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## **Obligatory contributions made by employers to the State Fund for the Rehabilitation of Disabled People as financial and legal incentives**

**Obowiązkowe wpłaty pracodawców na Państwowy Fundusz  
Rehabilitacji Osób Niepełnosprawnych jako bodźce finansowe i prawne**

### **Abstract**

The paper analyzed legal regulations concerning obligatory payments made by employers to the State Fund for the Rehabilitation of Disabled Persons which serve the purposes related to the rehabilitation of disabled people. These goals are pursued in various ways. In the first place, the obligation to pay is to motivate employers to employ as many disabled people as possible. The implementation of the goals related to the rehabilitation of disabled persons is also to be achieved by introducing the obligation to make payments in a situation where the employer commits behavior that is negatively assessed from the point of view of the statute. In connection with the obligatory contributions, there is a doubt about their legal nature, including the legitimacy of treating them as an element of the financial and legal incentives system. The authors stated that by introducing new legislative solutions in the field of supporting the employment of disabled people, the legislator does not maintain the coherence of legal solutions.

**Keywords:** The State Fund for the Rehabilitation of Disabled People, obligatory contributions, disabled people, employer, financial and legal incentives.

### **Streszczenie**

W niniejszym opracowaniu poddano analizie dogmatycznoprawnej regulacje prawne dotyczące obowiązkowych wpłat na PFRON w celu dokonania ich oceny. Jednym z najistotniejszych

obowiązków pracodawców jest bowiem dokonywanie wpłat na PFRON. Dokonywanie przez pracodawców tych wpłat służyć ma celom związanym z rehabilitacją osób niepełnosprawnych. Cele te realizowane są w różny sposób. W pierwszej kolejności obowiązek wpłat ma motywować pracodawców do zatrudniania jak największej liczby osób niepełnosprawnych, im bowiem ta liczba jest większa, tym wpłaty te są mniejsze. Realizowaniu celów związanych z rehabilitacją osób niepełnosprawnych ma ponadto służyć wprowadzenie obowiązku dokonywania wpłat na PFRON w sytuacji, gdy pracodawca dopuści się zachowań negatywnie ocenianych z punktu widzenia celów ustawy. W związku z obowiązkowymi wpłatami na PFRON powstaje zatem wątpliwość dotycząca ich charakteru prawnego, w tym zasadności traktowania ich jako elementu systemu bodźców finansowo-prawnych. Autorzy uznali, że wprowadzając kolejne rozwiązania legislacyjne w zakresie wspomagania zatrudniania osób niepełnosprawnych pracodawca nie zachowuje spójności rozwiązań prawnych. W tym zakresie szerokie stosowanie bodźców powinno natomiast opierać się na zasadach harmonijności i wzajemnego uzupełniania wszystkich regulacji, a nie wyłącznie jednej daniny.

**Słowa kluczowe:** Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych, obowiązkowe wpłaty, osoby niepełnosprawne, pracodawca, bodźce finansowo-prawne.

## 1. Introduction

The scope of obligations provided for in the Act of 27 August 1997 on Vocational and Social Rehabilitation and on the Employment of Disabled People<sup>1</sup> burdening employers depends on many factors, including, among others, having the status of a sheltered workshop or a workplace of professional activity, the number of employees employed on a full-time basis and achieving a specific employment rate of disabled people. One of the most important obligations of employers is to make payments to the State Fund for the Rehabilitation of the Disabled People (hereinafter referred to as PFRON or the Fund)<sup>2</sup>.

Making payments to PFRON by employers is intended to serve purposes related to the rehabilitation of disabled people. These objectives are pursued in different ways. In the first place, the obligation to make payments is to motivate employers to employ as many disabled people as possible, because the higher this number, the smaller the payments are. The implementation of the goals related to the rehabilitation of disabled persons is also to be achieved by introducing the obligation to make payments to PFRON in a situation where the employer's conduct becomes negatively assessed from the point of view of the Act. Objectives of the V.S.R.A. are also implemented by promoting the development of the activities of those employers who employ a specific number of disabled people with a specif-

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<sup>1</sup> Consolidated text of Journal of Laws of 2018, item 511, hereinafter referred to as 'V.S.R.A'.

<sup>2</sup> Obligation to make payments – not covered by the analysis of this study – also follows from Article 31(3)(1)(a) of the V.S.R.A. (payment to PFRON 10% of the funds obtained by the operator of the sheltered workshop due to exemptions from taxes and fees).

ic degree of disability or with specific conditions. The obligation to make payments to PFRON also serves to supplement the resources of this Fund, which are then transferred to achieve the objectives related to the rehabilitation of disabled people.

In connection with the obligatory contributions to PFRON, there is a doubt as to their legal nature, including the legitimacy of treating them as an element of financial and legal incentives. This study presents a dogmatic and legal analysis of legal regulations regarding obligatory payments to PFRON in order to assess them.

The study takes into account the legal status as of 31 December 2018.

## **2. The scope of the obligation to make contributions to PFRON**

The obligation to make payments to PFRON provided for in Art. 21 of the V.S.R.A. is borne by both employers of the open labour market and employers employing disabled persons with the status of a sheltered workshop.

With regard to employers with the status of sheltered workshops, it should be pointed out that Art. 21 of the V.S.R.A. lays down specific obligations and rights of employers who already have the status of sheltered workshops in connection with the employment of disabled people and is not a provision specifying the requirements (conditions) that must be met by an employer just applying for the status of a sheltered workshop<sup>3</sup>.

The obligation to make contributions to PFRON provided for in Article 21(1) of the V.S.R.A. arises when an appropriate number of people are employed (i.e. a total of at least 25 employees on a full-time basis), and the amount of the liability depends on the actual employment of disabled people<sup>4</sup>.

The required employment rate of disabled people, which exempts from making payments to PFRON, is the 6% rate indicated in Article 21(2) of the Act. Employers achieving this indicator are exempt from making contributions to PFRON. Pursuant to Art. 21(4) of the V.S.R.A., the 6% rate indicated in Art. 21(2) of the V.S.R.A. may be reduced in the case of employment of disabled people with conditions particularly difficult to perform work, which were indicated on the basis of the statutory delegation contained in Article 21(7) of the V.S.R.A. of 18 September 1998 on the type of conditions justifying a decrease in the employment rate of disabled people and the method of reducing it<sup>5</sup>.

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<sup>3</sup> Judgment of the Supreme Administrative Court of 22 November 2002, II SA 2786/02, LEX No. 142358.

<sup>4</sup> Judgment of the Provincial Administrative Court in Warsaw of 9 September 2005, III SA/Wa 910/05, LEX No. 192110.

<sup>5</sup> Journal of Laws No. 124, item 820.

With regard to employers listed in Article 21(2a) of the V.S.R.A. (i.e. state and local government organizational units that are budgetary units, budgetary establishments or auxiliary enterprise, cultural institutions and organizational units dealing statutorily with the protection of cultural property recognized as a historical monument) and Art. 21(2b) of the V.S.R.A. (i.e. public and non-public universities, public and non-public schools, public and non-public nursery schools, public and non-public other forms of pre-school education and care and educational institutions, regional care and therapeutic institutions, intervention pre-adoption centres, rehabilitation centres, public and non-public crèches, as well as children's clubs ) the legislator provided for a 6% employment rate regarding disabled people (Article 21(2a) of the V.S.R.A.) and 2% (Article 21(2b) of the V.S.R.A.). Achieving these employment rates for people with disabilities also results in the exemption of these employers from the obligation to make payments to PFRON. The possibility of using the indicator contained in Art. 21(2b) of the V.S.R.A. is determined not by the name of the type of activity, but by the very fact of performing a given type of activity, supported by appropriate official entries<sup>6</sup>. The amendment to Article 21(2b) of the V.S.R.A. introduced by the Act of 10 May 2018 on amending the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons and certain other Acts<sup>7</sup> – as it is apparent from the justification to the draft Act – was aimed at extending the scope of application of this provision to the widest possible group of entities in which childcare is provided. In the case of nursery schools, the amendment sanctions the current practice resulting from the interpretation of the regulations. So far, nursery schools have been accounted for by PFRON on an equal footing with schools.

The method of calculating the amount of payments to PFRON is regulated in Art. 21(1) of the V.S.R.A. According to this provision, the amount of monthly contributions to PFRON is the amount constituting the product of 40.65% of the average monthly salary and the number of employees corresponding to the difference between employment ensuring the achievement of the employment rate of disabled people in the amount of 6% and the actual employment of disabled people. The amount of contributions depends on factors such as: actual employment of people with disabilities, average salary and employment rate of people with disabilities.

Pursuant to Article 21(2e) of the V.S.R.A., entities exempt from making payments to PFRON (apart from those indicated in Article 21(2) of the V.S.R.A.) are the following enterprises which do not operate for the purpose of making

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<sup>6</sup> Judgment of the Provincial Administrative Court in Warsaw of 10 May 2010, III SA/Wa 8/10, LEX No. 675014.

<sup>7</sup> Journal of Laws of 2018, item 1076.

a profit: social welfare homes within the meaning of the provisions on social assistance, which in whole or in part have been established to provide care and specialist services for the disabled; hospices within the meaning of the provisions on medical activity; non-profit-making care and treatment establishments; public or non-public organizational units whose sole subject of activity is social and therapeutic rehabilitation of disabled people, education of disabled people or care for disabled people. Pursuant to Article 21(3) of the V.S.R.A., employers who have been declared bankrupt are also exempt from payments to PFRON (Article 21(3) of the V.S.R.A.). It should be pointed out that before 6 June 2018, this exemption was also extended to employers running a workplace in liquidation. This exemption has currently been abandoned due to the lack of justification for applying the exemption to these entities because the reason for the decision to liquidate does not have to be the difficult situation of the entity, but the decision to terminate or transform the activity.

To make payments to PFRON referred to in Article 21(1), Article 22b, Article 23 of the V.S.R.A. subject to Article 49, 5a–5d and Articles 49a and 49b of the V.S.R.A., the provisions of the Act of 29 August 1997 – Tax Ordinance<sup>8</sup> shall be applied respectively, except that the powers of tax authorities specified in this Act are vested in the President of the Management Board of PFRON (Article 49(1) of the V.S.R.A.). The payment obligation for PFRON is performed by way of self-calculation by the obligated employer, i.e. by declaring and making payments by the 20th day of the following month after the month in which the circumstances giving rise to the obligation to pay occurred.

### **3. Reduction of the amount of contribution to PFRON for the contractor of an entrepreneur employing disabled people**

In the wording of Art. 22 of the V.S.R.A., the legislator provided for the possibility of reducing the amount of contributions to PFRON indicated in Art. 21 of the V.S.R.A. in connection with the purchase ‘by the buyer’ of a production or service (excluding trade) made at the ‘seller’, who must meet the conditions indicated in this provision, related to the appropriate number of employees and the appropriate employment rate of disabled people as well as the appropriate degree of disability or a specific group of conditions. This preference mechanism is beneficial for the entity employing persons with disabilities as it is more competitive on the market.

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<sup>8</sup> Consolidated text of Journal of Laws of 2018 r., item 800, as amended.

It should be pointed out that since 1 October 2018, the provision of Art. 22 of the V.S.R.A. has undergone numerous changes including among others: paragraph 1a has been added (regarding the obligation, once in a given year, to submit information with the invoice about, among others, the rules for purchasing and using the reduction of payments); paragraph 5 has been amended (by imposing restrictions on the amount of the reduction indicated in paragraph 1); paragraph 9 has been amended (clarifying the method of calculating the employment status and the employment rate of persons with disabilities); paragraph 10 has been amended (clarifying the deadline for the seller to issue information on the amount of the reduction); paragraph 10a has been added (extending the application of Article 22(1) to (10) and Articles 22a and 22b to the entities listed therein); paragraph 11 has been deleted (in connection with the amendment of paragraph 5).

Only own services, i.e. provided by an authorized seller directly to an authorized buyer, also in the field of production activity, entitle to reduce the payment. This is confirmed by the interpretations of the Office of the Government Plenipotentiary for Disabled People, which show that if the invoice specifies own production and other production, this invoice may document the purchase entitling to the relief, but the relief will be issued only for the purchase of the authorized seller's own production and will be calculated without taking into account the revenues from the other production in the amounts of revenues<sup>9</sup>.

The seller referred to in Article 22 of the V.S.R.A. must be an employer employing at least 25 employees on a full-time basis, achieving a 30% employment rate of disabled people with an appropriate degree of disability and conditions indicated in Article 22(1)(1) and (2) of the V.S.R.A.

With regard to the concept of 'employment rate of disabled persons', it should be noted that its definition is given in Art. 2 point 6 of the V.S.R.A. and must be at least 30% at the seller. It applies to disabled employees who are classified as severely disabled (Article 22(1)(1) of the V.S.R.A.) or with a moderate degree of disability, in respect of whom mental illness, mental retardation, comprehensive developmental disorders or epilepsy have been adjudicated, as well as the blind (Article 22(1)(2) of the V.S.R.A.). The current wording of Article 22(9) of the V.S.R.A. clarifies that the period for which employment statuses should be determined for the purpose of demonstrating the employment structure required of the seller in accordance with Art. 22(1) of the V.S.R.A. is the month preceding the month of issuing the invoice documenting a given purchase. It also clarifies

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<sup>9</sup> Letter of the Office of the Government Plenipotentiary for Disabled People of 14 August 2016, BON-I-52315.89.2016.LK.

that the exemptions from those employment statuses provided for in Article 21(5) of the V.S.R.A. shall apply to the employment statuses and rates referred to in paragraph 1, paragraphs 5 to 7.

The possibility of making the reduction indicated in Art. 22 of the V.S.R.A. entails certain obligations on the part of both the buyer and the seller. The buyer is obliged to: document the purchase with an invoice (Article 22(2)(1) of the V.S.R.A.); settle the purchase fees within the time limit indicated in the invoice (Article 22(2)(2) of the V.S.R.A.); obtain information from the seller about the 'amount of reduction' (Art. 22(2)(3) of the V.S.R.A.).

When it comes to the seller, in accordance with the current wording of Article 22(1a) of the V.S.R.A., he or she is obliged to surrender to the buyer once in a given year, together with the invoice referred to in Article 22(2)(1) of the V.S.R.A. information on the principles of purchasing and using the reduction of payments, the possibility of submitting a statement of resignation from the intention to use the right to reduce payments and the possibility of revoking this statement, issuing information on the amount of the reduction within the period specified in Article 22(10)(1) of the V.S.R.A., keeping records of issued information on the amount of the reduction (Article 22(10)(2) of the V.S.R.A.), providing the PFRON Management Board with monthly information on the amount of the reduction by the 20th day of the month following the month in which it issued the information (Article 22(10)(3) of the V.S.R.A.).

Pursuant to Article 22b(1)(2) of the V.S.R.A., the seller's violation of the time limit indicated in Article 22(10)(1) of the V.S.R.A. results in the obligation for the seller to pay to PFRON an amount of 10% of the reduction amount indicated in the information on the amount of the reduction.

The reduction of the payment to PFRON provided for in Article 21 of the V.S.R.A. is entitled to the amount of 50% of the payment to PFRON to which the buyer is obliged in a given month (Article 22(3) of the V.S.R.A.). The payment to PFRON is reduced by the amount of reduction provided for in Article 22(5) of the V.S.R.A., which is the product of the rate of remuneration of disabled employees of the seller classified as a severe or moderate degree of disability and the revenue share rate and may not be higher than 50% of the amount due for the purchase referred to in paragraph 1, specified in the invoice referred to in paragraph 2 (1), less the amount of value added tax, including corrections to that invoice. The rate of remuneration of disabled employees of the seller classified as a severe or moderate degree of disability is defined in detail in Art. 22(6) and (7) of the V.S.R.A., while the revenue share rate – in Art. 22(8) of the V.S.R.A. The aim of the introduction of an amendment to Art. 22(5) of

the V.S.R.A. was to prevent possible irregularities resulting from corrections of purchase invoices related to the return of goods for which relieves had already been issued.

When calculating the amount of the reduction, only the employment and remuneration of employees employed under an employment contract (so the remuneration of persons performing home work is not taken into account) or a cooperative employment contract, for the month to which the revenues referred to in Article 22(8) of the V.S.R.A. are included<sup>10</sup>. The amount of the reduction due and not used may be included in payments to PFRON for a period not longer than 6 months, counting from the date of obtaining information on the amount of the reduction (Article 22(4) of the V.S.R.A.).

#### **4. Obligation to submit information**

Making payments to PFRON, using reductions in payments and exemptions from payments to PFRON are associated with the obligation to submit relevant information and declarations. Employers making the above payments submit to PFRON monthly and annual information on the employment of disabled people, on employment and training of disabled people or on activities for the benefit of disabled people, by teletransmission of data in the form of an electronic document (Article 21(2f) and (2f<sup>1</sup>) of the V.S.R.A.) according to the template indicated in the Regulation of the Minister of Family, Labour and Social Policy of 27 September 2018 on determining monthly and annual templates of information on employment, training or activities for the benefit of persons with disabilities<sup>11</sup>. Monthly information is submitted by the 20th day of the month following the month to which the information relates, and in the case of annual information – by 20 January for the previous year (Article 21(2f) sentence 2 of the V.S.R.A.). Pursuant to Art. 49(2) of the V.S.R.A., employers making payments also submit by the 20th day of the month following the month in which the circumstances giving rise to the obligation to pay occurred, simultaneously with the payment, monthly and annual declarations by teletransmission of data in the form of an electronic document. The template of these declarations is specified in the Regulation of the Minister of Family, Labour and Social Policy of 22 June 2016 on the establishment of templates of declarations submitted to the Man-

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<sup>10</sup> Letter of the Office of the Government Plenipotentiary for Disabled People of 8 July 2013 (BON-I-52311-242-2-LK/2013).

<sup>11</sup> Journal of Laws of 2018 item 1857.



agement Board of the State Fund for the Rehabilitation of Disabled People by employers obliged to pay into this Fund<sup>12</sup>. Failure to comply with this obligation constitutes an offence indicated in Art. 56a of the V.S.R.A. On the basis of the above information, PFRON determines whether the employer has made payments in the right amount and whether he or she has legitimately used the exemption from payments.

### **5. Obligation to make contributions to PFRON in case of violations of law**

The obligation to make contributions to PFRON is also regulated in Art. 22b of the V.S.R.A. In the aforementioned provision, it is provided for as a sanction for the violations indicated therein, made by the employer who is the seller. Violations of the law listed in Art. 22b of the V.S.R.A. are as follows: failure to include information on the amount of the reduction in the records or information indicated in Art. 22(10)(2) and (3) of the V.S.R.A., violation of the deadline from Art. 22(10)(1) of the V.S.R.A., failure to meet the conditions referred to in Art. 22(1) of the V.S.R.A. (i.e. justifying the reduction of the payment), providing in the information data which is inconsistent with the facts and results in an overstatement of the amount of the reduction.

The amount of punitive payments is respectively 55%, 10% and 30% of the amount (or the sum of amounts) of the reduction indicated in the information on the amount of the reduction (Article 22b(1)(1)-(3) of the V.S.R.A.). In the event of providing in the information referred to in Article 22(2)(3) of the V.S.R.A. data which is inconsistent with the facts and results in an overstatement of the amount of the reduction, the amount of the punitive payment, in accordance with the current wording of Article 22b(1)(4) of the V.S.R.A., corresponds to the amount constituting the difference between the overstated amount of the reduction shown in the information, referred to in Article 22(2)(3), and a correctly calculated amount of the reduction in the event of data which is inconsistent with the facts and results in an overstatement of the amount of the reduction in this information. Such payments should be made by the 20th day of the month following the month in which these circumstances (obliging to make payments) were revealed as a result of an inspection carried out pursuant to Article 22a of the V.S.R.A. or the verification activity referred to in Article 272 of Tax Ordinance (Article 22b(1) of the V.S.R.A.).

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<sup>12</sup> Journal of Laws of 2019 item 172.

Due to the inexpediency of pursuing small amounts of payments to PFRON, the legislator in Art. 22b(2) of the V.S.R.A. provided that the seller does not make payments to PFRON if their amount does not exceed five times the costs of a warning in executive proceedings.

## **6. Contributions to PFRON related to the failure to create or organize the workplace**

Pursuant to Art. 14 of the V.S.R.A., the employer is obliged to create or organize an appropriate workplace, with basic social facilities, to an employed person who, as a result of an accident at work or an occupational disease, has lost the ability to work in the current position, no later than within three months from the date of notification by that person of readiness to undertake work. The obligation to make payments to PFRON provided for in Art. 23 of the V.S.R.A. is borne by the employer who has not created or organized a workplace for a person referred to in Article 14 of V.S.R.A. within the prescribed period. The above payment, like the payment provided for in Art. 22b of the V.S.R.A., is punitive. The obligation to make a payment to PFRON in the above respect takes place on the date of termination of the employment relationship with this employee. The amount of the payment is fifteen times the average salary of the employee within the meaning of Art. 2 point 4 of the V.S.R.A.

## **7. Contributions to PFRON as the element of the system of financial and legal incentives**

Obligatory payments to PFRON can be analyzed at the level of their relationship with the levy law and in psychological terms. On the psychological level, the impact on the addressee of legal norms is closely related to the problem of creating motivational situations. A motivational situation means that in the psyche of the subject, through appropriate stimuli, motives of a specific behavior are produced, while stimuli can have a negative (discouraging) or positive (encouraging) effect<sup>13</sup>. The task of the stimulus is therefore to shape the motivation of the subject in accordance with the intention of the person sending the stimulus. A special type of economic stimuli are the so-called financial and legal incentives, defined as situations in which the evoked motive of action is related

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<sup>13</sup> J. Zieleniewski, *Organizacja zespołów ludzkich. Wstęp do teorii organizacji i kierownictwa*, Warszawa 1982, s. 388; Z. Bauman, *Socjologia*, Warszawa 1999, s. 121–122.

to obtaining a monetary effect, while the stimulus itself is triggered and regulated by legal norms<sup>14</sup>. The system encouraging the employment of people with disabilities is based on such a type of financial and legal incentives (both positive and negative), and it is important for the legislator to take into account the factors determining the effectiveness of these incentives.

With regard to financial and legal incentives, the conditions for their effectiveness are related to the required characteristics they must meet, and they relate both to their economic content and to the legislative standards of the provisions establishing them. In the theory of financial law, a wide catalogue of desirable features was developed, which can also be attributed today to a model financial and legal stimulus<sup>15</sup>. The most important problem related to the effectiveness of the stimulus is its strength, i.e. the amount of benefits or ailments associated with its use. Effective financial and legal incentives should also be stable in terms of the stability of the legal provisions that introduce them. In doing so, account must be taken of the necessary flexibility and predictability of incentives in the context of possible legal changes. It should be added that this feature is identical with the postulate of the quality of legislation (principles of decent legislation)<sup>16</sup>. In the doctrine, there is a well-established view that this principle requires that the content of legal regulations, especially in the case of norms of an intrusive nature, be legible and transparent, and the issuance of unclear and ambiguous provisions is a violation of the principles of the rule of law<sup>17</sup>. The test of the constitutionality of the provisions in this area requires checking the precision, clarity and correctness of the regulation, in order to then relate them in the right proportion to the nature of the examined regulation<sup>18</sup>.

Due to the possibility of several incompatible stimuli influencing the addressee at the same time, the effectiveness of a financial and legal stimulus depends on the exclusion of its collision. It is therefore argued that the application of all stimuli should be based on the principle of harmony and mutual complementarity<sup>19</sup>. The last postulate is to save money in the use of stimuli, because their too large number and excessive casuistry cause the risk of collision and competitiveness<sup>20</sup>.

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<sup>14</sup> J. Małecki, *Bodźce i sankcje prawnofinansowe*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1981, nr 1, s. 188–189; H. Renigier, *Bodźce prawno-finansowe* [in:] *System instytucji prawno-finansowych PRL. Instytucje ogólne*, t. I, ed. M. Weralski, Ossolineum, Wrocław 1982, s. 317.

<sup>15</sup> Further characteristics of stimuli taken after H. Renigier, *Bodźce...*, *op.cit.*, s. 333–341.

<sup>16</sup> C. Kosikowski, *Stabilność prawa podatkowego* [in:] *Polski system podatkowy. Założenia i praktyka*, ed. A. Pomorska, Lublin 2004, s. 13 et seq.

<sup>17</sup> T. Zalasinski, *Zasada prawidłowej legislacji w poglądach Trybunału Konstytucyjnego*, Warszawa 2008, s. 198–199.

<sup>18</sup> Judgment of the Constitutional Tribunal of 28 October 009, KP 3/09. OTK-A 2009/9/138.

<sup>19</sup> J. Małecki, *Bodźce i sankcje...*, *op.cit.*, s. 187.

<sup>20</sup> *Ibidem*.

There is no doubt that the contributions analyzed above constitute financial and legal incentives of a positive and negative nature, the purpose of which is to encourage the employment of people with disabilities. However, it does not seem that, when analysing all the financial and legal solutions in force regarding the employment of people with disabilities, it could be possible to claim that there is one coherent system in this area that deserves a positive assessment. Taking into account the conditions for the effectiveness of incentives, it should be stated that the broadly understood levy law (in particular including tax solutions) in so far as it creates a system encouraging the employment of disabled people, does not meet the requirement of stability and clarity of legal regulations<sup>21</sup>. In particular, one can point to the disturbance of the stability of incentives associated with numerous legislative changes and the long-time development of jurisprudence in the field of tax solutions. It also seems that currently some tax law institutions related to the employment of disabled people, including mainly tax exemptions, are becoming less and less important (or not important at all) in practice, which results in the process of reducing support for disabled employees using tax mechanisms. In this light, the above-mentioned obligatory payments made by employers to PFRON and the related regulations regarding preferences and sanctions seem to be a mechanism which characterises the consistencies of legal solutions, level of legislation acceptable from the point of view of the standards of intrusive law and predictability of the directions of solutions. Doubts as to the overall positive assessment of this institution are often caused by these amendments to the provisions regarding changes in the scope of mandatory payments, however, against the background of the broad dynamics of actual changes in the financial law, this is a problem of the entire system.

## 8. Conclusion

The levy law, in the scope that it is to create a system encouraging the employment of disabled people, uses the institution of the above-characterised obligatory contributions to PFRON. By definition, the regulations regarding these payments should therefore co-create a system supporting the employment of people with disabilities. At the same time, the obligatory contributions to PFRON are instruments of stimulation of the conduct of employers, as financial and legal incentives. These incentives have either positive or negative character as they en-

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<sup>21</sup> See more broadly P. Majka, M. Rydzewska, I. Wieleba, *Zatrudnianie osób niepełnosprawnych. Aspekty prawne i podatkowe*, Warszawa 2018, s. 185–412.

courage the employment of persons with disabilities through the prospect of financial benefit for the employer and, acting preventively, discourage them from behaving in a way that does not comply with their obligations through sanctions. The institution of payments to PFRON based on the introduction of financial obligations for employers is part of the system of financial and legal incentives, which is evolving towards increasing the obligations of employers. What becomes visible against this background is the process of eliminating exemptions and other tax preferences, as well as tightening the requirements of already existing tax preferences. It should be noted that introducing further legislative solutions in the field of supporting the employment of people with disabilities, the legislator does not maintain the consistency of legal solutions. Within this scope, however, the wide use of incentives should be based on the principles of harmony and mutual complementarity of all regulations, and not only one levy.

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## Legal Acts

- Ustawa z dnia 27 sierpnia 1997 r. o rehabilitacji zawodowej i społecznej oraz o zatrudnianiu osób niepełnosprawnych (t.j. Dz.U. z 2018 r., poz. 511).
- Ustawa z dnia 29 sierpnia 1997 r. Ordynacja podatkowa (t.j. Dz.U. z 2018 r., poz. 800 ze zm.)
- Ustawa z dnia 10 maja 2018 r. o zmianie ustawy o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych oraz niektórych innych ustaw (Dz.U. z 2018 r., poz. 1076).
- Rozporządzenie Ministra Pracy i Polityki Socjalnej z dnia 18 września 1998 r. w sprawie rodzaju schorzeń uzasadniających obniżenie wskaźnika zatrudnienia osób niepełnosprawnych oraz sposobu jego obniżania (Dz.U. nr 124, poz. 820).
- Rozporządzenie Ministra Rodziny, Pracy i Polityki Społecznej z dnia 22 czerwca 2016 r. w sprawie ustalenia wzorów deklaracji składanych Zarządowi Państwowego Funduszu Rehabilitacji Osób Niepełnosprawnych przez pracodawców zobowiązanych do wpłat na ten Fundusz (Dz.U. z 2019 r., poz. 172).