LEGAL ENVIRONMENT, NATIONAL STRATEGIES AND POLICIES FOR EMPLOYMENT OF PEOPLE WITH DISABILITIES

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Abstract

This paper explores the European disability policy changes since the European Year of People with Disabilities in 2003, when Information Systems Management Institute (Riga, Latvia) within the Leonardo da Vinci framework proposed the project “Ability not Disability in Employment” (2003-2005), which resulted in the study course “Employment of People with Disabilities” for business administration students, managers and entrepreneurs. Drawing on the experience of developing further this study course as part of next two transfer of innovation projects “Increasing Employability of Disabled People” (2008-2010), and “Ability not Disability in Workplace” (2009-2011), as well as the project “PwD Employ – Personal Learning Environment for the Efficient Recruitment of People with Disabilities” (2008-2010), two interlinked modules from this course such as European Strategies and Policies on the one hand, and Legal Environment, National Strategies and Policies on the other, are analysed. Using the United Nations Convention on the Rights of People with Disabilities (2007) and the Decision by the Council of the European Union Concerning the Conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (2009) as turning points, this paper looks into cross-section of different levels – local and global, national and supranational – regarding national and European disability strategies in general, and the ways they deal with employment of people with disabilities in particular.

Introduction


This story of signing, ratification, entering into force of a convention, passing a law and an implementation plan (for the first stage) in one of the European Union country – Latvia, shows complexity of the disability issues at different levels of policy: the national, the European or supranational [6], and the global policy regime provided by the United Nations Convention on
the Rights of Persons with Disabilities [7]. It also shows the important role of the disabled people’s organisations which actively take part and influence disability policy at all levels. Colin Barnes and Alison Sheldon, following the research done by Rachel Hurst and Bill Albert [8], stress that “disabled people’s organisations working together as the International Disability Caucus (IDC) were an active partner in developing and promoting the Convention on the Rights of Persons with Disabilities . . . adopted by the UN general Assembly” [9, p.778]. They draw attention to the interrelated issues of disability and poverty especially in low and middle income states and argue that poverty is best understood as a complex matrix of social exclusion [9, p.774] since such indicators as “poverty lines are country specific and most countries have different ideas of what constitutes a minimum standard of living” [9, p.774]. While the authors of this paper agree that poverty is best understood as a complex matrix of social exclusion, available though incomplete data of research on poverty and social exclusion indicators, for example, in Latvia also give some insight into this complex problem since, according to comparable data of the Community Survey on Income and Living Conditions (EU-SILC) survey on EU Member States available on year 2007, “in European Union generally Latvia is characteristic with the highest at-risk-of-poverty rate. In the meantime at-risk-of-poverty threshold in Latvia is the seventh lowest and it exceeds this indicator not only in Rumania and Bulgaria, but also in Poland, Lithuania, Hungary and Slovakia” [10]. The interrelated issues of disability and poverty in low and middle income states results in disability support systems under resourced. Thus, though some experts states that “the predominant policy approach in Latvia is the mainstreaming model” [11], lack of resources, the difficult economic situation in Latvia affecting state financed rehabilitation programs for disabled persons, the growth of unemployment rate in general and also within the people with disabilities [11] but first of all, the issues of “accessibility of workplaces, technologies and supporting infrastructure” [12] cast doubt about successful mainstreaming disability policy, for example, in Latvia. Nevertheless, the Decision the Council of the European Union on the United Nations Convention on the Rights of Persons with Disabilities, the signing and ratification of this convention by the states of the European Union, and the European Disability Strategy 2010-2020 [13] aiming at a barrier-free Europe provides not only legal and practical frameworks but also a common basis for analysis of these frameworks.

In this paper the authors explore the issues of employment of people with disabilities by focusing on legal environment, national strategies and policies as an important theme of the study course for students of the business administration programmes, managers and entrepreneurs, while adopting the social model of disability in general and the equal rights approach in particular. Drawing on the experience gained by developing the study course Employment of People with Disabilities within the Leonardo da Vinci project Ability not Disability in Employment (2003-2005) [14; 15; 16], then by working on two transfers of innovation projects of the Ability not Disability in Employment within the same Leonardo da Vinci framework – Increasing Employability of Disabled People (2007-2009) [17; 18] and Ability not Disability in Workplace (2009-2011) [19] – as well as by participating in the Leonardo da Vinci project PwD Employ – Personal Learning Environment for the Efficient Recruitment of People with Disabilities (2008-2010) [20; 21], the authors discuss the problems they encountered mostly caused by incomparability of the data from different EU countries and Turkey, as well as different research models adopted by researchers, social partners, policy makers and so on, and new basis for collaboration and understanding opened by the paradigm shift at all levels of disability policy: local, global, national, and supranational.

Employment of people with disabilities

As it is stated in the European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, “One in six people in the European Union (EU) has a disability that ranges from mild to severe making around 80 million who are often prevented from taking part fully in society and the economy because of environmental and attitudinal barriers. For people with disabilities the rate of poverty is 70 % higher than the average partly due to limited access
to employment. Over a third of people aged over 75 have disabilities that restrict them to some extent, and over 20% are considerably restricted. Furthermore, these numbers are set to rise as the EU’s population ages. The EU and its Member States have a strong mandate to improve the social and economic situation of people with disabilities” [13, p.3]. In this respect, employment is mentioned as one of eight main areas of action and it is stressed that the EU action will “enable many more people with disabilities to earn their living on the open labour market” [13, p.7]. In the related document, the United Nations Convention on the Rights of Persons with Disabilities, which is attached as Annex I in the Decision the Council of the European Union, it is made clear that “States Parties recognise the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities” [2, p.47]. Both these documents are based on the rights approach and recognize the right of persons with disabilities to enter the open labour market. When in 2003 the team of researchers at the Information Systems Management Institute, Riga, proposed the project Ability not Disability in Employment (AnDE) within the Leonardo da Vinci framework, the main idea was to raise awareness among business administration students, managers, entrepreneurs, that is, employers and future employers, about the skills, merits and abilities of persons with disabilities and to foster an attitude of respect for the rights of persons with disabilities. Considering two equally important events and processes for Latvia in this regard – the “European Year of People with Disabilities” (2003) and accession to the European Union (2004) – the team of researchers decided two of four modules of the study course Employment of People with Disabilities to devote to the European Policies to Promote Employment and Social Inclusion (module 2) [14; see also 20] and to the Possibilities for Employers to Co-Operate with Educational, Governmental Institutions, Employment Agencies and Social Organizations (module 4) [15] or what later became Module 3: Legal Environment, National Strategies and Policies [21]. Though, as already in the introduction to this paper was emphasised, different levels such as national and supranational (European), local and global intertwine, nevertheless, for educational purposes it was and, we believe, still is, useful to divide the material into two modules or chapters. That this decision is reasonable shows also recent research, for example, by Anne Waldschmidt [6], who first analyses and compares European social and disability policies as they evolved and then distinguishes three different welfare state regimes, first as ideal types and then as real states: the liberal model (the UK); the conservative (Austria, Germany, France, Italy); and the social-democratic model (Sweden and Norway). She also stresses that “one should be aware that there is no real existing welfare state that is actually congruent to one of these three ideal models” [6, p. 19]; however, this scheme helps to understand some dynamics operating in different European countries. By taking into account recent developments within the European disability policy, the authors of this paper also propose for consideration the usefulness of the third module of the course Employment of People with Disabilities, where next to the modules European Strategies and Policies and Legal Environment, National Strategies and Policies, there would be the module National Strategies to Implement the United Nations Convention on the Rights of Persons with Disabilities, which would show the local, global, national and supranational levels intertwined and in action. The importance for such cross-section is demonstrated by Disability High Level Group Reports (up to now – three annual reports) on Implementation of the UN Convention on the Rights of Persons with Disabilities [22; 23; 24].

**Employment of People with Disabilities: European Strategies and Policies**

Anne Waldschmidt by researching disability policies in the European Union over the last five decades and analysing documents published by the EU authorities between 1958 and 2005, has found that “as the disability policy has its origin in social policy it makes sense to study possible links between welfare concepts and disability policy approaches” [6, p. 10]. Especially it is important to compare and analyse both policies due to a fact “that it took the EU nearly 20
years after its start in 1957 to publish the first document that can be considered as explicitly relevant for disabled people: on June 27, 1974, the Council issued the “Resolution … establishing the initial Community action programme for the vocational rehabilitation of handicapped persons” [6, p. 16] or to understand “a backlog in disability policy from [1980 until 1986] which corresponds with a general stagnation in social policy” [6, p. 16]. She also has found that from the 1970s up to the middle of the 1990s European disability policy “was geared towards the labour market integration of disabled people” [6, p. 11] in parallel to the European social policy which aimed “at better working conditions and more democracy in business and companies” [6, p. 17]. She concludes that “at the early stage of EU disability policy, from 1974 until 1986 employment issues were of most importance; in recent years starting with activities of the Commission in 1996 the civil rights approach proves to be the prominent topic on the EU disability agenda” [6, p. 16]. One might have an impression that she describes successive stages; however, as it was discussed earlier, the main tendency of the European disability policies is to become more inclusive, thus, for example, employment issues have became part of rights approach as a right to work. Waldschmidt’s research reaches only 2005; thus, the authors of this paper stretched it until 2011, considering two events especially relevant: the UN Convention on the Rights of Persons with Disabilities (2007) and The Council Decision Concerning the Conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (2009). In sum, the authors agree with Waldschmidt that though “the development of EU disability policy closely corresponds to the ups and downs of general social policy at the European level” [6, p. 17], there are also differences (Waldschmidt distinguishes seven phases of the European social policy and five phases of the European disability policy, the latter ending in 2003 with the “European Year of People with Disabilities”). By taking Waldschmidt’s scheme as a basis (Table 1), the authors of this paper added two more phases to the European disability policy: the UN Convention on the Rights of Persons with Disabilities (UNCRPD) (2007) as another global impulse (Waldschmidt stresses the importance of the “International Year of the Disabled” declared by the United Nations (1981) as a stimulus for the third phase of the European disability policy); and The Council Decision Concerning the Conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (2009) which changes radically the idea of national, supranational (European) and global strategies since each member state has to present National Strategies to Implement UNCRPD [22; 23; 24].

Table 1. European social policy and disability policy in comparison.

<table>
<thead>
<tr>
<th>Periods of the EC/EU</th>
<th>Social Policy of the EC/EU</th>
<th>Disability Policy of the EC/EU</th>
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<tbody>
<tr>
<td>1958–1973</td>
<td>(1) Social policy exists only on a very low level</td>
<td>(1) First action programme with regard to disabled people focuses on vocational rehabilitation</td>
</tr>
<tr>
<td>1974–1979</td>
<td>(2) The first action programme in social policy is started</td>
<td>(2) Stagnation in disability policy; impulses by global disability policy</td>
</tr>
<tr>
<td>1980–1986</td>
<td>(3) British veto leads to general stagnation in social policy</td>
<td>(3) 1986–1992: The EC becomes an actor in social policy</td>
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</tbody>
</table>
Maastricht creates new rules

1998–2000

(6) 1998–2000: The social policy agenda is consolidated, the right to non-discrimination is put on the EU agenda

(4) 1996 – 2000: New orientation in European disability policy: shifting from vocational rehabilitation to equal rights

2000–2009

(7) Common aims for social policy and equalization policy issues are formulated

(5) Non-discrimination policy is implemented; the “European Year of People with Disabilities” (2003) gives additional impulses


Since 2009


Already comparing the European social and disability policies Anne Waldschmidt as a significant actor names the UK, when from 1980 to 1985 “due to the strictly liberal economic approach of Prime Minister Margaret Thatcher all concrete social policy initiatives of the Commission meet the British veto. At this time, decisions by majority vote are not yet possible in the EU; for this reason any social policy at all comes to a standstill” [6, p. 17]. Correspondingly the same years there is a backlog in disability policy, with changes coming from global impulses such as the “International Year of the Disabled” declared by the United Nations (1981). However, these global impulses, for example, equal rights, could also be seen as originated in a specific welfare regime exemplified by the Scandinavian countries such as Sweden or Norway. Therefore, Waldschmidt emphasises, it is also important to analyse “three dimensions of disability policy, i.e., social protection, labour market integration and equal rights” as “a matrix that combines the three classical types of welfare regimes” [6, p. 11].

Employment of People with Disabilities: Legal Environment, National Strategies and Policies

Drawing on a welfare state typology developed by Esping-Andersen [25] Anne Waldschmidt has created a matrix that combines the three classical types of welfare regimes and different disability policies according to them (table 2). She argues: “it is very likely that different welfare regimes which are applied in different member states are present at the European level as well. The presumption is that due to bottom-up effects one model or a specific combination of different models will turn out dominant at the supranational level as well” [6, p. 11]. And vice versa: top-down effects are present at the national level, especially after 2009, as it will be discussed in the next section.

Table 2. Disability policy in different welfare regimes.
<table>
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<th>Welfare regime</th>
<th>Liberal</th>
<th>Conservative</th>
<th>Social-Democratic</th>
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<tr>
<td>Social protection</td>
<td>X</td>
<td>XX</td>
<td>XXX</td>
</tr>
<tr>
<td>Integration into the labour market</td>
<td>XX</td>
<td>XXX</td>
<td>X</td>
</tr>
<tr>
<td>Civil rights</td>
<td>XXX</td>
<td>X</td>
<td>XX</td>
</tr>
</tbody>
</table>


The liberal welfare regime focuses on market, thus social protection “in terms of granting a minimum living wage will be in operation” [6, p. 20, emphasis added]. She assumes that “it is probable that [special] schemes for job market integration will comparatively seldom be applied, since they are rated as interfering with the forces of the free market” [6, p. 20]. Paradoxically, civil rights in form of non-discrimination policy “will strongly be represented, since it aims at providing free and equal access to the market for all individuals so that they are able to supply themselves” [6, p. 20]. However, according to this model or regime only specific civil rights as opposed to equal rights are taken into account, gearing towards the labour market integration of disabled people, as it was discussed in the previous section (an example of the European disability policy from the 1970s up to the middle of the 1990s). When in 2003 Information Systems Management Institute embarked on the Ability not Disability in Employment project one of the partner was The Exchange Network for Training and Enterprise, from Birmingham, (UK), and this matrix helps better understand not only the liberal welfare regime in general but also many initiatives and good practices offered by our British partner in particular as well as different European policies at the supranational level. In contrast to the liberal approach, in conservative or conservative-corporatist welfare regimes “civil rights will only be of minor value” [6, p. 20]. Instead, “a strong accentuation of labour market integration is very likely, since in conservative social policy the social insurance-based schemes heavily rely on the individuals’ participation in the labour market” [6, p. 20]. People with disabilities in this conservative regime would be basically socially protected. Some knowledge of the conservative-corporatist welfare regimes can help better understand not only different processes going on in Austria, Germany, France, or Italy, but also relevant policies at the European level. With regard to the social-democratic welfare model also known as the Universalist model “it is probable that basic social care systems are of high importance, whereas measures of job market integration will be weaker. One can also conclude that civil rights and non-discrimination policies are of middle relevance: on the one hand they are compatible with this welfare regime’s orientation towards social solidarity; on the other hand the universalistic approach can foster the assumption that there is no need for civil rights given the high level of social rights. In short, the assumption is that in this welfare model social solidarity has a higher importance than individualist civil rights” [6, p. 20]. Though illuminating on the processes going on in the Scandinavian countries, one should not forget about the difference between social rights, civil rights and equal rights.

**Employment of People with Disabilities: National Strategies by the European Union member states to implement the UNCRPD**

Working within the European framework of different Leonardo da Vinci projects since 2003, the authors of this paper time and again have to face with the problem of incomparability not only of situation of people with disabilities in different member (and candidate) countries of the European Union but also definitions, data, policies, strategies and so on. By making the
UNCRPD the cornerstone of the European disability policy since 2007, one can expect fundamental changes as the annual reports on implementation of the UNCRPD [22; 23; 24] show. The authors of this paper are sure that the ways opened up by these significant events and research will lead to valuable insights into dynamics of local and global, national and supranational, into better understanding of complex issues, and simply into better life not only for people with disabilities but all of us.

Conclusion

Disability policies and strategies at different levels – local, global, national, and European or supranational – have undergone major changes; however, only recent events – the United Nations Convention on the Rights of Persons with Disabilities (2007) and adopting this document as a basis for national strategies within the European Union – could be characterised as causing a paradigm shift. Based on the equal rights approach, among them the right of persons with disabilities to work, they stress the importance of mainstreaming disability issues. The authors of this paper drawing on the experience of developing study courses on employment of people with disabilities for business students, managers, entrepreneurs, i.e., employers and future employers, within the European framework of Leonardo da Vinci projects have pointed to some problems they encountered such as incomparability of data and definitions as well as to fundamental changes undergone not only by Latvia (accession to the European Union in 2004) but also by policy makers at the European level, thus opening up new ways of understanding not only national and supranational levels but also local and global.

References


