

Labour and Fundamental Human Rights

Employment of disabled people (Lithuanian report)

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The protection of the rights of the mostly vulnerable social group – mentally disabled people – remains problematic sphere in the Lithuania. The Lithuanian labor law changed its direction in the 1990, when Lithuania gained independence. Before that the old Labour Code of the Soviet Socialist Republic of Lithuania was valid (this code was adopted in 1972). There were few major changes of the code: in the 1991 (this code changed the soviet code) and in the 2002 (this code is still effective). Despite the existing regulation of the fundamental human rights, there are still the instances of cases, where disability is considered to be the reason to deprive person of almost all of his/her rights, including right to work, right to property, etc., while declaring person as incapable.

The Constitution of the Republic of Lithuania lists some labour rights: the right to freely choose a job or business, the right to have proper, safe and healthy conditions at work, to receive fair pay for work and social security in the event of unemployment; also the forced labour is prohibited;¹ the right to rest and leisure as well as to an annual paid leave,² etc. There is only one article in the Lithuanian Constitution which deals with the disabled people. It states that the State shall guarantee to citizens the right to receive old age and disability pensions as well as social assistance in the event of unemployment, sickness, widowhood, loss of the breadwinner, and in other cases provided for by laws.³ There is no provision in the Lithuanian Constitution directly stating that it is forbidden to discriminate on the ground of disability. There is only the general thesis that all persons shall be equal before the law, the court, and other State institutions and officials, and that the rights of the human being may not be restricted, nor may he be granted any privileges on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views.⁴ However, this regulation can not be interpreted as allowing the discrimination in Lithuania on the ground of disability. In this situation it is possible to apply the decision of the Constitutional Court of Lithuania, in which it confirmed that the most important thing is not the particular wording of

¹ *The Constitution of the Republic of Lithuania*, Official Gazette (1992, no. 33-1014), Article 48

² *The Constitution of the Republic of Lithuania*, Official Gazette (1992, no. 33-1014), Article 49

³ *The Constitution of the Republic of Lithuania*, Official Gazette (1992, no. 33-1014), Article 52

⁴ *The Constitution of the Republic of Lithuania*, Official Gazette (1992, no. 33-1014), Article 29

a certain rule, but the fact that the text should provide understanding beyond doubt that the instruction is given to certain subjects under certain conditions to act in appropriate way.⁵ Right to freely choose a job for the persons with disabilities is also expressed in the article 27 of the UN Convention on the Rights of Persons with Disabilities⁶, where it is stated that States Parties recognize the right of persons with disabilities to work on an equal basis with others. It shall be noted that Lithuania signed the UN Convention on the Rights of Persons with Disabilities in 2007⁷, but the Convention is still not in force as it must be ratified by the Parliament of the Republic of Lithuania. Also Lithuanian laws must be harmonized with EU laws, because Lithuania is a part of the European Union. The Amsterdam Treaty, which entered into force in 1997, in its article 13 for the first time enabled the Community to fight against discrimination on a wider range of grounds than ever before, such as disability, racial or ethnic origin, religion and belief, age and sexual orientation.⁸

According to the Lithuanian labour law, an employee can be a natural person who possesses working legal capacity in labour relations and employed under employment contract for a certain salary.⁹ But the employment contracts can be entered into only by persons having not only working legal capacity, but also a civil capacity. The civil capacity under Lithuanian law means that natural person shall have the full enjoyment of civil rights (passive civil capacity) and he, by his acts, shall have full exercise of all his civil rights and shall assume civil obligations (active civil capacity).¹⁰ This means that the employee must be fully capable to perform work functions. The Lithuanian Civil Code allows to declare natural persons as having limited active civil capacity only if they abuse alcoholic beverages, drugs, narcotic or toxic substances.¹¹ In these situations the court may impose restrictions on their civil capacity. There is no way to impose limited active civil capacity to the disabled persons. A natural person who as a result of mental illness or imbecility is not able to understand the meaning of his actions or control them may be declared as incapable.¹² When declared by the court as incapable, a person will be placed under guardianship.

The practice shows that sometimes a person with physical disability can be declared incapable what, of course, violates human rights. The prosecutor general's office of the Republic of Lithuania, when analysing situation about prosecutors activity defending the

⁵ The ruling of the Constitutional Court of the Republic of Lithuania (19 January 1994, Vilnius)

⁶ <http://www.un.org/disabilities/default.asp?id=150>

⁷ <http://www.un.org/disabilities/countries.asp?navid=12&pid=166#L>

⁸ *Treaty of Amsterdam*, Official Journal C: 1997-11-10 Nr.340-1 (1997), Article 13

⁹ *Labour Code of the Republic of Lithuania*, Official Gazette (2002, no. IX-926), Article 15

¹⁰ *Civil Code of the Republic of Lithuania*, Official Gazette (2000, no. VIII-1864), Articles 2.1 and 2.5

¹¹ *Civil Code of the Republic of Lithuania*, Official Gazette (2000, no. VIII-1864), Articles 2.11

¹² *Civil Code of the Republic of Lithuania*, Official Gazette (2000, no. VIII-1864), Articles 2.10

rights of social protected people, found that person's physical incapacity or inability to self-service is often provided as a ground for announcing the person as incapable in the requests by the prosecutors to the court.¹³ When preparing a request by prosecutor to establish person as incapable it is usually stated that the person is incapable due to his physical and mental illness, therefore he can not understand the meaning of his actions and control them. But in these requests there are no arguments which mental illness the person has, there are no statements or arguments why a person cannot understand and to control his actions by which he can evoke a danger to himself or to surrounding people. While investigating the grounds for declaring person as incapable, the courts wrongly determine the existence of medical and legal criteria. Therefore the person is announced as incapable only after the status of mental disorder established. There is no analysis whether the person is capable to act in the certain situations. Such mistakes by courts have lead to situations, where normally working persons were announced as incapable and, consequently, lost their right to work.

The person, declared by the court as incapable, cannot make a request to the court or to make an appeal, because all actions on behalf and in the name of that person shall be concluded by his guardian. Such grounds for declaring as incapable are not appropriate in any way. The purpose of such rules in the Lithuanian Civil Code is to protect the rights of persons with disabilities. The person could be declared as incapable only in situations when he is fully mentally ill. In other situations the rules of curatorship may be applied, when it is clear what level of special needs for the person is necessary.

The working capacity is closely related to the civil capacity. The question is whether the person, who was declared by the court as incapable, has working legal capacity. According to the Lithuanian law, declared by court as incapable people cannot perform any legal acts. Thus these people cannot be held as having working capacity because each working function, including signing a labour agreement, is connected not only to the physical but also to the legal actions. There can be some problems regarding legal responsibility of such persons under Lithuanian law if working capacity would be allowable to the incapable people. But, surprisingly, a working capacity is acknowledged to the persons to whom the court declared limited active civil capacity for the abuse of alcoholic beverages, drugs, narcotic or toxic substances.

Declaration as incapable may be confusing for the reason that it could be performed not only by a court, but also by the special institution - Disability and Working Capacity

¹³ *Summing-up note regarding decisions presented by prosecutors defending rights of social protected persons*, Prosecution Service of the Republic of Lithuania (2008, no.13.13-6)

Assessment Office at the Ministry of Social Security and Labour. The main purpose of declaring as incapable by the court is to help the person to realize his rights through the guardian. The purpose of declaring a person as disabled by the Disability and Working Capacity Assessment Office is to evaluate person's abilities to work what allows to apply for the state aid. Such rules confuse people, because declaring mental illness and deciding that the person is disabled is often a ground to apply to the court to declare a person as incapable. In such situation the person loses his active legal capacity and also ability to work even in special social enterprises.

A person with a limited working capacity can be announced as disabled by the Disability and Working Capacity Assessment Office. The task of that office is to determine what percentage of working abilities the person lost. There are three levels of a persons ability to work: the 1st level (60-100% ability to work) - the person is declared capable to work; the 2nd level (30-55% ability to work) - the person is declared as partly capable to work; and the 3rd (0-25% ability to work) - the person is declared as incapable to work.¹⁴ But this determination has nothing to do with the equality and non-discrimination principles. The determination of the working capacity mostly has impact only in receiving a support from the state. The practice shows that when disabled people apply for the work they often try to hide their illness, because of the negative look from the employers, who consider such persons as dangerous.¹⁵

The analysis of this work shows that the employee in most situations must be fully civil capable in order to perform working functions. The law and the legal practice shows that it is not worth for the person who needs guardianship to apply to court with the request to assign him a curatorship (or guardian) because he may be declared as incapable, the guardian may be assigned and, as a consequence, person loses his right to work. Such violations of human rights can be resolved by establishing in the law the ability to the court to declare for the disabled people a limited active civil capacity. The Lithuanian law does not provide for the possibility to periodically revise disability. A person declared as incapable by the court must have a right to apply to the court.¹⁶ The limited active civil capacity can be declared by the court if the person has mental health problems for which he is only partly capable to perform actions which can have legal consequences.

¹⁴ The text was prepared from the information in the web page of Disability and Working Capacity Assessment Office <http://www.ndnt.lt>

¹⁵ Turintiems negalią – barjeras. Angelė Valentinavičienė. Sekundė (2007 12 01) <http://www.sekunde.lt/content.php?p=read&tid=45446>

¹⁶ This also can be found in the jurisprudence of the European Court of Human Rights. In numerous its rulings the court stated that there can be some restrictions that to apply to court regarding to mental illness, but these restrictions cannot withdraw a right to apply to court.