

Rights of Persons with Disabilities on the Labour Market (Exemplified by Experiences of Adult Persons with Disabilities)

Prawa osób niepełnosprawnych na rynku pracy (na przykładzie doświadczeń niepełnosprawnych
osób dorosłych)

Key words: labour pedagogy, andragogy, labour market, disability.

Abstract: In the paper, the authors discuss the results of their own studies focused on the following research problems: 1. Which of the rights that persons with disabilities are vested with on the labour market have the greatest significance in the area of their professional activation? 2. What are the main sources of knowledge for persons with disabilities as far as their rights on the labour market are concerned? 3. Are persons with disabilities aware of their rights on the labour market and do they use that knowledge? 4. Would they like to learn more about their rights on the labour market? 5. In which respect have persons with disabilities experienced violation of their rights on the labour market?

Słowa kluczowe: pedagogika pracy, andragogika, rynek pracy, niepełnosprawność.

Streszczenie: Na łamach niniejszego artykułu autorki podjęły próbę zrelacjonowania uzyskanych wyników badań własnych, których epicentrum stanowiło poszukiwanie odpowiedzi na m.in. następujące problemy badawcze: 1. Które z przysługujących osobom niepełnosprawnym praw na rynku pracy ma największe znaczenie w przestrzeni ich aktywizacji zawodowej? 2. Jakie są główne źródła wiedzy osób niepełnosprawnych w zakresie ich praw na rynku pracy? 3. W jaki sposób osoby niepełnosprawne wykorzystują swoją wiedzę na temat praw na rynku pracy? 4. W jaki sposób badane osoby niepełnosprawne chciałyby poszerzać swoją wiedzę na temat przysługujących im praw na rynku pracy? 5. W jakim zakresie osoby niepełnosprawne doświadczyły łamania swoich praw na rynku pracy?

Introduction

The modern labour market is a fascinating object of studies both for researchers and practitioners. Right before our eyes, a number of transformations are taking

place; their nature should be thoroughly recognized and described. One of the major challenges that can be identified on the modern labour market is the issue of activation of persons with disabilities. Even though the functioning of this social group in the economic reality has been regulated legally, the authors have a feeling that these solutions leave some open space for a discussion. Provisions that were meant to make the functioning on the labour market easier for persons with disabilities and providing the employers with the possibility of hiring persons with disabilities in their companies do not unequivocally translate to the phenomenon of professional activation of this group of people. This paper will be devoted to the analysis of this issue.

Disability as the Labour Market Potential

There are "between 4.9 to 7.7 million of persons with disabilities in Poland"¹, depending on the adopted criterion of biological disability. This is almost one-fourth of our society. Change in the group of persons with disabilities according to the degree of disability is possible to observe by comparing data between 2002 and 2018. And thus, according to BAEL, the number of persons "with a severe degree of disability amounted to 21.1%, with a moderate degree to 35.1%, and with a light degree to 42.7% in 2002."² On the other hand, in 2019, the percentage of persons with a severe degree of disability amounted to 27.4%, with a moderate degree to 47.3% and with a light degree to 25.3%.³ Among persons with disabilities in a working age, this group has the following composition: "25.2% with a severe degree of disability, 48.7% with a moderate degree, and 26.1% with a light degree of disability."⁴ Simultaneously, in 2018, the number of professionally active persons with disabilities in a working age amounted to "460,000 people, where 426,000 were working people and 33,000 were unemployed. Thus, working persons with disabilities constituted 92.7% all of people with disabilities who are professionally active."⁵ At the same time, attention should be drawn to the fact that at the end of 2018 among registered unemployed persons with disabilities, 1,359 (2.2%) suffered from a severe degree of disability, 21,357 (34.9%) had a moderate degree of disability, whereas 38,402 (62.8%) had a light degree of degree. Thus, this group has a significant employment potential. One could even venture saying that persons with disabilities may offer an antidote to the problems with finding employees frequently revealed by employers. Meanwhile, in 2018 employers submitted 48,429 job offers for persons with disabilities to the labour offices.

¹ R. Jendrzejewski, *Ile jest osób z niepełnosprawnościami w Polsce*, <https://www.gov.pl/web/popcwsparcie/ile-jest-osob-z-niepelnosprawnosciami-w-polsce>, [access: 16.04.2020].

² M. Janicka, *Dane demograficzne*, <http://www.niepelnosprawni.gov.pl/index.php?c=page&id=78>, [access: 16.04.2020].

³ Ibidem.

⁴ Ibidem.

⁵ M. Janicka, *Rynek Pracy*, <http://www.niepelnosprawni.gov.pl/p,80,rynek-pracy>, [access: 16.04.2020].

According to the statistical data presented above, some of the persons with disabilities remain professionally passive. It was for this group of people that a number of schemes and projects were designed, which are meant to activate them on the labour market, for example "Stable Employment"⁶ offered by the State Fund for Rehabilitation of Disabled People (PFRON); governmental programme "Availability Plus 2018–2025"⁷, which assumes elimination for barriers in access of persons with disabilities to stable employment; the "Opportunity - Development - Independence" project⁸ organised by the PFRON. However, it is worth noting that apart from the dedicated initiatives, the issue of hiring persons with disabilities is supported by an array of formal and legal solutions. Legislative solutions introduced on the international and national arena are nowadays meant to encourage persons with disabilities to enter the open labour market, among others by organisation of numerous activation schemes. It is worth emphasising that in the past, inclusion of persons with disabilities into the social division of work had a segment-based nature: persons with disabilities were employed, in the first place, at the dedicated market, e.g. in supported employment enterprises. Nowadays, the paradigm of including persons with disabilities in the open labour market is applied. Here, it should be mentioned that irrespective of the adopted perspective, the issue of efficiency of the introduced formal and legal solutions has been subjected to only few empirical analyses. Bearing such deficit in mind, the authors of this study made an attempt at examining the issue of rights of persons with disabilities and their perception on the labour market. This study, in the authors' intention, could contribute to verification of the significance of the introduced formal and legal solutions for the actual professional situation of persons with disabilities. The following issues deserve special interest: significance of rights on the labour market for this group of people, the main sources of knowledge about such rights, the aspect of expanding and using the acquired knowledge and the issue of violation of such rights. The study which is discussed in this paper focuses mainly on adult persons with disabilities. The overriding objective of empirical studies was an attempt at formulating the answer to the following question: *What is the opinion of the disabled respondents about the rights with which they are vested on the labour market?* Before the authors present the results of the completed research project, it seems necessary to demonstrate the most important theoretical issues.

The law is equal with respect to all citizens and simultaneously citizens have equal rights, including obviously the right to work and to full participation on the labour market. The main document presenting the rights of every man, including persons with disabilities, is the "Universal Declaration of Human Rights."⁹ Its content

⁶ PFRON ułatwi aktywizację zawodową osób z niepełnosprawnościami <https://www.pfron.org.pl/aktualnosci/szczegoly-aktualnosci/news/pfron-ulatwi-aktywizacje-zawodowa-osob-z-niepelnosprawnościami/>, [access 10.12.2019].

⁷ Ibidem.

⁸ Szansa- Rozwój-Niezależność, <http://www.fazon.pl/>, [access: 31.01.2020].

⁹ Universal Declaration of Human Rights, adopted and proclaimed resolution of the General Assembly of the UN 217 A (III), Paris, 10 December 1948.

specifies that every man has a right to free choice of employment, to fair and satisfactory conditions of work and to protection from unemployment. A man also has a right to "equal pay for the performance of the same work without any discrimination."¹⁰ Furthermore, workers have a right to just and satisfactory remuneration, "ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection."¹¹ Similar tone of the narrative devoted to persons with disabilities is present in the "Declaration of Madrid", where we can read that promotion of access of persons with disabilities to employment, preferably on the open market, requires special efforts. This is one of the most important modes of counteracting social exclusion of persons with disabilities and fighting for their dignity and independent life. This requires not only "active mobilisation of all social partners, but also engagement on the side of state authorities, which should continue to actively support relevant solutions."¹²

The "Constitution of the Republic of Poland" offers an indisputable and impossible to omit contribution to the interpretation of the category of disability in the context of employability.¹³ The document features a description of solutions fundamental in their nature, including indication of the principle of equality with respect to the law, in the face of which "no one shall be discriminated against in political, social or economic life for any reason whatsoever."¹⁴ Furthermore, all citizens have "the freedom to choose and to pursue their occupation and to choose their place of work and to receive remuneration for work."¹⁵ At the same time, the provisions contained in the Constitution of the Republic of Poland clearly indicate that everybody has a right to "safe and hygienic work conditions and to days free from work stipulated in the act and to annual paid holidays."¹⁶ Persons with disabilities who do not have "the capacity to work due to a disease or disability have a right to social security."¹⁷ Every disabled person is "provided with aid to ensure their subsistence, adaptation to work and social communication."¹⁸ In this place, reference should be made to another document, inspired by the provisions contained in the Constitution of the Republic of Poland, namely "the Charter of Persons with Disabilities."¹⁹ Its content includes significant indications, such as the fact that a person with disabilities has the right to independent life, free and active, without discrimination.

¹⁰ Ibidem, Art. 2 - 6.

¹¹ Ibidem, Art. 7.

¹² *Declaration of Madrid*, European Congress for Persons with Disabilities, Madrid, 2002.

¹³ *Constitution of the Republic of Poland* of 2 April 1997 (Polish Journal of Laws [Dz.U.] of 1997, No. 78, item 483).

¹⁴ Ibidem, Art. 32.2.

¹⁵ Ibidem, Art. 65.

¹⁶ Ibidem, Art. 66.

¹⁷ Ibidem, Art. 67.

¹⁸ Ibidem, Art. 69.

¹⁹ *Charter of Persons with Disabilities*, Resolution of the Sejm of the Republic of Poland of 1 August 1997, Art.1.

The Charter also offers direct solutions with respect to employment: every person with disabilities has a right to work on the open labour market in compliance with his/ her qualifications, education and potential, use professional counselling and job placement services. In this place, it should be noted that to ensure the fulfilment of the premises described in the aforementioned legal acts, the institution of the Ombudsman for Persons with Disabilities was established, whose tasks include preparation of projects related to the improvement of social and professional conditions of persons with disabilities, as well as determination of premises for the employment policy, social and professional rehabilitation. The PFRON i.e. the State Fund for Rehabilitation of Persons with Disabilities should also be mentioned in this place. Activities taken and financed by the PFRON with respect to the disabled and all citizens in Poland are described in detail in the "Act on occupational and social rehabilitation and employment of persons with disabilities." The Act features key term for the discussed issue, namely "occupational rehabilitation." Occupational rehabilitation is an idea aimed at making it easier for the disabled person to receive and maintain proper employment and to have the possibility of professional promotion; at the same time, it draws attention to the rights of persons with disabilities to use "professional counselling, professional training or job placement services."²⁰ Fulfilment of the occupational rehabilitation postulate belongs to the *gmina* (commune), a foundation, an association or a public benefit organisation. The aforementioned Act is also an important indication as to the significance of performance of such activities as: "performance of assessment of capacity for work (performance of medical and psychological tests with the aim of determining the capacity for the practised profession), offering of vocational counselling taking the assessment of the capacity for work into account and allowing for selection of a proper vocation and training, professional preparation, taking the employment prospects into account, selection of a proper place of work and its equipment, determination of technical measures enabling or facilitating work performance."²¹ The Act on occupational and social rehabilitation and employment of persons with disabilities along with regulations comprises a legal uniform donned by the executive authorities, among others the labour market institutions and workplaces.

Rights of Persons with Disabilities on the Labour Market in the Light of Own Studies²²

In the course of the implemented research project, the authors set the goal as determination of the main sources of the respondents' knowledge about the rights on the labour market with which they are vested. Thirty-two respondents (64%)

²⁰ *Act on the occupational and social rehabilitation and employment of persons with disabilities* (Polish Journal of Laws [Dz.U.] No. 123, item 766) of 27 August 1997, Art. 7.

²¹ *Ibidem*, Art. 8. 2.

²² The studies were carried out in the Kujawsko-Pomorskie Province. The study covered 50 respondents with disabilities, including 38 women (76%) and 12 men (24%), aged 18–49. The respondents manifested diverse degrees of disability, i.e. light degree (14% of respondents), moderate degree (62%) and severe degree (24%). The studies were performed with the use of the diagnostic survey method.

indicated that they derive the information about the legislative solutions from other persons with disabilities. Twenty-two persons (44%) indicated websites, whereas the third place was taken by the Labour Code which had 40% of indications. Slightly less, i.e. 36% of indications were friends and occupational activation institutions (PFRON). To the surprise of the authors, close persons - in the opinion of the respondents - do not constitute the most important source of information, as parents were indicated by 30% of respondents, siblings by 10%, whereas other family members by 20%. Only 4% of respondents indicated that they did not have significant sources of knowledge about rights on the labour market at their disposal. It is also worth emphasising the fact that some of the respondents with disabilities mentioned arguments such as the desire to expand their knowledge even though due to research aspects, the authors were predominantly interested in arguments formulated by the respondents and aimed at clarifying the causes due to which persons with disabilities do not look for information about the rights with which they are vested, namely:

- "they are afraid that they would be dismissed if they speak up";
- "convenience on the side of the parents, who treat us like small children, no work places for persons with disabilities";
- "laziness";
- "low self-esteem";
- "according to me, they are afraid that they would not be understood and that they would not know how to behave in a given situation";
- "health condition, not all of them can work";
- "they are not looking for work and they do not need it";
- "the legal provisions are too complex, dispersed over various places, there are many mutually excluding interpretations of the existing provisions";
- "some have a well-grounded position on the labour market and they do not need the current knowledge because they have stable employment";
- "lack of self-confidence, lack of support from close family, conviction that "one is sick, a victim of life", stagnation is simpler than activity";
- "they do not believe that their rights will be respected";
- "inability to look for information";
- "lack of awareness that such rights exist."²³

Bearing in mind the opinions of respondents presented above, it is worth analysing the degree and the modes of exercise, on the part of persons with disabilities included in the study, of their rights on the labour market. These data are presented in the table below:

²³ Source: authors' own study.

Table 1. Degree of exercise of rights on the labour market by the respondents

No.	Specification	Total	
		Number of answers	Percentage share
1.	I do not exercise the rights that I am vested with on the labour market	4	8%
2.	I partially exercise the rights that I am vested with on the labour market	28	56%
3.	I fully exercise the rights that I am vested with on the labour market	18	36%
	Total	50	100.00

N=50

Source: author's own study.

The data prove that over a half of the respondents (56%) partially exercise the rights that they are vested with on the labour market. As many as eighteen (36%) of respondents declared that they fully exercise their rights. More importantly, four respondents (8%) answered that they do not exercise the rights with which they are vested on the labour market. As indicated in the discussion formulated at the initial pages of the study, legal and formal solutions applicable in Poland furnish persons with disabilities with aid that allows them to enter the labour market. Such aid has the financial or service-based form, which can be used by persons with disabilities or by employers hiring them. At the same time, the respondents drew attention to the existence of legislative provisions which, in their opinion, should be amended, among others:

- "higher subsidies to the remuneration for the employers";
- "part-time work or night work";
- "discounts for commuting to work for persons with a moderate degree of disability";
- "more emphasis on liquidation of barriers";
- "introduction of more instruments supporting employment among public sector employers";
- "half of the PFRON subsidy for the employer and half for the employee";
- "generally accessible trainings for employers who are afraid of hiring persons with disabilities."

The issue of the necessity of amending the currently applicable legal provisions mentioned by the respondents inspired the authors to tackle the issue of the respondents' experiences related to the violation of their rights in the course of the performed empirical investigations. These data are presented in Table No. 2.

Table. 2. Degree of experience of violation of rights on the labour market by the respondents

No.	Specification	Total	
		Number of answers	Percentage share
1.	Very low	18	36%
2.	Low	10	20%
3.	It is hard to say	6	12%
4.	High	12	24%
5.	Very high	4	8%
	Total	50	100.00

N=50

Source: author's own study.

According to the data presented in the table, eighteen respondents (36%) experienced violation of their rights on the labour market in a very low or low degree (20%). On the other hand, twelve respondents (24%) declared that they experienced violation of their rights in a high or very high degree (8%). Only 12% of respondents were unable to say if the situations that they have experienced should be determined as violation of rights or not. An important aspect of the performed studies was learning the respondents' opinion on how the persons with disabilities experienced violation of their rights on the labour market. The data from the performed studies are presented in the table below.

Table. 3. Examples of violation of rights on the labour market

No.	Specification	Total	
		Number of answers	Percentage share
1.	Work for a higher number of hours per day than specified in the employment contract	30	60%
2.	Holding position inconsistent with the skills and predispositions	29	58%
3.	Worse treatment on account of disability by other employees	19	38%
4.	Overtime work and work at night	19	38%
5.	Failure to receive additional leave (10 days)	18	36%
6.	No breaks during work time	16	32%
7.	Psychical abuse	16	32%
8.	Lack of remuneration for additional work	16	32%
9.	No equality among employees	15	30%
10.	Lack of adjusted work places with respect to urban design and architecture	15	30%

11.	Lack of remuneration for the performed work	14	28%
12.	No employment contract signed	14	28%
13.	Performance of work inconsistently with the law or the employment contract	14	28%
14.	Inferior treatment of a person with disabilities by the employer	13	26%
15.	Failure to prevent mobbing at the work place by the employer	12	24%
16.	Inferior treatment on account of the type of employment and work time	11	22%
17.	Refusal to grant employee leave and leave on demand	10	20%
18.	Failure to provide safe and hygienic work place	10	20%
19.	No possibility of gaining supplemental education	10	20%
20.	Failure to be granted leave for rehabilitation treatment	8	16%
21.	Lack of OHS training	7	14%
22.	Failure to receive remuneration for the time of participation in rehabilitation treatment	5	10%
23.	Physical abuse	4	8%
24.	Did not experience	4	8%
25.	Other	0	0%
	Total	X	X

N=50

Source: author's own study.

Data from the table show that as many as thirty respondents (60%) believe that persons with disabilities experience violation of their rights on the labour market by working for a higher number of hours per day than specified in the employment contract. The second place (58% of indications) was related to holding a position inconsistent with the skills and predispositions. The third place (nineteen respondents/ 38%) comprised declarations on performance of overtime work and work at night and worse treatment on account of disability. The authors found the fact that as many as sixteen respondents (32%) believe that persons with disabilities experience violation of their rights by physical abuse or lack of breaks at work very worrying. In the study, the respondents were additionally asked to indicate, during freely given opinions, how their rights on the labour market were violated. Some sample responses are presented below:

- "mobbing, no reimbursement for costs for medications";
- "failure to observe hourly standards of work, threats of dismissal if sick leave is requested";
- "no shortened work time";
- "my employment contract was not extended due to my disability";

- "the employer did not want to cover the costs of rehabilitation treatment";
- "inadequate pay as compared to other persons holding the same positions, no access to trainings, violation of the law by the occupational health medicine physician, worse treatment";
- "the employer took the financing for the course; my work position was degraded; work for the lowest national pay without chances for a raise with the highest subsidy from the state";
- "no possibility to receive leave for a medical appointment";
- "discrimination."

The respondents' answers caused the authors' concern as the authors did not expect that persons with disabilities experience discrimination on the labour market in such constitutive areas. Legal provisions clearly stipulate that persons with disabilities have a set system of work which results from their health needs. The authors also found it surprising that the fault (in the respondents' opinion) is on the side of the employers who use persons with disabilities primarily to collect state funds, simultaneously not allowing for full exercise of the rights with which such persons are vested. As shown above, the respondents listed numerous examples of violation of their rights on the labour market. Therefore, as part of the study, they were asked to provide answer to the question about the causes due to which persons with disabilities experience violation of rights on the labour market. These are their responses:

- "impunity of employers and consent that (fear of losing work and problems with finding a new one)";
- "I think that this is predominantly caused by the employer's ignorance about the rights of persons with disabilities";
- "because people think that persons with disabilities are weak";
- "no willingness to stand up to the employer";
- "because even today persons with disabilities are treated as a worse element of the society";
- "they do not fight for their rights";
- "weak position on the market";
- "lower self-esteem, lower competence and education";
- "no respect on the side of the employer";
- "employers still consider the employees with disabilities worse on account of their limitations, more days of mandatory paid leave, or shorter work time and other rights: these are cost generating items, but they forget that the state subsidies are meant to compensate for them, and it is often the only motive for hiring persons with disabilities as cheaper employees";
- "a mental barrier that still persists in persons with disabilities results in aversion or unequal treatment of persons with disabilities; furthermore, other employees can be jealous that a colleague with disabilities has additional leave and works for a shorter time for the same pay";

- "lack of knowledge, trainings, lack of tolerance, stereotypes, mental barriers, difficulties in adjustment on the part of persons with disabilities";
- "they definitely care about having work and they tolerate a lot."

According to the respondents' answers, persons with disabilities experience violation of rights on the labour market because they agree to it, being guided by fear to keep their work positions. Once again, the respondents indicate the employers as the main sources of problems; in their opinion, the employers lack sufficient information about the rights with which employees with disabilities are vested. However, the authors are aware that it would be necessary to verify the received research results among employers before final conclusions are drawn.

Going back to the main theme of the discussion, it is worth emphasising that the respondents were also asked to indicate what should be done to prevent violation of the rights of persons with disabilities. Some of the respondents' proposals are presented below:

- "making the employees aware of their rights and about the fact that they should fight for them, social campaigns and increased controls";
- "to fight for and to demand one's rights";
- "to change the society's attitude to persons with disabilities";
- "more trainings, talks with psychologists, vocational counsellors for the purpose of instilling the conviction that one is an equal competitor on the labour market";
- "greater controls and high financial penalties";
- "to educate employers";
- "adequate sanctions for violation of the law, more extensive information, changes of provisions pertaining to such persons";
- "it is necessary to speak out loud about the rights of persons with disabilities. More issues of this type should be discussed on TV or on the Internet so that they reach the largest group possible";
- "to support persons with disabilities and to train them";
- "to introduce enforcement of provisions pertaining to persons with disabilities";
- "first of all, it is necessary to expand people's knowledge already on the level of education pertaining to persons with disabilities, how they function and what they need in order to live normally. This would allow for better understanding of the other man and focusing on what a disabled person can do at work and not focus on man's disabilities and exclusion from the group";
- "more activation programmes."

To the authors' astonishment, the respondents indicated many interesting solutions which could prevent the violation of rights of disabled employees. First and foremost, education of employers with respect to the rights of employees with disabilities was considered the most important form. The authors consider education of persons with disabilities so that they become aware of their rights and are able to enforce them equally important.

Conclusions

The authors, having conducted the aforementioned study, were able to reach the following conclusions:

1. As far as increasing the professional activity is concerned, having the labour market right to shorter working time, i.e., no more than 7 hours a day and 35 hours a week, was the most significant for the disabled people (i.e., with severe or moderate disabilities).
2. For the disabled people, the main sources of knowledge concerning their labour market rights are other people with disabilities, websites and The Labour Code.
3. Most disabled people have used their knowledge concerning the labour market rights in order to search for job in an active way. Moreover, the studied people have been taking the opportunity to have their rehabilitative holidays subsidised, to get a job in the open labour market, register either as an unemployed person or a person searching for work in the employment bureau and take part in the trainings organised by the labour market institutions. It is also worth noting, that the disabled people who took part in the study have also used their knowledge of the labour market rights in order to help other people with disabilities.
4. The disabled people declared that they were willing to extend their knowledge regarding the rights they have in the labour market, through conversations with vocational guidance counsellors, using the available materials concerning the labour market rights (acts, resolutions, The Labour Code) and through conversations with the vocational counsellors specialising in the disabled people's rights.
5. When the disabled people experienced their labour rights being broken, it meant that the number of hours they worked was greater than they were supposed to work, their posts were not adequate for their skills and abilities, they were forced to work extra hours and at night, or they were treated poorly due to their disabilities.

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