

## THE PRINCIPLE OF NON-DISCRIMINATION CONCERNING DISABLED PEOPLE ACCORDING TO BASIC PROVISIONS OF THE AGREEMENT ON THE RIGHTS OF DISABLED PEOPLE

**Revol Valeev**

*(Revol-Valeev@yandex.ru)*

Doctor of Laws, professor

(Kazan Federal University)

**Ralina Rakhimova**

*(Ralarakhimova@gmail.com)*

PhD Candidate

(Kazan Federal University)

### **Abstract**

*Physically disabled people face a huge number of the problems connected with realization of their rights. Protection, promotion of the rights of disabled people and their realization – a current problem as for all international community.*

*The analysis of a problem of disability as social phenomenon demonstrates that, having passed the way from the idea of isolation of "disabled" members of society before attraction them to full-fledged life in society there was a need to reject classical approach to a disability problem as to a problem of "disabled people" and to present her as a problem, mentioning all society, but not separate "category" of people. Especially important in this direction legal regulation of the rights and freedoms of disabled people. As a basis to such regulation also serves the principle of non-discrimination. An example of legal use of the principle of non-discrimination concerning disabled people is the Convention on the rights of disabled people of 2006 year.*

*The purpose of the Convention consists in encouragement, protection and ensuring full implementation by disabled people on an equal basis of all human rights. She covers a number of such key questions as availability, individual mobility, health, education, employment, an habilitation and rehabilitation, participation in political life and also equality and non-discrimination.*

**Keywords:** non-discrimination, disabled people, human rights, United Nations Organization, disability

The problem of legal aspect of protection of the rights of disabled people is a current problem of modern society [1].

United Nations Organization (further in the text – the UN) from the moment of the basis works over improvement of the situation and life of disabled people, on protection of their rights and freedoms. The fundamental principles regulating questions of the rights and welfare of disabled people contain in such international treaties as the UN Charter and the International bill of human rights (includes three documents): Universal Declaration of Human Rights (1948), International Covenant on Economic, Social and Cultural Rights (1966) and International Covenant on Civil and Political Rights (1966) and two additional protocols to it, etc. [2]

The above-stated contracts have universal provisions in the field of human rights which promoted further completion of the international legal standards on the widest range of questions, including the rights of disabled people [3].

In our opinion, one of the most important principles in the field of protection of the rights of vulnerable categories of the population, namely disabled people, is the principle of non-

discrimination on the basis of race, skin colors, a floor, language, religion, political or other convictions, a national or social origin, property, birth or other status.

Active work of the UN of promotion of the rights and wellbeing of people with physical defects has begun in the 40th and has continued in the 50th of the XX century. The UN helped the governments of the countries in prevention and rehabilitation of disability by means of consulting missions, the training seminars for personnel and creation of the rehabilitation centers [4, 20].

However the United Nations only in 1970 has accepted the international concept of human rights focused on disabled people and equalizing opportunities for this category of persons which has shortly begun to win the international recognition. It is important to note that in 1969 the Declaration of social progress and development says about "need of acceptance of appropriate measures for restoration of working capacity of persons with intellectual or physical defects ... creation of social conditions in which disabled persons wouldn't be exposed to discrimination because of the shortcomings" [5]. In 1971 the United Nations General Assembly has adopted the Declaration on the rights of mentally retarded persons which has proclaimed: "the mentally retarded person...has the same rights, as other people". Provisions of this Declaration have been sent on assistance to mentally retarded persons in development of their abilities in various spheres of activity. Further, in 1975 the United Nations General Assembly has adopted the Declaration on the rights of disabled people which has formed "the general basis and the management for protection of these rights of disabled people". The Declaration contains definition to the concept "disabled person" and also the equal civil and political rights which disabled people can use irrespective of race, skin color, a floor, language, religion, political or other convictions, a national or social origin, financial position, the birth or any other factor are proclaimed. The recommendations stated in the Declaration on the rights of disabled people are directed to taking measures at the national and international levels [4, 23].

In 1976 the United Nations General Assembly has proclaimed 1981 - The international Year of Disabled people. This year has been devoted to achievement of a number of the purposes directed to equalizing of opportunities of disabled people, rehabilitation and prevention of disability. Besides, it was offered to all member states and relevant organizations to pay attention to development of measures and programs for implementation of The international Year of Disabled people is more whole. Acceptance by the United Nations General Assembly on December 3, 1982. The World Programme of Action concerning disabled people became the main result of this year. The fundamental purpose of the World Programme of Action concerning disabled people "consists in assistance to effective measures for prevention of disability, restoration of working capacity and realization is more whole than "equality" and "full participation" of disabled people in social life and development". To provide terms during which the governments and the organizations can carry out the actions recommended in the World Programme of Action the General Assembly has proclaimed 1983-1992. Decade of disabled people of the United Nations. During this period the United Nations General Assembly has adopted "The Tallinn Guidelines for Action on Human Resources Development in the Field of Disability" [6] and the Principles of protection of mentally sick persons and improvement of mental health services. Nevertheless, adoption of Standard Rules on the Equalization of Opportunities for Persons with Disabilities which have been developed on the basis of the experience gained during Decade of disabled people became one of the main events. The purpose of Standard rules is in that disabled people as members of society, would have the same rights and duties, as other persons, and "the girls, boys, men and women who are disabled people as members of society would have the same rights and obligations, as other persons" are more specific ", imposed on the states of the obligation for removal of obstacles, preventing disabled people to participate on equal terms in life of society" [7].

Basis for adoption of Standard Rules on the Equalization of Opportunities for Persons with Disabilities of steel the International Bill of human rights, the Convention on the Rights of the Child, the Convention on elimination of all forms of discrimination against women and also the World Programme of Action concerning disabled persons. These rules aren't obligatory though they can become norms of the international common law if are applied by a large number of the states which have expressed desire to observe international law. These Rules provide the control mechanism expressed in appointment of the Special rapporteur who annually submits reports of the Commission of social development. In turn, reports have to contain the conclusions concerning promotion and control of implementation of Standard rules and also the recommendations for their further development submitted at the request of the Commission [8].

The critical period in the course of disability recognition as international legal question has been marked by adoption on December 13, 2006 of the The Convention on the Rights of Persons with Disabilities and its Optional Protocol (further-Convention). The convention represents the first comprehensive contract in the field of human rights of the XXI century and is the first convention on human rights open for signing of integration by the regional organizations. Her purpose consists in encouragement, protection and providing to all disabled people of all human rights and fundamental freedoms.

Important achievement of the Convention consists in the maintenance of the concept "disabled person". According to Art. 1 "to disabled people persons treat with steady physical, mental, intellectual or touch violations which at interaction can interfere them with various barriers with full and effective participation in life of society on an equal basis with others". Besides, the general distribution of disabled people on categories is presented in the Convention: disabled women and disabled children [10].

The present Convention contains not only all categories of the rights and freedoms, but also explains and defines methods of application of these rights and freedoms to disabled people. So, for disabled people realization of the right for education without discrimination and on the basis of equality admits. In turn, the State Party of the Convention has to provide access to inclusive education at all levels and training during all life. The main objective of the Convention consists in providing to disabled people of guarantees of implementation of the same rights, as all other people, to lead full-fledged life of citizens who not only use the same opportunities but also can make the contribution to society. The convention on the rights of disabled people and the Optional protocol to her accepted by the General Assembly of the United Nations on December 13, 2006 are the last on time documents which have added the set of fundamental international legal documents in the field of human rights [9, 23].

There by it is possible to tell that adoption of the Convention on the rights of disabled people recognizes disability as a human rights problem. Also it should be noted that provisions of the Convention on the rights of disabled people occurred in earlier documents, such as: General Recommendation No. 18: Disabled Women accepted by Committee on elimination of discrimination against women; General comment No. 5 (1994) on persons with disabilities accepted by Committee on the economic, social and cultural rights and also adoption of such regional contracts as the Inter-American Convention On The Elimination Of All Forms Of Discrimination Against Persons With Disabilities (1999). In all these documents the principle of non-discrimination on various signs was on the first place.

Mentioning article 1 of the Convention on protection of the rights of disabled people, considered earlier, the principle of non-discrimination become directed "to effective participation in life of society on an equal basis with others" For people with physical disability barriers to participation in life of society various factors, for example, an uneven land relief, steps, heavy doors or narrow passes can [8].

In article 3 of the Convention is defined the complex of the fundamental principles. They serve as the management for interpretation and implementation of all Convention, covering all

questions. They are a reference point for understanding and interpretation of the rights of disabled people, a basis for realization of a main goal of the Convention which "consists in encouragement, protection and ensuring full and equal implementation by all disabled people of all human rights and fundamental freedoms and also in encouragement of respect of the advantage inherent in them".

The principle of non-discrimination is a basis of human rights and is the principle enshrined in all other human rights treaties. "Discrimination on the basis of disability" is defined by the Convention as "any distinction, an exception or restriction on the disability reason, the purpose or which derogation or denial of recognition, realization or implementation on an equal basis with others is result of all human rights and fundamental freedoms in political, economic, social, cultural, civil or any other sphere. She includes all forms of discrimination, including refusal in reasonable adaptation". The states have to exclude discrimination and in the right, reflected in the legislation, and in practice, for example discrimination methods at work. However the states are allowed to establish discrimination for the benefit of disabled people, when necessary for ensuring equal opportunities of disabled people and other persons.

Also a little specific principle is reflected in the Convention - it is the principle of respect of features which means acceptance of other people on the terms of mutual understanding. It means also adoption of disability as a component of human variety and a part of mankind. Despite some visible or obvious distinctions, all people have the identical rights and advantage. It should be noted that in spite of the fact that the principle of non-discrimination covers each provision of the convention, she is directed to prevention not of disability (that is medical approach), and discrimination on the basis of disability that is more social approach.

As for medical approach, namely the right to health of disabled people, Art. 25 of the Convention says that disabled people have the right for the highest level of health, but besides without discrimination on the basis of disability. It is important to note that in the field of health care the Convention considers the reproductive rights of disabled people and is the first international human rights treaty which considers a problem of sexual and reproductive health. Also Discrimination in the field of marriage, family and the personal relations isn't allowed. Disabled people are given equal opportunities to enter different relations, to act as parents, to start a family, to marry, etc. [1]

The Convention on the rights of disabled people is the extensive human rights treaty covering all range of the civil, cultural, economic, political and social rights. In the Convention the new rights for disabled people aren't established; instead in her reveals that the existing human rights mean for disabled people, and are specified obligations of the State Parties for protection and promotion of these rights, for creating favorable conditions for implementation of the rights of disabled people.

Especially it should be noted that within the principle of non-discrimination by Convention about the rights of disabled people the right of disabled people for participation in political life is marked specially out, in particular to participate in vote at parliamentary elections and also in cultural life, for example to participate in cultural and sporting events and in other types of leisure. At the same time realization of the right for participation sometimes demands from the state of acceptance of special measures, control of which realization lies on the state.

As for the economic, social and cultural rights, in the Convention on the rights of disabled people the obligation of the states to gradually provide their implementation is confirmed as it has been already recognized in article 2 of the International Covenant on Economic, Social and Cultural Rights. It is important that in the Convention the fact that for achievement of equality of disabled people it is necessary to achieve shifts in public consciousness and perhaps full inclusion of people with disabilities in public life is admitted.

It is important to note that article 30 of the Convention has provided that the State-parties take all appropriate measures for providing that disabled people had access to such places of

cultural actions or services as theaters, the museums, movie theaters, libraries and tourist services and also had access to the monuments and objects having the national cultural importance in the most possible degree [10].

The Convention on the rights of disabled people contains articles devoted to working capacity and employment of disabled people but at the same time disabled people aren't involved in one country of the world completely in labor market. Most of them or the unemployed, or have lost an incentive to active job searches. Among those who work many work at conditions of part-time, receive the salary lower than the level of minimum wage or perform work which doesn't correspond to their qualification. This lack of an opportunity to participate in economic activity seriously is reflected in life of disabled people, and especially contradicts the principle of non-discrimination.

It should be noted that the questions concerning vulnerable groups of the population including disabled people will have more often social character, but the decision to adopt the Convention on the rights of disabled people, was on the present not only theoretical fixing of that fact that disabled people can apply for all human rights, but also at last all this has gained legal aspect for protection of these rights.

#### **References:**

1. Monitoring the Convention on the Rights of Persons with Disabilities Guidance for human Rights Monitors Professional training series No. 17.
2. The second Perm congress of legal scientists: materials of the international scientific-practical conference (Perm, Perm State National Research University, October 28-29, 2011) / otv. Ed. OA Kuznetsova; Perm State National Research University - Perm, 2011 - 349 p. (in Russian)
3. *Rytov A.G.* Analysis of the strategy of adaptation to disability in able-bodied age // Bulletin of the Samara State University. - 2008.- №1 (in Russian).
4. Basic Facts about the United Nations M: Ves mir., 2005 (in Russian).
5. Declaration of social progress and development of 11 December 1969 [http://www.un.org/ru/documents/decl\\_conv/declarations/socdev.shtml](http://www.un.org/ru/documents/decl_conv/declarations/socdev.shtml) (in Russian).
6. Tallinn Guidelines for Action on Human Development in the Field of Disability, 1989. URL: [http://www.un.org/ru/documents/decl\\_conv/conv\\_disabled.shtml](http://www.un.org/ru/documents/decl_conv/conv_disabled.shtml) (in Russian).
7. Standard Rules for the Equalization of Opportunities for Persons with Disabilities, adopted: United Nations General Assembly resolution 48/96 of 20 December 1993 [http://www.un.org/ru/documents/decl\\_conv/conventions/disabled.shtml](http://www.un.org/ru/documents/decl_conv/conventions/disabled.shtml) (in Russian).
8. UN Convention on the Rights of Persons with Disabilities and the evolution of Russian legislation / G.N. Volkova // Population - 2014. - №2 (in Russian).
9. Convention on the Rights of Persons with Disabilities: United Nations General Assembly Resolution 61/106 of 13 December 2006. URL: <http://www.un.org/ru/documents/> (in Russian).
10. *Yakovleva E.N.* Promotion and protection of the rights of persons with disabilities in international law: the thesis / Ph.D. Institute of State and Law of the Russian Academy of Sciences. Moscow, 2015 (in Russian)

**Date of receipt of the article in the Editorial Office  
(04.06.2018)**