

PEOPLE WITH MENTAL DISABILITY AS HUMAN RIGHTS CARRIERS: THE EXAMPLE OF IMPLEMENTING THE RIGHT TO EDUCATION IN RUSSIA

PERSONAS CON DISCAPACIDAD MENTAL COMO CARRERAS DE DERECHOS HUMANOS: EL EJEMPLO DE IMPLEMENTAR EL DERECHO A LA EDUCACIÓN EN RUSIA

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abstract

This study was aimed at investigating the realization of the right to education as a human right for people with mental disabilities in the context of Russia. In the context of the present paper, mental disability is referred to the combination of various types of psycho-emotional disorders of behavior and mental retardation. According to the international human rights law, each person is born free and is equal in dignity and rights. By implementing international human rights standards into national legislation, the state undertakes a number of obligations towards its citizens, namely, to respect human dignity and create conditions for free development of the individuals, regardless of any classification presented in nosology. Considering the role of human rights as a universal mechanism for international control, a certain inconsistency was observed in national legislation regarding the legal status of various categories of people in the context of the study.

Keywords: Human Rights; the Right to Education; Mental Disability; Constitutionalism, International Human Rights Law.

Results and Discussion

Introduction

Before stating the problem of realization of the right to education for people with mental disability, as carriers of human rights in the context of Russia, it is necessary to emphasize that international principles and norms in the field of human rights are represented in various international instruments and are regarded to be universal in nature. Therefore, according to Article 1 of the Universal Declaration of Human Rights (Universal Declaration of Human Rights of 1948), all people are born free and are equal in dignity and rights. Study on the legal recognition of equal dignity reveals that, there are national and international legal prohibitions on infringement of dignity, including related to the cognitive and other disorders (Goar et al, 2018). All nations and all people have the right to live in decent conditions and have freedom and enjoy fruits of social progress and should on their part contribute to it (Declaration of Social Progress and Development 11.12.1969 Resolution 2542 (XXIV) (Proclaimed by Gen-eral Assembly resolution 2542, 2018).

According to principle 1 ("Principles for the Protection of People with Mental Illness and the Improvement of Mental Health Care" adopted by 12/12/1991 Resolution 46/119) all people who have the mental illness or are considered to be mentally ill should be treated humanely and with respect to the inherent dignity of the human person (General Assembly Resolutions 46/119 of 17 December 1991). Any person with mental illness has the right to exercise all civil, political, economic, social and cultural rights recognized in international legal acts. Discrimination against people with mental disorders is referred to the difficulty for equal enjoyment of rights. According to preamble of the Convention on the Rights of People with Disabilities, the recognition of dignity and value inherent of, and of their equal and inalienable rights of all members of the human family, are recognized as the basis for freedom, justice, and peace in the world (Convention on the Rights of Persons with Disabilities of 2006).

Research Method

This study was designed based on a dialectical approach to the knowledge of social phenomena and processes, including general scientific methods approved by legal science (system, analysis and synthesis, logical, etc.), and particular scientific methods. The latter includes formal legal, comparative legal, linguistic legal , etc.

In order to study on the realization of the right to education for people with mental disabilities as carriers of human rights, it is necessary to dwell on some key points. The legal recognition of equal dignity makes it possible to identify international legal prohibitions on the infringement of dignity, including those related to the cognitive and other disorders. The Results of the previous studies on the implementation of international human rights standards in national legislation showed that not only legislative formulations concerning the special subjects have changed, but also legal practice regarding the realization of the right to education has also altered. It appears that, socially significant goals aimed at recognition and protection of human rights by the state, are actualized through the normative regulation.

Generally, the rights and freedoms for an individual are considered to be achievements in development of mankind. The human rights position in the Constitution of the Russian Federation is confidently defined by the axiological preference of a person, his rights and freedoms (Marchheim, 2006). Human rights are considered as a central constitutional legal institution and are an integral element of constitutionalism (Marchheim et al, 2009; Larionov, 2018).

According to the international law, in its modern sense, human rights are not a simple formalization in norms of law, but they are regarded as a social possibility for the realization of rights for all people without exception. In this study, it is believed that international human rights law is the only source of law legitimizing international control over policies and practices related to the mental health of the people in a sovereign country. Human rights law provides fundamental protection that cannot be eliminated by domestic legislative process; for example, a ban on prosecution of any person with mental retardation, if he does not pose a danger to himself or others (Kay et al, 1972).

Governments are not authorized to grant or deny human rights and freedoms. Without any exception, all people have human rights because of their human nature. Thus, people with mental disabilities (mental disorders) do not have to prove that they deserve to have certain rights related to the fundamental nature of human rights. Human rights are the basis applied for challenging unfair treatment of people with mentally disable people.

Human rights law requires the states to perform certain tasks duties, which are as follows: respect indicating that the state is obliged not to violate human rights, for example, arbitrary deprivation of liberty; protection indicating that

the state is obliged to prevent private violations, for example, anti-discrimination laws; and implementation indicating that the state is obliged to promote human rights, for example, to guarantee the right to education (Global Law Perspectives of Human Mind Disability, 2004).

Education plays a vital role in protecting children from abuse or neglect, and is also considered to be important for the society, because it allows achieving stable and harmonious relations between different nations (Manuchehr, 2011).

The right to education is classified into the category of fundamental human rights and is guaranteed to everyone without exception. Considering the Recognition of the right to education for every person, the state is also obliged to guarantee the admission of freedom, autonomy, exclusivity and protection of the interests for the individual (Implementation of the General Assembly on the Right to Education, 2007).

Recognition of a child as incapable of learning and therefore denying the right to education for him resulted from lack of recognizing a person with a mental disability as a human being.

Being born in the form of the human does not necessarily mean that a man has been developed. A person grows in an environment, in which individuals similar to his own kind are present, and he becomes a social person through formation of socially significant skills, and knowledge. Education, in turn, acts as a universal mechanism for formation of relevant skills. But the essence of education lies not only in transfer and accumulation of knowledge, but also in forming the interaction with individuals in his own kind and adoption of certain social norms of behavior, which in some cases is found to be much more important for a person with mental disability in particular, and society in general.

As N. I. Bulaev states, education is a field of law in which the private interests of stakeholders are not in confrontation with public interests. State interests are aimed at actualizing the most adequate possible satisfaction of private interests of participants in educational activities (Bulaev, 2006). But features of "Private interest" as a counterbalance to the are as follows: belonging to an autonomous and relatively independent entity; conditionality based on motives, goals, needs of the subject (group of subjects); regulation of private law; voluntary implementation; and protection of disturbed private interest in the active actions of the subject himself (Belyaeva, 2014).

State interests are aimed at comprehensive satisfaction of private interests in the field of education. Private and public interests are united under a common constitutional goal indicating

"creation of conditions that ensure a decent life and free development of a person", which inevitably forms human capital as an economic basis for development of the state (Aristov, 2017). But the conflict is emerged; when the question regarding the ways and mechanisms to achieve this goal is put forth, as well as the individual perception concerning a particular model of teaching children with mental retardation, for example, the joint teaching of children with mental retardation and children without any disorders (Mostafaei et al, 2014).

In case of an isolation model regarding the realization of the right to education, a critical mass of fluctuations (deviations from the norm) accumulates (inability of people with mental disabilities to realize subjective rights on equal terms, creation of isolation conditions, inability to continue education after school, or employment; lack of financial resources to create special schools or boarding schools ,etc.) causes the state system to reach a bifurcation point (representing a point of choice or point of no return), resulted in the destruction of stems, and consequently to preserve the integrity of the system, the system is forced either to make a choice opposite to the previous one or to replace the existing system with a new system, with a different development vector. There are similar examples, which are already known in history, such as Ancient Sparta or Germany, during the Second World War. Solving the problem of mental disability through "cleansing the healthy from the patient" led to the termination of relevant regimes, and people with mental retardation continued to live in society, indicating that issue of human diversity has a more sustainable nature than ideas aimed at "physical destruction" or isolating people with mental retardation.

From a subjective point of view, the lack of experiencing everyday communication in people with mental retardation, can provoke a closed personality, fear of communication with other people, inability to live an independent life occurred for them, on the other hand, making a choice free from the will of third parties regarding where and with whom to live represents the situation which is natural and familiar for an ordinary person. On the objective side, a person who does not have the skill for establishing social interaction with his own kind, does not understand general norms of behavior in society, and is prone to deviant behavior. This happens not because of his internal characteristics, but due to the lack of relevant social experience.

"Since the mid-1980s, scientists began to consider the disability not as an isolated, individual medical pathology, but as a key term defining social category along with race, class and gender" (Catherine, 2003). Theory of

Normalization as a new theory proposed with respect to disability, has been introduced into scientific practices. According to the Normalization Theory, it can be inferred that "the use of cultural means for people in order to have the opportunity to live a full cultural life" as well as "the need to respect rights of people with disabilities to provide them with a normal path of development in the life cycle" have been particularly emphasized (Nirje, 1969).

Ideas based on the ideology of human rights are determined by identifying barriers that limit participation of people with mental disabilities in society. This has changed the focus on how environments are organized. For example, in learning process, new interpretations ensure accessibility to schools for individuals previously recognized as "incapable of learning", in terms of both physical access (e.g. ramps) and pedagogical strategies (Position paper national focus group for children with special needs, 2006).

In Russian legislation, the term of student with mental retardation (intellectual disability) is used, in relation to right to education for special subjects including mentally disabled people. According to the author, this term was found to be incorrect. Incorrectness was proposed since this concept was concluded to have an evaluative nature and referring to characterization with respect to the "clinical diagnosis" than the legal status related to a special subject in law. It was believed that if the concept of "student with disabilities" is used instead of the term of student with mental retardation, then at the formal legal level, the focus would be shifted from physical and mental characteristics of the student, because the child with mental disability cannot study in a general education organization, due to the problem of unsuitability of educational organization with respect to the needs and characteristics of the student with mental disability.

It is argued that the task of forming constitutional act is not assigned only to the state, but it is formed and constructed in the process of joint activities. The realization of human rights is inextricably linked with social construction of this concept. In turn, social construction is directly related to language formulations, including legislation, and not just casual determination (presence or absence of a medical diagnosis).

Normally as a result of reinforcing the concept of "student with mental retardation (intellectual disability)", the legislator constructs the basis of social reality in practical activities. Thus conditions caused by discriminatory order which, in turn, contradict the basic ideas of prohibiting discrimination related to the health status (disability), including intellectual disorders contributes to the creation of inequality in society.

Protection against discrimination in education sector is hampered by the absence of strict sanctions on Russian legislation regarding the discrimination in this sphere.

Findings

The results of the study on realization of the right to education for people with mental disabilities as carriers of human rights revealed the following conclusions indicating that there were three interrelations between mental disability and human rights:

The policy on protection of the rights of people with mental disabilities influences the human rights; violations in the human rights influence the rights of people with mental disabilities; protection of the rights of people with mental disabilities and promotion of ideas on the human rights are not opposed to each other, rather they are complementary ideas

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