

WORK, DIGNITY AND VISIBILITY: ALLOCATING PEOPLE WITH DISABILITIES IN THE FRAMEWORK OF PUBLIC SERVICES AS MEANS TO INDUCE THE IMPLEMENTATION OF INCLUSIVE PUBLIC POLICIES

TRABALHO, DIGNIDADE E VISIBILIDADE: A ALOCAÇÃO DAS PESSOAS COM DEFICIÊNCIA NOS QUADROS DO FUNCIONALISMO PÚBLICO PARA A INDUÇÃO DE COMPORTAMENTOS E EFETIVAÇÃO DE POLÍTICAS PÚBLICAS INCLUSIVAS

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ABSTRACT

This paper analyzes the social implications of the absence of people with disabilities in key public positions in the Brazilian labor market, as well as the effects of this in the feedback of prejudice and social exclusion in relation to this vulnerable group. In order to do so, a sample of the results of some of the most recent major public careers entrance exams in Brazil, for the positions of Judge, Prosecutor and Professor, have been drawn up in order to examine, in practice, the idea of broad accessibility to key positions, as proposed by the 1988 Constitution. Under the theoretical framework of the right to equality, and using the deductive method and bibliographical research, the conclusions point to the need for more investments in the implementation of accessibility and inclusive education resources, with the establishment of new affirmative measures aimed specifically at the promotion of labor inclusion in relation to the functions of greater responsibility within the public service.

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RESUMO

O artigo analisa as implicações sociais da ausência de pessoas com deficiência na ocupação de postos-chave do mercado de trabalho público brasileiro, bem como os possíveis efeitos disso na retroalimentação do preconceito e da exclusão em relação ao referido grupo vulnerável. Para tanto, pinçou-se uma amostra dos resultados de alguns dos principais concursos mais recentes no Brasil, para os cargos de juiz, promotor e professor, a fim de examinar como vem sendo implementado, na prática, o ideário de ampla acessibilidade aos cargos e empregos públicos propugnado pela Constituição de 1988. Sob o referencial teórico do direito à igualdade, e utilizando-se do método dedutivo e de pesquisa bibliográfica, as conclusões apontam para a necessidade de mais investimentos na implementação de recursos de acessibilidade e educação inclusiva, com o estabelecimento de novas medidas afirmativas voltadas especificamente à promoção da inclusão laboral no tocante às funções de maior responsabilidade dentro do funcionalismo público.

Palavras-chave: Trabalho; Visibilidade; Inclusão; Pessoas com deficiência; Funcionalismo público.

INTRODUCTION

In Brazil, 45.6 million people (23.9% of the population) bear some kind of disability¹. Out of this number, only 418,500 individuals (less than 1%) work formally². In the world, as not to leave any doubt about the contingent of individuals, there are about 1 billion people with disabilities³, the largest minority of humanity⁴.

The social exclusion of these people have always existed and the popular demands for their participation in the labor market only gained force, effectively, by the end of the First World War, and even so, in an incipient way. At this

¹ INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA – IBGE. Rio de Janeiro: RJ. *Boletim estatístico – censo 2010*. Available at: https://biblioteca.ibge.gov.br/visualizacao/periodicos/94/cd_2010_religiao_deficiencia.pdf. Last visited on March 24, 2018.

² MINISTÉRIO DO TRABALHO E EMPREGO. Relatório Anual de Informações Sociais – RAIS – 2016. In: *Dados Nacionais 2016*, 3. Análise dos principais resultados. Brasília – DF. Available at: <http://pdet.mte.gov.br/rais?view=default>. Last visited on May 1, 2018.

³ ORGANIZAÇÃO DAS NAÇÕES UNIDAS – ONU. *The invisibility of disability: why disability statistics matter*. 2016. Available at: http://www.un.org/disabilities/documents/sdgs/infographic_statistics_2016.pdf. Last visited on November 16, 2018.

⁴ MORENO, Lenin. A maior minoria da humanidade: um bilhão de pessoas com deficiência. *Le Monde Diplomatique*, n. 96, 06 de julho de 2015. Available at: <https://diplomatie.org.br/um-bilhao-de-pessoas-com-deficiencia/>. Last visited on May 25, 2018.

historic moment, at the international level, there has been a considerable expansion in mechanisms for the protection of fundamental rights, especially the ones related to the decent quality of work⁵.

Since then, the world has been through the advent of an international legal order, aimed at promoting equality and respect for diversity and dignity in all fields, including at work, albeit in a disproportionate speed, given the demands accumulated for centuries.

However, in reality, an international legal standpoint worthy of praise comes with the approval, in 2006, of the International Convention on the Rights of Persons with Disabilities – CRPD, ratified by 153 countries, among them Brazil.

Although there have been, for decades, multiple forecasts about the legal protection of disabled workers all around the world, Brazilian domestic policy has seen little to no change at all for many decades, and there is no doubt that there is still an important portion of citizens that are excluded from the constitutional promise of a good life⁶.

To the topic regarding this work, the recognition of the right of these citizens to run for public offices and jobs, however, began to receive greater constitutional protection with the advent of the guarantee established by Article 37, item VIII, of the 1988 Brazilian Constitution – a provision that grants them important percentage when trying for these positions.

It occurs that, despite the legal determination about this right, which deals with it in a much broader way than ever before, the fulfillment of this quota it is still not perceived in many jobs, particularly the most visible ones in the public structure, in positions such as judge, public prosecutor and university professor.

Matter of fact, this situation creates real invisibility to people with disabilities within public entities, highlighted by an ineffectiveness as to the accomplishment of the reservation of quotas with the respective filling of the intended positions, which reinforces the perspective that these people rarely even occupy key positions in State Administration.

This invisibility generates a vicious circle of inequality, inequity and poverty⁷, which is unacceptable, as it is said that those who are not seen are not remembered.

⁵ MARTINS, Sérgio Pinto. *Direito do trabalho*. 19. ed. São Paulo: Atlas, 2001. p. 41.

⁶ DWORKIN, Ronald. O que é uma vida boa? *Revista Direito GV*, São Paulo, v. 7, n. 2, p. 607-616, jul./dez. 2011.

⁷ ORGANIZAÇÃO DAS NAÇÕES UNIDAS – ONU. Comissão Econômica para a América Latina e o Caribe – CEPAL. *Panorama social da América Latina*, 2012. Available at: https://repositorio.cepal.org/bitstream/handle/11362/1246/S2012895_pt.pdf;jsessionid=6E097D548CE6733A0896074FA2F65CC8?sequence=1. Last visited on November 16, 2018

In order to confirm the proposed hypothesis, we present numbers extracted from public careers entrance exams for three different careers, which are symptomatic that, in *praxis*, official discourse is still perverse and uncommitted.

However, it is crucial to offer proposals for an immediate change of this reality, as will be done throughout this work, as not to cooperate with the alienation of a large number of excluded persons, absent of development strategies and instruments of rights⁸.

The present work initially addresses, in chapter 2, the history of legal protection of the disabled with respect to their inclusion in the labor market, seeking to identify the main aspects of this right in the private and public sectors.

Chapter 3 is devoted to the conceptualization of accessibility and the discussion about the visibility that should be given to the presence of people with disabilities in society, as well as the guarantees that modern democracy assures to this community.

The debate about the wide participation of these workers within the organizational structures of public entities is the subject of Chapter 4, when they will examine the results of the last exams of entrance in the career of Public Prosecutor and of Judge in the two largest Brazilian states, Minas Gerais and São Paulo. Such endeavor will allow a general sizing of the problem. With this aim in mind, data concerning the entrance in academic career were collected, and the results of three of the largest Brazilian public exams held in the last years for the job of professor in the states of Rio de Janeiro and Minas Gerais were brought together, given the great social impact of this functions, materialized mainly in the pedagogical, political and democratic importance of education.

At the end of this work, conclusions are given, seeking to propose, in addition to reading the official and undeniable data, effective actions to change the reality and induce positive behaviors that push for the implementation of inclusive policies, with the activation of available mechanisms, including the punishment of omissions, which was only possible starting from the theoretical framework on the right to equality, using the deductive method, with bibliographical research and document analysis.

THE INCLUSION OF THE PERSON WITH DISABILITIES IN THE LABOR MARKET

Among various challenges related to the inclusion of people with disabilities in the contemporary world, the issue involving the access to the labor market by

⁸ FRANÇA, Tiago Henrique de Pinho Marques. *Deficiência e pobreza no Brasil: a relevância do trabalho das pessoas com deficiência*. Universidade de Coimbra, 2014. PhD Thesis. Available at: <https://estudogeral.sib.uc.pt/bitstream/10316/27101/1/Defici%C3%AAncia%20e%20Pobreza%20no%20Brasil.pdf>. Last visited on November 16, 2018, p. 115.

these citizens is among those that have been the object of multiple important studies these days – even because, as said, it involves the minority of humanity.

Labor is at the center of human needs. Through it, the human being expands the meaning of his social role and guarantees his subsistence by building the foundations of his dignity⁹.

Currently, the field of human labor encompasses a large and multifaceted range of requirements to be sought by those who want to be part of corporate staff or public service.

The efficiency of work processes is increasingly expected and demanded. Entrepreneurs and public managers seek, first and foremost, a constant increase in profitability and functional income.

Although dimensions such as health, quality of life and the integrity of the worker are, undoubtedly, indispensable elements for the construction of the most important bases of the State and conditions for the maintenance of a competitive organizational climate, the logic of the market places the maximum productivity, at any cost, at the top of its main aspirations.

In this context, the stigma that still accompanies people with disabilities leaves important marks. Disability, which is only a peculiar way of being different¹⁰, continues to be classified and interpreted, erroneously, as an obstacle to the attainment of corporate objectives.

It is precisely at this point that this vicious circle that must be broken is identified, because in “several debates and in the evolution of the political and socioeconomic models of the States, people with disabilities were absent - and in many cases still are”¹¹.

It is a group thought to be relatively less able for work and more vulnerable to poverty, especially given the fact that there are challenges that go beyond the strictly labor-related difficulties. The high cost of living to people in this condition is a tangible reality:

Living with disabilities may incur differential living costs. The needs of special products specific to each disability, exclusive services and per-

⁹ ARAÚJO, Luiz Alberto David. *A proteção constitucional das pessoas com deficiência*. 2011. 4th. ed., 122 f. Thesis. (PhD in Law) São Paulo – SP. Available at: http://www.pessoacomdeficiencia.gov.br/app/sites/default/files/publicacoes/a-protecao-constitucional-das-pessoas-com-deficiencia_0.pdf. Last visited on November 19, 2018.

¹⁰ DWORKIN, Ronald. *A virtude soberana: a teoria e a prática da igualdade*. São Paulo: WMF Martins Fontes, 2011. p. 118.

¹¹ MORENO, Lenin. A maior minoria da humanidade: um bilhão de pessoas com deficiência. *Le Monde Diplomatique*, n. 96, 06 de julho de 2015. Available at: <https://diplomatie.org.br/um-bilhao-de-pessoas-com-deficiencia/>. Last visited on May 25, 2018.

manent care in some cases justify this difference. Medical expenses may also be more expensive, as well as those for the adaptation of the home, among others. It is expected that several factors will play a decisive role in estimating such costs, including: the regional standard of living costs; the age of the person concerned; the extension of the injury and functional limitations¹².

In this context, it should be noted that 80% of people with disabilities live in developing countries and that about 20% of the world's poorest people have disabilities¹³.

Of course there are structural reasons, from capitalist society that feeds on the inequality of many to the accumulation of wealth by the few. But observing the historical evolution of rights involving the legal protection of these people, it is possible to understand that the incessant struggle for the implementation of inclusive public policies, with effective mechanisms of realization, can break the inhumanity in this field and ignite a small light capable of illuminating hope in better days.

Historical foundation on the legal protection of disabled workers

The historical period right after World War II was the main moment in which the world community turned its eyes to the disabilities of its citizens. The large number of combatants returning from the battlefield with sequels and amputations have awakened the responsibility for coping with the problem, since such people needed to be reinserted into the social scenario in a proper way.

In 1948, the General Assembly of the United Nations (UN) proclaimed the Universal Declaration of Human Rights. Among its most important provisions, the document highlighted the principle that “everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment”¹⁴.

Reference should also be made, in this context, to Convention 159 of the International Labor Organization (ILO), from 1983¹⁵, which deals with the pol-

¹² FRANÇA, Tiago Henrique de Pinho Marques. *Deficiência e pobreza no Brasil: a relevância do trabalho das pessoas com deficiência*. Universidade de Coimbra, 2014. PhD Thesis. Available at: <https://estudogeral.sib.uc.pt/bitstream/10316/27101/1/Defici%C3%Aancia%20e%20Pobreza%20no%20Brasil.pdf>. Last visited on November 16, 2018, p. 115.

¹³ ORGANIZAÇÃO DAS NAÇÕES UNIDAS – ONU. *Alguns factos e números sobre as pessoas com deficiência*. 2017. Available at: <https://www.unric.org/pt/pessoas-com-deficiencia/5459>. Last visited on November 16, 2018.

¹⁴ ORGANIZAÇÃO DAS NAÇÕES UNIDAS – ONU. *Declaração Universal dos Direitos Humanos*. Aprovada pela Resolução n. 217, durante a assembleia-Geral da ONU, em Paris, França, em 10/12/1948. Available at: www.onu.org.br/img/2014/09/DUDH.pdf. Last visited on January 22, 2018.

¹⁵ BRASIL. Brasília. Presidência da República. Decreto n. 129, de 22 de maio de 1991. Promulga a Convenção n 159, da Organização Internacional do Trabalho – OIT, sobre Reabilitação Pro-

icy of Vocational Rehabilitation and Employment of Disabled Persons, which notes in its article 4:

The said policy shall be based on the principle of equal opportunity between disabled workers and workers generally. Equality of opportunity and treatment for disabled men and women workers shall be respected. Special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers¹⁶.

The Brazilian Constitution of 1988, unlike the previous ones, legitimated the protection of the worker's from the perspective of the principle of human dignity, recognizing, in item IV of article 1, the social value of work and respect for the dignity of the human person as basic foundations of participatory democracy.

In response, above all, to the effects of globalization and the economy, and in anticipation of the drastic onslaughts of the new post-industrial society, the 1988 Brazilian Constitution, on the topic of general principles of the economic activity (article 170), list human labor and the guarantee of a dignified existence for everyone as the main ground of the new economic order.

Among the previously mentioned principles, the goal is to reduce regional and social inequalities, as well as to promote full employment. Hence, it is possible to start from the proposal of inclusion in all other ambiances of national life.

Inclusion and the private sector

With regard to workers in the private sector, the set of provisions set forth in Law No. 8,213 of 1991¹⁷, which establishes rules regarding social security benefits for the insured persons of the General Social Security System (under the acronym RGPS in Portuguese), can be classified as an important normative advance.

This law compels companies with more than 100 employees to fill two to five percent of their posts with rehabilitated persons or persons with disabilities,

fissional e Emprego de Pessoas Deficientes. Available at: www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0129.htm. Last visited on January, 30, 2018.

¹⁶ BRASIL. Brasília. Presidência da República. Decreto n. 129, de 22 de maio de 1991. Promulga a Convenção n. 159, da Organização Internacional do Trabalho – OIT, sobre Reabilitação Profissional e Emprego de Pessoas Deficientes. Available at: www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0129.htm. Last visited on January, 30, 2018.

¹⁷ BRASIL. Brasília. Presidência da República. Lei n. 8.213, de 24 de julho de 1991. Available at: http://www.planalto.gov.br/Ccivil_03/leis/L8213cons.htm. Last visited on March 22, 2018.

creating the so-called quotas for these individuals, a provision that is repeated in the text of article 36 of the Decree 3,298, of 1999¹⁸.

Judicial decisions have already been consolidated in regard to compliance with the rule in question, and it is possible to find a set of decisions that give ever more effectiveness to the intent instituted by Law No. 8.213, referred to before, with the decision of the Superior Labor Court being a recent and better finished example of this assertion, taking this part in specific:

APPEAL. INTERLOCUTORY APPEAL. APPEAL TO THE REVIEW OF LAW N. 13.015/14. PUBLIC CIVIL ACTION. CONTRACTING OF REHABILITATED EMPLOYEES OR OF EMPLOYEES WITH DISABILITY. UNFULFILLMENT OF MINIMUM QUOTA PROVIDED IN LAW. The appealing party does not present enough arguments as to deconstruct the decision that denied follow-up to the interlocutory appeal, since the appeal to review of referred law did not demonstrate intrinsic presupposition foreseen in article 896 of the Brazilian Consolidation of Labor Laws (CLT). In the hypothesis, the Regional Court, valuing facts and evidence, concluded that the defendant did not prove to have exhausted all means on searching for rehabilitated and disabled workers. It was also noted that the company made insufficient efforts to fulfill the minimum quota provided for in article 93 of Law 8213/91, as restricted to the disclosure of vacancies for functions of great physical effort. It thus removed the allegation that contracting below the legal requirement was due to the lack of qualified candidates, and it would seem impracticable to consider breach of the indicated provisions of law and from the Federal Constitution, given the factual nature of the controversy. Provision denied¹⁹.

In this wake, the prejudice that still exists regarding the hiring of workers with disabilities must be overcome, since many of these people are competent and have skills unknown and unjustly discredited by the prejudiced analysis to which they are submitted.

In parallel to the practice of such affirmative actions, changes must be made in business environments that stimulate a new awareness of welcoming the dif-

¹⁸ BRASIL. Brasília. Presidência da República. Decreto n. 3.298, de 20 de dezembro de 1999. Available at: http://www.planalto.gov.br/ccivil_03/decreto/d3298.htm. Last visited on May 22, 2018.

¹⁹ BRASIL. Brasília. Tribunal Superior do Trabalho. Agravo de Instrumento nº AIRR-181-55.2013.5.09.0006, da 1ª Turma do TST. Relator: Walmir Oliveira da Costa. Brasília, DF. Publicação em 01/12/2018 e transitado em julgado em 02/03/2018. Available at: <http://aplicacao4.tst.jus.br/consultaProcessual/consultaTstNumUnica.do?conscsjt=&numeroTst=181&digitoTst=55&anoTst=2013&orgaoTst=5&tribunalTst=09&varaTst=0006&consulta=Consultar>. Last visited on February 17, 2018.

ferent, in reverence for the fundamental objective of building a more just and solidary society, prescribed in article 3, item I, of the 1988 Constitution²⁰.

As stated by Goldschmidt and Palma, specifically addressing the issue of the disabled, “the labor market must adapt to the needs of the physically disabled, considering what has already been said about human life overlapping the objectives of the capital market and profit”²¹.

Access to public office or public employment

The Constitution of the Republic of Brazil establishes, in article 37, item VIII, that “the law shall reserve a percentage of public positions and jobs for persons with disabilities and shall define the criteria for their admission”²².

The literal interpretation of that provision makes it possible, at first, to ascertain that the purpose of the constitutional legislator in affirming it was to ensure the reservation of vacancies within the establishment plan of the entity or sector in question, as it would be established through Law No. 8,213, of 1991.

Nevertheless, in regulating this fundamental right, the infraconstitutional legislator has made it clear in article 5, paragraph 2, of Law No. 8,112 of 1990, that a person with disability must be guaranteed:

[...] the right to take part in a public contest to fill a position whose duties are compatible with the disability of which they are bearers; for such persons will be reserved up to 20% (twenty percent) of the vacancies offered in the contest²³.

The Decree No. 3.298 of 1999 establishes the minimum quota of five percent of the vacancies offered in public career exams (article 37, paragraph 1), also referring to the fact that the number of vacancies offered in the entrance

²⁰ BRASIL. Brasília. Presidência da República. Constituição da República Federativa do Brasil, de 05 de outubro de 1988. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicaoconsolidado.htm. Last visited on May 27, 2018.

²¹ GOLDSCHMIDT, Rodrigo; PALMA, Darléa Carine. *O direito fundamental do deficiente físico ao trabalho digno e sua inclusão no mercado de trabalho*. Anais do Seminário Nacional de Dimensões Materiais e Eficaciais dos Direitos Fundamentais – Descontinuado. 17 a 19/08/2011, Chapecó (SC). Available at: <http://editora.unoesc.edu.br/index.php/seminarionacionaldedimensoes/article/view/911/0>. Last visited on February 2, 2018.

²² BRASIL. Brasília. Presidência da República. Constituição da República Federativa do Brasil, de 05 de outubro de 1988. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicaoconsolidado.htm. Last visited on May 27, 2018.

²³ BRASIL. Brasília. Presidência da República. Lei n. 8.112 de 11 de dezembro de 1990. Available at: http://www.planalto.gov.br/ccivil_03/Leis/L8112cons.htm. Last visited on March 22, 2018.

exams shall be safeguarded for such persons, though not effectively speaking of guaranteeing such places in State roles²⁴.

With regard to public employees, it is important to note that the reservation must be carried out within the companies as well and will be proportional to the total number of employees, with the need to guarantee that between two and five percent of the vacant staff components are going to be filled by rehabilitated candidates or persons with disability, according to article 93, of Law No. 8.213 of 1999.

A critique of the way in which legislation has addressed the issue concerns the ineffectiveness of this procedure as a mechanism for accessibility to the public labor market because:

[...] the affirmative action established by the Constitution has not been fully implemented by law. The Constitution establishes that a percentage of public positions and jobs will be reserved for persons with disabilities, while the law (and the decree that regulates it) reserves only a percentage of the vacancies in dispute in each public career exam²⁵.

The Supreme Court has already expressed its support for the thesis on the reservation of vacancies coming into reality. Minister Cesar Peluso, in the *writ of mandamus* No. 25.074, recognizing the legal force and clarity of the precept contained in the text of referred guarantee, has pronounced as follows:

... the disabled have the right to occupy a certain number of public posts and jobs, considered in each functional table, according to the percentage reserved to them by law, which can only be calculated in the comparison of the total of positions and of jobs, and not, of course, in the random number of places that are put on each public career exam²⁶.

²⁴ It is important to note that the provisions under Law 8,122 of 1990 and Decree 3,298 of 1999 are directed at public servants of the Federation. In regard to the states, municipalities and the Federal District, the respective regulations may deal with it in a different way, since these entities can legislate simultaneously on the matter of disability, by virtue of article 24, item XIV, of the 1988 Constitution. Despite this legislative autonomy, most state entities are following the same path led by federal legislation, that is, they set the reservation percentage on supply of vacancies via public exams to enter public careers, but not within the respective functional framework.

²⁵ ARAÚJO, Luiz Alberto David. *A proteção constitucional das pessoas com deficiência*. 2011. 4th. ed., 122 f. Thesis. (PhD in Law) São Paulo – SP. Available at: http://www.pessoacomdeficiencia.gov.br/app/sites/default/files/publicacoes/a-protexao-constitucional-das-pessoas-com-deficiencia_0.pdf. Last visited on November 19, 2018.

²⁶ BRASIL. Brasília. Supremo Tribunal Federal. Mandado de Segurança nº 25.074. Relator Ministro Cesar Peluso. Originário do Distrito Federal. Decisão monocrática de 18 de outubro de 2004. *Diário Oficial da União*. Brasília, 22 de outubro de 2004, p. 42. Available at: <http://stf.jus.br/portal/jurisprudencia/listarJurisprudencia.asp?s1=%28MS%24%2ESCLA%2E+E+25074%2ENUME%2E%29+NAO+S%2EPRES%2E&base=baseMonocraticas&url=http://tinyurl.com/bp8pqjp>. Last visited on February 2, 2018.

José dos Santos Carvalho Filho, analyzing the importance of the theme, observes:

[...] there has been, at least until now, no greater concern on the part of State bodies (except for honorable exceptions) regarding the recruitment of people with disabilities. This omissive stance is unconstitutional: the Public Power regulates and encourages this participation, and this is because, as known, it is an undeniable instrument of social inclusion²⁷.

The affirmative action proposed by the constitutional legislator aimed at the promotion of an effective inclusion, deprived of subterfuges that could impede the real fulfillment of the principle of non-discrimination, contained in article 3, item IV. However, there is still a need to move towards fair participation of such vulnerable group on the mission of public service in our country.

It is also worth noting the international recognition of this guarantee, promoted mainly by the Convention on the Rights of Persons with Disabilities - CRPD (Decree No. 6949 of August 25, 2009), in which Article 27 states that States Parties recognize the right of persons with disabilities to work, on an equal basis with others”, listing among one of the purposes to be fulfilled is that of “employing persons with disabilities in the public sector”.

ACCESSIBILITY AND VISIBILITY

The text of the Constitution, as well as any legal framework devoted to the protection of persons with disabilities, state that their participation in various social activities should be carried out as widely as possible.

The new concept of disability makes it clear that the difficulties with regard to full participation are much more placed in society than in the individual, as opposed to the already surpassed exclusively medical opinion towards disabilities. The current concept is well represented by the CRPD, which defines disability in its text and in its preamble, as

...an evolving concept and 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 others²⁸.

The technological advances achieved since the end of the last century allow almost all the problems resulting from the deficiencies to be solved through se-

²⁷ CARVALHO FILHO, José dos Santos. *Manual de direito administrativo*. 23. ed. Rio de Janeiro: Lumen Juris, 2010.

²⁸ BRASIL. Brasília. Presidência da República. Decreto 6.949, de 25 de agosto de 2009. Available at: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/decreto/d6949.htm. Last visited on September 5, 2017.

rious investments that provide the maximum accessibility for almost any kind of situation.

Also, the claim that every disabled person has, as a rule, more difficulties to carry out any activity has already been demystified. The technological apparatus – especially assistive technology – available to these people allows them to prepare themselves adequately for the performance of varied tasks like any other citizen.

Therefore, it is quite possible that these individuals competently assume the most diverse places within companies and public institutions. More than that, it is essential to make it possible to occupy public offices and state functions, because, as has already been shown, the possibility of doing a good job is outstanding.

In addition, the presence of companies with inclusive politics has become increasingly common in the most diverse branches, with its actions being guided by the following principles

- It is ethically correct to include people with disabilities in the general workforce;
- The workforce of the disabled person is as productive as the workforce constituted only of workers without disabilities;
- The workforce of disabled and non-disabled workers efficiently contributes to the company's successful economic goals and, at the same time, helps the company to play its part in the labor inclusion effort to ensure people with disabilities the right to work and all workers to learn from each other²⁹.

The above principles are perfectly suited to private and public working environments, and the expansion of the participation of persons with disabilities in both scenarios is essential to expose the reality of exclusion so that it can be effectively addressed.

As José Luiz Bolzan de Moraes teaches, in a comment on the fundamental objectives of the Republic, listed in the Brazilian Constitution, in article 3, item IV, highlighting the need to promote the common good, without prejudice:

[...] affirmative action policies, such as quotas, whatever the means of access selected (economic, racial, regional, etc.), dialogue with the promotion of the common good, even by recomposing the past or incorporating peculiar demands of the models of contemporary welfare,

²⁹ SASSAKI, Romeu Kazumi. *Inclusão: construindo uma sociedade para todos*. 8. ed. Rio de Janeiro: 2010, p. 68-69.

and in doing so, they are deviating the prejudice present in Brazilian society³⁰.

From a legal and constitutional perspective, therefore, the ideal of accessibility to work aims at participation that encompasses all the possibilities and spaces available in the social environment. In the public domain, this precept mainly includes posts whose visibility can promote the influence in behaviors and the implementation of inclusive public policies, as will be discussed in the next chapter.

WIDE PARTICIPATION AND AVAILABLE SPACES

In addition to the difficulties concerning the realization of the constitutional reservation of public positions and jobs for persons with disabilities, even greater obstacles are observed when it comes to their participation in key State positions. Examining the procedures of some national public careers exams, it can be verified that, when vacancies for such jobs are offered, it is even more visible the noncompliance with the aforementioned constitutional precept.

Judiciary and public prosecutor's office

In this topic, we tried to verify how this question has been presented in relation to the public service exams for the positions of Judge and Public Prosecutor in the country.

In the case of the Judiciary, it should be remembered beforehand that the National Council of Justice has delivered Resolution No. 230, dated June 22, 2016, which guides the adequacy of the activities of the organs of the Judiciary and its auxiliary services to the determinations of the International Convention on the Rights of Persons with Disabilities (CRPD), and Law No. 13,146 of 2015.

Article 10 of the aforementioned Resolution established the creation of permanent commissions on accessibility and inclusion to oversee, plan, elaborate and follow such policies. Section X of this article contains wording identical to that of Article 37, item VIII, of the Brazilian Constitution, providing for “inclusion, in all public careers exams, of the constitutional provision for reservation of vacancies for persons with disabilities, including those dealing with admission to the judiciary (1988 Constitution, article 37, item VIII)”³¹.

³⁰ BOLZAN DE MORAIS, José Luiz. Objetivos Fundamentais. In: ARRUDA ALVIM, Eduardo; LEITE, George Salomão; STRECK, Lenio (coord.). *Curso de direito constitucional*. 1. ed. Florianópolis: Tirant Lo Blanch, 2018. p. 129-136.

³¹ BRASIL. Conselho Nacional de Justiça. Resolução nº 230, de 22 de junho de 2016. Brasília, DF. Disponível em: <http://www.cnj.jus.br/busca-atos-adm?documento=3141>. Acesso em: 2 maio 2018.

As an example, the 185th exam to enter the judicial career in the state of São Paulo, in 2014 (already under the CRPD), in which 215 positions were offered, 204 of which were destined to all kinds of contestants and 11 (5%) to people with disabilities³². At the end of the exam, 80 candidates were approved, of which only 1 borne a disability³³.

In 2015, the public announcement of the 186th exam, on the same state, published the offer of 217 vacancies. Of these, 206 were destined to all kinds of contestants and 11 (5%) to people with disabilities³⁴. At the end of the process, 77 competitors were approved in general and none with disabilities, according to the final report³⁵. Therefore, it is easy to conclude that in practice it is difficult to find judges, men or women, with disabilities.

The National Council of the Public Prosecutor's Office (CNMP) edited and published, in 2014, the Ministerial Guide for action, aiming to promote institutional improvement and, in order to defend the rights of persons with disabilities, through the implementation of accessibility, priority treatment, public exams to enter the career, inclusive education and easy access to the process of assistance to the partially disabled, when needed be.

Regarding the expansion of access to vacancies in the institutional framework, the CNMP has posed a clear statement, orienting how the compliance with the rule of constitutional reservation of vacancies in the public sector should be carried out:

If the career frame is structured in offices and specialties, the allocation of reserved vacancies will be made in proportion to the number of offices in each specialty, so that for all public offices or jobs there is explicit provision for reservation of vacancies for persons with disabilities.

If, on the other hand, the Public Administration makes a single vacancy available, it shall be taken notice about whether it already has in its staff a significant number of employees with disabilities in the office or

³² TRIBUNAL DE JUSTIÇA DO ESTADO DE SÃO PAULO. *Edital do 185º Concurso de provas e títulos para ingresso na magistratura do Estado de São Paulo*. São Paulo, 11 de junho de 2014. Available at: <https://www.vunesp.com.br/TJSP1401>. Last visited on May 1, 2018.

³³ TRIBUNAL DE JUSTIÇA DO ESTADO DE SÃO PAULO. *Lista de aprovados na prova oral do 185º concurso de provas e títulos para ingresso na magistratura do estado de São Paulo*. São Paulo, 8 de setembro de 2015. Available at: <https://www.vunesp.com.br/TJSP1401>. Last visited on May 1, 2018.

³⁴ TRIBUNAL DE JUSTIÇA DO ESTADO DE SÃO PAULO. *Edital do 186º concurso de provas e títulos para ingresso na magistratura do Estado de São Paulo*. São Paulo, 10 de junho de 2015, p. 1-3. Available at: <https://www.vunesp.com.br/TJSP1504>. Last visited on May 1, 2018.

³⁵ TRIBUNAL DE JUSTIÇA DO ESTADO DE SÃO PAULO. *Lista de candidatos aprovados na avaliação de títulos no 186º concurso de provas e títulos para ingresso na magistratura do Estado de São Paulo*. São Paulo, 16 de agosto de 2016. Available at: <https://www.vunesp.com.br/TJSP1504>. Last visited on May 1, 2018.

job to be filled, so that the constitutionally mandated reservation is being fulfilled, or is being gradually fulfilled.

[...]

Not having employees or public servants with disabilities in reasonable representative parameters (remember that we do not yet have a law with effective reservation of positions and public jobs in each State body), this single vacancy can be filled by a disabled person. In this case, this information must be clear on the announcement of the public exam, in the sense that it is clear that the only vacancy available is supposed to be filled by a disabled person³⁶.

The adoption of these regulations reveals the extreme importance invested in the fact that these bodies shall give society an example of inclusion of persons with disabilities in their staff in a broader way, also allowing access to the main careers, especially considering the extreme visibility they pose.

However, in the year of 2010, the public announcement of the 87th Public Prosecutor's Office entrance exam to the State of São Paulo, disclosed an offer of 75 vacancies for prosecutors, with 71 for all types of contestants and 4 for people with disabilities³⁷. The final result registers the approval of 73 candidates in this specific exam and none with disabilities³⁸.

In the 86th Public Prosecutor's Office entrance exam of 2008 (prior to the effectiveness of CRPD, but with the Constitutional text already leaving no room for doubt about the obligation to broad inclusion), the final result does not make reference to any person with a disability³⁹. Of the 79 vacancies, 71 were destined to all kinds of contestants and 4 for people with disabilities, approving 52 contestants in the general dispute and none within the disability quotas⁴⁰.

³⁶ GUGEL, Maria Aparecida. *Pessoas com deficiência e o direito ao concurso público: reserva de cargos e empregos públicos – administração pública direta e indireta*. 3. ed. Goiânia: Editora da UGC, 2016. Available at: <http://www.revistaec.com/index.php/revistaec/article/view/269>. Last visited on November 01, 2017.

³⁷ MINISTÉRIO PÚBLICO DO ESTADO DE SÃO PAULO. *Edital do 87º concurso de ingresso na carreira do Ministério Público – 2010*. São Paulo, 31 de dezembro de 2009, p. 1. Available at: http://www.mpsp.mp.br/portal/page/portal/concursos/membros/87_CONCURSO_INGRESSO. Last visited on May 1, 2018.

³⁸ MINISTÉRIO PÚBLICO DO ESTADO DE SÃO PAULO. *Aviso Nº 191/11 – PGJ. Relatório final do 87º concurso de ingresso na carreira do Ministério Público – 2010*. São Paulo, 14 de março de 2011. Available at: http://www.mpsp.mp.br/portal/page/portal/concursos/membros/87_CONCURSO_INGRESSO. Last visited on May 1, 2018.

³⁹ MINISTÉRIO PÚBLICO DO ESTADO DE SÃO PAULO. *Edital do 86º concurso de ingresso na carreira do Ministério Público – 2008*. São Paulo, SP, 14 de agosto de 2008. Available at: http://www.mpsp.mp.br/portal/page/portal/concursos/membros/87_CONCURSO_INGRESSO. Last visited on May 1, 2018.

⁴⁰ MINISTÉRIO PÚBLICO DO ESTADO DE SÃO PAULO. *Aviso nº 549/09 – PGJ. Relatório final do 86º concurso de ingresso na carreira do Ministério Público – 2008*. São Paulo, 31 de julho de

In Minas Gerais the situation is similar. The Service Exam Public Announcement under number 01/2011 initially provided for the offer of 14 vacancies for the career of judge, of which 10% should be aimed at people with disabilities⁴¹. In the general classification stage, 99 candidates without disabilities were classified, among which only 1 was a quota holder⁴².

In the Minas Gerais Public Prosecutor's Office entrance exam, this situation also occurs. In the 55th exam to be a Prosecutor, in 2017, 36 places were destined to all kinds of contestants and 4 places for people with disabilities⁴³. The final result indicates the approval of 31 candidates in general and none with disabilities⁴⁴.

Access to academic career

The dimension of the problem on inclusiveness can be better understood by looking at how the rule in question is applied in the case of entrance exams to join careers in academia. A good sampling can be done by examining what happened in three large exams for professor vacancies recently held in Brazil, two of them at the federal level and one at state level.

The Federal University of Rio de Janeiro (UFRJ), through Public Announcement n. 588, dated September 14, 2017, announced vacancies for 9 areas of academic service. Of these, 8 areas were contemplated with 1 seat each and for one of the areas 2 vacancies were reserved. From the perspective of the constitutional reservation of va-

2009. Available at: http://www.mpsp.mp.br/portal/page/portal/home/interna/concursos/86_CONCURSO_INGRESSO_CARREIRA. Last visited on May 1, 2018.

⁴¹ TRIBUNAL DE JUSTIÇA DO ESTADO DE MINAS GERAIS. *Edital n. 01/2011, do concurso público de provas e títulos para ingresso na carreira da magistratura do Estado de Minas Gerais*. Belo Horizonte, 14 de outubro de 2011, p. 1. Available at: <http://www.tjmg.jus.br/portal-tjmg/transparencia/concursos/concurso-juiz-de-direito-substituto-edital-n-01-2011-1.htm>. Last visited on May 1, 2018.

⁴² TRIBUNAL DE JUSTIÇA DO ESTADO DE MINAS GERAIS. *Lista de classificação final do concurso público de provas e títulos para ingresso na carreira da magistratura do Estado de Minas Gerais – Edital n. 01/2011*. Belo Horizonte, 26 de março de 2013. Available at: <http://www.tjmg.jus.br/portal-tjmg/transparencia/concursos/classificacao-final-dje-de-26-03-2013.htm>. Last visited on May 1, 2018.

⁴³ MINISTÉRIO PÚBLICO DO ESTADO DE MINAS GERAIS. *Edital do LV concurso para ingresso na carreira do Ministério Público do Estado de Minas Gerais*. Belo Horizonte, 17 de janeiro de 2017, p. 1. Available at: <https://www.mpmg.mp.br/ acesso-a-informacao/concursos/membros/lv-concurso-de-promotor-de-justica-substituto/lv-concurso-de-promotor-de-justica-substituto.htm>. Last visited on May 1, 2018.

⁴⁴ MINISTÉRIO PÚBLICO DO ESTADO DE MINAS GERAIS. *Resultado final do LV concurso para ingresso na carreira do Ministério Público do Estado de Minas Gerais*. Belo Horizonte, 30 de novembro de 2017. Available at: <https://www.mpmg.mp.br/ acesso-a-informacao/concursos/membros/lv-concurso-de-promotor-de-justica-substituto/lv-concurso-de-promotor-de-justica-substituto.htm>. Last visited on May 1, 2018.

cancies and even if only the average percentage established legally was considered, it would be reasonable to understand that at least one of these 10 vacancies should be reserved for candidates with disabilities. However, as the percentage is applied separately to each vacancy⁴⁵, the quota agreement in the event in this exam was not even considered, according to item 3 of the respective announcement:

[...]

3. ON THE PARTICIPATION OF PERSONS WITH DISABILITIES 3.1.
Due to the number of vacancies, the provisions of Article 37, item VIII, of the Constitution of the Federative Republic of Brazil of 1988, Federal Law No. 7,85/1989 and Federal Decree No. 3,298/1999, shall not apply to this exam⁴⁶.

On the call to the exam under public announcement no. 860, dated December 20, 2017, also from the Federal University of Rio de Janeiro, still in progress, only 5% of the vacancies were reserved for candidates with disabilities⁴⁷. The vacancies were distributed in an institutional arrangement containing 236 different areas, and for each of these areas a maximum of two vacancies were foreseen, except in the case of mathematics, for which a total of 6 vacancies were available, one being guaranteed to the disability quota holders. The accounting of the vacancies offered in the exam shows that, in a universe of 285 vacancies, only one was reserved for people with disabilities⁴⁸.

⁴⁵ Regarding the issue, it should be noted that Decree No. 9,508, dated September 24, 2018, which was recently published, deals with the specific theme of reserving vacancies and public jobs for people with disabilities at federal level. According to what is written in article 1, paragraph 4, item I, of said Decree, “I – On the hypotheses of a public entrance exam or a selection process that is regionalized or structured by specialty, the minimum percentage of reservation will be applied to the total vacancies of the public announcement of the exam or selection process, except in cases where it is shown that such regionalized or specialized appliance will not lead to a reduction in the number of vacancies for disabled people” (BRASIL. Brasília. Presidência da República. Decreto 9.508, de 24 de setembro de 2018. Available at: http://www.planalto.gov.br/CCivil_03/_Ato2015-2018/2018/Decreto/D9508.htm. Last visited on November 16, 2018.

⁴⁶ Universidade Federal do Rio de Janeiro. *Edital de n. 588, de 14 de setembro de 2017, do concurso público para provimento de vagas em cargos efetivos da carreira de magistério do ensino básico, técnico e tecnológico*. Rio de Janeiro, 14 de setembro de 2017. Available at: https://concursos.pr4.ufrj.br/images/stories/_concursos_PR4/edital-588-2017/editais-e-anexos/Edital-588--de-14-09-17---01-03-18.pdf. Last visited on May 30, 2018.

⁴⁷ Universidade Federal do Rio de Janeiro. *Edital de n. 860, de 20 de dezembro de 2017, do concurso público para provimento de vagas em cargos efetivos da carreira de magistério superior*. Rio de Janeiro, 20 de dezembro de 2017. Available at: https://concursos.pr4.ufrj.br/images/stories/_concursos_PR4/Edital-860-17/Editais-e-Anexos/Edital_860-17_-_17-01-18.pdf. Last visited on May 30, 2018.

⁴⁸ Universidade Federal do Rio de Janeiro. *Anexo III do edital de n. 860, de 20 de dezembro de 2017, do concurso público para provimento de vagas em cargos efetivos da carreira de magistério supe-*

In Minas Gerais, in what was perhaps one of the largest exams to admission of professors ever held by the state, the SEPLAG/UEMG (Secretary of State for Planning and Management/State University of Minas Gerais) public announcement under No. 08/2014, of November 28, 2014, announced the offer of 146 vacancies, of which only 13 (less than 10%) should be destined to candidates with disabilities⁴⁹. The results show that at the end of the process only 10 candidates – about 7% of the total – were approved under special condition⁵⁰.

In the last IBGE (Brazilian Institute of Geography and Statistics) census, out of the 42,146,647 people with disabilities interviewed, only 2,808,878 (6%) have completed higher education⁵¹. Despite the effort to expand educational training in this category, people with disabilities are rarely seen teaching or involved in academia, which is still worrisome and feeds the stigma on disability being an obstacle.

The importance of including such people in academic careers is also present in the fact that the teaching practice, when carried out by members of vulnerable groups, has a great potential to reaffirm the need for effective democratization of workplaces.

It should also be stressed that distance education is also an important alternative for the training and qualification of people with disabilities, especially in those cases involving more severe disabilities. Greater and better investments in this field can undoubtedly promote future improvements in the condition of access to the labor market of professors and intellectual activities in general.

Teleworking [...], or computerized home offices, have grown considerably thanks to the definitive insertion of computer technology into the day-to-day activities of human beings, and it also opens up an excellent field of work for people with disabilities⁵².

rior. Rio de Janeiro, 20 de dezembro de 2017. Available at: https://concursos.pr4.ufrj.br/imagens/stories/_concursos_PR4/Edital-860-17/Edital-e-Anexos/ANEXO_III_-_Edital_860_-_17-01-18.pdf. Last visited on May 30, 2018.

⁴⁹ Universidade do Estado de Minas Gerais – UEMG. *Edital Seplag/UEMG N. 08/2014, de 28 de novembro de 2014. Concurso público de provas e títulos para provimento de cargos da carreira de professor de educação superior*. Minas Gerais, 28 de novembro de 2014. Available at: <https://fs.ibfc.org.br/arquivos/a09cdaa8c0240b92b36e75235f00ce48.pdf>. Last visited on May 30, 2018.

⁵⁰ Universidade do Estado de Minas Gerais – UEMG. *Resultados finais e homologações referentes ao Edital Seplag/UEMG N. 08 /2014, de 28 de novembro de 2014. Concurso público de provas e títulos para provimento de cargos da carreira de professor de educação superior*. Minas Gerais, 28 de novembro de 2014. Available at: https://www.ibfc.org.br/concurso/concurso_selecionado/241. Last visited on May 30, 2018.

⁵¹ INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA – IBGE. Rio de Janeiro: *Boletim estatístico – censo 2010*. Available at: https://biblioteca.ibge.gov.br/visualizacao/periodicos/94/cd_2010_religiao_deficiencia.pdf. Last visited on March 24, 2018.

⁵² SASSAKI, Romeu Kazumi. *Inclusão: construindo uma sociedade para todos*. 8. ed. Rio de Janeiro: 2010. p. 76.

However, although the telework option is very interesting, it is not possible to give up on the continuity of the processes of adaptation of workplaces and the implementation of accessibility in public spaces and means of transportation of the country, since interpersonal interaction is important for the complete social inclusion in question and, consequently, for the visibility that does not let ostracism happen.

In order to achieve the ideal of full inclusion of persons with disabilities in the workplace, both in the public and private sectors, and in line with what was agreed by the States Parties to the 2007 Convention on the Rights of Persons with Disabilities, the priorities of governments and society as a whole must be: (a) to increase investments in the implementation of inclusive education policies; b) to carry out more frequent supervision of the promotion of work to the disabled person; and c) to combat the precariousness of working conditions and the rights of these persons, punishing those responsible for violations⁵³.

With the attainment of these priorities, surely the ideal of a good life becomes more accessible, transforming it into one constructed with both the similar and the different, and constructed to the similar and the different.

FINAL THOUGHTS

The principles that enhance and underpin policies and actions for the inclusion of people with disabilities in the labor market are numerous and are clearly stated in international and domestic legislation. These provisions focus on the need to promote access to employment as widely as possible, both in the private sector and at the State level.

Evidently contrasting with these objectives, the imperatives of maximum efficiency at any cost, the search for the indiscriminate increase of profitability and the increase of competitiveness among companies are some of the components that condition the labor market, generating prejudice and discrimination in the admission of employees. The result is that most companies have been limited to complying with the quotas provided for in the regulatory legislation, as if said affirmative measures would represent an obstacle to meeting business goals.

Specifically in the public sector, where the rule of reserving vacancies via exams for entrance in public careers prevails, much still has to be done to achieve the ideal of participation people with disabilities in a level that is minimally close to the numerical representativeness of this vulnerable group in the social environ-

⁵³ FRANÇA, Tiago Henrique de Pinho Marques. *Deficiência e pobreza no Brasil: a relevância do trabalho das pessoas com deficiência*. Universidade de Coimbra, 2014. PhD Thesis. Available at: <https://estudogeral.sib.uc.pt/bitstream/10316/27101/1/Defici%C3%A7%C3%A3o%20e%20Pobreza%20no%20Brasil.pdf>. Last visited on November 16, 2018, p. 115.

ment. Most of the exams have stipulated the reservation of only 10% of the vacancies for candidates with disabilities, although the legislation establishes the maximum percentage of 20% for both. As it was verified here, the final results of these exams have shown that much remains to be done to achieve the constitutionally listed ideal. In addition to the low initial percentage of this vacancy reservation, in the great majority of the public announcements to the exams, very few candidates that fit the rule as quota holders appear on the lists of candidates approved.

The absence of disabled persons in leadership and management positions feeds back the already widespread prejudice and enhances the invisibility to which they fall victims, causing the false impression that they are predestined to always occupy jobs that require little ability or only demand small responsibilities. On the other hand, the absence of such persons in functions of superior hierarchical skill precludes the manifestation of the noblest wishes and proposals in defense of policies that are beneficial to the categories of which they are part, making it difficult to break prejudice and discrimination.

The guiding lines provided by the National Council of the Public Prosecutor's Office should be emphasized so that the public administrator, when conducting the exams to enter public careers, should check and constantly correct the fair distribution of the quota reservation among the various categories present in the institutional organization chart.

Another important point concerns the need to maintain a continuous improvement in the quality of public services. In this context, disabled persons should be provided with an adequate structure for preparing for work, which should start from the earliest school years and have serious and well-targeted investments in the transportation, adaptation and remodeling of public spaces, in addition to the implement of a full range of accessibility features.

It must be borne in mind that the major purpose of inclusive policies for people with disabilities is to make affirmative policies gradually less necessary as democratic participation is increasingly seen as usual. Only the achievement of this collective wish will demonstrate the fulfillment of the fundamental constitutional objective of building a solidary society in its entirety.

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