

Recommendations for Poland based on international experiences.

Implementation of Art. 27 of the UN Convention of the Rights of Persons with Disabilities (CRPD)

1. Introduction

Work and employment for persons with disabilities (pwd) provide an essential fundament for an independent living of human beings. They can earn their own money. Art. 27 of the UN Convention of the Rights of Persons with Disabilities (CRPD) must be respected as an important part of the human right strategy in each country worldwide, in Europe and also in Poland. To encourage the business world to provide inclusive and paid-work for pwd cause challenges for most of the states. Each of them can profit from a dialogue among various jurisdictions and from an exchange of good practices. Art 32 CRPD stipulates this kind of international cooperation.

International organizations already started to collect global indicators for implementing Art. 27. Rehabilitation International (RI) situated in New York (www.riglobal.org) published “golden rules for paid-work” or RI Europe consented key-notes for Rehabilitation (Art. 26) with the specific link to Art. 27. The author is the Vice-Chair of the RI Work and Employment Commission and member of the RI Executive Board. In addition to these activities the International Association of Social Security (ISSA) situated in Geneva (www.issa.org) provides Guidelines on Return to Work for their members, who comprise social security institutions responsible for health care, pension, unemployment and work accidents around the world. The author of this article was the head of the working group for these guidelines.

The following recommendations are based on these international standards as well as on the results of a Polish-German-project on early Intervention in vocational rehabilitation in 2013. The German Social Accident Insurance (DGUV) in Berlin and The Labor Ministry in Poland initiated this collaboration together with ZUS/KRUS and PFRON. The author of this article acted as project-leader on the German side. This article focusses more on successful strategies and programs on Return to Work (RTW) in the sense of job-retention. Only if prevention fails, to maintain existing work-places, it is necessary to find or

create new work-places for pwd. After some general remarks (2) the international accepted success-factors of RTW will be summarized with a specific link to Poland (3) followed by the proposal of starting an action-plan in social security institutions (4). The article ends with an outlook on topics for research (5).

2. Framework for an implementation process

a) Statistics

Art. 27 is a human right for about one billion persons with disabilities in working age worldwide. These statistics are based on the report on pwd published by the WHO in 2013. 80% of disabilities are not inborn, but developed during life time. Most of them become unemployed and dependent on long-term. Therefore “return-to-work-strategies” are one of the priorities for state activities based on the idea to retain the employability for persons with disabilities.

b) Terms

Return to Work without rehabilitation measures are not successful. These efforts must start early and right in time to retain jobs instead of starting too late when jobs are already lost for persons with disabilities. Art. 26 section 1 a) had fixed such activating factor as human right. And the term return to work also includes the method of case management. A pwd who suffers from a complex injury or a disease must be coached comprehensively through a labyrinth of regulations and a jungle of stakeholders in the social security system.

c) Business case

If various stakeholders should be convinced to invest in the implementation of Art. 27 and in RTW programs their interests on a return on an investment must be taken into consideration. The state profit from the prosperity of the society based on its workforce, who has to work longer and harder (demographic factor). Employers need their skilled workers fit for work on a long-term base and want to strengthen their work capacities with sustainable means. And health-care providers are paid for supporting their clients on their way back to work, especially physicians.

d) Human right

Art. 27 as human right highlights the interest of persons with disabilities addressed to the state that must adopt the jurisdiction and start programs for its realization: State parties shall safeguard the right to work, including

for these with acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to promote vocational and professional rehabilitation, job retention and return to work programs. Art. 25 b CRPD (Health) opens the link to state parties, who shall provide health services by including early identification and intervention as appropriate and services designed to minimize and prevent further disabilities.

e) Existing Challenges

Like in Poland most societies are confronted with the same key questions all over the world. How employees with disabilities can receive comprehensive medical, vocational and social service like out of one hand? How employers can be supported in their activities of retaining employees with chronic diseases at the workplaces? How social security institutions, which pay for measures in social security, can support these key challenges, also in Poland? How health care providers can act close to the working life with the impact on the employability of workers.

3. International Guidelines

Since 2014 guidelines on the implementation with the focus on RTW exist which have been consented by ISSA members in collaboration with experts within Rehabilitation International. These RTW Guidelines are based on an ILO Code of Practice “Managing disability in the workplace” published in 2002 and based on a consensus by social partners around the world (employers and employees side). In these guidelines some major success factors are addressed to the senior management of social security institutions. They should realize mainly six action fields of organising services in social security for persons with disabilities.

a) Holistic approach

An activating social security institution, which is not only re-acting on existing disabilities, must use its influence and must create suitable methods to develop the social security system in a country holistically, not only remaining passive by offering money like pensions, sick-pay or unemployment benefits. What are the crucial challenges for a successful implementation of Art. 26?

- Employers’ responsibility
If a society forces the employers’ liability for their employees by using suitable rules in labour or social law, Art. 27 will be implemented easier. There are several options. Germany has been introduced a legal responsibility of RTW for all employers in 2004. If employers cannot prove their offer of disability management, they are not entitled to dismiss an

employee based on sickness reasons. Other countries shifted the whole responsibility of health care costs to the employers, like in the Netherlands. They have to pay for sick-leave and for health-care services until two years. Other countries prefer financial incentive to implement Art 27 like in Austria. Also awards addressed to employers could be helpful for opening new doors for pwd in the working life (www.einfach-teilhabe.de).

- **Medical and vocational service**
Measures of medical rehabilitation (Art. 26 CRPD) offered close to the working place increase the employability of a person with a disability. Service providers like rehabilitation clinics or medical experts, like physiotherapists, must know where and how their patients are working. Otherwise they fail their job-task. But the social security institutions must pay for this kind of service by offering an adequate remuneration. Social insurers should organize their services provided with the view-point of persons with disabilities. RTW mostly starts already during the acute medical treatment. Contracts with general practitioners and specialized physicians are appropriate methods to initiate early rehabilitation programs.
- **ICF as a tool**
The CRPD has dedicated its focus to change the medical model on to a psycho-social model. Disability oriented programs must include all individual co-factors, not only physical disorders. This new personal-centred approach must identify comprehensive needs based on the ICF-classification for medical experts published and promoted by the WHO. This tool assists physicians in treating patients according to the CRPD. And social insurers have to force medical experts to use this tool and to finance the suitable equipment and reports.
- **Prevention and rehabilitation**
From the perspective of enterprises and their employees with disabilities health and safety support for their workers and health promotion programs must be offered as a one-stop-stop service combined with rehabilitation measures. All these kinds of benefits provided by several state authorities and social agencies are part of one single aim: To follow the right to sustainable work for person with disabilities. The social security institutions, like health care, pension and social accident insurance, have to collaborate in order to fulfil these mutual interests of employers and employees.

b) **Early intervention**

Social insurers must find activating solutions instead of waiting until pwd are excluded from the working-life. The senior management has to

create solutions in order to implement Art. 26 and RTW as a human right. Services and programs begin at the earliest stage, and are based on the multidisciplinary assessment of individual needs and strengths (Art. 26 section 1 a CRPD).

- Applications

Most of the social insurers are waiting for applications of benefits including rehabilitation measures. But this kind of passive behaviour does not fit into an activating social security system. Insurers must use the experiences and the information of stakeholders acting close to the working-places and employees with injuries or diseases to offer them prevention measures. This information must be accepted by the employee and the report must be paid by insurers. The German social accident insurers receive reports obliged by law in cases of work accidents which cause more than three days of sick-leave, and reports from physicians in cases of suspected occupational diseases (Art. 193 Social Code No. 7).

- Cooperation with company-physicians

In several countries employers are obliged by law to offer medical prevention checks / tests provided by occupational physicians working in or for enterprises. These preventive measures should be combined with the treatment of general practitioners, like family doctors. And the results of the examinations must be used for RTW strategies by social security institutions. The more medical professionals are collaborating the more the implementation of the right to work succeeds. Insurers must create activities among physicians by using contracts or an electronic-based communication system accepted by the employees. Global experiences should be noticed: Merely six weeks of sick-leave reduce return-to-work down to 50%.

c) Rehabilitation management

Management of the participation process is one offer to the pwd with specific complex cases paid by social insurers in some countries. Rehabilitation management means the consequence of an early intervention program. Pwd with needs of vocational assistance could not be left alone with all missing knowledge of benefits and responsibilities, which are necessary for their right to work. Most of the employees with disabilities feel helpless although they want to continue to work and not to be excluded from the working life.

- Economic value

Social insurers must be aware of the paradigm-shift from compensation to rehabilitation management. This trend offers not only an advantage for the persons with disabilities, but also belongs to an economic must-do.

Only around 5% of pwd need an intensive rehabilitation management, because they suffer from complex health problems with the impact on their employability. But these 5% causes around 80% of the total compensation costs of social security institutions.

- **Ability-based approach**
Rehabilitation Management realize the goal of CRPD to focus on abilities of pwd, not on their deficits. The ICF-oriented indication assist in finding efficient management methods, if they are used for vocational purposes. The key-success factor is an appropriate and efficient assessment tool, which eases the decision, who can work with which ability on which work-places.
- **Step by step reintegration**
Social insurers should manage a smart transfer during the RTW process by financing a step-by-step reintegration in the former working-surrounding. This kind of benefit should be placed in the respective social codes. Social insurers pay for the salary during this time-period subscript by medical doctors and based on an individualized integration plan that covers how long, in which intervals and in which steps the employee with disabilities should work. The ultimate goal is to work full-time and sustainable afterwards.

d) Participation

Persons with disabilities are experts in their own health problems. Social insurers should use this expertise like other paid experts. Findings about what pwd need could be taken in consideration without any charge, if the social insurers would ask their clients. This kind of participation opens opportunities for appropriate services and also for saving money in these cases, where pwd do not need benefits or cannot handle them, like electronic technical devices.

- **Peers**
One of the new methods of participation is to include peers in the rehabilitation process as one of a kind additional expert. A person with an amputation or a spinal-cord injury assists another person who is concerned with the same medical indication. The dialogue among peers motivates and stimulates the healing-process and the chances of RTW instead of staying at home without reduced expectations of an independent and self-determinate life.
- **Decision-making process**
Participation also enriches most of the discussions related to future-oriented strategies initiated by the senior management of social insurers. They should give the floor for competent persons with disabilities as

expert if they intend for example to realize a barrier-free office. Wheel-chair users and blind persons mostly know better what it is needed more than architects or other professionals. The insurers profit in same way if they use one pwd for an expert-group that has the task to design guidelines on any other kind of disability issues.

e) **Collaboration among stakeholders**

Social security institutions must support the collaboration between employers' and employees' (union) representatives in the country as well as the cooperation with societies of persons with disabilities, medical and vocational service providers and universities and their faculties of labour and social law and disability politics.

- **Federal umbrella organization**
The best solution seems to found an umbrella organization on the federal level for coordinating services in rehabilitation and participation for pwd like in Germany and in the Scandinavian countries. One Federation is situated in Frankfurt (www.bar-frankfurt.de), the other one in Heidelberg (www.dvfr.de). All these entities are integrating relevant interest-groups in rehabilitation supported by the German Ministry of Labour and Social Affairs since decades.
- **Model of state authorities**
Working together needs forerunners. Governments could place an impressive signal for cooperation in social security if they combine activities in the health care sector with the labour market, what facilitates the implementation of Art. 26. One option is to design one single ministry for health and labour. The other option follows the setting of a plan for collaboration among these two ministries. The third option is a federal institute where all stakeholders-groups for implementing Art. 27 can work together effectively and realize the same target.
- **Regional Competencies**
Community Based Rehabilitation (Art. 26 CRPD) has been promoted by the WHO over the last years. But this strategy is lacking of a linkage with the right to work. Art. 27 only can be implemented by using the relationship to the enterprises as well as with all these stakeholders who are providing prevention and rehabilitation programs in and for the enterprises. Smaller and medium-sized enterprises and their employees need "one face to the customer". In Finland this kind of comprehensive approach are provided by the occupational physicians whose agencies serve enterprises in prevention and rehabilitation issues. And in Norway "NAV" offers a holistic service on a community level also to enterprises in a holistic way.

f) Qualification of experts

Professionals, who were willing to learn and study RTW-programs and methods or implementing Art. 27, do not exist for a long time neither in Europe nor worldwide. Occupational physicians or occupational therapists (OT) were the only medical experts who offer a minimum of work-place oriented prevention and rehabilitation skills. Since the early nineteenth last century a Canadian education program conquer the world, called disability management (www.nidmar.ca). This education moduls must become more and more attractive to the enterprises and the senior management of social security institutions and their service providers like in Poland.

- ILO Guidelines

The Disability Management (DM) program is based on a consensus of social partner (employer and employees) on the international level: The ILO Code of Practice on RTW started with a successful story all over the world. The initiator is a person suffering from a severe paraplegic injury after a work-accident. He is still living on Vancouver Island (Canada) and acts with an intensive engagement to implement Art. 27 by means of so-called Disability Management Professionals (CDMP). DM programs are used mainly in America, Europe, Asia and in some African countries. Germany has been certified over 1000 CDMP since 2003 until today (July 2016) working in or for enterprises as RTW-experts.

- Professional skills

The success story in Germany started with the above mentioned legal duties of DM for employers. The need for some specialist in RTW is obvious in many other countries. Two options for qualifications can be identified: One option is to establish a completely new study with a bachelor and/or a master-degree. The other option is an add-on certifications for several professions who like to extend their skills in remaining or bringing pwd into the working-life, but merely by using selected modules (total 25) to pass the examination in nine core competencies like: Legal knowledge, medical support, networking, social competence, case management, assessment, persuade employers, evaluation and ethical behaviour.

- Duties and responsibilities

DM promotes the employment process. CDMP support employees and social security institutions to stay in familiar working-surrounding or find new fields of working-opportunities by using sponsorship for re-training or further education and other vocational benefits. They bridge the contact to decision-makers or bring relevant stakeholders together outside of enterprises like physicians, clinics or re-training centres. The RTW-expert is also a networker – on behalf of their clients – between

employers and employees. And their main goal is to stabilize the trust between both social partners in employing pwd.

4. Action plan as a tool

The implementation of human rights does not fall from heaven from one day to another. Therefore action plans delivered by governments, state authorities and civil society organisations support the implementation of CRPD in a sustainable way. The German government has been decided to use a 10 years National Action Plan (NAP), which is just revised as version 2.0 in June 2016 (www.einfach-teilhabe.de). Nearly the half of other countries in the world, who ratified the CRPD, uses this kind of a national strategy of awareness-raising. The German accident insurers followed this method with an own action plan dedicated mainly to their staff, for about 30.000 employees all over Germany including eleven hospitals financed by these social insurers. Also in Poland social security institutions, like ZUS or KRUS, belong to public entities, to which the CRPD is addressed. The following basic elements of an action plan are described briefly in this article, because it fits into the goal of the social accident insurers, to realize the right of work for persons with disabilities, who suffer from a work accident or an occupational disease. The action plan can be used as a good practice model for the implementation of Art. 27.

a) Work Accident Insurance

The social accident insurers in Germany offer a comprehensive service to the enterprises and employees in all aspect of health problems caused by the working conditions. They provide consultancy and benefits in prevention (health and safety and health promotion), in acute medical treatment, medical, vocational and social rehabilitation and compensation (sick-pay/pension). These insurers are only paid by contributions of the employers. They act as non-profit organizations based on a “pay as you go” financing system. And representatives of the employers and employees (consensus-oriented) take the responsibility for the essential decisions, like the important programs as an action plan. Some social insurers cover the risk of employees in public authorities like the state-run entities on the local regional and federal level and they are also responsible for accidents of children in kindergarten, pupils in schools and students.

Another message is: If social security institutions which serve clients (social customers) must start the implementation of CRPD in their own organisation as employer!

b) Action fields

CRPD stipulates some paradigm-shift for social security institutions. They have to respect the change from welfare to self-determination of person with disabilities. To care for someone is not enough! Also the change from a deficit-orientation to an ability-focus must be implemented in the jurisdiction and awareness of the stakeholders in social security. Last but not least “inclusion” is more than “integration”. Pwd must be respected as part of a diverse society. The most important message to the staff of social security institutions is: CRPD is not only relevant for persons with severe disabilities based on a state certificate. And CRPD is not a cost-inflation motor and makes the all-day work easier than they think. Here some specific action fields which seem to be relevant for the implementation of Art. 27 CRPD:

- **Awareness-raising**
If the staff working for social security institutions should implement the CRPD in their all day working life, an action plan must provide goals and concrete measures for awareness – raising. Some success factors: Top down strategy, kick-off events, training the senior-management, documentary movie “Gold – you can more than you think”, focal points (contact persons) in different departments and training of medical experts and enterprises to employ pwd.
- **Accessibility**
Offices in social security institutions must be constructed and renovated barrier-free, but not only by focussing on ramps, but also on reducing barriers for visual or hearing impairments. DGUV has published guidelines for all enterprises in German for becoming more accessible for pwd, because the work accident insurers are the competent partners of enterprises in health and safety of work-places. This action field comprises incentives for medical facilities to become more and more barrier-free. The idea is that insured persons with disabilities should be treated without barriers in the in- and out-patient facilities.
- **Participation**
Peer-acting in pilot-projects has been combined with a road-map organized by social security institutions. In this electronic information system persons, who are insured by social insurance, can find peers, what means other persons with same disability, in order to find understanding and assistance for facilitating the process of participating in the labour force. The message for the staff in agencies and facilities is easy: Participation in the sense of CRPD support the effectiveness and efficiency of payers in social security, mainly by stimulating ideas and using a charge-free expertise for suitable decisions where pwd are profit from.

- **Inclusion**
Quality criteria in rehabilitation that helps on the way back to the paid labour market must respect the individual needs of pwd. Rehabilitation services must be offered not exclusively, but together for persons with and without disabilities, like in rehabilitation sport. The implementation of Art 27 shall follow the goal: Education for children and sheltered workshops must be reduced to a reasonable minimum in a society. This message should also be noticed by founding new services like retraining centres like in Poland. Social insurers can contribute to promote ideas of diversity in the civil society because of their close contacts to enterprises.

c) **Some good practice examples**

Some actions are mentioned in the following passage based on the action plan of the German social accident insurers, which could be used in other countries like in Poland. This idea belongs to the human right in Art. 31 CRPD. Good-practice models shall be distributed in various states of the EU and worldwide.

- Each decision-making body has to dedicate one member as “ombudsperson” and all topics with relevance to the CRPD must be identified.
- Guidelines for participation, inclusion and accessibility on a federal level facilitate appropriate decisions in single cases including investments in barrier-free medical facilities.
- Helpful are publications of “Good-practice models”, in easy language, of check-lists for barrier-free events and handouts for enterprises and schools for investing in barrier-free working places.
- Specific research projects for promoting participation in rehabilitation should be provided at least of 10% of the research budget for a certain period of years.
- Social security institutions which provide services for clients (social customers) must start the implementation of CRPD in their own organisation as employer!

5. Challenges of Research

Research is an investment for the future of a society. Ideas coming out of research projects promote the productivity and the acceptance of a society in a global and competitive world. But these research relating to Art. 27 CRPD must use appropriate priorities. If research does not respect these priorities it will cost a lot and will change nothing. For a return on investment the state and social insurers, which are the most important payers of research, should concentrate on mainly five research fields which shall serve also as orientation for researchers.

Employability

Employment must be one of the most important outcomes for research in rehabilitation. The ability to work (RTW) based on the interest of various stakeholders has two dimensions. At first the measures of medical rehabilitation must be linked with the demands of the working places. And secondly research must focus on sustainability of rehabilitation investments: Are pwd are still in employment after two years.

Individual needs

The researchers should change their minds from evaluation-studies initiated mostly by service providers of multiple therapies to personal-centred pathway studies which define the individual needs of persons in various groups. These studies should use the ICF-model and the working conditions based on recommendations for an ability-oriented management with a red and yellow flag system for in-time interventions.

Complexity

An activating social security system needs more research on preventive indicators used for interventions for persons who would fail to stay productive in social and labour life with a disease or an injury. Assistance provided to these persons must start in-time and be designed holistically. Complex cases are not always severe cases like paraplegic patients but also some minor injuries of finger nerves can afford complex measures of rehabilitation.

Participation

The CRPD forces the state and social security institutions to invest in research of participation in rehabilitation. Professionals in rehabilitation traditionally include tools for motivating their patients/clients. But participation belongs to a structure quality of service providers that must be evaluated. Trends or non-professional assistance, like peer-support, offer a new research field: Which outcomes do amputated patients have if they are supported by amputated peers?

Collaboration

CRPD opens decision-makers in research and universities to follow a comprehensive approach towards faculties of human sciences with medical rehabilitation as one part a multidisciplinary collaboration. A national strategy in a country should support these kinds of centres of excellence based on an agreement of several ministries and social insurance institutions as payers. The consensus of a master plan of relevant research issues focussed on priorities makes a coordination and evaluation easier.