

Implementation of the UN Convention on the Rights of Persons with Disabilities in Poland

General obligations:

Polish regulations concerning disabled persons focus on protecting their existence, but neglect the need to guarantee them equal access to all laws, freedoms and autonomy, including the freedom to make choices, and the respect of the independence of a person. In order to implement the CRPD (UN Convention on the Rights of Persons with Disabilities) it is necessary to utterly change the philosophy of the Polish acts of law concerning disability issues.

According to the official Polish translation of the CRPD, “persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments. In the Polish language the terms “mental impairments” and “intellectual impairments” relate to the same group (intellectual impairments). The term “mental impairments” is missing in the Polish translation, and this may limit the conventional protection towards persons with this kind of disability.

There is no single universally applicable definition of disability in Polish law. There is also no uniform system of disability adjudication. Individual acts use different terms to determine disability, or types of disability, and consequently the granting of certain types of support is conditional on a series of documents. This results in the lack of a coherent system of support for persons with disabilities.

The definition and disability adjudication system included in the Act on Professional and Social Rehabilitation and Employment of Persons with Disabilities (hereafter also the “Act on Rehabilitation”) and the system of adjudication of work incapacity from the Act on Pensions and Annuities from the Social Insurance Fund are essential. According to art. 2 of the Act on Rehabilitation, “disability means a permanent or temporary inability to perform social roles because of permanent or long-term impairment of the body, in particular resulting in inability to work.” According to art. 3 of the Act there are three degrees of disability: severe, moderate and mild. Their definitions are also based on determining the degree of incapacity to work and perform social roles.

Although the definitions are designed for the needs of professional and social rehabilitation and employment, a number of acts from other areas of law refer to them, and this may raise doubts as to their adequacy in these areas. Under the Act on Rehabilitation, a separate system of disability adjudication applies for persons who have not reached 16 years of age.

The difference should be noted between the definition of disability and degrees of disability set out in the Act on Rehabilitation, and the definition adopted in the CRPD. Using as a basis the social model of disability, the CRPD places an emphasis on interaction with various barriers that may limit the full and effective participation in society. Polish acts,

however, in accordance with the medical model of disability, focus on dysfunctions and limitations. Similar criticisms can be made against the system of adjudication on incapacity to work, according to which two types of persons are distinguished – those fully and those partially incapacitated for work. This system is based on a medical model and it uses a terminology that is misleading and strengthens stereotypes about persons with disabilities. It should be noted that according to the regulations of this system, the capability to work in suitable conditions is not an obstacle in adjudicating work incapability. This construction of the system should be criticised, especially as suitable conditions will only differ slightly from the conditions for all other workers, and will often be only a desk beneath which there is a space for a wheelchair, an ergonomic chair, or a special computer mouse. Along with the technological progress of such adaptations, they are also becoming simpler and cheaper.

Distinct adjudication systems for work in homesteads and uniformed services also exist in Polish law. A separate procedure is provided in the education system, and students with disabilities should hold an opinion from a psycho-pedagogical clinic in order to receive support in the education process. The multiplicity of adjudication systems makes obtaining access to information about the possibilities of support difficult for persons with disabilities. Therefore, one disability adjudication system should be created in which the abilities of a specific person should be stated instead of their dysfunctions. To proceed with suitable support for persons with disabilities, the adjudication system should not focus on the limitations of a specific person, but rather on the matter of the right type of support that can provide for them the fullest participation in society. The support of children with disabilities should also be adjudicated under this system, and the adjudicating institution should be uninfluenced by the institutions providing support. It should also result in each person with disabilities being given comprehensive information about available support.

Statutory changes should also be made in relation to disabilities. The Act on Rehabilitation should be replaced by an act on the disability adjudication and institutions and instruments of support for persons with disabilities that regulate the unified adjudication and other interdisciplinary issues related to disability (institutions and funds supporting persons with disabilities and social rehabilitation). Problems related to employment in accordance with the conventional rule of including disability in mainstream society should be regulated in the acts of labour law (such as the employment of minors or pregnant women). At the same time, the Government Plenipotentiary for Persons with Disabilities should be moved from the office supporting the minister responsible for social security to the Prime Minister's Office.

Definition of communication and language does not occur in Polish legal order. Only in art. 69 of the Constitution can we find the obligation of public authorities to provide support in social communication to persons with disabilities. Statutory regulations concerning the issues of communication of persons with different types of disabilities, e.g. the Act on the Sign Language and Other Means of Communication will be discussed later in this report. Referring to the conventional definition of language, it should be noted that in accordance with art. 27 of the Constitution and art. 4 of the Act on the Polish language, the official language in Poland is Polish, but the law on the sign language and other means of communication provides the possibility to use the Polish Sign Language, mutually coded language and a communication system for deafblind persons in official situations. The Polish

legal system lacks a regulation regarding the use of augmentative and alternative communication (AAC) by persons with disabilities of speech. This frequently precludes or hinders the functioning of these persons in public and social life. Similarly, there are no legal solutions targeted at persons with intellectual disability, such as easy-to-read texts or pictograms.

In the Polish legal system the concept of universal design is not applied. Construction law uses terms such as “environment free from functional barriers” and “elimination of architectural, technical and communication barriers related to the individual needs of disabled persons”; these do not meet the requirements of the Convention for Universally Designed Objects. This is because they imply the designing of special solutions for persons with disabilities instead of providing them with access to the products, environment, programmes and services available to all.

In the official Polish translation the conventional term “reasonable accommodation” is translated as “reasonable improvements”, not “reasonable adaptation”. This is a mistake because “improvements” relate to a person and, according to the CRPD, this process is about adjusting social life to the needs of persons with disabilities. Moreover, the term “reasonable accommodation” occurs in Polish law only in the range of employment. Art. 23a of the Act on Rehabilitation obliges an employer to provide the necessary reasonable accommodation for persons with disabilities who take part in a recruitment process or training, internships, vocational training, apprenticeships or apprenticeships for graduates while remaining in an employment relationship with them. The Act does not define the term “reasonable accommodation”. It also does not refer to the requirement of not imposing “disproportionate and undue burden”.

Polish law also lacks clear references to guarantees of the full and effective participation and inclusion of persons with disabilities into society. You can specify the instruments for this purpose, but measures in this regard cannot be considered as the goal of the State policy towards persons with disabilities. In Polish law the term “social inclusion of persons with disabilities” does not even occur.

The legal system of the Republic of Poland lacks the instruments that may serve the promotion of the involvement of persons with disabilities in CRPD implementation. In particular, it should be noted that in the case of the National, Voivodeship and County Advisory Boards for Disabled Persons and the Board of Directors of the State Fund for Rehabilitation of Disabled Persons provided by the Act on Rehabilitation, no regulations have been implemented that guarantee the adequate participation of persons with disabilities within them. Moreover, actions have not been taken in this regard by the authorities that were supposed to implement the CRPD. It should also be noted that in 2012, in the procedure of appointing the Sign Language Council by the Government Plenipotentiary for Persons with Disabilities, out of the 16 members of the Council no deaf person was enlisted. Deaf persons were appointed indeed, but only after the protests of the community of deaf people and the speech of the Ombudsman.

The procedures of consultations with the disabled community should also be modified. Currently, consultations are only limited to posting the project of the act on the office's web page and to offering the possibility to make comments within an indicated time. A procedure that will guarantee an authentic dialogue with the disabled community, taking into account its specific requirements, should be implemented.

No training is implemented in Poland for different professional groups in view of raising awareness of the modern attitude towards disabilities included in the CRPD.

Implementation and monitoring in Poland

The implementation of the provisions of the CRPD in Poland must be analysed at many levels and it is difficult to express one general opinion on this process. One should instead talk about the implementation of individual articles or even parts of the solutions indicated in these articles. The Minister of Labour and Social Policy was indicated as a mechanism coordinating the implementation of the CRPD, and on their behalf the Government Plenipotentiary for Persons with Disabilities was indicated in turn. The Minister also appointed a team for the implementation of the provisions of the Convention. The team includes representatives of various ministries and institutions. Persons with disabilities, representatives of non-governmental organisations and other stakeholders are invited to team meetings. Team meetings are – when it is necessary – interpreted into the Polish Sign Language. The team works in accordance with a fixed plan and responds to the issues that arise on a regular basis. What adversely affects the functioning of the team, and more broadly the implementation of the Convention, is placing the Plenipotentiary at the Ministry of Labour and Social Policy, instead of at the Prime Minister's Office. The result of this is the perception of issues concerning persons with disabilities only at the level of social policy. Obviously, this is part of a broader issue concerning the general trend of recognising individual issues from the “ministerial” perspective. The implementation of the CRPD definitely is not of such character and requires very broad cooperation both at the governmental and local government level. In the overall assessment, it must be stated that the main assumptions of the Convention are not implemented in Poland. There is also no plan (or at least no plan is known of to the public) for implementing the provisions of the Convention. It is not operationalised – there is a lack of well-known indicators, milestones and operational plans. Strengthening the role of the Government Plenipotentiary and thereby giving greater importance to the implementation of the Convention should be the most important task for Poland in the next few years.

The Ombudsman is an independent body that monitors the implementation of the CRPD. It should be highlighted that it is a very high priority that Professor Irena Lipowicz gives to her activities on the matters related to the implementation of the CRPD, and more broadly on respecting the rights of persons with disabilities. The Ombudsman has appointed the Commission of Experts on Persons with Disabilities, publishes a newsletter on the implementation of the CPRD, takes multiple interventions concerning several articles

(unfortunately the effectiveness of these interventions differs, but a lack of commitment on the Ombudsman's part shall not be suggested here), and also publishes broader studies on the CRPD and its individual articles.

The biggest deficiencies in the implementation of the Convention in Poland occur at the level of local governments. While a change may be noted at the legislative level and, for example, while designing the implementation of the European funds in Poland, most local governments not only intentionally fail to implement the provisions of the Convention, but do not even know of its existence.

The implementation of the CRPD in Poland has a chance to accelerate significantly through the adoption by the Government and the European Commission of the Operational Programme “Knowledge Education Development”, in which the investment priority for implementation of the Convention was taken into account. Although the document itself was adopted after the reporting period covered by this report, the work on it took place during the reporting period. Non-governmental organisations for persons with disabilities were involved in this work. Special consideration of the issue of persons with disabilities in the Operational Program “Knowledge Education Development” was included at the initiative of non-governmental organisations – in the future it may be considered that the Convention is effectively implemented in Poland if the initiative of proper recognition of cases of persons with disabilities belongs to the government and local governments.

The issue of the publication of the text of the Convention in an accessible format may serve as an illustration of what is wrong with the implementation of the provisions of the CRPD in Poland and how much it is necessary to change the way of thinking about the principles set out in the Convention. The legal acts are published in the Internet System of Legal Acts, among other places. The text of the Convention is published there in a format that prevents familiarisation with its contents. According to the institutions responsible for this, there is no legal possibility of altering this state of affairs. And it seems that this possibility is very simple and can be taken advantage of almost immediately. The rules should be changed so that all legal acts are published in accessible formats. This shall be guaranteed by the ordinance on the National Interoperability Frameworks, which will come into force in 2015. However, even in this document no sanctions are provided for preventing persons with disabilities from familiarising themselves with the text of the Convention in its official form. On the other hand, the Ombudsman publishes not only the available text of the Convention but also its translation into an easy-to-read text prepared by an NGO and a film in the Polish Sign Language that discusses the fundamental principles of the Convention. What should be emphasised is that this film was financed with the funds from the European Social Fund but somehow this happened “beyond” the main purpose of spending these funds. It turns out that it is possible, for example to familiarise persons with various disabilities with the principles set out in the CRPD, but there is often a lack of the appropriate action on the side of the executive.

In 2012, a public campaign was made devoted to the ratification of the CRPD. The campaign was implemented by an NGO and financed with public funds from the SFRDP. The campaign, on the one hand, used modern means of communication (“murals”) and paved the

way for public discussion on the rights of persons with disabilities, but, on the other hand, operated only with the image of persons in wheelchairs, and the video materials developed in the campaign did not have subtitles and a sign language interpreter.

Both the Government and the Ombudsman carried out broad consultations on the reports on the implementation of the CRPD. It is worth noting that the Ombudsman commissioned the translation of the report into the Polish Sign Language to facilitate the familiarisation of deaf persons with its contents. Moreover, the Ombudsman organised a series of meetings and online consultations. At this stage, it is difficult to assess which comments from the consultations were taken into account. In the case of the government report, it should be stated that most of the comments made in the consultations (mainly by several representatives of NGOs working for persons with disability and equality) were not included in the report submitted to the UN.

Recommendations for further action:

1. Ratifying the Optional Protocol.
2. Abolition of marriage prohibition for persons with disabilities.
3. Changing the incapacitation system into a supported decision-making system.
4. Together with the disabled community, developing a social policy strategy concerning persons with disabilities (aims, areas, instruments, support, criteria, etc.) including the timetable of implementing the Convention.
5. Changing the definition of disability and types of disabilities and the standardisation of the adjudication system to be compatible with the Convention and the developed strategies.
6. Relocating the Government Plenipotentiary for Persons with Disabilities to the Prime Minister's Office. Making them horizontally responsible for the social policy towards persons with disabilities and co-ordinating all decision-making centres.
7. Basing legislation on the principles of dignity, autonomy and independent living of persons with disabilities.
8. Supporting the activity, and not the passivity, of persons with disabilities. Increasing the share of benefits and services of a compensative, activating and inclusive character.
9. Individualisation of support.
10. De-institutionalisation – transition from support in large institutions to support in local communities.

11. Extending the offer of public services significantly.
12. Strengthening the support of the State for families of persons with disabilities.
13. Giving preference to the open labour market.
14. Giving preference to and promoting inclusive education.
15. The inclusion of persons with disabilities in the process of law making and developing social policy programmes, including guaranteeing them adequate participation in decision-making bodies.
16. Passing an anti-discrimination bill to provide persons with disabilities with comprehensive protection.
17. Continuous training programmes to raise awareness about disability aimed at employees responsible for public services.
18. Liquidation of eugenic abortion.
19. Correction of the mistakes in the translation of the Convention.