

# CONSIDERATIONS REGARDING THE INTEGRATION OF DISABLED PERSONS INTO THE WORK FIELD - BETWEEN REALITY AND DESIDERATUM

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## **Abstract:**

*The right of persons with disabilities to integrate into work has been regulated by the Romanian legislature for a long time. Today, of course, there are companies or public institutions that have among their employees people with different disabilities.*

*The purpose of this article is to analyze whether access to the labor field is effectively regulated and ensured in order to concretely ensure these people the possibility of being employed in the positions for which they have competences.*

*We also want to investigate whether and to what extent people with disabilities are discriminated against by potential employers, even if they have the necessary skills and competences to occupy a certain position.*

**Key words:** *integration, disability, desideratum, work*

**JEL Classification:** *[K 31]*

## **1. Introduction**

The concept of “disability” has been approached in various ways across time and has incited numerous initiatives to adequately define it (Buboiu, 2014). In the specialized literature, the notions of “handicap” and “disability” have been defined distinctly, and finding a rigorous, unified definition that does not label affected persons has been a constant preoccupation (Neagoe, 2014).

The issues of disability and handicap are mainly approached from the perspective of two models: *individual* or *medical* and *social* (Manea, 2006), (Stamatin, 2010).

The medical model that considers the physical condition of the individual suffering from deficiencies as the main factor responsible for the basic restrictions in the life of any disabled person was dominant in Western Europe until the ‘80s. The social model, on the other hand, balances out the more rigid individual model and emphasizes the abilities that disabled people have and the manner in which they can be utilized (Agheana, 2017).

The term “disability / handicap” was first mentioned in the legislative and administrative domain in the 1950s, up until which point, people with deficiencies

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were referred to with the word “infirm,” and the state that said person was in was considered “infirmity” (Neagoe, 2014).

The UN Convention on the Rights of Persons with Disabilities, adopted in 2007, regards disability as an evolving concept, resulting from the interaction between people with deficiencies and the barriers of attitude and environment that hinder their full and effective participation in society on an equal basis with others.

According to article 1 of the Convention, “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. (Un Convention on the rights of persons with disabilities, n.d.)”

The adoption of the UN Convention on the Rights of Persons with Disabilities represented a crucial moment in this matter, being the first legally mandatory international instrument that specifically addresses disability. The purpose of the convention is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity” (UN Convention on the rights of persons with disabilities, n.d.).

## **2. The international and domestic legal framework**

The legal framework dedicated to disabled persons is a rich one, both on a European or international level, as well as on a domestic level, and is based on the following legal documents: the Universal Declaration of Human Rights; the European Convention on Human Rights; the Charter of Fundamental Rights of the European Union; the UN Convention on the Rights of Persons with Disabilities; the Treaty on European Union; the Treaty on the Functioning of the European Union.

At European level, we will mention the following legal acts that concern disabled persons: the European Pillar of Social Rights, Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies, European Parliament resolution of 11 December 2013 on women with disabilities (2013/2065(INI)), Regulation (EC) No. 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, European Parliament resolution of 30 November 2017 on implementation of the European Disability Strategy (2017/2127(INI)), European Parliament resolution of 1 June 2017 with recommendations to the Commission on the protection of vulnerable adults, along with its Annex (2015/2085(INL)), Directive 2000/78/EC20 establishing a General Framework for Equal Treatment in Employment and Occupation, transposed through Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination, republished; – the Revised European Social Charter<sup>21</sup>,

adopted in Strasbourg on May 3, 1996, ratified by Romania through Law no. 74/1999.

In Romania, the legal framework dedicated to disabled persons is rather vast. We will only refer to some of the legal acts on the matter here, namely: the Romanian Constitution (republished in 2003); Law no. 221/2010 for the ratification of the Convention on the Rights of Persons with Disabilities, adopted in New York by the General Assembly of the United Nations on December 13, 2006, opened for signature on March 30, 2007 and signed by Romania on September 26, 2007, with all subsequent amendments and additions; Law no. 448/2006 on the protection and promotion of the rights of disabled persons, republished, with all subsequent amendments and additions; Law on Social Assistance no. 292/2011, with all subsequent amendments and additions; Law no. 287/2009 on the Civil Code, with all subsequent amendments and additions; Law no. 134/2010 on the Civil Procedure Code, republished, with all subsequent amendments and additions; Law no. 53/2003 on the Labor Code, with all subsequent amendments and additions; Law no. 76/2002 on the unemployment insurance system and the stimulation of employment, with all subsequent amendments and additions.

### **3. The employment of disabled persons. The legal framework regarding the factual situation**

The legal regulations that are of interest to our endeavor can be found in the Law on the Labor Code, and Law no. 448/2006 published in the Official Gazette no. 1/03 January 2008 on the protection and promotion of the rights of disabled persons.

Disabled persons are defined, according to Law 448/2006, as: “those persons whose social environment, which is not adapted to their physical, sensorial, psychological, mental and / or other associated deficiencies, completely prevents or limits equal access to the life of society, requiring protective measures in order to support social integration and inclusion”.

The employment of disabled persons is governed by the following principles:

“(1) Any disabled person who wishes to integrate or re-integrate in the field of labor has free access to professional assessment and orientation, regardless of age, type or degree of disability;

(2) The disabled person actively participates in the process of professional assessment and orientation, has access to information and choice of activity, according to their wishes and abilities.”

These legislative provisions have a specific character, but they must also be corroborated with the provisions of article 4 of the Labor Code which sanction acts of direct and indirect discrimination based on various criteria, including disability, in the event that the differential (discriminatory) treatment would affect workers with the necessary competence trying to get employed or keep their job.

In order to stimulate employers to hire and keep disabled persons employed, article 84 of Law 448/2006 recognizes the following rights for them:

- a) the deduction, upon the calculation of the taxable profit, of the amounts spent to adapt the protected workplaces and purchase the machinery and equipment used in the process of production by the disabled person;
- b) the deduction, upon the calculation of the taxable profit, of the expenses related to the transportation of disabled persons from their domicile to the workplace, as well as the expenses related to the transportation of raw materials and finite products to and from the residence of the disabled persons who work from home
- c) the reimbursement, from the unemployment insurance budget, of specific expenses to provide professional training and orientation, as well as to employ disabled persons;
- d) a state subsidy, in the conditions provided for in Law no. 76/2002 on the unemployment insurance system and the stimulation of employment, with all subsequent amendments and additions.

Public authorities and institutions, legal persons, whether publicly or privately owned, that have at least 50 employees are obligated to have a staff in which at least 4% of employees are disabled. In the event that these entities do not apply the aforementioned provision, they shall take on one of the following obligations: a) the monthly payment, to the state budget, of a sum representing the guaranteed national minimum basic salary multiplied by the number of positions not filled by disabled persons; b) the monthly payment, to the state budget, of a sum representing the equivalent of a minimum of 50% of the guaranteed national minimum basic salary multiplied by the number of positions not filled by disabled persons, and the acquisition, by way of partnership, of products created and / or services offered through their own activity by disabled persons employed in authorized protected establishments totaling the amount left over to reach the sum provided for under letter a).

The category of employers representing the protected establishments (regulated by article 81 from Law 448/2006) where disabled persons can be employed enjoy a series of rights:

- a) an exemption from the payment of taxes for authorization upon the establishment's founding, as well as for re-authorization;
- b) an exemption from the payment of corporate tax, under the condition that at least 75% of the funds obtained through this exemption will be re-invested into restructuring or the acquisition of technological equipment, machinery, working facilities and / or fitting-out of the protected workplaces, under the conditions provided for in Law no. 571/2003, with all subsequent amendments and additions;
- c) other rights awarded by local public administration authorities financed by their own funds.

Disabled persons, according to article 5 letter c) of Law 448/2006, benefit from employment and the adaptation of their workplace, professional orientation

and re-training. In fact, the right to the adaptation of the workplace of disabled persons is called reasonable workplace adaptation and entails the totality of alterations made by the employer in order to facilitate the disabled person's exercise of their right to work, which also includes the modification and / or adaptation of the work schedule in accordance with the disabled person's functional potential, the acquisition of assistive equipment, devices and technology, as well as other similar measures.

Assisted employment, another facility introduced by the lawmaker through Law 145 of July 22, 2020, published in the Official Gazette no. 648 / July 22, 2020, supplementing Law 448/2006 in order to facilitate the employment process, represents the employment option made available to beneficiaries of the law and facilitates work in regular workplaces from the competitive labor market and entails offering support when searching for jobs, as well as at the workplace, along with transportation, assistive technology, training, specialization and the adaptation of tasks in accordance with the potential of the disabled person.

*De lege lata*, the employment of disabled persons can be carried out in the following ways:

- a) at home. In this situation, the labor agreement shall be governed by the provisions of the Labor Code, a general law, art. 108 and the subsequent. The same as with workers without disabilities who work at home, disabled workers who work at home benefit from transportation, offered by their employer, to and from their domicile, of the raw materials as well as other materials needed for their activity, along with the finite products that they create;
- b) on the free labor market;
- c) in protected forms, respectively in protected workplaces and authorized protected establishments.

The professional ability assessment when employing disabled persons has caused certain controversies due to the inadvertence of the lawmaker regarding the differing regulation of the probationary period in two legal acts, the Labor Code and Special Law 448/2006<sup>1</sup>.

The legal parallelism and flawed legislative technique through which these two provisions were created is liable to lead to completely different jurisprudential and doctrinary solutions (Valcelaru, 2023).

As a result of the analysis carried out, the author, in agreement with the majority of the doctrine, considers that the employer has the obligation to subject the disabled worker to ability assessment exclusively through a probationary period lasting between 45 days at least and 90 days at most for operating staff, respectively 120 days for leadership positions (Valcelaru, 2023).

If a disabled person is hired by an employer from the private sector, the professional ability assessment shall be carried out exclusively through the

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<sup>1</sup> Art. 31 of the Labor Code provides for a period of 30 days, while Law no. 448/2006 provides for a period of 45 days.

probationary period, an additional protection measure offered to the disabled person by the lawmaker, however, in the case of public institutions and authorities, the ability assessment of any worker, thus including those with disabilities, can be done exclusively through application assessment or examination.<sup>2</sup>

Through the analysis of the legal acts that we have referred to, we can ascertain that the lawmaker has regulated the employment of disabled persons in non-discriminatory terms, recognizing a series of rights both theirs and their employers' in order to stimulate the employment of disabled persons.

However, the statistics carried out seem to demonstrate that, in reality, despite the existing measures, disabled persons benefit from the fulfillment of their right to work to a much smaller extent.

In Romania, disabled persons benefit from limited support in the obtainment of a job and access to the labor market because the support offered by the state to disabled persons mainly focuses on granting medical assistance and not so much on developing abilities for an independent life (Achitei, Angela et al, 2019).

The employment rate for disabled persons in Romania is much lower than the employment rate of persons without disabilities, and much below the average rate of the other countries in the European Union. Thus, 74% of persons between 20 and 64 years old without limitations are employed, while the percentage for persons with certain limitations is only 51%, and only 12% among persons with severe limitations (are employed), the most vulnerable being those who live in rural areas, those with a lower level of education, and young people. The disabled persons who are employed hold precarious jobs with low income more frequently than employees who are not disabled: 44% disabled employees compared to 33% without disabilities (Ministry of Labor and Special Protection, 2021).

According to the aforementioned document, the main obstacles hindering disabled persons' access to employment are limited access to employment, the low quality of employment and the limited access of disabled persons to professional training programs. Due to these causes, a good portion of disabled persons work on their own, respectively 44% of persons with limitations who work are self-employed or bear the status of unpaid familial assistant (Ministry of Labour and Special Protection, 2021)

Although the lawmaker regulates the right to the adaptation of disabled persons' workplace, in reality, the adaptation of buildings to the needs of disabled persons still represents a great issue, as the data of the latest inspection carried out by ANPIS [NAPSI – the National Agency of Payments and Social Inspection] indicates that practically none of the 1,445 buildings inspected in 2020 fulfills all adaptation criteria, and the adaptation of special work equipment and assistive

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<sup>2</sup> For more details, see Oana-Denisa Vâlcălaru, *Perioada de probă – evoluția reglementării și (ne)protejarea intereselor salariaților cu handicap*, juridice.ro).

equipment is carried out occasionally by NGO, rarely being subsidized by employers (Ministry of Labor and Special Protection, 2021)<sup>3</sup>.

Discriminatory practices towards disabled workers represents another reason for the low access to quality employment, among them being the tendency to profile the labor supply depending on the type of disability and discouraging disabled persons from occupying positions with a high level of performance (Ministry of Labor and Special Protection, 2021).

The insufficient amount of incentives offered by the state to the employers of disabled persons, the lack of guides for employers that offer information related to the manners in which workplaces where disabled persons work can be adapted, the lack of providers to offer employers counseling services for reasonable adaptation, as well as the insufficiently clear and specific legislation related to the need to adapt workplaces represent other major hurdles in the employment of disabled persons (Ministry of Labor and Special Protection, 2021).

Even at European level, the Court of Auditors has found, following an audit whose object was the situation of disabled persons, that the actions carried out by the Commission in the past few years to support disabled persons have had a limited effect, going on to formulate a series of improvement proposals and recommendations (European Court of Auditors, 2023).

The lack of sufficient resources allocated for the support of disabled persons' access to work, failure to revise the relevant legislation at European level, the lack of timeframes for completion for some of the actions carried out by the Commission, which can have an impact on monitoring their effective implementation, are obstacles that must be removed in the future in order to truly support disabled persons.

## Conclusions

Despite the existence of domestic legal regulations regarding the rights of disabled persons that have been improved and supplemented in the past few years, the statistics mentioned confirm, predictably otherwise, that, in reality, the Romanian labor market is mostly incapable of being inclusive and ensuring an effective fulfillment of disabled persons' right to work. The national strategy regarding the rights of disabled persons "O Românie echitabilă" ("A Fair Romania"), 2022-2027 identifies the existing deficiencies and obstacles and, in agreement with the actions requested at European level, proposes measures to implement and monitor the strategy. The implementation of fair treatment for disabled persons entails both taking certain measures such as the regulation of

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<sup>3</sup> For further details, see Cristina M. Doboș, "Forme de abordare a dizabilității. Participarea persoanelor cu dizabilități în piața muncii" ["Forms of addressing disability. The participation of disabled persons in the labor market"] (dissertation), Bucharest, 2018, available at: <https://ftcub.unibuc.ro/wp-content/uploads/2022/01/M-Cristina-Dobos-Forme-de-abordare-a-dizabilitatii-Participarea-persoanelor-cu-dizabilitati-in-piata-muncii.pdf>.

certain legal acts and the implementation of the current legislation, as well as financial resources from various sources.

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