

International Seminar on Comparative Labour Law



“Equal Treatment of Persons with Disabilities in Employment”

National report
Adam Mickiewicz University Poznań



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1. Legal framework on equal treatment for persons with disabilities in employment

1.1. Introductory remarks

The general framework of non-discrimination in employment for people with disabilities in Poland consists of a wide variety of legal acts. According to Article 87 of the Constitution of the Republic of Poland¹, the sources of universally binding law in Poland are: the Constitution, statutes (acts), ratified international agreements, and regulations. Consequently, anti-discrimination provisions are introduced according to this particular order.

1.2. Non-discrimination in employment of people with disabilities in the Constitution

The anti-discrimination provisions of the Constitution are, in particular:

- Article 2 of the Constitution, which introduces the principle of social justice;
- Article 32 of the Constitution, which lays down the general anti-discrimination clause by establishing the principle of equality before the law and the prohibition of discrimination in political, social or economic life;
- Article 69 of the Constitution, the first provision in the history of Polish constitutionalism to refer directly and comprehensively to people with disabilities. Its key importance lies in the fact that it formulates a state policy according to which the authorities must provide aid to disabled persons to ensure their subsistence, adaptation to work and social communication. The State is therefore obliged to take various measures to increase the chances of disabled people to find work and to help those who are unemployed.

The application of the aforementioned provisions is reflected in the extensive case law of the Polish Constitutional Tribunal (hereafter: Constitutional Tribunal). For example, the Constitutional Tribunal, in its judgment of 15.11.2010 (ref. P 32/09), in relation to Article 69 of the Constitution, the Tribunal stated that the said provision establishes the obligation of the public authorities to create appropriate legislative mechanisms for the realisation of this task and refers to the appropriate legislation, both in terms of the level of satisfaction of the needs of disabled persons and the subject of regulation in this regard.

1.3. Non-discrimination in employment of people with disabilities in the statutes

In Poland, labour law was codified in the Act of 26 June 1974 – Labour Code², which remains the main source of labour law. The Labour Code also contains the provisions on prohibition of discrimination in labour relations:

¹ Hereinafter: "the Constitution",

² Hereinafter: "LC".

- Both Article 11³ LC and Article 18^{3a} § 1 LC contain an open catalogue of grounds for discrimination, in which disability is listed as one of the discriminatory criteria, without being exposed or characterised in any way in comparison to other discriminatory criteria such as sex, age and ethnicity;
- Article 11³ LC prohibits any direct or indirect discrimination in employment, including on the grounds of disability;
- Article 18^{3a} § 1 LC stipulates that employees must be treated equally with regard to the conclusion and termination of the employment relationship, working conditions, promotion conditions and access to training to improve professional qualifications, in particular regardless of disability. This includes the prohibition of direct and indirect discrimination;
- Article 18^{3b} § 1 LC elucidates what is considered to constitute a violation of the principle of equal treatment in employment. It stipulates that such a violation is established when the employer differentiates employee's situation based on the factors presented in art. 18^{3a} of the Labour Code and this action leads to consequences such as termination of an employment relationship;
- Article 18^{3b} § 2-4 LC states that, in response to a justified accusation of discrimination made by the employee, the employer must prove that his action was motivated by objective reasons which make it lawful to differentiate the situation of an employee on a legitimate basis³;
- Article 67¹⁹ § 6 LC establishes the employer's obligation to grant the request of an employee who cares for another member of the immediate family or another person in the same household with a certificate of disability or a certificate of significant disability to work remotely⁴;
- Article 94 pt 2b LC makes it one of the main duties of the employer to combat discrimination in employment, in particular on the grounds of disability;
- Article 207 § 2 pt 5 LC establishes the basic obligations of the employer in relation to health and safety at work, stating that the employer is obliged to take into account the protection of the health of disabled workers when taking preventive measures.

It is important to note that the provisions of the Labour Code apply to "employees" within the meaning of Article 2 LC, i.e. persons employed based on an employment contract, an appointment, an election, a nomination or a cooperative employment contract. It does not apply to atypical non-employee employment relationships (i.e. platform work, civil law contracts, self-

³ For example, if the nature of the work or the conditions of its performance are such that a given discriminatory characteristic constitutes a genuine and determining occupational requirement for the employee.

⁴ An exception to this obligation is granted only if it is not possible for an employee to work remotely due to the organisation of work or the nature of the work performed by the employee.



employment), with the exception of the provisions governing health and safety at work, as set out in Article 304 LC.

When it comes to atypical workers, who are not covered by the protection provided by the Labour Code, the Act of 3 December 2010 on the Implementation of Certain European Union Regulations on Equal Treatment is of crucial importance. The Act transposes into Polish law a number of EU directives on equal treatment and non-discrimination⁵ in areas not covered by the Labour Code. The Act prohibits unequal treatment on the grounds of disability and other discriminatory criteria listed in the Act (Article 1 of the Act), where the concept of unequal treatment is defined as treatment of individuals in a way that constitutes one or more of the following behaviours: direct discrimination, indirect discrimination, harassment, sexual harassment, as well as less favourable treatment of a person as a result of refusing harassment or sexual harassment or submitting to harassment or sexual harassment, as well as encouraging and ordering such behaviour (Article 3(5) of the Act). The Act provides legal definitions of terms such as harassment, sexual harassment, direct discrimination and indirect discrimination (Article 3(1) to (4) of the Act).

When it comes to the issue of specific protective measures and rights directly related to employees with disabilities, the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons of 27 August 1997⁶ is the most important document. It sets out in particular:

- in Chapter II of the VSRA, the rules of determination of disability status;
- in Chapter IV of the VSRA, additional rights of disabled employees;
- in Chapter V of the VSRA, special rights and obligations of employers relating to the employment of disabled persons;
- in Chapter VIII of the VSRA, forms of employment and job training for disabled persons.

⁵ Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood;

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services;

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast);

Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

⁶ Hereinafter: „VSRA”.

The scope of the VSRA is mainly limited to employees within the meaning of Article 2 LC, i.e. persons employed on the basis of a contract of employment, an appointment, an election, a nomination or a cooperative contract of employment.

1.4. Transnational sources of legal protection for persons with disabilities against unequal treatment in employment under the Polish legal system

1.4.1. European Union

Polish anti-discrimination law has undergone significant changes as a result of its adaptation to the EU standards set out in its secondary legislation. To give a few examples:

- Chapter IIa LC entitled “Equal treatment in employment” was added and entered into force on 1 January 2004 as a result of the implementation of series of EC directives on equal treatment⁷;
- The Vocational and Social Rehabilitation Act has undergone significant changes, e.g. Article 23a VSRA was added in 2011 the obligation to provide reasonable accommodation for disabled persons in the area of employment.

1.4.2. Council of Europe

- On 19 January 1993 Poland ratified the European Convention on Human Rights⁸. Although Article 14 ECHR does not directly refer to disability as a protected characteristic, the European Court of Human Rights⁹ has subsequently taken it into account in its jurisprudence.
- On 2 June 1997 Poland ratified the European Social Charter of 18 October 1961. Article 15 of the ESC guarantees the right of persons with disabilities to independence, social integration and participation in the life of the community and obliges the parties to the Charter, inter alia, to promote access to employment for persons with disabilities through all measures designed to encourage employers to recruit and retain disabled persons in the ordinary working environment.
- As of today, Poland still has not ratified the Revised European Social Charter.

1.4.3. Other transnational documents

In the Polish legal system, international treaties become part of the national legal order after their ratification and publication in the Journal of Laws of the Republic of Poland. Among the most prominent examples of these legal acts are:

⁷ Directives 2006/54/EC; 2003/88/EC; 2002/73/EC; 2000/78/EC; 89/391/EEC and 76/207/EEC.

⁸ Hereinafter: “ECHR”.

⁹ Hereinafter: “ECtHR”.

- the United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities, ratified by Poland on 6 September 2012¹⁰;
- Convention No. 159 of the International Labour Organization of 20 June 1983 on vocational and social rehabilitation and employment of disabled persons, ratified by Poland on 4 November 2004;
- Convention No. 111 (Discrimination (Employment and Occupation) Convention) of the International Labour Organization of 25 June 1958, ratified by Poland on 8 May 1961.

1.5. Non-discrimination in employment of people with disabilities in regulations

The Vocational and Social Rehabilitation Act has been substantiated through the enactment of regulations that can be issued, among others, by a Minister or by the Council of Ministers. Among the most important are:

- Regulation of the Minister of Economy, Labour and Social Policy of 8 July 2015 on determining the disability and the degree of disability;
- Regulation of the Minister of Labour and Social Policy of 23 December 2014 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.

2. Definitions of the persons with disabilities

2.1. Definitions of the persons with disabilities in Polish law

In the Polish legal system, it is difficult to speak of a single unified concept of disability in the context of employment and the labour market. The Labour Code does not contain a legal definition of a disabled person or of disability itself. This concept only appears in Article 2(10) VSRA, according to which disability should be interpreted as "a permanent or temporary inability to fulfil social roles due to a permanent or long-term impairment of bodily functions, resulting in particular in the inability to work". However, this is not a universal definition. On the one hand, national jurisprudence refers to concepts derived from international law. On the other hand, from a formal point of view, in order to benefit from special rights, a disabled person must obtain a formal decision confirming their legal status.

¹⁰ Hereinafter: „CRPD”.

2.2. Position of Polish law in relation to the concept of disabilities developed by the CJEU

2.2.1. “Disabled person” v “person with disabilities”

For a long time, national legislation used the term “invalid” (pl. *inwalida*), derived from the Latin word *validus* and the negation *in-*, to denote a person that is “sick, powerless, weak”¹¹. This term was used for example in Article 23 of the Act on Pension Provision for Employees and Their Families of 14 December 1982, and an “invalid” was defined as a person who was partially or totally unfit for employment due to a permanent or long-term impairment of bodily functions. Alongside the concept of “disability”, the legislature used the term “disabled person” (pl. *osoba niepełnosprawna*) in the Act on the Employment and Vocational Rehabilitation of the Disabled Persons of 9 May 1991, and then in the Vocational and Social Rehabilitation Act. The term “disability” (pl. *niepełnosprawność*) was introduced in 2002 by the Act on amending the Vocational and Social Rehabilitation Act and certain other Acts.

An analysis of the development of terminology presented above leads to the conclusion that the language used in Polish legislation when referring to disabled people has consistently used the so-called “disability-first” language, which emphasises the disability aspect of a given person. On the other hand, the modern approach to the issue of terminology has preferred to adopt the “person-first” language, thus emphasising the person rather than a given diagnosis. This has been studied by the Ministry of Family, Labour and Social Policy of the Republic of Poland as part of the project “Review of terminology used in various statutes relating to disability or its types”. According to the results, words such as “invalid”, “disabled”, “disabled person” should be changed to “person with disabilities”¹².

2.2.2. “Medical” v “social” model of disability

There are different models for defining disability. Under the “medical model” of disability a disabled person is described as having a condition that sets him or her apart from the rest of society, the possession of which may require a medical certificate¹³. The “social model” of disability promoted by the Court of Justice in *HK Denmark* recognizes that people with impairments are excluded through barriers created by society, so that their disability is a result of external factors such as inaccessible services. The prevalent opinion seems to be that the Polish legislature makes primary use of the so-called “medical model”, emphasizing the medical aspect of disability in the course

¹¹ M. Paluszkiwicz, *Prawne pojęcie niepełnosprawności*, „Studia Prawno-Ekonomiczne” 2015, v. 95, p. 80.

¹² Program Operacyjny Wiedza Edukacja Rozwój 2014-2020, <<https://www.gov.pl/attachment/a7a16a78-4da7-4e5f-b43a-501d0b624976>> p. 18, accessed 03.01.2025.

¹³ The Division for Inclusive Social Development, <<https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2022/01/Introducing-CRPD-English-.pdf>> p. 13, accessed 06.01.2025.



of defining it. This is reflected in particular in the need for confirmation of the level of disability by medical authorities, as stipulated in Articles 1 and 62 VSRA.

Nonetheless, as noticed by the Polish Supreme Court¹⁴, in Article 2(10) VSRA the Polish legislator characterizes disability by means of three separate elements:

- 1) biological, in the form of impairment of bodily functions,
- 2) social, understood as inability to fulfill social roles, and
- 3) economic (vocational), which is a special form of inability to fulfill social roles, such as inability to work.

Therefore, while the biological aspect of disability is still present in the definitions of disabled persons in Polish law, those definitions are not exclusively limited to this one element.

2.2.3. Concept of disabilities developed by the Court of Justice in the judgments of Polish courts

The concept of disability as developed by the Court of Justice has also been present in the judgments of Polish courts. In one of its judgments, the Polish Supreme Court referred directly to the autonomous concept of disability adopted on the grounds of Community law¹⁵. Although it quoted the *Chacón Navas* case (also mentioned in *HK Denmark*), in relation to the definition of disability, it recognized, with reference to Case C-335/11, that the concept of disability within the meaning of the Directive 2000/78 is not limited to a situation of complete deprivation of the ability to participate in working life, but also includes within its scope partial limitations in the performance of work (*HK Denmark*, para 43). Consequently, the definition of disability in national law must be interpreted in the light of the provisions of Directive 2000/78 and in the light of the relevant case law of the ECJ¹⁶.

2.3. The definition vs. formalities

2.3.1. Introductory remarks

Under Polish law, to be considered a “disabled person” in the context of employment relations requires not only a general or medical understanding of disability, but also a formal certificate of disability. In other words, the legal status of a disabled person - and the rights and obligations

¹⁴ Supreme Court decision of 24.05.2023, II USK 255/22, LEX no. 3568154.

¹⁵ Supreme Court judgement of 28.02.2019, I PK 50/18, OSNP 2019, No. 10, item 120.

¹⁶ As the Supreme Court stated, *the Court of Justice of the European Union recognizes that the concept of disability is an autonomous concept of Community law, and that it should be interpreted taking into account Council Directive 2000/78/EC of November 27, 2000 establishing a general framework for equal treatment in employment and occupation (OJ EU 2000.303.16), in isolation from possible different definitions of the concept operating under the laws of the Member States.*

associated with it - derive primarily from the possession of a valid certificate of disability issued by a competent authority.

There are two types of relevant certificates.

2.3.2. Disability pension certification (Certificate of Inability to Work)

Disability pension certification is administered by the ZUS¹⁷. This system is regulated by the Act of 17 December 1998 on pensions from the Social Insurance Fund. Its purpose is to assess an individual's ability to work and qualify them for a disability pension. Disability is defined on the basis of the inability to work due to illness or injury, taking into account professional skills, qualifications and retraining potential. Certificates of disability are issued by doctors and medical commissions operating within the structure of the ZUS.

Certifications may declare:

- Total incapacity for work;
- Partial incapacity for work;
- Incapacity for independent living;
- The need for retraining.

This type of certificate classifies a person as partially or totally unable to work, typically for the purpose of determining entitlement to social security benefits (disability pensions, etc.). Although primarily linked to pension or benefit entitlements, it can also be used as a basis for recognising disability in the context of employment.

2.3.3. Disability non-pension certification (Certificate of Disability Degree)

In order to receive appropriate recommendations for employment accommodation and access to benefits, persons with certificates issued for pension purposes are required to apply for a disability determination. This non-pension certificate is administered by local (powiatowy) and regional (wojewódzki) Disability Adjudication Commissions. According to Articles 3 and 4 VSRA there are three degrees of disability:

- **severe**, which describes a person with impaired bodily functions who is unable to work or who can only work in a sheltered workplace and who requires constant or long-term care and assistance from others to fulfil social roles, combined with an inability to live independently;

¹⁷ The Polish Social Insurance Institution.

- **moderate**, which describes a person who has impaired bodily functions, is unable to work or can only work in sheltered employment conditions or requires temporary or partial assistance from others to perform social roles.
- **mild**, which describes a person with a physical impairment that results in a significant reduction in the ability to perform work compared with the ability of a person with similar professional qualifications and full mental and physical fitness, or with limitations in the performance of social roles that can be compensated for by the use of orthopaedic devices, aids or technical means.

3. Equal treatment in the employment recruitment stage

3.1. National regulations that constitute impediments to the recruitment of persons with disabilities.

3.1.1. General Remarks

According to the Central Statistical Office, in 2023 there were 4,006,400 disabled people in Poland, of whom

- 1) 41.3% were classified as moderately disabled;
- 2) 27.4% were classified as severely disabled;
- 3) 25.2% were classified as mildly disabled; and
- 4) 5.8% had no specific degree of disability assigned to them due to their young age (up to 16 years)¹⁸.

Women made up the majority of disabled people, accounting for 53.1% of the total¹⁹.

The highest concentration of persons with a disability certificate was among women aged 70-74 and among men aged 65-69, indicating that a significant proportion of disabilities occur in older age groups. Among the disabled registered with the Social Insurance Institution (ZUS), 60.1% were aged 50 and over, which further confirms the clear 'ageing' of this population²⁰.

According to the Labour Force Survey, the employment rate of disabled people of working age was 34.2% in 2023. In 2023, the number of disabled people of working age in employment was 474,000, of which 447,000 were employed and 27,000 were unemployed²¹.

¹⁸ Osoby niepełnosprawne w 2023 r., Informacja Sygnalna, GUS 15.10.2024 r; <https://stat.gov.pl/obszary-tematyczne/warunki-zycia/ubostwo-pomoc-spoieczna/osoby-niepelnosprawne-w-2023-roku,26,6.html> (access: 14.03.2025).

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

Illness or disability is one of the main causes (10.6%) of inactivity among the Polish population²².

According to Statista, nearly half of Polish companies did not hire any employees with disabilities in 2024²³. Employers often cite the following reasons for this situation:

- 1) lack of applications from qualified disabled candidates and
- 2) concerns about workplace accommodations²⁴.

The complexity of the regulatory framework, in conjunction with the regulatory framework governing legal capacity, has contributed to this issue.

For the group of people with physical disabilities, the most important factor hindering employment was identified as employers' reluctance to hire persons with disabilities (25%). Respondents with this type of disability also considered limitations resulting from their impairment (23%) and the lack of suitable job opportunities they could apply for (19%) to be significant barriers²⁵.

Benefits received from the Social Insurance Institution (ZUS) or Municipal Social Welfare Centers (MOPS) are also important, as respondents expressed reluctance to lose these benefits. As a result, many choose not to take up employment. Among the top five barriers to entering the labor market, a significant portion of respondents (15%) indicated difficulties with commuting to work²⁶

According to **Centralna Baza Ofert Pracy** (Central Job Offers Database), there are currently **1 660 job listings** available, offering a total of **3 643 positions** for people with disabilities in Poland²⁷. However, this is only a joint database of the public labour offices, containing information on current job offers, internship proposals from the office and adult education, and does not include commercial job offers, the size of which is difficult to estimate reliably.

3.1.2. Protection of personal data of persons with disabilities.

3.1.2.1. Introduction

Employers are entitled to process health-related data under specific conditions. The issue remains contentious due to the sensitivity of disability certificates, which contain detailed medical information.

²² Pracujący, bezrobotni i bierni zawodowo, Informacja Sygnalna, GUS 27.11.2024 r., <https://stat.gov.pl/obszary-tematyczne/rynek-pracy/pracujacy-bezrobotni-bierni-zawodowo-wg-bael/pracujacy-bezrobotni-i-bierni-zawodowo-wyniki-wstepne-bael-4-kwartal-2024-roku,12,63.html> (access: 14.03.2025 r.).

²³ <https://www.statista.com/statistics/1473836/poland-hiring-employees-with-disabilities/>

²⁴ https://ec.europa.eu/employment_social/empl_portal/ede/PL%20employment%20%20report.pdf

²⁵ Model wsparcia osób niepełnosprawnych w środowisku pracy, Centralny Instytut Ochrony Pracy – Państwowy Instytut Badawczy, Warszawa 2019

²⁶ Ibidem

²⁷ <https://oferty.praca.gov.pl/portallista-ofert> (accessed: 14.03.2025).

3.1.2.2. Problem of disclosure of disability certificates

According to Article 2b(1) VSRA, an employer is permitted to process health data, including disability status, for both employees and job candidates. This interpretation of the law stems from the employer's legal obligation to employ persons with disabilities, as outlined in Article 21 VSRA. Specifically, employers with at least 25 full-time employees are required to maintain a minimum employment rate of 6% for persons with disabilities. Failure to meet this threshold results in mandatory contributions to the PFRON²⁸. Given this legal obligation, employers are allowed to collect and process disability-related data during recruitment and employment to determine their compliance with statutory hiring quotas.

At the same time, Article 2b(2) VSRA ensures that providing such information remains voluntary, meaning that individuals with disabilities are not compelled to disclose their status unless they wish to access specific workplace rights or accommodations.

If a disabled person chooses not to disclose their condition at the time of recruitment, certain legal and practical problems arise when they start working. The most critical issue arises during pre-employment medical examinations, which are mandatory in Poland before an employee starts work. If the disability affects the employee's ability to perform the job, the doctor may determine that the individual is unfit for the position, which may lead to the following consequences

- **refusal to allow the employee to work** - according to Article 229 § 4 LC, the employer may not allow an employee to work unless the employee presents a current medical certificate confirming that there are no medical restrictions on performing work in a given position under the working conditions described in the medical examination referral.
- **no right to remuneration** - as stated in Article 80 LC, remuneration is paid for work performed and an employee without a positive medical certificate will not be admitted to work;
- **Termination of employment** – an employer has the right to terminate the employment contract if the individual is deemed medically unfit for work.

A person with a disability can work under general conditions without disclosing his or her disability. However, under Article 22¹ § 4 LC, if they later wish to claim workplace accommodations or special benefits (such as reduced working hours, extra breaks or additional financial support for adaptive equipment), an employer is entitled to ask them to provide proof of their disability status. This retrospective disclosure raises privacy concerns as it forces individuals to disclose sensitive information at a later stage in their employment.

²⁸ State Fund for the Rehabilitation of the Disabled (pl. *Państwowy Fundusz Rehabiliacji Osób Niepełnosprawnych*)

Employers, in turn, are allowed to seek out individuals with disabilities during hiring processes to comply with legal requirements regarding workforce quotas. Such targeted recruitment is not considered discriminatory, nor does it violate data protection regulations, as it serves a legitimate purpose under the VSRA.

3.1.2.3. Privacy concerns and proposed solutions

Disability certificates in Poland contain detailed medical information, including specific diagnoses, which poses significant privacy risks. The necessity of revealing such information for reasonable accommodation creates a conflict between workplace rights and personal privacy.

One possible solution to alleviate this problem is to reform the format of disability certificates. Instead of including detailed medical information, the certificates should only confirm:

- The individual's classification within a recognized disability category.
- The accommodations they are entitled to.
- The legal basis for their protections and benefits.

In this way, employers receive only the necessary employment-related information without gaining access to an individual's full medical history. Such a reform would align with the principle of data minimization, a fundamental concept in the GDPR.

3.1.2.4. Privacy vs. safety standards

The Supreme Court²⁹ has held that withholding a disability certificate is not in itself a breach of employment obligations unless the undisclosed condition conflicts with essential safety or performance standards in the workplace. However, concealing a disability with the intent to mislead an employer about medical contraindications to work is a serious breach of employment obligations. Conversely, voluntary disclosure fosters trust and allows employers to tailor workplace accommodations to the needs of employees..

3.1.3. Regulatory framework governing legal capacity

3.1.3.1. Categories of legal capacity

Full Legal Capacity - adults with full legal capacity can enter into and terminate employment contracts independently without restriction.

²⁹ Supreme Court judgement of 7 February 2001, I PKN 244/00, OSNP 2002, No. 21, item 520.

Partial Legal Capacity - persons with limited legal capacity may conclude or terminate employment contracts independently³⁰. However, their legal representative may as well terminate the contract with the consent of the family court.

Lack of Legal Capacity - Persons entirely deprived of legal capacity require the active participation of their legal representatives in employment matters. Contracts must be signed by a legal representative³¹. Furthermore, family court approval is required for significant actions, such as entering into an employment contract³².

3.1.3.1. Grounds for legal incapacitation in polish law

Under Polish civil law³³, a person with a severe mental illness, intellectual disability, or other significant impairment affecting their ability to manage personal and financial matters may be fully or partially incapacitated. The court may grant incapacitation upon request by close relatives, a legal guardian, or a prosecutor, if the person's condition prevents them from making informed decisions and threatens their well-being or financial security³⁴.

3.1.3.2. Impact on autonomy

Restrictions on independent employment decisions limit the autonomy of persons with disabilities, conflicting with Article 12 CRPD, which promotes supported decision-making. Employers may be reluctant to hire individuals with limited or no legal capacity due to administrative burdens. Polish courts emphasize respect for the will of incapacitated persons³⁵, yet the Constitutional Tribunal highlights that full legal capacity is essential for employment independence³⁶.

Article 27 CRPD guarantees equal labor market access for persons with disabilities, regardless of legal capacity. Poland's current system of substituted decision-making fails to meet these standards, while CRPD calls for a model that allows individuals to make their own choices with proper support.

3.1.4. The problem of the 'pension trap' in the social security system

Individuals receiving disability pensions in Poland face strict income limits. According to the Act of 17 December 1998 on Pensions from the Social Insurance Fund, exceeding certain income thresholds may result in a reduction or suspension of benefits³⁷.

³⁰ Article 22 § 3 LC

³¹ Article 95 § 1 of the Civil Code in connection with Article 300 LC.

³² Articles 156 in conjunction with 175 of the Family and Guardianship Code

³³ Article 13 §1 of the Civil Code

³⁴ Article 545 of the Code of Civil Procedure

³⁵ Supreme Court Judgment, Case No. III CZP 30/19, 22 May 2019; Appellate Court Judgment, Case No. I ACa 953/10, 11 October 2010

³⁶ Judgment of March 7, 2007, K 28/05

³⁷ Article 104 (8) Act of 17 December 1998 on Pensions from the Social Insurance Fund

Income Limits and Their Impact on Employment: The fear of losing benefits discourages individuals with disabilities from seeking employment, even when workplace conditions are adapted to their needs. The rules for combining income from work and pensions fail to consider the degree of disability or the financial needs of individuals with low benefits. This creates a financial barrier that locks individuals into reliance on social benefits, limiting their economic and social participation.

3.2. Case law on discrimination in the recruitment stage

3.2.1. Introduction

There is extensive case law on discrimination in the dismissal stage. However, with regard to the recruitment stage, there is a single, very recent judgment issued on September 10, 2024 by the District Court in Warsaw³⁸.

3.2.2. Key facts

S.U. applied for a financial specialist position based on a job advertisement. During the recruitment process, S.U. was interviewed and informed that she was successfully shortlisted for the role. Terms of employment, including salary and working hours, were preliminarily agreed upon. During a subsequent step in the hiring process, S.U. disclosed her moderate mobility disability and provided a disability certificate. The certificate indicated she required appropriate accommodation at the workplace. The employer decided not to hire S.U., citing concerns about her ability to perform certain tasks, such as moving between buildings without elevators and performing duties as a building administrator. The company argued that they could not reasonably accommodate her disability in this role.

3.2.3. Claim of discrimination

S.U. filed a claim against the employer, asserting that she was discriminated against based on her disability, in violation of Articles 11³ and 18^{3a}-18^{3d} of the Labor Code. S.U. experienced significant psychological distress and a sense of devaluation due to the employer's decision. She sought compensation for lost wages during the probation period, damages for discrimination, and compensation for stress-related health issues.

3.2.4. Legal analysis

According to Articles 11³ and 18^{3a} § 1 LC, employees must be treated equally during recruitment and employment, regardless of disability. Article 18^{3b} § 1 LC places the burden of proof on the employer to demonstrate that decisions regarding employment are based on objective criteria rather than discriminatory reasons. The court found that the employer failed to provide objective

³⁸ Judgment of the District Court for Warszawa Praga-Południe in Warsaw of 10 September 2024 VI P 465/24

justifications for their decision not to hire S.U. The primary reason for her rejection was her disclosed disability, which violated the principle of non-discrimination.

The employer could not prove that her disability posed a genuine obstacle to performing the core functions of the financial specialist role. Tasks requiring physical mobility (e.g., reading meters) were occasional and could have been accommodated.

Under the VSRA, employers must implement reasonable accommodations to support disabled employees. The court noted that the employer did not explore or implement accommodations before rejecting S.U.'s application.

3.2.5. Court's Judgement

The court ruled in favor of S.U., awarding her compensation for:

- Discrimination under Article 18^{3d} of the Labor Code,
- Lost earnings during the probation period,
- Damages for emotional distress and stress-related health deterioration.

The employer was ordered to pay a total of PLN 22,200 in compensation.

3.3. Measures to encourage employers to engage employees with disabilities

3.3.1. Introduction

A large numbers of employers (86%) claim that they have never employed people with disabilities, simply because they have never received any job applications from disabled people. On the other hand, only 20% of employers are aware of the benefits of employing people with disabilities³⁹.

There are measures in Polish law to encourage employers to employ people with disabilities, including:

- exemptions from contributions,
- reimbursement of additional costs,
- wage subsidies

Detailed conditions for applying for reimbursements are set out in the Ministerial Regulation on Refunds for Additional Costs⁴⁰, which also specifies eligible expenses as the purchase of equipment and workplace modifications.

³⁹ Chłóń- Domińczak and Poznańska, 2007

⁴⁰ Regulation of the Minister of Labour and Social Policy on the reimbursement of additional costs associated with the employment of disabled employees

3.3.2. Quota system

Companies with more than 25 employees must ensure that at least 6% of their workforce consists of people with disabilities, as non-compliance will result in mandatory contributions to the PFRON, as stipulated in Article 21 VSRA.

The monthly contribution should be equal to the product of 40.65% of the average wage⁴¹ and the number of employees corresponding to the difference between the employment that would ensure the achievement of the 6% employment rate of people with disabilities⁴² and the actual employment of people with disabilities.

Below is one common way to express this provision in a simplified formula. Let:

- C = contribution,
- $p = 0.4065$ (i.e., 40.65%),
- W = the average wage,
- $r = 0.06$ (i.e., 6%);
- L = total number of employees (in full-time equivalent),
- D = number of employees with disabilities (in full-time equivalent).

Then the monthly contribution can be written as:

$$C = p \times W \times [(r \times L) - D]$$

with the understanding that this applies only if $L \geq 25$ and $[(r \times L) - D] > 0$. Otherwise, the contribution is zero (i.e., if the employer already meets or exceeds the 6% requirement).

Number of employed disabled persons refers to employees with a recognized disability status.

3.3.3. Contributions exemptions.

Organizations meeting the required disability employment quotas are exempt from contributions to the PFRON.

3.3.4. Wage subsidies for hiring individuals with disabilities (Article 26(a) VSRA).

Employers receive wage subsidies from the PFRON for hiring individuals with disabilities who are officially registered as disabled and not retired, except under specific conditions.

⁴¹ This is the average monthly wage in the national economy in the previous quarter from the first day of the month following the announcement by the President of the Central Statistical Office in the form of a notice in the Official Gazette of the Republic of Poland "Monitor Polski" (Article 2(4) VSRA).

⁴² This is the average monthly percentage of people with disabilities in total employment, calculated on a full-time basis (Article 2(6) VSRA).

- Severe disability: PLN 2,760/month.
- Moderate disability: PLN 1,550/month.
- Mild disability: PLN 575/month.

An additional wage subsidy of PLN 1.380, PLN 1.035 (moderate), or PLN 690 (mild) is available for hiring certain groups of persons with disabilities⁴³.

The subsidy must not exceed:

- 90% of total wage costs for a given month (entrepreneurs).
- 75% of total wage costs for a given month (other entities).

3.3.5. Reimbursement of additional costs (Article 26 VSRA)

Employers who hire persons with disabilities can claim reimbursement for:

- Adaptation of workspaces to the needs of employees with disabilities.
- Purchase or adaptation of equipment or assistive technologies.
- Employment and training of support personnel to assist disabled employees

Conditions: Employers must ensure that workplaces meet accessibility standards. Compliance is verified by the State Labor Inspectorate (pl. *Państwowa Inspekcja Pracy*) before subsidies or reimbursements are granted.

Additional conditions include:

- The employer must employ the person for a minimum of 36 months.
- Costs are reimbursed only after the employer submits proper documentation.
- The employer must provide detailed invoices and receipts for any reimbursable expenses (e.g., workspace adaptations, equipment purchases).
- The reimbursement limit is set at 20 times the average salary per adjusted workplace

3.3.6. Tax exemptions

The refund also includes the amount of VAT that, according to the provisions of the Value Added Tax Act of 11 March 2004, the taxpayer is not entitled to deduct from the tax due or claim as a refund for the tax difference.

⁴³ Under article 26a(1b) VSRA additional wage subsidies are available for hiring employees with **mental illnesses, epilepsy, or blindness**.

3.3.7. Financing of trainings and assisting personnel (Article 41 VSRA)

Employers may receive financing for specialized training of staff assisting disabled employees. The employer can organise the training itself or pay for it for the persons employed disabled persons. At the employer's request, the costs incurred for training employees with disabilities may be reimbursed from the Fund's resources up to 70% of these costs but not exceeding twice the average salary per person.

The refund covers costs incurred in connection with training, including:

- Services provided by trainers for the hours during which they conduct the training;
- Services of a sign language interpreter, a guide-interpreter, a reader for visually impaired persons, or a caregiver for an employed person with a significant degree of disability;
- Travel expenses for trainers, training participants, sign language interpreters, guide-interpreters, readers for visually impaired persons, or caregivers for an employed person with a significant degree of disability;
- Accommodation and meals for training participants;
- Advisory services;
- Administrative and office support;
- Rental of premises;
- Depreciation of equipment and tools, excluding equipment and tools purchased with public funds within seven years prior to the training;
- Training materials.

The refund also covers expenses for the wage costs of a disabled employee for the time during which the employee participates in the training.

3.3.8. Costs of employment of personnel assisting disabled employees (Article 26d VSRA)

The costs of employing staff to assist disabled workers in performing tasks that facilitate communication with their environment and tasks that are impossible or difficult for the disabled worker to perform independently at the workplace are also reimbursed. The eligible costs are the amounts of the salaries of the staff assisting the disabled worker for the time spent exclusively on this assistance.

4. Obligations of employers related to reasonable accommodation

4.1. Regulation of the obligation to provide reasonable accommodation for persons with disabilities in Polish labour law

The obligation of employers to provide reasonable accommodation to employees with disabilities in Article 5 of Directive 2000/78 was introduced in Poland by the Act of 3 December 2010 on Implementation of Certain Provisions of the European Union on Equal Treatment by adding Article 23a to the Act of 27 August 1997 on Vocational and Social Rehabilitation and Employment of Disabled Persons in the following wording:

“1. An employer shall be obliged to provide necessary reasonable accommodation to a disabled person who is in an employment relationship with the employer, who is participating in the recruitment process or who is undergoing a training, internship, vocational preparation or apprenticeship or graduate training. Necessary reasonable accommodation shall consist of making changes or adjustments in a particular situation to meet the specific needs notified to the employer as a result of the person's disability, provided that making such changes or adjustments would not result in imposing a disproportionate burden on the employer, subject to paragraph 2.

2. The burdens referred to in paragraph 1 shall not be disproportionate if they are sufficiently compensated from public funds.

3. Failure to make the necessary reasonable accommodation referred to in paragraph 1 shall be deemed a violation of the principle of equal treatment in employment within the meaning of the provisions of article 18(3a) § 2-5 of the Act of 26 June 1974. - Labour Code.’

4.2. Divergence of the obligation to provide reasonable accommodation in Polish law and Directive 2000/78

The VSRA imposes a specific obligation on the employer to provide reasonable accommodation to a disabled person who is in an employment relationship⁴⁴, participating in a recruitment process or undergoing a training, apprenticeship, vocational preparation or graduate traineeship. The scope of this obligation is therefore narrower compared to Directive 2000/78/EC, which covers not only the employment relationship but also non-employee atypical employment or self-employment, which indirectly affects the scope of those entitled to and obliged to provide reasonable accommodation⁴⁵.

⁴⁴ It is important to remember formal and narrow concept of an employment relationship under the LC.

⁴⁵ M. Paluszkiewicz [in:] *Vocational and Social Rehabilitation and Employment of Persons with Disabilities. Commentary*, authors E. Biela-Jomaa and the others., WKP 2023, art. 23a

4.3. Mechanism of introducing reasonable accommodation in practice

The obligation to provide reasonable accommodation is reactive. It only comes into effect when the employer receives information from a particular employee that the workstation is not adapted to the needs resulting from the disability. The legislator does not indicate when the employee must report their needs, nor does it specify the form in which the report must be made, but it must be sufficiently clear and precise. It can be any reliable and credible evidence showing that the performance of the work encounters difficulties related to the unsuitability of the workstation.⁴⁶

The employer may clarify the issue of accommodation in the regulations or in an internal reasonable accommodation policy, but no less favourably than the VSRA and taking into account individual cases. The obligation to make improvements is not absolute, as the employer may be exempted from it if it is a disproportionate burden. If it is not possible to apply them, employer may terminate the contract of employment, and this will not be an act of discrimination.⁴⁷

4.4. Case law

According to case law, reasonable accommodation within the meaning of Article 23(1) VSRA consists in taking measures to enable a disabled employee to continue to occupy his or her current position, but not in eliminating from the scope of duties activities that are essential to their position.⁴⁸ The concept should nevertheless be interpreted broadly and include both material and organisational measures.⁴⁹ Reasonable accommodation is the employee's right to have working conditions that enable them to continue to perform their duties and prevent them from being excluded from the labour market. However, it does not imply an obligation to work in conditions specially created for them, and they cannot be forced to exercise this right.⁵⁰

4.5. Unreasonable accommodation

- There is no legal definition of unreasonable accommodation, but it can be inferred that it is one that imposes a disproportionate burden on the employer
- Burdens are not disproportionate if they are sufficiently compensated by public funds.

⁴⁶ Judgment of the Provincial Administrative Court of November 9, 2017, ref. II SA/Go 536/17

⁴⁷ K. Naumowicz, *Specific Rights of Persons with Disabilities Regarding the Prohibition of Discrimination*, Studies on Labour Law and Social Policy, 2023, 30, no. 2, p. 160.

⁴⁸ Judgment of the Supreme Court of December 7, 2017, ref. I PK 334/16.

⁴⁹ Judgment of the Supreme Court of November 12, 2014, ref. I PK 74/14.

⁵⁰ Judgment of the Supreme Court of September 15, 2015, ref. III KRS 49/15.

- In assessing proportionality, the interest of the employee as well as the cost and inconvenience to the employer must be taken into account.⁵¹⁵² This assessment is a matter for the court and must be comprehensive.⁵³
- A correct understanding of the proportionality of burdens sets a limit to the employer's obligations - exceeding it means that there is no breach of the principle of equal treatment.⁵⁴

4.6. Good practices in accommodation for disabled people

An important element of the system for adapting workstations is the creation of a catalogue of good practices, which are a collection of exemplary solutions that can help employers to implement changes and convince them that fulfilling the obligation does not have to be complicated or costly. Using the analyses and materials published within the projects⁵⁵⁵⁶, there can be identified the following areas of possible action and exemplary practices:

- Adaptation of facilities and work premises
 - Repeatable functional layout on each floor (signposting of circulation routes, clearly marked directions)
 - Colour differentiation of floors
 - Appropriate mounting height for switches, bells, intercoms, sockets within reach of both standing and sitting wheelchair users
 - Architectural accessibility
- Room lighting and visual signalling
 - Individually selected lighting at the workstation
 - Contrasting colour of the floor, walls, doors, information signs on doors, equipment, signage in the building
- Room acoustics and sound signalling
 - Audible safety signalling
 - Computer workstations with software supporting synthetic speech, Braille

⁵¹ Judgment of the Provincial Administrative Court of November 9, 2017, ref. II SA/Go 536/17

⁵² M. Paluszkiwicz [in:] *Contemporary Issues in Pension Law*, ed. T. Bińczycka – Majewska, M. Włodarczyk, LEX 2015, part 3.

⁵³ Judgment of the Supreme Court of April 12, 2012, ref. II PK 218/11

⁵⁴ M. Paluszkiwicz, *Reasonable Accommodations as a Means of Supporting the Professional Activity of Persons with Disabilities in the Light of Case Law*, Studies on Labour Law and Social Policy, Volume 30, 2023, p. 398

⁵⁵ Study "Framework guidelines for designing facilities, rooms and adapting workstations for people with disabilities with specific needs" as part of project no. POKL.01.03.06-00-070/12 implemented under the Human Capital Operational Programme 2007–2013, co-financed by the European Social Fund. Project implemented in partnership by the State Fund for Rehabilitation of Disabled People and the Central Institute for Labour Protection - National Research Institute

⁵⁶ Guide "Model of support for people with disabilities in the workplace" published as part of project no. POWR.02.06.00-00-0054/17 co-financed by the European Social Fund under the Knowledge Education Development Operational Programme 2014–2020. Project implemented in partnership by the Central Institute for Labour Protection - National Research Institute (Leader), the State Fund for Rehabilitation of Disabled People, the Integration Friends Association, the National Audit Union of Invalids' Cooperatives and Cooperatives of the Blind

- Separation of high-noise and quiet zones
- Easement for electro-magnetic fields and radiation
 - Placing a sign warning of the location of this type of hazard
- Physical workload of the employee and spatial organisation of the workplace
 - Height-adjustable workstation
 - Shelving adapted to the worker's capabilities
 - Equipment operated by mouth, head movement, one-handed operation
 - Protection against tools falling from work surfaces
- Safe use of machinery and other technical equipment
 - Floor coverings to reduce the risk of slipping
 - Marking of edges of machine platforms, stairs, obstacles
 - Designation of traffic routes for pedestrian and transport traffic
- Microclimate
 - Temperature can be adapted to individual needs
 - Protection from direct contact with hot surfaces
- Work organisation and psychological workload of employees
 - Support for education of people with disabilities, individual plans
 - Non-discriminatory job titles
 - Support groups
 - Possibility of longer professional and social adaptation
 - Flexible working hours, possibility of remote, hybrid working
 - Drawing instructions for first aid at first aid kits
 - Training of managers and employees on disability management and induction of people with disabilities into the workplace
 - Sign language interpreter, sign language course for employees
 - Opportunities to familiarise themselves with the workplace building and employees
 - Working on a task basis, in smaller teams.

The "TAKpełnosprawni" Foundation is also active in this field and has carried out a number of studies, training sessions and reports for employers on the employment of people with disabilities (under the auspices of the National Fund for the Rehabilitation of People with Disabilities). It emphasises that in determining the appropriateness of making an adjustment, a company should take into account costs, company resources, organisational situation, the possibility of obtaining public funding, the potential benefits of the adjustment for persons other than the applicant, the company's obligations in terms of health and safety, and the rights and freedoms of others.

4.7. Remedies in case of failure to provide the obligation to provide reasonable accommodation

Article 23a (3) VSRA specifies that failure to provide reasonable accommodation is a violation of the principle of equal treatment in employment. According to Article 18(3d) LC, the discriminated person is entitled to compensation in an amount not lower than the minimum wage.

It should be noted that the legislator refers to the provisions regulating discrimination in employment in general terms, so that a breach of this obligation is sanctioned in the same way as discrimination on any other ground. It is also not determined in advance whether the refusal to make improvements is a direct or indirect form of discrimination.

The employee also has a realistic indirect means of forcing the employer to fulfil this obligation. This can be done by filing a complaint with the State Labour Inspectorate, which is the body set up to monitor and control compliance with labour law and which, upon receipt of a complaint, will carry out an inspection at the workplace in question. If irregularities are found, it can issue an order to the employer to remedy the identified shortcoming, i.e. the failure to provide reasonable accommodation for persons with disabilities.

More about remedies and the role played by NGOs in this regard is discussed in Section 9.

5. Positive action measures

5.1. Are there quotas in employment for persons with disabilities?

Companies employing at least 25 people must ensure that at least 6% of their workforce comprises individuals with disabilities. Non-compliance leads to mandatory contributions to the PFRON⁵⁷. Employers failing to meet the quota must pay a monthly contribution.

A detailed analysis of this issue can be found in Section 3.3.4.

5.2. Positive action measures for persons with disabilities

Differentiation in treatment in employment is permissible if it serves a legitimate aim, such as achieving equality for disadvantaged groups, provided that the measures are proportionate and temporary. Under Article 18^{3b} § 3 LC measures **taken for a specified period to equalize opportunities of disadvantaged groups⁵⁸ do not constitute a violation of the principle of equal treatment in employment. These measures are aimed at reducing actual inequalities in favour of such workers within the scope defined by this provision.**

⁵⁷ Article 26a VSRA.

⁵⁸ According to art. 18(3a) § 3 LC characteristics on the basis of which discrimination may occur include in particular, gender, age, disability, race, religion, nationality, political opinion, trade union membership, ethnicity, religion, sexual orientation, employment for a definite or indefinite period of time, full-time or part-time employment

Positive action includes legal and policy measures designed redress imbalances. For example, where candidates are equally qualified, preference may be given to a person from an under-represented group, such as women in male-dominated fields⁵⁹. This is permitted provided that:

- The measure does not automatically and unconditionally favour one group over another.
- The personal and professional circumstances of each candidate are assessed objectively.

5.3. Disability-Specific Positive Action

Article 23a VSRA introduces **reasonable accommodation** requirements, obligating employers to adapt workplaces without disproportionate burdens.

Reasonable Accommodation:

- Defined as necessary and appropriate modifications to enable disabled employees to work effectively.
- Must align with proportionality principles, considering costs, enterprise size, and public funding availability.
- Employers must actively identify the needs of disabled employees and implement accommodations unless these impose a **disproportionately high burden**.

5.4. Polish Act on Ensuring Accessibility for Persons with Special Needs

Scope and Purpose:

- Ensure equal participation for individuals with special needs by addressing architectural, digital, and informational barriers.
- Promote universal design and rational adjustments in public and private domains

Target Group⁶⁰: Defined as individuals requiring additional actions or measures to overcome barriers, ensuring access on an equal footing with others.

Public Sector Responsibilities: Applies to entities such as public institutions, state organizations, and publicly funded bodies Obligated to incorporate accessibility considerations in all activities and prevent barrier creation.

Accessibility Measures:

- Architectural Accessibility;
 - Remove horizontal and vertical communication barriers;

⁵⁹ K. Walczak (red.), Kodeks pracy. Komentarz. Wyd. 33, Warszawa 2023

⁶⁰Article 2 sec. 3 Act on Ensuring Accessibility for Persons with Special Needs (2019)

- Equip buildings with technical solutions for access to functional spaces, excluding technical areas;
- Provide clear and accessible building layout information in visual, tactile, or audio formats;
- Digital Accessibility
- Informational-Communication Accessibility
 - Offer assistive services, such as sign language interpreters and text-to-speech systems.
 - Equip spaces with tools like induction loops for the hearing impaired (Art. 6(3)(b)).
- Alternative Access⁶¹:
 - If full accessibility is unattainable, alternative measures must be provided, including personal assistance, technical tools, or organizational adjustments.

Implementation and Monitoring

- Ministry of Regional Development oversees implementation, monitors compliance, and promotes public awareness and develops governmental programs for accessibility, e.g., Program Dostępność Plus⁶².
- Public entities must submit quadrennial reports detailing compliance with accessibility requirements.
- Entities may apply for an Accessibility Certificate, which verifies compliance with standards through an audit.
- Certificates are valid for four years, with periodic reviews to ensure ongoing compliance.

5.5. Are best practices and case law on positive action known in your country?

A detailed analysis of this issue can be found in Section 4.6.

5.6. Case law concerning reasonable adjustments

Supreme Court Ruling II PK 276/10

Issue: The case concerned a dispute over the termination of employment for a disabled employee, Ms. Danuta C., by her employer, P. S.A. The main issue was whether the termination was lawful,

⁶¹ Article 7 Act on Ensuring Accessibility for Persons with Special Needs (2019)

⁶² Article 10 *ibidem*.

particularly considering the obligation to provide reasonable accommodation for employees with disabilities, as required under both Polish and European Union law.

Facts: Ms Danuta C. was employed as an assistant in a post office and was later classified as moderately disabled, meaning that she could only do light work. Her workstation was modified accordingly. However, her employer terminated her contract, citing her inability to lift objects weighing more than 5 kg, which was considered an essential requirement of her job. Ms Danuta C. claimed that the employer had failed to provide reasonable accommodation and had unlawfully terminated her employment.

The Court emphasized the following: According to Article 5 of Directive 2000/78/EC and the Polish law, employers are obliged to make reasonable adjustments, unless they constitute a disproportionate burden. In this case, moving Ms Danuta C. to a different job or changing her duties did not appear to be an unreasonable burden.

- The employer's actions could be interpreted as a failure to comply with the principle of non-discrimination under Polish labour law and European Union directives.
- The Court emphasised that Ms Danuta C.'s role could be modified within her original job description to accommodate her disability and that such adjustments could be made without significant organisational disruption.

5.7. Are positive action measures permitted only for limited grounds of discrimination, including disability, or is there a general derogatory provision authorising unilateral implementation of positive action measures?

There is a general derogatory provision authorizing unilateral implementation of positive action measures in the form of Article 18^{3b} § 3 LC. This provision is general in nature and can be applied to any under-represented group, not only to employees with disabilities.

However, there are also other derogations that specifically refer to disability as a specific ground of discrimination. According to Article 18^{3b} § 2(3) LC, the principle of equal treatment in employment is not infringed by measures which differentiate the legal situation of employees for the purpose of protecting parenthood or disability. In this context, disability enjoys special protection and may be the subject of particular concern to the employer.

In a way, the VSRA also enables and encourages the adoption of positive action measures for employees with disabilities in Poland, as it encourages employers to give priority to the employment of employees with disabilities.

6. Equal treatment as regards employment conditions

6.1. National regulations that concern employment conditions for persons with disabilities

6.1.1. Introduction

In the case of Polish labour law system, the employment conditions specifically tailored for persons with disabilities are largely found outside of the main source of labour law - The Labour Code. The Act of 27 August 1997 on Vocational and Social Rehabilitation and Employment of Disabled Persons (VSRA) sets out a variety of rules that must be followed by an employer, as well as the authorities. Special employment conditions are provided for employees with disabilities as defined by the VSRA in terms of working time, rest periods and paid vacation leave.

6.1.2. Working time

According to Article 15 VSRA, the working hours of disabled person may not exceed 8 hours per day and 40 hours per week. However, persons certified with severe or moderate degree of disability cannot legally work more than 7 hours per day and 35 hours per week. All persons with disabilities, regardless of their disability status, cannot perform work at nighttime⁶³ and in excess^{64,65}.

The application of a reduced working hours for employees with disabilities cannot affect their remuneration, determined by their hourly personal rate of pay⁶⁶, which is explicitly stated in Article 18 VSRA⁶⁷.

Contrary to Article 151⁴ § 1 LC, which states that employees managing an employing establishment on employer's behalf and head of separate organizational sub-units shall perform work, if any, outside working hours without the right to remuneration or allowance for overtime work, employees with disabilities are not subject to this general rule⁶⁸.

⁶³ According to Article 151⁷ § 1 LC that means any eight hours between 9 p.m. and 7 a.m.

⁶⁴ the norms constitute *ius cogens*, so even the employee's consent cannot cause them to be rescinded, and contrary contractual provisions are considered void; see also: Supreme Court verdict from 03.08.2016, ref. I PK 168/15

⁶⁵ It is, however, necessary to note, that Article 15 VSRA is not applicable to employees, whose scope of duty constitutes guarding, such as security personnel, and to employees, at whose request the medical doctor, who conducts preventative examinations of employees (or in the absence of such doctor - the medical doctor in charge of that employees care) will agree to it.

⁶⁶ Supreme Court resolution from 18.04.2000, ref. III ZP 6/00

⁶⁷ Additionally, if an employee transitions to a reduced number of working hours due to their disability, their hourly personal rate of pay shall be increased in the ratio of the previous working hours to now reduced ones.

⁶⁸ Rules from the VSRA are strictly binding, otherwise it would lead to the exclusion of employee's with disability right to remuneration and allowance for overtime work, which could be discriminatory in itself.; see also: Supreme Court verdict from 02.10.2008, ref. I PK 64/08; Supreme Court verdict from 06.07.2005, ref. III PK 51/05

6.1.3. Additional rest period and paid vacation leave

In accordance with Article 19 of the VSRA, persons certified as severely or moderately disabled are entitled to an additional 10 days of annual paid leave. Employees certified as severely or moderately disabled are also entitled to paid leave:

- in the amount of 21 working days, in order to participate in rehabilitation camp, no more than once a year;
- for specialized examinations, therapeutic or improvement procedures, and for obtaining orthopaedic supplies or their repair, if these activities cannot be performed outside working hours.

6.1.4. Necessary reasonable accommodations

Article 23a VSRA is the basis on which a person with a disability can request necessary reasonable accommodation for themselves⁶⁹.

The term "necessary reasonable accommodation" is defined in the legislation as an accommodation that consists of making changes or adjustments that are necessary in a particular situation to meet the specific needs previously communicated to the employer as a result of the person's disability, provided that making such changes or adjustments would not result in a disproportionate burden on the employer⁷⁰. The employer is obliged to make reasonable accommodation if its own organisational and financial capabilities allow it, and if the cost of making such changes or adjustments is sufficiently compensated by public funds. Failure to provide the necessary reasonable accommodation is considered a violation of the principle of equal treatment in employment.

6.2. Case law on discrimination in employment conditions

6.2.1. Supreme Court resolution from 03.08.2016, ref. I PK 168/15

Key facts: The claimant was moderately disabled and employed as a senior accountant. During the period covered by the claims in this case, she factually worked 8 hours a day and 40 hours a week. The plaintiff provided a disability certificate, but the employer did not require the plaintiff to provide a doctor's note stating that her working hours could exceed 8 hours per day. Subsequently, the defendant informed the plaintiff that the standard working hours for her would

⁶⁹ Interestingly, this employer's requirement is not only reserved for those with disabilities who already are employed, but also for those in the recruitment phase or undergoing training, internship, vocational training or apprenticeship.

⁷⁰ Such accommodations may, for example, consist of adapting the room (elimination of architectural barriers), providing appropriate equipment (e.g. voice-controlled office equipment - facilitation for the blind, enabling the use of alternative forms of communication - hiring a sign language interpreter), as well as adjusting working hours, dividing the tasks or educational opportunities depending on the type of disability and reported needs; <https://niepelnosprawni.gov.pl/a,6,racjonalne-usprawnienia-pjm>

be 8 hours per day and 40 hours per week, and that she was entitled to 26 days of paid annual leave. The claimant brought a claim for overtime pay.

Legal analysis: It is clear from Article 151 § 1 LC, which applies to the plaintiff, that work performed in excess of normal working hours constitutes overtime. The plaintiff was subject to a standard working time of 7 hours per day and 35 hours per week. The fact that the plaintiff (passively) accepted the working hours set for her for several years and did not claim overtime pay is irrelevant to this finding. Furthermore, the court ruled that the plaintiff's agreement to extend the standard daily working time to 8 hours per day (by contract or other agreement of the parties to the employment relationship - Article 11 LC) was also irrelevant. An extension of working time beyond the standard applicable to the employee is disadvantageous to the employee and therefore invalid under Article 18 § 2 LC. The disadvantage to the employee in this case is obvious, as Article 18 LC clearly states that a reduction in the working time norm has no effect on wages⁷¹.

Court's judgment: The Court of First Instance awarded the plaintiff the amount of PLN 31,584.00 as allowance for overtime work and supplemented vacation pay. The Court of Appeal and the Supreme Court have both upheld this judgment.

6.2.2. Supreme Court judgement from 12.04.2012, ref. II PK 218/11

Key facts: On August 23, 2004. The Prosecutor General appointed the plaintiff Monika O. as an assessor in the District Prosecutor's Office in L. Within the framework of her assigned duties, the plaintiff, like any prosecutor performing her duties, conducted pre-trial investigations, within the framework of which she also performed procedural actions at the scene of the crime. On January 13, 2007, the plaintiff was involved in a traffic accident. After hospital treatment, the plaintiff was referred for further rehabilitation in generally good condition, adapted to a wheelchair. On February 20, 2009. The Minister of Justice - Attorney General submitted a statement to Monika O. on dismissal without notice from her position as an assessor of the District Prosecutor's Office in L. in view of her absence from work due to illness lasting more than a year and her inability to work as an assessor as determined by a medical certificate.

Legal analysis: The Supreme Court noted that Article 11³ LC prohibits any direct or indirect discrimination on the basis of disability⁷². Article 18^{3a} § 1 LC also stipulates that employees should be treated equally with regard to the establishment and termination of the employment

⁷¹ This is confirmed by the Supreme Court's resolution of April 18, 2000, ref. III ZP 6/00, according to which the application of a shortened working time norm to a disabled employee taking up employment cannot result in a reduction of remuneration determined according to the hourly rate of personal classification.

⁷² Article 18^{3a} § 1 LC also stipulates that employees should be treated equally with regard to the establishment and termination of the employment relationship, terms and conditions of employment, promotion and access to training for the purpose of improving professional qualifications, in particular regardless of, among other things, disability.

relationship, terms and conditions of employment, promotion and access to training for the purpose of improving professional qualifications, in particular regardless of, among other things, disability. In turn, it is a violation of the principle of equal treatment to terminate an employment relationship on the grounds of disability (Article 18^{3b} § 1(1) LC)⁷³. The Law on the Public Prosecutor's Office specifies the requirements to be met by a prosecutor, and among them is listed the ability, by reason of health, to perform the duties of a prosecutor (Article 14(1)(4))⁷⁴.

In turn, the availability inherent in the prosecutor's profession cannot depend on the always uncertain approval of a doctor to perform work outside office hours. This is because Article 15(3) VSRA prohibits the employment of persons with disabilities during overtime and nighttime⁷⁵.

Court's judgment: The Supreme Court ruled that the plaintiff's allegation of a violation of article 11³ LC in conjunction with Article 18^{3a} and Article 2 LC was unfounded. The Court also stated that the dismissal of the plaintiff was due to her disability, as a result of which she lost her ability to perform her profession as a district prosecutor (assistant prosecutor). Therefore, this dismissal cannot be considered an illegal act of discrimination.

6.3. Restrictions for implementing measures and positive actions assisting persons with disabilities

This section is already covered in detail in Section III of the national report. In addition, however, it is clear that an employee cannot be forced to disclose their disability status. According to Article 2b of the VSRA, the employer is entitled to process personal data, including data relating to the health of individuals, but the provision of documents to the employer confirming personal health data is voluntary. According to the GDPR, health data can only be processed if 'processing is necessary for the performance of the administrator's duties and the exercise of their specific rights'. This means that an employer can only ask about an employee's disability status for a lawful purpose, such as positive action in the workplace or fulfilling a quota system.

Voluntary disclosure of disability status means that if an employee wishes to keep their disability private, they can do so, although in such a case they are not entitled to any additional benefits

⁷³ The prohibition of discrimination in Polish legislation is not absolute, as the principle of equal treatment in employment is not violated by actions, proportionate to achieving the legitimate aim of differentiating the situation of an employee, consisting in not employing an employee for one or more of the reasons specified in Article 18^{3a} § 1 LC, if the nature of the work or the conditions of its performance make the reason or reasons listed in this provision a real and decisive professional requirement for the employee (Article 18^{3b} § 2(1) LC).

⁷⁴ In general, it cannot be ruled out that a disabled prosecutor can perform their duties. However, this assessment depends on the circumstances of the specific case, in which the degree of disability (limitation of bodily functions) and the scope of the prosecutor's tasks play an important role.

⁷⁵ A waiver of these rules is possible only if the doctor conducting preventive examinations of employees or, in the absence of such a doctor, the doctor in charge of the person's care agrees.

intended for employees with disabilities. In addition, the employer can specifically look for employees with disabilities to meet required quotas.

6.4. Measures to make it more attractive for employers to keep their employees who have or develop a disability in employment

6.4.1. General remarks

This section is also partially covered in section III and IV of the national report. However, it should be mentioned, that there are many incentives for employers, mainly monetary, to employ and keep employing persons with disabilities. The VSRA includes the following encouragements:

- quota system (Article 21 VSRA);
- reimbursement of the additional costs pertaining to employing persons with disabilities (Article 26 VSRA);
- subsidies for employing persons with disabilities (Article 26a VSRA);
- reimbursement of the additional cost of support personnel to assist employees with disabilities (Article 26d VSRA).

6.4.2. Supported Employment Enterprise and Vocational Activity Enterprise (Chapter 6 VSRA)

6.4.2.1. Introductory remarks

The VSRA also supports the employment and appropriate working conditions of disabled workers through Supported Employment Enterprises (SEE) and Vocational Activity Enterprises (VAE). Both forms of organisation aim to create friendly workplaces for people with disabilities and to provide them with appropriate support for their professional and social development and integration.

6.1.1.1. The status of Supported Employment Enterprise

Definition and purpose: SEE is a unit operating in the commercial market that has obtained formal status as an entity creating special working and rehabilitation conditions for people with disabilities.

Criteria for obtaining status of the SEE:

1. **Ratio of employment** of people with disabilities to the statutory level (usually 40-50% of the total workforce), including the required number of employees with a certificate of severe or moderate disability.
2. **Adapting infrastructure** (buildings, rooms, equipment) to the needs of people with disabilities and providing medical and rehabilitation care.
3. **Obtaining a licence** (status) from the relevant authority (usually the provincial governor), which is subject to inspection and can be revoked if the requirements are not met.

Nature of activities:

- Operating under market conditions, focusing on the sale of goods or services.
- Combining a commercial function with the fulfilment of statutory tasks in the area of occupational and social rehabilitation of workers with disabilities.

6.1.1.2. The status of Vocational Activity Enterprise

Definition and purpose: VAE is a unit that focuses primarily on the rehabilitation and social activation of people with disabilities (especially moderate and severe disabilities) who find it difficult to work in the open labour market.

Criteria for obtaining status of the VAE:

1. **Appointed by local government or NGO:** VAE is most often established by a local government unit (municipality, district) or an NGO; the status is usually granted by the Marshal of the province.
2. **Rehabilitation profile:** Provision of intensive therapeutic support, social skills training and specialist support (e.g. job coaches, vocational instructors).
3. **Fulfilment of public functions:** VAE plays an important role in social policy by preparing employees for possible future employment outside the VAE.

Nature of activities:

- Emphasis on comprehensive rehabilitation, training and social integration.
- Any income from economic activity is primarily used to finance further rehabilitation services and to improve working conditions.

6.1.1.3. Advantages of SEE/VAE

Supported Employment Enterprises:

- **Exemptions and reliefs:**
 - Reliefs on local taxes (e.g. property tax) and public charges.
 - Reliefs on payments to PFRON if the required level of employment of disabled persons is maintained.
- **Subsidies from the PFRON:** monthly subsidies for the salaries of employees with disabilities (depending on the degree and type of disability).

- **Reimbursement of adaptation costs:** possibility to receive funding or reimbursement of costs related to the adaptation of workplaces to the needs of people with disabilities (e.g. purchase of equipment, software, modernisation of premises).

Vocational Activity Enterprises:

- **Grants for operations:**
 - PFRON funds to cover the costs of operations and rehabilitation of people with disabilities.
 - Possibility to use local and EU funding (e.g. European Social Fund programmes).
- **Exemptions and reliefs:** Depending on the type of activity and local regulations, sheltered workshops can benefit from tax reliefs or preferential rates for renting municipal premises.
- **Reimbursement of adaptation costs:** Similarly to integrated production workshops, the possibility of obtaining financial support for adapting workplaces to the specific needs of employees (including employees with multiple disabilities).

6.1.1.4. What is the impact of the SEE/VAE on access to employment and working conditions for people with disabilities?

- **Creation of adapted workplaces:** both SEE and VAE provide tailor-made workplaces (ergonomics, assistance, special equipment) that increase the chances of people with disabilities to find effective and stable employment.
- **Reinforcing rehabilitation and development:** thanks to the company's rehabilitation and activity funds, which are a distinctive feature of SEE and VAE, employees can take advantage of additional benefits, including training to improve their skills, therapy, medical care and rehabilitation stays.
- **Social and vocational integration:** VAE focuses on comprehensive rehabilitation and integration, preparing people with disabilities (especially those requiring more support) for a possible transition to the open labour market. SEE offers long-term jobs with the necessary adaptations and support; in practice, it is an opportunity for stable employment that takes into account health restrictions.
- **Reducing barriers in the labour market:** a system of subsidies, reimbursements and tax breaks encourages employers to create jobs for people with disabilities. Employees receive support tailored to their health and needs, which greatly facilitates their professional functioning.

7. The role of workers representatives and social dialogue

7.1. Workers representatives and integration of workers with disabilities in the company

The members of the National Advisory Council for Disabled Persons⁷⁶ (pl. *Krajowa Rada Konsultacyjna*) are an advisory and consultative body of the Government Plenipotentiary for Disabled Persons⁷⁷, which acts as a forum for cooperation between representatives of state administration bodies, local authorities and non-governmental organisations for disabled persons. One member of each trade union considered "representative" under the Act of 24 July 2015 on the Council for Social Dialogue and other institutions of social dialogue is elected to participate in the Council. The role of the Plenipotentiary is to supervise the implementation of the tasks set out in the Vocational and Social Rehabilitation Act, while the role of the Council is, inter alia, to submit to the Plenipotentiary proposals for undertakings aimed at the integration of disabled persons at the workplace, to give opinions on draft legal acts and government programmes concerning the situation of disabled persons, and to signal to the competent bodies the need to issue or amend regulations concerning the situation of disabled persons.

There are workers' representatives who focus specifically on the issues of disabled people. One example is the Federation of Trade Unions of Disabled Persons and Employees of Sheltered Workshops (pl. *Federacja Związków Zawodowych Osób Niepełnosprawnych i Pracowników Zakładów Pracy Chronionej*). Its stated overall aim is to improve the conditions for the social and vocational rehabilitation of disabled people in Poland. Solidarity Trade Union Organisation (pl. *NSZZ Solidarność*) is also active on behalf of disabled workers. An example of this is its initiative to submit a request to the Constitutional Tribunal to assess the compatibility of the provisions of the Act amending the Vocational and Social Rehabilitation Act and some other acts with Articles 2 and art. 69 of the Constitution. At issue was the provision extending the working hours of persons with severe or moderate disabilities, which was subsequently declared unconstitutional by the Constitutional Tribunal.

7.2. Collective agreements that promote the inclusion of persons with disabilities

In addition to the generally binding sources of law referred to in Article 87 of the Constitution, Polish law also includes "autonomous" acts as sources of labour law, which are binding in this specific area of law pursuant to Article 9(1) LC. These include collective agreements and other collective agreements based on laws, regulations and statutes. Unfortunately, we were not able to find any autonomous sources of labour law dealing with the issue of disability in employment.

⁷⁶ Hereinafter: "the Council".

⁷⁷ Hereinafter: "the Plenipotentiary".

8. Equal treatment in the dismissal stage

8.1. Obligations of employers as to retaining an individual with a disability or who develops a disability during employment

According to Article 14 VSRA, an employer is obliged to provide or organise a suitable workplace with basic welfare facilities for an employee who, as a result of an accident at work or an occupational disease, has lost the ability to work in his or her current position, no later than within 3 months from the date of the employee's notification of their willingness to start work⁷⁸. The law does not specify what conditions the basic welfare facilities should meet and what kind of workplace can be considered suitable for a person with a disability⁷⁹. It is therefore advisable to specify them in the decision certifying a disability to determine the degree of disability or partial disability.

The employer is not obliged to separate or organize a workstation for a person with a disability if the sole cause of the accident at work was the employee's violation of health and safety regulations or their state of intoxication⁸⁰. In cases where the state of intoxication or violations of health and safety regulations were one of the causes of an accident at work, but not the sole cause, the employer is as liable for the accident at work as if these violations on the part of the employee had not occurred at all⁸¹.

However, the law does not impose any special requirements or restrictions on the dismissal of a worker who has become disabled not as a result of an accident at work or occupational disease. In such cases⁸², the employee must undergo a return-to-work medical examination to determine whether they are capable of performing work in their current position. If the employee is found to be unfit for work, the employer may not allow the employee to return to work, which may be grounds for dismissal. In addition, according to Article 53 § 1(1) LC, an employer may terminate an employment contract without notice if the incapacity for work due to illness lasts longer than three months⁸³ or exceeds the total period for which the employee has received remuneration and sickness benefit for that reason and rehabilitation benefit for the first three months⁸⁴.

⁷⁸ Notification of readiness to join the job should be made within one month from the date of recognition as a person with a disability.

⁷⁹ As it seems, it is necessary to adapt the position to the type of injury suffered by the employee as a result of an accident at work or occupational disease, and to their current needs.

⁸⁰ These circumstances must be proven by the employer.

⁸¹ Such a regulation is objectionable as incompatible with the basic principle of liability based on fault, according to which the injured party is liable for the consequences of the event to the extent to which he contributed to it; see also: P. Szudejko [w:] P. Szudejko, *Ustawa o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych. Komentarz*, Warszawa 2023

⁸² That is, if the employee's incapacity for work due to an illness or disability lasts longer than 30 days.

⁸³ That is if the employee's length of service with that employer is less than 6 months.

⁸⁴ That is if the employee's length of service with that employer is at least 6 months

8.2. Discrimination in dismissing a person with a disability

8.2.1. General remarks

Dismissing an employee solely because of their disability is not permitted under Polish law and would constitute discrimination. In order to justify the termination of an employment contract, the employer must demonstrate genuine organisational or material reasons, such as the inability to perform the work in a given position despite attempts to adapt it to the employee's needs.

Another issue is the employee's ability to work. If the employee is incapable of working as a result of an acquired disability, and reasonable improvements are unable to change this condition, or the employer is unable to transfer the employee to another position⁸⁵, then, according to case law⁸⁶, the loss of the ability to work in the current position is considered a condition justifying the termination of the employment contract.

8.2.2. Case law

8.2.2.1. Supreme Court verdict from 12.11.2014, ref. I PK 74/14

Key facts: The plaintiff was classified as moderately disabled with contraindications to heavy physical work. He was employed by the defendant as a warehouse worker. A few months after submitting the disability certificate to the employer, the plaintiff's position was changed to shift work and the employer terminated the employment contract. The reason given was his disability.

Legal analysis: The Court held that, under Directive 2000/78/EC, disability cannot constitute a ground for termination of employment or selection of an employee for dismissal, and that it also imposes an obligation to provide reasonable accommodation for persons with disabilities. Failure to provide the necessary reasonable accommodation is considered a violation of the principle of equal treatment in employment within the meaning of Article 18^{3a} LC⁸⁷. If the employer does not take any action and merely states that it constitutes an undue burden, it can hardly be considered as fulfilling its obligation under Article 23a VSRA.

Court's judgment: The Supreme Court overturned the District Court's dismissal of the plaintiff's claim and referred the case back to the District Court for reconsideration.

8.2.2.2. Supreme Court verdict from 12.05.2011, ref. II PK 276/10

Key facts: The plaintiff had been employed by the defendant since 1987 as a post office assistant. In November 2008, the plaintiff was classified as having a moderate degree of disability, which meant that she could only perform light work. As a result, her workplace was adapted to meet the

⁸⁵ In this case only if the inability to work is the result of an accident at work or occupational disease.

⁸⁶ Supreme Court judgement of 16.12.1999, ref. I PKN 469/99, OSNP 2001, no. 10, item 346.

⁸⁷ The assessment of these circumstances is up to the court and must take into account overall circumstances of the particular case; see also: Supreme Court verdict from 12.04.2012, ref. II PK 218/11

needs of a person with a disability. After the plaintiff reported for work, the employer terminated her employment contract with three months' notice on the grounds that she was unable to lift weights of more than 5 kilograms.

Legal analysis: Indirect discrimination should be understood as the creation of a disadvantage for all or a significantly larger part of the members of the group distinguished on the ground of discrimination, hidden behind apparently neutral-sounding legal formulations, applied criteria or practices which do not appear to differentiate rights, obligations or privileges on the basis of legally defined discriminatory criteria, including disability. In other words, while direct discrimination is the application of different rules to comparable situations, indirect discrimination is the application of the same rule to different situations. Two criteria are therefore used to determine the existence of indirect discrimination: the collectivity criterion and the effect of the rule criterion. The former determines which group, distinguished by a prohibited criterion, is affected by a rule that can be considered discriminatory, while the latter makes it possible to determine what effect the rule has on that group.

Thus, in order to establish indirect discrimination, the plaintiff would first have to refer to circumstances which prove that, as a result of the neutral criterion used by the employer to terminate the employment relationship, namely the employees' inability to perform the duties of their positions, there was an unfavourable differentiation of the situation of all or a significant number of the employees belonging to the group distinguished on the basis of disability, in relation to the group of employees not characterised by this feature.

Court's judgment: The Court overturned the judgment of the Court of Appeal, which had awarded the plaintiff PLN 8,220.00, and referred the case back to the Court of Appeal for reconsideration.

9. Remedies, Procedures and Sanctions

9.1. Judicial measures for individual employees to combat discrimination based on disability at work

In principle, in the Polish legal system there is no specific legal protection for employees discriminated against on the grounds of disability. Disability is one of many - creating an open catalogue - criteria of unacceptable unequal treatment in employment. For this reason, the legal protection measures discussed below are universal and available to any potential victim of unequal treatment in employment.

Practical problems in pursuing discrimination claims by employees:

- The dispersal of anti-discrimination legislation hampers the social perception of the scope of normative protection against discrimination, which is confirmed by the results of the completed research.⁸⁸
- The number of anti-discrimination court cases is low: people who have been discriminated against very rarely go to court (only 10% of respondents said they had).⁸⁹
- There is a low level of awareness of the remedies available in the event of discrimination.⁹⁰

9.2. Judicial Measures in labor law

The basic and universal measure is the right to compensation provided for in Article 18^{3d} LC:

- It relates to a violation of the principle of equal treatment in employment by the employer. Liability exists even if the victim has not suffered damage in the strict sense of material damage.
- Amount of compensation: not less than the minimum wage.
- Available to an employee, a job applicant and a dismissed employee.

Discrimination may take a qualified form in the form of harassment in Article 18^{3a} § 5(1) LC. This is defined as undesirable behavior, the purpose or effect of which is to violate the dignity of an employee and create an intimidating, hostile, humiliating or offensive atmosphere towards them. This may be committed by the employer as well as by other employees. In addition to the claim for compensation described above, there is also a claim for violation of personal rights in the Civil Code (discussed in point 9.1.2).

It is also worth referring to mobbing (Article 94³ LC) on the grounds of disability. An employee whose health has been affected by mobbing can claim financial compensation from the employer for the damage suffered. In addition, if the employee's contract of employment has been terminated as a result, they may seek compensation of at least the minimum wage.

If a worker is unfairly dismissed on the grounds of their disability, Article 45(1) LC allows them to seek a declaration of invalidity of the dismissal, reinstatement under the previous conditions or proper compensation in court.⁹¹

⁸⁸ *Legal Awareness in the Context of Equal Treatment 2020*, Kantar 2020

⁸⁹ *Protection Against Discrimination in Poland. Legal Status and Social Awareness. Conclusions and Recommendations of the Commissioner for Human Rights*. CHR Bulletin 2020, no. 3, pp. 10-13

⁹⁰ *Ibidem*

⁹¹ According to art. 264 LC, an appeal against the termination of an employment contract shall be submitted to the labor court within 21 days from the date of delivery of the letter terminating the employment contract

In addition, Article 123 of the Act on the Promotion of Employment and Labour Market Institutions provides for a fine of not less than PLN 3,000 for anyone who refuses to employ an applicant for a vacant job or training place on the grounds, for example, of disability.⁹²

The sanctions have attracted much criticism, including from the Commissioner for Human Rights. It is felt that the catalogue should be expanded to include sanctions other than financial ones, which would better serve general prevention and be less trivialising of discrimination.

9.3. Judicial measures in civil law

The employee is also entitled to measures from the Civil Code⁹³ to protect personal rights. They are independent of measures from other provisions of law. The dignity of an employee is a distinguished personal right in Article 11¹ LC. Case law assumes that discrimination always involves a violation of dignity.⁹⁴ Civil law provides for prior and subsequent protection.⁹⁵ The following claims can therefore be made under Articles 23, 24 and 448 CC:

- when there is a threat of violation:
 - a demand to stop the discriminatory action (unless it is unlawful)
- when the violation has occurred:
 - a demand to complete the actions necessary to remove its effects, in particular by submitting an appropriate statement, e.g. an apology
 - a claim for compensation if material damage has been caused as a result of the violation of personal rights
 - a claim for damages for the harm suffered
 - a demand to pay an appropriate amount of money for a designated social purpose
 - a demand to determine the violation of personal rights.⁹⁶

It is worth noting that this is an ideal solution for non-employee workers (people who are employed, for example, under a mandate contract, a contract for specific work, a management contract, running a business). They are protected under civil law by the Act on the Implementation of Certain EU Provisions in the Field of Equal Treatment (the so-called Anti-Discrimination Act), the scope of which is much more limited than the labour law protection for employees.

⁹² Adjudication in these cases is conducted under the provisions of the Code of Procedure in Petty Offenses, and the petty offense is prosecuted ex officio, with the labor inspector acting as prosecutor.

⁹³ Hereinafter: "CC".

⁹⁴ Judgment of the Supreme Court of April 11, 2006, ref. I PK 169/05

⁹⁵ H. Szewczyk, *Gender Equality in Employment*, WK 2017, Chapter 11.1.3.

⁹⁶ M. Krawczyńska, M. Wieczorek, *How to Effectively Pursue Claims for Discrimination – A Procedural Guide*, Cooperation Fund Foundation, Warsaw 2013, p. 5

9.4. Judicial measures in criminal law

Article 218 § 1a of the Criminal Code defines a prohibited act as malicious or persistent violation of the rights of employees. Criminal liability is incurred by anyone who, in the course of performing activities related to labour law or social insurance, maliciously or persistently violates the rights of an employee arising from the employment relationship or social insurance. The legislator used the word "employee", which means that the offence can only be committed to the detriment of an employee within the meaning of LC. The perpetrator, on the other hand, can only be the employer or a person responsible in the workplace for matters relating to employment, working conditions or employee insurance, as well as other persons performing official duties in the field of labour law or social insurance. It is crucial that the employee does not have to suffer any specific damage, and the mere fact that these rights have been violated is sufficient. Malice is defined as intentional behaviour aimed at causing harm or suffering to another person. It should be noted that this is done only out of personal dislike and not for rational reasons. Persistence, on the other hand, is a repeated or long-term nature of the action. Malice and persistence may occur simultaneously or separately.⁹⁷

This offence is punishable by a fine, restriction of liberty or imprisonment for up to 2 years. It is sufficient for the employee to report the suspicion of committing an offence in any form to a police station or a public prosecutor's office, as the offence will be prosecuted *ex officio*.

9.5. Limitations on initiating court proceedings

- **labor law:** According to Article 291 § 1 LC, claims arising from an employment relationship expire 3 years after the date on which the claim became due.
 - Property and non-property claims are subject to limitation.
- **civil law:** in accordance with Article 442(1) § 1 CC, a claim for compensation for damage caused by a tort expires after 3 years from the date on which the injured party learned or, with due diligence, could have learned about the damage and the person obliged to repair it. This period may not be longer than 10 years from the date on which the event causing the damage occurred. If the damage resulted from a crime or misdemeanor, the claim for compensation expires after 20 years from the date of the crime, regardless of when the injured party learned about the damage and the person obliged to repair it.
 - non-property claims are not subject to limitation under Article 117
- **criminal law:** the misdemeanor under Article 218 §1a of the Criminal Code ceases to be punishable after 5 years from its commission.

⁹⁷ *Ibidem*, p. 40

9.6. The burden of proof

- **labor law:** Article 18^{3b} §1 LC introduces a "reversed burden of proof" for the discriminated employee. They only have to present facts from which discrimination can be presumed. In order to avoid liability, the employer must prove that he was guided by objective reasons in differentiating the employee's situation. This has been confirmed by case law.⁹⁸
 - In the case of mobbing, the standard burden of proof applies.
- **civil law:** standard burden of proof - in accordance with art. 6 CC, the burden of proving a fact is on the person who draws legal consequences from that fact.⁹⁹
- the offence under art. 123 of the Act on the Promotion of Employment and Labour Market Institutions and the offence under art. 218 § 1a of the Criminal Code are prosecuted *ex officio* and the burden of proof lies with the public prosecutor due to the presumption of innocence.

9.7. Non-judicial measures for individual employees to combat discrimination based on disability at work

9.7.1. Complaint to the National Labor Inspectorate

A discriminated employee may lodge a complaint with the National Labour Inspectorate, the submission of which will lead to an inspection. The inspection may be carried out against entities for which work is performed by natural persons, regardless of the basis for providing such work, and may apply measures in the event of a finding of violation of the provisions of the law, in particular:

- ordering the employer to pay due remuneration for work and other benefits due to the employee;
- imposing fines in the amount of PLN 1,000 to 30,000 and referral of applications for punishment to the courts;
- issuing an order to suspend the performance of tasks or activities;
- issuing an order or instruction, in the event of the discovery of violations other than those mentioned above, to remedy them and draw consequences in relation to those responsible.¹⁰⁰

The Inspectorate's staff are obliged not to disclose the fact that the inspection is being carried out as a result of a complaint, unless the complainant gives written consent. The complaint seems to be the most effective way for workers to indirectly influence the actual implementation and enforcement of their labour rights.

⁹⁸ Judgment of the Supreme Court of March 13, 2024, ref. II PSKP 52/23; Judgment of the Supreme Court of March 5, 2024, ref. II PSKP 8/23

⁹⁹ Judgment of the Court of Appeal in Warsaw of September 15, 2020, ref. I ACa 258/20; Judgment of the Supreme Court of December 14, 2012, ref. I CSK 248/12

¹⁰⁰ <https://www.pip.gov.pl/o-nas/cele-i-zadania>

9.7.2. Conciliation Proceedings with the Conciliation Committee

In order to settle a labour dispute amicably, a conciliation committee may be called upon if one has been set up at the workplace. The procedure only takes place at the written or oral request of the employee; the committee does not act ex officio. This is a cheaper and quicker solution than going to court - the committee should try to reach a settlement within 14 days of the application. This procedure does not deprive the employee of their right to go to court, they can still bring a lawsuit under the general conditions.

9.7.3. Mediation Proceedings

A distinction must be made between judicial and contractual mediation. It can be used at the pre-trial stage as an alternative to conciliation or ordinary court proceedings. It is initiated on the basis of a mediation agreement or by a decision of the labour court directing the parties to mediation. Mediation centres can be set up, for example, by trade unions or employers' organisations. Mediation is voluntary and confidential. If an agreement is reached, the labour court can approve it and it has the legal force of a court settlement.¹⁰¹

In practice, the percentage of mediations carried out and their effectiveness is low, but there has been an upward trend over the years.¹⁰²

9.7.4. Immediate Termination of the Contract by the Employee

According to Article 55 §1¹ LC, the employee has the right to terminate the employment contract without notice if the employer has committed a serious breach of its fundamental obligations. Subjecting an employee to discrimination may constitute such a breach, as the employer is obliged to counteract it and treat all employees equally. The employee is entitled to compensation equal to the remuneration for the period of notice and, in the case of termination of an employment contract for a fixed term, equal to the remuneration for the period for which the contract was to last, but not more than the period of notice. In the event of a conflict between this claim and the claim for compensation under Article 18^{3d} LC (which is directly related to discrimination), it should be assumed that the employee is entitled to both compensations (due to the different legal basis).¹⁰³

9.7.5. Application to the Commissioner for Human Rights

Anyone who has experienced discrimination may submit a free application to the CHR in any form. The Commissioner may initiate investigative proceedings, and if he finds a violation of rights and freedoms in the course of them, he has the right to:

¹⁰¹ K. W. Baran, *Labor Law*, WKP 2024, Section 4, Chapter XXX.2

¹⁰² Long-term study, *Mediation in Labor Law Cases in 2006-2023*, Statistical Database of the Ministry of Justice

¹⁰³ Z. Góral, *Prohibition of Discrimination in Employment*, WKP 2017, Chapter 6.4

- send a letter to the body, organization or institution in whose activities he found a violation,
- apply to the superior authority with a request to apply the measures provided for in the provisions of law - e.g. conducting an inspection,
- request the initiation of proceedings in civil cases and participate in any ongoing proceedings
- request the initiation of criminal proceedings in cases of crimes prosecuted ex officio
- request the initiation of administrative proceedings (when it finds the inaction of the competent authority)
- submit a request for punishment, as well as for the repeal of a final decision in proceedings in cases of petty offenses
- file a cassation appeal or other extraordinary appeal against a final judgment.

If the Commissioner does not initiate proceedings on his own, he may advise the applicant on what other measures they can use or transfer the case to another competent authority.¹⁰⁴

9.7.6. Seeking Help from Non-Governmental Organizations, Trade Union

More about this in Sections 9.8.1 and 9.8.2.

9.7.7. Internal Procedures in the Company

Employers have a duty to combat and prevent discrimination, but the LC does not specify how they should implement it, and this is a significant weakness of the legislation. The doctrine assumes that this can be done by setting up workplace compliance procedures, called internal anti-discrimination policies, based on preventive measures and a complaints procedure. In practice, however, it is more investigative than protective.

9.8. External Assistance for People with Disabilities

9.8.1. The Role of Non-Governmental Organizations

The authorities are obliged by EU law to engage in dialogue with non-governmental organisations to promote gender equality in employment. Their activities include legal support, counselling, social education, mediation, implementation of vocational activation programmes, monitoring compliance, reporting violations and research activities. They therefore have mainly soft skills. The biggest problem for the organisations is frequent financial problems, which, according to the research, are reported by 67% of the organisations.¹⁰⁵ The Act on Public Benefit Activities and Volunteering obliges the public administration to cooperate with non-governmental organisations in the area of public tasks, e.g. in the form of:

- commissioning non-governmental organisations to carry out public tasks

¹⁰⁴ CHR's Guide, "Against Discrimination," CHR Bulletin, Materials no. 78, Warsaw 2013

¹⁰⁵ Report "The Condition of Non-Governmental Organizations 2021" by the Klon/Jawor Association based on research conducted from October 2021 to January 2022

- informing each other about the planned directions of activity;
- discussing drafts of normative acts concerning statutory activities;
- forming joint advisory and initiative teams.¹⁰⁶

9.8.2. The Right of Non-Governmental Organizations to Appear on Behalf of Victims of Discrimination Before Adjudicating Bodies or Courts

In cases under the LC, Article 462 of the Code of Civil Procedure applies, according to which non-governmental organisations, within the framework of their statutory tasks, may, with the written consent of the employee or the insured person, bring actions on behalf of the employee or appeal against decisions of the pension authorities and, with the written consent of the employee or the insured person, join them in ongoing proceedings. The same applies to a trade union, and under Article 465(1) of the Code of Civil Procedure, its representative may also be the employee's agent.

One of the disadvantages is that organisations have to act on behalf of a specific person and cannot do so without their consent, and they are burdened with costs. It is postulated that granting them the autonomous right to file a complaint would be a much better and more effective solution, allowing the implementation of the statutory objectives.¹⁰⁷

9.8.3. Special Institutions and Bodies Conducting Activities for People with Disabilities

9.8.3.1. State Fund for Rehabilitation of Disabled People (PFRON)

PFRON is a state special-purpose fund supporting the rehabilitation and employment of people with disabilities and dealing with the implementation of government policy in this area. It operates on the basis of the Act on Vocational and Social Rehabilitation and Employment of Disabled Person. PFRON funds are allocated primarily to:

- compensating employers for increased costs related to employing people with disabilities (co-financing of remuneration),
- reimbursing employers for the costs of adapting, equipping workplaces
- co-financing the creation and functioning of occupational therapy workshops and vocational activity establishments,
- commissioning non-governmental organizations and foundations to implement tasks in the field of vocational and social rehabilitation of people with disabilities,

¹⁰⁶ State Fund for Rehabilitation of Disabled People, *Activities of Non-Governmental Organizations in the Field of Integration, Social and Vocational Rehabilitation of People with Disabilities*, Warsaw 2010

¹⁰⁷ *Protection Against Discrimination in Poland. Legal Status and Social Awareness. Conclusions and Recommendations of the Commissioner for Human Rights*. CHR Bulletin 2020, no. 3, p. 30

- co-financing systemic projects implemented with EU aid funds,
- supporting individual people with disabilities by: granting subsidies for starting a business, agricultural activity or making a contribution to a social cooperative,
- reimbursing social insurance contributions for people running a business,
- co-financing the elimination of architectural, communication and technical barriers, purchasing rehabilitation equipment, orthopedic items and assistive devices, sign language interpreter or interpreter-guide services, and the participation of people with disabilities in rehabilitation camps,
- financing active labor market instruments for people with disabilities registered as unemployed or job seekers (training, internships, etc.),
- PFRON's programs.

The PFRON's budget is financed from public funds, including contributions from employers and subsidies from the state budget.

9.8.3.2. Government Plenipotentiary for the Disabled Persons

The Government Plenipotentiary for Disabled Persons supervises the implementation of the tasks resulting from the VSRA. This person holds the position of state secretary in the office of the Minister for Family Affairs. The Plenipotentiary is appointed and dismissed by the Prime Minister. Their advisory body is the National Consultation Council for Disabled Persons. The tasks of the Plenipotentiary include, among others:

- initiating, supervising and coordinating the performance of tasks resulting from the Act,
- initiating control of the implementation of tasks specified in the Act,
- requesting information, documents and periodic reports from entities regarding the implementation of tasks,
- organizing conferences and training courses,
- providing information on matters in the field of vocational and social rehabilitation and employment of people with disabilities,
- developing standards in the implementation of tasks specified in the Act,
- developing and commenting on draft normative acts regarding employment, rehabilitation and living conditions of people with disabilities.¹⁰⁸

¹⁰⁸ <https://niepelnosprawni.gov.pl/p,12,pelnomocnik>

The European Commission refers to the independence of equality bodies as a condition for their effectiveness. The location of the Plenipotentiary, the method of appointment and dismissal, and their basic role indicate that they are dependent on the government and are not a competent body within the meaning of EU law. Furthermore, they have no competence to deal with complaints from discriminated persons, which reduces the effectiveness of the assistance provided.¹⁰⁹

9.8.3.3. Commissioner for Human Rights (ombudsperson)

The CHR is a body that protects human rights and freedoms. Its powers have already been discussed in section 9.2. Constitutional norms provide strong formal guarantees for the independence of the body (Articles 80, 209-212 of the Constitution). The electoral procedure adopted also requires cooperation between the two chambers of Parliament. This should be seen as an important safeguard. The strength of the CHR also stems from a fairly long tradition of its functioning. An obstacle to the functioning of the CHR as an independent body for equal treatment is the disproportion between the budget allocated to it and the tasks assigned to it. This results in the need to limit the scope of activities and select priorities.

9.8.3.4. Minister for Equality

The Minister for Equality is a minister who performs tasks assigned by the Prime Minister. This is a new body established on December 13, 2023. The regulation on the detailed scope of activity of the Minister states that the scope of activity of this body includes in particular:

- implementing government policy in the field of equality issues, including counteracting discrimination;
- undertaking, supporting or coordinating tasks related to counteracting violations of equality;
- analyzing needs and preparing proposals for directions of action;
- monitoring good practices and solutions regarding equality issues;
- initiating and conducting social dialogue;
- promoting, disseminating and popularizing the principle of equality;
- implementation of tasks related to counteracting domestic violence.

The Minister for Equality may, with the approval of the Prime Minister, request information, documents and periodic reports from government administrative bodies or in relation to a specific case or type of case. To the extent necessary to carry out its tasks, the Minister for Equality may also appoint teams to study specific issues and commission expert opinions and other studies. In

¹⁰⁹ *Protection Against Discrimination in Poland. Legal Status and Social Awareness. Conclusions and Recommendations of the Commissioner for Human Rights.* CHR Bulletin 2020, no. 3, p. 38

addition, the Minister prepare and submit to the Government the National Action Programme for Equal Treatment, which sets out objectives and priorities for action, and by 31 March each year they prepare and submit a report on the implementation of this programme for the previous calendar year, together with conclusions and recommendations.

9.8.3.5. Other Manifestations of External Assistance and Mechanisms for Supporting Access of People with Disabilities to Justice

- Article 18^{3e} LC provides a guarantee that the exercise by an employee of their rights as a result of a breach of the provisions of labour law, including the principle of equal treatment in employment, shall not be the basis for any unfavourable treatment of the employee and shall not have any negative consequences for the employee, in particular shall not constitute a reason justifying the termination of the employment relationship or its immediate termination by the employer. Furthermore, this provision also applies to any other employee who has in any way assisted such an employee in the exercise of their rights.
- Article 44 § 3 of the Act on the National Labor Inspectorate obliges the labour inspector not to disclose information that the inspection is carried out as a result of a complaint, unless the complainant gives written consent to this.
- Article 4 of the Act on Ensuring Accessibility to People with Special Needs states that a public entity is obliged to ensure accessibility to people with special needs by applying universal design or reasonable accommodations, so as part of this, it must take into account their needs in planned and ongoing activities, remove existing barriers and prevent their occurrence.