

# EMPLOYMENT OF DISABLED PERSONS IN POLAND

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Fecha de recepción: 21-09-2014

Fecha de aceptación: 04-10-2014

**SUMMARY:** 1. NORMATIVE GROUNDS FOR THE PROTECTION OF DISABLED PERSONS. 2. DEFINITIONS OF DISABILITY. 3. CERTIFICATES ATTESTING DISABILITY. 4. PROMOTING THE EMPLOYMENT OF DISABLED PERSONS. 5. NO DISCRIMINATION IN EMPLOYMENT ON GROUNDS OF DISABILITY. 6. DAMAGES DUE TO PERSONS DISCRIMINATED AGAINST IN EMPLOYMENT ON GROUNDS OF DISABILITY. 7. REASONABLE ACCOMMODATION FOR DISABLED PERSONS IN THE WORKPLACE. 8. EMPLOYMENT OF DISABLED PERSONS IN OPEN AND SHELTERED LABOUR MARKET. 8.1. Quota system. 8.2. Employment of disabled persons in public administration. 8.3. Employment of disabled persons in sheltered and vocational rehabilitation workshops. 8.4. Social employment of disabled persons. 9. SYSTEM TO SUPPORT THE EMPLOYMENT OF DISABLED PERSONS FROM PUBLIC FUNDS. 9.1. Supporting employers of disabled persons with public funds. 9.2. Supporting sheltered and vocational rehabilitation workshops with public funds. 9.3. Supporting social cooperatives of disabled persons with public funds. 9.4. Supporting self-employment of disabled persons with public funds. 10. LABOUR MARKET PARTICIPATION OF DISABLED PERSONS – STATISTICAL DATA. 11. DISABLED STUDENTS AND GRADUATES IN POLAND. 11.1. The right to education of disabled persons. 11.2. Organisational assistance for disabled students and doctoral students. 11.3. Financial assistance for disabled students and doctoral students. 11.4. The role of higher education institutions in the process of transition of disabled persons from studies to labour market. 11.4.1. *General comments.* 11.4.2. *The role of student career offices in occupational activation of disabled students and graduates.* 11.4.3. *Monitoring the career of disabled higher education institution graduates.* 11.5. Statistical data. 11.5.1. *Disabled students and higher education institution graduates.* 11.5.2. *Level of education*

*and labour market share of disabled persons.* 12. CONCLUSIONS. 13. BIBLIOGRAPHY.

**RESUMEN:** El presente estudio está dedicado al tema del empleo de personas con discapacidad en Polonia. La Constitución de la República de Polonia define un marco de obligaciones para las autoridades públicas (nacionales y locales) en el ámbito de la protección de los derechos de las personas con discapacidad en materia de empleo. Las regulaciones específicas en este ámbito están previstas en leyes y reglamentos. El tipo de soluciones introducidas por el legislador polaco está notablemente influenciado por los estándares internacionales y de la Unión Europea, particularmente en lo relativo a la igualdad de trato de las personas con discapacidad en el empleo, y en la adopción de mejoras razonables para estas personas en su lugar de trabajo. Los dos problemas fundamentales son la eficacia del sistema polaco de apoyo al empleo y la rehabilitación profesional de las personas con discapacidad a través de fondos públicos, y la transición sin problemas de los estudios al mercado laboral para las personas con discapacidad. Las áreas mencionadas requieren la adopción de medidas sistémicas.

**ABSTRACT:** The study concerns the issue of employing disabled persons in Poland. The Constitution of the Republic of Poland sets out framework obligations of public authorities (state and local) in the scope of protecting the rights of disabled persons in the field of employment. Detailed regulations in this scope are provided for in acts and regulations. The shape of solutions introduced by the Polish law maker is considerably influenced by the international and EU norms, in particular the solutions pertaining to equal treatment of disabled persons in employment and introduction of reasonable improvements for such persons in the workplace. The two major problems are the efficiency of the Polish system of support for the employment and vocational rehabilitation of disabled persons with public funds, and the smooth transition of disabled persons from studies to the labour market. The above mentioned areas require taking systemic measures.

**PALABRAS CLAVE:** discapacidad, persona con discapacidad, empleo, derecho laboral, empleado con discapacidad.

**KEYWORDS:** disability, disabled person, employment, Labour law; disabled employee.

## 1. NORMATIVE GROUNDS FOR THE PROTECTION OF DISABLED PERSONS

The provision of Article 68(1) of the Constitution of the Republic of Poland of 2 April 1997 reads that public authorities shall ensure special health care to disabled persons. Whereas under Article 69 of the Constitution, public authorities shall provide aid to disabled persons to ensure their subsistence, adaptation to work and social communication. "The aim of public authorities (state and local) is to provide, wherever possible, conditions enabling disabled persons to earn a livelihood and participate in social life."<sup>1</sup> Social and professional integration of disabled persons is a fundamental principle of social policy with respect to this group of persons.<sup>2</sup>

In Poland, the labour law was codified. The Act of 26 June 1974 – Labour Code is the most important source of labour law. As emphasised in the literature, "the Labour Code does not implement the stipulation of codification completeness to a full extent. [...] Numerous provisions remain outside the Labour Code, which have the *lex specialis* character with respect to this act, or are separate provisions systematically falling within the areas not covered by the codification. (...) Rights and obligations of employers and employees are provided for (...) not only in the Code, but also in other acts."<sup>3</sup>

The issue of vocational rehabilitation and employment of persons with disabilities is not regulated under the provisions of the Code. Detailed regulations in this area are included in the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities and numerous regulations issued under the authority stipulated in the Act.

The Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities specifies, *inter alia*, the rules of disability determination for the purposes of vocational rehabilitation and employment (Chapter II of the Act), additional rights of disabled employees (Chapter IV of the Act), as well

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<sup>1</sup> P. WINCZOREK, "Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku", wydanie 2., Warszawa, 2008, s. 166.

<sup>2</sup> B. KOŁACZEK, "Polityka społeczna wobec osób niepełnosprawnych", Warszawa, 2010, s. 168.

<sup>3</sup> L. FLOREK, "Prawo pracy", wydanie 14, Warszawa 2012, s. 27-29.

as special rights and obligations of employers relating to the employment of disabled persons (Chapter V of the Act). The rules provided for in the Act are substantiated, *inter alia*, in the following regulations: Regulation of the Minister of Economy, Labour and Social Policy of 15 July 2003 on determining the disability and the degree of disability; Regulation of the Minister of Labour and Social Policy of 28 November 2007 on conditions, manner and procedure of collection and deletion of data in and from the Electronic National System of Monitoring the Disability Determination; Regulation of the Minister of Labour and Social Policy of 11 March 2011 on reimbursement for the additional costs related to employment of disabled employees; Regulation of the Minister of Economy, Labour and Social Policy of 22 May 2003 on detailed rules of granting absence leaves to persons with severe or moderate degree of disability for the purpose of participating in rehabilitation camp.

The shape of the normative regulation of the rights of disabled persons in the area of employment, as well as of the rights and obligations of the employer related to the employment of disabled persons in Polish law, is influenced to a considerable extent by international standards. Poland ratified the United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities (6 September 2012), Convention No. 159 of the International Labour Organization of 20 June 1983 on vocational and social rehabilitation and employment of disabled persons (4 November 2004), and Convention No. 111 of the International Labour Organization of 25 June 1958 (8 May 1961) and the European Social Charter of 18 October 1961 (2 June 1997). The above-listed international agreements, upon their ratification and publication in the Journal of Laws of the Republic of Poland, have become a part of the national legal order. Pursuant to Article 87(1) of the Constitution of the Republic of Poland of 2 April 1997, they are the sources of universally binding law.

European Union norms affect as well the legal solutions introduced by the Polish law maker, in particular those aimed at ensuring equal treatment in employment (including counteracting discrimination in employment on grounds of disability). When undertaking actions aimed at implementing Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Section I of the Labour Code was extended by adding Chapter IIa entitled *Equal treatment in employment*. Moreover, the Act of 3 December 2010 on the implementation of certain provisions of the European Union in the field of equal treatment was adopted. The provisions of Chapter IIa in Section I of the Labour Code apply to employment relationships, whereas provisions of the Act of 3 December 2010 apply to employment relationships in the scope not regulated by the

Labour Code and to the forms of employment other than under contract of employment.

Sources of labour law include not only the sources of universally binding law listed in Article 87 of the Constitution of the Republic of Poland of 2 April 1997, but also sources specific to the labour law, referred to as “autonomous”. Pursuant to Article 9(1) of the Labour Code, the latter includes collective labour agreements and other collective agreements based on the law, regulations (including work, remuneration and company social benefit fund regulations) and statutes (including statutes of higher education institutions and labour cooperatives). The provisions of collective labour agreements and other collective agreements based on the law, as well as of regulations and statutes, set out the rights and duties of the parties to the employment relationship, but may not disadvantage employees more than the provisions of the Labour Code and other laws and secondary legislation [Article 9(2) of the Labour Code]. Autonomous (non-statutory) sources of labour law may set out, in particular, additional rights of disabled employees, formulating more advantageous legal situation of those employees than the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities.

## 2. DEFINITIONS OF DISABILITY

In the Polish legal system, the definition of disability was first formulated in the Act of 9 May 1991 on employment and vocational rehabilitation of persons with disabilities. The Act was repealed under Article 69 of the currently applicable Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities. The term “disability” was used before in the resolution of the Sejm<sup>4</sup> (Parliament) of the People’s Republic of Poland of 16 September 1982 on handicapped and disabled persons and in the Act of 29 November 1990 on social aid,<sup>5</sup> which is no longer in effect. However, the term was not defined therein.

Pursuant to Article 2(10) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities, disability means the permanent or periodic inability to perform social roles due to permanent or long-term

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<sup>4</sup> Editor’s note: “Sejm” is the lower house of the Polish Parliament.

<sup>5</sup> J. JAWORSKI, “Praca dla osób niepełnosprawnych w zwalczaniu ich wykluczenia społecznego. Ocena polskiego systemu wspierania zatrudnienia osób niepełnosprawnych”, Warszawa, 2009, s. 19.

physical impairment, in particular resulting in inability to work. When determining the meaning of the concept of “disability” for the purpose of vocational and social rehabilitation and employment, the Polish law maker considered the medical and social aspect of disability. “When analysing the definition of disability, it is hard not to get the impression that [...] the law maker treats the inability to work in a special way, giving it, in a way, the priority over other social roles. However, a question arises whether such approach does not compromise the purpose of the Act, being the vocational rehabilitation with the aim to facilitate disabled persons to obtain and maintain appropriate employment.”<sup>6</sup>

The law maker provides for three degrees of disability: minor, moderate and severe. The physical impairment, resulting in a significant reduction of the ability to perform work as compared with the ability of a person with similar vocational qualifications with full mental and physical capacities, or a restricted ability to perform social roles which may, however, be compensated by means of orthopaedic equipment, auxiliary appliances or technical means and may be determined as an instance of minor disability. Whereas a person unable to work or able to work only in sheltered working conditions, or requiring temporary or partial assistance of other persons to perform his/her social roles is determined as a person with moderate disability. A severe degree of disability corresponds in turn to the case of a person unable to work or able to work in sheltered working conditions only, who thus requires the permanent or long-term care and assistance of other persons to perform his/her social roles, on account of his/her inability to lead an independent existence. Determination of a moderate or severe degree of disability does not exclude the possibility of such person being employed by an employer who does not provide sheltered working conditions, if the workstation is adapted to the needs of a person with disabilities or if a person is employed in the telework system (Articles 3-4 of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities).

It is worth mentioning that the Convention No. 159 of the International Labour Organization ratified by Poland provides for a definition of a disabled person for the purpose of vocational and social rehabilitation and employment, whereas the United Nations Convention on the Rights of Persons with Disabilities, also ratified by Poland, sets out a “general” definition of a disabled person. Moreover, the concept of a

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<sup>6</sup> A. TYŚKIEWICZ-MAZUR, “Definicje niepełnosprawności na potrzeby rehabilitacji zawodowej i zatrudnienia”, w: *Zatrudnianie osób niepełnosprawnych. Regulacje prawne*, redakcja A. Giedrewicz-Niewińska, M. Szablowska-Juckiewicz, Difin SA, Warszawa, 2014, s. 45.

disabled person was also defined in the resolution of the Sejm of the Republic of Poland of 1 August 1997 entitled the Charter of Rights for Persons with Disabilities.

### 3. CERTIFICATES ATTESTING DISABILITY

In accordance with Article 1 of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities, a disabled person is a person whose disability is confirmed by a certificate certifying his/her degree of disability: minor, moderate or severe, or his/her total or partial inability to work under separate legislation, or his/her disability issued before attaining 16 years of age. "The definition of a disabled person under Article 1 of the Act is formal in this sense that regardless of the health condition, a given person is deemed disabled only if he/she obtained a relevant certificate of a competent authority".<sup>7</sup>

The process of determining the disability is conducted in two instances. Disability is determined by "poviat"<sup>8</sup> (county) teams of experts for determining the disability as first instance, and "voivodship"<sup>9</sup> (province) teams of experts for determining the disability as second instance. The Government Plenipotentiary for Disabled People supervises the process of disability determination [Article 6(1)-(1a) and Article 6c(1) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities]. In order to improve the effectiveness and quality of disability determination, the Electronic National System of Monitoring the Disability Determination was established (Article 6d of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities and Regulation of the Minister of Labour and Social Policy of 28 November 2007 on conditions, manner and procedure of collection and deletion of data in and from the Electronic National System of Monitoring the Disability Determination).

"Poviat" and "voivodship" teams of experts for determining the disability issue certificates of disability of persons under 16 years of age, certificates of the degree of

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<sup>7</sup> K. ŻAK, "Prawne pojęcie niepełnosprawności", w: *Studia z zakresu prawa pracy i polityki społecznej*, redakcja A.M. Świątkowski, Kraków 2003/2004, s. 349.

<sup>8</sup> Editor's note: "Poviat" is a Polish administrative division corresponding to a county in other countries.

<sup>9</sup> Editor's note: "Voivodship" is a Polish administrative division corresponding to a province in other countries.

disability of persons who attained 16 years of age and certificates of recommendation to exemptions and entitlements of persons holding certificate of inability to work or of disability (Article 2 of the Regulation of the Minister of Economy, Labour and Social Policy of 15 July 2003 on determining the disability and the degree of disability). Disability of a child is determined for a specified period, however for a period not longer than until he/she attains 16 years of age, whereas the degree of disability of a person over 16 years of age is issued for a specified period or permanently. Whereas certificates of recommendation to exemptions and entitlements are issued until the expiry of a certificate of inability to work or disability (Article 3(5)-(7) of the Regulation of the Minister of Economy, Labour and Social Policy of 15 July 2003 on determining the disability and the degree of disability). Certificates issued by “poviat” and “voivodship” teams of experts for determining the disability are administrative decisions.<sup>10</sup>

Equivalent to the relevant certificates of the degree of disability are considered the certificates issued by authorized physician of the Social Insurance Institution and certificates on qualification of the disabled person to one of disability groups, the latter provided that they did not lose their binding force before 1 January 1998 (Article 5 and 62 of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities).

#### 4. PROMOTING THE EMPLOYMENT OF DISABLED PERSONS

“Disabled persons are a social group which from the very beginning since the unemployment in Poland emerged enjoys (...) the separation in the scope of support in finding the employment”.<sup>11</sup> Pursuant to Article 2(1)(2) of the Act of 20 April 2004 on the promotion of employment and labour market institutions, a disabled person may have the status of unemployed if he/she is able and ready to undertake employment at least on a half-time basis for a given profession or service or other paid work. Persons without the certificate of disability are required to be able and ready to undertake full time employment. “Disabled unemployed may use the services and

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<sup>10</sup> I. RADZIWON, “Orzekanie o niepełnosprawności oraz o jej stopniu”, w: *Zatrudnianie osób niepełnosprawnych. Regulacje prawne*, redakcja A. Giedrewicz-Niewińska, M. Szablowska-Juckiewicz, Difin SA, Warszawa, 2014, s. 50.

<sup>11</sup> E. STASZEWSKA, “Środki prawne przeciwdziałania bezrobociu”, LEX a Wolters Kluwr business, Warszawa, 2012, s. 236.

measures of labour market intended for all unemployed persons registered in a “poviat” labour office. Moreover, on account of such persons being considered persons in special labour market situation, additional actions are taken with respect to them.”<sup>12</sup>

Expenditures for services or labour market instruments for disabled persons registered as unemployed are financed with the Labour Fund resources [Article 11(3)(1) of the Act of 20 April 2004 on the promotion of employment and labour market institutions]. This includes -but is not limited to- financing expenditures for:

- 1) medical or psychological examinations to determine ability to perform work, participate in a training or apprenticeship, work practice, performance of works of social benefit, as well as to determine the specific psychophysical predispositions required to perform a given occupation;
- 2) reimbursement for the costs of travelling to a medical or psychological examination;
- 3) trainings, work practice, apprenticeship for adults;
- 4) reimbursement for the costs of travelling to the employer submitting the job offer or to the place of work, work practice, apprenticeship for adults or classes in the scope of vocational counselling in connection with the referral of the “poviat” labour office;
- 5) reimbursement for the costs of accommodation at the place of work for the person who took up employment or other gainful work, work practice, apprenticeship for adults outside the place of permanent residence, in the case of the referral by the “poviat” labour office;
- 6) work of social benefit (up to 60% of the minimum benefit amount due to the persons performing work of social benefit, the remaining part is financed by gmina which organises the work of social benefit) and reimbursement for the costs of travelling to the place of performing the work of social benefit;
- 7) post-graduate studies.

Persons in a special situation in the labour market, including disabled unemployed persons, are a priority group in referral to a special programme. Moreover, a “starost” may enter into agreement with an employment agency to bring the unemployed in a special situation on the labour market for employment or other gainful work under civil law contracts for the period of at least 6 months [Article 49(6)

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<sup>12</sup> M. SZABŁOWSKA, “Wyrównywanie szans osób niepełnosprawnych w zakresie dostępu do zatrudnienia na otwartym rynku pracy”, *Polityka Społeczna*, nr 10, 2013, s. 21.

and Article 61b of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities].

With respect to disabled persons holding the status of unemployed, not only actions financed with the Labour Fund resources are taken, but also actions financed with the State Fund for Rehabilitation of Disabled Persons resources.

Within the actions aimed at the labour market activation of disabled graduates, JUNIOR programme is implemented by the “powiat” labour office and the “voivodship” branches of the State Fund for Rehabilitation of Disabled Persons.

The addressees of the programme are persons with determined severe, moderate or minor degree of disability of up to 25 years of age –or in the case of persons who graduated from the higher education institution up to 27 years of age– referred to work practice as per the terms and conditions stipulated in the Act of 20 April 2004 on the promotion of employment and labour market institutions. The financial support from the State Fund for Rehabilitation of Disabled Persons is granted to: a disabled graduate (co-financing in the form of benefit for vocational rehabilitation), a vocational counsellor (bonus for taking care of a disabled trainee) and an employer participating in the programme (bonus for the placement of a disabled graduate), with the exclusion of employers operating a vocational rehabilitation facility.<sup>13</sup>

## 5. NO DISCRIMINATION IN EMPLOYMENT ON GROUNDS OF DISABILITY

Article 32(2) of the Constitution of the Republic of Poland of 2 April 1997 provides, in general, that no one shall be discriminated against in political, social or economic life “for any reason whatsoever”, yet does not indicate any special criteria of discrimination.<sup>14</sup>

The principle of equal treatment in employment is a fundamental principle of Polish labour law (Article 11<sup>2</sup>-11<sup>3</sup> of the Labour Code). Equal treatment in employment means that there must be no discrimination whatsoever, directly or indirectly, in particular on grounds of sex, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, creed, sexual orientation, as

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<sup>13</sup> “Informator dla osób niepełnosprawnych”, Warszawa 2013, s. 45-46.

<sup>14</sup> M. CHMAJ, “Równość wobec prawa i zakaz dyskryminacji”, w: *Konstytucyjne wolności i prawa w Polsce*, tom 1. *Zasady ogólne*, redakcja M. Chmaj, Kraków 2002, s. 129.

well as on grounds of employment for a definite or indefinite period of time or full time or part time employment [Article 18<sup>3a</sup>(2) of the Labour Code].

The Polish law maker formulates the prohibition against discrimination in employment, including employment relationships and employment other than under contract of employment. The signs of breach of the principle of equal treatment in employment include: direct discrimination on grounds of disability, indirect discrimination on grounds of disability, harassment on grounds of disability and practices related to encouraging another person to violate the principle of equal treatment in employment or when a person is ordered to violate that principle [Article 18<sup>3a</sup>(2)–(5) of the Labour Code and Article 3(1)-(3) and (5) of the Act of 3 December 2010 on the implementation of certain provisions of the European Union in the field of equal treatment]. The employer's failure to ensure necessary and reasonable improvements for disabled persons in the work establishment [Article 23a(3) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities] is also deemed a breach of the principle of equal treatment in employment within the meaning of Article 18<sup>3a</sup>(2)-(5) of the Labour Code.

Employees should be treated equally in terms of establishing and terminating an employment relationship, employment conditions, promotion conditions, as well as access to training in order to improve professional qualifications, in particular regardless of disability [Article 18<sup>3a</sup>(1) of the Labour Code]. "Provisions of the Labour code, based on the EU law, stipulate various circumstances which despite differentiation in the situation of the employee do not constitute breach of the principle of equal treatment in employment. Such differentiation must be objectively justified and proportionate to the aim the achievement of which is legitimate."<sup>15</sup> The law maker allows for applying measures resulting in different treatment of the legal situation of an employee in respect of the disability protection and introducing measures for a specified period of time aimed at the creation of equal opportunities for disabled employees [Article 18<sup>3b</sup>(2)(3) and Article 18<sup>3b</sup>(3) of the Labour Code].

The contents of Article 18<sup>3b</sup>(2)(1) of the Labour Code are also worth mentioning. Pursuant to this provision, the principle of equal treatment in employment is not violated by conduct proportionate to legitimate aim, consisting in deciding not to employ an employee on one or more grounds referred to in Article 18<sup>3a</sup>(1) of the Labour Code (including on grounds of disability), where the type of work or the conditions of its performance mean that the characteristic or the characteristics referred to in that provision constitute a genuine and determining

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<sup>15</sup> L. FLOREK, "Prawo pracy", wydanie 14., C.H. Beck, Warszawa, 2012, s. 19.

occupational requirement for the employee. Taking this into account, in its judgment of 12 April 2012 (II PK 218/11) the Supreme Court found that “health condition allowing for performing all prosecutor’s duties, unconditionally in irregular working hours, is essential and determining occupational requirement for regional public prosecutor (public prosecutor assistant). This requirement is of particular relevance owing to the fact that it ensures proper performance of duties imposed on the public prosecutor’s office, therefore the aim of the requirement is legitimate. Such health requirement does not also fall beyond the scope of what is inevitable to achieve this aim. Health requirements are adjusted to the scope of duties of the public prosecutor, thus they must be deemed proportionate.” Therefore, the dismissal of the claimant “due to her disability, as a result of which she lost the ability to perform the occupation of a regional public prosecutor (public prosecutor assistant), [...] cannot be deemed a prohibited act of discrimination.” The Supreme Court emphasizes, however, that “the assessment whether a disabled public prosecutor is able to perform his/her obligations depends on the circumstances of a given case, where the degree of disability (physical impairment) and the scope of the public prosecutor’s duties play a significant role.”

## 6. DAMAGES DUE TO PERSONS DISCRIMINATED AGAINST IN EMPLOYMENT ON GROUNDS OF DISABILITY

From the effective date of the Act of 14 November 2003 to amend the Labour Code and certain other acts (i.e. 1 January 2004), an employee discriminated against on grounds of disability is entitled to damages under Article 18<sup>3d</sup> of the Labour Code. At the present moment, Article 18<sup>3d</sup> of the Labour Code provides only for the bottom limit of damages (at least the amount of the minimum remuneration for work) due to an employee from the employer, which corresponds to the European norms.<sup>16</sup>

When determining the rules of liability for damages for breach of the principle of equal treatment in employment, the Polish law maker stipulated only damages and did not decide to introduce cash compensation for suffered harm. In the opinion of the Supreme Court, such shape of normative regulation does not prevent an employee from claiming remedy of not only property damage, but also non-property damage under Article 18<sup>3d</sup> of the Labour Code (judgment of the Supreme Court of 7 January

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<sup>16</sup> Z. GÓRAL, w: *Zarys systemu prawa pracy*, tom 1. *Część ogólna prawa pracy*, redakcja K.W. Baran, Warszawa, 2010, s. 631.

2009, III PK43/08; judgment of the Supreme Court of 3 April 2008, II PK/07). Similar view on damages under Article 18<sup>3d</sup> of the Labour Code is shared by the representatives of legal writings.<sup>17</sup>

The dispute regarding damages under Article 18<sup>3d</sup> of the Labour Code is a matter falling within the scope of the labour law within the meaning of Article 476(1) of the Code of Civil Proceedings and jurisdiction of labour courts (labour and social insurance courts).<sup>18</sup> In judicial proceedings, a person requiring payment of damages from the employer for the breach of the principle of equal treatment in employment enjoys evidentiary facilitations. Under Article 18<sup>3b</sup>(1) of the Labour Code, a “special allocation of the burden of proof, other than provided for in Article 6 of the Civil code” was introduced.<sup>19</sup> This means that “an employee should indicate facts proving the alleged unequal treatment, and then the burden of proof that its reasons were objective shifts to the employer” (judgment of the Supreme Court of 9 June 2006, III PK 30/06).

Persons in employment other than under contracts of employment (in particular under civil law contracts) who were the victims of discrimination on grounds of disability have the right to claim damages under Article 13 of the Act of 3 December 2010 on the implementation of certain provisions of the European Union in the field of equal treatment. They enjoy evidentiary facilitations mentioned in Article 14 of the said Act.

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<sup>17</sup> P. CZARNECKI, “Charakter prawny odszkodowania za dyskryminację w zatrudnieniu”, *Praca i Zabezpieczenie Społeczne*, nr 2, 2012, s. 18; T. LISZCZ, “Odpowiedzialność odszkodowawcza pracodawcy wobec pracownika”, *Praca i Zabezpieczenie Społeczne*, nr 1, 2009, s. 2.

<sup>18</sup> W. SANETRA, w: J. Iwulski, W. Sanetra, “Kodeks pracy. Komentarz”, wydanie 2., Warszawa, 2011, s. 181.

<sup>19</sup> B. WAGNER, “Zasada równego traktowania i niedyskryminacji”, *Praca i Zabezpieczenie Społeczne*, nr 3, 2002, s. 11.

## 7. REASONABLE ACCOMMODATION FOR DISABLED PERSONS IN THE WORKPLACE

The employment relationship provides for a general obligation of the employer to protect health and life of an employee.<sup>20</sup> Pursuant to Article 207(2)(5) of the Labour Code, the employer is obliged to protect the health and life of employees by ensuring conditions of health and safety at work by the appropriate use of the achievements of science and technology. In particular, the employer is obliged to consider the protection of health and life of disabled employees within the preventive measures undertaken.

Special obligations of the employer related to the employment of disabled persons are set out in the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities. Article 23a was added in the said Act under the influence of the European Union law. The provision imposes obligations on the employer in the scope of introducing reasonable accommodation for disabled persons. The employer should ensure reasonable accommodation not only to a disabled person bound by the employment relationship therewith, but also to a disabled person participating in the recruitment process or training, work practice, vocational apprenticeship or work or postgraduate traineeships. "This means that obligations of the employer in the scope of introducing reasonable accommodation are universal. It should be noted, however, that the employer is released from introducing reasonable accommodation creating a disproportionate burden. This is the only reason for refusing the introduction of reasonable accommodation by the employer."<sup>21</sup> Pursuant to Article 23a(2) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities, the burden related to introducing reasonable accommodation shall not, however, be deemed disproportionate when it is sufficiently compensated with public funds. This refers, in particular, to a situation where the employer introducing reasonable accommodation may obtain reimbursement from the State Fund for Rehabilitation of Disabled Persons for

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<sup>20</sup> T. WYKA, "Ochrona zdrowia i życia pracownika jako element treści stosunku pracy", Warszawa, 2003, s. 249.

<sup>21</sup> E. CZECH, S. DUDEK, "Wprowadzanie racjonalnych usprawnień dla osób niepełnosprawnych w zakładzie pracy", w: *Zatrudnianie osób niepełnosprawnych. Regulacje prawne*, redakcja A. Giedrewicz-Niewińska, M. Szablowska-Juckiewicz, Difin SA, Warszawa, 2014, s. 242.

additional costs of employing disabled persons or for costs of equipping the workstation, under Article 26 and Article 26e of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities, respectively.

The law maker has also regulated the issue of protecting persons whose disability was caused by an accident at work and/or occupational disease. Under Article 14 of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities, the employer is obliged to separate or organise an appropriate workstation with basic employee facilities for the employee who as a result of an accident at work or occupational disease, lost the ability to work on previous position and was recognised a disabled person, not later than three months from the date of declaring by such person the readiness to start work. The employer is released from such obligation if the accident was caused solely by breach of health and safety provisions by the employee due to its fault or intoxication –which is proved by the employer–.

As correctly noted in the literature, “it follows from the contents of Article 14 of the Act on vocational and social rehabilitation and employment of persons with disabilities that this provision may apply when the employment relationship between the disabled person and the employer still exists, which is indicated by using the phrase «employed person», that is a person still employed. Such conclusion may also be derived from the comparison of Article 14 with Article 23 of the Act on vocational and social rehabilitation and employment of persons with disabilities, under which obligation to pay financial sanction for failure to meet the obligations under Article 14 arises at the moment of terminating the employment relationship. This implies that the employer undertakes these actions with respect to an employee, and not with respect to a former employee.”<sup>22</sup>

The employer who separates or organizes an appropriate workstation with basic employee facilities may be reimbursed for these costs with the funds from the State Fund for Rehabilitation of Disabled Persons (Article 26 of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities). Whereas an employer who failed to separate or organize such workstation within three months from the date of declaring by the employed person the readiness to work shall

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<sup>22</sup> M. LATOS-MIŁKOWSKA, “Ochrona trwałości stosunku pracy pracowników niepełnosprawnych i opiekunów osób niepełnosprawnych”, w: *Zatrudnianie osób niepełnosprawnych. Regulacje prawne*, redakcja A. Giedrewicz-Niewińska, M. Szablowska-Juckiewicz, Difin SA, Warszawa, 2014, s. 260-261.

on the date of termination of the employment relationship with such person make payments to the State Fund for Rehabilitation of Disabled Persons in the amount of 15 times the average remuneration in the national economy in the previous quarter (Article 23 of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities).

## **8. EMPLOYMENT OF DISABLED PERSONS IN OPEN AND SHELTERED LABOUR MARKET**

### **8.1. Quota system**

The Polish law maker introduced the quota system in 1991. According to the assumptions of the system, an employer either ensures the required level of employment of disabled persons, or makes monthly payments to the State Fund for Rehabilitation of Disabled Persons in the amount depending on the employment rate of disabled persons.<sup>23</sup>

The employment rate of disabled persons means the average monthly percentage share of disabled persons in total employment, expressed as full time equivalent [Article 2(6) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities]. From 1 January 2000, the required employment rate of disabled persons is, as a rule, 6%. For public and private higher education institutions, higher vocational schools, public and private schools, teacher training institutions, as well as care and rehabilitation centres, the rate is 2% (from 1 January 2005). With respect to those units, the employment rate of disabled persons is calculated as a sum of the rate of disabled persons and the doubled rate of pupils and students being disabled persons. The latter rate is determined based on the previous year's rate [Article 21(1) and Article 21(2b)–(2d) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities]. The obligation to achieve the required employment rate of disabled persons does not apply to diplomatic and consular posts, as well as foreign representations and missions [Article 21(6) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities].

Employers who employ at least 25 employees expressed as full time equivalent are obliged to ensure 6% or 2% employment rate of disabled persons. The employer who

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<sup>23</sup> L. KLIMKIEWICZ, “Wpłaty na Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych”, Warszawa, 2011, s. 23.

failed to achieve the required employment rate of disabled persons makes monthly payments to the State Fund for Rehabilitation of Disabled Persons in the amount being the product of 40.65% average monthly remuneration in the national economy in the previous quarter and the number of employees being the difference between the employment ensuring achievement of the required employment rate and actual employment of disabled persons. Whereas the employer with the employment rate of disabled persons being at least at the statutory level is exempted from the obligation to make payments to the State Fund for Rehabilitation of Disabled Persons [Article 21(1)–(2) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities]. The following non-profit facilities are also exempted from the obligation to make such payments, even if they do not achieve the required employment rate of disabled persons: social assistance institutions in the meaning of the provisions on social assistance, hospices in the meaning of the provisions on healthcare activities, and public and private organisational units whose objects comprise only social and healthcare rehabilitation of disabled persons, education of disabled persons or care for disabled persons. Employers conducting liquidation on the work establishment or who have been declared bankrupt are also exempted from the obligation to make payments to the State Fund for Rehabilitation of Disabled Persons [Article 21(1e) and Article 21(3) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities].

## **8.2. Employment of disabled persons in public administration**

The Polish law maker introduced regulations aiming at achieving the equality of opportunities of disabled persons in the scope of access to employment in public administration. Pursuant to Article 21(2a) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities, state and local organisational units being budget enterprises or auxiliary enterprises are required to maintain a 6% employment rate of disabled persons.

Moreover, under the Act of 19 August 2011 the rules of preferential treatment of disabled persons applying for employment in an office where the employment rate of disabled persons is lower than 6%, were introduced. “The reasons for the new regulation stem from the low employment rates of disabled persons in the public sector (including administration-civil service, state offices and local governments).”<sup>24</sup>

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<sup>24</sup> A. ZIĘTEK, “Zatrudnianie osób niepełnosprawnych w administracji publicznej”, w: *Zatrudnianie osób niepełnosprawnych. Regulacje prawne*, redakcja A. Giedrewicz-Niewińska, M. Szablowska-Juckiewicz, Difin SA, Warszawa, 2014, s. 146.

Currently, a disabled person has priority in employment at civil service posts and local government units, provided that such person is regarded as one of the best candidates meeting the basic requirements and additional requirements to the greatest extent. A disabled person who intends to exercise the right of priority in employment is obliged to file a copy of certificate of disability along with other application documents [Article 28(2b) and Article 29a of the Act of 21 November 2008 on civil service and Article 13(2b) and Article 13a of the Act of 21 November 2008 on local government employees].

### **8.3. Employment of disabled persons in sheltered and vocational rehabilitation workshops**

The Polish law maker stipulated the possibility of employing disabled persons in sheltered working conditions, i.e., by entities with the status of sheltered workshop or vocational rehabilitation workshop [Article 2(7) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities]. “The main purpose of these workshops is the rehabilitation (vocational, medical and social) of disabled persons employed therein.”<sup>25</sup>

The employer operating a sheltered workshop establishes a company fund for the rehabilitation of disabled persons, the funds from which are allocated to the financing of vocational, social and medical rehabilitation, including individual rehabilitation schemes for disabled persons, developed by the rehabilitation commission established by the employer [Article 33(1) and Article 33(4) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities]. Whereas in vocational rehabilitation workshops, company rehabilitation funds are established, used for financing of, *inter alia*, expenditures for assistance in preparing disabled persons with severe or moderate degree of disability to work outside the vocational rehabilitation workshop and ensuring equal opportunities thereof in the new workplace [Article 14(1) and Article 15(1)(5) of the Regulation of the Minister of Labour and Social Policy of 17 July 2012 on vocational rehabilitation workshops].

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<sup>25</sup> L. KLIMKIEWICZ, w: K. Berenda-Łabędź, L. Klimkiewicz, A. Pałeczka, “Ustawa o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych. Akt wykonawcze. Komentarz”, Warszawa, 2002, s. 191.

#### **8.4. Social employment of disabled persons**

Social employment means ensuring the possibility of participating in courses conducted by social integration centres, social integration and supported employment clubs. The latter means providing advisory and financial support in maintaining professional activity enabling the person to undertake employment, works of social benefit in the meaning of the provisions on the promotion of employment and labour market institutions, in establishing or joining social cooperative or undertaking non-agricultural economic activity. Social employment is ensured to persons who remain socially excluded and on account of their life situation are not able to satisfy their basic living needs on their own, and are in a situation leading to poverty and preventing their participation in professional, social and family life [Article 1(2)-(4) and Article 2(8) of the Act of 13 June 2003 on social employment].

Disabled persons constitute one of the groups of persons listed as an example by the law maker, entitled to benefit from the social employment. For disabled persons, participation in courses conducted by social integration centre or social integration and supported employment club is an opportunity for social and vocational reintegration, i.e., a chance for participating in the local community life and performing social roles in the workplace, a place of residence or stay, and being able to independently provide work on the labour market [Article 1(1)(8), Article 2(4)–(5), Article 3(1) and Article 18(1) of the Act of 13 June 2003 on social employment].

### **9. SYSTEM TO SUPPORT THE EMPLOYMENT OF DISABLED PERSONS FROM PUBLIC FUNDS**

#### **9.1. Supporting employers of disabled persons with public funds**

Employers who employ disabled persons implement social objectives and therefore, it is justified to support their activity with public funds. The law maker grants certain entitlements to such employers as regards applying for funds from the State Fund for Rehabilitation of Disabled Persons, including the reimbursement for the additional costs of employing a disabled person, reimbursement for the costs of furnishing the workstation of a disabled employee, refund of the costs of training of a disabled employee, as well as monthly financial assistance towards payment of remuneration of a disabled employee. The perspective of minimizing the costs of work owing to public funds is to encourage the employers to employ disabled persons.

In the case of employers conducting non-agricultural economic activity, the financial assistance towards payment of remuneration of disabled employees and reimbursement for the additional costs of employment of disabled persons constitute public aid in the meaning of Article 41 and Article 42 of the general block exemption regulation, respectively, which may be provided along with other public aid, including the financial support from the European Union (Article 2 of the Regulation of the Minister of Labour and Social Policy of 9 January 2009 on a monthly subsidy to pay workers with disabilities and Article 2 of the Regulation of the Minister of Labour and Social Policy of 11 March 2011 on the additional costs related to employment of disabled employees).

## **9.2. Supporting sheltered and vocational rehabilitation workshops with public funds**

The activity of employers operating sheltered workshops is supported with public funds. The employer operating a sheltered workshop may receive financing from the State Fund for Rehabilitation of Disabled Persons up to 50% of interest on bank loans, provided that such loans are utilised for the purposes of vocational and social rehabilitation of disabled persons. Such employer may also receive reimbursement from the State Fund for Rehabilitation of disabled persons for the costs of construction or extension of facilities, transport costs and administrative costs, if such costs constitute additional costs of the employer resulting from the employment of disabled persons. An employer operating a sheltered workshop may be reimbursed for the costs if the employment rate of disabled persons in its facility equals 50%, and the employer has lodged a relevant application [Article 32(1)-(2) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities]. An employer holding the status of a sheltered workshop who employs at least 30% of blind or mentally ill or intellectually disabled persons with severe or moderate degree of disability is also exempted from taxes (except for gambling tax, VAT, customs duty, income tax, and motor vehicle tax) and fees (except for stamp duty and sanctions) [Article 31(1)-(2) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities].

The activity of vocational rehabilitation workshops is also supported with public funds. The costs of establishing vocational rehabilitation workshops are co-financed with the funds from the State Fund for Rehabilitation of Disabled Persons, organising entity and other sources. Whereas activity of vocational rehabilitation workshops is co-financed with the funds from the State Fund for Rehabilitation of Disabled Persons

and “voivodship” local government in the amount of at least 10%, yet the percentage share of the “voivodship” local government may be reduced provided that other sources of financing are obtained (Article 29(3) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities). An employer operating a vocational rehabilitation workshop, similarly to an employer operating a sheltered workshop, benefits from tax and fees exemptions under Article 31 of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities.

### **9.3. Supporting social cooperatives of disabled persons with public funds**

Disabled persons, having full capacity to perform acts in law, may establish a social cooperative [Article 4(1)(3) of the Act of 27 April 2006 on social cooperatives]. Various forms of financing for such type of activity as well as privileges in the scope of tax obligations are to encourage the establishment of social cooperatives. Persons willing to establish or join a cooperative may receive funds from the Labour Fund. Moreover, there is a possibility of obtaining funds from the State Fund for Rehabilitation of Disabled Persons for making a contribution to the social cooperative.<sup>26</sup> Pursuant to Article 15(1) of the Act of 27 April 2006 on social cooperatives, a social cooperative activity may be supported from the state budget or the budget of the local government units, in particular through: subsidies, loans, sureties, financial, economic, legal and marketing services or consulting, refunding the costs of inspection. Subsidies and financial, economic, legal and marketing services or consulting may be co-financed from the European Social Fund resources [Article 15(7) of the said Act].

### **9.4. Supporting self-employment of disabled persons with public funds**

The Polish law maker introduced regulations on supporting self-employment of disabled persons from public funds. Disabled persons registered in “poviat” labour office as unemployed or searching for work not being under employment contract may receive one-off support from the State Fund for Rehabilitation of Disabled Persons for undertaking non-agricultural economic activity, agricultural activity or making a contribution to the social cooperative. Whereas disabled persons conducting

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<sup>26</sup> M. KEMPA, “Spółdzielnie socjalne osób niepełnosprawnych” w: *Zatrudnianie osób niepełnosprawnych. Regulacje prawne*, redakcja A. Giedrewicz-Niewińska, M. Szablowska-Juckiewicz, Difin SA, Warszawa, 2014, s. 188-190.

non-agricultural economic activity, or owning or leasing a farm may apply for financing up to 50% of interest on bank loan taken out for continuing the activity. They may also apply to the refund of social insurance contributions (Articles 12–13 and Articles 25a–25d of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities).

## **10. LABOUR MARKET PARTICIPATION OF DISABLED PERSONS – STATISTICAL DATA**

Since 2007, Poland has witnessed an increase in labour market participation rate and employment rate of disabled persons, in particular of persons in working age. In 2013, the labour market participation of disabled persons in working age reached the level of 27.3% (women: 28.6%; men: 26.5%). Whereas the employment rate and unemployment rate reached the level of 22.4% (women: 23.2%; men: 22%) and 17.9% (women: 19.2%; men: 17.2%), respectively. In 2013, employers placed 59,300 job offers for disabled persons in Labour Offices. As regards the number of job offers, 14.8% (8,800) were subsidised job offers. Compared to 2012, the number of job offers for disabled persons increased by 8.5%.<sup>27</sup>

In December 2013, 1,392 sheltered workshops, employing 166,803 disabled persons and 19,523 employers from the open labour market employing 85,015 disabled persons were registered in the Supplementary Financing and Reimbursement Servicing System (SODIR) kept by the State Fund for Rehabilitation of Disabled Persons. In December 2013, 22,828 disabled persons conducting non-agricultural economic activity applied for the refund of social insurance contributions from the resources of the State Fund for Rehabilitation of Disabled Persons. Moreover, in the fourth quarter of 2013, 1,936 farmers were entitled to the refund of social insurance contributions.<sup>28</sup>

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<sup>27</sup> [www.niepelnosprawni.gov.pl/niepelnosprawnosc-w-liczbach-/rynek-pracy/](http://www.niepelnosprawni.gov.pl/niepelnosprawnosc-w-liczbach-/rynek-pracy/) [dostęp: 07.06.2014 r.].

<sup>28</sup> [www.niepelnosprawni.gov.pl/niepelnosprawnosc-w-liczbach-/sod-pfron/](http://www.niepelnosprawni.gov.pl/niepelnosprawnosc-w-liczbach-/sod-pfron/) [dostęp: 07.06.2014 r.].

## **11. DISABLED STUDENTS AND GRADUATES IN POLAND**

### **11.1. The right to education of disabled persons**

Pursuant to Article 70(1) of the Constitution of the Republic of Poland of 2 April 1997, “everyone shall have the right to education.”

Public authorities shall ensure universal and equal access to education. To this end, they shall establish and support systems for individual financial and organisational assistance to pupils and students [Article 70(4) of the Constitution of the Republic of Poland of 2 April 1997]. Terms and conditions of the said assistance are provided for in acts including, but not limited to, the Act of 7 September 1991 on the Educational System and the Act of 27 July 2005 – Law on Higher Education.

In its resolution of 1 August 1997 entitled “the Charter of Rights for Persons with Disabilities”, the Sejm of the Republic of Poland states that persons with disabilities shall have the right to be educated at schools together with peers without disabilities, as well as the right to special or individual teaching [Article 1(4)]. The Sejm of the Republic of Poland calls upon the Government of the Republic of Poland and local government authorities to undertake actions to implement this right (Article 2). The Government shall present, on an annual basis, information about actions undertaken to implement the rights of disabled persons, including the right to education (Article 3).

### **11.2. Organisational assistance for disabled students and doctoral students**

Pursuant to Article 13(1)(9) of the Act of 27 July 2005 – Law on Higher Education, one of the principal objects of a higher education institution shall be creating conditions for the full participation of disabled persons in the process of learning and research. This provision “implements obligations imposed on the state under the Constitution of the Republic of Poland (Articles 32 and 70) and under the international law.”<sup>29</sup>

Public and private higher education institutions receive State-budget grants for the performance of tasks related to the provision of appropriate conditions for the full participation in the process of learning by students and doctoral students with disabilities [Article 94(1)(11) and Article 94(4a) of the Act of 27 July 2005 – Law on

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<sup>29</sup> H. IZDEBSKI, J.M. ZIELIŃSKI, “Prawo o szkolnictwie wyższym. Komentarz”, LEX a Wolters Kluwer business, Warszawa, 2013, strona 70..

Higher Education]. Moreover, higher education institutions are entitled to receive grants for funding or co-funding of investments, including those which benefit students and doctoral students with disabilities [Article 94(1)(10) of the Act of 27 July 2005 – Law on Higher Education].

Requirements for the adequate execution of the teaching process, while taking into account specific needs of disabled students and doctoral students, shall be specified in study regulations and doctoral study regulations, accordingly [Article 162(6) and Article 195(3) of the Act of 27 July 2005 – Law on Higher Education]. The said regulations shall be adopted by the senate of a higher education institution [Article 161(1) and Article 196(6) of the Act of 27 July 2005 – Law on Higher Education].

Higher education institutions shall ensure organisational facilitations not only for disabled students and doctoral students, but also for candidates with disabilities. Pursuant to Article 169(5) of the Act of 27 July 2005 – Law on Higher Education, in the case of additional admission tests, the entrance requirements and procedures shall take into consideration any particular needs of candidates being persons with disabilities.

### **11.3. Financial assistance for disabled students and doctoral students**

Students and doctoral students shall be entitled to apply for financial support of the following types: maintenance grant, special grant for disabled persons, scholarship as an outstanding student/doctoral student awarded by a rector, scholarship for academic achievement awarded by the minister, as well as assistance grants [Article 173(1) and Article 199(1) of the Act of 27 July 2005 – Law on Higher Education]. A student/doctoral student with a disability confirmed by a certificate from a competent authority may be awarded a special grant for disabled persons [Article 180 of the Act of 27 July 2005 – Law on Higher Education].

A public and private higher education institution shall receive State-budget grants for tasks regarding non-refundable financial support for students and doctoral students [Article 94(1)(7) and Article 94(4) of the Act of 27 July 2005 – Law on Higher Education].

Financial support for students and doctoral students, including students and doctoral students with disabilities, may also be granted by local government authorities [Article 173a(1) and Article 199a of the Act of 27 July 2005 – Law on Higher Education]. Moreover, scholarships for academic attainment may be awarded to students and doctoral students, including students and doctoral students with

disabilities, by natural persons or by bodies corporate who are neither State- nor local government-administered bodies corporate [Article 173b(1) and Article 199b of the Act of 27 July 2005 – Law on Higher Education].

#### **11.4. The role of higher education institutions in the process of transition of disabled persons from studies to labour market**

##### *11.4.1. General comments*

The law maker formulated obligations of a higher education institution in the scope of creating conditions for the full participation of disabled persons in the process of learning and research, as well as obligations in the scope of providing financial assistance to disabled students and doctoral students. However, it failed to clearly establish the role of a higher education institution in the process of transition of disabled persons from studies to the labour market. A significant role in ensuring fluent transition, especially of disabled persons, from studies to labour market is played, in turn, by the student career offices. Currently, 346 student career offices operate in 442 Polish higher education institutions.

##### *11.4.2. The role of student career offices in occupational activation of disabled students and graduates*

Student career offices shall mean entities acting for the benefit of occupational activation of students and higher education institution graduates, operated by higher education institutions or student organisations. Their tasks include, in particular:

- 1) providing students and higher education institution graduates with information about the labour market and opportunities for occupational qualifications improvement,
- 2) gathering, classifying and making available job offers, work practice and internships,
- 3) keeping a database of students and higher education institution graduates interested in finding a job,
- 4) assisting employers in finding proper candidates for job vacancies and work practices,

5) assisting in active job seeking [Article 2(1)(1) of the Act of 20 April 2004 on the promotion of employment and labour market institutions].

Rector's representatives for disabled students (e.g. at the University of Zielona Góra)<sup>30</sup> and dean's representatives for disabled students (e.g. at the Nicolaus Copernicus University, Faculty of Law and Administration, Toruń)<sup>31</sup> are also involved in the process of occupational activation of students and graduates with disabilities.

#### *11.4.3. Monitoring the career of disabled higher education institution graduates*

Pursuant to Article 13a of the Act of 27 July 2005 – Law on Higher Education, higher education institutions shall monitor the careers of their graduates with the aim of amending degree programme structure and curricula in order to meet the demands of the labour market, specifically at three and five year intervals following the date of graduation. “Also the institution of the Ombudsman for Graduate Affairs is included in the process of monitoring the careers of graduates, although on imprecise terms.”<sup>32</sup>

The draft Act amending the Act – Law on Higher Education and Certain Other Acts (parliamentary document No. 2085) stipulates, in particular, that Article 13a be repealed and Article 13b be added in the Act of 27 July 2005 – Law on Higher Education. The drafted amendments aim at establishing the Polish national system for monitoring professional careers of graduates, maintained by the minister competent for higher education based on data included in the Polish list of students and data gathered by the Social Insurance Institution on the accounts of the insured and the accounts of premium payers. Higher education institutions would no longer be obliged to monitor the careers of graduates. They would, however, be entitled to monitor the careers of their graduates on their own with the aim of amending curricula to meet the demands of the labour market.

The Polish law maker did not introduce separate regulations in the scope of monitoring the career of disabled higher education institution graduates. Under the

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<sup>30</sup> M. GARBAT, “Usługi społeczne i aktywizacja studentów z niepełnosprawnością na przykładzie działań podejmowanych na Uniwersytecie Zielonogórskim”, w: *Osoby niepełnosprawne. Szanse i zagrożenia godnego funkcjonowania w nowoczesnym społeczeństwie*, redakcja J. Plak, Warszawa, 2011, strona 132.

<sup>31</sup> J. WASZAK, “Rola edukacji w przeciwdziałaniu wykluczeniu osób niepełnosprawnych z rynku pracy”, w: *Zatrudnianie osób niepełnosprawnych. Regulacje prawne*, redakcja A. Giedrewicz-Niewińska, M. Szablowska-Juckiewicz, Difin, Warszawa, 2014, strona 107.

<sup>32</sup> H. IZDEBSKI, J.M. ZIELIŃSKI, “Prawo o szkolnictwie wyższym. Komentarz”, LEX a Wolters Kluwer business, Warszawa 2013, strona 72.

currently applicable Article 13a of the Act of 27 July 2005 – Law on Higher Education, higher education institutions shall monitor, in particular, the careers of their disabled graduates. Upon repealing Article 13a and adding Article 13b in the Act of 27 July 2005 – Law on Higher Education, the minister competent for higher education shall monitor professional career of graduates, including graduates with disabilities.

## **11.5. Statistical data**

### *11.5.1. Disabled students and higher education institution graduates*

In 2012, higher education institutions had 31,613 disabled students, of which 17,579 were full-time students and 14,034 were part-time students. In 2012, among the disabled students there were deaf persons and persons with impaired hearing (2,047), blind and visually impaired persons (2,733), persons with reduced mobility (9,050) and persons with other impairments and diseases (17,783)<sup>33</sup>. “Most disabled persons are the students of specialisations such as: general and special pedagogy, law, history, philologies – Polish and West European culture philologies. The second largest group of disabled students is studying psychology and political sciences.”<sup>34</sup>

In the academic year 2011/2012, 8,617 disabled persons graduated from higher education institutions, including 4,194 from full-time programmes and 4,423 from part-time programmes. Among the disabled students there were 597 deaf persons and persons with impaired hearing, 713 blind and visually impaired persons, 2,481 persons with reduced mobility and 4,826 persons with other impairments and diseases. The number of disabled graduates depended on the type of a higher education institution. As many as 2,998 disabled persons graduated from universities, 898 disabled persons graduated from higher technical schools, 239 from higher agricultural schools, 1,167 from higher economic schools, 707 from teacher training schools, 214 from medical universities, 32 from higher nautical schools, 52 from higher schools of art, 25 from higher schools of theology, 30 from higher schools of

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<sup>33</sup> [www.niepelnosprawni.gov.pl/niepelnosprawnosci-w-liczbach-/edukacja/](http://www.niepelnosprawni.gov.pl/niepelnosprawnosci-w-liczbach-/edukacja/) [dostęp: 05.07.2014 r.].

<sup>34</sup> J. WASZAK, “Rola edukacji w przeciwdziałaniu wykluczeniu osób niepełnosprawnych z rynku pracy”, w: *Zatrudnianie osób niepełnosprawnych. Regulacje prawne*, redakcja A. Giedrewicz-Niewińska, M. Szablowska-Juckiewicz, Difin, Warszawa, 2014, strona 107.

the National Defence Department, and 2,204 disabled persons graduated from other types of schools.<sup>35</sup>

#### *11.5.2. Level of education and labour market share of disabled persons*

“Average level of education of disabled persons in Poland in total is lower than of population in total.”<sup>36</sup> In 2013, the Central Statistical Office reported that 9.1% of disabled persons in working age had a university degree, 18.7% completed post-secondary and secondary vocational education, 6.6% completed general secondary education, 40.9% completed basic vocational education, and 24.7% had only lower secondary, primary or incomplete primary education (or no education at all).<sup>37</sup>

“The labour market share of disabled persons is closely related to education.”<sup>38</sup> In the fourth quarter of 2013, the labour market participation of disabled persons and the employment rate of disabled persons in working age amounted to, respectively: 49.4% and 41.6% for higher education, 31.8% and 27% for post-secondary and secondary vocational education, 31.8% and 28% for general education, 26.4% and 21.1% for basic vocational education, and 13.3% and 10.6% for lower secondary, primary or incomplete primary education.<sup>39</sup> Insufficient education and qualifications are deemed to be one of the obstacles for the participation of disabled persons in the labour market.<sup>40</sup>

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<sup>35</sup> [www.niepelnosprawni.gov.pl/niepelnosprawosc-w-liczbach-/edukacja/](http://www.niepelnosprawni.gov.pl/niepelnosprawosc-w-liczbach-/edukacja/) [dostęp: 05.07.2014 r.].

<sup>36</sup> S. GOLIMOWSKA, “Integracja społeczne osób niepełnosprawnych. Ocena działań instytucji”, IPiSS, Warszawa, 2004, strona 55.

<sup>37</sup> [www.niepelnosprawni.gov.pl/niepelnosprawosc-w-liczbach-/edukacja/](http://www.niepelnosprawni.gov.pl/niepelnosprawosc-w-liczbach-/edukacja/) [dostęp: 05.07.2014 r.].

<sup>38</sup> S. GOLIMOWSKA, “Integracja społeczna osób niepełnosprawnych. Ocena działań instytucji”, IPiSS, Warszawa, 2004, strona 55.

<sup>39</sup> [www.niepelnosprawni.gov.pl/niepelnosprawosc-w-liczbach-/edukacja/](http://www.niepelnosprawni.gov.pl/niepelnosprawosc-w-liczbach-/edukacja/) [dostęp: 05.07.2014 r.].

<sup>40</sup> M. MAGNUSZEWSKA-OTULAK, “Bariery aktywności zawodowej osób niepełnosprawnych”, w: *Osoby niepełnosprawne. Szanse i zagrożenia godnego funkcjonowania w nowoczesnym społeczeństwie*, redakcja J. Plak, Warszawa, 2011, strona 30.

## 12. CONCLUSIONS

The labour market share of disabled persons in Poland has been increasing, but is still considerably lower than in other Member States.<sup>41</sup> “The problem is not only the low labour market share of disabled persons but also the predominance of employing such persons in sheltered workshops.”<sup>42</sup> The Polish law maker introduced a series of legal solutions aimed at promoting the employment of disabled persons on the open labour market, including the quota system, preferential treatment of disabled persons applying for employment in public administration, or special entitlements for employers of disabled persons. However, the open labour market is still not the target place of employment for most disabled persons active in the labour market. The literature is critical towards the Polish vocational rehabilitation system for disabled persons, indicating that it “plays only a marginal role in preparing disabled persons to enter the open labour market. In fact, the system and processes of vocational integration of disabled persons are considerably limited to maintaining sheltered workplaces.”<sup>43</sup> The factors hampering the employment of disabled persons include as well frequent amendments to regulations on obtaining public funds by the employer of disabled persons and complex administrative procedures.<sup>44</sup>

Successful completion of higher education institution facilitates accessing the labour market by disabled persons. In Poland, during the last few years, the number of disabled students and doctoral students and the number of disabled higher education institution graduates has been growing, however the level of education of disabled persons is considerably lower than of the society in general. Therefore, insufficient education is deemed to be one of the obstacles for disabled persons to access the labour market. The issue of facilitating the transition of disabled persons from studies to the

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<sup>41</sup> M. MAŃCZAK, “Między Polską a krajami Unii Europejskiej”, *Niepełnosprawność i Rehabilitacja*, nr 1, 2000, s. 14.

<sup>42</sup> A. BARCZYŃSKI, “Skuteczność polskiego modelu aktywizacji zawodowej w warunkach gospodarki rynkowej”, w: *Zatrudniając niepełnosprawnych. Wiedza, opinie i doświadczenie pracodawców*, redakcja B. Gąciarz, E. Giermanowska, Warszawa, 2009, s. 182.

<sup>43</sup> B. GĄCIARZ, E. GIERMANOWSKA, P. SOBIESIAK, “Wprowadzenie. Postawy pracodawców a polityka integracji osób niepełnosprawnych”, w: *Zatrudniając niepełnosprawnych. Wiedza, opinie i doświadczenie pracodawców*, redakcja B. Gąciarz, E. Giermanowska, Warszawa, 2009, s. 12.

<sup>44</sup> J. BARTKOWSKI, B. GĄCIARZ, E. GIERMANOWSKA, A. KUDLIK, P. SOBIESIAK, “Pracodawcy o zatrudnianiu osób niepełnosprawnych”, Warszawa, 2009, s. 17 i 20.

labour market should also be regarded as significant. Actions in this respect are insufficient.

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