

Comparative Report on National Legislations for People with Learning Disabilities

Job Coaching for people with Disabilities Leonardo da Vinci Partnerships Project

Consolidated comments from the five country reports by Andrew Picken Social Enterprise Europe

1. Overall comment

There are five reports from Turkey, Lithuania, Bulgaria, Germany and the UK which are strong and complete in themselves. In this report rather than consolidating all the comments, I highlight some of the most important points from each of the country reports. I took this approach because each country report was written independently and highlighted different issues relevant to each country, making comparison difficult. I have excluded all the references to sources which can be found in the individual country reports.

Overall the five reports except possibly that of Turkey were similar in some features:

- They started from European and UN legislation about discrimination.
- All had a working definition of key concepts such as learning difficulty or disability and disability except Turkey which used a US definition.
- All governments provided some financial and some practical support whether a benefits system or support to getting jobs.
- All had some kind of obligations on employers to contribute to enabling disabled employees to work - some going as far as quotas - others practical support only.

However the differences were in the degree to which these systems had been institutionalised and the levels of support, whether legislation had been enacted and the degree to which civil society support had been emphasised. There was a progression from the most developed in UK and Germany through Lithuania and Bulgaria to Turkey where the system is least developed

2. Definitions

The definitions of disability and learning disability are similar in the five countries. In Lithuania for example, a disabled person is a person who is recognized as having a disability level of less than 55 percent of working capacity, and (or) who has special needs. "Learning disabilities" is a general term that describes specific problems- trouble learning and using certain skills such as reading; writing; listening; speaking; reasoning and maths.

In Bulgaria, the term "disability" has been defined as any loss or disruption concerning the anatomic structure, physiology or psychology of any individual. "An individual of permanent disability" is one who is of permanently limited ability to perform activities compared to a healthy person, and the degree of limited capability is at least 50 %.

In England, there is no single government definition of disability. Under the Equality Act 2010, you are disabled if you have a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on your ability to do normal daily activities. In Valuing People, the 2001 White Paper, Learning disability was defined as a significantly reduced ability to understand new or complex information, to learn new skills (impaired intelligence), with a reduced ability to cope independently (impaired social functioning) which started before adulthood, with a lasting effect on development. There is slightly different legislation in Scotland, Wales and Northern Ireland to that in England.

There is no unique definition of disability in Turkey. The term is used as it is in 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". Currently, there isn't an exact definition of learning disability according to Turkish legislation.

Under the German security code "People are disabled if their physical functions, intellectual skills or mental health are likely to deviate more than just temporarily and hence their participation in the life of the community is adversely affected". The most used definition of learning disability is a "long-lasting serious and large-scale failure in school performance" (Kanter), which usually goes along with low intellectual ability, but not serious enough to be a mental disability. It is difficult to establish a border between learning disability and mental disability or (partial, temporary) learning difficulties. A learning disability exists, when the overall intellectual development is affected. Learning is impaired in academic as well as in non-academic areas.

3. Current Situation

In Lithuania in 2010 there were 267,200 people (8.03%) with disabilities of whom about 173,300 (64.8%) were of working age. The overall national average unemployment rate was 17.8 percent; among people with disabilities it was 74.6 percent. The largest number of employed disabled people had the lightest disability (45-55 per cent of working capacity). They represent almost half (49.9 percent) of all working people with disabilities. The largest group of disabled people (those with 30-40% of working capacity) made up 48.5 percent of all employed people with disabilities. The smallest group having the most severe disability (0-25 per cent of working capacity) made up only 1.6 per cent of all employed people with disabilities.

Disabled people in Bulgaria are subject to attitudes and practices inherited from the past, when the majority were isolated, protected and cared for by their families or the state. Most continue to be confined and isolated in their homes. There are no official statistics on the disabled in Bulgaria, but there are on people of working age registered with authorities: there are about 200 000, of whom 10% are employed. About 13,000 were actively seeking employment, which is 4% of the total number of jobless people registered. The number of people with permanent disabilities who have found, or stand the chance of finding jobs on the labour market is extremely limited.

According to Bulgarian law there is an annual list of commodities and services, assigned for subsidised and protected special enterprises and cooperatives. In practice, this is where the majority of people with disabilities, find work. There is a requirement for employers with more than 50 employees to reserve between 4% and 10% of places for people of limited working ability. In reality, employers do not do this. No system exists to support employers in carrying out the process of adapting the working place. National programs exist on providing employment to people with disabilities, but they are limited to 6 or 9 months.

In England, more people with learning disabilities are experiencing a better quality of life and for some their personal outcomes, dreams and aspirations are becoming a reality. However, this remains a small percentage of the learning disability population and there are many areas where positive change has been negligible: for example paid work. Only 6.4 per cent of people with moderate to severe learning disabilities known to adult social services are in paid employment. This is far lower than the employment rate for all disabled people (47.4 per cent) and the working age population in England (77.3 per cent).

It is estimated that in 2011 in England, 1,191,000 people have a learning disability. This includes 905,000 adults aged 18+ (530,000 men and 375,000 women). The result is that individuals are still excluded and marginalised and, continue to face discrimination in every aspect of their lives. The promotion of person centred planning and support has also made a significant contribution to the way people are supported, primarily as a result of individual's themselves saying what they want, how they want it and when they want it. Recent Government policy has promoted the use of individual budgets (sometimes referred to as personalisation, personal budgets, personalised support or self directed support). Individual budgets are part of the wider reform and changes to adult social care and were included in 'Putting People First', DH 2007, which outlined the government's vision of how personalisation of social care services will be introduced, allow people to have more choice and control over their own lives.

In Germany 8.6 million people are officially recognised as being disabled. This means that one in every ten people is disabled (according to information from the German Federal Statistical Office). 74 per cent of disabled people are over 55 years of age. Most of them, about 6.7 million, are severely disabled; 1.9 million are classed as slightly disabled. There are no official figures for people with learning disabilities outside of schools. According to estimates 800.000 – 1.000.000 people of all ages with learning disability live in Germany. Some research (Bickmann and Engruper, 2001) found, that most of the people with learning disabilities have no constant professional life after school, but discontinuity, unemployment, insecure employments and precarious financial situations.

4. Legal Framework

In Lithuania the rights and various assurances of people with disability are defined in about 70 pieces of legislation, starting with the Constitution of the Republic of Lithuania (1992) and ending with special laws regulating exclusively disability-related issues including the Social Integration Act 2005 and the Law on the Social Integration of People with Disabilities which uphold:

- equal rights - people with disabilities have the same rights as other members of society;
- equal opportunities - the disabled, as well as other members of the society have the same conditions for education, work, leisure, social participation, political and community life. Only in cases where the same

conditions and measures are ineffective, specific measures to improve the situation of persons with disabilities are introduced;

In 2004, the Lithuanian Law of Social Enterprises provided for opportunities to establish social enterprises for the disabled. The purpose of these enterprises is to employ disabled people who have lost the ability to work, are economically inactive, unable to compete on equal terms in the labour market and to encourage the return of these people to the labour market and their social inclusion.

In 2006, the Lithuanian Act of Support for Employment came into force. Its purpose is to pursue full employment for the population, including people with disabilities, reduce social exclusion and strengthen social cohesion. The Act provides incentives to employers who employ people with disabilities. Article 4 of the Act provides employers who employ people who have mild disability, with wage subsidies for 12 months. The tasks of the Law on Special Education are: to prepare people with special needs to live independently, to provide them with qualified educational psychological assistance, to provide equal opportunities to gain education and training, to create continuous learning opportunities and conditions helping them integrate in the institutions of general education.

In Bulgaria there is a Long-term Strategy on Employment of People with Disabilities 2011-2020 and a Law on Encouraging Employment and the Integration of People with Disabilities Act which creates conditions for people with disabilities to exercise their rights to determine their participation in the market economy with independence to the highest possible extent. The law offers employers financial support towards pay and for adapting workspaces. The law offers the people with disabilities a possibility for entrepreneur initiatives, including launching their own businesses, by making available certain financial resources to them. The Law on Protection against Discrimination, sets out protection against all forms of discrimination

In UK the equality and inclusion of people with disability including disability are key mainstream issues for a whole range of legislation. Scotland Wales, Northern Ireland and England have slightly different legislation. Perhaps the most important single relevant act in England is the Equality Act 2010: As well as anti discrimination measures, an employer has to make 'reasonable adjustments' to avoid putting disabled people at a disadvantage compared to non-disabled people in the workplace, for example by adjusting working hours or providing a special piece of equipment for a job. Some employers choose to adopt a higher standard for recruitment. The Two Ticks Positive about Disability Award is given to employers who make five commitments to employ, keep and develop the abilities of disabled staff. This is described in <http://www.pluss.org.uk/2-ticks-positive-about-disability-symbol>. There are many benefits and rights under this and other legislation including Disability Living Allowance (being replaced by Personal Independence Payments), Employment and Support Allowance, Attendance Allowance, Carer's Allowance and Disabled Students Allowances. An Access to Work grant helps pay for practical support including specialist equipment, travel and a communicator at a job interview.

In Turkey, Parliament ratified the Convention on the Rights of Persons with Disabilities in December 2008 and is in the process of ratifying the Optional Protocol to the Convention, which will allow individuals and groups to complain about violations to the UN Committee on the Rights of Persons with Disabilities. Article 61 of the Constitution states that "The state shall take measures to protect the disabled and secure their integration into community life". Article 50 reads: 'No one shall be required to perform work unsuited to his age, sex, and

capacity. Minors, women and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions.' Additionally, according to Article 61 the state 'shall take measures to protect the disabled and secure their integration into community life'. The Labour Act of Turkey No. 4857 states that firms employing fifty or more employees shall employ disabled persons - 3% in private establishments and 4% in the public sector. The participation rate by all people with disabilities in work is 21.7%.

In Germany, the key legislation is Social Law Book IX and the UN Convention concerning the rights of disabled people which is also national law in Germany. These laws are linked or based on the German constitution called "Grundgesetz", in which the discrimination because of a disability is constituted as act against the human rights. Social Law Book IX gives people with learning disabilities the right to have access to the regular job market and to get financial and technical support for training, rehabilitation and integration in the job market. Support is financed directly by the local, regional and federal public authorities or as personal budget directly to disabled people. Disabled people have the right to decide if they want the personal budget. Social Law Book IX doesn't regulate the different services, supporting measures and financial contributions in detail. It obliges the so called "Träger der Rehabilitation" as other social security institutions to guarantee and organize these services and the financial support.

The Federal Ministry for Labour and Social Affairs is setting up pilot programs to increase employment of the disabled - for example Job 4000 - creating 4000 new jobs for unemployed disabled. The Ministry has also financed pilot projects for personal budgets for disabled people. The authorities can give financial support to employers for technical equipment, training or to minimize loss of reduced working results (Minderleistungsausgleich). They are also supporting the founding of integration companies in which at least 25 % per cent of employees have to be disabled. The services are financed by a countervailing charge paid by enterprises with more than 20 employees which do not fulfil the minimum 5% rate of employment of disabled people.

If people are not employable (not able to work on the regular job market for more than 3 hours per day) they have the right of access to sheltered workshops. If disabled people are not able to work in a sheltered workshop they have access to therapeutic work or sheltered work. However the providers of sheltered workshops need more incentives to find strategies for getting their employees into the regular job market

5. Area for Development

In all five countries there is still discrimination based on disability, and the larger majority of job places are not suitable for people with disabilities.

Many people with disabilities in Lithuania cannot exercise their right to work or have to be content with just a poor, low-paid job. Although if the assistance, trainings and adaptive place is provided, most people with disabilities can work in a variety of jobs, adapted according to prevailing labour norms and according to their abilities.

In 2012, the Economic and Social Council of the Republic of Bulgaria elaborated an expert's opinion on the "Employment of people with disabilities", which details, in a succinct way, the main stages of the process and the problems which shall be considered and find solution to on a national scale.

www.esc.bg/bg/documents/category/4?download=160

In England welfare cuts are making the situation worse. The Chief Executive of Disability Rights UK, Liz Sayce, says: "We have received thousands of calls from disabled people who report that they are finding their lives increasingly difficult as they try to cope with the effects of welfare reform, cuts in personal budgets, and the lack of opportunities to get into work and to get on in work. According to DWP's own figures the number of disabled people in 'absolute' poverty rose during 2011/2012. It is good to measure progress and to have aspirations for increasing equality but the Government needs to ensure that all its policies are pushing in the same direction – not taking us one step forward and two steps back.". Over 80 per cent of workers are employed in the private sector, and public services are increasingly outsourced to private companies, so there is a serious risk that the positive duties will become marginalised and ineffective.

In Turkey there is a need for:

- A comprehensive law on protection of rights of disabled people
- A well functional controlling system for private and public institutions that give services to disabled people.
- Employers to make accommodation for people with learning disability.

In Germany, the system has not been very successful in integrating people with learning disabilities in the regular job market. Why are there so many unemployed disabled and users of sheltered workshops who never progress to regular jobs? The employment rate of disabled people in Germany is only 4.5 % of all employed people and one of the lowest in Europe. One third of the private companies have less than 1 % of disabled employees or none. We need a clear decision against sheltered workshops and a strategy how to decrease the number and to give more incentives to integrate former users of these workshops into the regular job market. There is a huge demand for evident changes, like a personal budget for employment and new definition of employability.