



## The Protection of the Disabled Persons' Labour Rights Development in International, Regional and National Levels

### KEYWORDS

Disabled persons, labour rights, implementation, international organizations, job placement, employment.

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**ABSTRACT** *The main objective of the article is to review development process of disabled persons' labour rights in international, regional levels and implementation of international norms on labour rights of people with disability into national legislation of the Republic of Kazakhstan. This paper will describe advantages and disadvantages of the employment conditions of people with disabilities in societies.*

### Introduction

People with disabilities often confront unique challenges in ensuring their own human rights, labour rights in particular in all societies. Disabled persons' employment is considered to be the most difficult problem in spite of the activities to create a barrier-free environment for the people with disabilities and to equal their rights with healthy individuals. Regarding these problems, international organizations develop international instruments and mechanisms on regulation of disabled persons' labour rights and employment.

"It is estimated that there are at least 600 million persons with disabilities worldwide – about 10 per cent of the global population – of whom approximately 80 per cent live in developing countries" according to the statistics of the United Nations Organization (*Report of the Secretary-General Assembly A/60/290*). We all understand that discrimination, segregation, marginalization acts of society and lack of participation of disabled persons in social, political and economic activities of their society influence the conditions of life of people with disabilities. Violation of human rights of this social group continues as result of these actions.

Every day we are reminded that, for everybody, work is defining feature of human existence. It is the means of sustaining life and of meeting basic needs. But it is also an activity through which individuals affirm their own identity, both to themselves and to those around them. It is crucial to individual choice, to the welfare of families and to the stability of societies (*Somavia, 2001 pp.5-6*).

The first successful effort in the field of regulation on disabled persons' rights was the development of the Declaration on the Rights of Disabled Persons in 1975. Then the World Programme of Action Concerning Disabled Persons was adopted by the United Nations Organization in 1982. But the development of these documents could not solve the employment challenges of people with disabilities. That is why the employment problem of disabled persons is required detailed study in international, regional and national levels.

Declaration of Philadelphia was adopted by International Labour Organization, which concerning the aims and purposes of the Organization. According to the sub-paragraph (a) article II of the ILO Declaration of Philadelphia "All hu-

man beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity" (*Declaration of Philadelphia, International Labour Conference, 1944*).

The International Labour Organizations deal with the employment and integration challenges into society of people with disabilities in the international level. This Organization initiated to develop several acts which are concerning the international standards in the field of ensuring disabled persons' rights to work.

These documents are a basic guidance to social policy concerning the people with disabilities. There are other instrumental documents of the International Labour Organizations, which are directly or indirectly related to the problems of disability. There are such documents as the "Convention concerning Discrimination in respect of employment and occupation" (No.111) in 1958 in particular, "Convention on Vocational Guidance and Vocational Training in the Development of Human Resources" (No.142) in 1975 and "Recommendations of vocational guidance and training in the field of human resources development" (No.150) in 1975, etc.

International labour standards consider the concept of disability in two different viewpoints: passive measures for income guarantee are given as a governmental social assistance and a social protection; active measures are training and support in the field of employment. The first concept means that employees could receive a compensation for their disabilities, which happened in working process or military action. The second concept should be provided by the state as mechanisms of social protection. Standards of ILO consider the disability as an "accident", which should be reflected in the field of social guarantee law and in this case, the state has to provide financial support for people, who do have not abilities to earn their living for health reasons.

Convention concerning Vocational rehabilitation and Employment of disabled persons (No.159) was adopted in 1983 by ILO. According to the articles 2-4, Part II Principles of vocational rehabilitation and employment policies for disabled persons of this Technical Convention "each Member shall, in accordance with national conditions, practice and possibilities, formulate, implement and periodically review a national policy on vocational rehabilita-

tion and employment of disabled persons and their policy shall aim at ensuring that appropriate vocational rehabilitation measures are made available to all categories of disabled persons, and at promoting employment opportunities for disabled persons in the open labour market. All policy positions shall be based on the principle of equal opportunity between disabled workers and workers generally (*ILO, Vocational rehabilitation and Employment of disabled persons Convention*).

Employment Policy (Supplementary Provisions) Recommendation of International Labour Organization runs "The promotion of full, productive and freely-chosen employment... should be regarded as the means of achieving in practice the realization of the right to work" (ILO, Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169).

The objectives of international labour standards will be described as follows: breaking down barriers, which cramp for full social participation and integration of people with disabilities into activities of society and ensure mechanisms for effective support of their economic and social independence.

According to the ILO Declaration on Fundamental Principles and Rights at Work "All ILO Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, including the elimination of discrimination in respect of employment and occupation (*ILO Declaration on Fundamental Principles and Rights at Work, 1998*).

The main result of those actions was the Convention on the Rights of Persons and its Optional Protocol, which were implemented by the United Nations in 2006. Nowadays this Convention is one of the most universal acts in the field of ensuring disabled persons' rights and especially labour rights. The Committee on the Rights of Persons with Disabilities was founded on 3 of May, 2008 after the Convention was fortified. These activities of international society promote to break down barriers and eliminate discrimination. The monitoring will be periodically provided by the Committee on the Rights of Persons with Disabilities. One of the important authorities of the Committee according the UN Convention on the Rights of Persons with Disabilities promote States to undertake a large variety of scopes to ensure that disabled persons have equal rights to find an employment and a professional career. It is detailed in article 27 of the UN Convention on the Rights of Persons with Disabilities that "States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities" (*UN Convention on the Rights of Persons with Disabilities, 2006*). It adds new impetus to this complex measures and issues of persons with disabilities are regarded in international law. The pathway to independence and the dignity of decent work will be strengthened by the initiations of international organizations.

European Council and European Union provide active policy in ensuring of disabled persons' rights in regional level.

The Council of Europe's main policy approaches to access to social rights and to eliminate all discrimination for peo-

ple with disabilities are based on the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter.

Between 1992 and 2003, in an effort to promote social cohesion and respect for the principle of equal rights in Europe, the Council of Europe took various initiatives to foster a wide understanding of disability in the member states. In result of these activities were adopted at the first Conference of Ministers responsible for Policies for People with Disabilities Recommendation No. R(92)6 on a coherent policy for people with disabilities (1992). Because of the Recommendation there were opened traditional organizations in the member countries, which have been aimed to help people with disabilities to become more independent. Next steps of this trends and according to the principles of the Council of Europe, there were founded "Towards full citizenship of people with disabilities through inclusive new technologies" (2001) and "Guidelines for improving access to social protection" (2002) (*Access to social rights for people with disabilities in Europe. 2003*). Many fundamental principles and rights were mentioned in the Recommendation as "are still inaccessible to many people with disabilities: the right to education; the right to work; the right to private and family life; the right to protection of health and social security; the right to protection against poverty and social exclusion; the right to adequate housing, etc." (*Recommendation 1592 (2003) of the Parliamentary Assembly*).

Access to and employment is the main of the investigating issue, but we must know that it is closely associated with vocational training. According to the Article 15, Part I of the European Social Charter "Disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability" and article 10, Part I of the revised document is "Everyone has the right to appropriate facilities for vocational training" (*European Social Charter CETS No.:035*). The content of the article is intended to provide the technical and vocational training of all persons. It defines the right to employment one of the main social rights. Chapters 6 and 7 of Recommendation No. R(92)6 headline the importance of helping people with disabilities to keep employment, career progress and vocational integration. European countries give consideration that everything has to give people with disabilities access to the normal vocational guidance, assessment services and the right to participate actively in choosing the vocational activity according to their aspirations and aptitudes.

European countries always follow the progress of world globalization in sphere of the protection human rights and more attention for people disabilities. According to the Report of the Secretary-General Assembly A/60/290 the progress in laws and regulations is actively developed. For example: Cyprus introduced a legal protection system. Israel established positive discrimination mechanisms. The Netherlands adopted the Act on Equal Treatment of Disabled and Chronically Ill Persons. Legislation came into force that provided incentives for job retention for workers with disabilities in Germany. Malta reported that, according to State regulations and laws, at least half of the members of bodies that deal with issues of disability must be persons with disabilities, etc. (*Report of the Secretary-General Assembly A/60/290*).

The conditions of disabled persons, the law progress and regulations are considered in national level. Current laws of the Republic of Kazakhstan in the area of disabled persons'

rights protection are based on the provisions of the Constitution of the Republic of Kazakhstan and the basic Law on Social Protection of the Disabled Persons in the Republic of Kazakhstan, which is adopted in 13 April, 2005. As one of the members of the world society the Republic of Kazakhstan ratified 7 of 9 main international treaties in sphere of Human Rights. The Convention on the Rights of Persons with Disabilities and its Optional Protocol was signed in 11 of December, 2008 as eighth international convention. Nowadays Kazakhstan provides many activities for ensuring of people with disabilities. Laws of the Republic of Kazakhstan concerning of Social Protection of Disabled Persons are implemented in accordance with the Convention on the Rights of Persons with Disabilities. And Implementation process of the International Convention in the Republic of Kazakhstan is organized actively.

According to article 35 of the Law and Social Protection of Disabled Persons in the Republic of Kazakhstan harm to persons disabled because of occupational injury or disease through the employer's fault shall be entitled to compensation in accordance with the laws of the Republic of Kazakhstan. At the same time the laws of the Republic of Kazakhstan do not provide for special regulations regarding compensation of damages to disabled persons arising out of their employment. Damages are compensated in accordance with the legislations related to an employee's life and health (*Kardash T.G. 2005*).

The basic regulatory document in the area of employment is the Labour Code of the Republic of Kazakhstan dated 15 May, 2007. In accordance with the provisions of Article 5, nobody's rights can be restricted in the area of employment, apart from cases and in a manner envisaged by this Code and other laws of the Republic of Kazakhstan. In the Republic of Kazakhstan everyone has the right to freely choose employment or agree to work without any discrimination or compulsion to do so, the right to apply one's working abilities and choose a profession and type of activity (article 6). At the same time, everyone has equal opportunities to exercise employment rights and freedoms (Article 7). No-one may be subjected to any discrimination in exercising their employment rights depending on physical disabilities (article 7) In accordance with Article 187.2 of this Code the employer shall not have the right to engage employees caring for sick family members or bringing up disabled children in night work or overtime work, or to send on business trips or to perform rotational work, without their written consent.

In spite of these implementations, in legal measures the Government of the Republic of Kazakhstan should prioritize the principle of including people with disabilities into the open labour market in unemployment plans and programmes of the country. Within the legislative initiative, the Government and deputies of the Parliament of the Republic of Kazakhstan should develop special legislation in respect of people with disabilities, stipulating norms on adjusting working places and norms on adjusting working places and offices not only for people with disabilities, who suffered an occupational injury or disease through the fault of an employer, but for all disabled employees. Also, the Government is requiring job quotas for people with disabilities (*National Human Development Report. 2009*).

According to the point 7 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993), states are obliged to implement the principle, that in accordance people with disabilities have to get oppor-

tunity to exercise their rights in the field of employment. Unfortunately, the employment problems of people with disabilities are not solved in real practice of many establishments.

There are some difficulties of getting a decent job for people with disabilities in the Republic of Kazakhstan:

- Stereotypes, bias and discrimination in society;
- Low social situation and the big distance between living style of people with disabilities and other citizens' group of the Republic of Kazakhstan;
- The low level of disabled persons' training and teaching;
- The unfavorable working conditions;
- The weak developed system of social protection for people with disabilities.

According to the Address of the President of the Republic of Kazakhstan N.Nazarbayev to the nation "Kazakhstan's way - 2050: common aim, common interests, common future" on 17 January, 2014, one of the priorities to incorporate people with disabilities into active life, and they will not only receive disability benefits, but also feel full-fledged members of the society (*Address of the President of the Republic of Kazakhstan N.Nazarbayev.2014*).

Nowadays, it is clear that the best way of the disabled persons' rehabilitation depends on their employment, which characterizes a social adaptation, financial independence and integration into society. Moreover, the list of work for people with disabilities significantly has expanded in terms of development of economic services, automatization and computerization of the industrial sector.

The progress on protection of disabled persons' rights starts in the beginning of XXI century because of the adoption of universal acts - UN Convention on the Rights of Persons with Disabilities in 2006. Regional organizations follow the universal standards and have tried to implement it into national legislation system of member countries. This kind of activities certainly influence on national policy of legislation system. The implementation steps of the Republic of Kazakhstan provide satisfactory results in definite aspects of society, but there is low governmental control, which cannot abide by the law. It is praiseworthy aim that the Republic of Kazakhstan tries to comply with the norms of international and regional organizations. In the near future the Republic of Kazakhstan will ratify UN Convention on the Rights of Persons and its Optional Protocol. And the ratification result really will promote to create favourable conditions for people with disabilities, particularly in their workplace.

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