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The Rights of People Living with Disabilities in the 21st Century



Summary

In this study a thorough review is given of the current social status and legal environment of people living with disabilities in the 21st century. In Europe there exists a great diversity of interpretations and actual practices in the rights of people living with disabilities. Legal regulations on the conditions of people living with disabilities add further content to the definition of the term “disability”. In the legal treatment of the topic there is an inherent contradiction: while, as a result of social developments, the individual’s uniqueness and usefulness for the community are measured and evaluated, his/her right and access to a complete and satisfactory life is not guaranteed; instead, society aims to manage and influence those segments of life which impact society as a whole. The entire topic of disabilities is overshadowed by a dichotomy of the individual as a self-serving entity and as a useful contributor to society. The study first discusses the international protocols and conventions that had a direct impact on the lives of people with disabilities in the 20th century; and then elaborates on the good practices that constitute precedents. The conditions prevailing in disability affairs in Hungary are described in theoretical and practical perspectives, and the extent to which human rights are guaranteed for and achieved by this segment of society is demonstrated.

Keywords: human rights of people living with disabilities, legal regulations, society

“Disabilities can be deciphered only within a given historical context. In times preceding our modern era societies relegated people living with some forms of disabilities to total exclusion, meanwhile the so-called ‘village idiots’ well-known from stories and fairy tales, who according to contemporary standards would be treated as less than complete members of any society, were accepted and valued members of their communities.” (Maschke, 2010:67)

TERMINOLOGY – A PERSON LIVING WITH DISABILITIES? DISABILITY AS A CONCEPT?

Act XXVI of 1998 on the Rights and Safeguarding of Equal Opportunities of Disabled Persons, as amended by Act LXII of 2013, defines a person living with a disability as an individual who lives, in the long-term or permanently, with some form of sensory, communicative, physical, mental, and psychosocial dysfunction, or any number of them cumulatively, which adversely affect(s) their ability to effectively engage in social interactions on an equal footing with others due to environmental, social and other factors and hindrances¹ (Magyar Közlöny, 2013).

With focus on measurability, Section 11 of the 2011 Census in Hungary defines disability as an individual’s persistent condition or quality of the total absence or partial possession of physical, mental, sensory, motor, and communication functions or capacities, which hinders their ability to participate in social interaction and to lead a life considered to be standard (KSH, 2014).

In her study entitled *Bevezető általános gyógypedagógiai ismeretek* [Introduction to Special Needs Education] Gordosné provides a detailed analysis of the term by surveying various fields. The definition of disability entails, on the one hand, various aspects and the interrelationships between them. A number of psychological and social characteristics and the ability to make sound decisions are necessarily affected by physical and nervous injuries, i.e. they are direct consequences of impairment. The various attributes of disabilities frequently overlap. For example, certain types of vision impairment result in total blindness, thus aggravating a physical disability by psychological damage and the inability to carry out ordinary daily activities. Physical disabilities are termed as primary, while psychological ones as secondary, and absence of capacities to lead a normal daily life as the tertiary form (Gordosné, 2004).

Árpád Spaller and Katalin Spaller (2006) give a detailed analysis of the terms “disability” and “people living with disabilities”, and describe the institutional framework supporting the disabled. They tackle disabilities from the perspective of special needs education. The terminology originates from medical science and indicates chronic biological impairments, alterations in basic body functions, and any attendant changes in the individual’s personality. Disability is a negative change from the generally accepted norm, an organic dysfunction, which may be of the central nervous system, one of the sensory organs, speech impediment or motor skills disorder that persists throughout the entire lifespan of the affected person and is irreversible. The term

“disability” may be one-sided and derogatory, since it labels an individual by focusing on existing impairments (Spaller–Spaller, 2006).

The WHO’s interpretation provides a more complex terminology and content. Adding a completely new element to the academic framework of the topic, in 1980, the WHO set up a classification referred to as the *International Classification of Impairments, Disabilities and Handicaps* (ICIDH). This new multidimensional approach was a significant landmark in the renewal of special needs education in Hungary (Gordosné, 2004), and made a major contribution to sociology, political science and medicine. According to this classification, disability is produced by a number of interrelated processes following some form of illness or disorder, consequently leading to some form of impairment that could be further aggravated to result in an actual disability, which can be coupled with the development of a handicap. In 2001, the World Health Assembly adopted the latest revised version of the WHO’s *International Classification of Functioning, Disability and Health* (ICF). The ICF does not assess individuals or their predicaments, i.e. their health issues or the adverse outcomes of accidents; rather it utilizes a so-called reverse classification system by surveying the effects and severity of illnesses relative to the functional potencies of the affected person (Gordosné, 2004).

INTRODUCTION TO THE RIGHTS OF PEOPLE LIVING WITH DISABILITIES

People living with disabilities have the same rights as any other people, even though this only became evident and apparent in the past 20-25 years. They have various obstacles in their everyday life, and they may significantly affect their rights, since people with disabilities are unable to represent their interests and make use of support from society in many areas.

The most important 21st century accomplishment is the efforts made at achieving equal opportunities for all. This is further reinforced by the solidarity and integration approach of members of society. Social values are divided into two models: standards established by the society, and statutes, laws and regulations, which often ignore the genuine needs of society. However, that is exactly why the cause of people with disabilities could gain the opportunity to have a special role in the social consensus and to raise public awareness of the fact that people belonging to disadvantaged groups must be given public support as opposed to those who do not need such assistance. Thus, legislation should primarily aim for the integrity of society, and adopt laws and submit draft acts in this spirit.

Every legislation should overcome the current legal treatment of the condition of people living with disabilities the primary problem needs. In western European civilization (Huntington, 1998), in the individualistic value-system and in the concept of equality, which replaced the former system of feudal privileges, and in the ideal of complete equality, as stated in the *Declaration of Independence* and in the *Declaration of the Rights of Man and of the Citizen*, individuals are considered strictly on qualitative

terms, the human being is viewed in an *essentialist* model. On the other hand, the profit-oriented logic of capitalism favours a different criterion: the individual should serve as a productive member of society, actively contribute to, or at least not hinder the smooth functioning of, the profit-driven social, economic and political system; this is the utilitarian or *functionalist* view of man. The area of disabilities may be one of the major flashpoints between ideologically motivated and profit-oriented philosophies; the disabled are entitled to the same rights as the non-disabled members of society, however, their integration into the mainstream society due to their presumed “uselessness” requires the outlay of substantial social and material resources. The principle of equality demands that any society should attempt at remedying the outstanding disadvantages, but this does not necessarily mean that it attempts to transform disabled people into socially valuable members for its own benefit. As we do not have any semblance of an eternal human essence applicable to all members of a society, the opportunity of self-realization, through personal aspirations may go far beyond what is considered as socially conducive in a particular society. Compensation for the disadvantages suffered must come with the provision of opportunities to live a full life, which necessarily requires integration, in other words, in any age in any given society “useful” functions must be found for the disabled, though by doing so, the essentialist model may be compromised (Laki-Tóth, 2013).

CHARACTERISTICS OF HUMAN RIGHTS

“Every person is entitled to certain fundamental rights, simply by the fact of being human. These are called ‘human rights’ rather than a privilege (which can be taken away at someone’s whim). They are ‘rights’ because they are things you are allowed to be, to do or to have. These rights are there for your protection against people who might want to harm or hurt you. They are also there to help us get along with each other and live in peace”.²

Human rights are based on human needs. Every person has an equal right not only to life, but also to a dignified life. Human rights have certain essential characteristics which distinguish them from other basic rights.

Characteristics of human rights

Universal: Human rights apply to every human being on this planet, irrespective of their race, gender, social group, disability condition or any other distinguishing factor.

Inherent: Every human being is naturally entitled to human rights, without any distinction.

Inalienable: Human rights cannot be repealed or denied from any individual human being.³

Human rights are indivisible (i.e. cannot be selectively applied), universal (encompass all rights man is endowed with) and are complementary (mutually affect one another).

Universal Declaration of Human Rights

The *Universal Declaration of Human Rights* was adopted by the United Nations in 1948. Since its adoption, a number of other covenants have been drafted that it serves the basis of. In its 30 articles, it lists the inherent human rights (basic cultural, economic, political and social rights) that apply to all human beings irrespective of race, colour, sex, religion or political opinion. Although not legally binding, and thus cannot be enforced, it is still a powerful instrument in applying diplomatic and moral pressure on governments and it is frequently cited.

United Nations Convention on the Rights of Persons with Disabilities

The issue of disabilities must be treated in a wider context; proper understanding requires familiarization with the affected individual's physical, social and cultural environment. However, these markers by themselves may not be sufficient, since if a given country or region does not possess the proper legal and economic background to offer support and encouragement, then living with disabilities is undoubtedly a disadvantage. The Hungarian laws, regulations and ordinances clearly prove that in this country the right framework is given for the disabled segment of society to actively utilize the opportunities provided by the social, political and economic facets of the involved actors.

“Of the pertinent international regulations, primarily the *UN Convention on the Rights of Persons with Disabilities* (CRPD) must be mentioned, which the member states of the European Community signed in 2007. Hungary ratified the above Convention second in the world with the adoption of Act XCII of 2007 on the *Convention on the Rights of Persons with Disabilities* and the *Optional Protocol to the Convention*. This legal document coherently and comprehensively lists the basic rights of people living with disabilities, thereby guaranteeing equal opportunities to them” (Szále, 2010:108). The European Union became a signatory to the CRPD in December 2010. “By this act the EU recognized that people living with disabilities face challenges in the attainment of their rights and emphasized that the European Union and its members states must continuously remain vigilant to enforce the relevant EU regulations” (Bénde, 2013).

Besides the elaboration of the legislative acts, which had already been passed when scrutinizing the decision-making process related to disability affairs, it is indispensable to involve, or provide opportunities for the involvement of, the affected groups so that they become partners instead of being mere observers in the legal process that is of prime relevance in their lives.

In 2006, the UN General Assembly adopted the *Convention on the Rights of Persons with Disabilities*, the first human rights instrument with an explicit focus on disabilities.

“People living with disabilities are not the recipients of charity but holders of rights; these are to be guaranteed not primarily through public welfare and support schemes but with the realization of self-determination, living and leading independent lives as well as equal access to services.”⁴

A BRIEF SUMMARY OF THE RIGHTS OF DISABLED PERSONS

The *Convention on the Rights of Persons with Disabilities* (CRPD) specifies the duties of governments to protect and promote the rights of people living with disabilities. This study follows principles enshrined in the Convention, as no matter where groups of people with disabilities live, they have the same rights everywhere.

The clear aim of the Convention is to enable people with disabilities to live their life in a way similar to that of the members of the majority society. The elimination of discrimination is essential in ensuring that, which means that legal regulations created by governments make equal opportunities achievable and eliminate discrimination against persons living with disabilities. This creates a sort of obligation for society, economy, governmental and non-governmental organisations, i.e. in the 21st century, distinction is not made between people living with disabilities and the other members of society.

This is also underlined in a provision of the Convention, which ensures equality before the law by recognising that “persons with disabilities should enjoy the same legal rights as everyone else”.⁵

People living with disabilities are enabled to determine their lives. However, this raises numerous questions and creates problems, as the persons concerned are not in all cases able to fully determine their own lives and make responsible decisions in relation with their acts.

Legal issues also raise questions relating to independent life. The Convention also aims to implement the principle and action, which precludes people living with disabilities from being forced to live in a particular arrangement. The people concerned should have the possibility to have a home of their own, a job, and access to information, transport, education, culture and different services in order to have equal opportunities. Although these rights are fundamental, we can still see very serious deficiencies in these areas even in the 21st century.

As people living with disabilities rely on care, they are dependent and vulnerable. Nevertheless, they have the right to live under conditions that ensure human dignity, and to be protected from acts of exploitation, violence, torture and degrading treatment. Currently, people at a disadvantage are frequent victims of different acts of society, it therefore appears that resolving this situation is far from negligible from a policy perspective.

The right to political participation, i.e. ensuring participation in political life, is one of the most important rights for persons at a disadvantage. “States have the obligation to respect, protect, and fulfil the rights of people with disabilities to participate in political and public life and decision-making more generally where their interests are affected” (SINOSZ, 2007).

DISABILITY ISSUES IN HUNGARY

“When analysing the relationship between disability and law, one of the fundamental questions is what the class of persons with disabilities can be regarded as from the

point of view of society: a minority that can be described with precise characteristics or a group of people that can only be distinguished by their special needs from the large majority” (Kálmán–Könczei, 2002).

Hungarian legislation and social science research papers have started to address the situation and the involvement of people living with disabilities in society in the 1990s. Equal opportunities, equal treatment, social inclusion, segregation and the community mindset gradually drew attention to the tasks, which were previously marginally addressed by legislators, experts and the society itself.

Act XXVI of 1998 on the Rights and Ensuring the Equal Opportunities of People with Disabilities (Act on the Rights of Persons with Disabilities) was adopted as the first act on the rights of persons with disabilities in Hungary. “The primary objective of the Act is to guarantee the rights of persons with disabilities, and thus to promote their equal opportunities, independent living and active involvement in social life. [...] Moreover, the Act on the Rights of Persons with Disabilities provides for specific rights of people with disabilities, such as – to give but a few examples – the rights to rehabilitation, to aid, to assistance services, to early development and to integrated or protected access to the labour market.”⁶

Another relevant act is Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities. The principle of equal treatment prohibits discrimination against any social group, whether on grounds of membership in a national or ethnic minority, disability, state of health, family status, motherhood (pregnancy) or fatherhood, sexual orientation, sexual identity and age. This act was the first milestone in the integration of social groups, the elimination of discrimination and raising legal awareness in Hungary.

People living with disabilities have obligations as well as rights, and both are essential in the healthy functioning of society.

SUMMARY

The change of perception in recent decades is based on the so-called normalization principle, which can be considered as an individual-level professional paradigm that aims to ensure normal living conditions for people with disabilities and to overshadow the institutional system. In order to put the principle in practice, we need to create a social environment which enables the persons concerned to have an optimum individual life path that improves their development and the quality of life, and leads to an open society.

In the 21st century, disability still poses serious problems for the persons concerned, among others, limited participation and the absence of opportunities for integration in the society. Sensitive areas include issues related to the private sector, participation in education and in the labour market, the system of social support to people with disabilities and the setting up of safety nets. Depending on the definition of disability, a very high ratio of Europe’s population (between 10 and 15 per cent) are classed or declare themselves as disabled. This assigns further inevitable tasks to

governments in the field of both disability policy and the social security and pension scheme. In the aggregate, this means that the improvement of living, housing and working conditions for people with disabilities will be critical in the next few years. This requires integration and solidarity, and the abolition of discrimination and exclusion. However, for this to happen, the persons concerned, the members of the majority society and the political, economic and government stakeholders must act in concert.⁷

NOTES

- ¹ 2013. évi LXII. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról szóló 1998. évi XXVI. törvény módosításáról [Act LXII of 2013 amending Act XXVI of 1998 on the Rights and Safeguarding of Equal Opportunities of Disabled Persons]. *Magyar Közlöny*, 80. sz., 2013. május 24., www.complex.hu/kzldat/t1300062.htm/t1300062.html.
- ² <http://youthforhumanrights.org/what-are-human-rights.html>.
- ³ <http://hrlibrary.umn.edu/edumat/hreduseries/HR-YES/contents.html>.
- ⁴ <http://emberijogok.kormany.hu/fogyatekkal-elok>.
- ⁵ <http://fra.europa.eu/en/publication/2011/key-rights-persons-disabilities-introduction>.
- ⁶ <http://emberijogok.kormany.hu/persons-with-disabilities>.
- ⁷ www.egyenlobanasmod.hu/tamop/data/MTA_1hullam.pdf.

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