

Effective Implementation of Disability Rights.

(Focused on Dutch cases)

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Summary

I . Introduction

1. Background of Research

In 2007 Korea enacted the Act on the Prohibition of Discrimination against Disabled Persons (APDD), and it ratified the Convention on the Rights of Persons with Disabilities (hereinafter, CRPD) next year. Since then, the National Human Rights Commission of Korea (NHRCK) has received 5,285 complaints of discrimination by disability and many cases (over 60%) have been resolved by making recommendations or mutual settlement such as improvement in institutions and practices, human rights education, compensation for damages, and improvement in convenience facilities. As a result, during short period South Korea has now improved policy for the disabled significantly. Despite such progress, however, people with disabilities are still not protected adequately and tend to remain on the periphery of society and enjoy only incidental benefits. Especially the intellectually disabled also suffer serious discrimination and violations of their human rights. Therefore, we are looking for good practices and policy implications from cases of the Netherlands that has implemented policies based on spirits of respecting people for a long time.

2. Method and Contents of Research

Firstly, the status of disability rights in Netherlands is based on the report of ANED (Academic Network of European Disability Experts) and interview with

José Smits who wrote the report. Secondly, mechanism of disability discrimination remedy in Netherlands is primarily based on mid term report¹ to DSiN (Disability Studies in Netherlands). Lastly, I reviewed employment and education policies for the disabled in the Netherlands through recent data and materials.

Hereinafter, I will refer mainly to employment and education policies for the disabled in Netherlands. Relating to status of disability rights and mechanism of disability discrimination remedy in Netherlands, refer to the web site of ANED and DSiN.

II . Policies of Disability Rights in Netherlands

1. Employment

According to 2009's survey² of Centraal Bureau voor de Statistiek (CBS), in Netherlands, nearly 1.7 million people aged 15 to 64 years have a disability affecting their capacity to work. Among them, about 43% had a paid job of at least 12 hours. This figure is 0.5% higher than in 2003. And the half of paid job occupied full time job.

According to 2013's survey³ of Centraal Bureau voor de Statistiek (CBS), in Netherlands, about 71% of employee with disabilities had a permanent

¹ <http://disabilitystudies.nl/mid-term-report-effective-implementation-disability-rights>

² <http://www.cbs.nl/en-GB/menu/themas/arbeid-sociale-zekerheid/publicaties/artikelen/archief/2010/2010-3243-wm.htm>

³ <http://www.cbs.nl/en-GB/menu/themas/arbeid-sociale-zekerheid/publicaties/artikelen/archief/2015/een-op-de-drie-arbeidsgehandicapten-heeft-betaald-werk.htm>

contract, 12% had flexible contract and 17% were self employed. Employee with disabilities had permanent contract more than employee without disabilities (68%).

Meanwhile, in Korea, according to 2014's survey⁴ of Employment Promotion Agency for the Disabled, nearly 2.5 million people over 15 years old have a disability. Among them, about 37% had a job. This figure is 1% higher than in 2010. However, unlike the Netherlands, employment rate (37%) includes unwaged employee (14%) who work for family-run business.

As shown above, employment rate of employee with disabilities much lower than employee without disabilities in both countries. And despite recent global economic depression, employment rate of employee with disabilities had increased in both countries.

On the other hand, there are big differences between policies for employment of people with disabilities in both countries. The first thing is hiring quota scheme. In Korea, since 1991, hiring quota scheme has been introduced. According to hiring quota scheme, in public sector employer should employ people with disability at least 3% of total. Private sector is 2.7%. If the company do not comply with the hiring quota scheme, it should pay financial penalty. The amount of Financial penalty is from 500 euro to 1,000 euro, per person and month.⁵

In Netherlands, autonomous agreement between employer and trade union has been respected rather than hiring quota scheme for a long time. In 2015

⁴ survey on economic activities of people with disabilities(2014, Employment Promotion Agency for the Disabled) p.6, P11, P20, P29

⁵ EMPLOYMENT PROMOTION AND VOCATIONAL REHABILITATION OF DISABLED PERSONS ACT, Article 28

there were some changes. Participation act (participatiewet) and Quota act (Quotumwet) were enforced. According to above laws, government and private companies should make 125,000 jobs for people with disabilities by 2026. In case that the job creation schedule is not met by 2017, new quota levies can be introduced for companies employing more than 25 members.⁶ Like this, hiring quota scheme is recently considered in Netherlands for employment promotion for the disabled.

The second thing is the concept of disability. In Netherlands, the concept of disability is based on occupational disability, not medical impairment. That is to say, employment and income depends on the level of working ability. If someone is fully incapable of working, he can receive disability benefit permanently without working. But, if someone is partially incapable of working, he can receive disability benefit only for some period. And then he has to work. Moreover, when those who are partially able to work earn income, total income increases. If not, just minimum level of living is ensured. Like this, the Dutch government encourages employment of people with disabilities based on the concept of occupational disability.

In Korea, the concept of disability is still based on medical impairment model. That is to say, disability depends on medical conditions. Welfare service for people with disability also depends on medical conditions. The level of working ability is not considered, just only medical conditions. These situations result in imbalance of welfare service between users frequently. Therefore, despite hiring quota scheme, in Korea the employment rate of

⁶ <https://www.rijksoverheid.nl/onderwerpen/werken-met-arbeidsbeperking/inhoud/meer-banen-mensen-arbeidsbeperking>

people with disabilities is still low and in case he or she is luckily employed, it is difficult to make sure of sustainable employment.⁷

The third thing is wage subsidies. In Netherlands, according to Participation Act, if people can not earn minimum wages, government give him or her wage subsidies. Like this, dutch government think that wage subsidies stimulate employment of people incapable of earning minimum wages.

Looking at wage level of people with disabilities in Korea, according to 2014's survey⁸ of NHRCK, average wage of people with disability is about 1,000 euro per month. And average wage of people with severe disability is below 400 euro per month.⁹ Whereas minimum wage is 920 euro per month and average wage of employee without disability is about 1,500 euro per month.

Like this, although many people with disability earned below minimum wage, there are no wage subsidies in Korea. In 2014 UN CRPD Committee recommended that Korean government should take steps to fill the gap between productivity and minimum wage for the people incapable of earning minimum wages.

To sum it up, in order to guarantee the employment of people with disabilities at a higher level in terms of both quantity and quality, moreover in order to make people with disabilities live independently, the changes in the concept of disability and wage subsidies policy are required.

⁷ the percentage of contract below 2 years is 52.1%(Employment Promotion Agency for the Disabled, 2006)

⁸ survey on labour of people with severe disabilities (NHRCK, 2014)

⁹ Like the Netherlands, minimum wage is not applied to people with disability that can not expect a certain level of productivity.

2. Education

Netherlands has a long history of segregated education based on special school. In 1920, special school was legally recognized, and since that time, the number of special school increased rapidly. However, as segregated education had gone too far, people began to concern about it.

Especially, in the late of 20th, a series of research¹⁰ showed that academic performance in the segregated education is not superior to in the inclusive education. At the same time, social needs in terms of human rights that students with disabilities should be given inclusive environment began to be raised. And dutch government also needed other alternatives to cut down the cost of government should be paid for the benefits of WAJONG.

Since then, Netherlands attempted to promote inclusion of student with disability into regular school. In 2003, Act on Expertise Center (wet Expertise centra) was enacted. Eventually, students with severe learning disabilities also could have the rights to education. And pupil bound budget was introduced in this act. Due to this budget, student with special needs could attend regular school.

Even with the start of this act, according to study of the Coalition for Inclusion, the number of students that receive no education because of their disabilities is estimated in 2,000 to 5,000.¹¹ And in a letter to parliament of the

¹⁰ Gartner and Lipsky, *Beyond Special Education : Toward a Quality System for All Students*, Harvard Educational Review: December 1987, Vol. 57, No. 4, pp. 367-396;

Baker, Wang and Walberg, *Synthesis of Research / The Effects of Inclusion on Learning*, Educational Leadership December 1994 / January 1995 | Volume 52 | No. 4, The Inclusive School Pages 33-35

¹¹ J. Smits, *Samen Leven. Coalitie voor Inclusie*, December 2010

minister of education in 2012, over 3,000 students are in day care center instead of schools because they are considered incapable of being educated. The law firm Judion, specialized in educational law, identifies an increase in the number of cases in which parents are prosecuted because they are suspected to neglect their legal duty to enroll their children with a disability or learning problem. According to Judion, parents are acquitted in such cases because judges find that parents face schools that refuse to admit their children.¹² And in 2012, the ETC (Equal Treatment Commission) judged in 7 of 13 cases that admission refusal by the school was unjustified.¹³

Looking at situations on quality of education in Netherlands, according to education inspectorate in 2010¹⁴, both in special schools and inclusive schools, quality of education was assessed insufficient in a third of the cases by the Education Inspectorate. Only for special school, quality of education was insufficient in half of the cases.

Like this, since 2003, although dutch government introduced pupil bound budget and focused on the inclusive education, accessibility to education and quality of education for students with disabilities were not guaranteed sufficiently. Thus, Act on Appropriate Education (Passend Onderwijs Wet) was enacted in 2014. Appropriate education means tailor made education for each one. The aim of this act is to reduce the costs of special education, at the same time, to improve the quality of education for students with disability. If there are some conflicts about admission to school between parents and

¹² Jurisprudence:Den Bosch LJN BH9847; Amsterdam LJN BJ4236; Alkmaar LJN BP0089; Amsterdam LJN BR6546; rechtbank Zwolle parket nr 07-530634-09, Haarlem LJN BP2682; Breda LJN BR0408; Alkmaar LJN BT8894; Den Haag parketnr 09-642572; Haarlem; march 23, 2012

¹³ Dutch Equal Treatment Commission, Annual Report, 2012

¹⁴ Pages 89-90, Chapter 4 on quality of education in Onderwijsverslag: Speciaal Onderwijs en Expertisecentra <http://www.onderwijsinspectie.nl>

school, School Board has a responsibility to seek and give an appropriate place for the students with disabilities.

However, this education policy is criticized by the Coalition for Inclusion, in terms that endorsing 'appropriate education' instead of inclusive education may be contradictory to the UN Convention. On the other hand, the largest network for people with disabilities 'The ieder(in)' support government's policy, because they can make free choice between inclusive school and special school.¹⁵

Meanwhile, in Korea, the Act on the Prohibition of Discrimination against Disabled Persons (APDD) and Act on Special Education for the Disabled Persons (ASEDP)¹⁶ were enforced in 2008. Since then, there have been a little changes on the education of students with disabilities.

The first thing is that the cases of admission refusal by school have much decreased. In complaints cases of NHRCK since 2008, it is difficult to find the case that school refused admission of students with disabilities by reason of disability. Instead, the case that students with disabilities didn't receive legitimate conveniences much increased.

The second thing is an increase of the number of students with disabilities that receive the inclusive education. According to a survey on education of people with disabilities¹⁷, the number of students with disabilities receiving inclusive education has increased from 62.8% in 2006, to 70.4% in 2015. At

¹⁵ <https://iederin.nl/themas/onderwijs-en-jeugd/passend-onderwijs/>

¹⁶ According to CRPD, both acts emphasize that students with disabilities have a right to receive education suitable for their needs without any discrimination in inclusive environments.

¹⁷ survey on education of students with disabilities(National Institute of Special Education, 2015)

the same time, special education decreased from 37.2% in 2006, to 29.6% in 2015.

And if one looks at the situations on the quality of education in inclusive environments, a recent survey¹⁸ of NHRCK showed that 4.7% of students with disability experienced indifference and neglecting from the teacher in inclusive environments. 12.5% experienced exclusion from the courses of study, 30% did not receive proper conveniences from inclusive school.

And in a survey on violation of human rights in inclusive environments, It showed 16% of students with disability experienced physical violence, 24% verbal violence, 19% bullying by peers.

Likewise, since 2008, although APDD and ASEDP emphasized the rights to receive education suitable for educational needs without any discrimination in inclusive environments, there have existed quite a bit dissatisfactions with the quality of education and violation of human rights in inclusive environments. Also, UN CRPD Committee(2014)¹⁹ is concerned that, despite the existence of an inclusive education policy, students with disabilities in regular schools return to special schools. It is further concerned that students with disabilities enrolled in regular schools fail to receive education that is suitable to their impairment-related needs.

As we can see the cases of both countries, the education policies for students with disabilities in both countries leaves quite a little to be desired.

¹⁸ survey on education of students with disabilities in inclusive education(NHRCK, 2014)

¹⁹ p6, Concluding observations on the initial report of the Republic of Korea, Committee on the Rights of Persons with Disabilities (29th OCT, 2014)

Especially, in case of Netherlands, since pupil bound budget was introduced in 2003, the number of students with special needs highly increased and they could go to regular school with various supports. However, unfortunately, this budget that had positive impacts on the education of students with special needs was abolished in 2014. Moreover, Act on Appropriate Education emphasizes tailor made education for each student. However, it has a risk that propriety of education is prior to value of inclusive education. So, we need to keep an eye on how it will affect rights to education of students with disabilities, besides cost saving effect of government.

In conclusion, seen from the cases of both countries, inclusive education is demanding three challenges. The first is educational inclusion such as individualized education program or inclusive method in a course of study for students with special needs. The second is environmental inclusion such as environment accessible for students with disabilities. The last is emotional inclusion. This means understanding and support of those who relate to the students with disabilities such as teacher, classmates and parents. If even one thing mentioned above is missed in inclusive education, as we can see cases of both countries, it can bring students with disability greater frustration and despair over academic achievement and relationship building. Therefore, in order to realize inclusive education, three things must be for sure taken into consideration.

* NOTE

In order to help your understanding about situations in Korea, I attach three major laws of Korea relating to employment and education of people with disabilities.

Appendix :

1. ACT ON THE PROHIBITION OF DISCRIMINATION AGAINST DISABLED PERSONS, REMEDY AGAINST INFRINGEMENT OF THEIR RIGHTS, ETC.

2. EMPLOYMENT PROMOTION AND VOCATIONAL REHABILITATION OF DISABLED PERSONS ACT

3. ACT ON SPECIAL EDUCATION FOR THE DISABLED PERSONS, ETC.