

Preparations for ratification of UN Convention on the Rights of Persons with Disabilities in Poland

Malgorzata Koter-Mórgowska,
Polish Federation of Organizations
of Persons with Physical Disability
(OFOONR)





General facts

- 13 December 2006 – adoption of the Convention by the United Nations General Assembly,
- 30 March 2007 – Convention opened for signature,
- 3 May 2008 – Convention entry into force.



Statistics

Until 10 October 2011:

- 153 signatories of the Convention
- 105 ratifications of the Convention
- 90 signatories of Optional Protocol
- 63 ratifications of Optional Protocol

In Poland

- 30 March 2007 – UN Convention signed
(without Optional Protocol);
- 2008 – analysis of compliance of the Polish legislation
and the Convention provisions by NGOs
- April 2011 – start of ratification procedure, after analysis
of Polish law with special attention to its
conformity to regulations in the Convention;
- 29 July 2011 – the ratification motion sent by Ministry of
Labour and Social Affairs to Council of
Ministers Permanent Committee;
- ??? – ratification of the Convention



Reservation made when signing the Convention

„The Republic of Poland understands that Articles 23.1 (b) and 25 (a) shall not be interpreted in a way conferring an individual right to abortion or mandating state party to provide access thereto.”



Signing of the Convention was a declaration of Poland's support for obeying every human rights of persons with disabilities.

It contributed to:

- sensitising society to respecting the rights and needs of persons with disabilities,
- improving the already existing national legal provisions concerning persons with disabilities and implementation of this legislation, as well as creation of more comprehensive attitudes to disability issues,
- better implementation of the disability mainstreaming idea on every level of the public administration.



A decision concerning the signing of the Optional Protocol has not been taken

To reconsider Polish position it would be essential to know the practice of the complaints procedure.

(the opinion of Polish Ministry of Foreign Affairs)

Results of preliminary analysis of the national legislation before the decision to sign the Convention

- Polish legislation already reflects the majority of the Convention provisions,
- many legal changes need also to be made to guarantee full compliance with the Convention and ensure its implementation.

Decision on the ratification of the Convention has been preceded by the performance of necessary actions

- carrying out the detailed review of national legislation in order to precisely determine changes necessary to achieve full consistency of national law with the Convention;
- drafting new legal acts introducing changes indispensable for adjustment and precisely defining their financial implications;
- adoption of necessary legal regulations.

Analysis of compliance of the Polish legislation and the Convention provisions

Carried out in 2008 by

- Foundation “Regional Development Institute” (FIRR)
- Polish Disability Forum (PFON)

☞ Report “Polish way to the Convention on the rights of persons with disabilities”

partially taken into consideration by governmental administration when considering necessity of and elaborating proposals for amendments to national legislation prior to a decision on the ratification of the Convention.

Findings made by FIRR and PFON

Inconcistencies of Polish law with the Convention, most important in following areas:

- civil law;
- family law;
- access to education and employment;
- accessibility of information, architecture and transport.

Ratification procedure

Carried out by Ministry of Labour and Social Affairs

- reports of all departments on the compatibility of current regulations with the directives of the UN document;
- complex legal report – the basis for starting the procedure of ratification;
- consultations with trade unions, organizations of employers and NGOs of persons with disabilities;
- preparation of ratification motion

Opinion of NGOs

- unequivocal support for ratification of the Convention;
- necessity of further adjustment of Polish law in several areas (resulting from articles 5, 6, 7, 8, 9, 12, 15, 19, 21, 23, 24, 25, 27, 29 and 33 of the Convention);
- the Optional Protocol should be ratified together with the Convention.

Ratification procedure

- Ministry of Labour and Social Affairs 
- Council of Ministers Permanent Committee 
- Council of Ministers 
- Parliament (Sejm and Senate) 
- President

Interpretative statement

- will be made together with ratification

„The Republic of Poland declares that it will interpret Article 12 of the Convention in a way allowing the application of the incapacitation, in the circumstances and in the manner set forth in the domestic law, as a measure indicated in Article 12.4, when a person suffering from a mental illness, mental disability or other mental disorder is unable to control his or her conduct”

Reservation that will be made together with the ratification

„Article 23.1(a) of the Convention refers to the recognition of the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses. By virtue of Article 46 of the Convention the Republic of Poland reserves the right not to apply Article 23.1(a) of the Convention until relevant domestic legislation is amended. Until the withdrawal of the reservation a disabled person whose disability results from a mental illness or mental disability and who is of marriageable age, can not get married without the court's approval based on the statement that the health or mental condition of that person does not jeopardize the marriage, nor the health of prospective children and on condition that such a person has not been fully incapacitated. These conditions result from Article 12§1 of the Polish Code on Family and Guardianship (Journal of Laws of the Republic of Poland of 1964, No. 9, item 59, with subsequent amendments)”.

Reservation that will be made together with the ratification

„The Republic of Poland understands that Article 23.1 (b) and Article 25 (a) shall not be interpreted in a way conferring an individual right to abortion or mandating state party to provide access thereto, unless that right is guaranteed by the national law.”



Changes in Polish law

– impact of the Convention

The process of adjusting and modernization of law was started although we can suppose this would have never started without the Convention. It is still not ratified but is creating a new trends in law and increase disability awareness in Poland.

Changes in Polish law

– impact of the Convention

- amendment to higher education law;
- adaptation of the elections procedure;
- discussion about incapacitating, marriages and changes in education;
- crossing out of article 80 of Civil Code (concerning necessity of stating notarial deeds by blind persons)

Thank you for your attention!



www.ofoonr.lublin.pl