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LEGAL REGULATION OF SOCIAL SECURITY OF DISABLED PERSONS IN THE REPUBLIC OF KAZAKHSTAN

The article analyzes the theoretical characterization of legal relations arising in the field of social security. In addition, based on the constitution of the Republic of Kazakhstan were compared important issues. The relevance and practical importance of the topic has a number of reasons, not only scientific but also practical significance.

Legal relations in social security arise, modified or terminated in connection with certain events and actions, which are called legal facts. It provides an overview of the accessibility of information and the surrounding area for people with disabilities, the degree of respect for their rights and freedoms in the field of social services, the integration of disabled people into the structure of education.

The work focuses on the peculiarities of the realization of electoral rights of disabled people so that they become full participants in the electoral process. The history of the legal regulation of the electoral rights of disabled people is examined, the current electoral legislation is analyzed and, first of all, the instructions of Kazakhstan, concrete examples of violation of the electoral rights of disabled people are analyzed on the basis of Internet portals, media reports and other sources.

The object of the study are public relations with the participation of disabled people and persons with disabilities.

The subject of the study was the legal norms on the realization of the rights of persons with disabilities in international and national labor law and the law of social security.

Key words: social welfare, legal relationship, pension, aid, disability, capacity, legal facts.

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Қазақстан Республикасында мүгедектерді әлеуметтік қорғауды құқықтық реттеу

Мақалада әлеуметтік қамтамасыздандыру аясындағы қалыптасқан мемлекеттік-құқықтық қатынастардың теоретикалық сипаттамасы қарастырылды. Сонымен қатар, Қазақстан Республикасының Конституциясына негізделі отырып маңызды мәселелер салыстырылды. Зерттелген тақырыптың өзектілігі мен маңыздылығы бүгінгі таңдағы өзгерістерімен тікелей байланысты және оның ғылыми-тәжірибелік маңызы айқын.

Әлеуметтік қамтамасыздандыру аясындағы қалыптасқан құқықтық қатынастардың пайда болуы, өзгерілуі және аяқталуы заңдық фактілерімен тікелей байланысты. Сонымен қатар, мүмкіндігі шектеулі жандар үшін әлеуметтік қызмет көрсету саласындағы өз құқықтары мен бостандықтары дәрежесін, білім құрылымы мүгедектердің біріктіруді қамтамасыз етеді.

Олардың сайлау процесіне толыққанды қатысуға сайлау құқықтарын жүзеге асыру ерекшеліктері туралы құқықтарды қарастырады. Мүгедек адамдардың сайлау ережелерімен толықтай танысып, оны құқықтық реттеуді және талдауды сайлау заңнамасына сүйеніп жүзеге асыра алады. Ең алдымен, Қазақстан нұсқаулары бар Интернет порталдардың, БАҚ баяндамалар мен басқа да көздер негізінде мүгедектігі бар адамдардың сайлау құқықтарын пайдалана алу жөніндегі мәселелер қарастырылады.

Зерттеу объектісі мүгедектер мен мүмкіндіктері шектеулі адамдардың қатысуымен қоғамдық қатынастар болып табылады.

Мақала ғылыми-зерттеу, халықаралық және ұлттық еңбек заңнамасын және әлеуметтік қауіпсіздік құқықтық ережелері мүгедектердің құқықтарын іске асыруға бағытталған.

Түйін сөздер: әлеуметтік қамтамасыздандыру, құқықтық қатынастар, субъектілер, зейнетақы, көмек мөлшерлері, мүгедектілік, құқықтық қабілеттілік, заңдық фактілер.

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Правовое регулирование социальной защиты инвалидов в Республике Казахстан

В статье анализируется теоретическая характеристика правоотношений, возникающих в сфере социального обеспечения. К тому же, основываясь на конституцию РК, были сравнены важные проблемы. Актуальность и практическая значимость исследуемой темы обусловлены рядом причин и имеют не только научное, но и практическое значение.

Правоотношения в социальном обеспечении возникают, изменяются или прекращаются в связи с определенными событиями и действиями, которые принято называть юридическими фактами. Дается обзор доступности информации и окружающего пространства для инвалидов, степени соблюдения их прав и свобод в сфере социального обслуживания, интеграции инвалидов в структуру образования.

В работе сосредоточено внимание на особенностях реализации избирательных прав инвалидов с тем, чтобы они стали полноправными участниками избирательного процесса. Рассматривается история правового регулирования избирательных прав инвалидов, анализируется действующее в настоящее время избирательное законодательство и, в первую очередь, инструкции Казахстана, рассмотрены конкретные примеры нарушения избирательных прав инвалидов на основе интернет-порталов, сообщений СМИ и других источников.

Объектом исследования являются общественные отношения с участием инвалидов и лиц с ограниченными возможностями здоровья. Предметом исследования стали правовые нормы по реализации прав инвалидов в международном и национальном трудовом праве и праве социального обеспечения.

Ключевые слова: социальное обеспечение, правоотношения, субъекты, пенсии, пособия, инвалидность, дееспособность, юридические факты.

Introduction

In recent years, the subject of disability has attracted considerable attention in Kazakhstan. The primary reason for this interest is the enactment of a law in 2005 protecting the rights of disabled persons and the operation of public programs in 2002-2005 and 2005-2007 intended to rehabilitate those disabled. These programs reflect the Government of Kazakhstan's (GoK's) goals of improving social protection of the disabled, and of implementing antidiscrimination policies to ensure equal opportunity for disabled people. A second reason is the enactment in 2005 of two laws concerning obligatory social insurance and employers' obligatory insurance. These laws aimed foremost to promote the country's new life insurance market, but, by creating an urgent demand for disability tables from life insurance companies, they had implications as well for a better understanding of the nature of disability. Given the limited number of published

research on disability in Kazakhstan and the lack of publicly available disability statistics, these laws have accelerated the need for disability research [1]. Among the questions that need to be answered are: What is the true pattern of disability in Kazakhstan? Is the incidence of disability decreasing? What is the life expectancy of Kazakhstan's disabled?

Main part

In order to address these questions, we attempt first to create an historical picture of disability in Kazakhstan by analyzing government population statistics and studying the evolution of disability determination procedure in the former Soviet Union and independent Kazakhstan. Doing so is not a trivial task, as there has been almost no systematic research, either in Russian or English [2]. However, the effort is useful, as it enables us to cast light on the set of problems concerning disability in Kazakhstan, including those that remain hidden in the official reports.

Furthermore, the legislation of Kazakhstan (law ‘On Social Protection of Disabled Persons in the Republic of Kazakhstan’), provides the following definition of a person/child with disabilities : “disabled person is a person who has health problems with a persistent disorder of body functions, caused by diseases, injuries, and their consequences, defects, leading to a physical dysfunction and the need for his/her social protection”; “disabled child is a person under the age of eighteen years old, with health problems with a persistent disorder of body functions, caused by diseases, injuries, and their consequences, defects, leading to physical dysfunction and the need for his/her social protection; “children with limited abilities” are defined as “children under the age of 18 with physical and (or) mental defects who experience restrictions in vital functions caused by congenital, hereditary, acquired diseases or trauma consequences, confirmed in accordance with due procedures” [3].

As we know, nowadays, the number of disability children are increasing. In that reason, we are trying to describe «why people are disabled?». In the last five years there have been several changes made in the legislation of Kazakhstan pertaining to the rights of children with disabilities. These amendments affected laws such as the Code on ‘Marriage and Family’, ‘On the Rights of the Child in the Republic of Kazakhstan’, ‘On Education’, ‘On social, medical and educational support for children with disabilities’, ‘On special social services’, ‘On national accumulative educational system’, ‘On amendments of the legislation concerning social security’ and ‘On military service and status of military servants’. The recent legislative changes address both definitions and also provide for changes in provision of additional support in the area of social welfare, education and health of children with disabilities. Finally, important changes were introduced to various Decrees of the Ministry of Health of the Republic of Kazakhstan concerning screening procedures for children with disabilities. The law of the Republic of Kazakhstan ‘On the Rights of the Child in the Republic of Kazakhstan’ ensures that children with disabilities have equal rights with children without disability to live in conditions which ensure dignity and promote active inclusion in society. The same Law provides for the right to education, choice of occupation and profession and participation in creative and social activities. The right to social security, including rehabilitation and integration into society is stated under the Law on “Social Protection of Disabled Persons in the RK”. According to this Law, children with disabilities

are also entitled to the right of access to social infrastructure facilities. In accordance with the law “On social, medical and educational support for children with disabilities”, children with disabilities have the right to receive a number of services. This includes free social, medical and educational support; free medical examination in public health organizations, medical and other support from psycho-educational counseling departments or medical-social examination departments and free medical care in accordance with the laws of the Republic of Kazakhstan. It also provides for free-of-charge orthopedic products and footwear, prints with a special font, sound-amplifying equipment and alarms, compensatory technical means in accordance with the laws of the Republic of Kazakhstan; to receive free pre-school and general secondary education in institutions of education or public secondary schools. Given that they qualify on a competitive basis, children with disabilities are also entitled to receive free of charge technical and vocational, post-secondary, higher education in state educational institutions within the public education programs and curricula; employment after graduation. According to the same law, children with disabilities who are also orphans and/or left without parental care, who benefit from full state support, shall be provided with accommodation after graduating from an institution by the local executive authorities. Consistent support from the state for children requiring special attention is envisaged in the National Long Term Action Plan (2012) for ensuring the rights and improving the quality of life for persons with disabilities for 2012-2018 [4].

Lately, the Ministry of Health of Kazakhstan has adopted new regulations on antenatal, perinatal and neonatal screenings. Thus, the medical institutions of Kazakhstan introduced a method for the integrated management of childhood illnesses and early childhood development. Primary health care professionals carry out preventive health supervision of children at risk in accordance with an individual plan. The integrated management of childhood illnesses is carried out for the purposes of diagnosis of disability for children under 5 years old as well as improving their physical and mental development. Besides, in order to identify children at “risk” in the maternity homes, children’s clinics, primary health care institutions, a mass standardized examination, i.e. screening is conducted. With the consent of the parents or other legal representatives, the children “at risk” identified during the screening are sent to the psychological, medical and educational counselling units. One of the official tools

introduced in 2003 is screening of psycho-physical development of young children. It is implemented by means of five screening examinations conducted in three stages. Since 2006, a screening program of prenatal diagnosis and prevention of congenital and hereditary disorders in children has been adopted and is under implementation. Under this screening program, a genetic screening is introduced for possible early (prenatal) identification of children with genetic disorders, in-depth diagnosis of congenital and hereditary diseases and prevention of birth of children with psycho-physical development disabilities. There is an on-going process of integrating activities of social protection, health and education, while also maintaining sectorial specialization. The education sector has a role to play in identifying developmental delays through a pedagogical examination. The health sector holds mass standardized screening of children in the early years with the aim of identifying risks. This sector also does in-depth diagnosis of congenital, hereditary and acquired conditions. In the sector of labour and social protection social surveys are conducted to determine the degree of disability as well as how that affects prospects of inclusion into for example the labour market.

The adoption of the Law on Specialized Social Services (2008) required several changes in regulations for social services. This included for example introduction of standards for the provision of special social services in the sphere of social protection, education and health. All standards describe provision of eight special social services: special routine services, special medical services, special pedagogical services, special psychological services, special legal services, special vocational services and special economic services for different categories of service users. All these services are cross-sectoral and link up with social work. According to the recent statistics from three ministries (Health, Education and Social Welfare), 13,430 social pedagogues, psychologists in education (MOES, January 2012,) 12,101 social workers for children with disabilities (MLSP, 2011) 1,157 social workers and psychologists at primary health care level (MOH, 2011) are introduced into the system to identify the needs of children and families and refer them to professional help. The network of psychological, medical and pedagogical consultation units (PMPC) was expanded, which allowed improving the identification of children with developmental disabilities. According to the Ministry of Labor and Social Protection of Population of the RK (2013), more than 2,000 children with

disabilities currently receive services through NGOs. The day-care facilities provide services to 3,000 children with disabilities. Overall, 88 per cent of the total number of children with disabilities are provided with technical auxiliary aids out of the total number of children who need them. Overall 43 per cent of special education organizations are equipped with modern multi-media educational systems, 41 per cent with a speech pathology training stimulator, and 37 per cent with a speech/hearing training stimulator. Around 95 per cent of children with developmental disabilities have access to the internet.

In 2012, the overall number of children below 18 years of age who were placed in residential care was 10,887[5]. Out of this some 21 per cent were children with disabilities. While the overall number of children in residential care has been decreasing in the last 3 years, this has not been the case for children with disabilities in residential care to the same extent.

In Kazakhstan, currently, social allowances in the form of cash transfers are provided to families raising children, including adopted children, children under guardianship, and children with disabilities. Child benefits can take different forms and are either categorical or targeted to the poor (income dependent). By law, children are directly or indirectly covered under the following types of social assistance benefits: child benefits (social allowances), targeted social assistance (TSA), special social benefits and benefits for children with disabilities[6]. Children with disabilities are provided with other forms of state support, in addition to state benefits. For example, all regions fund provision of material support to children with disabilities who are being raised at home. Depending on the age and disability group, children are currently entitled to children's disability benefits/allowances – from 15,103 KZT (\$ 100) to 24,231 KZT (\$ 161). Besides, there is also parental allowance/ benefit to care for a child with disabilities – 18,660 KZT (\$125). With the introduction of new forms of social service, an opportunity appeared for employment of mothers with children with psycho-neurological disabilities, with disorders of the musculoskeletal system. The government provides tax benefits to all members in a family with a child with disabilities. Thus, income within a threshold of the equivalent of the minimum salary 55-fold or less per year of one of the parents of a child with a disability, disabled since childhood, is not subject to individual income tax. Moreover, families with a child with disabilities are exempted from among other obligations such as land tax.

Since 2010, monthly benefits have been introduced for a person raising a child with disabilities in the amount of the minimum salary rate. These are meant to support parents who have to leave work and engage in caring for a child with disabilities. In 2010, 51,178 families (adoptive parents), guardians (trustees) raising children with disabilities, received allowances in the amount of 14,952.00 KZT (\$98 USD), in 2011 – 54,800 people in the amount of 15,999.00 KZT (\$105 USD), and in 2012 -58,700 families received care allowances in the amount of 17,439 KZT (\$114 USD). In view of social support for families having children with disabilities in all regions at the expense of local budgets, payment is made for material support to 11,659 children with disabilities, raised and educated at home. Average monthly payments during the period of the child's education are nearly 4,000 KZT (\$27). In 2012, 63,751 children with disabilities were covered.

From the perspective of the disability rights movement, the social model of disability has been widely adopted as a conceptual framework which explains the marginalization of disabled persons. According to the social model of disability, society sets up barriers that include attitudes, policies, physical facilities, technology, learning environments, work opportunities, and cultural representations, however, it does not explain explicitly the role of the disabled person in the quest for social change. A collective identity can provide the knowledge, experience and context to build a foundation which supports social change to more readily reduce barriers for disabled persons in the future. In his thinking about collective identity, Oliver (1994) stated that: it is necessary for oppressed groups to organize collectively to confront oppression. That inevitably means confrontation and conflict with powerful groups, interests and structures for there are few examples in human history of people willingly giving up power to others (p. 18) [6]. In this passage, Oliver is calling disabled persons to unite, to resist the dominant ideology of non-disabled worldviews and disabling social structures which can result in marginalization and oppression. To advance disability rights, equity and citizenship, the investigation of collective identity and the social model of disability can move discussions from being oppressed or marginalized persons to one which envisions the agency of disabled persons through a rights approach. Furthermore, the social model of disability has been critiqued for having a disembodied view of disability, rather than an "embodied experience of impairment as an intercorporeal phenomenon" (Paterson & Hughes, 1999, p. 608). As an intercorporeal phenomenon, I

consider the relationships between disabled and non-disabled persons. This recognition of embodiment is integral to the collective identity theory (Melucci, 1996) within the disability rights movement and the disabled community's relations to society. This gap in understanding has resulted in researchers offering alternative theories to supplement the social model of disability. For example, Peters, Gabel and Symeonidou, (2009) argued for a need for a collective consciousness and common vision as vital components in the acts of resistance. They recommend a paradigm shift from disability as constructed by society to one that constitutes disability as a complex matrix of language, practices, body effects, disposition and aspirations. This matrix also points to the necessity of an embodied approach to collective identity formation. This paradigm of disability is better positioned to support transformation and social change rather than just explaining marginalization and/or oppression as in the social model of disability. This study supports the shift away from the original social model of disability from the 1970s towards the need for a revised 21st century model when social change is the sought after result [7].

Once identified, children with disabilities are assessed by a Psychological, Medical and Pedagogical Commission (PMPC). The assessment results in the delivery of a certificate specifying whether the child can participate in education, and if so the level of education to which s/he should be directed. There is some progress to further ensure the realization of children's right to education. The process of developing inclusive education is comprehensive and requires the participation of government agencies, parents, community, families, educational institutions and organizations, nongovernmental organizations. In order to develop inclusive education in Kazakhstan, the Law of the Republic of Kazakhstan "On education" was amended to ensure the state's responsibility to provide children with disabilities with conditions for "education, correction of developmental disorders and social adaptation" starting from an early age at all levels of education. In 2010-2011 there were reportedly 5,649 children who were not attending school due to some form of disability or health issues. 56.2 per cent of Kazakhstan's 151,216 children registered as 59000. Total number of children with disabilities below 18 years registered in the country Total number of families receiving "care allowance" for child with disability Total number of children and/or families with children with disabilities receiving "disability allowance" 11 living with disabilities have access

to special education programs, even though the 2005 Law on Social Protection of Disabled Persons guarantees children with disabilities access to free primary, basic secondary and general secondary education. Most of the children with disabilities are being taught under home programs that heavily rely on the child's family support. Thus, as per latest data there are: 2,061 children with disabilities below 18 years who attend special boarding schools; 8,758 children with disabilities receiving home schooling; 8,613 children with disabilities who attend special pre-school facilities [8].

Conclusion

The definition of disability in Kazakhstan since independence has approached the WHO ICF definition as result of gradual shifting from a medical to a social model, as well as legal acknowledgement of the rights of all categories of the population, including children. The methodology of determining the presence of disability also has moved toward international norms. However, many tasks remain to be fulfilled in the area of application of the ICF to a national clinical diagnosis and rehabilitation assessment, and in disability data collection. It is a fortunate that Russia and Kazakhstan have the same disability definition and similar criteria for disability determination. In order to keep this important tradition for the purpose of comparability of disability incidence and prevalence, it is necessary to develop a uniform ICF user guide for all former USSR republics and detailed strategy of ICF application on the basis of disability population statistical categories inherited from the Soviet Union. The method of gathering disability incidence data in Kazakhstan, inherited from the Soviet Union and based on population statistics, is highly reliable; correspondingly the reported data are quite accurate. In particular, there are two types of disability data in Kazakhstan that complement each other. The first represents a flow concept, thereby tracking disability incidence, and second one uses a stock concept, thereby reporting disability prevalence. However, the reported disability incidence among working-age adults in Kazakhstan is inaccurate, since when registering newly disabled people, the Ministry of Labor and Social Protection uses old labor classifications in spite of the fact that Kazakhstan accepted ILO standards in 1994 [9]. As a result, the majority of

newly disabled among the self-employed population – who generally cannot provide employment certificates – are inaccurately registered as being “unemployed.” Thus, official disability incidence among unemployed population is overestimated and, correspondingly, disability incidence among the employed is underestimated. As long as the MLSP does not disaggregate the newly disabled into the more commonly recognized categories of self-employed, hired labor, unemployed, or economically inactive, it is important correct for the resulting inaccuracy. The results above suggest large differences between official and corrected data. While it is possible to criticize the health data collection system Kazakhstan inherited from the USSR, it is based on population data and events registration, and both health and disability are registered according to rules of the International Classification of Diseases (ICD). This allows analysts to compare trend of incidences of disease and disability occurring in the whole population over any period of time. To summarize briefly, historical analysis shows that disability in Kazakhstan in the post-Soviet era exhibited the following new patterns:

- A high rate of disability incidence among the unemployed population, which did not exist in the Soviet era, due to full employment.
- Disability incidence among the employed population is much lower than among the unemployed. In particular, the disability incidence today among regular employees is only one-third that of the 1992 peak, and also far below Soviet levels.
- There is almost certainly substantial hidden disability resulted from deteriorating access to medical examination, especially for the sizeable rural population that has migrated from rural to urban area in search of employment, and most of all for immigrants from southern Central Asian republics working, often without official status, in agriculture, construction, and service activities. Our bottom line assessment is that it is implausible that declining adult disability incidence reported in official data reflected real improvements in either underlying health or pace of rehabilitation. Given the trends of increased morbidity and death rates among adult population, the optimistic official picture almost certainly reflects growing underreporting rather than improvement in health conditions related to disability.

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