needs and in the governmental programme “Accessibility Plus”. He was followed by dr hab. Joanna Kossewska (Pedagogical University) and her presentation *Ecological aspects of social inclusion in a structural angle*. She defined the concept in question as inclusion of a person with disabilities in the social life and the related notions such as interaction and public participation. She presented the mechanism of supporting social inclusion under the BASE model - Behavioral, Academic, and Social Engagement. The last talk, *The role of non-governmental organizations in social inclusion of persons with disabilities – a systemic analysis of selected cases*, was given by dr Iwona Warchoł (Kazimierz Pulaski University of Technology and Humanities in Radom). She presented statistical data on the activity of social and professional reintegration establishments (centres for social integration, social integration clubs, establishments offering employment to persons with intellectual disabilities and occupational therapy workshops). Additionally, she presented examples of non-governmental organizations that act for persons with disabilities (Polish Association of the Blind, Polish Association of the Deaf, “START” Polish Sporting Association of Persons with Disabilities, Open Doors Association).

The last, ninth panel, "Rights of persons with disabilities in individual branches of the Polish law", moderated by dr hab. Tomasz Dubowski (University of Białystok), opened with a talk from dr hab. Małgorzata Balwicka-Szczyrba, professor of the University of Gdańsk: *Discussion on the model of supporting elderly persons with disabilities in civil law trading*. It was noted that current legal regulations were adopted in a different demographic situation and at the moment the state should safeguard rights so that elderly persons could act in civil law trading as long and as fully as possible. The laws should give primacy of action of elderly persons, which may be achieved i.a. by means of anticipatory power of attorney that features in the German law. Next to speak was dr Maciej Domański (Jagiellonian University, Institute of Justice) who presented *Problems related to the abolition of incapacitation in the Polish law*. He examined flaws of incapacitation and pointed to its absolute character, its stigmatising name and a very broad extent of application. The speaker believed that certain elements of incapacitation must remain in force in the drafted legal measures, though they should adhere to subsidiarity, protect against abuses and have the maximum respect to the will of the person with disabilities. The next paper, *Persons with disabilities in criminal procedure – legal regulations against practice*, was read by dr Ilona Topa (University of Silesia). She emphasized the need to ensure the right to courts, including effective access to justice for persons with disabilities by means of procedural adjustments and training of the staff of the system of justice. States should remove all obstacles in law and in fact for persons with disabilities and ensure necessary support. The subject matter of *Protection of patients of psychiatric hospitals* was discussed by dr Jan Ciechorski (Warsaw School of Economics), who began by saying that compliance with the law in force must be the starting point. Listing the rights of patients of psychiatric hospitals, dr Ciechorski identified the right to health care services, to respect of autonomy and to contact with third persons and also the rights of persons admitted to psychiatric hospitals forcibly. The last presentation in this panel was delivered by dr Łukasz Orylski (Foundation for Children with Cancer, Warsaw). It was *Possibilities of implementation of the mechanism of reasonable accommodation in Poland – legal and practical aspects*. He pointed to the universal significance of reasonable accommodation for ensuring accessibility to persons with disabilities. He also noted the need of dialogue between lawyers who make laws and practitioners who deal with the protection of rights of persons with disabilities.

Each presentation in the panels was followed by a heated debate. Dr hab. Ewelina Cała-Wacinkiewicz, professor of the University of Szczecin, closed the proceedings. She thanked all participants for the interesting exchange of thought on social inclusion of persons with disabilities. The presentations made during the conference will be published in a peer-reviewed scholarly monograph.

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