

ACCESSIBILITY OF BUILDINGS FOR PEOPLE WITH DISABILITIES AND SPECIAL NEEDS IN THE LIGHT OF THE PROVISIONS OF THE BUILDING REGULATIONS

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Abstract. This article addresses the issue of accessibility of buildings for people with disabilities and those with special needs in the light of the provisions of the Construction Law. The starting point for the discussion is the premise that accessibility constitutes one of the fundamental human rights, underpinned by provisions of the Polish Constitution as well as international and EU law. The study discusses the key legal acts governing this issue, including the Act on Ensuring Accessibility for People with Special Needs, technical and building regulations, and standards arising from the UN Convention on the Rights of Persons with Disabilities and European Union policies. The article analyses key concepts such as accessibility, architectural accessibility and universal design, highlighting their significance for shaping the built environment. The analysis showed that despite relatively extensive legal regulations, there are significant difficulties in their effective enforcement in practice. The most significant barriers include institutional constraints, organisational problems and insufficient public awareness. The conclusion highlights the need for systemic measures, encompassing both the strengthening of control mechanisms and the promotion of universal design, as well as the fostering of attitudes conducive to building an inclusive society.

Keywords: accessibility; construction; disability; basic requirements; people with special needs; architectural accessibility.

INTRODUCTION

Accessibility affects us all, albeit in different ways. Depending on our age, state of health, or even a temporary illness, the environment around us can present numerous barriers in our daily lives. Accessibility takes many forms

– it includes, amongst other things, the ability to use buildings, access information, education, technology and transport.

A number of legal instruments are dedicated to the rights of people with disabilities; these primarily concern the prohibition of discrimination and the rights relating to ensuring that these individuals can participate in social life in the broadest sense [Skóra 2021, 189]. Accessibility is a fundamental right of every human being. This is confirmed by Articles 30 and 32 of the Polish Constitution, which emphasise human dignity and the prohibition of discrimination. The principles of accessibility are further clarified and elaborated in the provisions of the Act of 19 July 2019 on ensuring accessibility for people with special needs.¹ In addition, with regard to the accessibility of buildings, the provisions of the Act of 7 July 1994 – the Building Act – apply,² which will be examined in detail here.

The relevant provisions of the Building Act have introduced a mandatory requirement to ensure that public facilities and multi-family residential buildings are accessible to persons with disabilities, as referred to in Article 1 of the Convention on the Rights of Persons with Disabilities, drawn up in New York on 13 December 2006,³ including older people. Although the requirement is currently limited to public buildings and multi-family residential buildings, it is worth ensuring that accessibility is also provided in other types of buildings.

The aim of this article is to outline the key requirements of the Building Act regarding the accessibility of buildings for people with disabilities and special needs. The subject matter will be analysed using a legal-theoretical approach.

1. KEY LEGAL PROVISIONS REGARDING THE ACCESSIBILITY OF BUILDINGS

In the context of fulfilling the obligation to ensure the accessibility of buildings, the provisions of the Construction Law play a key role. Since the Act came into force, these provisions have required all new public buildings and multi-family residential buildings to be adapted to the needs of people with disabilities.⁴

In addition, on 20 September 2019, the Act on Ensuring Accessibility for Persons with Special Needs came into force, setting out measures to ensure such accessibility and the obligations of public bodies in this regard (Article 1 of the Act). Article 6 of this Act sets out, amongst other things, the minimum requirements for ensuring architectural accessibility for people with special

¹ Journal of Laws of 2024, item 1411 [hereinafter: Accessibility Act].

² Journal of Laws of 2024, item 725 [hereinafter: the Building Act].

³ Journal of Laws of 2012, item 1169 as amended [hereinafter: Convention].

⁴ However, the provision specified at the time that this applied in particular to wheelchair users.

needs. These include: a) ensuring that the circulation spaces within buildings are free from horizontal and vertical barriers, b) installing equipment or applying technical measures and architectural solutions within the building that enable access to all rooms, with the exception of technical rooms, 3) providing information on the layout of rooms within the building, at least in visual, tactile or audio formats, 4) ensuring access to the building for a person using an assistance dog, as referred to in Article 2(11) of the Act of 27 August 1997 on the vocational and social rehabilitation and employment of persons with disabilities,⁵ e) ensuring that persons with special needs are able to evacuate or be rescued by other means. Detailed guidelines in this regard are set out in the Regulation of the Minister of Infrastructure of 12 April 2002 on the technical conditions to be met by buildings and their location.⁶

Taking into account the needs of people with disabilities has also become an important element of the European Union's social policies. These issues are reflected, amongst other things, in the European Commission's communication of 15 November 2010: *European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe*. This communication directly refers to the EU's 'Europe 2020' development strategy, one of whose key priorities is inclusive growth: fostering a high-employment economy delivering social and territorial cohesion. The strategy places particular emphasis on accessibility – both in physical terms (e.g. infrastructure and buildings) and digital terms (access to information and online services). The need to remove barriers preventing people with disabilities from fully participating in social and economic life was emphasised, as was the promotion of universal design as the standard in the creation of spaces and services. In this context, EU actions aimed to harmonise legislation and support Member States in implementing solutions that promote social inclusion. As a result, European Union policy in this area has adopted a systemic approach, aimed not only at removing existing barriers but also at actively creating the conditions that enable people with disabilities to participate fully and independently in society.

In 2012, Poland ratified the United Nations Convention on the Rights of Persons with Disabilities, drawn up in New York in 2006, thereby committing itself to incorporating these issues into its legislation, policies and social practices.⁷ In its general principles, the Convention refers, amongst other

⁵ Journal of Laws of 2024, item 44 as amended.

⁶ Regulation of the Minister of Infrastructure of 12 April 2002 on the technical requirements to be met by buildings and their siting (i.e. Journal of Laws of 2022, item 1225 as amended).

⁷ The Convention on the Rights of Persons with Disabilities – a United Nations international human rights treaty aimed at protecting the rights and dignity of persons with disabilities. The text was adopted by the United Nations General Assembly on 13 December 2006 and opened for signature on 30 March 2007. Following ratification by the twentieth party, the

things, to the principles of accessibility, equal opportunities, and ensuring full and effective participation in society and social inclusion. Ensuring accessibility in buildings is directly linked to the principle of equal opportunities, as it enables people with disabilities to use public spaces on an equal footing with other citizens. At the same time, it supports their independence and self-reliance, which is of significant importance for their professional, educational and social activities. A lack of appropriate architectural solutions, however, leads to social exclusion, limiting the ability to participate in public life. Building accessibility is a key element in fulfilling the obligations arising from the UN Convention on the Rights of Persons with Disabilities. Ensuring it not only removes architectural barriers but also contributes to building a more open, equal and inclusive society.

2. BASIC CONCEPTS RELATING TO ACCESSIBILITY

Accessibility is a general concept which, for the purposes of the government's 'Accessibility Plus' programme, has been defined as a characteristic of an environment (physical space, digital reality, information and communication systems, products, services) that enables people with functional difficulties (physical or cognitive) to use it on an equal footing with others. In the context of the physical environment, this primarily translates into the functionality and accessibility of the built environment, and thus architectural accessibility. The aim of accessibility is to enable people with disabilities to live independently, that is, to live without the need for assistance from others and free from paternalistic attitudes towards people with disabilities. This reflects the social (socio-functional) concept of disability, according to which it is not a person's characteristics that determine their disability, but the environment in which they function [Kurowski 2012, 8].

Architectural accessibility is achieved primarily through the application of 'universal design', that is, the design referred to in Article 2 of the Convention, which is taken into account in particular to meet the minimum requirements referred to in Article 6, in order to ensure accessibility for people with special needs (Article 2(4) of the Accessibility Act). It is therefore a matter of designing products, environments, programmes and services in such a way that they are useful to everyone, to the greatest extent possible, without the need for adaptation or specialised design. The principles of universal design include, amongst others: 1) equitable use, meaning that the design is useful and appealing to people with different abilities (capabilities), 2) flexibility of use – the design accommodates a wide range of individual preferences and abilities of users, 3) simple and intuitive operation – the

design is easy to understand, regardless of the user's experience, knowledge, language skills or current level of concentration, 4) accessible and usable dimensions and space – adequate size and space provided for approaching, operating and using the product, regardless of the user's size, posture or mobility [Benek, Labus, and Kampka 2016]. These principles call for the adaptation of spaces to suit all users. Accessibility may also be ensured through alternative means. As the Supreme Administrative Court notes, this option may apply in individual cases, particularly where a public body is unable, for technical or legal reasons, to ensure accessibility for people with special needs. Such access consists, in particular, of providing a person with special needs with assistance from another person or technical support, and ensuring that the public body is organised in such a way as to enable the fulfilment of that person's needs to the necessary extent.⁸

With regard to architectural accessibility, in accordance with Article 6(1) of the Act on Ensuring Accessibility, the minimum requirements for ensuring accessibility for people with special needs include: ensuring that building circulation spaces are free from horizontal and vertical barriers; the installation of equipment or the use of technical measures and architectural solutions in the building that enable access to all rooms, with the exception of technical rooms; providing information on the layout of rooms in the building, at least in visual, tactile or audio formats; ensuring access to the building for persons using an assistance dog and ensuring that persons with special needs can be evacuated or rescued by other means. As R. Mędrzycki rightly observes, 'it has rightly been stated in legal doctrine that some requirements have been defined in minimal terms, sometimes losing sight of the essence of the matter.' For example, public bodies have been required to remove architectural barriers from the circulation areas of buildings, but not from the surrounding properties (where barriers may also exist); similarly, the lack of requirements to ensure accessibility to technical rooms prevents some people with disabilities from being able to work on an equal footing [Mędrzycki 2023, 286].

The aim of this design is to ensure that people facing various limitations can function effectively in shared spaces. When ensuring accessibility, consideration must be given not only to the needs of people with various types of disability resulting from health impairments (e.g. physical, mental, intellectual or sensory disabilities), but also to the needs of older people and children (including parents with young children). For this reason, the Act uses the term 'person with special needs', which is not synonymous with the term 'person with a disability'. The term 'person with special needs' should be understood to mean a person who, due to their external or internal

⁸ Judgment of the Supreme Administrative Court of 8 April 2025, ref. no. III OSK 2774/23, Lex no. 3855294.

characteristics, or due to the circumstances in which they find themselves, must take additional steps or employ additional measures to overcome barriers in order to participate in various spheres of life on an equal footing with other people (Article 2(3) of the Accessibility Act). As A. Gronkiewicz and A. Ziółkowska add, this definition could include, for example, people who are temporarily unable to work due to a broken limb or a deterioration in their health caused by an autoimmune or chronic illness, or those who are unable to work because they are caring for a family member (spouse or parent) [Gronkiewicz and Ziółkowska 2024, 195]. In turn, people with disabilities include those who have a long-term impairment of physical, mental, intellectual or sensory functioning, which, when combined with various barriers, may hinder their full and effective participation in social life on an equal basis with others (Article 1 of the Convention).

3. ACCESSIBILITY AS REGULATED BY THE BUILDING ACT

The fundamental regulation concerning the obligation to ensure the accessibility of buildings for people with disabilities is set out in Article 5(1)(4) of the Building Act. It requires that a building be designed, and subsequently constructed, used and maintained in accordance with the regulations, including technical and construction regulations, applicable Polish Standards and the principles of technical knowledge, in a manner ensuring, amongst other things, the necessary conditions for the use of public facilities and multi-family residential buildings by persons with disabilities referred to in Article 1 of the Convention, including older persons [Kuźma, Tymiec, Kornecka, et al. 2024].

This provision is included amongst the general provisions of the Building Act, which demonstrates its crucial importance for the interpretation and application of all the specific provisions contained in the subsequent sections of the Act. Its scope of application must therefore be analysed in the context of defining the subject matter of the Building Act, in accordance with Article 1 of that Act. This means that the obligations of the designer, the developer and other participants in the construction process (Articles 17-27 of the Building Act), as well as the tasks of the architectural and construction administration and building supervision authorities (Articles 80-89c of the Building Act), should be interpreted in the light of these general principles, including in relation to the provision of Article 5.

It is worth noting that the provision in question refers explicitly to the Convention on the Rights of Persons with Disabilities, rather than to the Accessibility Act, and this is no coincidence. It should be borne in mind that, pursuant to Article 5 of the Building Law, a building must be designed, *inter alia*, in the manner specified in regulations, including technical and construction regulations. These regulations include, amongst others, the

Regulation of the Minister of Infrastructure of 12 April 2002 on the technical conditions to be met by buildings and their location. This Regulation refers to persons with disabilities, but does not address the situation of persons with special needs. Its scope is therefore too narrow to meet the requirement of safeguarding the interests and needs of all groups requiring state support [Niewiadomski, Asman, Dessoulavy-Śliwiński et al. 2024].

The obligation to comply with the conditions set out in Article 5(1)(4) of the Building Act applies exclusively to public buildings and multi-family residential buildings. In order to protect the interests of these persons, the legislator has also stipulated that the provision allowing for derogations from the technical and construction regulations referred to in Article 7 of the Building Act must not, in relation to such buildings, result in reduced accessibility for disabled and elderly persons (see Article 9 of the Building Act).

There is, of course, nothing to prevent such conditions from being provided in other types of construction as well; however, this is left to the investor's discretion, and in such cases, compliance with these conditions will not be enforced [Szwajdler and Bąkowski 2023, 40-44; Smarż 2023, 40-44]. Meanwhile, a breach of the principle of protecting the interests of persons with disabilities entails sanctions under the provisions of the Building Act. For example, it is worth noting that the competent building control authority will, amongst other things, refuse to issue a certificate of occupancy if a mandatory inspection carried out pursuant to Article 59a of the Building Act reveals that the conditions necessary for the use of the building by persons with disabilities and older people have not been ensured (see Article 59(5) in conjunction with Article 59a(2)(2)(f) of the Building Act). Furthermore, pursuant to Article 93(1) of the Building Act, anyone who, when designing or carrying out construction works, grossly fails to comply with the provisions of Article 5(1)-(2b), shall be liable to a fine.

The legislator also stipulates an obligation to ensure that a minimum proportion of residential units in a multi-family building are accessible to people with disabilities, including older people, out of the total number of residential units (Article 5(1)(4a) of the Building Act). Relevant information in this regard should be included in the building design (Article 34(3)(2)(h) and (i) of the Building Law) [Okolski 2024]. These requirements are further detailed in the provisions of the Regulation of the Minister of Development of 11 September 2020 on the detailed scope and form of a building design. The provisions of the aforementioned Regulation have undergone significant changes following the entry into force of the Act on ensuring accessibility for persons with special needs. The aim of these changes was to adapt the requirements regarding the principles for drawing up architectural and construction designs to the needs of people with disabilities [Stelmach 2001, 8].

In addition to the generally applicable regulations, the Ministry of Housing has published a guide entitled 'Design Standards for Buildings for People with Disabilities', which was developed in collaboration with organisations representing people with disabilities. This guide has been published on the government website www.budowlaneabc.gov.pl.⁹ and is intended to serve as a reference guide for those designing buildings. These standards contain guidelines on the design of parking spaces, building architecture and interior fittings. They therefore provide essential guidance on how to design buildings so that they can be used by people with special needs from the moment they arrive at the site, through the entrance area, vertical and horizontal circulation, and then within the premises. This guide also highlights the scale of the challenges faced by people with various types of disabilities, particularly those associated with old age.

4. INSPECTION OF THE ACCESSIBILITY OF BUILDINGS

The supervision of compliance with and application of the provisions of the Building Act, which takes the form of inspections and checks, falls within the remit of the building control authorities. This supervision includes, amongst other things, checking that construction works are carried out in accordance with the provisions of the Building Law, the construction design or the conditions specified in the building permit decision (Article 84(1)(1) in conjunction with Article 84a(1)(1) of the Building Law). Furthermore, although the provision of paragraph 2 indicates that this competence falls within the scope of 'supervision of the application of the law', the supervision of compliance with the law should also include verifying the fulfilment of obligations arising from decisions and rulings issued on the basis of the provisions of the Building Law (Article 84a(2)(2) of the Building Law) [Niewiadomski, Asman, Dessoulavy-Śliwiński, et al. 2024].

The activities of the building control authority therefore cover measures taken at every stage of the construction and use of a building. As part of their supervisory role, building control authorities, in accordance with the powers conferred by Article 83 of the Building Act, are also authorised to inspect buildings in use and, should they identify reasonable grounds for concern regarding their condition, may, for example, order: an inspection of the building's technical condition, the submission of an expert report on its condition, the rectification of any identified irregularities, or the suspension of the building's use until such time as they have been rectified.¹⁰

⁹ Design standards for buildings for people with disabilities, <https://www.gov.pl/web/rozwoj-technologie/standardy-projektowania-budynkow-dla-osob-z-niepelnosprawnosciami> [accessed: 15.01.2025].

¹⁰ Judgment of the Provincial Administrative Court in Opole of 19 August 2021, ref. no. II SA/Op 375/20, Legalis no. 2607227.

The Act of 19 July 2019 on ensuring accessibility for persons with special needs introduced a complaints procedure as a supervisory mechanism to ensure compliance with minimum accessibility requirements. In enacting the provisions of Article 32 of the Accessibility Act, the legislator established the principle that public-law entities are obliged to ensure accessibility. Where such accessibility is not provided, and thus the provisions of the Act in this regard are breached, the Chair of the PFRON Management Board must issue a decision ordering that accessibility be ensured. Anyone, without having to demonstrate a legal or factual interest, has the right to inform a public body of a lack of, amongst other things, architectural accessibility. A request for ensuring accessibility is submitted to the public body whose activities are related to the demand for ensuring accessibility contained in the request. Accessibility must be ensured, to the extent specified in the request for accessibility, without undue delay, but no later than within 14 days of the date on which the request for accessibility was submitted. If the body fails to ensure accessibility for the applicant, the applicant has the right to lodge a complaint regarding the lack of accessibility. The complaint is lodged with the Chair of the PFRON Management Board. If it is found that the failure to ensure accessibility to the extent requested by the complainant resulted from a breach of the provisions of the Act, the Chair of the PFRON Management Board shall, by way of a decision, order the public body to ensure accessibility. Proceedings before the Chair of the PFRON Management Board are conducted at a single instance. In both cases, the ruling of the Chair of the PFRON Management Board is an administrative decision to which the provisions of the Code of Administrative Procedure apply, with the additions resulting from the Act. In both cases, these decisions are of a binding nature; they are not based on the concept of administrative discretion [Mędrzycki 2021].

CONCLUSION

The provisions of the Building Act and its implementing regulations govern in considerable detail the adaptation of buildings to meet the needs of people with disabilities. Unfortunately, these provisions are not always adequately observed or enforced, to the detriment of people with disabilities.

One of the obstacles to their effective enforcement is the insufficient number of staff employed by the supervisory bodies responsible for inspection and supervision in this area. Another obstacle is the still frequently unclear legal status of many buildings, or the constantly changing owners and managers of these buildings, which makes it difficult to monitor compliance with the obligations arising from the Building Act.

The problem with compliance with regulations on adapting buildings to the needs of people with disabilities also stems from the mindset of our

society. This applies in particular to those who go to any lengths to circumvent the regulations in force. Without a change in the mindset of those responsible for the design and construction of buildings, even the best regulations and the strictest penalties for non-compliance will be ineffective. Therefore, we must focus on changes to the functioning of building control authorities and the promotion of good practices, as well as on raising public awareness and fostering sensitivity among designers and developers to the needs of people with disabilities.

Architectural accessibility should not be viewed solely as a statutory obligation, but as a standard for designing spaces that meet the needs of all users. In this context, the need for systemic measures takes on particular significance. These include both the institutional strengthening of building control authorities and the development of mechanisms for more effective monitoring and enforcement of regulations. At the same time, it is essential to promote good practices in universal design, as well as to conduct educational activities aimed at designers, developers and the general public. It should be emphasised that ensuring the accessibility of buildings is not merely a technical or legal issue, but constitutes a key element of the state's social policy and the fulfilment of international obligations. Creating barrier-free spaces contributes to the development of an inclusive society in which every person – regardless of their limitations – can function independently and with dignity. In this sense, accessibility should be regarded as one of the fundamental hallmarks of a modern and responsible state governed by the rule of law.

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