

**Lala Ahad Mammadova**

Baku State University

master

lala.bagirova@yandex.ru

## INTERNATIONAL STANDARDS FOR THE RIGHTS OF PERSONS WITH DISABILITIES IN THE CONTEXT OF HUMAN RIGHTS

### Summary

People with disabilities are the most vulnerable and most disadvantaged group in the world. It is estimated that more than a billion people, or about 15% of the world's population, live with some form of disability. More than 250 million older people have moderate or severe disabilities.

Disability in the modern world has manifested itself as one of the global problems affecting the interests of almost all spheres of activity, but despite the existing national, regional and international legal norms, as well as the activities of international organizations and the efforts of non-governmental organizations around the world, belonging to people with disabilities human rights are still not adequately respected.

This article discusses such important aspects, as discrimination faced by people with disabilities, formation of international legal protection of the rights of persons with disabilities and implementation of international documents in national law by states.

**Key words:** *disability, human rights, discrimination, social equality, legal protection*

### Introduction

People with disabilities are the most vulnerable and most disadvantaged group in the world. It is estimated that more than a billion people, or about 15% of the world's population, live with some form of disability. The current demographic situation, expressed in an increase in the proportion of older people in the structure of the world's population, directly affects the indicators of disability. More than 250 million older people have moderate or severe disabilities.

Disability benefits represent a significant proportion of total social security spending. The total cost of such programs in OECD countries averages about 2% of GDP. Reaching in some of them 5% of GDP, which often exceeds the volume of spending on unemployment benefits. On average, in the OECD, disability programs alone account for about 10% of all public social spending. Disability in the modern world has manifested itself as one of the global problems affecting the interests of almost all spheres of activity, but despite the existing national, regional and international legal norms, as well as the activities of international organizations and the efforts of non-governmental organizations around the world, belonging to people with disabilities human rights are still not adequately respected.

In many societies, there are deep-rooted prejudices against people with certain physical, mental, intellectual, or sensory impairments. People with disabilities often face problems of discrimination, exclusion, isolation. For a long time, it was believed that such problems are an inevitable consequence of their physical, mental, intellectual or sensory impairments. The facts of refusal to register persons with disabilities at birth were revealed, and guardianship of persons with disabilities is completely and unnecessarily transferred to legal representatives, who subsequently often abuse their rights. Large numbers of people with disabilities live in extreme poverty, in institutions, lack education or work opportunities, and face a range of other factors of marginalization. Half of the disabled are unable to pay for medical care. The likelihood that people with disabilities will not be able to find the qualified health care provider they need is more than 2 times higher than that of people without disabilities (1).

#### *Disability barriers*

*Insufficient policy and standard setting.* States' policies do not always take into account the needs of persons with disabilities.

*Negative attitude.* Prejudice create barriers to education, employment, health care and social participation of people with disabilities.

*Lack of provided services.* People with disabilities are significantly more vulnerable to a lack of services such as health care, rehabilitation, and support and assistance.

*Restricting access to necessary services.* Insufficient staffing, poor staff training and service coordination can affect the quality, accessibility and adequacy of services for people with disabilities.

*Insufficient funding.* The resources allocated for the implementation of policies or plans are often insufficient. Funding gaps are a major barrier to sustainable service delivery in countries and regions with different levels of economic development.

*Limited access to transport and information systems.* Lack of access to transport is the main reason for the denial of employment opportunities for people with disabilities or a limiting factor in the availability of health services.

*Inadequate information and communication.* Little information is available in accessible formats, and many communication needs of people with disabilities are not being met.

*Lack of integration into public life.* Most people with disabilities do not participate in decision-making processes on issues that directly affect their lives.

*Lack of data and evidence base.* Lack of accurate and comparable data on disability, as well as experience with effective programs, can hinder understanding of disability-related issues. Awareness of the total number and living conditions of persons with disabilities can help improve efforts to remove disability barriers and provide services that enable persons with disabilities to successfully integrate into society (2).

*Formation of international legal protection of the rights of persons with disabilities.* Discrimination against disabled people has existed in society throughout the history of mankind and continues to this day. The development of mechanisms for the protection of persons with disabilities in the human rights system allows for a change in the status of persons with disabilities from beneficiaries of charitable assistance. This approach seeks to find opportunities for independent respect for the rights of persons with disabilities by creating an environment that allows them to actively participate in public life. The promotion and protection of the rights of persons with disabilities is not only about providing special services, but also about taking measures to change discriminatory attitudes, adopting policies, laws and programs that remove barriers and guarantee the enjoyment of civil political, economic and social cultural rights by persons with disabilities.

Fundamental international legal acts that together form the International Bill of Human Rights (Universal Declaration of Human Rights (1948), International Covenant on Economic, Social and Cultural Rights (1966) and International Covenant on Civil and Political Rights (1966), enshrine civil, political, economic social and cultural rights, but these acts do not directly mention the rights of persons with disabilities.

The absence of a special act in the field of protection of the rights of persons with disabilities predetermined a significant increase in the activity of international cooperation between states in the field of improving legal mechanisms ensuring the protection of persons with disabilities. The issue of persons with disabilities in the context of human rights has been repeatedly addressed by the United Nations: guidelines for improving international cooperation in this area have been actively developed (3).

In 1982 the UN General Assembly adopted the World Program of Action for Persons with Disabilities, the purpose of which was to implement the full participation of persons with disabilities on equal terms in social life and development in all countries, regardless of their level of economic development.

The General Assembly proclaimed the period 1983-1992 "The United Nations Decade of Disabled Persons" and called on States to use this period as one of the means of implementing the World Program of Action.

In 1987, at the first International Conference to take stock of the World Program of Action for Persons with Disabilities, held in Stockholm, it was recommended to develop a convention on the rights of persons with disabilities. Despite proposals put forward by the Governments of Italy and Sweden, as well as by the Special Rapporteur of the Commission for Social Development on the situation of persons with disabilities, no such convention was negotiated.

In 1993, the General Assembly adopted a recommendatory document in the form of "Standard Rules for the Equalization of Opportunities for Persons with Disabilities". These rules formed state obligations to remove barriers that prevent persons with disabilities from participating on equal terms in the life of society, which were subsequently incorporated into the national legislation of many states. The Committee on Economic, Social and Cultural Rights adopted general comment No. 5 of 1994 on "Persons with disabilities" despite the fact that the International Covenant on Economic, Social and Cultural Rights does not contain provisions related to disability (4).

The Committee analyzes disability issues in the context of the provisions of the Covenant. In particular, according to the Committee, according to Art. 10 of the Covenant on the right to an adequate standard of living, persons with any form of disability have the right to marry and have their own family. The need to do everything possible to enable persons with disabilities to live with their families is emphasized. According to the Committee, social security and income maintenance programs are of particular importance for persons with some form of disability (art. 9).

According to the Committee, the right to physical and mental health (art.12) implies the right to access those medical and social services, including orthopedic prostheses, which enable persons with some form of disability to become independent, prevent further exacerbation of the disease and support their social integration as well as the right to use such services. In addition to ensuring that persons with a disability have access to adequate food, shelter and other basic necessities of life, it should also be ensured that assistive devices are available for persons with disabilities to help them increase their level of independence in everyday life and in the exercise of their rights.

It should be noted that the Committee on Economic, Social and Cultural Rights in 1990, in its general comment No. 3, emphasized the duty of States parties to protect vulnerable members of society, which takes on significant importance in times of drastic diminution of available resources. In the context of market relations, two specific aspects of the obligations of the participating States stand out. The first aspect is related to the need to ensure such a situation in which not only the public but also the private sector is subject to regulation within appropriate limits in order to guarantee fair treatment of persons with any form of disability. The second aspect relates to the conditions in which the means of providing public services are increasingly privatized and the free market is increasingly emphasized. In these conditions, it is necessary that private employers, private suppliers of goods and services, as well as other non-state enterprises are guided by non-discriminatory norms in relation to persons with any form of disability (5).

In December 2001, the Mexican government initiated the General Assembly to establish an ad hoc committee to consider proposals aimed at the development of a comprehensive and unified international convention on the protection and promotion of the rights and dignity of persons with disabilities, which prepared the text of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto adopted by the UN General Assembly on December 13, 2006.

The Convention on the Rights of Persons with Disabilities consists of 50 articles devoted to the goals, general principles, obligations, specific rights and measures to be taken by the participating States to create favorable conditions for the implementation of the rights of persons with disabilities, strengthening the international cooperation and organization of international and national monitoring. It should be emphasized that the Convention does not create any new rights, it only clarifies the obligations of states in relation to existing civil, cultural, economic, political and social rights. The purpose of the Convention is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”. The Convention guarantees the recognition of the legal capacity of all persons with disabilities. It prohibits torture, exploitation, violence and ill-treatment and protects the life, freedom and safety of persons with disabilities, their right to freedom of movement, freedom of expression, and the right to privacy. The Convention imposes an obligation on States parties to take all appropriate measures to ensure that persons with disabilities can fully enjoy their rights on an equal basis with others.

The Convention establishes a Committee on the Rights of Persons with Disabilities, mandated to receive and consider periodic reports submitted by States parties to the Convention. Under the Optional Protocol to the Convention, individuals and groups of individuals can bring to the attention of the Committee claims that they have violated any of the provisions of the Convention. The Optional Protocol also allows the Committee to conduct investigations in countries where there is credible evidence of gross or systematic violations of the rights of persons with disabilities. The Convention lacks a comprehensive definition of the term “disability”; in the preamble to the Convention, “disability” is recognized as an evolving concept based on a dynamic approach that can change over time and over different socio-economic conditions (6).

According to the Convention, persons with disabilities are persons with persistent physical, mental, intellectual or sensory impairments, which, when interacting with various barriers, may interfere with their full and effective participation in the life of society (Art. 1). Obviously, for the full and effective implementation of the Convention, it is extremely important that the definition of disability in national legislation reflects the understanding of disability as a social phenomenon. Experts believe it is necessary to abandon definitions based on medical indications and formulated depending on the types of health disorders, or from definitions based on the concept of everyday life, in which the inability to perform such activities is linked to a health disorder.

The basic principles of the Convention are set out in Art. 3: respect for inherent human dignity, personal autonomy and independence; non-discrimination, equality of opportunity and equality of men and inclusion in society; respect for existing differences between people and acceptance of the fact of human diversity; ensuring accessibility; respecting the evolving capacities of children with disabilities and respecting their right to maintain their identity.

The convention is based on a triad of obligations:

*Obligation to comply.* States parties should not create obstacles to the enjoyment of the rights of persons with disabilities. In particular, states are prohibited from conducting medical scientific experiments on a disabled person without his or her free consent.

*Obligation to protect.* States parties must prevent violations of the rights of persons with disabilities by third parties. In particular, states are obliged to require private employers to ensure that working conditions are fair and disability-friendly, in particular through the introduction of reasonable accommodations.

*Performance Obligation.* States parties must take legislative, administrative, budgetary, judicial and other measures to guarantee the full realization of these rights. Some states that have ratified the Convention on the Rights of Persons with Disabilities have tried to change some of the provisions of this Convention through reservations. However, article 46 of the Convention on the Rights of Persons with Disabilities allows parties to

declare reservations, provided that such reservations are not “incompatible with the object and purpose of this convention” (7).

The Convention on the Rights of Persons with Disabilities, in its preamble, states “the importance of international cooperation to improve the living conditions of persons with disabilities in every country, especially in developing countries. The article 32 states that international cooperation is recognized as a way of realizing the goals and objectives of the Convention.

Unlike other core international human rights treaties, the Convention provides four areas that are relevant from the point of view of international cooperation in support of the realization of the rights of persons with disabilities:

1. Accessible and inclusive international cooperation, including international development programs.
2. Strengthening existing capabilities, including through the mutual exchange of information, experience, programs of advanced practices.
3. Collaboration in research and access to scientific and technical knowledge.
4. Technical and economic assistance, including through facilitating access to and exchange of accessible and assistive technologies, and through technology transfer (8).

### Conclusion

The number of persons with disabilities in the world today has reached 1 billion, i.e. 15% of the population. It is the largest “minority” in history in the world, which faces various forms of discrimination on a daily basis.

Attention is paid to improving the well-being of people with disabilities and their living conditions not only in each country individually, but also on an international and regional scale. International cooperation of states in the field of protection of the rights of persons with disabilities deserves special attention.

Conventions and declarations at the international level that relate to the rights of persons with disabilities are binding on all states parties, but in fact, not all states ensure the full realization and protection of the rights of persons with disabilities. Unfortunately, it is quite difficult to implement a practical impact on the state that violates the rights of persons with disabilities.

As a rule, states use international agreements in the field of human rights protection as a basis for the formation of their own legislation. However, it cannot be said that international agreements have no impact on states. Often, the adoption of a program or convention, as well as a recommendation, serves as an impetus for the formation of mechanisms for the protection of rights and the elimination of discrimination against persons with disabilities at the national level. At the regional level, the Council of Europe has a European Court of Human Rights, which allows people with disabilities to file complaints when their rights are violated.

### References

1. World report on disability. WHO. The World Bank. 2011.
2. Executive summary ageing in the twenty-first century; a celebration and challenge. UNFPA. 2012.
3. International social security association. Social Policy Highlight, 2017.
4. Office of the high commissioner for human rights. Monitoring the Convention on the Rights of Persons with disabilities. Guidance for human rights monitors. Geneva, 2010.
5. Standard Rules on the Equalization of Opportunities for Persons with Disabilities. A/RES/48/96. 1993.
6. Committee on Economic, Social and Cultural Rights. General comment 5. Persons with disabilities (Eleventh session, 1994). U.N.Doc E/1995/22.
7. Report of the United Nations High Commissioner for Human Rights on progress in the implementation of the recommendations contained in the study on the human rights of persons with disabilities. A/HRC/4/75 Human Rights Council. 2016.
8. Thematic study by the Office of the United Nations High Commissioner for Human Rights on the role of international cooperation in support of national efforts for the realization of the rights of persons with disabilities. A/ HRC/16/38 Human Rights Council. 2015

**Rəyçi: h.f.d. G.Rzayeva**

Göndərilib: 08.03.2021

Qəbul edilib: 09.03.2021