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# Reducing social costs by the rehabilitation system in Germany: Rehabilitation, Prevention and the Role of Employers

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# Μειώνοντας τις κοινωνικές δαπάνες με το σύστημα αποκατάστασης στη Γερμανία. Αποκατάσταση, πρόληψη και ο ρόλος των εργοδοτών

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**ABSTRACT**

Retaining and restoring employability and work capacity of the employees is a major goal in the German social security system and an important means to reduce social costs. The main tool to achieve this is rehabilitation. The "rehabilitation system" constitutes an important part of the overall German social security system. This article gives an overview of the German rehabilitation system, its main goals and characteristics. Special attention is paid to the question of prevention and the role of employers.

**KEY WORDS:** rehabilitation, Germany, social security system, prevention, employers, employees, health, employability

**ΠΕΡΙΛΗΨΗ**

Η διατήρηση και αποκατάσταση της υγείας και της ικανότητας προς εργασία των εργαζομένων αποτελούν βασικό στόχο του γερμανικού κοινωνικού κράτους και σημαντικό μέσο μείωσης των κοινωνικών δαπανών. Το σύστημα αποκατάστασης (Rehabilitation) είναι ένα σημαντικό μέρος του γενικότερου συστήματος κοινωνικής ασφάλισης. Τα άρθρο περιγράφει τους βασικούς στόχους και τα χαρακτηριστικά του συστήματος αποκατάστασης και υπογραμμίζει το ρόλο των εργοδοτών σε αυτό το σύστημα.

**ΛΕΞΕΙΣ-ΚΛΕΙΔΙΑ:** αποκατάσταση, εργοδότες, εργαζόμενοι, γερμανικό σύστημα κοινωνικής ασφάλισης, υγεία, Γερμανία

# 1. Introduction

How can one country reduce costs in the social security system? Demographic changes and economic challenges pose this question. There are certainly many different possible answers to this question – and there are certainly many good examples from different countries of the European Union.

In this article one particular example of reducing costs will be presented: Retaining or restoring work capacity. By retaining or restoring peoples' employability and health, they can stay active longer in the labour market. Doing this, the payment of income-replacement benefits can be reduced or postponed while at the same time social security contributions are being paid for a longer time, thus preserving the financial sustainability of the social security system.

The German social security system provides an interesting example from which we can learn about potentials and ways of maintaining work capacity. Retaining and restoring the health and employability of persons who have become ill or are at the risk of becoming disabled has always been a central goal of the German "rehabilitation system", which constitutes an important part of the overall social security system. The legal provisions for rehabilitation have been incorporated as Book IX into the German Social Code. Book IX has the title "Rehabilitation and Integration of disabled persons", i.e. it regulates not only rehabilitation matters, but it includes all the relevant provisions that facilitate the participation and integration into society for disabled persons and also for persons "at risk of becoming disabled". The legal rules provide for medical, occupational and welfare benefits in order to achieve the goal of participation and integration into society quickly, effectively and economically. These benefits have been put together under the heading of "integration assistance".

In this article the German rehabilitation system is presented. After summarizing its logic and historical development (chap. 2 + 3), the main goals and characteristics of this system are briefly described (chap. 4 + 5). Special attention is paid to the question of prevention and the role of employers in the system of rehabilitation (chap. 6).

# 2. The "motto" of the rehabilitation system: "Rehabilitation before cash benefits"

The main feature of the German rehabilitation system is "rehabilitation before pension" or – more concrete – rehabilitation before any kind of cash benefits. All kinds of medical and occupational rehabilitation assistance have priority over payments of sickness allowance or pensions. The same applies if integration assistance helps to avoid, overcome or alleviate the need for long-term care or prevent its aggrevation".[1] In this sense, all possibilities of restoring a person's health and capacity for work must be exhausted before any kind of benefit can be paid.

# 3. Historical development

When the first legal provisions of the German social law were created at the end of the 19th Century, the era of codified and comprehensive regulations of the type seen today[2] had not yet arrived. Rather, regulations were made for individual groups of people and their specific

problems.[3] Nevertheless, one can say that modern social security in Germany is still based on the reforms Bismarck[4] began in 1881 with the establishment of social insurance for workers of industrial industry.[5]

The first social security law was the Occupational Accident Insurance Act of 1884. The competent funds soon began, on the basis of this law, to provide medical services as quickly as possible – from 1890 onwards in accident hospitals. They pursued the aim of effectively limiting the consequences of accidents at work and reducing the volume of pensions that would have been payable otherwise. With regard to pension insurance, it was already legally possible as early as in 1889 for the funds to assume the costs of medical care if illness or accident threatened to cause incapacity for work and a subsequent need for invalidity pension. The principle of 'rehabilitation before pension' was thus already in operation. The uniform regulations on war victims welfare (first issued in 1919) were also intended to reintegrate war victims into gainful employment wherever possible. These regulations were supplemented by provisions which also date back to 1919 which required employers to employ severely disabled persons who were victims of war and accidents. For the integration of disabled persons not belonging to the groups mentioned above, the first special uniform regulations were introduced in 1924, whereby disabled persons were regarded as 'healable poor'. Similarly, from the very beginning, the duties of placement into employment and providing unemployment insurance which were regulated by law in 1927 included counselling and placement services for disabled persons. These were supplemented in the late 1960s by extensive duties related to vocational rehabilitation as a part of a "pro-active labour market policy".

In the decades to follow, the objective of integrating disabled persons and persons at risk of becoming disabled into working life and into society as a whole was pursued with increasing vigour. Thus, the principle of as early an intervention as possible was strengthened.

This principle has gained more importance since the codification of all rehabilitation provisions in one single chapter of the Social Code in the year 2001: All the different legal provisions concerning the integration of people with disabilities or at risk of becoming disabled were consolidated and incorporated as Book IX into the German Social Code. The aim was to achieve more cooperation, coordination and convergence of the different bodies involved into the rehabilitation system. For the first time, the obligations of all social security authorities in the field of rehabilitation – and also of employers – were regulated in one law. This way, the rather complex rehabilitation system has been streamlined by harmonizing the legal basis of service provision.[6]

## 4. Goals, principles and benefits of the rehabilitation system

In Section 4 (1) of Book IX of the Social Code, integration assistance includes all social security benefits which regardless of the cause of a person's disability are necessary:

1. to avert, eliminate, or alleviate a disability, to prevent its aggravation or to reduce its effects
2. to avoid, overcome or alleviate reductions in earning capacity or the need for long-term care or prevent an aggravation and to avoid the early receipt of other social benefits or reductions in social benefits already paid
3. to secure permanent participation in working life in accordance with a person's leanings and abilities

4. to promote an individual's personal development in a holistic approach, enable their participation in the life of society and facilitate a life as autonomous and self-determined as possible.

The most important principles of the German rehabilitation system are: a) the priority of prevention, b)the right of the beneficiaries to express wishes and to choose, c)the speedy, efficient and economic provision of integration assistance and d) the cooperation between the different rehabilitation funds.

Many different social security benefits and services are provided by the rehabilitation system. These can be categorized as following: a) medical rehabilitation assistance,b) occupational integration assistance, c) assistance to cover living expenses and other supplementary assistance and d) social integration assistance.

## 5. The duty for cooperation between the rehabilitation funds

Due to the differentiated system of social insurance in Germany, integration assistance is not provided by one insurance scheme only, but can be provided from different schemes or funds. The system of medical, occupational and social rehabilitation is a joint responsibility of pension insurance, health insurance, accident insurance, Federal Employment Agency and social welfare bodies.

The question which integration assistance is provided by which rehabilitation fund and under which conditions, depends on the laws applicable to the individual rehabilitation funds.[7] This takes into account that the established system consists of various branches. Thus, pension insurance assistance may only be granted to persons who are covered by that scheme and social assistance only to those who meet the requirements of that particular scheme. The relevant regulations are laid down in the respective Books of the Social Code and in other laws on the provision of assistance. In contrast, regulations on the *nature* and *objectives* of integration assistance are to be found in a single piece of legislation – in Book IX of the Social Code. This is meant to illustrate that the common objective of integrating disabled persons and persons who are at risk of becoming disabled into society to the greatest possible extent is generally pursued in the same way by all rehabilitation funds responsible in individual cases.[8]

The rehabilitation funds are under obligation to cooperate. Under Section 13 of Book IX of the Social Code ambiguous responsibilities between the various rehabilitation funds should

be solved by mutual agreement and wherever possible in the form of joint recommendations. The coordinating body is the Federal Committee for Rehabilitation, which not only consists of the various (public) rehabilitation funds, but also of trade unions, employers' organizations, organizations representing the disabled and rehabilitation service providers. At a regional revel, public rehabilitation funds are obliged to have common service units[9] for persons and employers. These involve disability organizations in the counselling.[10]

When assistance from different rehabilitation funds is necessary, Section 10 (1) of Book IX of the Social Code provides that, in consultation with the persons, the rehabilitation funds involved are required to combine the benefits that are likely to be necessary to meet the individual needs in such a way that a smooth process is ensured. In fact, the rehabilitation funds have to ensure a continuous process in line with the respective needs (integration management).

The responsible rehabilitation fund assesses when medical rehabilitation is initiated, whether the earning capacity of a person may be maintained, improved or restored by means of appropriate integration assistance. If it becomes evident during the provision of the medical rehabilitation assistance that it may be difficult for a person to keep their current job, the question of whether occupational integration assistance is necessary must be clarified without delay, both in consultations with the person concerned and with the responsible rehabilitation fund.[11]

## 6. Prevention, early intervention and the role of employers

As mentioned before, an important principle of rehabilitation is the priority of prevention. According to the objective enshrined in Section 3 of Book IX of the Social Code, the primary aim is to avoid as far as possible the manifestation of chronic diseases and disabilities by implementing targeted prevention in all age groups and areas of life. Key areas include health and safety at work, accident prevention, workplace integration management, environmental protection and health protection, especially with regard to chronic, degenerative diseases.

Under Section 23 of Book V of the Social Code, members of statutory health insurance funds are entitled to medical prevention services. Also of relevance for prevention are the regulations regarding the prevention of work-related accidents and occupational diseases (Book VII of the Social Code) and numerous statutory and collectively agreed provisions on health and safety at work.

New approaches to prevention at company level are laid down in Section 84 of Book IX of the Social Code. Since 2004, all employers are required to introduce integration management measures into their company policy, i.e. they must provide targeted assistance and support services for employees who fall ill for a longer time. This is called "in-company" or "workplace integration management process" (Betriebliches Eingliederungsmanagement").[12] Through early intervention, the objectives of prevention and rehabilitation result in employees retaining their employability rather than facing dismissal or early retirement. If employees are unfit for work for more than six weeks in a given year, either continuously or repeatedly, employers must assess how an employee's inability to work can best be overcome and must identify the type of assistance or support needed to prevent a recurrence so that the position can be retained. Section 84 (2) of SGB IX intentionally does not prescribe in detail how this is to be done. An appropriate solution must be found at each workplace to meet individual needs. The law merely requires (with the agreement of the individual concerned) the involvement of the responsible employee representative (works or employee council) and, if the individual is severely disabled, the severely disabled employees representative, in order to identify ways to overcome the employee's unfitness to work and the type of assistance or aids needed in doing so.

Where participation-oriented benefits or employment support are considered in overcoming an inability to work and preventing a repeat episode of ill health, the local joint rehabilitation services office or in the case of severely disabled persons the integration office must be involved. Their know-how and support is often very helpful and constructive, particularly for smaller companies.

Employers who introduce workplace integration management measures may receive incentives from rehabilitation funds in the form of awards or grants for financing technical aids or work assistance. Besides these payments, workplace integration management can also be

supported by the "gradual re-integration" ("stufenweise Wiedereingliederung"). Those who are being gradually reintegrated still have the status of being unable to work, but nevertheless start working (again), often part-time or with a reduced workload. They are supported by medical rehabilitation and are still entitled to (temporary) incapacity benefits from health insurance or pension insurance.[13]

While failure to introduce integration management measures is not subject to sanctions, employers who fail to meet this requirement will find it significantly more difficult to enforce illness-related terminations of employment against the will of the employee concerned: The Federal Labour Tribunal has stated that if the employer fails to complete proper integration management, his right to dismiss the employee in the particular case can be affected,[14] following the case law of the European Court of Justice on disability discrimination.[15]

Workplace integration management can be described as a cooperative approach to mobilizing internal and external knowledge. The aim is to prevent job loss by restoring the employability of employees who have fallen ill and by safeguarding their employability for the long term. Workplace integration management has become an important tool of social responsibility in German companies, being subject to many agreements between company management and work councils. Politically it is not only meant to help long-term ill employees, but also to relieve the pressure on health care insurance and pension insurance budgets, and not least to retain qualified workforce in the labour market which itself appears necessary due to the demographic change in Germany.[16]

## 7. Conclusion

Retaining and restoring employability and work capacity of the employees is a major goal in the German social security system. The main tool to achieve this is rehabilitation. "Rehabilitation before benefits" is one of the most important principles of the German social security law. Although not new, this principle has gained more importance since the codification of all rehabilitation provisions in one single chapter of the Social Book in the year 2001. In particular, prevention and early intervention have been strengthened. To this end, the role of employers and their responsibilities were made clearer. With the "workplace integration management" an important step towards retaining and restoring employees' health and employability has been taken. By maintaining employability, integration management becomes a key part of mitigating the effects of demographic change.

## Notes

1. Section 8 (3) of the Book IX of the Social Code.
2. Particularly Section 4 of Book IX and Section 10 of Book I of the Social Code.
3. BMAS (Federal Ministry for Work and Social Security), *Rehabilitation and Integration of People with Disabilities*, 2014, p. 169.
4. Kaiserliche Botschaft, 17 Nov. 1881, *Reichstag* V.1, 1.
5. M. Stolleis (2013), *Origins of the German Welfare State – Social Policy in Germany to 1945* (Springer 2013); F. Kaufmann (2013), *Thinking About Social Policy – The German Tradition;* A. Hänlein & F. Tennstedt (2008), Geschichte des Sozialrechts in: B. von Maydell, F. Ruland & U. Becker (eds.), *Sozialrechtshandbuch* (SRH), 55 (4th ed.).

6. OECD, *Sickness, Disability and Work: Breaking the Barriers,* 2010, p. 149.
7. Section 7, Clause 2, of Book IX of the Social Code.
8. BMAS, *Rehabilitation and Integration of People with Disabilities*, 2014, p. 41.
9. "Gemeinsame Servicestellen": R.F. Shafaei (2008), *Die gemeinsamen Servicestellen für Rehabilitation.*
10. F. Welti/H. Groskreutz (2013), The Role of Non-Public Actors in Social Security in Germany, in: F. Pennings/Th. Erhag/ S. Stendahl (eds.), *Non-public Actors in Social Security Administration*, p. 16.
11. BMAS, *Rehabilitation and Integration of People with Disabilities,* 2014, p. 51.
12. K. Nebe (2013), Prävention und Rehabilitation – Erhaltung und Wiederherstellung der Erwerbsfähigkeit als Schnittstellenproblem, in: Deutscher Sozialrechtsverband (ed.), *Das Sozialrecht für ein längeres Leben*, p. 63.
13. K. Nebe (2008), *(Re-)Integration von Arbeitnehmern: Stufenweise Wiedereingliederung und Betriebliches Eingliederungsmanagement – ein neues Kooperationsverhältnis,* DB 2008, p 1801 f.
14. Bundesarbeitsgericht, 12.7.2007, 2 AZR 716/06, BAGE 123, 134.
15. ECJ C-13/05 (Chacón Navas), ECR 2006, I-06467.
16. F. Welti/H. Groskreutz (2013), The Role of Non-Public Actors in Social Security in Germany, in: F. Pennings/Th. Erhag/ S. Stendahl (eds.), *Non-public Actors in Social Security Administration,* p. 27.

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