Employment and social divergence in Europe: the social exclusion of employees with disabilities and their protection in Portuguese Labour Law

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Abstract:

According to an ILO Report presented in Portugal last November¹, since Portugal’s financial assistance programme was agreed in 2011 with the EU, the ECB and the IMF, there has been a deterioration in the labour market situation that is without precedent in the modern economic history of Portugal. One in seven jobs has been lost since 2008, two-thirds of which have been over the past two years alone with an unemployment rate in the first quarter of 2014 of 15.3%.

In this paper we highlight that policies promoting employment must focus on the groups of employees with the most severe problems in the labour market. One of these groups are persons with disabilities that represent 15% of the world’s population of whom 2-4% experience significant difficulties in functioning. And disabled people are two to three times more unemployed than non-disabled people.

In the years ahead, disability will be an even greater concern because its prevalence is on the rise. This is due to ageing populations and the higher risk of disability in older people as well as the global increase in chronic health conditions such as diabetes, cardiovascular disease, cancer and mental health disorders. Some women, men and children with disabilities are fully integrated in society, and are participating in and actively contributing to all areas of life. However, the great majority face discrimination, exclusion, isolation and even abuse.

Disabled people represent 80 million persons in the European Union and one in four Europeans has a family member with a disability. On the other hand, people with reduced mobility represent more than 40% of the population.

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¹ Tackling the jobs crisis in Portugal, p. 2.
Only 16% of those who face work restrictions are provided with some assistance to work. Many disabled persons are ‘discouraged workers’ and don’t even attempt to enter the labour force. They are therefore classified as inactive.

On the other hand an increasing number of employees with disabilities are not protected by labour law and a genuine need for policy exists in this area. The lack of legal protection in some cases increases the vulnerability of employees who are already not seen, unfortunately, by many in different social and cultural contexts, as being real workers.


It is also of core importance to develop Active Labour Market Policy who have the aim to transfer the use of passive support to active help for integration of people in the labour market. Active Labour Market Policies –ALMPs- are also central to preventing long-term unemployment and encouraging more rapid transitions towards employment. Looking at equality in society for disabled people, the implementation of an effective ALMP is thus extremely important. ALMPs makes it easier for disabled people to enter or remain in the labour market. Instruments include, as in ALMP in general, a very broad variety of instruments. They range from, inter alia, economic support to lower wage costs, support to create accessibility in the workplace, job coaches, job-counselling, legislative support including quotas, rights to interview, prohibition of discrimination. In Portugal\textsuperscript{2}, the employment of people with disabilities is encouraged through financial incentives introduced by the government. Backups can be granted either to own hiring people with disabilities or the execution or implementation of technical aids for employability possible. Moreover, companies can receive subsidies to offset declines in productivity of disabled workers, by comparison with other workers. Thus, these supports take many forms and cover various areas of hiring people with disabilities. Of all these measures derive significant financial benefits for companies that hire and retain employees with disabilities.

\textsuperscript{2} But also in many other countries in EU.
Portugal transposed Directive No. 2000/78/EC and adopted a broad concept of discrimination and articles 85.º and 86.º of Portuguese Labour Code establish the obligation to the State and to the employer to adopt appropriate measures to promote access to employment, career development and training of people with disabilities or chronic illness, as well as setting up the principle of reasonable accommodation.

Alongside these situations, article 84 of Portuguese Labour Code provides similar principles for employees with reduced work capacity. There are still many laws about this theme that run through the most varied fields.

The purpose of our paper is to analyze some of the practical examples, the legislation and the response that the social actors are giving to ensure the protection of employees with disabilities in a middle of an economic crisis like the one that Portugal is facing.

**Keywords:** Social exclusion; crisis; disability; discrimination

1. **Introduction**

1.1. The history of disabled people in the western liberal democracies since the Second World War is one of movement from being regarded as objects of compassion and potential beneficiaries of welfare to being seen as bearers of rights whose denial should be a cause of outrage.

Disability discrimination is a relatively new concept. Previously issues related to disability were dealt with by means of social security and social welfare provisions, health law or guardianship. Disabled persons were seen not as subjects with legal rights, but as objects of welfare, health and charity programs. It was considered that disabled people were unable to participate in employment and wider society as a result of their disability and it was what it is called the medical model.

However with the rise of the civil rights movement of disabled people that began in the USA and based on the social model of disability which has widely gained acceptance lead to barriers which impede disabled people’s lives being perceived as a form of discrimination which should be addressed in anti-discrimination legislation. And it was also noted that considerable disabled people were discriminated against in

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employment. Employers saw not the abilities, but the inabilities – the barriers to participation.

Since the late 1970s the disability rights movement has been increasingly successful in promoting a fundamentally different theoretical understanding of disability — the social model. This model locates disability in the social environment. This model in its current form, characterized as the biopsychosocial model by the World Health Organization, in contrast to the medical model, conceives of disability as a complex relationship between individual biomedical impairment, individual reactions to that impairment and associated functional limitations, and a social environment which is not responsive to the needs of that person. Locating disability in the social environment leads to policy responses directed at changing the environment to eliminate the structural barriers to equal participation, including anti-discrimination legislation, universal design building codes, integration and mainstreaming, and creating conditions of individual empowerment. The role of the law in this model is to protect individuals from discriminatory treatment and prescribe a duty to integrate and accommodate disabled people, and set out the rights of disabled persons to participate in and control social programs focused on their particular needs.\(^5\)

1.2. About 15% of the world's population lives with some form of disability, of whom 2-4% experience significant difficulties in functioning. This is higher than previous World Health Organization estimates, which date from the 1970s and suggested around 10%.

In the years ahead, disability will be an even greater concern because its prevalence is on the rise. This is due to ageing populations and the higher risk of disability in older people as well as the global increase in chronic health conditions such as diabetes, cardiovascular disease, cancer and mental health disorders.\(^6\) Eighty per cent live in developing countries. Some women, men and children with disabilities are fully


\(^6\) *World Report on Disability*, 2011, made by World Health Organization and World Bank, pp. 7-8. According to the *World Health Survey* around 785 million (15.6%) persons 15 years and older live with a disability, while the *Global Burden of Disease* estimates a figure of around 975 million (19.4%) persons. Of these, the *World Health Survey* estimates that 110 million people (2.2%) have very significant difficulties in functioning, while the *Global Burden of Disease* estimates that 190 million (3.8%) have “severe disability” – the equivalent of disability inferred for conditions such as quadriplegia, severe depression, or blindness. Only the *Global Burden of Disease* measures childhood disabilities (0–14 years), which is estimated to be 95 million (5.1%) children, of whom 13 million (0.7%) have “severe disability”.  

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integrated in society, and are participating in and actively contributing to all areas of life. However, the great majority face discrimination, exclusion, isolation and even abuse\(^7\). Many persons with disabilities live in extreme poverty, in institutions, without education or employment opportunities and face a range of other marginalizing factors. In some countries they are denied the right to own property and it is common for persons with disabilities to be denied the right to make decisions for themselves. The discrimination they face is widespread, cutting across geographical boundaries and affecting people in all spheres of life and all sectors of society\(^8\).

But, many have demonstrated that with the right opportunities along with adaptations and support, if needed, they can make a major contribution at all levels of the economy and society. Yet, they are often excluded and marginalized, and are particularly vulnerable in times of crisis. The current economic crisis highlights the barriers faced by people with disabilities and brings into sharper focus the need for inclusive and sustainable development.

Disabled people represent 80 million persons in the European Union (more than 15% of the population). One in four Europeans has a family member with a disability. Six Europeans out of ten know someone, in close or more distant circles, who has a disability.

People with reduced mobility represent more than 40% of the population. Disabled people are two to three times more unemployed than non-disabled people.

Only 16% of those who face work restrictions are provided with some assistance to work. Many disabled persons are ‘discouraged workers’ and don’t even attempt to enter the labour force. They are therefore classified as inactive.

But one cannot forget that people with disabilities are not a homogeneous group. They may have a physical disability, a sensory, intellectual or mental disability. They may have had a disability from birth, or acquired this in their childhood, teenage years or later in life, during further education or while in employment. Their disability may have little impact on their ability to work and take part in society, or it may have a major impact,

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\(^7\) People with disabilities are more likely to be unemployed and generally earn less even when employed. Global data from the *World Health Survey* show that employment rates are lower for disabled men (53%) and disabled women (20%) than for non-disabled men (65%) and women (30%). A recent study from the Organization for Economic Co-operation and Development (OECD) showed that in 27 countries working-age persons with disabilities experienced significant labour market disadvantage and worse labour market outcomes than working-age persons without disabilities. On average, their employment rate, at 44%, was over half that for persons without disability (75%). The inactivity rate was about 2.5 times higher among persons without disability (49% and 20%, respectively). See *World Report…*, cit., p. 11.

\(^8\) Information of the United Nations Human Rights, *in Monitoring the…*, cit., p. 7.
requiring considerable support and assistance. Throughout the world, people with disabilities are participating and contributing in the world of work at all levels. However, many persons with disabilities who want to work do not have the opportunity to work due to many barriers\textsuperscript{9}. And the more severe the degree of disability, the lower the participation in the labour force. Only 20\% of people with severe disabilities, compared to 68\% for those without disabilities. Persons with disabilities are less likely by more than 50\% to reach third level education as non-disabled persons. 38\% of disabled people aged 16-34 across Europe have an earned income, compared to 64\% of non-disabled people. Disabled people’s income is dramatically lower than the income of non-disabled people\textsuperscript{10}.

1.3. The protection given to employees with disabilities is provided at an international level by the binding international instrument assumed by the Portuguese State when ratifying the Convention number 159 of ILO about Vocational Rehabilitation and Employment (Disabled Persons), 1983\textsuperscript{11}, and its accompanying Recommendation number 168.

The United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) is a significant international instrument adopted in 2006 which, together with ILO Convention No. 159 and other international, regional and national initiatives, contributed to improving the living conditions and status of people with disabilities around the world today and in years to come. Article 27 on Work and Employment will promote opportunities for persons with disabilities to gain a living through decent work in the labour market. The UNCRPD entered into force on 3 May 2008 and, as with Convention No. 159, is legally binding on ratifying countries.

The UNCRPD was opened for signature on behalf of the European Union in 30\textsuperscript{th} of March of 2007\textsuperscript{12}, entry into force in 3\textsuperscript{rd} May 2008 and it was ratified by Portugal in 2009\textsuperscript{13}. These international instruments impose not only the prohibition of disability

\textsuperscript{9} See ILO, \textit{Managing Disability in the Workplace}, 2011.


\textsuperscript{11} Approved for ratification by resolution of the Assembly of the Republic No. 63/98, on 9/10, and ratified by Presidential Decree No. 56/98, 2/12.

\textsuperscript{12} With a reservation on article 27, No. 1, due to the faculty that is given to Member States by Art. 3, No. 4 of Directive 2000/78/EC of the Council of 27/11, to exclude the armed forces regarding discrimination based on disability.

\textsuperscript{13} Resolution adopted by the Assembly of the Republic No. 56/2009, 7/05, and ratified by Decree of the President of the Republic No. 71/2009, 30/07. Further, the Optional Protocol to the Convention was adopted by Resolution of the Assembly of the Republic No. 57/2009, of 7/05 and ratified by Decree of the President.
discrimination, but also the need of implementation of positive action measures destined to ensure effective equality of opportunity between disabled people and other workers, in particular as regards access to employment and vocational training, in the public and private sectors.

Also in the context of the European Union, article 19.º of the Treaty on the Functioning of the EU (ex-art. 13. TEC) enables the EU to take appropriate measures, within the limits of its powers, to combat discrimination on grounds of disability, among other reasons. Based on this expertise, the Council adopted Directive no. 2000/78/EC of 27/11 establishing a general framework for equal treatment in employment and occupation\textsuperscript{14}. The Employment Equality Directive created for the first time a source of European Union Law from which citizens affected by disability discrimination may derive justiciable rights\textsuperscript{15}.

The implementation of article 5 of the directive was made in Portugal by articles 85.º and 86.º of Portuguese Labour Code.

In Portugal, articles 85.º and 86.º of Portuguese Labour Code, determine the obligation to the State and the employer to adopt appropriate measures to promote access to employment, career development and training of people with disabilities or chronic illness.

2. The protection of employees with disabilities in Portugal

2.1. Prohibition of discrimination

In relation to the main principles of equality and non-discrimination article 24 of Portuguese Labour Code enshrines the principle of equal access to employment and work, stating that “the employee or job applicant has the right to equal opportunities and equal


treatment as regards access to employment, training and promotion or career professionals and working conditions may not be privileged or favored, prejudiced, deprived of any right or exempted from any duty due (...) to (...) reduced work capacity, disability, chronic illness (...) the State should promote equal access to those rights”.

In Portugal we transposed Directive No. 2000/78/EC and adopted a broad concept of discrimination that, in addition to direct discrimination that is related with a formal equality, also includes the indirect discrimination, that tries to establish a substantial equality and that is a real option for effecting fundamental principle of equal treatment at various levels. The definition of these concepts arises in art. 23, No. 1, of PLC, following a consolidated understanding of the law and jurisprudence of the European Union.

In addition to the principles and rules contained in PLC, there is another legal diploma — Law No. 46/2006 of 28/08 — in order to prohibit and punish discrimination on grounds of disability and the existence of aggravated health risk, regardless insertion in the employment context.

2.2. Positive discrimination: job quotas

In Portugal, article 28, No. 1, of Law No. 38/2004, 18/08, imposes on businesses, depending on their size, the duty to "hire people with disabilities through employment or the provision of service, numbering up to 2% of all workers." The number 2 adds that "[t]he provisions of the preceding paragraph may be applicable to other employers under the regulatory”, so that its scope is not limited to businesses.

We think that this reference to an apparently maximum percentage of workers (“up to 2% of total workers”), when compared to the public servants contract where is expected to hire people with disabilities as a percentage equal to or greater than 5%, can lead to an employer not contract any employee with disabilities.

But one cannot forget accordingly with article 85, number two of Portuguese Labour Code, the State should encourage and support the employer’s in hiring employees with disabilities or reduced working capacity and also the rehabilitation and of the same.

2.3. Mechanisms to support the qualification of persons with disabilities and with changed work abilities and their (re)integration into the labor market
Active Labour Market Policy (ALMP) is a core aspect of the Portuguese legal system. The aim has been to transfer the use of passive support to active help for integration of people in the labour market.

Active Labour Market Policies are also central to preventing long-term unemployment and encouraging more rapid transitions towards employment. The rule of social dialogue is also key in the design of the strategy, as will the availability of solid government implementation institutions.

Looking at equality in society for disabled people, the implementation of an effective ALMP is thus extremely important. ALMPs makes it easier for disabled people to enter or remain in the labour market. Instruments include, as in ALMP in general, a very broad variety of instruments. They range from, inter alia, economic support to lower wage costs, support to create accessibility in the workplace, job coaches, job-counselling, legislative support including quotas, rights to interview, prohibition of discrimination.

In Portugal, the employment of people with disabilities is encouraged through financial incentives introduced by the government. Backups can be granted either to own hiring people with disabilities or the execution or implementation of technical aids for employability possible. Moreover, companies can receive subsidies to offset declines in productivity of disabled workers, by comparison with other workers. Thus, these supports take many forms and cover various areas of hiring people with disabilities. Of all these measures derive significant financial benefits for companies that hire and retain employees with disabilities.

Additionally, any accessibility improvements, such as widening of doors, installation of ramps and rods, installation guidelines audio, braille, and other signs can also improve access to customers in general, and particularly the elderly. This is also a business advantage for the company.

It is possible to detach, among others, the following measures, that intend to intervene directly next to the people with disabilities, improving their skills, or their social environment, in order to create necessary conditions to their effective social integration, and are promoted by the Institute of Employment and Vocational Training (IEFP): Pre-vocational Education; Information, Evaluation and Vocational Guidance of people with disabilities; Vocational Training; Retraining to work; Incentives for employers in order to promote people with disabilities’ employment; Self-Employment, Telework; Technical

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16 Active Labour Market Policy (ALMP) is also a central aspect of the European Employment Strategy.
Assistance carried out at job station itself; Supported Employment in the normal labour market; Sheltered-Employment; Technical-Assistance.

In Portugal, the Employment and Vocational Training Institute (“Instituto do Emprego e Formação Profissional” – IEFP) is the national body competent to implement the vocational rehabilitation policy by developing actions that favour the vocational integration of People with disability in the normal work market.

The vocational integration of people with disabilities is considered a decisive stage in the overall rehabilitation process. It is essential for these people to be able to live fully functional social lives in the community. The entire rehabilitation process has the objective of fully integrating people with disability in society. This is done by guaranteeing their economic independence by equipping them with vocational skills and by letting them carry out a stable, paid vocational activity with the consequent acquisition of worker status.

The legislative instruments that the Employment and Vocational Training Institute (IEFP) puts at the disposal of people with disabilities for the carrying out of a stable and paid vocational activity can be divided into three groups: one group, aimed at vocational integration in the normal work market that mainly addresses the important role that employers can and should play in the process of socio-vocational integration of People with disability.

Another group, aimed at the creation of independent activities by people with disability, encouraging their vocational and business capacity and providing them with consequent vocational integration. This is done by subsidising the setting up of a disabled person’s own business.

The final group, although not opposing the main objective of the vocational integration of people with disability in the normal work market, is aimed at those people with disability who, for reasons related with the type and degree of handicap and the physical environment need special work conditions. This group seeks to achieve vocational integration of people with disability in a sheltered employment regime.

In Portugal we have a legally “integration stage for people with disabilities and handicaps” that has the objective to complement and enhance the skills of people with

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disabilities and enhance their professional performance in order to facilitate their recruitment and integration into the labor market.

We also have another form of legal integration that is the “Employment-Insertion Contract for People with Disabilities and Handicaps”. The main purpose is to promote and support the transition to the labor market through the participation of people with disabilities in socially useful activities to enhance their personal and relational skills, enhance self-esteem and encourage work habits.

Another way is what we call “Protect Job-Centre”. The work under supported employment can be provided at Protected Job-Centers. It is considered Protected Job-center a productive structure of primary, secondary or tertiary sector with its own legal structure or legal personality of public or private law, endowed with administrative and financial autonomy that aims to provide people with disabilities and reduced working capacity the exercise of a professional activity.

The main point is to provide people with disabilities and reduced working capacity the exercise of a professional activity and the development of personal, social and professional skills to the total integration and, wherever possible, in normal work.

In Portugal we also have the possibility of what we call the “Supported employment contract in employers” and is provided in jobs integrated into productive organization or service (including companies), under special conditions. The objective is to provide to people with disabilities and reduced working capacity the exercise of a professional activity and the development of personal, social and professional integration.

The Sheltered Employment regime covers all people with disabilities who although cannot immediately or in the short term be covered by general work regulations, are sufficiently productive and they can, under special conditions, carry out stable, paid and profitable work. The Sheltered Employment regime has the objective of encouraging the transition to the normal work market as soon as possible. It seeks to provide training for all people with disability who have an average work capacity equal to or greater than one third of the normal work capacity demanded of a non-disabled worker in the same job post. These objectives are carried out mainly through Sheltered Employment Centers and Enclaves.

Sheltered Employment Centers (“Centros de Emprego Protegido” – CEP) –seek to provide people with disabilities, with paid activity and the possibility of training and / or vocational improvement that allows them to be transferred whenever possible to the
normal work market. CEP are developed in regular industrial, handcraft, agricultural, commercial or service units.

Enclaves – this type of work is carried out by a group of workers with disabilities in the normal work environment. The establishment of either of these modalities can be done by public, cooperative or private organizations.

But participation in employment is only one aspect of integration in the society, and, the wider implications of different types of jobs need also to be taken into consideration when focusing on equality. Sheltered employment, like the ones pointed before, fulfills one function, but at the cost of achieving mainstreaming. Sheltered employment raises concerns about social inclusion and there are also continuing concerns about the low level of remuneration for employees in sheltered workshops, placing many at risk of poverty\(^\text{18}\).

We also have the “Merit Award”. This award rewards people with disabilities who, each year, stand out in creating their own employment as well as employers who are excelling in the professional integration of people with disabilities.

In the rehabilitation process we have in Portugal many programs that aim to make it easier to the worker with disability or with a reduced working capacity to work or to return to the work. Rehabilitation is a good investment because it builds human capacity. It should be incorporated into general legislation on health, employment, education, and social services and into specific legislation for people with disabilities. Policy responses should emphasize early intervention, the benefits of rehabilitation to promote functioning in people with a broad range of health conditions, and the provision of services as close as possible to where people live\(^\text{19}\).

As an example we have the creation of “New Centers of Opportunities”. Equal opportunities for people with disabilities and disability, particularly in terms of their participation in the labor market, are often a reality delayed due to constraints pertaining to the lack of adequate educational qualifications. To minimize this difficulty, the Action Plan for the Integration of Persons with Disabilities or Disability 2006-2009 (PAIPDI)

\(^{18}\) See BENT GREVE, The labour market situation of disabled people in European countries and implementation of employment policies: a summary of evidence from country reports and research studies, Academic Network of European Disability experts, 2009, p. 15.

provided for the adoption of concrete measures, including the creation of New Centers of Opportunities devoted to the certification of school youth and adults with disabilities.

The Program for Employment and Support Qualification of Persons with Disabilities, approved by Decree-Law number 290/2009, 12/10 establishes procedures for additional targeted support for training and qualification. We highlight the training and retraining, including on-the-job training, for people with disabilities, employed or not, financially supported (arts. 6.º ff.). In this area, is granted financial support to employers in respect of continuing education activities developed for their employees with disabilities and disability, which covers expenses related to the adaptation of the post training, acquisition of learning resources and teaching and specialized services order to facilitate access and frequency of training.

At the same time, devote up measures aimed at integration, maintenance and reintegration into the labor market, which are, inter alia, information, assessment and guidance for qualification and employment by supporting the placement and subsequent monitoring of the same by employment centers or resource centers (art. 15.º ff.). There is legislation that provides financial support, subsidized by the Institute of Employment and Professional Training, both for people with disabilities benefiting from this scheme, both for resource centers (art. 28.º ff.).

On the other hand, on the National Institute for Rehabilitation site, we can find many “good practices” not directly related with the employment relationship but that helps the integration of people with disabilities, like the project that is called “Routes without Barriers”. This project was designed to provide a barrier-free tourism, accessible to all, to minimize access barriers and enable the development of resources and tourism services of the territories involved, materializing in the creation of a tourist route that runs partners in all territories Alentejo and Spanish Extremadura, with the Edit Script Accessible Tourism - Routes Without Barriers, translated into 3 languages (Portuguese, Spanish and English).

Another example is the service that some libraries like the Municipal Library of Coimbra and the Municipal Library of Oporto offer that is a Reading Service for People with Visual Impairment, which thus seeks to address the specific needs in the area of public reading.

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20 [www.inr.pt](http://www.inr.pt)
This service offers over 900 titles of books printed in Braille and a set of about 700 book titles in sound recording, and also provided a home loan of Braille and audio books.

Last, but not the least, and I personally think that is a very important aspect, there is the contest “School Alert!” This Contest “School Alert!” meets as major objective the awareness and mobilization of school students of primary and secondary education to guarantee equal opportunities, non-discrimination and human rights, especially the rights of persons with disabilities, thus promoting the participation of schools and community in building a society for all. It also aims to disseminate the work created by students under the guidance of faculty teaching, which consist of the development of the principles enshrined in the UN Convention on the Rights of Persons with Disabilities and the Law on the Prevention, Education, Rehabilitation and Participation of Persons with Disabilities upon submission of proposals for innovative and feasible solution for their achievement. By involving teachers, students, assistants, parents and the whole school community formal and informal, the “School Alert!” promotes awareness to the issue of inclusion and promotion of rights of all persons, regardless of age, gender or physical or cognitive condition. And that is very important because it is a way to transpose the gap between school and the labour market for disabled people, including attention to education, to the employment needs of young disabled people and the significance of life-long learning, and especially because persons who are born with disabilities may face exclusion from an early age. According to the United Nations Educational Scientific and Cultural Organization (UNESCO), children with disabilities face many challenges in education, including institutionalized discrimination, stigmatization and neglect, in the classroom, the local community and their own homes.

Also in the PLC articles 84 until 88 legislate the main obligations to the employer but there also other legislation about it, special related with the positive measures and the incentives created by the State to help employers in hiring people with special needs or to make the necessary adaptations in the workplace.

2.4. Exemptions and reductions in social security contributions

The Law Decree number 299/86, 19/09, came to grant incentives to employers through relief contributory to facilitate the integration of the disabled in the workplace. Thus, employers taxpayers of the general welfare of workers for others who have at their service, contracted indefinitely disabled workers benefit from a reduction of social
security contributions payable in accordance with those workers. But one can’t forget that is consider a disabled employee for the purpose of this statute, those with working capacity of less than 80% of normal capacity required of a non-disabled worker in the same job.

2.5. Reasonable accommodation in the workplace

An important aspect of providing rights for disabled people in law includes the introduction of a right, in certain circumstances, to reasonable accommodation. In this regard disability discrimination legislation is different in concept to other forms of discrimination such as sex and race which is largely predicated on the concept of traditional equality that all people should be treated alike regardless of differences of, for example religion or sexual orientation.

The concept of reasonable accommodation appeared in response to barriers created by the physical or social environment resulting in an inability to perform a function in a conventional manner. It was first recognized with respect to religion, because reasonable accommodation was an exception to be granted to a person upon whom a working time rule would have a discriminatory effect on grounds of their religion21, and only later with respect to disability.

Reasonable accommodation builds on the understanding that only applying a formal approach to non-discrimination will do little to help people with disabilities and recognize the relevance of the notion of impairment, because if one ignores the impact of an impairment and treats a person with a disability in exactly the same way as one treats a person without a disability, a de facto situation of inequality will arise. To address this situation the notion of reasonable accommodation was created22.

In Portugal, article 86 of PLC regulates the meaning of reasonable accommodation, that transpose article 5 of the Employment Equality Directive.

With this article more than the proclamation of formal equality based on the classic concept that all are equal before the law, it is established the legality of temporary measures that enshrine unequal treatment as a way to compensate for inequalities of opportunity and of treatment that still persist in social life, trying to achieve real equality under the Portuguese Constitution Law. It is the adoption of positive measures related to

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the idea of positive discrimination and the idea of social justice that is the intention of this article.

And to do that we have some practical possibilities in the Employment and Vocational Training Institute.

The Employment and Vocational Training Institute grants the benefits to companies with an aim at removing structural barriers in employment:

Grant for job adaptation and the elimination of architectural obstacles: These are non-repayable grants given to companies or other bodies to adapt their equipment or installations to the functional difficulties of the worker with disabilities. Each one these grants may not exceed 12 times the amount of the minimum monthly wage regarding the highest point it can reach.

The Law Decree No. 290/2009 of 12 October provides for an increase in support for the adaptation of jobs and removal of architectural barriers.

Grant for personalized Assistance: This grant is given to companies and to other enterprises who engage people with disabilities within their staff, in order to cover the costs concerning their personalized assistance. It is granted for a three month period, extendible to a maximum of six months, and its assessment is based on the employer’s expenditure with the actions regarding personalized assistance. It cannot exceed, each month, twice the monthly minimum wage ensured within its highest amount.

Technical Aids: The Law Decree No. 93/2009 of 16 April, as amended by Decree-Law No. 42/2011 of 23 March, creates a system of Allocation Product Support (SAPA), which replaces the system of supplementary aids and assistive technologies. It seeks to promote the elimination of social, physical and communication (amongst other) barriers that disabled people are confronted with in their daily lives. It is a public and universal system that covers health, education, vocational training and independent living\(^{23}\).

3. Conclusions

The on-going economic crisis has significantly worsened the employment situation both quantitatively and qualitatively, has deteriorated living standards and has

\(^{23}\) See also Order of the National Institute for Rehabilitation, I. P. with the list of approved products support and Annual Order of the National Institute for Rehabilitation, IP.
undermined social cohesion and such growing inequality involves many economic, social and political risks.

Programmes, awareness-raising and social support are necessary to change the way society operates and to dismantle the barriers that prevent persons with disabilities from participating fully in society. Furthermore, persons with disabilities need to be provided with the opportunities to participate fully in society and with the adequate means to claim their rights.

Discrimination must be addressed at the national level, where governments need to act and political, legislative and administrative interventions and social dialogue are required to ensure equality at work. Action is also required at the workplace level, with the direct involvement of the social partners. Many employers have successfully turned diversity into an asset and promoted both productivity and innovation, and human resources policies are increasingly embracing considerations of non-discrimination.

In times of crisis, inequality, insecurity and the danger of exclusion are fed by direct or indirect discrimination. Attitudes are influenced, and it becomes more difficult to strengthen policies and legislation against discrimination. And work-related discrimination against persons with disabilities can range from limited access to education, vocational training and rehabilitation, to marked differences in wages between workers with disabilities and the rest of the workforce as well as exclusion from certain jobs. Also, persons with disabilities are also more likely to earn lower wages.24

In relation to the recruitment and hiring of people with disability it is increasingly obvious that disabled people not only have a valuable contribution to make to the national economy but that their employment also decreases the cost of disability benefits and may reduce poverty.

And, because implementation of policies is often best achieved at the local level, the integration of the social partners is important. The labour market partners help in ensuring social responsibility from companies and social dialogue and participation of the partners as part of the mainstreaming strategy is very important.

Such partners are better able to reach and involve employers as well as to provide access to specific target group functioning as lobbying organizations at the center or as supporters in implementation at the company level.

Portugal, May 2014

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