

Sheltered employment for persons with disabilities

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Sheltered employment is expanding in many countries with various types of institutions offering an increasing number of positions to persons with disabilities who wish to work. The structures involved are also showing a growing desire for recognition as full participants in the economy and as employing higher professional standards. In fact, many providers of sheltered employment are now using management methods borrowed directly from the commercial world. Quality control procedures have been introduced in a number of countries, in order to obtain ISO 9000 certification and to compete on an equal footing with normal enterprises.

However, such institutional structures have evolved in very diverse legal contexts ranging from general business law to the special provisions governing establishments with a therapeutic function. Given such contextual diversity, questions of the employment status and fundamental rights of the workers involved may — sometimes crudely — be overlooked. This article offers an overview of that particular aspect of sheltered employment.

Two problems are particularly important in this sector. The first arises from the various concepts of sheltered employment. Does it provide workers with an occupation over the long term or can it constitute transitional employment on the way to entry or re-entry to unsheltered employment? The second question is an extension of the first in respect of the objectives of sheltered employment. Should the production of goods and services take priority over therapeutic or medical and social concerns? Are these dual objectives compatible? Clearly, there is very considerable inter-country variation in the definitions, limits, context and conditions applicable to sheltered employment and as a result in whether persons with disabilities are granted full employment status. It depends, for example, on whether the structure in question is governed by labour legislation or by legislation on health care and social policy. In fact this dual, differentiating approach was confirmed in a ruling by the European Court

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of Justice in 1987 (the Bettray case, No. 344/87), which has not been overturned by subsequent case law. In effect, a dividing line was drawn between the sheltered sector and “ordinary” employment.

Mention should also be made of the negative image sometimes associated with sheltered employment and disabled workers, as epitomized in the use of terms such as “ghetto”, references to segregation or the artificial position the sector holds in the economy (Velche and Baysang, 1995), or to the strengthening of links between provision for children and adults, and the problems of adjustment to changing social and socio-economic conditions (Blanc, 1995).

In order to address these questions, this article reports on a study made of employment conditions in sheltered workshops in a number of countries.¹ In the opening section, an overview of sheltered employment in 20 countries is provided. The following section elaborates a typology of the various forms of sheltered employment encountered in the study. Finally, in a concluding section a number of policy proposals are put forward.

Overview of sheltered employment

Type and legal personality of sheltered employment structures

The legal framework of sheltered employment provision varies. In the majority of cases the structures are private establishments, usually run by voluntary associations or as cooperatives or, more rarely, as genuine commercial enterprises. (In Ireland, South Africa and Portugal all the structures are private.)

The composition of the sector as a whole varies from situations in which sheltered workshops are run by many small, voluntary associations, some of them managing just one establishment, to a situation in which a single entity predominates (as in the case of Remploi in the United Kingdom) or even constitutes the entire sector (such as Samhall, a foundation that became a limited liability company in 1992, in Sweden). Individual sheltered workshops employ on average between 30 and 90 disabled persons.

Overall, the sheltered employment sector has been growing significantly, although obviously the pace of growth varies between countries. In a soft labour market, disabled workers are a particularly vulnerable group and have

¹ Data on working conditions in sheltered employment were collected by means of a survey. The questionnaire was sent to the social partners and to voluntary associations of and for persons with disabilities. An initial selection was made of 18 countries which appeared to pursue a relatively stable policy regarding sheltered employment. Questionnaires were ultimately sent to 25 countries and 35 completed forms were returned. The five countries which did not respond to the questionnaire were excluded from the study. The following 20 were included: Argentina, Australia, Belgium, Costa Rica, Czech Republic, Denmark, France, Germany, Greece, India, Ireland, Luxembourg, Norway, Poland, Portugal, South Africa, Spain, Sweden, Switzerland and United Kingdom.

great difficulty finding a job on the open market, in which case sheltered employment establishments can help by offering more positions to disabled persons seeking work.

Although in many countries it is difficult to quantify the development of such arrangements over the past ten years, the following figures reveal a marked growth in the sector: in Spain, the number of places in sheltered workshops (*centros especiales de empleo*) has more than doubled since 1987, to a current total of 14 000; in France, the work-based assistance centres (*centres d'aide par le travail*) have increased their capacity by 20 000 (33 per cent) and the sheltered workshops (*ateliers protégés*) by 5 000 (80 per cent) over a ten-year period. In the United States, over the past five years the number of jobs available in workshops for severely handicapped persons run by the NISH (i.e. only a part of the sheltered environment), has risen from 15 000 to almost 26 000. By contrast, in Sweden, over the past ten years there has been virtually no change in the number of jobs on offer by the Samhall enterprise to disabled workers (27 000), though the percentage this represents of the total population is among the highest in Europe. In Quebec, the number of sheltered workshops (*centres de travail adapté*) remained stable from 1982 up to 1996, when it began to increase. In India, a recent decision to establish a fund for the employment of disabled persons may be expected to have an impact on sheltered employment. In Costa Rica, over 60 per cent of the sheltered workshops operating today were set up during the past ten years. Sometimes, the sector grows and evolves at the same time, as in the case of Remploy in the United Kingdom. Active in sheltered employment for over 50 years, this enterprise is now focusing on increasing the numbers of *interworkers*, i.e. employees placed by Remploy in regular enterprises.

There is a particularly marked disparity between countries in the numbers employed in a sheltered environment as a proportion of the economically active population. Even amongst European countries, it ranged from 1 to 12 per thousand (see table 1).

However, figures do not always provide a clear picture and, in so far as in some countries there is no specific legislation and therefore no serious statistical studies can be made, the result is a sort of "grey market" in sheltered employment.

Sometimes, there is just one type of sheltered employment structure, as in most northern European countries, for instance. Elsewhere the norm is two coexisting types of institution, as in Australia (where sheltered workshops exist alongside "enclaves" which employ disabled workers within ordinary enterprises), in Argentina (sheltered therapeutic workshops and sheltered production workshops), in Spain (sheltered workshops and work-based assistance centres), and in France (sheltered workshops and work-based assistance centres).

Voluntary associations of and for persons with disabilities (especially, associations of their parents) frequently play a decisive part in the administration of sheltered employment. These associations, which often took the lead in founding such institutions, are now often the main providers of employment for disabled workers in the widely different situations prevailing in Argentina,

Table 1. Number of persons in sheltered employment in 16 member States of the Council of Europe and their share of the economically active population, early 1990s

Country	Number of persons	Share of economically active population (%)
Austria	1 000	0.3
Belgium	20 000	4.9
Denmark	8 000	2.7
Finland	11 000	4.4
France	90 000	3.0
Germany	140 000	3.7
Ireland	8 000	6.3
Italy	over 10 000	[est.] 0.2
Luxembourg	100	0.6
Netherlands	85 000	12.2
Portugal	1 000	[est.] 0.1
Spain	11 000	0.4
Sweden	34 000	7.5
United Kingdom	13 000	2.9
European Union (of 12)	approx. 430 000	2.3
Norway	11 000	5.0
Switzerland	22 000	6.0
Total	approx. 465 000	

Sources: Samoy and Waterplas, 1992; Grammenos, 1992.

Australia, France, South Africa or Spain, and thus are directly involved in their administration. Conversely, in some countries of northern Europe (e.g. Belgium, Ireland, Norway, Sweden and United Kingdom), such associations play a less decisive role in administration, often acting purely in an advisory capacity.

Aims and activities of sheltered workplaces

The main objectives of sheltered employment were most frequently cited as being social and occupational integration, and rehabilitation. In many countries (Australia, Denmark, India, Sweden) the provision of jobs in one structure or another was perceived to be the main aim (Belgium even referred to "setting to work"). Others cited the production of goods and services (Costa Rica, Norway, Portugal, South Africa), while the Swedish Samhall enterprise also mentioned financial performance, albeit only fourth on the priority list. In Luxembourg, however, "production is not viewed in terms of output. It is the consequence of a disabled worker's self-fulfilment rather than an immediate objective".

At the opposite end of the scale from objectives formulated clearly in production, or even in productivity terms, are those concerned with enhancing the disabled workers' well-being, for example, with restoring their dignity (Australia). Therapeutic treatment as such was mentioned only by Greece, and a purely occupational function only in relation to the Spanish work-based assistance centres.

Certain intermediate objectives were also often mentioned, for example, supplementing disabled workers' income (South Africa, Spain); vocational training (Australia, Norway, Scotland); and the transition to "ordinary" employment (Argentina, Belgium, Sweden).

Although there are no precise data on the types of activity carried out in sheltered employment structures, those most frequently mentioned by the countries examined were, in descending order: subcontracting of an industrial nature (packaging, assembly or manufacturing), manufacturing *per se*, services, agriculture, and commercial activities.

Legislation and supervision

The sheltered sector is governed by various types of legislation. While some countries (e.g. Costa Rica, Greece, India, Ireland, South Africa or Sweden) have no specific legislation on the organization or operation of sheltered workplaces, most other countries do have specific legislation or regulations governing aspects of sheltered employment, both to protect employees and to specify exceptions to the application of labour law (notably as regards a fixed minimum wage).

However, in some countries sheltered employment is explicitly excluded from standard labour legislation (e.g. Australia, unless there was an enterprise agreement or an "award" in the branch of activity in question); in some other countries, existing labour law applies in the absence of any specific reference to sheltered employment in the legislation.

Such workshops may be supervised either directly by the ministry of labour at central level (e.g. Norway, for the "labour market enterprises" (AMB), and Portugal) or at regional or local level (Spain), or by the ministry of social affairs, or even jointly.

When there are two or more types of workshop, a distinction is generally drawn between those concerned primarily with production and those where the treatment is the focus. They are supervised by the relevant ministry (labour or health, respectively) and are subject to different regulations, particularly as regards labour law. Workers with less severe disabilities are largely found in workshops emphasizing production, while treatment-oriented workshops employ a large proportion of persons with a mental impairment.

Funding and subsidies

Countries fall into one of two broad categories: those where such establishments receive central government funding, either through a ministerial department or national agency (e.g. Australia, Costa Rica, France, Ireland, Sweden); and those where funding is provided on a regional or local basis (e.g. Belgium, Portugal, South Africa, Spain), though a few combine funding from several levels (e.g. Argentina, Denmark, and Scotland (United Kingdom)).

In some cases, government funding is linked to a certain level of earnings (50 per cent of the minimum wage in Spain, for example), while in others, there is no direct link to the earnings of workers in sheltered employment.

In any case, the wage link is only one element in determining government funding of sheltered workshops. There are also subsidies for equipment, job creation, training (e.g. in Portugal, prior training for employment in a sheltered workshop is fully subsidized for up to nine months), adaptation of work stations, etc. In Sweden, for example, the Samhall enterprise receives a blanket subsidy based on the “increased cost of employing disabled workers”.

The persons in sheltered employment

Demographic characteristics

The greatest difference between the countries studied was in the actual numbers of persons with disabilities employed in the sheltered sector and in its relative size. In India, 3 000 persons are employed in sheltered workshops out of an economically active population of over 300 million (though the figure may not reflect those in the large number of undeclared small enterprises), by contrast with 27 000 in Sweden out of an economically active population of about 4 million. Comparing European countries only, Samoy and Waterplas claimed rates in 1992 from under 0.1 to over 12 per thousand of the active population, for a total of some 500 000 disabled workers (Samoy and Waterplas, 1992, table on p. 4).

Most workers in the sheltered sector are persons with disabilities; the percentage of non-disabled workers (mostly employed in some supervisory capacity) typically ranged between 5 and 25 per cent. However, in Poland the situation is unusual, with only 122 000 disabled workers in a total sheltered workforce of about 200 000; this anomalous situation arises because any enterprise with a workforce of at least 40 per cent disabled persons (or even 30 per cent if they are visually impaired) is eligible for sheltered employment status.

The proportion of men in sheltered employment is consistently higher than that of women, constituting an average of 60 to 70 per cent of the total (even 80 per cent in Switzerland). There are few statistics on the age distribution of disabled workers, but the scant data available do show a wide variation from “young” in Costa Rica, where 90 per cent of disabled persons working in sheltered workshops are under 40, to “intermediate” in Australia, where about a third are in the age groups of under 30, 30-39, 40 and over, respectively, and finally to “older” in Sweden, where the average age of disabled workers in sheltered employment is 46. The population in sheltered workshops tends to be older in those countries with longer experience and larger numbers.

Nature of the disabilities

The nature of the disability of workers in sheltered employment is rarely studied. The few figures available reveal marked differences. In Argentina, for example, some 90 per cent of workers in the sector have a mental impairment; likewise, in Australia, over 85 per cent have a mental or psychological impair-

ment. But in Sweden, only 33 per cent are mentally or psychologically impaired, and 26 per cent in Norway; just 16 per cent are mentally impaired in the United Kingdom. The percentage of persons with a physical impairment is about 50 per cent in Sweden but only 7 per cent in the centres in France and Australia.

Length of service and mobility

Little information was provided on average length of service in sheltered employment in the replies to the questionnaire. Figures were provided only by Scotland (20-25 years), Costa Rica (12 years) and Sweden (8.2 years for women and 8.4 years for men); the responses from Greece and Ireland indicated that disabled workers generally remained in a sheltered workshop for the whole of their working lives.

Nor is much known about the rate of transfer to “ordinary” employment. In Norway, half the existing sheltered jobs in labour market enterprises must be allocated for short-term employment (under two and a half years). A 1993 study revealed that 11 per cent of workers transfer from these enterprises to “ordinary” jobs, though this type of structure employs persons with the least severe disabilities and accounts for 43 per cent of sheltered employment in Norway. South Africa cited a transfer rate of just 4 per cent, Sweden estimated the rate at 3 to 6 per cent, Greece and Costa Rica estimated 3 per cent, Switzerland and Scotland specified under 2 per cent, and France, Spain, Belgium and Ireland reported a transfer rate of less than 1 per cent. There may also be a transition from one type of sheltered employment structure to another (in countries which have several different types of structure) which may represent a significant move for the individuals concerned as, for instance, in Spain from work-based assistance centres (*centros ocupacionales*) to sheltered workshops (*centros especiales de empleo*).

These low rates of transfer out of sheltered employment may partly account for the heavy demand for such positions and for the growth of the sector, but they also underlie the concern as to the future prospects of workers in sheltered employment. The recurring question about the ultimate objective of sheltered employment then is whether it should be viewed as providing a long-term occupational activity, or as serving as an intermediate stage leading to “normal” employment.

Employment, freedom of association and worker representation

There are three broad types of employment status for disabled workers in a sheltered environment.

- First is the type where all workers in the sector are considered to be clients or trainees, that is, they have no real employment relationship with their employer. Argentina, Costa Rica, Germany, Greece, Ireland or South Africa are all examples of this category. In this case, disabled workers are

never considered to be employees, even if they receive a financial payment for the work they do.

- The second category, which applies to most European countries as well as Australia, contains several types of employment status. They vary according to the nature of the sheltered employment structure, the degree of disability, and whether the employer is party to a collective agreement. The result is that certain workers are considered students, trainees, or clients, while others enjoy employee status and all the associated rights.
- Finally, in the third category, workers in the sheltered employment sector are basically considered to be employees. Amongst the countries in this category Belgium, Sweden and the United Kingdom are the most important. In these cases, the employees sign a contract identical to those used outside the sheltered employment environment.

As regards freedom of association, in a few countries — especially those where disabled workers do not have employee status — unionization of the sheltered workplace is out of the question. When two types of sheltered employment provision exist side by side, as in France, workers in sheltered workshops may be allowed to join trade unions but no such right is granted in the work-based assistance centres. In the great majority of countries examined, there was freedom of association in these establishments in principle, but it took no tangible form. Thus there is a gap between the theoretical right to organize and a (often very) low membership rate, which may be explained by a measure of disinterest shown by the large union federations towards the sheltered workforce generally, on the one hand, and the difficulties of operating alongside the voluntary associations, on the other. Finally, in the few cases where employee status is broadly recognized for disabled workers in a sheltered environment, trade unions can be seen to play a central role: this can be seen in Wallonia (French-speaking Belgium) with membership rates of 30 to 40 per cent and where 62 per cent of sheltered production workshops (*entreprises de travail adapté*) have a union representative; and in Sweden, where nearly 100 per cent are trade union members.

In nearly half the countries studied, no collective agreement whatsoever applies to employment. Yet in the United Kingdom, by contrast, Remploi has its own national collective agreement, and in Belgium nearly all the collective agreements recognized by the National Labour Council now apply to sheltered workshops.

Similarly, as regards elected representation and disabled workers' participation in decision-making within sheltered employment structures, situations vary widely, from the "ordinary" case close to non-sheltered employment (e.g. Belgium, Norway, Sweden and the United Kingdom, where there are shop steward elections), to a complete absence of any representation or participation in decision-making (e.g. Costa Rica, Luxembourg and Switzerland). However, most of the countries examined fall into some intermediate situation and respondents mentioned wide variations even within the country.

Wages, career structures and training

Wages and benefits

In over two-thirds of the countries considered here there was a minimum wage or income for disabled workers in sheltered employment; the exceptions were Argentina, Australia, Greece, India, Ireland and South Africa.

However, the existence of an incomes floor had no bearing on either the average level or the composition of a minimum wage for such workers. In some cases, the payment was the sole source of income, in others it supplemented an invalidity pension. The various forms of income of persons in sheltered employment need to be examined more closely.

In one group of countries, earned income is considered separately from other forms of income and is fixed broadly according to standard criteria — experience, skills, productivity, collective agreements or awards. In some cases, such payments constitute the disabled worker's sole income.

Countries in this category include Belgium, Norway, Poland, Sweden, the United Kingdom, for structures providing a transition to open employment; and India and Spain, despite their marked disparities in wage levels.

In Australia, wage levels are determined primarily by productivity and by the existence or otherwise of collective agreements; above a certain ceiling, however, payment of a wage may cause a pension to be reduced or even cancelled.

In France, the basic wage in a sheltered workshop is at least 35 per cent of the minimum wage (SMIC), and a supplement paid by the Government brings the total to at least 90 per cent of the SMIC. Whatever the wage paid by the enterprise, a worker's total payments may not exceed 130 per cent of the SMIC, which restricts promotion possibilities, at least in terms of earnings. The income of a person working in a work-based assistance centre is composed of one productivity-related part (at least 15 per cent of the SMIC) and of an income supplement paid by the Government (at least 55 per cent of the SMIC). Adults with disabilities may be eligible for an additional benefit which is not connected with their job, the total resulting income then ranging between 70 and 110 per cent of the SMIC.

Similarly, in Germany, a basic wage established by the labour office is supplemented by a component assessed on the basis of the volume and quality of the individual's work. In the Czech Republic, employees whose work does not justify the payment of the minimum wage receive a supplement calculated on the basis of the level of pension entitlement (which may amount to 75 per cent of the minimum wage when the pension is paid in full, or 50 per cent when it is paid in part). In Denmark, the wage is fixed on the basis of the invalidity pension received by the individual worker.

In Ireland workers in sheltered workshops receive a pension and a supplement paid by the employer which may not exceed 50 per cent of the pension.

In Switzerland, the wage (usually supplemented by an invalidity pension) is expected to reflect any "residual" skills the disabled person may have (i.e. the greater the disability, the lower the wage). Similarly, in Greece, though

productivity may be taken into consideration, earnings are largely assessed in the light of the degree of disability. In Costa Rica, persons with disabilities employed in a sheltered environment receive a benefit or grant which is always below the minimum wage fixed by law.

Luxembourg is an exception in this respect, in that income is accorded without regard to the work carried out; persons officially registered as disabled receive a guaranteed minimum income regardless of whether they work or not.

In all the cases considered, wages are paid in cash or into workers' bank accounts.

Workers frequently benefit from a range of allowances in addition to their wages. These include subsidized transport in almost 75 per cent of cases, though in various forms: partial or total reimbursement, free transport for the disabled, pick-up services. Similarly, almost half receive a meal subsidy. Working clothes are provided in some cases (e.g. France and Ireland), though often this rule applies to all workers (e.g. Belgium and the United Kingdom). In some instances, workers are accommodated on the premises (in France, this is rarely the case in sheltered workshops but is more frequent in the work-based assistance centres, despite the fact that the accommodation is always funded from an independent source; in Belgium and India, accommodation is sometimes provided alongside sheltered employment establishments. Leisure activities may be organized in some cases, as in Greece, or in the French work-based assistance centres.

Career, advancement and promotion prospects

A quantitative assessment of internal or external mobility cannot be made on the basis of the replies concerning career prospects. None the less, some general trends emerged from a number of replies.

In a few countries, the emphasis is on internal promotion and on career opportunities within the enterprise (e.g. Australia and Poland), sometimes with wage increase (Denmark), the chance of taking on management responsibilities (South Africa), of moving out of the disabled category (Germany) or of obtaining an employment contract (Argentina). In some countries equal or greater emphasis is placed on developing ways of entering "ordinary" employment (Costa Rica, Czech Republic, Denmark, France, Spain) and in dual systems on the transition from one type of structure to the other (in Spain and in France, from a work-based assistance centre to a sheltered workshop). As mentioned earlier, the Norwegian system focuses on providing temporary positions (two and a half years maximum), and to this end has developed the idea of a rehabilitation plan. Sweden is exceptional for the variety of possibilities which range from entering "ordinary" employment to becoming a non-disabled Samhall employee or launching into self-employment with an activity previously carried out within Samhall.

But in others there is a dearth of prospects for disabled workers: they were considered "very limited" in Portugal, "virtually non-existent" in Switzerland and "non-existent" in Ireland; in Luxembourg the only prospect mentioned was

“remaining in the structure until you reach pensionable age”. The reply from Belgium referred generally to the limited prospects for anyone wishing to leave sheltered employment and, as a result, the difficulties encountered by persons with more severe disabilities in getting a place in a sheltered employment establishment.

Conditions of work

The smallest difference between countries concerns working hours. In general, working hours range from 35 to 40 hours per week. Four countries fall significantly short of this average — Argentina (25 hours), Greece (30 hours), South Africa (30-35 hours), and Australia (variously estimated at between 32 and 38 hours), while in India, the average is significantly higher (45-48 hours).

The vast majority of countries reported that there are no specific measures for women workers. There appeared to be no cases of child labour (under age 15) in sheltered employment structures in the countries examined.

Some disparities emerge regarding night work. This is illegal in almost half the countries in the sample. It is considered exceptional or very rare in Australia and Belgium, while in France it is marginal and requires special permission by the labour inspection authorities and by the committees on occupational safety, health and working conditions. It is banned except under special dispensation in Spain, and is considered unworkable in South Africa on account of inadequate public transport. It is permitted in the Czech Republic and Poland subject to medical permission, as it is in India where a bonus is also payable.

The system of paid leave for those in sheltered employment is no different from the usual system in most of the countries studied. However, in Argentina and South Africa, no provision is made for paid leave in sheltered workshops, except for employees under contract. In South Africa, sheltered workshops often close for two or three weeks in December, and for this reason employees usually save a certain sum each month, which is taken out at this time. In Ireland, paid leave is usually granted, though there is no legal obligation to do so; in Costa Rica, half the structures surveyed granted paid holidays. In Australia, though paid holidays are compulsory throughout the sector, they are actually granted in structures covered by awards or agreements, but not always in other structures not so covered, where the social and therapeutic approach often prevails over production as such.

In Luxembourg, Poland and in some Belgian establishments, additional days of leave are granted to disabled workers. In the Czech Republic, Sweden and the United Kingdom, the number of days granted for sick leave is higher than in “ordinary” employment.

Social security

In almost half the European countries studied, social security benefits applicable in sheltered employment are identical to those elsewhere (the Czech Republic, France (for the sheltered workshops), Germany, Norway, Poland,

Portugal, Spain (for the sheltered workshops), Sweden and the United Kingdom). In Greece, though the same social security benefits apply in sheltered employment as in other forms of employment, disabled workers become eligible for a pension sooner.

In several countries the benefits payable in sheltered employment are comparable with those paid in “ordinary” employment, with the exception of unemployment benefits. For disabled workers this is calculated according to specific rules in Belgium; it is not granted in Denmark, in the work-based assistance centres in France and in Spain, or in Switzerland.

In Ireland and Luxembourg, employees in sheltered employment receive an invalidity pension which establishes their right to other social security benefits — which are thus linked to their disability rather than to their occupational activity. Most workers in sheltered employment in Australia are in a similar situation and therefore continue to receive a pension (either in full or in part, depending on the degree of their disability) if they fall ill or stop working.

In Argentina, the sheltered employment programme now requires basic social security coverage of disabled workers, effective in certain cases, while other workers are covered only by third-party insurance. In South Africa, there is virtually no social security provision for workers in the sheltered sector, other than the retirement pension paid by the Government and sick leave that is granted by employers in some cases. In Costa Rica, there is no social protection in this sector, and in India, only in structures covered by the Factory Act where the standard coverage applies to disabled workers as well.

Typology of the situations examined

It seemed useful to group the “types of sheltered employment situation”, in order to understand better both the various models involved and the differences between them in terms of labour relations and working conditions.

The therapeutic model (protection vs. employee status)

The therapeutic model is generally the one applied in institutions employing persons with a mental impairment. Except in Ireland where the centres are run by charities, associations of persons with a mental impairment or of their parents are often very active in these institutions: for instance, in Argentina the FENDIM (*Federación de Entidades Pro-Atención al Deficiente Intelectual*) played a central role in setting up sheltered employment structures and is still closely involved in running them. Similar situations apply in Costa Rica, Greece and South Africa. In Luxembourg, parents’ associations are represented on the boards of most private institutions in this sector.

In Ireland and Greece, no public authority has particular responsibility for sheltered employment and no specific legislation applies to the sector. In South Africa, the responsible public authority is the Welfare Department, while in Costa Rica and Argentina a specific institute supervises the activities of the various institutions involved. The situation in Luxembourg differs somewhat,

in that the labour and education ministries are jointly responsible for the sector.

Under this therapeutic model, workers are generally regarded either as beneficiaries, or as trainees or clients, rather than as employees (except for a minority of cases in Luxembourg and Argentina). Thus, they do not have a contract with their employers and so are not covered by most of the provisions of the relevant labour codes (with the notable exception of all those concerning health and safety which apply equally to sheltered employment, other than in Costa Rica where no legislation whatever exists in this regard). Likewise, workers' social security entitlements are not modelled on those of employees but are linked to their disability status rather than to the work they do in a sheltered environment. Except in Luxembourg, the social security applied in sheltered employment bears little comparison with that offered to workers in "ordinary" employment.

Thus, in this model the workers with disabilities do not sign employment contracts and do not join trade unions. Most replies stated that membership of a trade union was possible though not widespread, largely because of a lack of trade union interest in this sector. Argentina, Greece and South Africa mentioned the election of representatives to discuss social policy issues with the management; reference was also made to elections in a number of such institutions in Ireland, but only in connection with safety matters. Collective bargaining is therefore very limited and collective agreements non-existent in the sheltered employment environment of the therapeutic model.

Disabled workers' income thus comes largely in the form of benefits, grants or pensions, rather than wages, and is therefore not tied to minimum salary. In Luxembourg, they receive the guaranteed minimum wage, while in Ireland or South Africa their income is comprised of a fixed pension to which a supplement is added.

In this model, working hours are shorter than those prevailing in other situations: with the exception of Luxembourg, where they may total 40 hours, they range between 30 and 35 hours in South Africa, are 35 hours in Ireland, and 30 hours in Greece, and just 25 hours in Argentina.

The intermediate model (the disabled worker as "quasi-employee")

In this model, though working conditions cannot be viewed as concerning wage employment only, they do not reflect a purely therapeutic function either.

Though generally considered as employees, workers may not be covered by all the provisions governing usual wage employment. An employment contract is considered advisable, but it does not always exist in practice (particularly in Denmark and Germany). In this model, membership of a trade union was always reported as being permitted, yet in practice membership levels are extremely low or even non-existent. Similarly, there is very little collective bargaining (indeed, its legal status has yet to be determined in Germany), and only rarely do disabled workers participate in decision-making processes and elect representatives. In all cases there are no collective agreements which might cover the sector.

Yet wages must be above a stipulated minimum. They may vary according to any existing disability pension and its level (the amount payable must be at least 5 per cent of the minimum wage in Denmark), or they may be composed of a basic wage payable to all plus an individualized supplement (Germany). However, such payments do not constitute wages in the normal sense of the term. In Portugal, they are equivalent to the minimum wage.

In contrast to the preceding model, social security in this intermediate model is based on that applicable to workers generally, but with certain restrictions: unemployment benefit is not payable in Switzerland and Denmark and, in the latter case, old-age pensions are payable only when the beneficiary reaches the age of 67.

Working hours — between 35 and 42 hours, with some exceptions — are not very different from those observed in “ordinary” employment.

The intermediate model tends more toward the wage employment model than the therapeutic model. However, trade unions are virtually or entirely absent, as are collective agreements and participation or representation of the disabled workers.

Working conditions in this sector in Portugal, where sheltered employment has been established much more recently than in other countries in this group (the earliest legal provisions date from 1983 and the first establishment opened in 1988), tend to reflect the wage employment model.

The mixed (dual) model

Usually two, sometimes more, types of sheltered employment structure coexist under this model. However, this does not mean that the situations in countries with dual systems are all the same. The distinction made between the different types of structure is virtually identical in Spain and France (work-based assistance centres and sheltered workshops), with the first type of structure falling into the therapeutic category and the second pursuing the wage employment approach. In Norway, the principle is virtually identical, but the practice is fundamentally different in that the labour market enterprises are required to allocate half their posts to training and rehabilitation activities for a limited period of two and a half years, and the other half to the traditional form of sheltered employment; the employment cooperatives (ASB and ASVO for the public sector) and the production workshops (PV) offer more extensive protection, and represent the other facet of Norway’s sheltered employment policy.

The situation in Australia is entirely different again: the dual nature of its sheltered employment structures is not strictly speaking the result of policy but rather reflects a trend which is evolving on the basis of whether or not individual structures are covered by an industrial award or agreement. However, though the initial premisses are different, the end situation broadly corresponds to the French and Spanish situations, in that there is a *de facto* separation between the wage employment approach and the therapeutic approach.

In all these cases, the status of persons with disabilities employed in a sheltered environment depends on the type of structure within which they carry out this activity.

In the higher level structures, they are considered employees; they sign an employment contract (though this may include certain features which would not appear in a normal employment contract, particularly regarding remuneration) and may join trade unions. However, unionization remains very limited in such structures, with a few exceptions in Australia where trade union membership on occasion exceeds 30 per cent of employees. In Norway, the fixed-term nature of contracts in labour market enterprises is cited as one reason for the low level of union membership. In the lower level structures, which generally employ a larger proportion of workers with a mental impairment (26 per cent in cooperatives, 57 per cent in AMB in Norway and with a comparable distribution in France and in Spain), the disabled workers are not considered employees (even though in Norway they do sign an actual contract) and trade unions are virtually absent. As regards the law, in the higher level structures the degree of disabled workers' involvement in their own representation and in decision-making within the establishments where they work is broadly the same as that laid down for "ordinary" employment. However, in practice, the situation is not always so simple. Although the relevant collective agreements are generally those applicable to the structure's sector of activity, difficulties arise in their implementation especially because of the absence of effective union representation and information on rights. In this connection, it seems that here again the Australian awards system offers the institutions involved a comparatively high level of participation in labour relations.

In the lower level structures, workers' rights are considerably more limited by the fact that legal standards are rarely invoked, that trade unions are largely absent and that the sector is not covered by collective agreements. In this connection, Norway is a somewhat separate case because differences between the two types of structures as regards the requirements of labour law are less marked.

In the Norwegian labour market enterprises (enabling transition to "ordinary" employment), in Australia in establishments covered by an award, and in Spain in the sheltered workshops, the wages paid are calculated on the same basis as in "ordinary" employment, whereas in France they consist of one part paid by the employer (at least 35 per cent of the SMIC) and a supplement paid by the State. In all cases, a minimum wage serves as reference.

By contrast, in the Spanish work-based assistance centres and the Norwegian cooperatives, incomes are made up of a basic pension plus an individual bonus which may vary. In Australian enterprises not covered by an award, in theory the wage is separate from the pension but in fact the two are closely linked since the pension may be reduced or cease to be payable once a given wage ceiling is reached; this is considered by some trade union organizations to act as a brake on payment of proper wages in this sector. In France, the incomes of people working in a work-based assistance centre consist of the partial benefit payable to a disabled adult plus a wage paid directly by the centre itself (at

least 5 per cent of the SMIC) and an income supplement (50 per cent of the SMIC) paid by the labour office of the provincial authority (*département*) concerned. The level of social protection is also determined by the nature of the structure (except in Norway where it is equivalent to that applicable in employment generally), since it is linked to employee status in the higher level structures and is dependent on the pension in other structures (the question of social protection of persons with disabilities working in the Spanish work-based assistance centres seems problematic in this respect).

The advantage of this dual system is that it permits a transition between the different types of structures; however it may also “tie” individuals to the type of establishment furthest removed from “ordinary” employment (in France, for example, less than 15 per cent of the workers are in sheltered workshops compared with over 85 per cent in work-based assistance centres).

The wage employment model (protection and labour legislation)

This model covers a wide variety of situations depending, first, on the composition of the sector (in Sweden, a single group; in the United Kingdom, one dominant enterprise which employs over half the workers in the sector, in conjunction with more limited, private or public structures at the local level; in Belgium, a large number of establishments of limited size, most of them administered by not-for-profit associations; in Poland, a similarly wide range of structures, with great variations in size from 20 to 3 000 individuals); and on the proportion of disabled to non-disabled employees (in Sweden, 90 per cent of workers employed by Samhall are disabled; in Poland, enterprises with workforces of 40 per cent disabled employees — and even 30 per cent if visually impaired — qualify as sheltered enterprises and receive the corresponding tax advantages; in Belgium, workshops also cater for “workers making a phased return to employment after illness” and “unemployed persons who are hard to place”). Although this model includes systems that have evolved very differently over time (in Poland, in particular, where growth was very marked and the number of sheltered employment structures more than tripled between 1991 and 1996), its unity and strength derive from its full integration in the working world.

However, there is no significant difference between this wage employment model and the prior models as regards either the sort of work carried out by the persons with disabilities or the sector of activity. But it is different in that the person with a disability is considered to enjoy the right to work and also (as far as possible) to enjoy the same rights and fulfil the same obligations as any non-disabled worker. The responsibility for the workshops under this wage employment model generally lies with the ministry of labour, and the persons with disabilities working there have employees status. Hence, as regards most of the topics considered here, these workshops function very much like “ordinary” employment structures: employees sign a contract that is identical to that of any other employee; levels of trade union membership, while not high, are still significant; employees elect their representatives and there is

a measure of collective bargaining. The sector is covered by collective agreements and diverges only very slightly from the provisions of the labour codes.

The principal reservations about this model concern the persons employed (in particular, a lower percentage of persons with a mental impairment than in other situations; and, more particularly, whether it can remain dynamic over time. In this connection, there is a substantial difference between the Belgian and Swedish cases. Belgium appears to reflect a trend (mentioned by a number of respondents) for the workers with the greatest production capacity to be retained while workers with more severe disabilities are less frequently accepted, with the rate of return to employment estimated at under 1 per cent. By contrast, with an integration rate of between 3 and 6 per cent per year and a strong policy on ensuring a wide range of prospects for its employees, Sweden's Samhall enterprise exemplifies a different facet of this wage employment approach. Its approach shows that considering disabled workers in the sheltered environment as full employees does not necessarily lead to a rigid system with limited prospects of advancement for the individuals concerned.

One could include India in this model, in that its form of sheltered employment differs little from standard employment, though major differences exist between the unregistered small enterprises and the large establishments in its sheltered employment sector. However, it would be wise not to be too categorical in view of the limited size of the sheltered sector in India, and its very recent origins. Finally, a "lesser wage employment model" may be considered to apply in this case, given that, despite the virtual absence of employment protection, the persons with disabilities employed in this sector seem to enjoy working conditions very similar to those in "ordinary" employment. Moreover, it seems likely that the same link between unspecified working conditions for disabled workers and a low level of social protection may prove to be present in other countries.

Conclusions

This survey repeatedly revealed a striking diversity of situations. Under the approach adopted, there was every conceivable variation between two extremes: on the one hand, the concept of the disabled worker as primarily a "sick" person in need of support who, in the context of this support, takes part in some occupational activity, and on the other, the definition of the sheltered environment as being no different from the "ordinary" work environment as regards workers' rights and obligations.

A country's level of development has little bearing on the manner in which working conditions in the sheltered environment are determined. Although the more prosperous countries predictably subsidize sheltered employment more heavily, the mode of funding is by no means the only criterion for judging the prospects and possibilities offered to disabled workers in the sheltered environment.

In the end, the question is to ascertain whether and how the "protection and support" that are such important features of this sector affect labour relations and working conditions.

As far as working conditions are concerned, therefore, one might say that the support necessitated by the particular situation in which a person is placed, whatever their disability, should not limit the possibilities open to that individual to participate fully in professional life.

It should be recognized that, in many countries, finding employment in a sheltered structure is not easy and may involve lengthy procedures. At times of employment crisis, with high unemployment, some persons with disabilities who might otherwise have obtained a job on the open market turn to sheltered employment. The degree to which “ordinary” labour relations and working conditions apply seem even more important in such cases, and is especially relevant in enabling the transition from “ordinary” employment to the sheltered sector or vice versa.

Clearly, also, the nature and quality of labour relations and working conditions in sheltered employment structures bear no direct relation to the activities carried out in these establishments. Indeed, in countries in which the types of activity are identical or very similar, the situation as regards workers’ rights diverges widely. Even within a single country, very similar types of manufacturing activity may be carried out within both the “therapeutic” structures and those of the wage employment model, with as a consequence widely different labour relations and working conditions.

Moreover, while a distinction is frequently made by nature of disability in countries where several different types of sheltered employment structure co-exist, it is also possible that persons with comparable disabilities may be channelled into structures operating very different systems, each with its own style of labour relations and working conditions (although they may lie only a few miles apart geographically). While it is not realistic to consider that every person with a disability should be able to take advantage of all the possibilities available under a system of advanced labour law and relations, that is true for the population as a whole and cannot therefore serve to justify any restriction whatsoever in this regard.

Restrictions on the full application of labour legislation in sheltered employment originate in the two basic definitions of the sector. On the one hand, from a strictly economic point of view, the sheltered employment sector, which has often emerged as a result of initiatives taken by voluntary associations, gives the impression in some countries of being unable to meet the requirements of labour legislation, thereby jeopardizing the very survival of such establishments. On the other hand, the therapeutic aim of sheltered employment stands in the way of meeting legal and social requirements in work organization.

Although the absence or low level of public funding in some countries means that sheltered employment is in a very precarious position, the support function tends to predominate in such establishments, which usually means therapeutic care and assistance.

A clear correlation exists between the definition of sheltered employment structures as places of treatment and a diminished respect for labour legislation, particularly as regards matters relating to participation. To some extent, in such

cases disability is considered as a form of incapacity which then, far from being remedied by an environment supposedly intended to do so, in fact fostered the structure itself.

Consequently, it can be said that even today, the therapeutic function is still extensively perceived as hindering the development of labour relations built on rights and obligations.

Paradoxically, although the stated aim is always to move into “ordinary” employment — despite the fact that this is feasible for only a minority of those employed in the sheltered environment — it would appear that more progress is being made towards achieving this mobility through a more open (less discriminatory) approach in connection with jobs themselves (on a technical level) than in connection with labour rights. The sheltered environment therefore seems better able to assume its function of integration into the “ordinary work environment” when the working conditions it offers (on status, contract, collective bargaining, worker representation, etc.), are close to or identical with those prevailing in that “ordinary” work environment. The result is that as there are more cases of successful transition into employment, then labour relations and working conditions in sheltered employment also become normalized. Though certain disabled workers will clearly never be able to work in an “ordinary” environment, the mere fact of considering sheltered employment as open to the outside world (and therefore as a place of provisional employment for some) creates more favourable conditions for the community of disabled workers as a whole.

Today, although encouraging results have been achieved which appear to bear out that, in most cases, a disability is not an insurmountable obstacle to integration into regular employment (in terms of carrying out a job as well as personal and collective fulfilment), nevertheless it is still essential to protect workers and their rights to achieve autonomy. Although disabled persons, and those in sheltered employment in particular, have certain inherent characteristics, their situation should be viewed as part of a broader issue, namely, whether work is experienced as an imposition and a source of alienation, or can be a means of liberation and self-fulfilment.

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