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TRAINING PENSION AS A BENEFIT FROM SOCIAL
INSURANCE SUPPORTING THE PROCESS
OF VOCATIONAL REHABILITATION
– SELECTED PROBLEMS AND CONTROVERSIES

RENTA SZKOLENIOWA JAKO ŚWIADCZENIE
Z UBEZPIECZENIA SPOŁECZNEGO WSPIERAJĄCE
PROCES REHABILITACJI ZAWODOWEJ
– WYBRANE PROBLEMY I KONTROWERSJE

Summary: This article presents and evaluates Polish normative solutions regarding the training pension as a benefit from the general social insurance system, intended to support the implementation of the vocational rehabilitation process. The essence and purpose of vocational rehabilitation in terms of international documents and Polish law were presented, and the role assigned to the training pension in the process of implementation of this rehabilitation was indicated. It also shows the shortcomings of the legal provisions in force in Poland and the adopted organizational and financial solutions, which meant that, contrary to expectations, the role of the indicated cash benefit from social insurance in supporting the implementation of the vocational rehabilitation process is negligible.

Keywords: vocational rehabilitation, social security system, disability insurance, training pension.

Streszczenie: W niniejszym artykule dokonano prezentacji i oceny polskich rozwiązań normatywnych dotyczących renty szkoleniowej jako świadczenia z powszechnego systemu ubezpieczeń społecznych, mającego wspierać realizację procesu rehabilitacji zawodowej. Przed-

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stawiono istotę i cel rehabilitacji zawodowej w ujęciu dokumentów międzynarodowych oraz prawa polskiego oraz wskazano rolę, jaką w procesie realizacji tej rehabilitacji przypisuje się rencie szkoleniowej. Ukazano także mankamenty obowiązujących w Polsce w tym zakresie przepisów prawa oraz przyjętych rozwiązań organizacyjnych i finansowych, które sprawiły, iż wbrew oczekiwaniom rola wskazanego świadczenia pieniężnego z ubezpieczenia społecznego w zakresie wspierania realizacji procesu rehabilitacji zawodowej jest znikoma.

Słowa kluczowe: rehabilitacja zawodowa, system ubezpieczeń społecznych, ubezpieczenia rentowe, renta szkoleniowa

INTRODUCTION

The training pension as a benefit to support the implementation of the vocational rehabilitation process was introduced in Poland to the catalog of benefits from the general social insurance system under the provisions of the Act of 28 June 1996 amending certain acts on pension provision and social insurance¹. Thus, apart from the regulations concerning the medical rehabilitation which has been functioning in the indicated insurance system since 1995, the regulations concerning the support of the vocational rehabilitation process have reappeared in the Polish social insurance law².

The establishment of the benefit in question in the general social insurance system met with approval in academic literature³, which was accompanied by hope for a significant improvement in the process of vocational rehabilitation of persons subject to insurance in the indicated insurance system, for whom professional retraining was adjudged due to inability to work in the current profession. Unfortunately, the practice of applying the adopted normative as well as organizational and financial solutions in the field of vocational rehabilitation of the indicated persons justifies the claim that these hopes have not been fulfilled, and the importance of the training pension as a benefit supporting the process of vocational rehabilitation is small in Poland⁴. So the question arises, what caused the indicated state of af-

¹ Journal of Laws of 1996, No. 100, item 461.

² Provisions on supporting the process of vocational rehabilitation of persons insured in the general social insurance system were previously contained in the Act of 15 February 1989 amending the Act on the organization and financing of social insurance (Journal of Laws of 1989, No. 25, item 137).

³ Cf. eg. I. Jędrasik-Jankowska, *Nowe ujęcie ryzyka niezdolności do zarobkowania*. „Praca i Zabezpieczenie Społeczne” 1997, no. 1, p. 17; W. Koczur, *Orzekanie o niezdolności do pracy dla celów rentowych*, [in:] *Prawo pracy, ubezpieczenia społeczne, polityka społeczna. Wybrane zagadnienia*, ed. B.M. Czwirniak, Opole 1998, p. 387 ff.; O. Kowalczyk, *Zmiana zasad orzekania o niepełnosprawności i niezdolności do pracy jako element reformy systemu ubezpieczeń społecznych*, [in:] *Reformy społeczne i zagrożenia ich realizacji*, ed. L. Frąckiewicz, W. Koczur, Katowice 1998, p. 268; U. Jackowiak, *Zmiana kryteriów i trybu orzekania o niezdolności do pracy dla celów rentowych*. „Gdańskie Studia Prawnicze” 2000, Vol. VI, p. 155.

⁴ Cf. J. Walusiak-Skorupa, M. Lipowska, M. Wiszniewska, *Ocena roli Zakładu Ubezpieczeń Społecznych w aktywizacji zawodowej osób z problemami zdrowotnymi, realizowanej poprzez wydanie orzeczeń o celowości przekwalifikowania zawodowego*, „Medycyna Pracy” 2020, no. 3, p. 309 ff.

fairs?; which of the existing solutions in the discussed matter should be considered particularly inaccurate and, therefore, requiring change. This study is an attempt to answer these questions.

VOCATIONAL REHABILITATION – CONCEPT AND PURPOSE

Vocational rehabilitation is treated both in the documents of the International Labor Organization⁵, the Council of Europe⁶ and the European Union⁷ as an element of comprehensive rehabilitation, understood as a coordinated set of organizational, medical, economic and social activities aimed at achieving the highest possible level of functioning of people with disabilities, including people with lost or reduced ability to work and enabling them - depending on their individual situation - to take up paid work, continue their current work or gain qualifications for another job, corresponding to their health capabilities. Comprehensive rehabilitation understood in this way covers the subjective scope of activities in the field of medical, professional and social rehabilitation.

The comprehensive nature of the modern model of rehabilitation is also emphasized by the Polish legislator, who in Art. 7(1) of the Act of 27 August 1997 on Vocational and Social Rehabilitation and Employment of People with Disabilities⁸ states that rehabilitation of people with disabilities means a set of activities, in particular organizational, therapeutic, psychological, technical, training, educational and social, aimed at achieving, with active participation these people, the highest possible level of their functioning, quality of life and social integration. In the cited provision, they point out that the Polish legislator also emphasizes the need for active

⁵ In particular, in chronological order, the provisions of the ILO Recommendation No. 99 on the adaptation and occupational rehabilitation of invalids issued on 1 June 1955 and the ILO Convention No. 159 on the occupational rehabilitation and employment of persons with disabilities adopted on 1 June 1983 and Recommendation No. 168 of the same title. It should be noted that the provisions important from the point of view of the process of restitution of working capacity in social security systems are also contained in the ILO Conventions: No. 102 of 1952 on minimum standards of social security, No. 121 of 1964 on benefits in the event of accidents at work and occupational diseases and 128 of 1967 on invalidity, old age and survivors' benefits. Cf. W. Koczur, *Kwestia restytucji zdolności do pracy w systemach ubezpieczeń społecznych w świetle postanowień aktów międzynarodowych*. „Z Zagadnień Zabezpieczenia Społecznego” 2009, no 1, p. 11 ff.; see also A. Dral, *Ochrona pracowników niepełnosprawnych*, [in:] *System prawa pracy*. Vol. IX: *Międzynarodowe publiczne prawo pracy. Standardy globalne*, ed. K.W. Baran, Warszawa 2019, p. 828 ff.

⁶ Provisions regarding the issues discussed here can be found both in the European Social Charter of 1961, the Revised European Social Charter of 1996, as well as in the European Code of Social Security of 1964 and the Revised European Code of Social Security of 1990. Cf. W. Koczur, *Kwestia restytucji zdolności do pracy...* op. cit., p. 18ff.; G. Uścińska, *Europejskie standardy zabezpieczenia społecznego a współczesne rozwiązania polskie*, Warszawa 2005, p. 317ff.

⁷ Cf. provisions of the Community Charter of Fundamental Social Rights of Workers adopted on 9 December 1989 (especially Title I, Points 10 and 26) or Council Recommendation No. 442 of 27 July 1992 on the convergence of objectives and policies in the field of social protection (Official Journal of the European Communities, No L 245, 26.8.1992, p. 49).

⁸ Consolidated text Journal Laws of 2021, item 573 as amended.

participation in the discussed process of people with disabilities and the inclusive nature of the activities carried out within its framework, which is in line with the recommendations of the above-mentioned international organizations.

The inclusive nature of vocational rehabilitation as an integral part of comprehensive rehabilitation is emphasized in Art. 1(2) of the ILO Convention No. 159 on Vocational Rehabilitation and Employment of Disabled Persons⁹ adopted in Geneva on 20 June 1983, in which it is stated that the purpose of this rehabilitation is to enable a disabled person to obtain and maintain suitable employment, to advance professionally, thus facilitating his or her integration or reintegration into society¹⁰.

The Polish legislator, specifying similarly in Art. 8(1) of the Act on Vocational and Social Rehabilitation and Employment of People with Disabilities, the objective of vocational rehabilitation adds at the same time that the implementation of this objective is carried out by enabling the indicated persons to use vocational counseling, vocational training and job placement¹¹, while for its implementation it is necessary:

- 1) assessing the ability to work, in particular by: a) conducting medical and psychological examinations enabling the determination of physical and mental fitness to perform the profession and assessing the possibility of increasing this fitness; b) determination of qualifications, professional experience, talents and interests,
- 2) conducting vocational counseling taking into account the assessment of work capacity and enabling the selection of the appropriate profession and training,
- 3) professional preparation, taking into account employment prospects,
- 4) selection of the appropriate workplace and its equipment,
- 5) specification of technical means enabling or facilitating the performance of work, and if necessary – orthopedic items, aids, rehabilitation equipment, etc.

As it is emphasized in the literature in the field of the discussed matter, the vocational rehabilitation program and its implementation must be adapted to the capabilities of a given person and vary in complexity in individual cases. This is determined by the type and severity of the disease diagnosed in a given person, their age and sex, environment and a number of other factors, including personality traits¹². An important issue is also the implementation of the principle of early initiation

⁹ Journal of Laws of 2005, No. 43, item 412.

¹⁰ Cf. A. Dral, *Ochrona pracowników niepełnosprawnych...*, p. 851 ff; A. O'Reilly, *The right to decent work of persons with disabilities*. ILO, Geneva 2007, p. 27 ff.

¹¹ Due to the lack of regulation of the above-mentioned labor market services in the provisions of the above-mentioned Act, in order to determine the scope of the assistance provided and its recipients, we are forced to use the provisions of the Act of 20 April 2004 on employment promotion and labor market institutions, i.e. Journal of Laws of 2022, item 690 as amended On the labor market services in question, see M. Grewiński, *Usługi społeczne we współczesnej polityce społecznej. Przegląd problemów i wizja przyszłości*, Warszawa 2021, p. 316 ff.

¹² Cf. *Rehabilitacja zawodowa. Stan aktualny i proponowane zmiany*, ed. G. Uścińska, A. Wilmowska-Pietruszyńska, Warszawa 2014, passim; M. Garbat, *Rehabilitacja zawodowa i zatrudnienie chronione osób z niepełnosprawnościami w Polsce – geneza, rozwój i stan obecny*, „Niepełnosprawność – Zagadnienia, Problemy, Rozwiązania” 2015, no. 1, p. 81.

of this rehabilitation, which means that it should be started as soon as possible. To this end, as already postulated in ILO Recommendation No. 168 of 1983 on the vocational rehabilitation and employment of people with disabilities, health systems and entities responsible for medical rehabilitation should cooperate with the bodies responsible for vocational rehabilitation¹³.

The implementation of activities in the field of restitution of working capacity requires not only the activity of relevant institutions in the field of medical and vocational rehabilitation, but also supporting the rehabilitation process through cash benefits aimed at, on the one hand, compensating an insured person unable to work as a result of an illness or accident income (protective and compensatory function), and, on the other hand, motivate to undergo the recommended rehabilitation and vocational training (motivational function), which can only take place if the conditions for acquiring the right to the benefits in question and their amount are satisfactory for the indicated person¹⁴. A cash benefit from social insurance (established, as indicated above, both in the Polish general system and in the social insurance of farmers¹⁵) intended to support the implementation of the vocational rehabilitation process is a training pension, granted to persons for whom vocational retraining has been adjudicated due to inability to work in current profession (general system), or permanent and total inability to work on a farm (social insurance for farmers).

TRAINING PENSION AS A BENEFIT FROM SOCIAL INSURANCE – GENERAL CHARACTERISTICS

The rules and procedure for granting a training pension as a benefit from the general social insurance system are specified in the provisions of the Act of 17 December 1998 on old-age and disability pensions from the Social Insurance Fund¹⁶, and the rules for adjudicating on the advisability of professional retraining are laid down in the Regulation of the Minister of Social Policy of 14 December 2004 in on the determination of incapacity for work¹⁷.

¹³ Cf. W. Koczur, *Kwestia restytucji zdolności do pracy...*, p. 17; see also eg. C. Gobelet, F. Franchignoni, *Vocational rehabilitation*, Paris, Berlin, Heidelberg, New York 2006, p. 10; *The Inclusion of Persons with Disabilities in Vocational Training and Employment*, ILO, Geneva 2007, passim; *Guidelines on Return to Work and Reintegration*. ISSA, Geneva 2016, p. 19 ff.

¹⁴ Cf. W. Koczur, *Restytucja zdolności do pracy w polskim powszechnym systemie ubezpieczeń społecznych*, Katowice 2010, p. 171 ff.; see also eg. A. O'Reilly, *The right to decent work...*, p. 87 ff.; H. Low, L. Pistaferrri, *Disability insurance and the dynamics of the incentive insurance trade-off*. 'American Economic Review' 2015, no. 10 (105), p. 2986 ff.

¹⁵ Cf. article 21b of the Act of 20 December 1990 on social insurance for farmers (i.e. Journal of Laws of 2022, item 933, as amended).

¹⁶ Consolidated text: Journal of Laws of 2022, item 504 as amended.

¹⁷ Journal of Laws of 2004, No. 273, item 2711 as amended.

As stipulated in Art. 60(1) of the Act on old-age and disability pensions from the Social Insurance Fund, the said benefit is payable to the insured person who meets the conditions for acquiring the right to a disability pension and in relation to whom it has been decided, as indicated above, that professional retraining is appropriate due to inability to work in the current profession. The prerequisites for acquiring the right to a pension due to incapacity for work are set out in Art. 57(1) of the said act.

Pursuant to the indicated legal regulation, the disability pension is payable to an insured person who has met the following conditions jointly:

- 1) is unable to work¹⁸;
- 2) has the required contributory and non-contributory period¹⁹;
- 3) the incapacity for work occurred in the periods enumerated in the above-mentioned act, and in the periods of receiving the nursing benefit or special care allowance specified in the provisions on family benefits²⁰ or the guardian's allowance specified in the provisions on the determination and payment of allowances for guardians²¹, for which there was no obligation to pay contributions for retirement and disability insurance, or not later than within 18 months from the end of these periods;
- 4) does not have an established right to an old-age pension from the Fund or does not meet the conditions for obtaining it.

It should be noted that the condition specified in point 2 is not required from the insured person whose incapacity for work is caused by an accident on the way to

¹⁸ According to Art. 12(1) of the Act on old-age and disability pensions with FUS (Social Insurance Fund), an incapable of work is a person who has completely or partially lost the ability to work due to a violation of the body's fitness and does not promise regaining the ability to work after retraining, and a person who has lost the ability to work is completely incapable of work to perform any work (Article 12(2)), and a person who is partially incapable of work and who has significantly lost the ability to work in accordance with the level of qualifications held (Article 12(3)). On the structure and content of the risk of incapacity for work in social disability insurance, see H. Pławucka, *Ryzyko niezdolności do pracy dla celów rentowych – konstrukcja i treść*, [in:] *Niezdolność do pracy jako ryzyko w społecznym ubezpieczeniu rentowym*, PSUS, Warszawa – Chorzów 2014, p. 31 ff; K. Roszewska, *Ryzyko niezdolności do pracy*, Warszawa 2018, p. 229 ff. Let us add that the nature of the incapacity for work (permanent or temporary) is related to the right to a permanent or periodic pension, while the amount of the benefit usually depends on the extent of this incapacity (total or partial). It should also be emphasized that both permanent and periodic pensions may be granted in the case of total and partial incapacity for work. The criterion differentiating the indicated types of pensions are the prognosis as to the possibility of regaining the ability to work. If there are no such prospects, a permanent pension is awarded, and if the prognosis as to the possibility of regaining the ability to work is favorable, a periodic pension is awarded. In turn, the training pension is a benefit due in the event of partial permanent incapacity to work in the current profession, in a situation where professional retraining is appropriate.

¹⁹ The contributory and non-contributory periods used to determine the right to a disability pension are the periods listed in Art. 6 and 7 of the Act on old-age and disability pensions from the Social Insurance Fund, but it should be remembered that pursuant to Art. 5(2) of the said regulation, when determining the right to a disability pension and calculating its amount, non-contribution periods are taken into account in the amount not exceeding 1/3 of the proven contribution periods.

²⁰ See the Act of 28 November 2003 on family benefits. Consolidated text: Journal of Laws of 2022, item 615 as amended.

²¹ See the Act of 4 April 2014 on the determination and payment of allowances for guardians. Consolidated text: Journal Laws of 2020, item 1297.

or from work²², and the condition specified in point 3 does not apply to the insured person who has proven the contributory and non-contributory period of at least 20 years for a woman or 30 years for a man and is completely incapable of work.

In addition to the above-mentioned conditions for acquiring the right to a pension due to incapacity for work (permanent or temporary), which have already been extensively analyzed and assessed in the literature in the field of social insurance²³, the condition for acquiring the right to a training pension is also a decision on the advisability of professional retraining due to inability to work in the current profession. However, the applicable regulations do not specify how the concept of a profession performed so far should be understood - whether it will be a studied and practiced profession, or actually practiced, although not studied, or maybe also studied, but not actually practiced.

The view of H. Pławucka seems to be correct here, according to which in the practice of adjudicating on the right to a training pension, the concept of the profession practised so far should refer not only to the profession studied and practiced, but also to longer professional activity practised before falling ill, even if it is not consistent with the studied profession, which is not uncommon in the current socio-economic reality²⁴.

Otherwise, the advisability of professional retraining could not be declared in relation to people who do not have a specific profession, but perform work consistent with general skills allowing them to perform paid work, which would constitute unjustified preference for people without qualifications (profession), because without acquiring the right to a training pension, they would always be entitled to a pension for partial incapacity for work.

As indicated above, the rules for adjudicating on the advisability of professional retraining are set out in the Regulation of the Minister of Social Policy of 4 December 2004 on adjudicating on incapacity for work. According to its content, the

²² The legal definition of the term “accident on the way to or from work” is contained in Art. 57b sec. 1 of the Act on old-age and disability pensions from the Social Insurance Fund: see also I. Jędrasik – Jankowska, *Pojęcia i konstrukcje prawne ubezpieczenia społecznego*, Warszawa 2020, p. 139 ff.; K. Antonów, *Ubezpieczenia rentowe*, [in:] *Prawo pracy i ubezpieczeń społecznych*, ed. K.W. Baran, Warszawa 2022, p. 851ff.

²³ See eg. K. Antonów, *Renta z tytułu niezdolności do pracy*, [in:] *Ryzyko niezdolności do pracy w zabezpieczeniu społecznym*, ed. U. Jackowiak, R. Ziółkowska, Gdańsk 2006, p. 52 ff.; H. Pławucka, *Renta z tytułu niezdolności do pracy*, [in:] *Renta w prawie polskim*, ed. M. Dreła, Wrocław 2016, p. 189 ff.; W. Koczur, *Renty z tytułu niezdolności do pracy w pozarolniczym ubezpieczeniu społecznym*, [in:] *Urzeczywistnianie idei humanizmu w kontekście zagwarantowania podstawowych praw osobom z niepełnosprawnościami*, ed. M. Borski, Sosnowiec 2017, p. 125ff.

²⁴ Cf. H. Pławucka, *Renta z tytułu niezdolności do pracy...*, p. 209; The same author: *Ryzyko niezdolności do pracy...*, p. 52; The same author: *Niezdolność do pracy w przepisach prawa emerytalno-rentowego*. „Praca i Zabezpieczenie Społeczne” 1998, no.1, p. 5; W. Koczur, *Restytucja zdolności do pracy w polskim powszechnym systemie ubezpieczeń społecznych...*, p. 207-208; K. Roszewska, *Ryzyko niezdolności do pracy...*, p. 246-247; M. Zieleniecki, *Rola zasiłku wyrównawczego i renty szkoleniowej...*, p. 46. Let us add that the wording of Art. 13(1)(2) of the Act on old-age and disability pensions from the Social Insurance Fund, in the light of which, when assessing the advisability of professional retraining, the type and nature of the job performed so far, the level of education, age and psychophysical predispositions should be taken into account.

evaluating doctor of the Social Insurance Institution, when assessing incapacity for gainful work and the possibility of professional retraining, takes into account jointly: 1) the nature and course of disease processes and their impact on the functional state of the body; 2) the psychophysical fitness of the body and the degree of adaptation to anatomical defects, disability, the effects of the disease; 3) qualifications, age, profession, performed activities and working conditions and the possibility of further performing paid work; 4) the possibility of reinstatement to work through treatment and rehabilitation or professional retraining.

In the literature on the subject, it is emphasized that an important element of the judicial procedure in the case of professional retraining is the psychological assessment of the insured person's ability to work, performed by a consultant psychologist who assesses, among others, the efficiency of the insured person's cognitive functions, the characteristics of his personality (emotional reactions, motivation to retrain and take up work), also determines the interests and professional preferences of the examined person²⁵.

As provided for in § 6 sec. 3 of the regulation referred to above, the advisability of professional retraining is declared if the person applying for the benefit in question has permanently lost the ability to work in the current profession²⁶ and may regain the ability to work after retraining.

If professional retraining is advisable, the Social Insurance Institution (ZUS) issues a decision on granting a training pension for a period of 6 months and directs the person concerned to the poviát labor office for professional retraining. Pursuant to Art. 40(1) of the Act of 20 April 2004 on the promotion of employment and labor market institutions²⁷, the training of the indicated persons is initiated, organized²⁸ and financed from the Labor Fund by the poviát starost. This entity directs a person receiving a training pension to a training indicated by him/her, if he/she justifies the desirability of this training, and its cost in the part financed from the Labor Fund in a given year does not

²⁵ Cf. A. Sidorko, *Renta szkoleniowa*, „Przegląd Ubezpieczeń Społecznych i Gospodarczych” 1999, no. 8, p. 10; A. Wilmowska-Pietruszyńska, *Rola orzecznictwa lekarskiego i rehabilitacji w ramach prewencji rentowej w pozarolniczym ubezpieczeniu społecznym*, [in:] *Zabezpieczenie społeczne osób niepełnosprawnych*, ed. L. Frąckiewicz, W. Koczur, Katowice 2010, p. 84; M. Lipowska, *Zasady orzekania o celowości przekwalifikowania zawodowego*, [in:] *Standardy orzecznictwa lekarskiego ZUS*, Zakład Ubezpieczeń Społecznych, Warszawa 2913, p. 16.

²⁶ The question arises whether the introduction of such an important requirement as permanent incapacity to work in the current profession, not provided for in the Act on pensions and disability pensions from the Social Insurance Fund, in the implementing regulation, does not go beyond the limits of statutory authorization. For doubts in this regard, see also J. Cegielska-Jóźwiak, *Renta szkoleniowa*, „Z Zagadnień Zabezpieczenia Społecznego” 2012, no. 4, p. 16.

²⁷ Consolidated text: Journal of Laws of 2022, item 690 as amended.

²⁸ The organization of the training in question consists in selecting training institutions and concluding training contracts with them, or entrusting training to a training institution established and run by the starost, directing people to training, monitoring the course of training, conducting analyses of the effectiveness and efficiency of training (Article 40(2b) the act on promotion of employment and labor market institutions).

exceed 300% of the average remuneration. It should be noted that referral for training of a person receiving a training pension should be preceded by a determination by the vocational counselor of the poviast labor office of that person's predisposition to perform the profession that he/she will obtain as a result of the training.

At the request of the poviast starost, the above-mentioned period of receiving the benefit in question in connection with professional retraining is extended for the time necessary for professional retraining, but not longer than by 30 months. The period of 6 months referred to above may also be shortened if, before the expiry of this period, the starost notifies the pension body of the impossibility of retraining to another profession or that the person concerned does not undergo professional retraining²⁹.

According to Art. 64(1) of the Act on old-age and disability pensions from the Social Insurance Fund, the training pension amounts to 75% of the pension calculation basis³⁰, however, it cannot be lower than the lowest pension for a person partially incapable of work. Determining the amount of the benefit in question using the method proportional to earnings (i.e. on preferential terms, more favorable than in the case of other disability benefits, as it makes the amount of the training pension directly, in a certain percentage, dependent on the earnings of the insured person) means that the legislator assigns it not only a protective function (providing the insured with funds during the period of professional retraining), but also motivational – the person receiving the benefit in question should feel motivated to focus on obtaining new professional qualifications. For this reason, as it is argued in the literature on the subject, the legislator decided in Art. 64(3) of the Act, that the benefit in question is not due if you earn income from activities subject to social insurance, which is considered to be employment, service or other gainful work or running a business – regardless of its amount³¹. Let us add that the training pension is not due in the period of receiving benefits: sickness, maternity, care, compensatory and rehabilitation benefits.

²⁹ The analysis of the regulations in force in the discussed matter justifies the claim that the role of the pension authority in these proceedings is limited only to the technical implementation of the poviast starost's request. Cf. W. Koczur, *Restytucja zdolności do pracy w polskim powszechnym systemie ubezpieczeń społecznych...*, p. 210; M. Lipowska, *Zasady orzekania...*, p. 19.

³⁰ The assessment basis for the training pension is the average assessment basis for retirement and disability pension insurance or social security contributions over the next 10 calendar years, selected by the person concerned from the last 20 calendar years or from 20 calendar years selected from the entire period of coverage, falling before the year of submitting the application for pension (Art. 15 of the Act on old-age and disability pensions from the Social Insurance Fund). In the case of insured persons who, due to life circumstances, are unable to indicate the earnings earned in the period of 10 consecutive calendar years to determine the pension assessment basis, the contribution assessment basis for the period of actual insurance coverage is adopted (Article 17(1) of the Act).

³¹ Cf. I. Jędrasik-Jankowska, *Pojęcia i konstrukcje prawne...*, p. 361; H. Pławucka, *Renta z tytułu niezdolności do pracy...*, p. 210; M. Zieleniecki, *Rola zasiłku wyrównawczego i renty szkoleniowej w rehabilitacji zawodowej*, [in:] *Ryzyko niezdolności do pracy w zabezpieczeniu społecznym*, ed. U. Jackowiak, R. Ziółkowska, Gdańsk 2006, p. 48. It should be noted, however, that in the literature there is also a view that such a categorical ban on obtaining any, even negligible, income during the period of receiving the training pension is not right. Cf. D. Dzienisiuk, *Prawo pracy a prawo ubezpieczeń społecznych*, Warszawa 2016, p. 277.

As stipulated in Art. 102(2) of the Act on old-age and disability pensions from the Social Insurance Fund, the right to a training pension ceases: 1) after 6 months, if the starost does not apply for an extension of this period; 2) from the date when the starost's notification of the inability to retrain to another profession was received, also when the notification was received by the pension body before the expiry of 6 months; 3) at the end of the period for which the said benefit was granted at the request of the starost; 4) from the date of receipt of the notification from the starost that the person concerned did not undergo professional retraining before the expiry of 6 months or during the period for which the benefit was granted.

The right to the benefit in question ceases, of course, also on the general principles set out in Art. 101 of the Act on old-age and disability pensions from the Social Insurance Fund, i.e. when any of the conditions for obtaining the benefit in question ceases to exist and in the event of the death of the entitled person³².

TRAINING PENSION IN THE GENERAL SOCIAL INSURANCE SYSTEM – DOUBTS AND CONTROVERSIES REGARDING THE APPLICABLE REGULATIONS

The analysis of the regulations in force in the area of the discussed matter leads to reflection that a number of them should be considered unfortunate or even wrong. First of all, in the scope of regulating the conditions for acquiring the right to a training pension, attention is drawn to the contradiction in the definition of incapacity for work contained in Art. 12(1) of the Act on old-age and disability pensions from the Social Insurance Fund (according to which a person is considered incapable of work who has completely or partially lost the ability to work due to impairment of the body's fitness **and does not promise regaining the ability to work after retraining**) with the condition of acquiring the right to a disability pension training in the form of a decision on the advisability of professional retraining (Art. 60(1) of the Act). As indicated above, in accordance with the applicable legal status, in order to acquire the right to a training pension, it is necessary to meet the conditions set out in Art. 57(1) of the Act (including the declaration of incapacity for work) and 60(1) of the Act on pensions and disability pensions from the Social Insurance Fund (decision on the advisability of professional retraining). However, it is not possible for the same insured person to state that he or she does not promise to regain the ability to work after retraining and at the same time declare the advisability of such retraining³³. Unless we assume that the *inability to work in the current profession*, referred

³² Cf. K. Antonów, *Komentarz do art. 101 ustawy o emeryturach i rentach z FUS*, [in:] *Emerytury i renty z FUS, emerytury pomostowe, okresowe emerytury kapitałowe. Komentarz*, ed. K. Antonów, Warszawa 2014, p. 516 ff.; I. Jędrasik-Jankowska, *Pojęcia i konstrukcje prawne...*, p. 239 ff.

³³ As J. Cegielska-Jóźwiak aptly notes (*Renta szkoleniowa...*, p. 24), a consistent and literal interpreta-

to in Art. 60 of the Act, is separate from the one specified in Art. 12 of the Act by type of incapacity for work. Then there is no contradiction between the requirement of no negotiations to regain the ability to work, which is a necessary condition for the declaration of incapacity for work within the meaning of Art. 12 of the Act, and the condition of advisability of professional retraining, which is necessary for the granting of a training pension³⁴. Acceptance of such a position, however, means that the thesis that the training pension is a benefit separate from the disability pension referred to in Art. 57 of the Act on old-age and disability pensions from the Social Insurance Fund, since it differs from it in terms of purpose, premises and amount³⁵. It should be noted that both in the literature in the field of social security and in the judicature, the view is also presented that the training pension is not a separate type of pension, which is directly indicated by Art. 3(2) of the Act on old-age and disability pensions from the Social Insurance Fund³⁶.

In the context of the above-mentioned doubts related to the nature of the training pension, the question arises whether the insured person may submit an application for the indicated benefit himself/herself or whether this benefit should be granted automatically by the pension authority if, as a result of submitting an application for a disability pension, the advisability of professional retraining will be determined. The legislator does not explicitly resolve this issue. Opposing views are presented in the literature on the subject matter. While one of them assumes that the training pension cannot be the subject of a separate application by the insured person due to its dependent nature³⁷, the other states that if we consider the indicated pension as a different type of pension from the disability pension, then it is subject to the general rules set out in Art. 116(1) of the Act and may be the subject of a separate application by the insured person³⁸. In the practice of pension authorities, the first view is generally accepted, which is based on the executive provisions to the Act, including the above-mentioned § 6 sec. 3 of the Regulation of the Minister of Social Policy on the determination of incapacity for work.

tion of the provisions in force in the matter in question makes it impossible to grant a training pension, as it requires the insured person to meet two completely contradictory conditions: ability to work after retraining and the desirability of retraining.

³⁴ Such a position finds support in the literature in the field of the discussed matter, see eg. H. Pławucka, *Niezdolność do pracy w przepisach...*, p. 6.

³⁵ See J. Cegielska-Jóźwiak, *Renta szkoleniowa...*, p. 24; R. Więcek, *Renta szkoleniowa jako jedno ze świadczeń pieniężnych przysługujących w ramach ubezpieczenia społecznego*, „Ubezpieczenia Społeczne. Teoria i Praktyka” 2012, no. 1-2, p. 94.

³⁶ See eg. M. Bartnicki, B. Suchacki, *Komentarz do art. 60 ustawy o emeryturach i rentach z FUS*, [in:] *Emerytury i renty z FUS...*, p. 389 and the case law cited therein.

³⁷ M. Janiszewska, *Orzekanie o niezdolności do pracy dla celów rentowych*, „Służba Pracownicza” 1997, no. 9, p. 5.

³⁸ Cf. H. Pławucka, *Niezdolność do pracy w przepisach...*, p. 6; J. Cegielska-Jóźwiak, *Renta szkoleniowa...*, p. 25.

Controversies in the matter discussed also concern the legal solution, according to which, as indicated above, the basic period of receiving the training pension (6 months) is shortened in the event that the poviastarost notifies the pension body of the lack of possibility of professional retraining. It should be emphasized that in the light of the applicable legal status, the indicated circumstance is determined autonomously by the poviastarost and is not subject to any judicial review.

As indicated above, the extension of the right to a training pension beyond the basic period of 6 months takes place only at the request of the poviastarost. It should be noted that no legal provision (neither in the Act on pensions and disability pensions from the Social Insurance Fund, nor in the Act on labor market institutions and employment promotion) states that the starost may submit the application in question only with the consent of the insured person, which seems very peculiar, because it is the beneficiary who should first express the will to apply for the benefit in question for a further period. Doubts are also raised by the fact that a person receiving a training pension does not have any legal possibility to challenge the decision of the poviastarost not to submit an application for an extension of the period of receiving the indicated benefit, because it is not a formal decision against which he could appeal through administrative means. It is also not possible to appeal to the common court against the decision of the pension authority, because in the absence of the above-mentioned request from the starost, no decision is issued. The absence of the indicated application from the starost automatically determines that the pension authority will not determine the right to a training pension for a further period. Thus, J. Cegielska-Jóźwiak rightly states that Art. 60(3) of the Act on old-age and disability pensions from the Social Insurance Fund in its current wording does not sufficiently protect the interests of insured persons. A separate issue requiring a critical assessment here is the fact that, according to the analysis of the content of art. 40(2-4) of the Act on old-age and disability pensions from the Social Insurance Fund, the poviastarost's application for an extension of the payment of the training pension is binding for the pension body and, if it is submitted, it may only issue a decision on granting the benefit in question to a given person for a further period; at the same time, there is no way to check the legitimacy of this request or even whether the professional retraining has actually been carried out so far. Therefore, we are dealing here with a completely bizarre situation, consisting in the fact that the body financing the implementation of a specific benefit has been deprived of the possibility to verify whether the period of its collection is justified from the point of view of the purpose for which the benefit in question is to be served.

An interesting issue that has not been clearly resolved by the legislator is the issue of the further status of a person receiving a training pension in relation to whom the period of receiving this benefit has been shortened or the right to the pension in question has ceased. Theoretically, such a person should be entitled to

a disability pension (Article 60(1) in connection with Article 57 of the Act on old-age and disability pensions from the Social Insurance Fund). However, this solution raises doubts in the context of Art. 12(1) and 13(1)(2) of the above-mentioned act. However, this solution raises doubts in the context of Art. 12(1) and 13(1)(2) of the above-mentioned act³⁹. It seems, however, that in relation to the insured persons for whom professional retraining was found to be appropriate and who cannot be retrained for reasons beyond their control, despite the existence of negotiations to regain working capacity after retraining, the possibility of granting a disability pension should be explicitly provided for.

CONCLUSIONS

The normative solutions presented in this study regarding the training pension from the general social insurance system as a benefit intended to support the implementation of the vocational rehabilitation process cannot be unequivocally assessed. On the one hand, one should appreciate the fact of their establishment, the purpose attributed to them and the favorable shape of the amount of the training pension, on the other hand, one should bear in mind a number of imperfect or even defective provisions, the interpretation of which raises many problems and doubts. The main shortcomings of the indicated legal regulation include: imprecise and inconsistent with other provisions of the Act on pensions and disability pensions from the Social Insurance Fund, regulation of the conditions for acquiring the right to a training pension, lack of correlation of the discussed insurance provisions with the provisions of the Act on promotion of employment and labor market institutions, lack of (and organizational) framework for cooperation between the pension authority and poviats labor offices. As indicated above, the legal regulation in question is also controversial due to the fact that some of its provisions protect the interests of the insured, in relation to whom the advisability of professional retraining was determined due to inability to work in the current profession, in an insufficient manner. In these circumstances, it is not surprising that the role of the training pension as a benefit to support the implementation of the vocational rehabilitation process is, as indicated at the beginning of this article, insignificant in practice. It is also influenced by the fact that there is little interest in this benefit on the part of the insured, who prefer (instead of professional retraining) the still attractive status of a person receiving a disability pension in Poland, which, unlike in the case of receiving a training pension, enables further earning and often reaching earnings higher than before the certificate of incapacity for work⁴⁰. A separate issue here is the assessment of the accuracy of legal,

³⁹ Cf. W. Koczur, *Renty z tytułu niezdolności do pracy...*, p. 135.

⁴⁰ Cf. D. Dzienisz, *Renty w systemie ubezpieczeń społecznych...*, p. 179 ff.; W. Koczur, *Restytucja zdolności do pracy w polskim powszechnym systemie ubezpieczeń społecznych...*, p. 221 ff.

organizational and financial solutions adopted in Poland in the field of vocational rehabilitation of persons insured in the general social insurance system (as well as in farmers' social insurance). The current model of these solutions, in which the insurance institution has been deprived of influence on this very important sphere of activities in the field of restitution of the insured persons' ability to work, should be assessed critically. Observation of practice in the field of the discussed matter justifies the statement that the effective functioning of the system of vocational rehabilitation of the insured requires the concentration of all activities in this area in one institution, from adjudication on the advisability of professional retraining to the implementation of the retraining process and its financing⁴¹. The indicated solution would also enable more effective assertion of the right to a training pension through court proceedings.

Summing up, the improvement of the existing state of affairs in the scope of the discussed matter will require a thorough intervention of the legislator, not only in the sphere of substantive law, but also in the systemic and procedural law.

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⁴¹ Cf. W. Koczur, *Rehabilitacja kompleksowa w procesie restytucji zdolności do pracy w powszechnym systemie ubezpieczeń społecznych*, [in:] *Polska szkoła kompleksowej rehabilitacji. Analiza prawnoporównawcza instytucjonalnych rozwiązań*, ed. P. Czauderna, W. Koczur, M. Woch, M. Wypych, Warszawa 2019, p. 30; see also studies included in the collective work *Rehabilitacja zawodowa. Stan aktualny i proponowane zmiany*, ed. G. Uścińska, A. Wilmowska-Pietruszyńska, Warszawa 2014. On trends in the indicated scope in other Member States of the European Union, see V. Patrini, D. Ahrendt, *Disability and labour market integration: Policy trends and support in EU Member States*, Luxembourg 2021.

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