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Rights of Children with Disabilities

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Abstract. The rights of children with disabilities represent a critical dimension of human rights, emphasising equality, dignity, and inclusion. This paper examines the legal and social frameworks for protecting these rights, with a focus on Poland's legislative, constitutional, and international obligations. It discusses evolving definitions of disability, emphasizing the role of societal attitudes and systemic barriers in perpetuating inequality. Analysis of international conventions, such as the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, underscores global commitment to safeguarding the dignity and opportunities of children with disabilities. The paper highlights Poland's extensive legal guarantees, including healthcare access, education, and financial benefits, while critiquing challenges such as fragmented regulations, insufficient funding, and societal stigmas. It advocates inclusive education, comprehensive family support, and improved teacher training to foster empathy and effective integration. Recommendations stress the need for stable, accessible legal frameworks and proactive measures to ensure that children with disabilities achieve parity in opportunities and societal participation. Despite progress, achieving substantive equality requires sustained efforts to dismantle discriminatory barriers and foster inclusive environments.

Keywords: children with disabilities, human rights, disability inclusion, legal protections, inclusive education

1. Introduction

Modern societies have many people living with various disabilities, among whom children represent a large proportion. According to the 2021 National Population and Housing Census, out of a population of more than 38 million, the number of people with disabilities in Poland as of 31 March 2021 was about 5.5 million,[1] of which approximately 300,000 were children.

Undoubtedly, disability restricts people; however, it does not deprive them of their humanity or their rights, which derive from the dignity inherent in everyone, which is innate, not dependent on anything, not subject to gradation, and is the same for everyone. People with disabilities have the same rights as others. This means that a child, like an adult, is entitled to the full range of human rights. However, due to the particular physical and psychological vulnerability of children, the specific protection of their rights, which is appropriately strengthened compared to the standards adopted for adults, is necessary. Therefore, the rights of the child are specific to the general system of human rights; nevertheless, they form an integral part of the human rights to which everyone is entitled, which emphasises the subjectivity of the child as a subject of the law.

Against the background of the general standard of children's rights, a catalogue of the rights of children with disabilities, which aims to equalise their life chances and ensure the enjoyment of the rights to which all children are entitled, stands out. Due to the limitations caused by disability, the realisation of these rights may be difficult. Therefore, it is necessary to create appropriate conditions for everyone to fully enjoy their rights.

2. The Concept of Disability

Disability refers to the impaired functioning of a person in biological, individual, and social terms, resulting from an impairment of the ability to perform a certain activity in a way that is generally regarded as normal and typical of members of modern societies. People with disabilities are hindered from functioning normally not only by their own limitations but also, if not primarily, by unfavourable social attitudes. It is accepted that disability is an evolving concept and that it results from the interaction between persons with dysfunctions and the barriers resulting from human and environmental attitudes that hinder their full and effective participation in society on an equal basis with others.[2]

It is important to stress that disability is a phenomenon inherent in human nature. The causes of disability vary due to various factors (either congenital or acquired during a person's life) such as age, gender, inherited genes, injuries and accidents, complications from illnesses, addictions, poverty, social exclusion, life situations that activate various forms of mental disorders, and environmental

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[1] Statistics Poland, National Population and Housing Census 2021. Population ageing in Poland in the light of the results of the 2021 Census, Warsaw 2021, p. 49.

[2] Preamble to the Convention on the Rights of Persons with Disabilities, created in New York on 13 December 2006, Dz. U. 2012, item 1169.

pollution. It follows that anyone can develop a disability at any time in their life. Therefore, disability should be regarded as completely normal and inherent in human life. It is particularly important to prepare children to accept their own and others' disabilities and to treat them as part of life – present or future, personal, or that of loved ones.

The concept of a person with disabilities has been introduced into legal language relatively recently, replacing earlier terms, such as disabled person, handicapped person, invalid, cripple, which had acquired a pejorative meaning. In Polish law, the term 'disabled person' was first used in the resolution of the Sejm of 16 September 1982 on invalids and disabled persons.[3] However, the concept was not defined. The Act on Employment and Vocational Rehabilitation of Disabled Persons of 9 May 1991[4] defined a disabled person as 'an unemployed or disabled person seeking work within the meaning of the provisions on employment and counteracting unemployment' (Article 2(2)). As this definition referred to the ability to perform gainful employment and not to a health impairment, it did not satisfy many circles. In 1997, two further definitions of a disabled person were developed. The first was in the Charter of the Rights of Persons with Disabilities of 1 August 1997,[5] according to which persons with disabilities are those whose physical, mental, or psychological impairments permanently or periodically hinder, limit, or prevent them from living, learning, working, and performing their social roles in accordance with legal and customary norms (§ 1). The second is included in the Act of 27 August 1997 on Vocational and Social Rehabilitation and Employment of Persons with Disabilities,[6] in which persons with disabilities are defined as persons whose physical, mental, or psychological condition permanently or periodically hinders, restricts, or prevents them from fulfilling their social roles due to a permanent or long-term impairment of the organism's efficiency, in particular resulting in inability to work (Article 2(10)). Pursuant to Article 4a(1), a child with a disability is one who is under 16 years of age, if they have a physical or mental impairment of an expected duration of more than 12 months, due to a congenital defect, long-term illness, or bodily injury, resulting in the need for total care or assistance in meeting the basic needs of

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[3] Resolution of the Sejm of the People's Republic of Poland of 16 September 1982 on invalids and persons with disabilities, *Monitor Polski* 1982, No. 22, item 188.

[4] Act of 9 May 1991 on employment and vocational rehabilitation of disabled persons, Dz. U. 1997, No. 123, item 776.

[5] Resolution of the Sejm of the Republic of Poland of 1 August 1997, The Charter of Rights of Persons with Disabilities, *Monitor Polski* 1997, No. 50. item 474 and 475. The Charter was introduced to bring together all the fundamental rights of persons with disabilities in one document, which was to constitute an element of pressure on institutions obliged to protect their interests. However, the document did not fulfil the expectations that were attached to its enactment.

[6] Act of 27 August 1997 on professional and social rehabilitation and employment of persons with disabilities, Dz. U. 1997, No. 123, item 776, as amended.

life in a manner that exceeds the support needed by a person of their age. In the assessment system, disability is decided in proceedings establishing disability for persons up to and from the age of 16. When legally confirming the disability of younger children (up to the age of 16), a certificate of established disability is issued (without differentiating degrees of disability). A child's disability is declared for a limited period, but not exceeding the child's 16th birthday; an assessment of the child's capacity to improve his or her functioning is decisive. However, for persons over the age of 16, disability is assessed according to three levels: severe, moderate, or mild. The degree of disability is either temporary or permanent. Detailed principles of assessing disability in children up to the age of 16 are regulated by the provisions of the Regulation of the Minister of Labour and Social Policy of 1 February 2002 on the criteria for assessing disability in persons up to the age of 16,[7] and those of assessing disability in older children are regulated by the provisions of the Regulation of the Minister of Economy, Labour and Social Policy of 15 July 2003 on assessing disability and the degree of disability.[8] This means that the notion of a person with a disability is linked to obtaining a formal confirmation of such status by a district or municipal team for assessing disability, without which a person who is actually disabled cannot be recognised as such. Thus, it is possible to speak of legal disability (documented by a decision of the relevant authority) and biological disability, where a person does not apply for such a decision. Nevertheless, only parents and guardians of children who have a disability certificate can apply for various forms of state support and assistance.

3. International Guarantees for the Protection of the Rights of Children with Disabilities

Of particular importance in the system for the protection of the rights of children with disabilities was the world's first declaration defining the rights of the child: the Declaration of the Rights of the Child, commonly referred to as the Geneva Declaration, adopted by the General Council of the International Children's Aid Union on 13 February 1923, then adopted by the General Assembly of the League of Nations on 16 November 1924. The Geneva Declaration set out the rights of the child to normal physical and spiritual development, to care, to assistance and education, and to social security regardless of the child's race, nationality, and religion. The significance of the Geneva Declaration was to replace the

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[7] Regulation of the Minister of Labour and Social Policy of 1 February 2002 on the criteria for assessing disability in persons aged up to 16 years, Dz. U. 2002, No. 17, item. 162.

[8] Regulation of the Minister of Economy, Labour and Social Policy of 15 July 2003 on disability assessment and the degree of disability, Dz. U. 2003, No. 139, item. 1328.

mercy and philanthropy factor with an explicit emphasis on the obligations of adults towards children[9] and to regard the child as an autonomous being with a catalogue of his or her own rights.

On 20 November 1959, the United Nations General Assembly adopted the Declaration of the Rights of the Child, addressed to all children, including children with disabilities,[10] an extension of the Geneva Declaration. The Declaration provided a benchmark for the basic needs of the child and, at the same time, was an act of international law that recommended that states establish children's rights in their national laws and obliged nations and states to respect and uphold these rights. At the heart of the Declaration was the conviction that mankind should give the child the best it has, since the child, due to its physical and mental immaturity, requires special care and attention and adequate legal protection, both before and after birth. The basis of all actions should be the welfare of the child. The Declaration contained detailed rules on the protection of the rights of the child, including the physically or mentally handicapped child, who should be given special care. Meanwhile, it placed an obligation on states to introduce laws into their national legal systems, which should take the principle of the best interests of the child as their basis. The Declaration consists of an introduction and 10 detailed principles on the rights of the child:

1. The first principle contains the fundamental rule that rights apply to all children, without exception or distinction on the grounds of race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth, or any other reason.
2. The second principle emphasises the role of legislation, which should provide the child with the necessary and indispensable conditions for health and normal physical, mental, moral, spiritual, and social development, under conditions of freedom and dignity.
3. The third principle confers on all children the right to a name and citizenship.
4. The fourth principle ensures that children have the opportunity to benefit from social welfare.
5. The fifth principle concerns children with developmental deviations and disorders; it implies the need for special care for these children.
6. The sixth principle states that, for the harmonious development of personality, the child needs love and understanding, as well as care, especially of the parents, to whom the state should provide the appropriate conditions and assistance necessary for the upbringing and preparation of the child for life in society.

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[9] Balcerek, 1990, pp. 190–191.

[10] Declaration on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1959.

7. The seventh principle refers to the right of every child to education – free and compulsory, at least as far as primary school is concerned.
8. The eighth principle prescribes the priority of protection and assistance for all children.
9. The ninth principle obliges adults to protect the child from neglect, cruelty, and exploitation.
10. The tenth principle contains the injunction to educate the child in the understanding of others, tolerance, friendship among nations, peace, and universal brotherhood.

Among these, the fifth principle, which applies to children with disabilities, holds a special place, according to which 'The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition'.

However, it was not until the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, that real actions for the subjective treatment of the child were initiated.[11] The convention was ratified by Poland in 1991. It is generally acknowledged that the Convention is the greatest achievement of the international community in terms of the protection of children's rights, as it constitutes the axiological and normative basis for actions for the benefit of the child at the global, regional, national, and local levels. Incidentally, it should be added that the draft Convention was prepared by Poland and presented to the international community in 1978, providing a basis for further work. According to the adopted definition, a child is any human being below the age of 18 years, unless he or she attains the age of majority earlier in accordance with the law relating to the child (Article 1).[12] By virtue of the Convention, the states that have ratified it have assumed not only certain legal and international obligations but also obligations towards the children themselves. These obligations are incumbent on the state, its authorities, and the adult population as a whole. Parents, who are to be supported by the state, are responsible for fulfilling their obligations towards children. The Convention obliges all institutions, bodies, and organisations to safeguard the interests of the child in all activities concerning the child. It places an obligation on states to develop institutions, facilities, and services aimed at ensuring the well-being of children and to establish social programmes to support children, young people, and those who care for them. The special protection of the child related to his or

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[11] The Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989.

[12] In Poland, this definition is detailed in Article 2(1) of the Act of 6 January 2000 on the Ombudsman for Children, consolidated text Dz. U. 2023, item 292, according to which a child is every human being from conception to adulthood.

her state of health is further manifested in the inclusion of the category of disability in the catalogue of grounds constituting the prohibition of discrimination. State Parties must respect and guarantee rights with regard to every child, without discrimination of any kind, regardless of, inter alia, race, colour, sex, language, religion, political opinion, property status, or disability (Article 2(1)).

The Convention defines the status of the child based on four assumptions:

1. The child is an autonomous subject, but due to his or her physical and mental immaturity, he or she requires special care and legal protection.
2. The child as a human being requires respect for his or her identity, dignity, and privacy.
3. The family is the best environment for the upbringing of the child.
4. The state is to support the family and not replace it in its functions.

The Convention also contains a catalogue of the fundamental rights of the child.[13] Each corresponds to a duty of the state to ensure its realisation to the maximum extent possible. Against the background of the general standard of protection of children's rights, specific standards to which children with disabilities are entitled can be identified. The situation of these children is specific, and the rights to which they are entitled require special protection, consisting not only in the prevention of discrimination but, above all, in the application of the principle of equalisation of life chances. The equalisation of opportunities is a prerequisite for equality. From an individual perspective, attention is paid to supporting the activity, independence, and autonomy of children with disabilities and the assistance and support of the environment working on their behalf. The systemic approach emphasises state action in the sphere of legislation, social policy, and organisation of social life.[14] Comprehensive assistance provided by the state is intended to help a child with disabilities integrate into society and, on a personal level, develop fully.

The most important tasks of the state in favour of the child with disabilities are included in the rather elaborate Article 23 of the Convention on the Rights of the Child. The guarantees contained therein are comprehensive, addressing various aspects of life and functioning. According to its wording,

> 1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in

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[13] The catalogue of children's rights was formulated based on the following principles: the child's welfare, equality, respect for the rights and responsibilities of both parents, and state support. The catalogue includes the following rights: civil, social, cultural, political, and economic.

[14] Nowicka-Chachaj and Rdzanek-Piwowar, 2005, p. 22.

> the community. 2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child. 3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development. 4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

It is complemented by Article 25, according to which

> States Parties shall recognise the right of a child placed by a competent authority in an establishment for the care, protection or treatment of physical or mental health to a periodic review of the child's treatment and any other circumstances relating to the placement […]

– a bulwark against discriminatory treatment and segregation of children with disabilities. It follows that the provisions of Article 23 of the Convention extend their protection to all the rights of a child with a disability and his or her family.

A mechanism has been introduced to monitor the status of the State Party's implementation of the Convention through the obligation to submit periodic reports on the means it uses to realise the rights contained in the Convention and its progress in the enjoyment of those rights (Article 44). Submitted reports are considered by the Committee on the Rights of the Child (Article 43), a panel of experts 'for the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention'. The Committee on the Rights of the Child, after considering government reports on the implementation of the Convention, may offer suggestions and general recommendations based on the information received. These suggestions and general recommendations of the Committee are forwarded to the concerned State Party and brought to the attention of the United Nations General Assembly, together with any comments made by States Parties to the Convention. Unfortunately, however, the Committee has limited ability to enforce the rights under the Convention, as it can only issue non-binding opinions and recommendations. Their importance is based on the Committee's international authority and on factors of a diplomatic nature.

In the system of protecting the rights of persons with disabilities, the Convention on the Rights of Persons with Disabilities of 13 December 2006, which was ratified by Poland in 2012, plays a special role. It applies to persons with disabilities, which include persons with long-term physical, mental, intellectual, or sensory impairments that, in interaction with various barriers, may hinder their full and effective participation in society, on an equal basis with others. The primary purpose of the Convention is to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity (Article 1). Children with disabilities require special protection due to their vulnerability and risk of social exclusion, as reflected in Article 7 of the Convention, according to which

> 1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. 2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. 3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

The Convention reminds the international community that persons with disabilities are subjects of law, endowed with human rights just as persons without disabilities. Thus, they are not objects to be managed but veritable subjects deserving of the respect owed to every human being. The Convention placed an obligation on everyone, particularly state authorities, to create conditions for the fullest possible enjoyment of all human rights and obliged states to take effective measures to improve the living conditions of persons with disabilities. To help states fulfil their obligations, a Committee on the Rights of Persons with Disabilities was established (Article 34), with functions analogous to those of the Committee monitoring the Convention on the Rights of the Child. Along with the

Convention, an optional protocol, which introduced an additional mechanism to control the application of its provisions of a quasi-judicial nature in the form of the possibility for the Committee to examine individual complaints, was enacted. Poland did not accede to this protocol and, thus, did not recognise the competence of the Committee to receive and examine notifications made directly or on behalf of persons or groups of persons under Polish jurisdiction who claim to be victims of a violation of any of the rights enumerated in the Convention.

4. Constitutional Guarantees for the Protection of the Rights of Children with Disabilities

In what concerns the protection of a child with disabilities, the Constitution of the Republic of Poland of 2 April 1997,[15] the supreme law of the Republic of Poland, is of utmost significance. Among the provisions relating to the protection of the rights of a child with disabilities, of fundamental importance is Article 30 of the Constitution of the Republic of Poland, according to which 'The inherent and inalienable dignity of the human being is a source of human and civil freedoms and rights. It is inviolable and its respect and protection is the duty of public authorities.' The concept of dignity is understood as a fundamental characteristic of every human being, determining the respect due to him or her, regardless of his or her objectively or subjectively perceived other characteristics. It follows that dignity does not depend on a person's degree of fitness. Human rights based on it are therefore innate, inalienable, universal, and indivisible. A consequence of this is the prohibition of discrimination against anyone for any reason. According to Article 32 of the Polish Constitution, everyone is equal before the law and has the right to equal treatment by public authorities. No one may be discriminated against politically, socially, or economically for any reason. Disability cannot determine the legal inequality of a person or justify discrimination. The indicated provision introduced the principle of equality, the essence of which is that all subjects of the law characterised by a given essential (relevant) characteristic to an equal degree are to be treated equally, i.e. according to an equal measure, without discriminatory as well as favourable differentiations.[16] However, this does not mean that this principle should be equated with a prohibition of differentiation. Indeed, the principle of equality should be interpreted considering the principle of social justice (Article 2 of the Constitution of the Republic of Poland). Thus, it is permissible to differentiate the situation of similar entities, characterised by the same feature, if this remains in direct relation to the purpose of the regulations,

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[15] The Constitution of the Republic of Poland of 2 April 1997, Dz. U. 1997, No. 78, item 483 as amended.

[16] Judgment of the Constitutional Tribunal of 9 March 1988, U 7/87, OTK 1988, No. 1, item 1.

while the differentiation must be proportional, which means that the importance of the interest that is to be served by such differentiation must remain in appropriate proportion to the infringed interests; meanwhile, the differentiation must not be fundamentally detrimental to other values.[17] Therefore, it is permissible to prefer certain groups (positive discrimination, compensatory preference, affirmative action) when this is necessary to bring about de facto equality.[18] Due to their impairments, persons with disabilities are at a higher risk of encountering barriers to the full realisation of their rights than those without disabilities. This means that it is constitutionally permissible to discriminate positively to reduce the social inequalities between persons without disabilities and those with disabilities. In certain situations, the legislator is even obliged to introduce positive discrimination against persons with disabilities.

The legislator imposes an obligation on public authorities to provide special healthcare to children, pregnant women, persons with disabilities, and the elderly (Article 68(3) of the Constitution of the Republic of Poland). This means that Poland has assumed the obligation to secure a higher standard of rights for the above-mentioned categories of persons. These categories include children with disabilities. Article 67 of the Constitution of the Republic of Poland confers on every citizen, inter alia, in the event of inability to work due to illness or disability, the right to social security and imposes specific obligations on state authorities to assist in securing the existential needs of persons with disabilities. The provision of Article 69 of the Constitution of the Republic of Poland explicitly guarantees public authorities' assistance for persons with disabilities, referring to specific statutory regulations concerning assistance in securing their daily existence, adaptation for work/learning, and social communication.

The protection of children's rights, without any differentiation, is provided for by Article 72(1) of the Polish Constitution, according to which

> The Republic of Poland shall ensure protection of the rights of the child. Everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense.

This constitutional rule, meant to ensure the protection of the interests of a minor, who, in practice, can claim it himself to a very limited extent, constitutes the basic, overriding principle of the Polish family law system, to which all regulations in the sphere of relationships between parents and children are

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[17] Judgment of the Constitutional Tribunal of 16 December 1997, K 8/97, OTK 1997, Nos. 5–6, item 70.

[18] Judgment of the Constitutional Tribunal of 29 September 1997, K 15/97, OTK 1997, Nos. 3–4, item 37.

subordinated.[19] The primacy of the principle of the child's welfare means that in all actions concerning the child, whether taken by public authorities or private institutions, the child's best interests must be prioritised. To this end, a specialised body – the Children's Rights Ombudsman – whose role is to protect the rights of children, including children with disabilities (Article 72(4) of the Polish Constitution), has been established. Its competences and method of appointment are set out in the Act of 6 January 2000 on the Ombudsman for Children's Rights. The subjectivity of the child is emphasised in Article 48(1) of the Constitution of the Republic of Poland, according to which 'Parents shall have the right to raise their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions.' These provisions are reinforced in Article 53(3) of the Polish Constitution, according to which 'Parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. The provisions of Article 48, para. 1 shall apply as appropriate […]', and in Article 72(3) of the Polish Constitution, which obliges public authorities and persons responsible for the child to listen to and, as far as possible, consider the child's opinion when determining the child's rights. This is because the child, like everyone else, has the right to his or her own views and his or her own opinion, which require at least being heard.

5. Statutory Guarantees for the Protection of the Rights of Children with Disabilities

International and constitutional guarantees for the protection of the rights of a child with disabilities are reflected in statutory provisions that relate to various aspects of human life. They regulate the forms of support and assistance provided by the state for children with disabilities and their families. Particular importance is attached to health protection, mainly the use of health services.

The basic normative act regulating the availability of these benefits is the Act of 27 August 2004 on healthcare services financed from public funds.[20] The Act provides for the right to health services aimed at the preservation of health, prevention of disease and injury, early detection of disease, treatment, care, and the prevention and reduction of disability (Article 15(1)). However, children with disabilities require much more extensive diagnostics, ongoing rehabilitation, costly treatment, and specialised equipment. The state has an obligation to inform and identify funding opportunities for medicines and treatment, purchase

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[19] Judgment of the Constitutional Tribunal of 28 April 2003, K 18/02, OTK-A 2003, No. 4, item 32.

[20] Act of 27 August 2004 on healthcare services financed from public funds, unified text Dz. U. 2024, item 146.

of rehabilitation equipment, booking of rehabilitation holidays, and access to orthopaedic items and aids necessary for the rehabilitation of children with disabilities. Adequate, functioning rehabilitation equipment or orthopaedic objects and aids necessary for rehabilitation are the basis of not only improvement but also ensuring that children with disabilities enjoy their rights. The duty to inform is very important here, as parents of children with disabilities are often helpless or lost in the face of the amount of paperwork they must deal with when seeking to obtain the necessary support from the state.

5.1. Rehabilitation and Schooling

The Act of 27 August 1997 on Vocational and Social Rehabilitation and Employment of Persons with Disabilities provides for support aimed at enabling persons with disabilities to participate in social life and vocational rehabilitation based on instruments aimed at professional activation and promotion. For a child with a disability, support instruments in terms of social rehabilitation are important. Pursuant to Article 10c, under the system of social rehabilitation benefits, a subsidy may be granted for participation in a rehabilitation turnout as an organised form of active rehabilitation combined with elements of leisure, the purpose of which is the general improvement of psychophysical fitness and development of social skills of participants, inter alia, through establishing and developing social contacts, realisation and development of interests, and participation in other activities provided for in the programme of the turnout. The duration of rehabilitation holidays is at least 14 days. These stays are organised exclusively in the country in stationary and non-stationary forms (e.g.: sailing camp, canoeing, hiking camp, etc.). In addition, rehabilitation holidays are organised for persons with disabilities with similar needs, particularly resulting from their age or type of disability or type of illness or dysfunction.

Rehabilitation holidays are subsidised by county family assistance centres or municipal social assistance centres operating in cities with county rights, funded by the State Fund for Rehabilitation of Disabled Persons. Pursuant to Art. 10e, a disabled person may apply for a subsidy for participation in a turnout if the average monthly income, within the meaning of the provisions on family benefits, divided by the number of persons in a joint household, calculated for the quarter preceding the month in which the application is submitted, does not exceed 50% of the average remuneration per person in a joint household or 65% of the average remuneration in the case of a single person. In cases justified by a difficult material situation of a disabled person, the subsidy for the participation in the turnout of this person or the subsidy for the participation of his or her carer may be granted without reducing the amount of the subsidy despite exceeding the amount of the average monthly income. A child with disabilities and his or her guardian can apply for the subsidy. In accordance with the provisions applying the norms of the Act, contained in the Regulation of the Minister of Labour and Social Policy of 15 November 2007 on rehabilitation sessions,[21] the amount of co-financing is 27% of the average monthly remuneration for a disabled person up to the age of 16 and a disabled person aged 16–24 who is studying and not working, regardless of the degree of disability, and 18% of the average monthly remuneration for the guardian of the child. In cases justified by the particularly difficult life situation of a person with disabilities, this subsidy may be increased to 35% of the average monthly salary. Children with disabilities up to the age of 16 and persons with disabilities up to the age of 24 who are studying and not working, regardless of the degree of disability, have priority in obtaining the subsidy.

In addition to the co-financing of participation in rehabilitation holidays, the catalogue of support in the field of social rehabilitation of a child with disabilities includes the co-financing of the provision of rehabilitation equipment and orthopaedic articles and aids and elimination of architectural, urban planning, transport, communication, and technical barriers. Detailed regulations related to the granting of these benefits are contained in the Regulation of the Minister of Labour and Social Policy of 25 June 2002 on determining the types of county tasks that can be financed from the State Fund for Rehabilitation of Persons with Disabilities.[22] A carer of a child with disabilities may apply for the co-financing of the provision of rehabilitation equipment – up to 60% of the cost of the equipment – according to the needs resulting from the child's disability. In addition, a child with a disability may be granted a subsidy for the purchase of orthopaedic items and aids. Such assistance is granted in an amount of up to 100% of the disabled person's own contribution within the limit of the price of the item/measure if such a contribution (co-payment) is required and up to 150% of the sum of the limit amount and the disabled person's own required contribution (co-payment) to the purchase of these items and measures if the price is lower than the set limit. The elimination of architectural, urban planning, transport, communication, and technical barriers for persons with disabilities is provided for up to 80% of the costs of the project, but no more than fifteen times the average wage. The aim of eliminating these barriers is to enable or facilitate a child with disabilities to perform everyday basic activities and maintain contact with the environment.

As a rule, a child with disabilities is not exempt from compulsory schooling and therefore not only has the right to attend school but also has such an obligation from the age of 7 to 18. This is confirmed by the Act of 7 September 1991 on the educational

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[21] Regulation of the Minister of Labour and Social Policy of 15 November 2007 on rehabilitation holidays, Dz. U. 2007, No. 230, item 1694.

[22] Regulation of the Minister of Labour and Social Policy of 25 June 2002 on determining the types of county tasks that can be financed from the funds of the State Fund for Rehabilitation of Disabled Persons, Dz. U. 2002, No. 96, item. 861.

system[23] and the Act of 14 December 2016. The Education Act[24] states that a child with disabilities has a full right to education and to be provided with educational opportunities in all types of schools, according to individual developmental and educational needs and predispositions. The Act also addresses the need to adapt the content, methods, and organisation of teaching to the psychophysical capabilities of students and to ensure the use of psychological care and special forms of didactic work. The implementation of these goals and tasks includes the idea of inclusive education (inclusion) for children with special developmental needs, which may determine the need to secure specific educational needs. It should be emphasised that inclusive schools are the most effective means of equalising opportunities and integrating students with disabilities into society. It is also an important element in building social solidarity between the non-disabled and the disabled and in eliminating discriminatory attitudes. Segregated education in special education institutions should only be an exception complementary to the general education system. Exercising the right to education and fulfilling compulsory schooling prepares one for an independent, adult life. It enables one to acquire the knowledge and education needed to function as an informed and responsible individual, able to work and meet one's life needs as independently as possible. It is a right that guarantees personal development, active participation in public life, and independence in decision-making. It is in the interest of the community that children with disabilities, once they reach adulthood, do not live on social assistance benefits but are able to function independently to the best of their ability. This is because exclusion due to disabilities in childhood undoubtedly results in the perpetuation of this disadvantage into the adult life of the person with disabilities.

The legislator ensures that all students with special educational needs have the opportunity to attend all types of schools: mainstream, inclusive, and special schools. Attendance at mainstream schools in standard classes, with the possibility of benefiting from special individual educational support, is the preferred form of teaching, most conducive to full integration. The school may provide special educational conditions if the pupil obtains a certificate of need for special education. This document is issued by the assessment team of the psychological-educational counselling centre.[25] The certificate is a valuable source of information for the teacher about the student, his or her developmental potential, needs, strengths of the student, ways of working, necessary conditions for the organisation of the educational process, etc. Every child with a disability

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[23] Act of 7 September 1991 on the educational system, unified text Dz. U. 2022, item 2230 as amended.

[24] Act of 14 December 2016 Education Law, unified text Dz. U. 2023, item 900 as amended.

[25] Regulation of the Minister of National Education of 7 September 2017 on judgements and opinions issued by adjudicatory teams acting in public psychological and pedagogical counselling centres, Dz. U. 2017, item 1743.

has the right to receive psychological-educational care and assistance and special forms of didactic support, as well as to receive an opinion or a certificate on the adjustment of educational requirements to his or her individual psychophysical needs, to receive a diagnosis, and to receive therapy depending on the identified needs. When the psychological-educational counselling centre or other specialised counselling establishes specific learning difficulties, which make it impossible for the child to fulfil his or her school duties, the parents have the right to demand that the school adapts the educational requirements to their child’s individual needs, and the school is obliged to adapt the requirements to enable the child to equalise his or her chances in the future and to achieve independence and active participation in social life. The obligation to adapt the content, methods, and organisation of teaching to the psychophysical capabilities of the pupil rests with the school management and the teachers. A pupil with disabilities may be postponed from compulsory schooling or have their period of education extended by at least one year at each educational stage. Given the pupil’s educational difficulties, it may be important to provide appropriate teaching aids and resources. The size of any aids used, their weight, the possibility to manipulate them or limit their mobility, the appropriate adaptation of the textbooks, etc. are also significant. Teachers are obliged to individualise their work with the pupil and adapt the way in which the curriculum content and the rules for assessing achievements are implemented to the pupil’s needs and abilities. Due to the limitations resulting from the disability, the educational process should be organised in such a way as to adapt to the pupil’s slower pace, enabling him or her to complete a task in a longer time, extending the time for tests, or dividing tasks into stages. It is also important to adapt the educational requirements and assessment rules to the individual pupil’s psycho-physical abilities daily. The degree of implementation of the appropriately modified curriculum in relation to the core curriculum should be taken into account. When assessing a pupil, it is necessary to consider not only the learning outcomes but also the effort and progress made by the pupil.

5.2. Various Benefits

Municipalities are obliged to provide free transport and care for students with disabilities when travelling to the nearest institution or to reimburse the student’s transport costs and that of his or her parent/guardian if the latter provides transport and care for the student. Pupils with motor disabilities (including aphasia) or moderate or severe intellectual disabilities are also provided with transport to the nearest post-primary school until the end of the school year in the calendar year in which the pupil turns 21. Children and youths with profound intellectual disabilities who participate in remedial classes are provided with free transport and care by the municipality when travelling to a remedial-educational centre until the end of the school year in the calendar year in which they turn 24 or 25.

Various types of benefits for children with disabilities are a tangible form of assistance, among which monetary benefits should be prioritised. Children with disabilities are entitled to a nursing allowance, while parents/guardians of children with disabilities can apply for one. This type of support is guaranteed by the Act of 28 November 2003 on Family Benefits.[26] Pursuant to Article 16, the attendance allowance is a benefit granted irrespective of income criterion, the purpose of which is to partially cover expenses resulting from the need to provide a disabled person with the care and assistance of another person in connection with an inability to lead an independent life. The attendance allowance is granted to a child with disabilities, a person with disabilities over the age of 16 if he or she has a significant degree of disability certificate, and a person with disabilities over the age of 16 with a moderate degree of disability certificate if the disability developed by the age of 21. The amount of the attendance allowance is PLN 215.84 (€50) per month. This allowance is not due to a person placed in an institution providing 24-hour care, a person entitled to a nursing allowance, and when family members are entitled to benefits abroad to cover expenses related to their care unless the provisions on the coordination of social security systems or bilateral social security agreements provide otherwise. A person entitled to the attendance benefit is not entitled to the attendance allowance. In turn, pursuant to Article 17, the carer's allowance is due to parents/guardians caring for a person up to the age of 18 who have a certificate of a significant degree of disability or a certificate of disability together with the following indications: the need for permanent or long-term care or assistance from another person in connection with significantly limited ability to lead an independent life and the need for permanent co-participation of the child's guardian in the child's daily life in the process of treatment, rehabilitation, and education. However, the carer's allowance is not due in a situation where a child with disabilities has been placed at or is staying in a social care home, a care and treatment facility, a nursing and care institution, an institution providing 24-hour care; when the person is chronically ill; and when the person is housed in a correctional institution, detention centre, or shelter for minors. The allowance is also not due if the person in need of care has an established entitlement to a special attendance benefit, attendance allowance, or a carer's allowance; the person in need of care or another person related to the person in need of care is entitled abroad to a benefit to cover expenses related to care unless the provisions on the coordination of social security systems or bilateral social security agreements provide otherwise and the person in need of care has an established entitlement to a special attendance benefit, an entitlement to an attendance allowance, or an entitlement to a carer's

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[26] Act of 28 November 2003 on family benefits, unified text Dz. U. 2024, item 323.

allowance. The amount of the carer's benefit is PLN 2,988 (€700) per month. This amount is subject to annual valorisation. The carer's allowance is increased by 100% for the second and each subsequent person over whom care is exercised. The head of the municipality, mayor, or town mayor disburses the pension and disability insurance contribution and health insurance for the person collecting the carer's allowance. The awarding of the carer's allowance is not dependent on the family income criterion, meaning that it is possible to combine professional activity, without any restrictions, with the collection of this benefit, thus ensuring the possibility to obtain funds thanks to which they will be able to fulfil their parental duties better. All the more so as caring for a disabled child is expensive.

The family benefit is used to partially cover the child's living expenses. The right to this allowance is vested in the child's parents/guardians (Article 4(1–2)). Family benefit is not granted, inter alia, if the child has been placed in an institution providing 24-hour maintenance or in foster care; a family member is entitled to family benefit for a child abroad, unless the provisions on the coordination of social security systems or bilateral social security agreements provide otherwise. An institution providing round-the-clock subsistence is a social welfare home, a youth education centre, a juvenile hostel, a reformatory, a remand prison, a prison, as well as a military school or other school providing full subsistence free of charge (Article 3(7)). Family benefit is granted until the child: reaches 18 years of age; completes schooling, but no longer than reaching the 21st year of age, or 24 years of age if he or she continues schooling or higher education and has a moderate or significant degree of disability (Article 6(1)). The granting of the right to the family benefit depends, inter alia, on meeting an income criterion. The family benefit is granted if the average monthly per capita family income or the income of a learner does not exceed the net amount of PLN 674.00 (€156). For families with a child with disabilities, this criterion is PLN 764 (€178) net per family member. Family benefit is paid monthly in the amount of: PLN 95.00 (€22) per child up to the age of 5; PLN 124.00 (€29) per child over the age of 5 up to the age of 18; and PLN 135.00 (€31) per child over the age of 18 up to the age of 24. There are additions to the family benefit for, inter alia: education and rehabilitation of a disabled child; commencement of the school year; a child commencing education at a school outside the place of residence; single parenthood; and parenting a child in a large family (Article 8).

Financial support is also provided for by the Act of 12 March 2004 on social assistance.[27] Benefits granted under this Act may take the form of a cash benefit, granted to the family primarily in the form of a purpose-specific benefit and a special purpose-specific benefit. The purpose-specific benefit may be granted to meet an essential living need, in particular, to cover part or all of the costs of food, medicines, foodstuffs for special nutritional purposes, medical devices and

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[27] Act of 12 March 2004 on social assistance, unified text Dz. U. 2023, item 901 as amended.

treatment, heating, including fuel, clothing, necessary household items, minor repairs and renovations in the dwelling, and funerals (Article 39). In particularly justified cases, a family with an income exceeding the income criterion may be granted a special purpose allowance (Article 41). A formal and legal condition for receiving benefits from the social assistance system is meeting the income criterion established by the Regulation of the Council of Ministers of 14 July 2021 on verified income criteria and amounts of cash benefits from social assistance,[28] which is PLN 776 (€180) for a person running a household alone and PLN 600 (€140) for a person in a family. For a person who resigns from employment in order to provide direct personal care to a chronically or seriously ill family member, a social assistance centre/social services centre pays a contribution to the pension and disability insurance funds from the amount of income criterion per person in a family if the income per person in the family of the caregiver does not exceed 150% of the amount of the income criterion per person in a family and the caring person is not subject to compulsory pension and disability insurance from other titles or does not receive a pension or disability allowance. The need for direct personal care must be certified by a health insurance doctor. The contribution for pension and disability insurance in the amount specified in the provisions of the social insurance system is paid for the period of care, but no longer than for the period necessary to obtain the insured status (contributory and non-contributory) compulsory period of 20 years for women and 25 years for men (Article 42). A disabled child who requires partial care and assistance in meeting the necessities of life may be granted care services, specialised care services, or a meal, provided at a support centre (Article 51(1)). Under institutional care, a person requiring round-the-clock care due to disabilities, who cannot be provided with the necessary assistance in the form of care services, is entitled to be placed in a social welfare home (Article 54). Among the types of social welfare homes, provision is made for social welfare homes for children and adolescents with intellectual disabilities and for persons with physical disabilities (Article 56, points 5 and 6).

5.3. Foster Care

Special forms of support for a child with disabilities and their foster carer are provided for in the Act of 9 June 2011 on Family Support and the Foster Care System.[29] With the special needs of a disabled child in mind, in terms of individual, specialised care and rehabilitation and revalidation, special types of foster care institutions are provided for in the form of unrelated professional foster

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[28] Regulation of the Council of Ministers of 14 July 2021 on verified income criteria and amounts of cash benefits from social assistance, Dz. U. 2021, item 1296.

[29] Act of 9 June 2011 on family support and the foster care system, unified text Dz. U. 2024, item 177.

families and specialised-therapeutic-type foster care institutions. The legislator has also extended the period in which a disabled foster child can stay in foster care until the age of 25 (Article 37(2)). A foster family and a person running a family-type children's home are entitled to an allowance of no less than 227 PLN (€52) a month to cover increased costs of the maintenance of that child (Article 81 sec. 1). An allowance of not less than PLN 860 (€200) per month is granted for the maintenance of a child in a family-type care institution who has a certificate of disability or a certificate with a considerable or moderate degree of disability. This amount can be increased by expenses for: subsidising holidays outside the place of residence of a child aged 6 to 18 – once a year; covering necessary expenses related to the needs of the admitted child – once and expenses related to the occurrence of random events or other events affecting the quality of care – once or periodically (Article 115).

6. Conclusions

The provisions of Polish law meet the requirements for the protection of the rights of a child with disabilities and his or her family, although their realisation in practice varies, and they do not eliminate all exclusionary mechanisms. However, the situation of a child with disabilities is not shaped by legal regulations only. Regulations alone, even in their most perfectly shaped form, will not fully secure the realisation of the rights to which they are entitled. At the level of statutory regulations, the range of legal guarantees dedicated to children with disabilities are broad. However, there are still some social barriers to interpersonal relationships with persons without disabilities, which hinder their social activity. These barriers often result from prejudices and stereotypical perceptions of disability, leading to exclusion and marginalisation. Meanwhile, people with disabilities have the same rights as others and should therefore be given the opportunity to participate in society. Levelling the playing field is possible by breaking down stereotypes and prejudices against people with disabilities. This is a fundamental step towards providing them with a welcoming environment, respect, and understanding. In view of this, intensive efforts are needed to change perceptions regarding disability and to become familiar with it as a normal part of life, inter alia, and to a greater extent than hitherto, by conducting awareness-raising campaigns among the non-disabled community on the coexistence of non-disabled and disabled people in joint activities. The perceived slow change in social mentality gives hope for gradual improvement in the situation of people with disabilities.

Most importantly, regarding the rights of a child with disabilities, the whole system should strive to ensure that the child can develop as close as possible to his or her non-disabled peers and that disability is not a barrier to development.

However, this requires increased state involvement, including financially. State policy in this area should consider the specific problems that children with disabilities face daily, bearing in mind that their upbringing and the satisfaction of specific needs due to disability always entail the involvement of above-standard material resources. The possibility of prompt treatment and rehabilitation and their consistent continuation is often determined by the amount of families' material resources, meaning that their lack automatically limits the developmental possibilities of a child with disabilities and reduces their chances of achieving independence in the future.

The law provides for many types of benefits and services for children with disabilities; however, the level of funding is inadequate to meet their actual needs. It should be borne in mind that children with disabilities require a commitment of greater financial resources if only because of the increased cost of medical treatment, the need to provide them with constant rehabilitation, and the maintenance and repair of assistive equipment. Clearly, due to the child's disability, these needs are much higher than in the average family. The rights guaranteed to children with disabilities and their families will only be on paper as long as the financial support falls short of real needs.

The lack of a support system for children with disabilities points to the lack of a support system for their families, including, inter alia, the lack of comprehensive information and support for parents from the doctor and medical staff immediately after a child is diagnosed with a disability, the lack of procedures for ensuring the earliest possible specialised treatment and rehabilitation, and the lack of an effective support system for parents with a child with disabilities to enable them to work freely. The problems associated with the early diagnosis of disabilities are worth noting. Parents of children with disabilities need to know that they will not be left to fend for themselves. However, they are sometimes unable to cope with the responsibilities of providing appropriate care for a child with disabilities, and they end up abandoning them. This is why, despite the progress made in deinstitutionalisation, many children with disabilities live in various types of institutions. The lack of an effective welfare system and real support does not encourage families to keep children with disabilities at home. It is necessary to develop a comprehensive family support programme with an extensive system of volunteers, caregivers, physiotherapists, and nurses to assist parents with a child with disabilities.

Undoubtedly, progress is visible in the development of legal guarantees for the protection of the rights of persons with disabilities. However, more legal measures should be taken to assist them better in solving their problems, rather than bailing them out.

Nevertheless, the quality of existing legal regulations is insufficient. Laws should be precise and understandable, as well as stable and orderly. Meanwhile, the provisions containing standards affecting children with disabilities often require at least basic legal knowledge and are scattered across many normative acts, which are subject to frequent changes. Often, shortly after a normative act has been issued, a new one must be issued due to amendments. The large number of provisions scattered across many normative acts and the specificity of legal language require high legal awareness among parents of children with disabilities in order to interpret these provisions appropriately and go to the appropriate body to exercise their rights. It seems desirable to reinforce the stability of law and to create a single authority to provide information on the rights of children with disabilities and their parents, as well as the support that should be sought and from whom it can be obtained. Prompt, reliable information enables parents to start treatment immediately, which not only improves the child's current state of health but also prevents it from deteriorating and increasing disorders.

It is necessary to implement measures to integrate children without disabilities with those with disabilities so that both groups can 'get to know' each other, understand each other, and help each other. Isolating children with disabilities from those without disabilities negatively influences the perception of those with disabilities as inferior. Not separating children with and without disabilities allows both groups to be in a diverse environment while fostering self-esteem, empathy, tolerance, and acceptance. It also influences the development of independence and builds self-confidence while fostering positive attitudes, helping to build lasting relationships with peers. Therefore, the benefits of this type of coexistence accrue to both parties. The process of inclusion of children with disabilities is only partly realised, as it involves relationships within the school, whereas outside-school children with disabilities do not participate in the lives of their non-disabled peers. Only by understanding inclusion in this way is it possible to effectively build a community based on solidarity between children with disabilities and their non-disabled peers in their natural living environment.

For the rights of children with disabilities to be fully realised, school teachers should be prepared adequately. Unfortunately, most teachers are not prepared to work with children with disabilities; they have inappropriate attitudes towards them, use discriminatory language, lack the skills to integrate children with disabilities with their non-disabled peers, and show reluctance to accept children with disabilities into their classrooms. This calls for decisive action in terms of mobilising them to improve their interpersonal skills and teaching methods, as well as being more open and allaying their fears of interacting with children with disabilities. This seems to be the best way to put into practice international and national guarantees to protect the rights of children with disabilities.

References

Balcerek, M. (1990) ‘Szkolnictwo specjalne i pedagogika specjalna w pierwszej połowie XX wieku’, in S. Mauersberg (ed.) *Dzieje szkolnictwa i pedagogiki specjalnej.* Warsaw: Wydawnictwa Szkolne i Pedagogiczne.

Banaszak, B. (2012) *Constitution of the Republic of Poland: Commentary.* Warsaw: C.H. Beck.

Nowicka-Chachaj, A. and Rdzanek-Piwowar, G. (2005) ‘Prawa dzieci i młodzieży niepełnosprawnej w systemie praw człowieka’, in B. Szczupał (ed.) *Młodzież niepełnosprawna – szanse i zagrożenia w aktualnej rzeczywistości społecznej.* Cracow: Oficyna Wydawnicza „Impuls”.

Statistics Poland (2021) *National Population and Housing Census 2021: Population Ageing in Poland in the Light of the Results of the 2021 Census.* Warsaw: Statistics Poland.

United Nations General Assembly (1959) *Declaration on the Rights of the Child.* Adopted on 20 November 1959. Available at: http://libr.sejm.gov.pl/tek01/txt/onz/1959.html (Accessed: 30 April 2024).