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The survey of the opinion of the management of Disability Adjudication Teams in Poland on the reform of adjudication on disability

Abstract

Introduction. Adjudication of disability in Poland is carried out by independent institutions, operating within the framework of various judicial systems and on the basis of different legal regulations. In 2017, an inter-ministerial team was appointed whose task was to develop a coherent and modern system of adjudicating on disability and inability to work.

Aim. The aim of the study was to obtain the opinion of the management of Disability Adjudication Boards in Poland whether there is a need to reform the certification of disability.

Material and methods. The research questionnaire was sent to 294 boards. In total 66 responses were obtained, which is 23.5% of the invitations.

Results. Over 65% of respondents indicate the need for reform, while 28.8% believe that the reform is unnecessary. The weaknesses of the current system include the inability to recruit appropriate doctors and specialists – 90.9%, insufficient financing of teams – 81.8% and staff shortages among full-time employees – 57.6%. Fewer respondents indicate unclear criteria for assessing disability – 47% and poor preparation of assessments – 21.2%. The strengths of the system are dominated by organizational factors: employee preparation – 77.3%, organizational stability of the system – 59.1% and locating teams in the local government structure – 51.5%. The following factors can be considered as substantive: stability of regulations – 39.4% and quality of jurisprudence – 34.8%.

Conclusions. Majority of the respondents see the need for the reform of adjudication on disability. The greatest problems of disability adjudication boards in Poland are: difficulty in specialists' recruitment and insufficient financing.

Keywords: reform, adjudication, disability.

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INTRODUCTION

Adjudication of disability in Poland is carried out by independent institutions, operating within the framework of various judicial systems and on the basis of different legal regulations. At the same time, there are adjudicating institutions for disability pension purposes – Zakład Ubezpieczeń Społecznych (Social Insurance Institution – ZUS), Kasa Rolniczego Ubezpieczenia Społecznego (Agricultural Social Insurance Fund – KRUS) – and adjudicating bodies for non-parental purposes – poviats and municipal bodies for adjudication of disability (PZON/MZON), against which Voivodship Disability Adjudication Teams (WZON) are superior. The Ministry of Family and Social Policy supervises adjudication institutions for non-parental purposes. Separate jurisprudence divisions are adjudicating institutions for uniformed services and the judiciary resolving disputes through court proceedings [1].

The fragmentation of judicial institutions is not the only controversial feature of this system. Researchers also point to the lack of uniformity of concepts and criteria for assess-

ing the state and scope of disability, archaic approach to the adjudicated person, focusing on his deficits and weaknesses, and not on the possibilities and needs. The jurisprudence uses negative and evaluative nomenclature, which may be considered as stigmatizing the adjudicated persons. There is also a lack of appropriate use of tools in the form of modern technical achievements. The system, which developed a quarter of a century ago, survived without major and significant modifications. All this means that the Polish disability certification system is considered to be complicated, outdated and not very friendly to people applying for a certificate [2].

The existing controversies and discussions around disability certification systems resulted in the decision to reform them. In 2017, an inter-ministerial team was appointed, whose task was to develop a coherent and modern system of adjudicating on disability and inability to work. The aim of the team was a detailed analysis of the legal and organizational solutions in force and the development of draft amendments to regulations, primarily at the level of the new “jurisprudence” act [3].

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The work of the team has so far not brought results in the form of a bill and from time to time they become the subject of new controversies and questions, both for the disabled people community and state authorities. In 2021, the Minister of Family and Social Policy was asked about the status of work on the announced reform [4]. In response, the secretary of state and the government plenipotentiary for disabled people stated that analytical and legislative works were still carried out in order to develop the concept of creating a unified system of adjudication of disability, without specifying the date of their completion [5].

The issues of the announced reform of the assessment of disability were discussed in the government's document Strategy for Persons with Disabilities 2021-2030. The Strategy outlines the main features of the planned system, i.e.:

1. Comprehensiveness, uniformity and integration of the existing systems.
2. Adjudication's attitude towards the assessment of the possibilities, potential and aspirations of a person also in the context of the influence of the surrounding environment.
3. To create a single state agency for jurisprudence.
4. Separation of the function of the benefit payer from the judicial function.

The published announcements indicate the intention to move away from the benefit-based system towards a system supporting the aspirations and activation of people with disabilities [6]. The works on the reform have been going on for 5 years, and at the same time, the expected results are still lacking. This prompted the research team to conduct a survey among the chairmen of poviat and city disability adjudication teams. The chairmen of PZON/MZON constitute the management staff of the teams and are officials meeting strictly defined criteria – completed master's studies or higher medical studies. In addition, they are obliged to participate in periodic trainings concluded with an examination and granting the authority to perform the functions of the chairman [6].

AIM

The aim of the study was to obtain the opinion of the management of PZON/MZON whether there is a need to reform the certification of disability, to what extent the reform should be prepared and to assess the plans and actions of the state authorities in this regard.

METHOD

The Electronic National System for Monitoring the Assessment of Disabled Persons (EKSMOON) in Poland contains data on 294 poviat and municipal disability assessment teams. The research questionnaire was sent to 294 PZON/MZON. The survey was done in August and September 2022. In 14 cases, e-mail addresses turned out to be inactive or non-existent. In total 66 responses were obtained, which is 23.5% of delivered e-mails. As part of the survey, 10 questions were asked, and the visits provided should be associated with the PZON/MZON community known to the respondents, and not with other judicial bodies. It was possible to give more than one answer to some of the questions.

The PZON/MZON chairmen were asked questions about:

1. The need for reform of the adjudication system operated by poviat/city adjudication teams.
2. Consulting the assumptions of the announced reform of the judicial system.
3. Knowledge about the general assumptions of the announced reform of the ruling.
4. Main flaws/weaknesses of the current adjudication system.
5. Main advantages/strengths of the current adjudication system.
6. Assessment of the scope that should be covered by the reform of the adjudication system.
7. Optimal period from the publication of regulations to the achievement of full system efficiency.
8. The most serious challenges related to the reform.
9. Expected effects of the announced reform.
10. The method of communication on the part of the authorities on the assumptions of the reform.

In the questions, a distinction was made between "reform" and "announced reform", giving the respondents the opportunity to comment on the necessity or lack of necessity for "some" reform of judgments and statements in relation to a specific reform "announced" by the authorities. In some of the questions it was possible to give more than one answer. A google form tool was used.

RESULTS AND DISCUSSION

The analysis of the answers clearly shows the need for "some" reform of the adjudication system. When it comes to 65.2% of respondents, they indicate the need for reform, while 28.8% believe that the reform is unnecessary. Only 6% of respondents declared that they had no opinion. The respondents point to the advantages and disadvantages of the current system and express expectations as to the directions of the reform. The weaknesses of the current system include the inability to recruit appropriate doctors and specialists – 90.9%, insufficient financing of teams – 81.8% and staff shortages among full-time employees – 57.6%. Fewer respondents indicate unclear criteria for assessing disability – 47% and poor preparation of assessments – 21.2%. The strengths of the system are dominated by organizational factors: employee preparation – 77.3%, organizational stability of the system – 59.1% and locating teams in the local government structure – 51.5%. The following factors can be considered as substantive: stability of regulations – 39.4% and quality of jurisprudence – 34.8%.

The obtained results may to some extent be caused by the selection of the target group – the PZON/MZON management staff, who focuses in their professional work on ensuring the continuity and correctness of the teams' activities.

Respondents also identify challenges related to the possible implementation of the reform and the time perspective necessary to achieve full efficiency of the system after the reform. Among the main challenges there are again problems with obtaining appropriate certifying judges – 80.3%, moreover, 66.7% of respondents are afraid of the resignation of existing certifying judges from working in the new system, while 62.1% see the challenges related to financial security by the organizational structure and technical facilities will be a challenge for 59.1% of the respondents. The number of 47% of respondents predict problems with acquiring new doctors and specialists,

and 28.8% of respondents indicate training of new certifying officers in the reformed system. The answers provided show that the teams' managers focus on the current organization of their work. The respondents considered 2 years – 53% or 1 year – 34.8% to be the optimal period for implementing the reform, and some (single answers) from 3 months to even 5 years. It should be noted, however, that the above issues concern “some” reform, and not the “announced” reform. In the case of “some” unspecified reform, the responses of respondents indicate the acceptance of the need for reform and an attempt to rationally assess the advantages and disadvantages of the current system, as well as an attempt to indicate the goals, challenges and time perspective of necessary actions.

In the case of questions related to the “announced” reform, the responses of respondents point to serious deficits in consulting the assumptions of the reform and in communicating intentions on the part of the authorities. As many as 90.9% of respondents declare that the authorities have not consulted the assumptions of the reform with them, while 80.3% of respondents indicate lack of clarity, lack of consistency, no access for interested persons to the communications of the authorities, 19.7% of the responses indicate the existence of incomplete communication in this respect. None of the respondents considered the method of communicating the intentions of the authorities as completely clear, completely coherent and fully accessible to interested persons.

Despite the deficits in communication with the authorities, 62.1% of respondents say that they know the assumptions of the reform, which means that they reached them on their own outside of official information channels. When it comes to 37.9% of respondents, they claim that they do not know the assumptions of the announced reform.

Despite the prevailing, i.e. 65.2% of positive and constructive attitudes of the respondents towards the need to introduce “some” reform of the ruling, 62.1% of responses regarding the anticipated effects of the “announced” reform include the assessment that, as a result, the introduction will not introduce benefits but will exacerbate the existing problems. It should be noted that the knowledge of the assumptions of the government reform by the majority of the respondents does not mean their full acceptance. The announcement of introducing unified concepts and adjudication criteria in 66.7% of the respondents enjoys the highest level of acceptance. The number of 48.5% of the respondents support the idea of departing from adjudicating on the basis of health and deficits, towards adjudication in the context of people's possibilities, aspirations and environment. As far as 24.2% of the respondents are concerned, they accept the concept of establishing one state adjudication agency, which is significant in the context of the fact that 51.5% of respondents consider the location of adjudication for non-disability benefits in the local government structure as a strength of the system.

The summary of the answers provided allows us to state that the President of PZON/MZON:

1. See the need to reform the disability assessment system.
2. Identify the strengths and weaknesses of the current disability assessment system.
3. Express constructive attitudes towards a possible reform of the disability certification system.
4. Have knowledge of the reform planned by the government and at the same time state that they have not been officially consulted on this matter.

5. Negatively evaluate the way in which the government's intentions regarding the reform are communicated.
6. Believe that the reform carried out by the government in the announced form will not remove the current problems but will aggravate them.

In the context of the announced reform of jurisprudence, it should be emphasized that changes in the methodology of research and description of a given population, changes in the scope of terms used, and finally changes in the criteria for assessing disability and changes in legal regulations in this area may have far-reaching social and economic effects, both in the personal dimension of specific people and on a national scale. This is illustrated by the results of successive censuses, in which in the periods between the censuses the number of disabled people in Poland changed in an at least surprising way.

And so the 1978 census showed just over 1.9 million people with disabilities, the 1988 census – over 3.2 million such people, the 2002 census more than 4.4 million people with disabilities, and the 2011 census just over 3.1 million people with disabilities. At the same time, these data include people described as legally disabled, that is, having an appropriate certificate confirming this condition [7].

It is difficult to pinpoint any medical reasons for such rapid changes in the number of people with disabilities. It should be emphasized, however, that within the meaning of the provisions of law, for various forms of assistance, in particular periods from 1.9 million to 4.4 million people were eligible for various forms of assistance, which is significant in terms of the scale, scope and costs of benefits, entitlements and concessions granted to them due to disability.

It should be noted that the problem of the disability model adopted in a given country can also be considered in economic or even ideological terms. An example of exploring the economic context of the phenomenon may be the considerations of M. Raudsaar and M. Kaseorg from the University of Tartu (Estonia), who indicate that the lack of an appropriate state policy towards the phenomenon of disability leads to increasing state expenditure and the loss of opportunities for people with disabilities to improve personal, social and economic status [8].

One of the measures of the implementation of state policy in relation to the phenomenon of disability may be, for example, the issue of employing disabled people. And so, in the German model, in a certain period of time, the passive forms of support, including “benefit” ones, were switched to general activation activities for people with disabilities. This activation takes the forms of assisted employment, and the passive forms are reverted only when active forms of social and vocational rehabilitation definitely fail [9].

The British approach, according to which only a person incapable of any employment can be considered disabled, can be considered close to the extreme economic approach to the phenomenon of disability. Interestingly, this view was clarified on the basis of economic analyzes, which proved that the “benefit” system of supporting people with disabilities is too costly economically, considering the significant possibilities of this wealthy state [10].

Considering the above-mentioned statistical data and scientific works from various parts of Europe, it is necessary to ask whether the reform of adjudication on disability will go hand in hand with the reform of the package of benefits, rights,

concessions and services provided to people with disabilities in a more or less effective way by the Polish state. It should be noted that the shift towards the activation model in social and vocational rehabilitation has already taken place in Poland. At that time, it was planned to create a network of institutions, in which the important links were to be occupational therapy workshops (WTZ) and occupational activity centers (ZAZ), as the basic forms of social and vocational rehabilitation, preparing people with significant disabilities, also to a greater extent, for a more independent life and taking up employment. The implementation of both types of institutions into the Polish system of social and vocational rehabilitation has ended with a moderate success, contaminated by the general inefficiency of the WTZ and ZAZ systems, especially in the area of professional activation of people with disabilities [11].

Bearing in mind the government's declared goals of the disability jurisprudence reform, it is worth asking what additional or quite different possibilities of social and vocational rehabilitation of disabled people, in the practical and not only declarative sphere, will this reform create? And whether the reformatting of the disability model from the "benefits and benefits" system to the "aspiration and activation" system will not cause deep disappointment of people who will be offered activation services instead of financial benefits, which would be a logical consequence of changing the rules of certifying disability?

CONCLUSION

The majority of the respondents see the need for the reform of adjudication on disability. The greatest problems of disability adjudication boards in Poland are: difficulty in specialists' recruitment and insufficient financing.

REFERENCES

1. Kłos B. Systemy orzecznictwa o niezdolności do pracy i orzecznictwo o niepełnosprawności w Polsce. *Studia BAS*. 2015;2(42):11.
2. Głąb Z, Kurowski K.W poszukiwaniu nowego systemu orzekania o niepełnosprawności w świetle Konwencji ONZ o prawach osób niepełnosprawnych i idei niezależnego życia. *Studia z Polityki Publicznej*. 2018;4(20):23-43.
3. Regulation No. 6 of the Prime Minister of February 2, 2017 on the Inter-ministerial Team for the Development of the Disability and Inability to Work Assessment System, M.P. 2017 item 167.
4. [<https://bip.brpo.gov.pl/pl/content/jak-wygladaja-prace-nad-reforma-systemu-orzecznictwa-ws-niepelnarnosci-mrips-odresponse>] (access: 25.08.2022)
5. The Letter BON-IV.070.122.2021.AP. [https://bip.brpo.gov.pl/sites/default/files/2021-09/Odpowiedz_MRiPS_22.09.2021.pdf] (access: 22.09.2022).
6. § 21 of the Ordinance of the Minister of Economy, Labor and Social Policy of July 15, 2003 on the ruling on disability and the degree of disability. *Journal of Laws* 2021.857.
7. The Report on the results National Census of Population and Housing 2011 Central Statistical Office Warsaw; 2012. People with disabilities and their households 2002. Central Statistical Office, Warsaw; 2003.
8. Raudsaar M, Kaseorg M. Social entrepreneurship as an alternative for disabled people. *J Business Rev*. 2014;2(3):120-5.
9. Bańczyk P, Eichner M, Pasternak K, Tulaja J. Model aktywizacji zawodowej osób bezrobotnych z różnymi typami niepełnosprawności. *Centrum Społecznego Rozwoju*; 2015.
10. Berthoud R. Trends in the employment of disabled people in Britain. University of Essex, Institute for Social and Economic Research; 2011.
11. Laboratorium Badań Społecznych, Badanie sytuacji warsztatów terapii zajęciowej. Raport końcowy z badania. Warszawa; 2014. [<https://www.pfron.org.pl/pl/publikacje/badania-i-analazy-pfro/77>] (access: 22.09.2022).

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