

Complementary Law 142: challenges of disability evaluation on a justice frame

Livia Barbosa^a, Éverton Luís Pereira^b, Daniela da Silva Rodrigues^c

^aDepartamento de Serviço Social, Universidade de Brasília – UnB, Brasília, DF, Brazil.

^bDepartamento de Saúde Coletiva, Universidade de Brasília – UnB, Brasília, DF, Brazil.

^cCurso de Terapia Ocupacional, Universidade de Brasília – UnB, Brasília, DF, Brazil.

Abstract: Introduction: The Complementary Law 142 of 2013 (LC 142) was responsible for ensuring the anticipation of retirement for people insured by Social Security diagnosed with mild, moderate and severe disabilities. The LC 142 applies the same concept of the International Convention on the Rights of Persons with Disabilities, which is instrumented through the Brazilian Functionality Index (IFBrA). Objective: This article aims to discuss the LC 142 from the standpoint of disability and work. Method: We performed a literature review on the topic, as well as a debate on the issues of the article on a reflective theoretical basis. Results: The central argument is that to ensure the applicability of the law and to uphold justice, it is necessary to consider the subjects from a complex and multifaceted point of view. Conclusion: The paper proposes that on matters of disability it is necessary to think beyond work, since the inclusion of these subjects in society is also subject to other determinants.

Keywords: *Legislation as Topic, Disabled Persons, Work.*

LC 142: desafios da avaliação da deficiência em um marco de justiça

Resumo: Introdução: A Lei Complementar 142 de 2013 foi responsável por garantir a antecipação da aposentadoria para contribuintes do Regime Geral da Previdência que forem considerados pessoas com deficiência leve, moderada ou grave. A LC 142 faz uso do conceito de deficiência trazido pela Convenção Internacional sobre os Direitos da Pessoa com Deficiência e é instrumentalizada por meio do Índice de Funcionalidade Brasileiro aplicado para fins de aposentadoria (IFBr-A). Objetivo: O artigo tem como objetivo discutir a LC 142 do ponto de vista da deficiência e do trabalho. Método: Foi realizada uma revisão bibliográfica sobre o tema em questão, bem como um debate sobre as problemáticas do artigo. Trata-se de um artigo teórico reflexivo. Resultados: O argumento central é de que para garantir a aplicabilidade da Lei, atendendo às exigências normativas e ao debate sobre deficiência, é necessário pensar o sujeito de um ponto de vista complexo e multifacetado, ou seja, inserido na sociedade e imerso em teias de restrições de participação de várias ordens. Conclusão: O artigo propõe que para pensar a deficiência é necessário ir além de aspectos meramente do trabalho, visto que a inserção desses sujeitos na sociedade está condicionada também a outros determinantes.

Palavras-chave: *Legislação como Assunto, Pessoas com Deficiência, Trabalho.*

1 Introduction

On March 8, 2013, the Presidency of the Republic of Brazil approves the Complementary Law 142 (BRASIL, 2013), which deals with the regulation of the granting of retirement to the insured person of the General Social Security System (RGPS). This right is provided in § 1 of art. 201 of the Federal Constitution and it ensures the reduction of the contribution time in two, six or ten years for people with disabilities who are classified as mild, moderate or severe, respectively.

The insured worker of the RGPS must undergo an evaluation process consisting basically of two stages to be subject to the law of Supplementary Law 142/2013. The first stage is purely administrative in nature and consists in the presentation of a set of documents proper to this right. The second stage is the assessment of the disability, which must be conducted by a medical expert and a social worker, both from the National Social Security Institute (INSS). The insured person, in this sense, must pass through two professionals who will carry out the evaluation based on the Brazilian Functionality Index adapted for the purpose of granting the retirement of the disabled person (IFBr-A).

The art. 4 of CL 142/2013 ensures that the evaluation is medical and functional. The definition of the IFBr-A as an instrument to be used was made through the Interministerial Ordinance AGU/MPS/MF/SEDH/MP Number 1 of January 27, 2014, which also details the form of evaluation - biopsychosocial and multi-professional. This understanding follows what is expressed in the Convention on the Rights of People with Disabilities, ratified by Brazil in 2007, acquiring constitutional status in 2008. These normative instruments are in line with the Brazilian Inclusion Law, published after the Complementary Law, but it explicitly determines that the assessment of disability for purposes of public social protection should be "biopsychosocial, carried out by multidisciplinary and interdisciplinary team" (BRASIL, 2015).

As a new law, the Complementary Law 142/2013 is surrounded by understandings and positions of all order in constant dispute (PEREIRA; BARBOSA, 2016). As the human sciences, political sciences, and social sciences areas show, the emergence and effects of a law or public policy cannot be understood in a distant way from the powers, knowledge, interests, and discourses that produce and reproduce them in the social sphere (SHORE; WRIGHT; PERÓ,

2011). There is not only an understanding of the meanings of the Complementary Law 142/2013 and the scenario of political disputes over the authority of discourse remains in the various spaces of discussion or deliberation.

However, the CL 142 is the result of a trajectory and collective constructions that cannot be ignored, so not everything is susceptible to positions and understandings. The battles and confrontations that precede the contemporary debate have already consolidated some understandings in the current legal order. Thus, references such as the Convention on the Rights of People with Disabilities (BRASIL, 2009), the International Classification of Functioning, Disability and Health (CIF) (ORGANIZAÇÃO..., 2003) and the text itself of the complementary law should be the base for the ongoing discussions.

These solid foundations were built through a long process of recognition of their validity by society and science. The Convention is the first international document that directly expresses the views of disabled people about themselves. The international debate strongly describes the progress made by the Convention, from its construction process to the final text adopted by the United Nations General Assembly in 2006. The Committee responsible for the construction of the Convention recognized its lack of expertise in the subject matter and, for the first time in the history of the United Nations, it allowed and encouraged the participation of civil society in the initial stages of discussion of the text. The encouragement of participation was even material, with the creation of a Fund to ensure that organizations from poor countries participated in joint meetings with countries and institutions without their own resources for participation (MELISH, 2007).

The description of disability by the disabled person implied a shift in causal relationships over the disadvantage they experience every day. If deficiencies occurred in biomedical knowledge as a result of faults or deviations from the body, people with disabilities began to describe it as a result of environments not sensitive to body diversity. In this understanding constructed by people with disabilities, body impairments or injuries are described as an expression of human diversity (DINIZ, 2007). Disadvantage or inequality occurs only in discriminatory environments. Thus, disability becomes a category that describes the inequality experienced by people with disabilities in environments with barriers.

The democratic character of the construction of the Convention ensured that this interpretation reached the final text and, consequently, the legal system of the countries. According to the Convention, people with disabilities are

[...] those with long-term physical, mental, intellectual or sensory impairments who in interaction with various barriers, may obstruct their full and effective participation in society in conditions of equality with the other people [...] (BRASIL, 2009).

The Convention represents a democratic achievement in which the member countries have agreed on a set of concepts brought by the disabled people about their experience in the various spaces.

In the social policies area, the adoption of the biomedical model or the so-called social model of disability has profound implications for the rights of this population. The perspective of disability as a bodily limitation implies investments primarily in sanitary measures, medicalization, and rehabilitation, and not social protection and reparation of inequality (DINIZ, 2007; DINIZ; MEDEIROS; BARBOSA, 2010). With the emergence of the social model, disability becomes an emerging issue for public policies (DINIZ; SQUINCA; MEDEIROS, 2007). The challenge for political negotiations will be from the new concept of disability as an instrument for promoting justice rather than as an individual issue.

Addressing disability as a restriction of participation requires an important evaluation effort, which will be analyzed in this article. The central argument is that even for specific rights such as the right to retirement or work, the identification of disability requires a broad understanding of the restrictions that people suffer in the different spheres of life.

Therefore, the purpose of this article is to analyze the Complementary Law 142/2013 based on the debates and available evidence on disability, work and social security, within a conceptual reference of equality and justice.

2 Method

This is a reflective theoretical study on the assessment of disability from Complementary Law 142/2013, which provides for the anticipation of retirement for taxpayers of the General Social Security System. The reflections outlined in this article were carried out based on the Convention on the Rights of People with Disabilities, an essential document in the discussion of the guarantee of rights of the

population with disabilities in Brazil. It was also sought support in normative texts of Social Security to deepen this reflection, such as the Organic Law of Social Assistance (LOAS) (BRASIL, 1993) and reports of the International Labor Organization (ILO) (SECRETARIA..., 2006). LOAS is important in the construction of the rights of people with disabilities in Brazil, and ILO because it brings new paradigms of the social debate about disability.

3 Results and Discussion

3.1 The subject with disability and the IFBr-A: to whom is Complementary Law 142 intended?

The concept of disability has been a concept in a dispute over the years. Even today, it is possible to argue that there is no consensus on the best terminology to refer to people with disabilities. In the academic sphere, dissent reverberates for years and the concept remains in dispute - it is always possible to disagree theoretically about who is the disabled subject and on what is the best term available to describe it. However, for legal purposes, the adoption of the Convention on the Rights of People with Disabilities in Brazil introduces into our legal system a unique concept, with a constitutional status, where all legislation must comply. The concept of disability in the Convention is the basic concept for the entire Brazilian public social protection system.

CL 142 regulates the retirement of people with disabilities in Brazil. In this sense, CL follows the Convention in its concept:

People with disabilities are those who have long-term physical, mental, intellectual or sensory impairments, who in interaction with different barriers, they can obstruct their full and effective participation in society in equal conditions with other people (BRASIL, 2009).

Both the Law and the Convention determine a basic definition that needs to be operationalized by public policies and the question of how to identify the disabled person for social protection purposes becomes fundamental.

Since the Convention proposes a unique concept to be implemented by Brazilian social protection, the Secretary of Human Rights has commissioned an IETS/UFRJ instrument to identify people with disabilities based on normative parameters (FRANZOI et al., 2013). In its conception, the IFBr is an instrument for evaluating the candidate

for social protection of any Brazilian policy. Among those who apply for a certain protection or benefit, the IFBr should be able to assist in the identification and selection only of those people who conform to the constitutional concept. The bridge metaphor represents the role of the instrument. The IFBr is like a bridge between the candidate and the concept of the Convention: only those who adhere to the concept will be able to cross the bridge.

However, from a conceptual point of view, considering the IFBr requires maintaining the concept of the Convention as a constant reference. Although CL 142 refers to a labor law and is often associated with the world of work, it is a Law intended for people with disabilities. According to the Convention, once again disability refers to the restriction of participation in **several areas of society** because of barriers faced daily. The Convention associates disability with **restriction of participation in society** and not only in the world of work. From a conceptual point of view, even though the disabled person does not suffer from a restriction of participation in work, retirement may be eligible if they are restricted in other spheres of life. To identify who is disabled, it is necessary to look at other spheres of life, not just the world of work, at the risk that the assessment is not considered valid.

This is not a purely theoretical understanding, but it finds legal precedents in the Brazilian scenario. For example, the Organic Law of Social Assistance (LOAS) was created in 1993 and defined people with disabilities as those incapable of independent living and work (BRASIL, 1993). With the signing of the Convention by Brazil in 2007 and with its approval by Congress in 2008, after LOAS, the concept of the Convention was introduced into our legal system. The concepts of LOAS and the Convention are different. For the Convention, disability is a restriction on participation in society; for LOAS, incapacity for independent living and for work.

This has not gone unnoticed by the Brazilian legal system. In 2008, the Supreme Court lodged an Action for Non-compliance with Basic Precept (ADPF 182), arguing that the concept of LOAS was narrower than the Convention and therefore unconstitutional (PROCURADORIA..., 2009). For the Republic General Office, being unable to live independently and to work did not exhaust the restrictions of participation that the person with disabilities could suffer, since the person could be restricted in other spheres of life, such as in leisure, in community life, among other. Reducing the assessment

of disability to restrictions at work disregards the concept of disability in the Convention and may infringe individual rights in individual cases.

Thus, even a person with a disability who is not restricted from participation in work but who are restricted in other dimensions of life may be considered a disabled person and benefit from CL 142. The identification of people with disabilities by IFBr-A should observe the concept of disability in the Convention, even for labor rights. In this sense, the IFBr strives in an important way to consider fundamental dimensions of participation, contemplating the sensorial domains; Communication; Mobility; Personal cares; Domestic Life; Education, Labor and Economic Life; Socialization and Community Life. Such domains do not emerge as an isolated effort by the group that created the instrument but considers international instruments recognized in their identification. The seven areas covered by the instrument are fully removed from the International Classification of Functioning, Disability, and Health (CIF).

Even from the point of view of the labor debate, it is possible to argue as opposed to a labor-based assessment. CL 142 recognizes the definitions given by the Disability Convention and ensures the right to equity from the point of view of work. However, people with disabilities historically did not experience equal opportunities in this area of life in society. The non-existence of similar conditions at work is a reflection of the inequalities and discriminations suffered in other spheres of life in society. To reflect on this, it is fundamental to broaden the idea of work, placing it both in the axis of social relationalities and in dialogue with the presuppositions brought in the Convention, since instrumentalizing the expanded concept of disability requires observing individuals from the integral point of view.

The International Labor Organization (ILO) is an important reference in building a reflection on how disability and its new paradigms can be thought from the point of view of work. According to the ILO Report, people with disabilities are the

[...] individual whose prospects of appropriate employment, reassumption, retention, and advancement are substantially reduced by duly recognized physical, auditory, visual, mental or multiple disabilities, aggravated by the local difficulties of inclusion in the world of work (SECRETARIA..., 2006, p. 5)¹.

The ILO report demonstrates how disability is the interaction between the impediments and the various barriers that a given subject experiences. This experience means that people with disabilities do not enjoy the same working conditions, which transcends the place where the subject performs his/her work activities and the functions he/she performs. The ILO expressly mentions the social conditions that hinder access, maintenance and progression in a particular job as part of the understanding of work and insertion in the market.

Working strictly as a work activity, provided that the conditions (physical or structural) in their space are adequate, can represent a space of equality between disabled people and other people. However, this is not corroborated when we realize that there are many elements that are at stake, as the case of the forms as the society as a whole, in its various facets, is organized according to hegemonic patterns of body, behavior, and experience. It is not just about global processes that engender subjects from social classes. Historically constructed patterns of normalcy have placed people with disabilities in invisible places, with the idea of incapacity and impotence as the paradigm. This issue was described by classic authors of disability studies to refer to the so-called “biomedical model” (DINIZ, 2007; BARNES; OLIVER, 1993). When the ILO highlights the difficulties faced by people with disabilities at work, it also speaks of the numerous challenges these people face in the social sphere. That is, talking about the work environment is also talking about life in society.

There is also the mixture between the difficulties (or inequalities) provoked by a body “outside the norm” (DINIZ, 2007; DAVIS, 1995) and its inclusion or permanence in the workplace is evident. The union between the individual assumptions do not place them on an equal footing with other people and the local policies and actions that facilitate or hinder the entry into the labor market that the ILO qualifies as a person with a disability.

The Report produced by the ILO includes a series of guidelines for managers and entrepreneurs for the insertion in the labor market of people with disabilities, considering the historical difficulties experienced by this population in relation to the professional. In the Brazilian case, we have the contextualization made by the document “The inclusion of people with disabilities in the labor market” edited and promulgated by the Ministry of Labor and Employment (MTE) in 2007. In this document, the

federal public authority recognizes the disadvantage historical experience of this population in Brazil, not only in the formal inclusion in the labor market but also in the “street circulation” and other public spaces (BRASIL, 2007).

These documents that deal exclusively with work already address the challenge of dealing with the issue of disability in a world marked by inequalities as a result of bodily differences and visually competitive. The CL 142, in Brazil, comes to remedy another aspect, what was already proposed by Law 8.213, of July 24, 1991 (BRASIL, 1991): people with disabilities experience, in their working environment and in their everyday life, barriers that put them in unequal conditions with other professionals.

The interesting thing about these documents is that even an organization focused on the “world of work”, as is the case of the ILO, recognizes the difficulty of people with disabilities in life in society in general, which has a reflex and repercussion in working life. The International Labor Organization recognizes inequality by stressing the need to think strategies to overcome the ways in which historically disabled people have been excluded from most jobs.

Undoubtedly, work is one of the elements of life in society. However, it cannot be thought that a person with disabilities has difficulties only in this sphere, given the depth of the relationship of inequality and the expectation of normality that is disseminated in all social spheres.

In the life of society, in different moments and social situations, people with disabilities cannot enjoy the same conditions as others. This question is not anchored in the “desire” or “potentiality” of the individual who experiences a different body, but is, above all, in the ways in which society is not yet sensitive to human diversity. Such inadequacy of society produces and reproduces historical exclusions and invisibilities that hinders people with disabilities to enjoy equal conditions for others. Or, if they enter a job, it is possible that these people experience difficulties and barriers (external to their will or desire) that put them in a situation of inequality or disadvantage.

Thus, both from the point of view of the disability debate and from the point of view of the debate on work, the evaluation of candidates for CL 142 should be carried out broadly, besides the restrictions exclusively found in the strictly defined working environment.

4 Conclusion

This article presented some elements that discussed the importance of a comprehensive view on the subject to classify him as a person with disabilities, having the Convention on the Rights of People with Disabilities as a parameter. The Convention reinforces that disability is the restriction of participation because of the barriers experienced by individuals with some type of physical impairment.

To instrumentalize these concepts, it is necessary to keep in mind that individuals have disability experiences in various facets of society, not just at work. Even if CL 142 deals with a labor benefit, being in agreement with the legal prerogatives requires observing this subject in its fullness, and not only in the moments in which he is engaging in some work activity.

CL 142/2013 was created with the purpose of guaranteeing the consolidation of legal reference and restoring historical injustices that people with disabilities experienced in Brazil. The IFBR-A is an instrument that can assist in the consolidation of the rights of this population, with the multi-professional assessment of disability based on the Convention and the International Classification of Functioning, Disability, and Health (CIF). Such injustices are also visible in the world of work, a place where this part of the Brazilian population is hardly included, and when it is there, it cannot enjoy the same conditions or possibilities as other people.

An effort is needed that seriously considers the concepts proposed in the Convention and the interactions of these people in the various social spheres for IFBR-A to be able to guarantee an acquired right. Recognizing that the difficulties caused by barriers experienced by certain people are greater than their possible limitations in their working environment, it will be possible to enforce CL 142 or other forms of social protection for the disabled and guarantee the right acquired in the democratically constructed terms until the current moment.

Acknowledgements

The authors thank the Ministry of Social Security (MPS) for financial support.

References

BARNES, C.; OLIVER, M. Disability: a sociological phenomenon ignored by sociologists. In: SHAKESPEARE,

T. *The disability reader: social science perspectives*. London: Cassell, 1993. p. 65-78.

BRASIL. Lei nº 8.213, de 24 de julho de 1991. Dispõe sobre os Planos de Benefícios da Previdência Social e dá outras providências. *Diário Oficial [da] República Federativa do Brasil*, Brasília, DF, 24 jul. 1991.

BRASIL. Lei nº 8.742, de 7 de dezembro de 1993. Dispõe sobre a organização da Assistência Social e dá outras providências. *Diário Oficial [da] República Federativa do Brasil*, Brasília, DF, 7 dez. 1993.

BRASIL. *A inclusão de pessoas com deficiência no mercado de trabalho*. Brasília: TEM: SIT, 2007.

BRASIL. Decreto nº 6949, de 25 de agosto de 2009. Promulga a Convenção Internacional sobre os Direitos das Pessoas com Deficiência e seu Protocolo Facultativo, assinados em Nova York, em 30 de março de 2009. *Diário Oficial [da] República Federativa do Brasil*, Brasília, DF, 26 ago. 2009.

BRASIL. Lei Complementar nº 142, de 08 de maio de 2013. Regulamenta o § 1º do art. 201 da Constituição Federal, no tocante à aposentadoria da pessoa com deficiência segurada do Regime Geral de Previdência Social - RGPS. *Diário Oficial [da] República Federativa do Brasil*, Brasília, DF, 9 maio 2013.

BRASIL. Lei nº 13.146, de 06 de julho de 2015. Institui a Lei Brasileira de Inclusão da Pessoa com Deficiência (Estatuto da Pessoa com Deficiência). *Diário Oficial [da] República Federativa do Brasil*, Brasília, DF, 6 jul. 2015.

DAVIS, L. *Enforcing normalcy: disability, deafness and the body*. New York: Verso, 1995.

DINIZ, D. *O que é deficiência*. São Paulo: Editora Brasiliense, 2007.

DINIZ, D.; SQUINCA, F.; MEDEIROS, M. Qual deficiência? Perícia médica e assistência social no Brasil. *Cadernos de Saúde Pública*, Rio de Janeiro, v. 23, n. 11, p. 2589-2596, 2007. Disponível em: <http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0102-311X200701100006&lng=pt&nrm=iso>. Acesso em: 07 set. 2009.

DINIZ, D.; MEDEIROS, M.; BARBOSA, L. *Deficiência e igualdade*. Brasília: Editora UNB, 2010.

FRANZOI, A. C. et al. Instrumento de classificação do grau de funcionalidade de pessoas com deficiência para cidadãos brasileiros: Índice de Funcionalidade Brasileiro - IF-Br. *Acta Fisiátrica*, São Paulo, v. 20, n. 3, p. 164-170, 2013.

MELISH, T. J. The UN disability convention: historic process, strong prospects and why the US should ratify. *Human Rights Brief*, Washington, v. 14, n. 2, p. 1-14, 2007.

ORGANIZAÇÃO MUNDIAL DA SAÚDE. *CIF: Classificação Internacional de Funcionalidade, Incapacidade e Saúde*. São Paulo: EDUSP, 2003.

PEREIRA, É. L.; BARBOSA, L. Índice de Funcionalidade Brasileiro: percepções de profissionais e pessoas com deficiência no contexto da LC 142/2013. *Ciência & Saúde Coletiva*, Rio de Janeiro, v. 21, n. 10, p. 3017-3026, 2016.

Disponível em: <http://www.scielo.br/scielo.php?script=sci_arttext&pid=S1413-81232016001003017&nrm=iso>. Acesso em: 03 out. 2017.

PROCURADORIA GERAL DA REPUBLICA. *Ação de descumprimento de preceito fundamental 182*. Brasília, 2009. Disponível em: <<http://www.stf.jus.br/portal/geral/verPdfPaginado.asp?id=398078&tipo=TP&descricao=ADPF%2F182>>. Acesso em: 03 out. 2017.

SECRETARIA INTERNACIONAL DO TRABALHO. *Gestão de questões relativas à deficiência no local de trabalho: repertório de recomendações práticas da OIT*. Brasília: OIT, 2006.

SHORE, C.; WRIGHT, S.; PERÓ, D. (Org.). *Policy worlds: anthropology and the analysis of contemporary power*. Oxford: Berghahn Book, 2011.

Author's Contributions

All the authors contributed equally to the conception of the article and approved its final version.

Funding Source

Ministry of Social Security (MPS).

Notes

¹ It is believed that the conceptualizations brought by the Convention and those proposed by CL 142 in Brazil transcend ILO definitions and are consolidated as more progressive to ensure an integral vision of work and of people with disabilities.