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THE RIGHT TO EDUCATION OF PERSONS WITH DISABILITIES

The article deals with the problems of the right to education of persons with disabilities. It is established that the legal policy of the state takes one of three different approaches to education of persons with disabilities, exclusion, segregation and integration. Integration approach focuses solely on improving the ability of individual to comply with the relevant standards. The first two approaches reflect a restrictive model of the legal status of persons with disabilities. The approach of inclusive education emerged as a response to these discriminatory approaches. In the aspect of the right to education of persons with disabilities it should also be highlighted the importance of such principle as non-discrimination on grounds of health status. Inclusive education is socially important because it provides a reliable platform for counteraction of inequality and discrimination. The mixed learning environment, which includes persons with disabilities allow their contributions to be evaluated, and the prejudices and misconceptions that will be gradually challenged and dismantled. It is a complex of learning and development. Exercising the right to education of disabled on the basis of inclusion introduces new perspectives to achieve the goals and self-esteem, and empowerment of individuals to build society.

Key words: persons with disabilities, inclusive education, the right to education.

Formulation of the problem. Education today is an area that is strategically important for the development of statehood as soon as only it is able to form active members of civil society with proper respect for law, legal awareness and national and legal culture. The development of education should play a key role not only for individual and citizens of the state, but also for statesmen and law-makers in terms of transformation and reforming conversions.

Exercising the right to education for persons with disabilities has its own peculiarities, methodological approaches and problematic questions. Primarily this is due to a large number of people who have problems with health. The presence of people with disabilities is typical for of any society. According to the UN, in the world there are about 15% of persons with disabilities. It can be noted that there are more than one billion persons with disabilities in the world¹. It is necessary to consider that on the territory of the 47 Council of Europe member states lives, according to various statistical data from 80 to 120 million people with disabilities, which is approximately 10-15 percent of the total population of Europe².

State of topic research. The problems of legal education policy always attracted the attention of domestic and foreign lawyers and practitioners. Among them is necessary to allocate the works of: T.A. Denisova, I.M. Zharovska, V.M. Dryomin, N.A. Miroshnichenko, A.P. Tuzov, M.D. Sharhorodskyi, M.I. Havronyuk and other prominent scientists and practitioners. However social changes of social development require an updating of approaches, it appears a number of new methodological approaches to the analysis of the right to education that meet the modern requirements. **The purpose of this article** is to analyze the legal regulation of the right to education of persons with disabilities.

Presentation of the main provisions. The legal policy of the state takes one of three different approaches to education of persons with disabilities, exclusion, segregation and integration.

The policy of exclusion lies in the fact that a disabled person cannot attend general education schools on the grounds that a disabled person has certain drawbacks. As a result of this approach people with disabilities should be placed in social rehabilitation or medical facilities without educational services. State considers that this category of persons need not educational, but medical and rehabilitation services.

Segregation – is national policy for persons with disabilities which implies the existence of specialized institutions designed to respond to specific problems. Typically, these institutions are created for education of certain categories of persons and are divided by health deviation features.

¹ У світі проживає понад мільярд інвалідів. <<http://1tv.com.ua/uk/specialnews/2013/09/23/23492>>.

² Human Rights and Disability: Equal rights for all. CommDH (2008). *IssuePaper. The Council of Europe website.* <<https://wcd.coe.int/ViewDoc.jsp?id=1355349>>.

Integrating – when a disabled person is placed in a general education institution which is obliged to create conditions and to modify standards so as to ensure optimum constant of educational level. Integration approach focuses solely on improving the ability of individuals to comply with the relevant standards. The first two approaches reflect a restrictive model of the legal status of persons with disabilities. The approach of inclusive education emerged as a response to these discriminatory approaches.

It's no secret that children with disabilities are limited in opportunities to obtain complete education. The classical approach of Soviet (and post-Soviet) pedagogy – is a special educational establishments, usually boarding schools, institutions for children with special needs, i.e. it was chosen a selective method of providing educational services. Certainly such education has a specific list of positive aspects in its arsenal, but the significance of disadvantages indicates the urgent need to find new approaches and methods to implement the right to education of disabled children. These include isolation of the child, its detachment from family and wider social contacts, limited range of interpersonal interaction, the negative legal socialization, they do not always get quality social and educational level, reduction of competitiveness in the labor market and so on. The specified contradicts the Declaration of the Rights of the Child, which provides the legal principle that "a child who is deficient in physical, mental or social terms, should be provided special treatment, education and care that are necessary, because of his/her special status" (Art. 6).

The international community has developed standards in the education sector of persons with disabilities. Resolution 48/96 of the General Assembly of 20 December 1993 "Standard Rules on the equalization of opportunities of disabled persons" from 1993 among other determines, that states should recognize the principle of equal opportunities in the field of primary, secondary and higher education for children, youth and adults with disabilities in integrated structures. They should ensure that persons with disabilities education should be an integral part of the general education system. Such an approach reflects two important points: firstly, the attention is focused on the need for education of persons with disabilities of different levels, regardless of age, i.e. the need to ensure the whole complex of educational services; secondly, provides integrated inclusive approach to this category of persons (Principle 6).

Later in 1994, 92 states and 25 international organizations met in Salamanca (Spain). As pointed out the authorized representative of this conference F. Mayor – the conference met with the aim to achieve the goals of education for all and consider the changes to be implemented in the core policy directions required to promote the approach, that lies in inclusive education, namely to ensure that the schools could be open for all children, especially for children with special educational needs¹.

This Salamanca Conference declares that persons with special needs in education sphere, should have access to education in mainstream schools, which should provide them conditions based on teaching methods, focused primarily on children to meet these needs, regular schools with this inclusive orientation are the most effective means of fight against discriminatory attitudes, creating a favorable atmosphere in communities, building an inclusive society and providing education for all. So the declaration introduces the principle of "Education for All" and specifies that the education system of a democratic country should be adjusted to meet the needs of all children.

The Dakar framework of action "Education for All: fulfilling our collective commitments", adopted by the World Education Forum in 2000 declares its commitment to achieve the goals and solving problems of education for all, for every citizen and every community. Education should be directed to the disclosure of the talents and potential of every human being and personal development of students, so that people can improve their lives and transform their societies.

Convention on the Rights of Persons with Disabilities from 2006 implements this progressive approach. Art. 24 of the Convention equates education and inclusion regarding minors. Exercising the right to education of persons with disabilities is provided through inclusive education at all levels and lifelong learning.

In the aspect of the right to education of persons with disabilities it should also be highlighted the significance of such principle as non-discrimination on grounds of health status. Quite often given principle is identified with the concept of equality, because ensuring such equal opportunities involves primarily prohibition of discrimination. But equality in our opinion is only a basis for disclosure of such principle as non-discrimination. Equality – is equal opportunities for all. In the case of persons with disabilities, providing equal opportunities with other will not lead to a proper exercise of the rights; will not allow

¹ Майор, Ф. Предисловие. Саламанкская Декларация лиц с особыми потребностями принятая Всемирной Конференцией по образованию лиц с особыми потребностями: доступ и качество. <http://www.fl-life.com.ua/inclusion/?page_id=870

unleashing the full potential of the individual. We believe that we should agree with researchers who believe that "the prohibition of deviations from the standard of universal equality, prohibition of discrimination is an independent principle of law, but not merely the reverse side of the principle of equality"¹. Discrimination leads to a negative impact on the individual, leads to the devaluation of its legal consciousness, leads to disbelief into law, state and society. It also has long-term negative effect on the state relations. In general comments in the document adopted at the session of the Committee on Economic, Social and Cultural Rights in 2009, in particular, is found that "Discrimination undermines the realization of economic, social and cultural rights for a significant part of the world population. Economic growth alone does not lead to sustainable development, and individuals and groups of individuals continue to face socio-economic inequality that often is caused by rooted historical and contemporary forms of discrimination"².

Semantically the term «discrimination» has Latin origin and means separation, distinction³.

In scientific literature discrimination often is regarded as a kind of inequality that infringes rights or causes flaws of the individual situation. Thus K. Levchenko under discrimination understands – any distinction, exclusion, restriction or preference. The orientation of discrimination – is easing (destruction) of the right or the actual position of a particular social group; the result of discrimination – is a violation of the equality de jure or de facto, or (and this is very important) – making a threat of such violation⁴. In turn, O. Guz outputs this term from a principle of violation of equality stating that "this way of deformation of equality of legal entities or equality of their legal status by changing relationships of rights and duties, their security, volume and area of implementation with the aim of setting (correction) of objectively justified or subjective motivated parameters of justice and freedom in society."

In the modern sense discrimination includes not only any exception, but the right to positive discrimination. Discriminatory subjective right – is a measure of possible behavior that establishes privileges only for one part of legal relations in the form benefits, measures to ensure more low level of responsibility⁵. Therefore, non-discrimination is not only the absence of negative distinction "but the use, if necessary, special supporting and encouraging measures aimed at creating conditions for equal opportunities for persons due to circumstances beyond their control find themselves in unequal conditions with others"⁶.

The prohibition of discrimination is reflected in the European Convention on Human Rights (Art. 14), which reflects the standard according to which "1. the exercise of any statutory right is secured without discrimination on any ground, such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2. No one can be discriminated by any public authority on any ground such as those mentioned in paragraph 1".

The Convention does not contain separate reference to such attributes of discrimination as health state, but nevertheless this basic tool document prohibits discrimination based on disability. ECHR practice shows that disability and various health conditions are regarded as "other signs" within the meaning of that article. In the judgment in the case *Glor v. Switzerland* from 2009⁷, which was one of the first, the court established the presence of discrimination based on disability. In the judgment was recognized that the applicant, who suffered from diabetes, can be considered a person with a disability, despite provisions of national law on which this diagnosis was considered "minor" limitation of person's capability. The applicant was in a discriminatory situation because he was declared unfit for military service and was not exempt from tax because failure to pass service, because this privilege was extended to the category

¹ Равлінко, З.П. (2014). До питання про співвідношення принципів рівності суб'єктів права та заборони дискримінації. *Держава та регіони. Серія: Право*, 3, 7.

² Комитет по экономическим, социальным и культурным правам. (4–22 мая 2009 года). *Замечание общего порядка № 20, Недискриминация экономических, социальных и культурных прав*(пункт 2 статьи 2 Международного пакта об экономических, социальных и культурных правах), E/C.12/GC/20, 2 июля 2009. Сорок вторая сессия, Женева, Пункт 3 повестки дня.

³ Дворецкий, И.Х. (1976). *Латинско-русский словарь*. Москва: Русский язык, 334.

⁴ Левченко, К.Б. (2011). Дискримінація: правове визначення поняття. *Наше право*, 2, ч. 1, 40 – 45.

⁵ Гузь, О.Ю. (2012). Дискримінація як форма порушення прав людини. *Форум права*, 2, 166-169.

⁶ Товт, М.М. (2013). Зміст поняття "дискримінація" та принцип недискримінації у сучасному міжнародному праві. *Правова держава*, вип. 24, 393-398.

⁷ Case of *Glor v. Switzerland*. Application no. 13444/04. Dated 30 April 2009. *European Court of Human Rights official website*. <[http://hudoc.echr.coe.int/eng#{"fulltext":\["Case%20of%20Glor%20v.%20Switzerland"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-92525"\]}](http://hudoc.echr.coe.int/eng#{)>.

of people with more than 40 per cent loss of capacity to which he did not belong, due to national legislation. These cases include the case *I.B. v. Greece* from 2013^{1,2}.

Convention against Discrimination in Education of 1960 indicates the inadmissibility of discrimination and proclaims the right of every person to education. The Convention does not provide a particular emphasis on discrimination against the disabled, but defines discrimination "creating or maintaining separate educational systems or institutions for any person or group of persons, except under the provisions of Article 2 of this Convention" (art. 1). The exception indicated in the second article concerns the separate system of institutions by the criterion of gender, religious and linguistic nature and those that create additional conditions for education. The decision of the ECHR "Case about some aspects of the legislation on the use of languages in education in "Belgium v Belgium" says: "persons... have no right under Art. 2 Protocol #1 to require the government to create educational institutions of a certain type. However, if the state creates such, it cannot establish discriminatory, within the meaning of Art. 14, rules for admission into this institution"³. So the creation of special institutions aimed at certain exclusion for persons with disabilities should be regarded as a discriminatory factor⁴.

Convention on the Rights of Persons with Disabilities in the art. 2 indicates that "discrimination on the basis of disability" means any distinction, exclusion or restriction due to disability, the purpose or result of which is impairing or nullifying the recognition, realization or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation. The educational sphere is not highlighted separately, but is included in the social sphere, because discrimination in the sphere of the right to education does not meet international legal standards.

Inclusive education is socially important because it provides a reliable platform for counteraction of inequality and discrimination. The mixed learning environment, which includes persons with disabilities allow their contributions to be evaluated, and the prejudices and misconceptions will be gradually challenged and dismantled. Inclusive education also improves the quality of education for all leading training and educational strategies that contribute to the overall development of abilities and skills. It is a complex of learning and development. Exercising the right to education of persons with disabilities on the basis of inclusion introduces new perspectives to achieve the goals and self-esteem, and expansion of individuals' rights and possibilities to build a society based on mutual respect and rights⁵.

Conclusion. The international standards determined the necessity to upgrade approaches precisely through the spread of inclusive education system. Education becomes publicly available, equal for all. Within the educational concept "Education for all", proposed by UNESCO, the primary task of social development is to ensure everyone the right to meet the educational needs receive quality basic education. Inclusive education provides an appropriate legal status of persons with disabilities, the possibility of development individual properties and potential, on the basis of non-discrimination of health status.

Despite the declaration of the principles of equality and non-discrimination, regulatory and institutional protection of the right to education of persons with disabilities the problem of inclusion still exists. According to data submitted by UNICEF – orphanage institutions in Central and Eastern Europe and the CIS countries, there are 219 thousand children with disabilities. In this region is the world's highest rate of children living in orphanage institutions has raising nature. But even more alarming is growing evidence that, an estimated 1.1 million children with disabilities are "invisible" – they are not included in any official data, are unlikely to go to school and are hidden from the public eye⁶.

¹ *Case of I.B. v. Greece*. Application no. 552/10. Dated 03.10.13. European Court of Human Rights official website. <[http://hudoc.echr.coe.int/eng#{"fulltext":\["Case%20of%20I.B.%20v.%20Greece"\],"documentcollectionid2":\["GRANDCHAMBER"\],"CHAMBER":\["CHAMBER"\],"itemid":\["001-127055"\]}](http://hudoc.echr.coe.int/eng#{)>.

² *Дело Кiyутин против России. Заявление №2700/10. От 10 марта 2011 года. Официальный сайт Европейского Суда по правам человека.* <http://european-court.ru/uploads/ECHR_Kiyutin_v_Russia_10_03_2011>.

³ *Защита личности от дискриминации: хрестоматия в 3 т. Т. 2. (2009). Европейский Суд по правам человека. Дело относительно некоторых аспектов законодательства об использовании языков в образовании в Бельгии против Бельгии: Постановление от 23.07.1968 г. [Извлечения]. Москва: Нов. Юстиция, 202–246*

⁴ *Конвенція про боротьбу з дискримінацією в галузі освіти.* <http://zakon2.rada.gov.ua/laws/show/995_174>.

⁵ *Thematic study on the right of persons with disabilities to education.* Distr.: General 18 December 2013.

⁶ *Право детей с ограниченными возможностями на образование: подход к инклюзивному образованию, основанный на соблюдении прав человека.* <www.unicef.org/ceecis/IEPositionPaper_RUSSIAN.pdf>.

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