



ORIGINAL PAPER

**An Integrative Approach to Social Policy in Romania: Review
of the Special Protection of Persons with Disabilities**

Roxana Radu* , Loredana Belu**

Abstract

The concept of disability has not received any legal definition in the Romanian law system, despite the existence of a multitude of social security regulations regarding the protection of persons with disabilities. The legislation refers only to the concept of person with disabilities. Disability is not only an individual problem, but a serious social problem that requires attention from the state and society. Special protection of disabled persons includes measures stipulated by Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities, in order to encourage persons with disabilities to exercise their right to special treatment to prevention, to medical treatment, rehabilitation, education, professional training and social integration. In order to provide professional rehabilitation and vocational integration of people with disabilities, the law provides that employers, individual or legal persons, conclude with these disadvantaged persons individual employment contracts in accordance with their training, their physical and intellectual capacities. Also, Romanian legal system provides for the right to education, social and legal assistance, pension, housing, health care and other social services for children and adults with disabilities.

Keywords: *disability, allowance, social assistance, law, employment*

* Assoc. prof., PhD, Faculty of Law and Social Sciences, University of Craiova/ Scientific Researcher III, PhD, “C.S. Nicolăescu-Ploșșor” Institute for Research in Social Studies and Humanities of the Romanian Academy, Craiova, Phone: 0040721400359, Email: rocxaine@yahoo.com

** Lecturer, PhD, Faculty of Law and Social Sciences, University of Craiova, Email: loribelu@yahoo.com

General considerations

After the revolution of 1989, the status of persons with disabilities experienced a rapid process of change and continuous enrichment through the creation of a favorable framework, of a decentralized system with reform and control role, of a strong developed partnership between state structures and NGOs of people with disabilities or those active in the protection of disabled persons in order to protect the dignity and the free development of personality of these disadvantaged persons. Central and local administrative authorities' efforts focused on the successful inclusion of people with disabilities in the community, the labor market, education, culture, social and recreational activities, as well as their involvement in social, economic, political and religious life. First rights for disabled people in the employment field have been recognized by Law no. 57/1992 on the employment of people with disabilities, subsequently repealed by Government Emergency Ordinance (G.E.O.) no. 102/1999 regarding special protection and employment of persons with disabilities (Radu, 2004: 82-89).

Definition of disability

Disability is not only an individual problem, but a serious social problem, which requires the adoption of a social policy focused on specific education, vocational rehabilitation and employment of people with disabilities, on their care and social integration. The concept of disability describes the social role attributed to a person with deficiency, by which is disadvantaged in comparison with others in the interaction with them or with specific cultural and social environment. Thus, the handicap becomes synonymous with the notion of rejection, marginalization or exclusion of persons with deficiency or disability. The concept of disability must be bounded strictly of related or neighbouring notions. Thus, it is different from the notion of infirmity which encompasses "any abnormality or disturbance, loss of a structure or a function at the level of the organism" (Ghimpu, Țiclea and Tufan, 1998: 447). The infirmity occurs more as a cause of disability than any one of its manifestations: as disability is not necessarily generated by an infirmity or infirmity does not necessarily generate the disability (Borgetto and Lafore, 2000: 276). Distinction must be made between disability and maladjustment: if the two notions can have a similar effect, the second does not refer to both an organic or psychiatric impairment as to a harmful behavior towards certain social norms (Borgetto and Lafore, 2000: 276). Disability should not be confused with the concept of incapacity within the meaning of "restriction, reduction or loss of ability to perform an activity in conditions considered normal for a normal person" (Ghimpu, Țiclea and Tufan, 1998: 447) nor with the legal incapacity: the fact that disability can lead to this does not mean that any disabled person must, a fortiori, be subject to such measures. Finally, disability should not be confused with the concept of social exclusion, not because the person with a disability would not be at risk of exclusion, but because the two concepts are situated on different planes, exclusion is not only a possible consequence of disability: as disability does not necessarily lead to exclusion, this one is not necessarily caused by the existence of a disability (Borgetto and Lafore, 2000: 276-277). In the specialised literature, disability was defined as "any disadvantage suffered by a person due to infirmity or disability that prevents her wholly or partially from satisfying tasks considered normal for it (depending on age, gender and various social and cultural factors)" (Pop et al., 2001: 357). The Romanian law refers only to the concept of disabled person, from whose definition we

may conclude that the handicap may consist of any physical, sensory, psychiatric or mental deficiencies that prevents or limits its normal access on equal terms in social life, according to age, sex, education, social and cultural factors, requiring special protection measures for social integration.

Special protection for persons with disabilities

According to art. 2 para. 1 of Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities, “disabled person” means a person who, because of physical, mental or sensory illness lacks the skills to carry out normal daily activities, requiring protection measures in support of recovery, integration and social inclusion. It is worth noting that under G.E.O. no. 102/1999 regarding special protection and employment of disabled persons and only in the context of employment, the disabled person has also designated an invalid person. The Declaration of the handicapped, proclaimed by the United Nations in 1975, states that the term “handicapped” means any person who is unable to secure all or part of individual and social needs of a normal life due to congenital deficiency or to other causes of physical or mental disability. According to art. 50 of the Constitution, persons with disabilities enjoy special protection. In order to achieve this protection, the state carries out a national policy of equal opportunities, of prevention and treatment of disability, aiming at the effective participation of persons with disabilities in community life while respecting the rights and duties of parents and guardians. Special protection of disabled persons includes measures taken under Law no. 448/2006 on the protection and promotion of disabled persons in order to ensure the rights of persons with disabilities to special treatment, prevention, rehabilitation, education, training and social integration of this category of persons.

Protecting and promoting the rights of persons with disabilities is based on the following principles: respect for rights and fundamental freedoms; preventing and combating discrimination; equalization of opportunities; equal treatment in terms of employment; social solidarity; community empowerment; subsidiarity; adapting society to the disabled person; interests of the disabled person; integrated approach; partnership; freedom of choice and control or decision over their lives, services and forms of support; person-centered approach in service delivery; protection from neglect and abuse; choosing the least restrictive alternative in determining support and advice; integration and social inclusion of people with disabilities, with equal rights and obligations as all other members of society.

According to the revised European Social Charter, adopted in Strasbourg on 3rd of May, 1996, ratified by Law no. 74/1999, as well as other national and international acts to which Romania is a party, public authorities, social service providers, civil society and individuals and legal entities are obliged to promote, respect and ensure the rights of persons with disabilities, namely the right to health care – prevention, treatment and recovery; education and training; employment and workplace adaptation, vocational guidance and retraining; social assistance or social services and social benefits; housing, adaptation of personal life environment, transport, access to the physical environment, information and communications; leisure, access to culture, sports, tourism; legal assistance; tax incentives; assessment or reassessment by examining недеplabile persons at home by members of the Evaluation Committee, at an interval of 2 years. Law no. 448/2006 also provides another measure of special protection, namely that the public authorities have to take specific actions to include the needs of people with disabilities

and their families in all policies, strategies and regional, county or local development programs, and in government health care programs. These measures should be aimed at creating availability conditions for transport, infrastructure, communication networks, medical and socio-medical services; establishment of rehabilitation centers specialized for types of disabilities; creating conditions for ensuring access and assistive technology; development of programs to prevent the occurrence of disability; supporting access to recovery and spa treatment; inclusion and recognition of sport as a means of recovery (art. 9 para. 1). In particular, the special protection of persons with disabilities in institutionalized form is achieved by providing support services, care, treatment, recovery, rehabilitation, vocational guidance and training, as well as other services in the institutions of special protection for people with disabilities. A measure of special protection under the former regulation (G.E.O. no. 102/1999) is also found in Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities. Thus, public utility buildings, doorways, residential buildings built with public funds, means of public transport and their stations, taxis, passenger rail carriages and platforms of main stations, parking lots, streets and public roads, public telephones, information and communications environment will be adapted according to the relevant legal provisions, so as to allow free access of people with disabilities, while historical and heritage buildings will be adjusted accordingly, respecting the architectural characteristics (art. 61 para. 1 and 2). The costs of work necessary to achieve these adaptations are supported from the budgets of local or central government authorities and from own sources of private legal entities, as appropriate.

Special protection measures are applied on the basis of classification in categories of persons with disabilities in relation to the degree of disability established after assessment of the evaluation committee of disabled adults or by the commission for child protection. Classification into a category of persons with disabilities is attested for both adults and children, according to medical and psychosocial criteria approved by order of the Minister of Public Health and the Minister of Labour, Family and Equal Opportunities, at the proposal of National Authority for Disabled Persons, which determine the degree of disability (light, medium, severe and profound) stressed by a certificate of admission to degree and type of disability.

The organization and financing of social assistance for people with disabilities

Institutions dealing with the special protection of disabled persons and with observing the law in this area is the National Authority for People with Disabilities, the Board for the analysis of the problems of people with disabilities – at national level, the General Directorate for Social Assistance and Child Protection and committees for analysing the problems of disabled people – at local level. National Authority for People with Disabilities and other central and local public authorities must ensure, according to law, necessary conditions for integration and social inclusion of people with disabilities. Also, this authority drafts policies and ensures the monitoring and enforcement of the rights of persons with disabilities. Funding social assistance of persons with disabilities is mainly from the following sources: local budget of municipalities, cities and villages; local budgets of counties, respectively of Bucharest Municipality's sectors; State budget; monthly maintenance contributions of disabled people receiving social services in care centers; donations, sponsorships and other sources, under the law. The Special Fund for

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Social Solidarity for People with Disability is managed and administered by the National Authority for People with Disabilities and approved by the state budget law.

Obligations of persons with disabilities

According to art. 58 of Law no. 448/2006, persons with disabilities have the following obligations: a) to present themselves, at their own initiative or upon request, for evaluation and re-evaluation by the committees with competence in the field; b) to do everything necessary to enjoy the rights provided by law; c) to follow the activities and services provided in the recovery plan for children with disabilities, respective in the individual service plan for the disabled adult; d) to make reasonable efforts for employment on the labour market, under the law, in relation to the vocational preparation, physical and mental possibilities, based on the recommendations of the committee with expertise in the field; e) to work with social workers and specialists aimed at recovery, rehabilitation, vocational guidance and social integration; f) to inform the general directorates of social assistance and child protection (from county or sectors of Bucharest municipality) within 48 hours of becoming aware of any change on the degree of disability, domicile or residence, material status or other situations likely to alter the granting of rights provided by law.

Compared to the previous regulation, we note that the current law has replaced the legal obligation of the disabled people “to engage in a job, under the law, according to their vocational training, the possibilities of their physical and mental health and the medical recommendations” with the obligation to “to make reasonable efforts for employment on the labour market”. Art. 21 of O.U.G. no. 102/1999 was criticized on the grounds that has instituted a form of forced labor in the account of disabled persons which blatantly contravened to the principle of freedom of work stipulated in art. 41 para. 1 of the Constitution and in the international conventions ratified by Romania (Radu, 2004: 82-89). Thus, in order to benefit of protective measures provided for in regulations, a person with disabilities should be employed, otherwise being deprived of the protection of the law. Even if this obligation of disabled person was considered to have a protective purpose and effect and therefore constitutional (Ștefănescu, 2002: 552), we believe that the formula adopted by the legislature in 2006 is more appropriate.

Employment of Persons with Disabilities

Employing people with disabilities raises a number of issues. First, the organization of the workspace, the degree of specialization, working conditions, working hours and nature of work affects the extent to which people with disabilities can participate in performing an activity. Thus, when the family is the unit of production or disabled person is helped into work performed by members of his family, it is easier for them to have an active professional life, in relation to the flexibility and complexity of work. In the competition between labor supply and demand, participation of people with disabilities in the labor market becomes more problematic (Manea, 2000: 442).

People with disabilities have the right to work and earn income in accordance with the provisions of labor law and the specific provisions of Law no. 448/2006. According to art. 72 of Law no. 448/2006, any disabled person who wants to integrate or reintegrate into the labor market has free access to professional evaluation and orientation, regardless of age, type and degree of disability. The disabled person actively participates

in the evaluation and vocational guidance, has access to information and choice of activity, according to his wishes and skills and the principle of free work.

The person with disability who is educated and has the appropriate age for employment, the disabled person without a job, who does not have professional experience or who, while being employed, wants vocational retraining take advantage of professional guidance, as appropriate. Training of persons with disabilities is organized, on the basis of law, through initiating, qualification, training and specialization programs. People with disabilities have the right to conditions created for them in order to be able to choose and practice their profession, trade or occupation, to gain and maintain employment and to promote in their profession. Employment of disabled persons is made by natural or legal persons, in accordance with their professional preparation and physical and intellectual capacities available to them, on the basis of a certificate of admission to a degree of disability issued by the evaluation committees at the level of the county or of the sectors of Bucharest Municipality. Taking into account that disabled persons of third degree are included by law in the sphere of disabled persons (art. 76 para. 2), hiring is done following the conclusion of an individual contract of employment or of individual agreements concerning employment relationships concluded between a cooperative society and cooperative members who put together their work and capital (Găină and Găină, 2008: 58-70). For this purpose, can be established protected units, with or without legal personality, or protected places of work, especially organized, by providing facilities and adaptations according to the requirements of people with disabilities. Another form of employment of people with disabilities is the conclusion of an individual contract work at home, in which case the natural or legal person employing them must provide transportation to and from the home of any raw materials they use in their activity and finished products carried out by them. The new labor code provided a new legal system for work at home through art. 108-110 (ex art.105-107). Since the regulation of labor at home has many shortcomings (Radu, 2008: 162-163; Popescu, 2013: 179), *de lege ferenda* it is necessary supplementing the law, as to provide that person with a disability employed with an individual labor contract at home can be helped by husband/wife, children, parents or an auxiliary.

Protected units are socio-economic units organized and equipped according to the requirements of persons with disabilities, with a view to the elimination of any impediment for carrying out the work by such persons. Authorized protected units benefit from the following facilities: a) exemption from licensing fees to the establishment and renewal; b) exemption from payment of income tax, provided that at least 75% of the obtained exemption is reinvested for restructuring or for the purchase of technical equipment, machinery, installation work and / or layout of workplaces protected as provided by Law no. 571/2003 regarding the Fiscal Code, as amended and supplemented; c) other rights granted by local government authorities financed from own funds.

Public authorities and institutions, legal persons, public or private, with at least 50 employees (in the previous law this number was at least 100 employees) are required to employ disabled persons at a rate of at least 4% of the total of employees. Public institutions of national defense, public order and national security are exempted from this obligation. In the case that the number of disabled persons employed is inferior to the amount prescribed, public authorities and institutions, legal persons, public or private, covered by the law, can opt for any of the following obligations: a) to pay monthly to the State budget an amount corresponding to 50% of minimum gross basic salary per country multiplied by the number of jobs in which they did not hire people with disabilities; b)

to purchase products or services from authorized protected units, on a partnership basis in the amount equivalent to the amount due to the State budget under the conditions referred to in point a).

People with disabilities seeking employment or already employed have the following rights: training courses; reasonable accommodation in the workplace; counseling prior to the period of employment and during employment and on probation, from a counselor specialized in labor mediation; a probationary period paid by the employer of at least 45 days; paid prior notice, of at least 30 working days, granted by the employer at the employment contract termination for reasons not attributable to the employee; opportunity to work less than 8 hours per day, under the law, where there is the recommendation of the evaluation committee in this regard; exemption from salary tax. In what concerns the probation period it is worth noting that, unlike the Labour Code, which provides that the testing of the professional skills of persons with disabilities is done solely on the basis of a probationary period not exceeding 30 days and with exclusive character (Gidro, 2013: 59-60), Law no. 448/2006 on the protection and promotion of the rights of people with disabilities sets a probationary period of at least 45 working days. Its provisions are applicable by priority because this is a special law and adopted after the entry into force of the new Code labor. However, because it contains provisions less favorable to employees, *de lege ferenda* we propose amending art. 82 of Law no. 448/2006 in the sense of stipulating a probationary period not exceeding 30 calendar days for the employment of people with disabilities and not having an exclusive character.

In order to support and encourage the employment of persons with disabilities, art. 83 of Law no. 448/2006 provides certain rights for employers who resort to employment of such persons: a) deduction in calculating taxable income, of the amounts they use for the adaptation of protected places of work and the acquisition of machinery and equipment used in the production process by the disabled person; b) deduction in calculating taxable income, of expenses for transporting disabled people from home to work, and the costs of transporting raw materials and finished products to and from the residence of the disabled person hired to work at home; c) settlement from the unemployment insurance budget of the expenses specific for training, vocational guidance and employment of persons with disabilities; d) a subsidy from the state, as provided by Law no. 76/2002 on the unemployment insurance system and employment stimulation, with subsequent amendments.

Right to pension

According to Law no. 263/2010 on the unitary system of public pension, individuals who have made a contribution period under handicapped conditions before becoming insured benefit from reduced standard retirement age, depending on the degree of disability, as follows: a) by 15 years, if the insured with profound handicap have achieved in conditions of disability pre-existing to the quality of insured, at least a third of the complete contribution period; b) by 10 years, if the insured with severe handicap have achieved in conditions of disability pre-existing to the quality of insured, at least two thirds of the complete contribution period; c) by 10 years, if the insured with medium handicap have achieved in conditions of disability pre-existing to the quality of insured, the complete contribution period. In case of worsening disability during the execution of the individual employment contract and classification of the employee in another disability degree, are applicable the legal provisions relating to the degree of disability he

had at the employment moment because the law clearly states the conditions of “disability pre-existing to the quality of insured” (Gîlcă, 2003: 101). The blind receive old-age pension, regardless of age, if they realized at least one third of the complete contribution period while being blind.

The right to health care and social services

According to art. 10 of Law no. 448/2006, people with disabilities have free medical care, including free medicines for both outpatient treatment and during hospitalization in the health insurance system, as laid down by the framework contract. In order to provide assistance for recovery / rehabilitation, people with disabilities have the right to: a) free medical devices for outpatient treatment, according to the conditions set out in the framework contract concerning medical assistance in social health insurance system and its implementing rules; b) free accommodation and meals for the companion of the child/adult with severe or profound disabilities in hospitals with beds, sanatoriums and spa resorts, on the basis of a recommendation from the family doctor or a medical specialist, provided by the Single National Fund of Health Insurance, according to the framework contract concerning medical assistance in social health insurance system; c) a free ticket for spa treatment in a year, based on individual program of rehabilitation and social integration and on recommendation of the family doctor or the medical specialist.

Another extremely important measure to protect persons with disabilities is the obligation of the public authorities to take measures for introducing a priority criterion for hiring, at lower levels of rent, housing from the public domain of the state or its territorial administrative units. People with severe disabilities have the following rights: a) granting a room for living, in addition to the minimum standards of living provided by law, based on renting contract for dwellings included in the private or public domain of the state or of the administrative-territorial units; b) determining the rent, under the law, based on renting contracts for residential areas with destination of housing owned by the State or its territorial-administrative units to the minimum level required by law. From these provisions will benefit also the family or legal representative during the period in which they take care of a child or an adult with severe disabilities. People with profound and severe handicap are entitled to gratuity urban transport on surface and underground, on all lines. This right belongs also to the personal assistants or companions of the person with disability. The right to social assistance in the form of social services shall be granted upon request or ex officio, where appropriate, on the basis of documents provided by law. People with disabilities receive social services provided at home, in the community or in day care centers and residential centers, public or private. Social services for people with disabilities are designed and tailored to the individual needs of the respective person. The persons with disabilities can receive social services provided in day care centers and residential units of various types (public-private, public or private type). Day centers and residential centers are places with adequate infrastructure where social services are provided by qualified staff; residential centers are locations where the disabled person is hosted at least 24 hours.

The types of residential centers for the disabled are centers of care and support; recovery and rehabilitation centers; centers of integration by occupational therapy; training centers for independent living; respite centers/ crisis centers; community services and training centers; protected housing. A person with disabilities is sheltered in a residential center, except for respite centers, crisis centers and protected dwellings if its

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protection and care can not be ensured at home or in other community services. Adult with severe visual disability receives for the payment of his attendant an allowance equivalent with the net salary of junior social worker with secondary education from social assistance units in the public sector, other than those with beds. Adults with disabilities benefit under the law, of the monthly allowance, regardless of income, the amount of which varies depending on the degree of disability (severe and profound) and of complementary personal monthly budget, regardless of income, whose amount is differentiated for adults with medium, severe or profound disability.

Disabled person who has in care, supervision and maintenance a child and who does not derive other income outside monthly allowance for adults with disabilities receives a child raising allowance in the amount of 450 lei until the child turns age 2 years and a monthly child support in the amount of 150 lei for children aged between 2 and 7 years. Children with disabilities, including children with disabilities by type HIV/AIDS benefit from state allowance under the conditions and in the amount provided by law, increased by 100%. Children with disabilities by type HIV/AIDS receive a monthly allowance for food, calculated on the basis of the daily food allowance established for collective consumption in public health units.

In accordance with Law no. 448/2006 and Government Emergency Ordinance no. 148/2005 on family support for raising children, approved with amendments by Law no. 7/2007, as amended and supplemented, the person who has the care, supervision and maintenance of a disabled child benefit, where applicable, from the following rights: a) leave and allowance for raising a disabled child or, if applicable, monthly incentive, until the child reaches the age of 3 years; b) leave and raising child allowance in the amount of 450 lei for disabled children aged 3 to 7 years; c) reduced working hours to 4 hours for the parent taking care of children with severe and profound disabilities until the child reaches the age of 18, at the request of the parent; d) medical leave granted under the law, for taking care of disabled children requiring hospitalization, outpatient treatment or home treatment for discontinuous affections and recovery/ rehabilitation, until the child reaches the age of 18; e) placement monthly allowance granted under the law, whose amount is increased by 50%.

Those rights shall be granted, upon request, to a parent, a person who is entrusted a child for adoption, who adopted a child or a person who has a child in foster care or in emergency placement, and the person who was appointed guardian, except professional maternal assistant and people who at the same time have the quality of personal assistant for the same child.

In addition to the benefits listed above, children with disabilities also benefit from a range of facilities and gratuities under Law no. 448/2006. These facilities are granted to children with disabilities to ensure equal opportunity for integration on social life and avoid their internment in care centers.

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