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Public Disability Policies As Policies Against Poverty

Several recent studies, promoted mainly by the World Bank, have underlined and statistically confirmed the close relation existing between disability and poverty, mostly due to the survival of historical social and cultural prejudices which consider persons with disabilities as useless for the society.

From this perspective, it becomes clear that public policies aimed to break such a link are likely to achieve simultaneously two purposes: guarantee the equality of opportunities for persons with disabilities, and contribute to the reduction of poverty. To reach these goals, direct economic aids to persons with disabilities are not enough, and not even the most important instrument: conversely, the emphasis must be placed on politics to promote the access of disabled persons to education and employment.

These are the ideas that I intend to develop in the following pages, in which I will try to provide some basic guidelines for public disability policies, closely following the UN Convention on the Rights of Persons with Disabilities (hereinafter referred to as «the Convention»), approved by the General Assembly of the United Nations Organization on the 13th of December 2006, and which entered into force on the 3rd of May 2008 (after the ratification of 20 countries required by Article 45.1).

I. THE LINK BETWEEN DISABILITY AND POVERTY

As Agustina Palacios has shown in a recent and very valuable study,¹ the historical approach to disability, which has prevailed until very recent times, was based on the assumption that persons with disabilities cannot provide anything useful to society, but are, in the contrary, a burden for the community. Therefore, the only possible response to disability was either the direct physical elimination of the disabled person or her or his confinement to a marginal and peripheral area of

¹ See Agustina Palacios: *El modelo social de discapacidad: orígenes, caracterización y plasmación en la Convención Internacional sobre los Derechos de las Personas con Discapacidad*, Cinca, Madrid, 2008, especially pp. 37-101.

society. The persons with disabilities were absolutely excluded from work, what rendered them incapable of providing themselves of economic independence, and forced them to become beggars, depending from private or public charity. These general features defined the social position of persons with disabilities for centuries.

The situation improved very slightly along the last two centuries, as a consequence of medical advances, which allowed for a consideration of the person with disabilities mainly as an ill person, who has to be cared for in order to make his or her healing and recovery possible. Moreover, this purpose should be the primary goal of public disability policies, because persons with disabilities will be likely to provide a useful contribution to society only insofar as their recovery is achieved. Nonetheless, the substantial continuity between this medical or rehabilitative approach and the previous one (the «marginalization approach») is quite evident, because the person with disabilities remains excluded from society as long as he or she does not recover, and, above all, in the cases in which recovery is viewed as impossible.

The weight of these traditional approaches, which persist in present societies, leaves persons with disabilities distant from education and employment. And even when these cultural barriers tend to disappear, persons with disabilities suffer the discrimination caused by the obstacles of a social environment which has not been designed for them, and which makes very difficult their access to a wholly normalized life.

Let us take a closer look at the case of Spain with the help of some data (see Table I, below)

Table I Difference between the level of studies of the persons with disabilities and the population in general

| <i>Level of studies</i> | <i>Disabled persons</i> | <i>Total population</i> |
|-------------------------|-------------------------|-------------------------|
| Illiterate | 6'44% | 2'37 |
| Primary education | 31'37 | 20'78 |
| Secondary education | 31,97 | 44'85 |
| Higher education | 12,26 | 23'08 |

Source: Personal elaboration, based on the data provided by the Spanish National Statistics Institute.

As the table reflects, the rate of access to upper levels of education is much lower than the average among persons with disabilities; and the percentage of illiteracy is almost three times higher inside this social group. Of course, the

consequence of the low access to education is a great difficulty to enter in the labor market: as a matter of fact, in Spain the rate of employment –which measures the percentage of persons between 16 and 64 years of age who have a job– is among persons with disabilities less than half of the average (28'29% vs. 59'42% for the total population).² It must be added that the low level of education generates a very low qualified labor and an over-representation of persons with disabilities in lower level jobs.

The obvious effect of what has been said so far is that disability creates poverty. And this evidence is confirmed by the statistical data, which reveal that one fifth of the persons with disabilities are poor, a rate that doubles the proportion for the general population. Furthermore, the poverty situation that non-developed countries suffer may be related to the fact that 80% of disabled persons live in them. In fact, the connection between disability and poverty is strengthened in these countries: even if there are no reliable researches about every country, it can be checked that –as the World Bank has stated–, the poverty rate among disabled people is 10 points higher than among the general population in Cameroon (50'6% against 40'2%), 20 points higher in Uganda (42% against 22%) or, even, more than 50 points higher in Serbia (70% against 11%).³ However, the prevalence of poverty in persons with disabilities can be found in developed countries as well: a recent research has proved that, for example, in Spain, the average income of disabled people is a mere 47'8% of the average income of a non-handicapped person.⁴

But the relation between disability and poverty can also be considered from the opposite perspective: if disability causes poverty, poverty in turn generates further disabilities. Illnesses caused by malnutrition or by bad conditions of living can indeed result in disability, or aggravate already existing disabilities. The higher rate of prevalence of disabilities among poor people might also be due to this inverse factor. A paper by Rebecca Yeo provides in this context some interesting figures:

² It must be pointed out that the figures that have been provided in the text, related to Spain, are very similar to those of other developed countries; and, of course, the difference between the levels of education and employment of persons with disabilities and non-disabled persons is still much higher in developing countries. To give only two more examples, in the United States the rate of employment of non disabled persons also doubled in 2005 that of disabled persons (75% vs. 36'7%); and in México the percentage of illiteracy among disabled persons is 33%, while it has been reduced to 9% among non disabled persons, while the average rate of activity is 50%, while it only reaches 25% among persons with disabilities.

³ World Bank Disability and Development Team: *Poverty Reduction Strategies: Their Importance for Disability*, 2004, pp. 5-6 (available online at: <http://siteresources.worldbank.org/DISABILITY/Resources/2806581172608138489/PovertyReductionBonnell.pdf>).

⁴ Maximino Carpio et al.: «Análisis de la capacidad de renta de las personas con discapacidad como requisito para una vida independiente», in Rafael de Lorenzo & Luis Cayo Pérez Bueno (eds.): *Tratado sobre Discapacidad*, Thomson, Pamplona, 2007, pp. 887-947. See also Silverio Agea: «Pobreza, exclusión y discapacidad: una acción adecuada a los grupos más vulnerables», in Luis Cayo Pérez Bueno (ed.): *Hacia un Derecho de la Discapacidad. Estudios en homenaje al Profesor Rafael de Lorenzo*, Thomson, Pamplona, 2009, pp. 807-825.

«Being poor dramatically increases the likelihood of getting an impairment. Those living in chronic poverty often have limited access to land, healthcare, healthy food, shelter, education and employment. Furthermore, people in chronic poverty often have to put up with hazardous working conditions. All these factors can cause illness, injury and impairments.

It is estimated that one hundred million people worldwide have impairments which are caused by malnutrition and poor sanitation and are therefore preventable. The World Health Organization estimated in 1992 that up to 70% of childhood blindness and 50% of hearing impairment in Africa and Asia were preventable or treatable. In India, lathyrism is a motor-neuronal disease that affects mobility and coordination. It is caused by toxins present in the cheapest kind of lentils. Almost everyone eating these lentils is aware of the risk, but has no alternative. In Cambodia it is estimated that over 70% of recent landmine survivors had been farming or foraging with the full knowledge that they were doing so in areas infested with landmines». ⁵

The relation between disability and poverty can be, thus, properly described as a vicious circle, that it is necessary to break.

2. BREAKING THE VICIOUS CIRCLE: EDUCATION AND EMPLOYMENT

A public policy aimed at facilitating persons with disabilities their exit from poverty would contribute to break the vicious circle that has just been described and would attack one of the main causes of poverty. Moreover, such a policy ought to constitute a duty for a *social state* which, as for example articles 130 and 131 of the Spanish Constitution point out, has the obligation «to bring the standard of living of all citizens up to the same level» and to «stimulate the more equitable distribution of income and wealth». But a policy with that orientation would also provide an effective warrant of the equality of opportunities of persons with disabilities, which is the key principle of the new approach to disability that – replacing the old approaches described at the beginning of these pages– inspires the most recent legal developments in this field, as it is the case with the UN Convention on the Rights of Persons with Disabilities.

The departure point of this new approach is the consideration of persons with disabilities primarily as persons, as human beings, with equal dignity and rights to all other human beings. But it also has to pay attention to the fact that persons with disabilities face the serious obstacles caused by a social environment that has

⁵ Rebecca Yeo: «Chronic poverty and disability», *Chronic Poverty Research Centre, Background Paper No. 4* (2001), p. 15 (available online at: www.chronicpoverty.org/uploads/publication_files/WP04_Yeo.pdf). See also Rafael de Lorenzo: *El futuro de las personas con discapacidad en el mundo. Desarrollo humano y discapacidad*, Fundación ONCE, Madrid, 2003, pp. 86-88.

not been designed for them –that is why this approach is known as «social approach» or «social model»–, and defines consequently as the major task of public policies the correction and removal of those social obstacles in order to assure the equality of opportunities of persons with disabilities to exercise their human rights and to have a full participation in society.

This new approach can be clearly seen for example in the Preamble of the Convention, where it is said that «disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others», as well as in the definition of persons with disabilities itself, contained in Article 1 («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») and in the general obligations of the States Parties enumerated in Article 4, that clearly aim to the correction of the social obstacles that stop persons with disabilities from equality of opportunities and full enjoyment of human rights. Besides, the proclamation of equality between persons with disabilities and other persons is a central idea of the document; thus, although an specific article (Article 5) is devoted to equality, the words «equal basis» or similar phrases appear in most articles of the Convention (for example, articles 7, 9, 10, 14, etc.). The goals of the Convention are to promote the effective enjoyment of human rights and the full participation in society of persons with disabilities and to assure their equality of opportunities, adopting all measures that might be necessary to remove the barriers that hinder it, which include measures of affirmative action (article 5.4) or measures to ensure universal accessibility (art. 9).⁶

Of course, in order to assure the equality of opportunities of persons with disabilities direct economic aids, either in the form of subsidies or tax exemptions, can be necessary in some cases, above all to compensate expenses caused by disability, as well as to secure a worthy standard of living to those people who will not be able to enter the labor market at all.⁷ But the main way to guarantee that persons with disabilities have the same opportunities than other persons is to provide them with the instruments that make possible a whole personal development and a full participation in society: education and employment. Therefore, to promote the access of persons with disabilities to the educational system in its different levels and to assure persons with disabilities the possibility

⁶ For a further study of the reception of the «social model» in the Convention, see Agustina Palacios: *El modelo social de discapacidad...*, cit., pp. 235-467. On «equality of opportunities» as a central principle of Disability Law, see Antonio-Luis Martínez-Pujalte: «Los principios básicos del nuevo Derecho español de la discapacidad», in Luis Cayo Pérez Bueno (ed.): *Hacia un Derecho de la Discapacidad*, cit., esp. pp. 249-258.

⁷ An analysis of these economic aids in the case of Spain can be seen in José Antonio Panizo Robles: «Las prestaciones económicas públicas del Estado, la Seguridad Social y las Comunidades Autónomas», and Miguel Cruz: «Los beneficios fiscales para las personas con discapacidad en la legislación española», both in Rafael de Lorenzo & Luis Cayo Pérez Bueno (eds.): *Tratado sobre Discapacidad*, cit., pp. 949-987, and I.015-I.039.

of having a job should be the main purposes of public disability policies. And precisely those two instruments –education and employment– define also the path to get persons with disabilities out of poverty.

2.1 The commitment for an inclusive education

As it has rightly been pointed out,

«Education is a factor of crucial importance for the personal development of the persons with disabilities, and it is a precondition for access to other recognized instruments of integration as employment. Education influences the whole life path of the person with disabilities, and from it depend the possibilities of participation and normalization as a full citizen or the fall into situations of social exclusion or marginalization.»⁸

Therefore, to ensure the access of disabled persons to compulsory educational levels –which in Spain reach until 16 years of age–, and to promote their participation in the upper, not compulsory levels, must be, as it has already been said, a major goal of public disability policies. The figures that have been provided in the precedent pages show that the present situation in this field is far from satisfactory.

Access of persons with disabilities to education might be carried out in two different ways: either setting up special centers specifically and exclusively devoted to schoolchildren or students with disabilities, which was the traditional model, coherent with previous approaches to disability; or, instead, integrating persons with disabilities with other schoolchildren or students in the same educational system, what has been known as «inclusive education». I would like to underline that the second option is clearly preferable, and it is therefore today explicitly mandated by article 24 of the Convention, which requires the State Parties to «ensure an inclusive educational system at all levels».⁹ Although a deeper study of this question exceeds the limits of these pages,¹⁰ from the point of view that is being examined in the present article I think that the main argument in favor of an inclusive educational system is that it will provide persons with disabilities a higher qualification and an upper level of capabilities, skills and knowledge, which of course will improve their future employability and, more generally, their opportunities of personal development. Indeed, segregated education in special

⁸ Luis Cayo Pérez Bueno: *El desmantelamiento de la discapacidad y otros escritos vacilantes*, El Cobre, Barcelona, 2004, p. 26.

⁹ On the debates preceding the final draft of article 24, see Agustina Palacios: *El modelo social de discapacidad...*, cit., pp. 381-401.

¹⁰ There is a huge literature on this issue. See, for example, Mel Ainscow: *Understanding the Development of Inclusive Schools*, Taylor & Francis, London, 1999; Danielle van Steendlandt: *La integración de los niños discapacitados a la educación común*, UNESCO, Santiago de Chile, 1991; Gerardo Echeita & Cecilia Simón: «La contribución de la educación escolar a la calidad de vida de las personas con discapacidad», in Rafael de Lorenzo & Luis Cayo Pérez Bueno (eds.): *Tratado sobre Discapacidad*, cit., pp. 1.103-1.133; and the literature quoted in these sources.

schools will tend to lower the required level of knowledge and skills to those than can be easily acquired by children with disabilities: in fact, segregation is based on a «deficiency», that hinders those children to follow the normal educative process and «forces to focus on the defect of the child, diverting attention from much other personal features and reducing the expectations of what he can achieve». ¹¹ Instead, in the inclusive model the basic goals of educational process will be the same for all pupils, what will oblige to provide a complementary support to those with special needs or with a greater difficulty to reach by themselves the required level.

This complementary support is also required by article 24 of the Convention. In order to make the right of persons with disabilities to education effective, second paragraph of article 24 demands States Parties to take three different kinds of measures, which in a certain sense follow a progressive scale:

- In the first place, «reasonable accommodations». This is an important concept that is defined in article 2 as

«Necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms»

In this case to ensure they will be able to benefit from education in the same conditions as others. As reasonable accommodations can be understood, for instance, the installation of a ramp to make the school accessible to persons with physical disabilities, the prevision of oral instead of written examinations for blind students, or the use of computers adapted to the different kinds of disabilities. As these examples try to show, reasonable accommodations have to do mainly with the adaptation of physical space or of the general conditions of the educational process.

- Secondly, the support that might be required by persons with disabilities within the general education system. Besides reasonable accommodations, it is clear that persons with disabilities will normally have need of a personal support provided by teachers and educators, which will be very variable according to the specific circumstances, and in most cases it will not involve the adoption of special measures, but will be supplied in the ordinary educational process. To this general support refers article 24.2.d) of the Convention.

- Finally, in those cases in which it might be required, «effective individualized support measures» in «environments that maximize academic and social development». With this third set of measures, the Convention refers to those cases in which the pupil, due to sensorial or intellectual

¹¹ Danielle van Steendlandt: *La integración de los niños discapacitados...*, cit., p. 18.

disabilities, cannot achieve a reasonable educative progress if he or she does not receive an specialized assistance, either through the individualized help of an specialized teacher, through special classes in the ordinary school or through special centers which complement the task of the general education system, which may be necessary above all for children with autism or with severe intellectual disability.

A last remark has to be made on this issue. It is obvious that an educational system as the one envisaged by article 24 of the Convention requires a considerable amount of resources, which are scarce –especially in the present context of international economic crisis–. But, apart from the fact that education is a human right of every person, we should take into account that to invest in the education of persons with disabilities will allow the States to save important sums that today are spent in social protection of people excluded from the labor market. If a substantial increase of the activity rate of persons with disabilities were achieved –and education is a key factor for that purpose–, the social protection budgets would be considerably reduced, while the number of contributors to the public expenses would increase.

2.2 Main elements of an employment policy for persons with disabilities

That employment is the main instrument to facilitate persons with disabilities their escape from poverty and marginalization, and their way to a full personal development, does not need to be argued in detail. Therefore, to promote employment should be the basic priority of public policies in the field of disabilities. This question is addressed by article 27 of the Convention, which recognizes «the right of persons with disabilities to work, on an equal basis with others», including «the right to the opportunity to gain a living by work freely chosen or accepted in a labor market and work environment that is open, inclusive and accessible to persons with disabilities».

A large variety of strategies can become a part of such an employment policy. The main tools used to promote the employment of persons with disabilities can be classified, in my opinion, in five main groups: ¹²

¹² Although the classification presented in the text has been elaborated by the author, it is partly based in the classifications included in Patricia Thornton & Neil Lunt: *Employment Policies for Disabled People in Eighteen Countries: A Review*, Cornell University, Ithaca, NJ., 1997, specially pp. 385-396; Daniel Mont: «Disability Employment Policy», *Social Protection Discussion Paper*, The World Bank, 2004, pp. 11-12.

2.2.1 Persuasion

This first strategy consists mainly in the development of campaigns led by the public powers to increase public awareness of the employment potential of persons with disabilities. These campaigns should have a double target: on the one hand, persons with disabilities themselves, because they have to be made conscious of their capabilities and of their usefulness for labor market, and they have to realize that it is worth to have a job; and, on the other hand, the corporate sector, who has to be persuaded that to hiring persons with disabilities is and affordable, and even necessary strategy.

This is certainly the less demanding strategy to promote employment of persons with disabilities, but its value should be not underestimated: one of the main causes of the low employment of persons with disabilities –as it has already been said–, is the survival of cultural prejudices and images of persons with disabilities that present them as useless and even as a burden for the rest of the people, and this kind of persuasion campaigns –complemented by the dissemination of experiences and best practices– might contribute to overcome those prejudices. A sign of the importance of this instrument is the fact that it is explicitly mentioned by the Convention, whose article 8 invites the States to initiate and maintain «effective public awareness campaigns designed to promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labor market».

2.2.2 Employment support

I include in this second group all those measures directed to persons with disabilities themselves, aimed at improving their employability and at helping them find a job. Counseling, guidance, training, intermediation and placement services, either supplied by labor market authorities or by private and non-governmental organizations (even organizations of persons with disabilities), belong to this second set of tools. Article 27 of the Convention refers explicitly to them when it includes, among several other measures intended to safeguard the right to work, «assistance in finding, obtaining, maintaining and returning to employment» (article 27.1.e). It should be stressed that, in order to assure that such services are really effective for persons with disabilities, these should receive a specialized assistance, when possible provided by organizations of persons with disabilities themselves. The Spanish experience with the ONCE (National Organization of Blind Persons) offers in this context an excellent model.

A very special way to facilitate the employability of disabled people is the so called «supported employment», which designates all those actions aimed to «help integrate people with disabilities directly into the workplace. They consist of ongoing support services that enable disabled persons to learn and perform their

jobs». ¹³ These services may include, among others, job coaches, who offer individualized assistance to enable people with disabilities learn at an appropriate pace; enclaves, which can be defined as «small groups of disabled workers who form a production unit within a regular business or industrial setting», ¹⁴ normally under the guidance of a coach; transportation services; assistive devices; individually tailored supervision; or regular debriefings to talk about job progress and to identify problems and ways of overcoming them.

As it can be seen, the difference between «supported employment» and the employment support actions described in the precedent paragraph lies in the fact that now the support is provided to the disabled person in the workplace itself. In the other hand, the common feature of both kinds of tools is that they are directed to persons with disabilities themselves, and have the purpose of facilitating their access and their permanence in the labor market; although supported environment can also be considered as an strategy directed to the employer, because it is aimed to increase the competitiveness of the disabled worker and to reduce the cost of hiring him or her, specially if the expenses of the support are financed by the State, as it normally occurs. Of course, although for the purposes of the present classification we include both instruments in the same group, it should not be overlooked that supported employment is a much more intense strategy, and its implementation might entail important difficulties and generate substantial expenses.

2.2.3 Financial support

It is the tool which has been most frequently used to promote the employment of persons with disabilities. It can take different forms, like direct financial aid to employers, wage subsidies, tax incentives or reductions of the social security contributions.

The justification of these incentives is that they compensate the employer for the loss of productivity or the higher cost which involves hiring a person with disabilities, although they can be seen also as a form of affirmative action to combat the existing discrimination of persons with disabilities in the access to labor market. This is the conception which seems to assume article 27 of the Convention, which invites States Parties to «promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programs, *incentives* and other measures» (article 27.I.h). This tool can be used in combination to those belonging to the other groups, for example if the financial aid is granted to subsidize supported employment or accommodations of the workplace.

¹³ Daniel Mont: «Disability Employment Policy», cit., p. 27.

¹⁴ Patricia Thornton & Neil Lunt: *Employment Policies...*, cit., p. 19.

Even though it is not so frequent, financial support can also be given to disabled employees themselves, for example in order to reimburse the costs of tools, equipment or educational material. A common provision in many countries is financial support to adapt motor vehicles, although it is not limited usually to employees but extended to all persons with physical disabilities.

2.2.4 Statutory regulations

The strategies that have been explained so far have one thing in common: they ultimately rely on the free will of the employer, who is entitled to take the decision to hire persons with disabilities or not according to his or her personal convenience, although he or she might be encouraged or even financially stimulated to take a positive decision.

But it is also possible for the law to impose binding obligations on the employers that limit their sphere of free decision. This can be done in two different ways. In first place, legal regulations may prohibit any discrimination against persons with disabilities when it comes to be hired for a job or to be kept in it, making it thus illegal to base employment decisions on a person's disability. So does article 27.1.a of the Convention, which prohibits «discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment...».

These anti-discrimination acts –the first example of which was the well-known American with Disabilities Act of 1990, that has been positively valued by most scholars because of its contribution to increase employment of persons with disabilities– usually requires the employer to provide «reasonable accommodations» too, a concept that has already been used in these pages for the field of education. In the domain of employment, reasonable accommodations include all the adaptations of the workplace or the working conditions necessary for the disabled worker to fully perform his or her duties, which include not only modifying the physical layout or equipment used, but also restructuring jobs, work schedules and training. This approach has been also assumed by the Convention, which requires the States Parties to «ensure that reasonable accommodation is provided to persons with disabilities in the workplace» (article 27.2.i) and defines explicitly the «denial of reasonable accommodation» as a «discrimination on the basis of disability» (article 2). The major problem raised by anti-discriminatory regulations is, nonetheless, the difficulty to prove that the decision not to hire a person was taken precisely because of his or her disability. Therefore, their positive effect is not mainly to increase the hiring of persons with disabilities, but rather to prevent job terminations due to disability and consequently to improve the continuance of persons with disabilities in the labor market.

As a more effective way to increase recruitment of persons with disabilities, many countries have gone a step further than the anti-discrimination acts that have been just mentioned, and have imposed on the employers the obligation to hire a

certain percentage of disabled workers. Normally the quota applies only to companies with a minimum number of employees –which usually ranges from 25 to 50–, and it may be the same for all kinds of companies –for example, 2% of the overall number of employees in Spain– or vary according to the company’s size. Most countries with quota systems give also the possibility of alternative measures for those employers who cannot fulfill the quota, like a certain number of contracts with sheltered employment centers or financial contributions to social funds. Of course, the quota also applies to the public sector, where it is usually higher. Employers who do not comply with the quota nor with the alternative measures are normally subject to fines, as well as to the prohibition to contract with the public sector.

The quota system has aroused critics from several points of view. It can be argued that the quota is itself a discrimination against non-disabled workers. This issue was explicitly dealt with by the Spanish Constitutional Court, which rightly concluded that, «as the quota tries to promote the professional insertion of persons with difficulties of access to an employment, it is not only not opposite to equality, but makes it real and effective». ¹⁵ Therefore, the quota cannot be considered as discriminatory, even if in a specific case it causes damage to a non-disabled person, because it compensates a really existing disadvantage and discrimination of persons with disabilities in access to work. Secondly, it is frequently argued that quotas are ineffective because they remain very often unfulfilled, and, even if they were fulfilled, their limited application and the low percentage in which the quota normally consists would not solve the problems of inactivity and unemployment of persons with disabilities. This objection can be answered taking into account that the quota should be considered as only one instrument of a much broader employment policy, as I am trying to highlight in these pages. ¹⁶

Finally, in this group of employment strategies can also be included the regulation of public contracting, which can be used as a powerful instrument to stimulate the social responsibility of corporations and specifically their responsibility towards persons with disabilities. As it has already been said, a logical consequence of the quota system in the countries where it has been established is the prohibition to contract with the public sector for those employers who do not fulfill the quota nor comply with the proposed alternative measures. But, going beyond this negative limit, it is obvious that, if the hiring of

¹⁵ Decision of the Spanish Constitutional Court of October 3rd 1994 (269/1994).

¹⁶ See Rafael de Lorenzo: *El futuro de las personas con discapacidad en el mundo*, cit., pp. 128-130; Daniel Mont: «Disability Employment Policy», cit., pp. 20-21. It is interesting to point out that the quotas were explicitly mentioned in the original draft of present article 27 of the Convention, but this reference was finally deleted because of the opposition of the European Union and some national delegations, which considered it too restrictive. On the debates preceding the final draft of article 27, see Agustina Palacios: *El modelo social de discapacidad...*, cit., pp. 401-416; the main issues discussed were the explicit mention of quotas and, above all, the inclusion of «sheltered employment», which will be dealt with below in the text.

persons with disabilities or the best practices in non-discrimination, reasonable accommodation or supported employment are used as preferential criteria for the awarding of public contracts, corporations will be indirectly compelled to reach better performances in these fields and to exceed the compulsory minimums required by law. Therefore, this strategy of employment policies has been developed in the European Union during the last years, especially since the adoption of 2004/18/CEE Directive.¹⁷

2.2.5 Sheltered employment

A last set of employment policies in defense of persons with disabilities is the promotion of sheltered employment, which is employment provided in segregated facilities, usually established by organizations of persons with disabilities or other non lucrative organizations, in which all workers –or, at least, a great majority of them– have a disability. This instrument has been heavily criticized by some organizations of persons with disabilities, arguing that it perpetuates their exclusion and keeps them away from the labor market and separated from the ordinary workers. In fact, although the International Labor Organization suggested including in the Convention an explicit mention of sheltered work, this proposal was strongly refused by some NGOs, and the final draft of article 27 makes no reference to sheltered employment, although, of course, it does not either exclude, nor outlaw it. Nonetheless, the clear preference of the Convention for ordinary employment can be seen in the reference made at the beginning of the article to «a labor market and work environment that is *open, inclusive* and accessible».

It must be recognized, however, that for many disabled people there is very little or even no chance of acceding to the ordinary labor market, and sheltered employment facilities supply them a job that otherwise they would not have at all. In this sense, the Spanish experience of the so-called Special Employment Centers (Centros Especiales de Empleo) has been quite satisfactory, and has provided a workplace to many people with disabilities.¹⁸ These centers are corporations where at least 70% of the employees are persons with disabilities, whose employment relation has a specific regulation, and which receive substantial financial support from the State. It must be taken into account that the critics of

¹⁷ On this issue see the excellent study by Susana Rodríguez Escanciano: *Un paso adelante en la protección de los derechos laborales de las personas con discapacidad: el nuevo sistema de contratación pública*, Cinca, Madrid, 2008. See also Alberto Durán: «Bases para un nuevo modelo de inclusión laboral de las personas con discapacidad», in Luis Cayo Pérez Bueno (ed.): *Hacia un Derecho de la Discapacidad*, cit., pp. 724-728.

¹⁸ See on this issue Marcos de Castro: «Los Centros Especiales de Empleo como fórmula de Economía Social», in Luis Cayo Pérez Bueno (ed.): *Hacia un Derecho de la Discapacidad*, cit., pp. 645-669; Rafael de Lorenzo & Miguel Angel Cabra de Luna: «El empleo de las personas con discapacidad», in Rafael de Lorenzo & Luis Cayo Pérez Bueno (eds.): *Tratado sobre Discapacidad*, cit., esp. pp. 1.149-1.151.

disability organizations were also based on the bad experiences of some of these sheltered employment facilities, in which disabled workers were often mistreated and received very low wages. The Spanish regulation of Special Employment Centers has been successful in preventing these risks and in warranting decent working conditions; today, the provision of article 27.1.b of the Convention is very relevant in this respect, as it requires the States Parties to «protect the rights of persons with disabilities, on an equal basis with others, to just and favorable conditions of work, including equal opportunities and equal remuneration for work of equal value».

The final aim of sheltered employment projects should be through the integration of persons with disabilities in the ordinary labor market. Different formulas have been designed to facilitate the transition from sheltered employment to ordinary employment, but they have remained so far quite ineffective. This is still an unfinished business, for which new solutions will have to be imagined.

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After this overview of different tools to promote employment, I would like to underline that all of them should belong to a comprehensive employment policy for persons with disabilities. The results of such a policy will not be noticed from one day to the following, but a responsible development by the public authorities of a stable and continued strategy, in whose design and implementation persons with disabilities themselves, through their representative organizations, are fully involved, will certainly have visible outcomes in the medium term. If in the last decades we have been able to witness the massive incorporation of women to the labor market, there is no reason to think that a similar evolution is not possible for persons with disabilities.

3. A FINAL REMARK: DISABILITY AND DEVELOPMENT COOPERATION

I would like to point out finally that the policy instruments that have been explained in the precedent pages are not only applicable to the internal policies of developed countries, but also to the cooperation projects with developing countries. Therefore, the Convention, that refers also to non developed countries –many of them with high poverty rates and very far from the lowest standards of life, especially for persons with disabilities–, devotes article 32 to international cooperation, stressing its importance for the realization of the purpose and objectives of the present Convention, and encouraging the States to «undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional

organizations and civil society, in particular organizations of persons with disabilities», including, for example, cooperation programs that contemplate the specific reality of the disabled.

It is indeed completely necessary that the efforts and strategies used in the fight against poverty in the underdeveloped countries adopt an approach which is inclusive of disability. In other words, that they view the reality of disability as a specific field of problem that must be solved. In fact, it will be impossible to carry out a successful strategy against poverty if we do not take into account the fact that, for persons with disabilities, it is especially difficult to get out of poverty, as it has been highlighted along these pages, because of the interaction between their physical, psychical or sensorial disability and the social barriers. So, any project that seeks to reduce the poverty levels of a certain geographic area should pay attention to those specific difficulties, especially if it is a zone where disability is particularly present, as it happens in, generally, every non-developed country. Strategies aimed at poverty reduction should include, therefore, measures to strengthen the opportunities of persons with disabilities, specially promoting their education and their employment chances.

This concern led the United Nations Economic and Social Council to pass Resolution 2008/21, of July 24th, on «Mainstreaming disability in the development agenda», that among other important recommendations urged States, United Nations entities and regional and international development organizations to «give priority to the promotion of full and productive employment and decent work for persons with disabilities, as a key factor in ensuring that persons with disabilities benefit from development on an equal basis with others», «including by providing access to education and training». This Resolution has been followed by the Report of the Secretary General of November 20th 2009, which concludes that, due to the fact that mainstreaming disability is a relatively new requirement, there is a very limited experience in its implementation; and provides some general recommendations to advance in this direction, among which the most important is in my opinion the need to stimulate the participation of persons with disabilities and their organizations in the formulation, implementation and evaluation of development cooperation strategies and activities.¹⁹

It should be regarded as a great step forward, which has spread to all developed countries in the last years, the incorporation of a gender perspective to projects of development cooperation, that now contemplate the specific situation of marginalization of women, more intense in non developed countries. Now we are in a moment where a new step forward is needed: to add, too, as a complement of gender perspective, the disability perspective. In the last years, international organizations have underlined the need of a human rights-based approach to development cooperation. A human rights-based approach «seeks to analyze inequalities which lie at the heart of development problems and redress

¹⁹ The Resolution of the Economic and Social Council and the Report of the Secretary General is available online at www.un.org/disabilities/default.asp?id=1467 and www.un.org/disabilities/documents/reports/csocd48.pdf.

discriminatory practices»; ²⁰ and requires thus to address the specific needs of the different social groups, especially those who are more intensely affected by exclusion and marginalization, like persons with disabilities. Therefore, also a human rights-based approach demands mainstreaming disability in development cooperation. To achieve this goal, participation of persons with disabilities and their organizations in the design of development cooperation policies is extremely necessary.

²⁰ Office of the United Nations Commissioner for Human Rights: *Frequently asked questions on a human rights-based approach to development cooperation*, United Nations, New York, 2006, p. 15.