

The research report on recognition before the law of persons with disabilities in Poland

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EXECUTIVE SUMMARY

The report presents the main legal acts concerning disability policy in the context of article 5, 12, 19 of Convention on the Rights of Persons with Disabilities. It summarizes all the main legislation acts, strategies and programs in disability policy in Poland. There are also included findings from interviews with lawyers, leaders of the disability movements in Poland, experts in the field of equal recognition before the law, nondiscrimination, accessibility and independent living.

You can learn from the report that there are some good examples of policies and legislation in the field of accessibility. There is also political will to implement them. At the other hand, in the field of nondiscrimination, equal recognition before the law and ensuring the right to independent living there is still much to be done. Legal protection measures against discrimination are currently insufficient. Almost 100 000 thousand people in Poland is incapacitated or partly incapacitated and no serious work was undertaken to implement supported decision-making. Many of them are still living in institutions.

INTRODUCTION

In Poland, there are over 3 million people with disabilities who have legal confirmation of their disability. In fact, there are many more- from 4 to 7 million.

This report provides an overview of the situation of persons with disabilities in Poland.

Especially in the field of equal recognition before the law, non-discrimination and the right to independent living after the ratification of the Convention on the Rights of Persons with Disabilities (CRPD). The report focuses on legal framework on national level (with the link to EU law) and also outlines the key strategic documents in disability policy. In the first part of the report we focus on the international legal framework on disability rights in the Polish context (ratification and implementation of CRPD, general comments). In the second chapter we outline the national framework with the focus on legal capacity, law on inclusion and accessibility, law on mental health, inclusive education, electoral code and law against discrimination. In the third part we share some practical examples of the practical implications of the current law based on interviews with experts in the field of disability policy, CRPD implementation and non-discrimination. The report concludes with recommendations- the expected legal changes that will lead to fulfilment of the rights of persons with disabilities.

This report was written by the experts from Association Institute for Independent Living with the cooperation with the experts from Polish Disability Forum.

I. INTERNATIONAL LEGAL FRAMEWORK

Convention on the Rights of Persons with Disabilities

CRPD is the first comprehensive human rights treaty of the 21st century and first treaty that is specifically about disability rights. The Convention sets out minimum requirements for the rights of people with disabilities and indicates the goals to be achieved. Poland has ratified CRPD in 2012¹ but has not ratified the optional protocol.

CRPD is still not in the center of disability policy in Poland but it is used widely by DPOs and The Office of Ombudsman to promote disability rights and the shift towards human right model of disability. There are some examples of legal acts and strategic documents are based on CRPD view on disability (we present them in the following chapters), but most of the system is still rooted in medical model.

On 18th of September 2018 Poland received first concluding observation on the initial report². It states that there are some positive achievement in the field of disability rights - Accesibility Plus Programme, Electoral Law of 2011 (which enables persons with disabilities to vote and facilitates the voting procedures), the amendments to the Law on Higher Education of 2018, (providing for support to persons with disabilities in the higher education system). However, the concluding observations mostly focus on many areas of concern and recommendation and said that urgent action is needed under almost all articles with special focus on Article 19 and article 6. Concluding observations were never officially translated into polish by the government and there were also very few public discussions about it. It is also worth to mention that general comments are unknown even amongst DPOs and were never officially translated into polish.

¹ Ustawa z dnia 15 czerwca 2012 roku o ratyfikacji Konwencji ONZ o prawach osób niepełnosprawnych, sporządzonej w Nowym Jorku dnia 13 grudnia 2006 roku, <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20120000882>

² https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPOL%2fQ%2f1&Lang=en

II. NATIONAL LEGAL FRAMEWORK

Codes and legal capacity to act in Poland

According to the Polish legal system, everyone has legal capacity from the moment of birth (Civil Code, Art. 8). Full legal capacity is acquired upon reaching the age of majority (Civil Code, Art. 11) whereby an adult is eighteen years of age (Civil Code, Art. 10).

Simultaneously, the concept of lack of legal capacity is set. Persons under the age of thirteen and incapacitated persons do not have legal capacity (Civil Code, Art. 12). A person over the age of thirteen may be completely incapacitated due to mental illness, mental retardation or other types of mental disorder - especially drunkenness or drug addiction - if is unable to direct his/her conduct. Custody is established for the fully incapacitated person unless he/she is still under parental authority (Civil Code, Art. 13).

A legal act performed by a person who has no legal capacity is invalid unless the subject of an agreement concerns contracts commonly concluded in minor everyday matters. In that case, the result shouldn't cause gross detriment to a legally incapable person (otherwise the contract is invalid) (Civil Code, Art. 14).

Polish Civile Code also provides the concept of limited legal capacity concerning juveniles who are over thirteen years of age and partially incapacitated persons (Civil Code, Art. 15). Presumptions about limited legal capacity are the same kind as in the case of full incapacitation and concerns persons whose condition does not justify full incapacitation, but the assistance (guardianship) is needed to conduct their affairs (Civil Code, Art. 16). The validity of a contract concluded by a person with limited legal capacity depends on the confirmation by her/his representative (Civil Code, Art. 18) unless the contract concerns minor everyday matters of daily life (Civil Code, Art. 20).

Law on Inclusion and Accessibility of Persons with Disabilities

Accessibility Plus

Accessibility Plus³ is a governmental program that defines the priorities of actions to increase accessibility for groups with special needs. It was adopted for the years 2018-2025. It is the first such large and comprehensive program to increase accessibility. The main aim of the program is to increase accessibility in the following areas: architecture, transport, education, digitalization, health and culture. There is also separate priority about coordination.

The program defines 44 priorities, each of which has indicators and funding sources. As part of the program, activities such as increasing the accessibility of schools, universities, health care institutions and increasing the accessibility of rail transport are planned. The program was created in cooperation with people with disabilities and experts in the field of accessibility/disability policy.

The program stands, that accessibility affects all of us but in everyday life its lack is recognised mainly by people with special needs, including individual needs, arising from disability. Accessibility concerns in particular: persons in wheelchairs, on crutches, with reduced mobility; blind and partially sighted people; deaf and hard of hearing people; deafblind persons; people with mental and intellectual disabilities; elderly persons and those weakened by diseases; pregnant women; people with small children, including those with prams; people having difficulties in communicating with the environment (also in understanding written or oral language); people with uncommon height (including children); people with heavy or bulky luggage, goods. The proposed definition applies both to temporary and permanent needs. The definition of accessibility in the program is very inclusive and in line with CRPD.

It is too early to evaluate the impact of the programme but it is safe to say that it will improve accessibility in many areas and for the first time accessibility is on the political agenda.

Ustawa z dnia 19 lipca 2019 roku o zapewnieniu dostępności osobom o szczególnych potrzebach

The act defines the obligations of public entities in terms of ensuring architectural, digital, information and communication accessibility. The aim of the act is to gradually improve the accessibility of public entities, thanks to which persons with special needs will be able to use public services as independently as possible. The Act specifies measures to remove or

³ https://www.funduszeuropejskie.gov.pl/media/72628/Dostepnosc_angielski.pdf

eliminate barriers only in relation to public finance sector entities and entities financed from public funds.

Under the act, local governments have the obligation to designate persons to act as accessibility coordinators. The tasks of the accessibility coordinator include in particular:

- 1) supporting people with special needs in accessing services provided by a given institution
- 2) preparation and coordination of the implementation of an action plan to improve the accessibility in local communities
- 3) monitoring the activities of a given institution in the field of ensuring accessibility to people with special needs

Accessibility Coordinators are prepared to work through a training package financed under the Accessibility Plus program.

Ustawa o zapewnieniu dostępności cyfrowej stron internetowych i aplikacji mobilnych podmiotów publicznych (2019)

The Act on ensuring digital accessibility of websites and mobile applications of public institutions specifies the obligation to ensure this accessibility at the WCAG 2.0 level up to the AA level for all public institution. By 2020 at the latest, the websites of public institution - and mobile applications in 2021 - are to achieve the full accessibility. In addition, pursuant to the Act, each public entity is to publish a so-called declaration of accessibility on its website.

Ustawa o języku migowym i innych środkach komunikowania się (2011)

Pursuant to the Act of August 19, 2011 on sign language and other means of communication a deaf, hard of hearing or deaf-blind person, called an authorized person, who wants to use the services of the public office may benefit from assistance through the use of measures supporting communication, in particular from: sign language interpretator or guide-interpretator for deaf-blind person. The service should be free of charge.

Inclusive education

Act of December 14, 2016 - Educational Law (Art. 1) - ensures the implementation of the right of every citizen of the Republic of Poland to education and the rights of children and young

people to education and care appropriate to their age and achieved development. It also provides the possibility of learning in all types of schools for children and youth

with disability. According to the Regulation of the Ministry of National Education (2015, Art. 2) education is organized at every stage of education, in integration with non-disabled students.

The Polish education system includes various types of institutions, among them special and integrative. Schools provide revalidation classes for students with disabilities. The special education system is broad and may be provided in kindergartens and public schools, kindergarten sections in schools, primary and integration schools or special departments (Educational Law Art. 127). A special education certificate specifies recommended forms of special education, taking into account the type of disability, including a degree of intellectual disability (Educational Law Art. 127). Depending on the type of disability, including the degree of intellectual disability, children and adolescents are enabled to learn, according to their needs to the extent available to them, improving disturbed functions, receive revalidation, rehabilitation and specialist help and care (Educational Law Art. 127).

Communes are responsible for providing students with disabilities free transportation and care over time transport to the nearest primary school, and for students with motor disabilities, including aphasia, intellectual disability to a degree moderate or significant - also to the nearest post-primary school (Educational Law Art. 127). Material for general education should be tailored to the needs and educational and psychophysical abilities of students with disabilities, enabling the implementation of a curriculum for a given educational activity at a given stage of education (Act of September 7, 1991, About the Education System, Art. 3.24.a).

A student or graduate with a certificate of special education need issuing because of a disability can join the eighth-grade exam and the matura exam in terms and form adapted to the type of disability, on the basis of this certificate (Act of September 7, 1991, About the Education System, Art. 44.1).

Law on Mental Health

Ustawa o ochronie zdrowia psychicznego

Polish law on mental health is based on the Mental Health Act (1994). According to Article 2, mental health protection covers the implementation of tasks related to promoting mental health and preventing mental disorders; providing people with mental disorders multilateral and commonly accessible health care and other forms of care and assistance necessary for living in a family and social environment; shaping appropriate social attitudes towards people with

mental disorders, especially understanding, tolerance, kindness as well preventing their discrimination. The above tasks are implemented under The National Health Program.

The Mental Health Act provides for preventive actions in the field of mental health protection undertaken primarily towards children, adolescents, the elderly and towards people in situations posing a threat to their mental health (Art. 4.1). Activities include, among others, the application of the principles of mental health protection in the education system, rehabilitation centres and in military units; creating facilities to develop preventive activities, especially all psychological counselling and specialist institutions; introducing mental health issues into the professional preparation program of people dealing with upbringing and teaching, rehabilitation, treatment and care, management and organization of work and organization of leisure; undertaking research aimed at strengthening mental health and prevention of mental disorders; taking into account mental health issues in public mass media (Art. 4a).

The Act introduces the concept of social support for people who, due to mental illness or intellectual disability have serious difficulties in everyday life, especially in shaping their relations with the environment, in the field of education, employment and in living matters. Social support consists in particular in maintaining and developing skills necessary for independent and active life; organizing help from the family and others (such as individuals, groups, social organizations and institutions) in the social environment; providing financial and material assistance and other benefits based on principles specified in the Act on Social Assistance (Art. 8).

Protection of the rights of persons with mental health problems and intellectual disability is the task of The Patient Ombudsman, which is implemented in particular with the help of Ombudsmen for Patients' Rights of a Psychiatric Hospital. The tasks of the Ombudsman for Patients' in a Psychiatric Hospital include especially assistance in asserting rights in matters related to admission, treatment, conditions of stay and discharge from a psychiatric hospital; explaining or assisting in explaining oral and written complaints; cooperation with the family, legal representative, legal actual guardian; initiating and conducting educational and information activities in the field of the rights of people using health services (Art. 10b).

Polish Electoral Code

The Electoral Code (2011) contains a number of provisions enabling persons with disabilities to participate in voting. A voter with disability is understood here as a voter with limited physical, mental, mental or sensory fitness, which makes it difficult for him to participate in elections.

Of the Act, the Electoral Code describes in detail (in Articles 37a - 37c) the provision of information about elections to disabled voters:

- Voters with disabilities, at their request, may be assisted by another person, excluding members of electoral commissions and stewards. It is also possible to vote by proxy
- The Act also allows blind people to vote independently, stating that a voter with vision impairment may vote using braille overlays for voting cards.
- The Electoral Code Act also allows postal voting by voters with a significant or moderate degree of disability

It is also said that 20% percent of all polling stations have to be accessible.

There are some problems with implementing this law mostly with the accessibility of the polling station, access to information about the elections and using braille overlays for voting cards.

Law on Protection against Discrimination

According to Article 32 of the Polish Constitution (1997), everyone is equal before the law. All citizens are entitled to equal treatment by public authorities. Nobody may be discriminated against in political, social or economic life for any reason.

Polish non-discrimination policy regarding people with disabilities is described in the Charter of the Rights of People With Disabilities - resolution of the Polish Parliament (August 1, 1997) based on Polish Constitution, Universal Declaration of Human Rights, Convention on the Rights of the Child, Standard Principles on the Equalization of Opportunities for Persons with Disabilities. Paragraph 1 of the Charter recognizes that disabled persons, i.e. persons whose physical, mental or intellectual fitness permanently or temporarily hinders, restricts or prevents everyday life, study, work and social roles, in accordance with legal and customary norms, have the right to be independent, self-reliant and active life and may not be discriminated against. The Parliament states that non-discrimination means, in particular, the right of people with disabilities to access to goods and services enabling full participation in social life, access to treatment and medical care, access to comprehensive rehabilitation aimed at social adaptation, education at schools together with their able-bodied peers, as well as to use special education or individual education, psychological, pedagogical and other specialist help, work on the open labour market in accordance with the qualifications, education and possibilities, access to social security system taking into account the need to incur increased

costs resulting from disability, living in an environment free from functional barriers, having a self-governing representation of one's environment and to consult it on any draft legal acts concerning disabled persons, full participation in public, social, cultural, artistic, sports life as well as recreation and tourism according to their interests and needs.

In 2010, the Polish Parliament adopted the Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment. The Act defines the areas and methods of counteracting violations of the principle of equal treatment, inter alia, on the grounds of disability. It also introduces the Government Plenipotentiary for Equal Treatment appointed and dismissed by the Prime Minister. Tasks related to counteracting discrimination on the grounds of disability is performed by the Plenipotentiary in cooperation with the Government Plenipotentiary for People with Disabilities.

Non-discrimination regulations are also included in the Labour Code. Along the Article 18(3a) employees should be treated equally in terms of entering into and terminating employment, terms of employment, promotion and access to training in order to improve professional qualifications, in particular regardless of their sex, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, religion, sexual orientation, employment for a fixed or indefinite period, full-time or part-time employment.

The policy of non-discrimination is supported by the Ombudsman as a body obliged by law to uphold the rights of people discriminated against and excluded, in particular, due to ethnicity, nationality or race, religion, denomination, worldview, sexual orientation, disability, sex, age (<https://www.rpo.gov.pl/pl/kategoria-konstytucyjna/art-32-rownosc-i-zakaz-dyskryminacji>).

National Strategy on Persons with Disabilities 2020-2030

In 2018 in concluding observation one of the concerns of the CRPD Committee was the lack of a comprehensive strategy and action plan for the implementation of the Convention and the lack of mainstreaming of its provisions into national, regional, local and sectoral policies. Now the strategy is under development and currently was in public consultation.

The main goal of the National Strategy on Person with Disabilities is to include this group of people in social and professional life on an equal basis with others. An important goal is also the implementation of the provisions of the Convention on the Rights of Persons with Disabilities.

The main priorities in the Strategy are:

- Independent living
- Accessibility
- Education
- Work and employment
- Social protection
- Health
- Awareness raising
- Coordination

The implementation of the planned activities will be financed from the state budget, local government funds and subsidies from the European Union. The Strategy is still not officially implemented. Even though in public consultation there was some enthusiasm about setting CRPD and independent living in the center of the Strategy, there was also some concerns mostly about funding's and the expected results.

In the official statement The Ombudsman for Human Rights appreciated the fact that the government commenced work on the draft Strategy for People with Disabilities 2020-2030, but also point out all the concerns:

- No additional funding is allocated to achieve the expected results
- Situation of women and girls with disabilities and older people is not sufficiently included in the strategy
- Strategy does not provide for quick actions to abolish the institution of incapacitation (ubezwłasnowolnienie)
- The proposals for counteracting the deep crisis in child psychiatry are insufficient

Regardless of all the remarks creating the Strategy is a huge step for CRPD implementation in Poland and setting human rights based approach in the center of disability policy in Poland.

III. FINDINGS FROM GROUP INTERVIEWS

We conducted six interviews with disability policy experts, most of them with living experience of disability including vision and mobility impairment and psychosocial disability. Below we listed the key findings from the interviews:

Implementation of CRPD Art. 12

Despite the ratification of the CRPD and the provision in the Polish Constitution, Article 12 of the CRPD is not implemented in Poland. There are anti-discrimination provisions - such as in labour law - but there is no mechanism for their direct enforcement. In this case, it is possible to assert one's rights on the basis of the Civil Code only (there are examples of people who won court cases against employers). There are also some new legal mechanisms which are not known to the wider public and whose operation is not proven yet. An example is the issue of digital accessibility. If the website or document published by the public administration is not available, it is possible to ask the entity to ensure accessibility. If this is not done, it is possible to submit a complaint to The State Fund for Rehabilitation of Disabled People. However, it is not yet known to what extent this mechanism is used and how it functions. At the same time, there are still no works on the anti-discrimination act.

Discrimination

There are still discriminatory practices in the area of marrying people with intellectual disabilities and mental disorders. It is explicit discrimination enshrined in the Polish Civil Code (Art. 82). The listed types of disability are treated as an obstacle to marriage in common with alcohol or drug abuse. The head of the Registry Office may then assume that persons wishing to marry are not fully aware of their actions. In this case, he or she refers the case to a court that rules on the possibility of contracting marriage. Moreover, a person who is completely incapacitated does not have the right to marry.

Some discriminatory practices are based on personal beliefs and social concerns. An example is the issue of occupational medicine doctors, who are reluctant to permit people with disabilities to work, fearing liability for possible mistakes on the

one hand, and not understanding the need and possibilities of work of people with disabilities on the other hand.

Incapacitation

The substantial malady of the system is the issue of incapacitation. In Poland, it takes two forms: total and partial, the latter being adjudicated relatively rarely (only about 6% of incapacitated people are partially incapacitated). It is a practice based on known work patterns - convenient for both courts and custodians.

In Poland, so far, there is only one case referred to the Constitutional Tribunal, in which Art. 12 of CRPD was used as an argument against incapacitation. However, the case was rejected.

Since the courts very rarely apply for partial incapacitation, a custodian (as a person who supports incapacitated person) appears sporadically. With complete incapacitation, an institution of a legal guardian is applied. A lot of negative examples should be mentioned here - such as the care of one guardian over many incapacitated persons (in extreme cases, one guardian was assigned to 53 persons). It should be noted that in many cases the courts do not adequately control reporting, do not actively check whether the reasons for incapacitation still exist - there are no clear rules on checking and the legal records remain dead.

There are known situations in which people are legally incapacitated in property and family games. Decisions are made against the interests of the person concerned, and incapacitation is used for the convenience of the legal guardian. The regulations make it difficult to provide support at the place of residence, as the incapacitated person is assigned to a legal guardian. This causes situations in which the incapacitated person cannot use the support instruments in a given poviát or voivodeship due to the fact that the legal guardian lives in another place (the support is assigned to the guardian) .

Supported decision-making is a postulated alternative to legal incapacitation, but no serious work is undertaken in this regard. A temporary solution could be a wider introduction of partial incapacitation with each time a precise definition of its scope as well as the tasks and duties of the legal guardian.

Independent living

Some areas of support related to independent living can be seen to develop, but a lot remains to be done. One of the biggest drawbacks of the system is its projects-based solution. The solutions are mainly based on the temporary implementation of grants awarded to institutions, and after their completion, they are often suspended without the possibility of continuation. This causes ad hoc and irregular support, depriving a significant part of people with disabilities of access to it (especially in rural areas and areas less active in terms of fundraising and project management). In terms of personal assistance, there are few permanent programs, but only at the level of particular cities, such as Warsaw, Kraków, Białystok. It should be noted that this is temporary assistance (service based on an hourly system) that does not solve the problems of people who require more intensive support.

Supported housing appears on an ad hoc basis, also at the level of few cities. There is no clear trend of its development here. Large institutions (social welfare homes) are still widespread, with the average number of inhabitants exceeding 100 people. Assisted housing is usually a pilot type and is seen as an experiment of some sort rather than a target solution.

In the field of assisted decision-making, no action has appeared for 10 years. The familiar approach to people with intellectual disabilities is dominant.

However, there are areas where progress can be observed. In September 2020, the digital accessibility regulations enter into force. Declarations of availability are made under the regulation. Public entities are controlled by the Ministry of Digital Affairs, which is starting to enforce the regulations introduced in 2012. However, important digital applications launched by public entities are still inaccessible. An example is the lack of adaptation of the "Home Quarantine" application (produced in connection with the COVID-19 epidemic) to the needs of the blind. However, it is necessary to indicate positive examples and more and more digitally available services, such as patient accounts, tax declarations, applications to offices. These are solutions implemented by the Ministry of Digitization, which shows the advantages of centralizing supervision over accessibility. The current model, in which the provision of digital accessibility was dispersed (in the hands of individual public administration units), did not work well due to the fact that there was no standardization of accessibility and executive will.

There is a growing interest in creating accessibility in the field of interpreting into sign language and adapting public space to the needs of people with disabilities. It should be noted, however, that in the private sphere only telecommunication operators have an obligation to ensure accessibility. There is no separate path for other private entities, and neither can they be sued. Implementation of the directive on the availability of goods and services is under preparation, which will cover commercial entities, but it is not known how it will look in practice.

The situation of people with intellectual disabilities, the autism spectrum and mental disorders

People with intellectual disabilities, the autism spectrum and mental problems are in a particularly difficult situation. In the Mental Health Act, they are defined as one group, which causes terminological chaos and interchangeable use of terms by offices and doctors (e.g. confusing intellectual disability with mental disorders), which creates ambiguities both among people providing and receiving support.

The situation of people with mental disorders is very difficult. The law focuses on isolation, not mental health protection, and does not provide effective protection of rights as well as a viable appeal system. Individuals are sometimes referred to hospitals by courts without their consent (as a threat to their own and other people's safety), but there is no support for them at the earlier stages - the system forces them to wait until they need to be referred to a hospital or a nursing home care. It happens that people go to detention for many years. They are not made aware of their rights, they are given drugs without explanations, and various techniques are used to keep them in the hospital. The situation is complicated by the system of remunerating hospitals for patient care, consisting in the payment of funds by the National Health Fund for each day of patient stay, which prompts hospitals to extend the period of hospitalization.

Opinions of court experts can be controversial and inconsistent with the judicature. Often, court experts decide to prophylactically refer a person to a psychiatric hospital to avoid accusations of negligence. There is also a conflict of interest as the person who is diagnosed is usually sent to the hospital where the expert works. Thus, the expert multiplies the hospital's financial resources.

One should also pay attention to the still poor knowledge of the specificity of mental health problems, intellectual disability and the autism spectrum among court experts, public attorneys and prosecutors (although there are exceptions). Court procedures are inaccessible, unclear, court letters are illegible and difficult to understand (especially for people with intellectual disabilities), which makes it impossible to take independent action. Public lawyers are not always able to offer support. People with disabilities usually stand in a very disadvantaged position in terms of procedures, awareness, information and communication (unfriendly environment, unfriendly ways of conducting court proceedings, a rigid catalogue of behaviours - such as the need to maintain appropriate formulas in court, the problem of the inexperience of interrogators - police, psychologists).

The Mental Health Act insufficiently protects the patient and allows the use of direct coercion - which is abused. At the same time, the mechanisms for reporting abuse are weak (there is no such opportunity for social welfare homes). Inspections in facilities are conducted in an unsystematic manner and do not concern the quality of life of patients, but only the scope of legal compliance and the correctness of documentation. Controllers usually do not have the opportunity to talk to patients experiencing violence. The scope of coercive measures is inconsistent with the CRPD and violates the individual's personal freedom. There are known cases of using these measures in response to minor behaviours of patients, such as leaving the room or turning on the lights at night.

At the same time, experts emphasize that money allocated to psychiatry is poorly invested. There is a lack of support preventing mental crises and support in local communities after leaving the hospital, which means that people often return to facilities unable to cope with factors influencing their situation, such as a difficult family or financial situation. There is no funding for grassroots environmental activities such as mental health organizations that provide support in the local community. The support of recovery assistants is also not promoted.

Advocacy

The area of disability is within the scope of activities of the Ombudsman, however, it depends on the personal preferences of the person holding this position. For the Ombudsman who held the office for the last term, it was not a priority area.

Cooperation with the community of people with disabilities or with the committee of experts was poor and the activities were largely façade and occasional. It should be noted, however, that the Ombudsman is an important office that protects people with mental disorders, both on the legal level and promoting a switch to the non-medical approach. For this purpose, a dedicated body has been established, which also includes people with experience of staying in a psychiatric hospital.

Attention should be paid to the functioning of patient advocates in psychiatric hospitals, employed by the Patient Ombudsman. Patient advocates positions in hospitals are underfunded. There is also a lack of unified standards and knowledge in the field of violating patient rights. The list of the advocates' capabilities is sometimes limited and they may not always effectively confront a hospital that violates patient rights.

IV. CONCLUSIONS

Codes and legal capacity to act in Poland

Data from the Ministry of Justice show that in 2017 there were 12,412 people partially incapacitated. According to the data of the Ombudsman that, at present in Poland it is approximately 90 thousand people who are completely incapacitated.

The Polish legal system in terms of legal capacity is rigid and does not ensure full social inclusion for people with mental and intellectual disabilities. Both limited legal capacity and full incapacitation impose significant restrictions on the freedoms of people with disabilities. In practice, the code equates incapacitated persons with disabilities with minors. Moreover, the codex language (coming from the 1960s) is pejorative and inconsistent with current terminology standards.

The term 'minor everyday matters of daily life' is unclear and its interpretation depends on the guardian's interpretation. A guardian or trustee should be recruited among the closest ones: spouse, parents, siblings, family members. But in many cases, social workers are assigned to do so by their superiors and are not truly involved in the case.

Law on Inclusion and Accessibility of Persons with Disabilities

Inclusive education

The Act of December 14, 2016 - Educational Law - was ineffectively modified regarding the language (Act of 14 December 2016 Regulations introducing the Act - Education Law). For example, the term 'mental retardation' was declaratively replaced by 'intellectual disability' while it is still used in the Act.

Although the Polish education system seemingly offers a lot to students with disabilities it is still segregative and varies depending on the place of living (especially the countryside vs. cities). Research by the Supreme Audit Office (2017) indicates a slow downward trend in the number of students in special education in favour of mainstream education, but the percentage of children and students with disabilities participating in inclusive education in 2016 remained at a relatively low level and ranged between 31-53 %, with only 4 voivodeships exceeding the 40% threshold, and one 50%. Among the factors hindering the implementation of inclusive education, the most frequently indicated (based on the opinions of teachers and specialists) were: lack of support from additional teachers, overcrowded classes, lack of specialists, and architectural barriers. As noted by Kubicki, Rucińska and Grzelak (2015: 32), “students with disabilities still face many barriers related to the realization of their rights, in particular with regard to inclusive education. Due to these barriers, many people in Poland - including parents of children with disabilities - when considering the appropriate conditions for learning a child with a disability, take into account education in special schools, and thus choose a segregated model of education, and then - a segregated labour market based on employment in sheltered workshops ”.

The promise of accessible education is still not fulfilled for the majority of students with disabilities and the end of education - even with a nominally acquired profession - may amount to “falling into a black hole” of exclusion and lead to a feeling of deprivation and frustration.

Law on Accessibility

The Law on Accessibility in Poland is new, but complex. There are three different legal acts- one about digital accessibility (2019), one about accessibility for people with special needs in general (2019), one about access to sign language interpreters and interpreter for deafblind person (2012). All the legal acts are in line with CRPD and rooted in social model of disability.

There is also national program about increasing accessibility- Accessibility Plus. The program has many priorities from accessibility of the public space and public institution, transport, education, innovation in the field of accessibility to coordination of the whole process. It has

not been fully implemented yet, but was welcomed with enthusiasm by persons with disabilities in Poland.

Law on Mental Health

The Mental Health Act continues to use discriminatory terms such as mental illness and retardation.

It also provides the concept of the use of force and such measures as holding, immobilization, compulsory use of drugs, isolation. The use of force directed at people who commit an attack against their own or other person's life or health or common security, or violently destroy or damage items in their surroundings, or seriously disrupt or prevent the functioning of the medical facility providing health services (Art. 18.1). The decision on the application of the use of force is made by a doctor (or in special cases a nurse), who determines a type of coercive measure and supervises its execution personally (Art. 18.2).

The Act comprises mental health issues as well as matters of people with intellectual disabilities. It seems that the Act does not always strictly distinguish between the categories of mental problems and intellectual disability (Art. 7). The Act supports the institution of incapacitation for 'the well-being of a mentally ill person or mentally retarded person' (Art. 16).

Law on Protection against Discrimination

In the opinion of the Ombudsman - an independent body for equal treatment - legal protection measures against discrimination are currently insufficient (<https://www.rpo.gov.pl/pl/kategoria-konstytucyjna/art-32-rownosc-i-zakaz-dyskryminacji>). Despite numerous provisions in the legislation, there is still a lack of executive tools that would allow for their enforcement.

Discriminatory terminology concerning disability should be amended in a manner consistent at the level of the entire legislation.

V. RECOMMENDATIONS

Codes and legal capacity to act in Poland

The institution of legal incapacitation should be replaced by the system of supporting decision making. At each stage of the decision-making process, a person who has difficulties with it

would receive support - both technological, personal and organizational. Although in Polish debate the supporting decision making isn't fully developed there are some ideas worth mentioning such as an institution of power of attorney, preferably notarized, in which a disabled person may authorize another person or several people to act for him/her. This does not deprive his/her of legal capacity, but in a difficult situation, someone can replace him/her.

Law on Inclusion and Accessibility of Persons with Disabilities

The main recommendation is to continue activities aimed at increasing the accessibility of both architectural, digital and information and communication technologies. Actions should also go beyond large cities and be more focused on rural areas as well. Moreover, increasing accessibility should extend to private actors. However, it should be clearly noted that the accessibility legislation in Poland is very complex. Now it is very important to do ongoing monitoring and evaluation of the law in practice to see how the implementation of the law in practice.

Inclusive education

The main postulate is to further develop the inclusive education system. An important issue is to avoid negative selection (deriving both from the attitudes of parents, teachers and specialists, but also from the lack of infrastructure in the form of available schools or transport to them) - especially at the initial stages of education - as well as creating exit paths from special schools at various educational stages and moving (if possible) to mainstream schools for those students whose potential allows it. Related to this is the postulate of avoiding the phenomenon of too low requirements, which is one of the biggest barriers that persons with disabilities face (Shakespeare 2017). Its source is the conviction that persons with disabilities are so limited in their capabilities that investing in them an educational effort equal to the effort put into leading students without disabilities is pointless.

Law on Protection against Discrimination

<https://www.rpo.gov.pl/pl/content/rekomendacje-dla-polski-komitetu-onz-komitetu-ds-praw-osob-z-niepe%C5%82nosprawnościami>

Among the most important actions against discrimination should be indicated:

The repeal of the provisions enabling the incapacitation of persons with disabilities, and thus the deprivation of individual persons of legal capacity, and the establishment of decision support mechanisms that respect the autonomy and will of the persons' with disabilities.

Recommendation to abolish provisions preventing persons with disabilities from entering into marriages and starting families.

Moving away from terminology such as "mental retardation", "incapacity for work", "incapacity to fulfil social roles" or "dependence or lack of capacity for autonomy" and replacing it with terminology that fully respects the dignity of persons with disabilities.

Repeal of the legal provisions allowing the placement of persons with disabilities in institutions due to psychosocial disability and the lifting of restrictions on the personal freedom of persons in social care homes.

Introducing consistent regulations to ensure the protection of people with disabilities against discrimination in all areas of life, including comprehensive redress and prohibiting the so-called cross-discrimination on the basis of disability, gender, age, ethnicity, gender identity and sexual orientation.

Law on Mental Health

Creating a system of round-the-clock community support for persons with mental problems, which are currently in hospitals only because of the lack of such support.

VI. List of legal acts

1. Konwencja o Prawach Osób Niepełnosprawnych (KPON 2012), sporządzona w Nowym Jorku dnia 13 grudnia 2006 r. (Dz.U. 2012, poz. 1169).
2. Ustawa z dnia 19 sierpnia 2011 roku o języku migowym i innych środkach komunikowania się (Dz. U. 2011 poz. 1243)
3. Ustawa z dnia 19 lipca 2019 roku o zapewnieniu dostępności osobom ze szczególnymi potrzebami (Dz.U. 2019, poz. 1969)
4. Ustawa z dnia 4 kwietnia 2019 o dostępności stron internetowych i aplikacji mobilnych podmiotów publicznych (Dz.U. 2019, poz. 848)
5. Ustawa z dnia 7 lipca 1994 roku Prawo Budowlane (Dz.U. 1994, poz. 414)
6. Rozporządzenie Ministra Infrastruktury z dnia 12 kwietnia 2002 r. w sprawie warunków technicznych, jakim powinny odpowiadać budynki i ich usytuowanie (Dz.U. 2012 Nr75, poz. 690)

7. Rozporządzenie Ministra Infrastruktury i Rozwoju z dnia 3 lipca 2015 r. w sprawie szczegółowych warunków technicznych dla znaków i sygnałów drogowych oraz urządzeń bezpieczeństwa ruchu drogowego i warunków ich umieszczania na drogach (Dz.U. 2015, poz. 1314)
8. Uchwała Rady Ministrów z dnia 17 lipca 2018 Nr 102/2018 w sprawie ustanowienia Rządowego Programu Dostępność Plus