

Mechanisms for the Enforcement of the Rights of Disabled People

Georgyi Nickolaevich Kuleshov, Alla Andreevna Neznamova, Maria Alexandrovna Volkova,
Anna Leonidovna Shilovskaya, Renata Romanovna Lenkovskaya

Abstract: *The process of the Russian Federation integration into the global social environment requires improving the level and quality of life of the population as established in the Constitution of the Russian Federation and the fundamental norms of international law. In recent years, the Russian Federation shows changes, both at the federal and regional levels, in the legal regulation of social issues related to the support of various categories of the population, primarily persons with disabilities and persons with low income. The article establishes that further development of the governmental and legal regulation of social assistance to various categories of citizens, the creation of conditions for increasing the level of wages, as well as ensuring population employment are required. The aim of the article is to study and analyze the legislation of the Russian Federation on the implementation of the provisions of the Convention on the Rights of Persons with Disabilities in terms of providing an accessible and barrier-free environment. The article gives recommendations on the Russian legislation improving.*

Index Terms: *labor, person with disabilities, physically challenged person, social integration.*

I. INTRODUCTION

A. Introduction of the Problem

The European Social Charter executed in Strasbourg in 1956 guarantees the people's right to social security as well as the right of the persons with disabilities to independence and integration, which is expressed in promotion of employment, adaptation to different labor conditions depending on the needs of a person with disabilities and the degree of disability [1].

In Russia, there are about 12.3 million persons with disabilities, that is, almost every tenth person living in our country is a person with disabilities [2].

The Russian Federation is a social state, which implies the government's duty to ensure social protection of all segments of the population, especially physically challenged persons and persons with disabilities.

One of the most important tasks of the state in the sphere of social security in relation to persons with disabilities is to

ensure the accessibility and comfort of the environment, in which a person with disabilities lives, as well as the realization of their right to work.

After the ratification of the Convention on Rights of Persons with Disabilities, on December 1, 2014, the Russian Federation adopted the Federal Law No. 419-FZ "On Amendments to Certain Laws of the Russian Federation on Social Protection of Persons with Disabilities Following the Ratification of the Convention on the Rights of Persons with Disabilities", and a plan of actions was developed for its implementation, which became effective on January 1, 2016 [3].

The main changes are as follows:

- conditions of accessibility of facilities and services for persons with disabilities depending on the impaired functions are determined;
- a common system of actions aimed at creation of a barrier-free environment for persons with disabilities is established for all industries;
- the types of assistance required for persons with disabilities in overcoming barriers that prevent them from receiving services rendered to the public accounting for the specifics of the industry, are identified;
- a norm is introduced on the duty of public authorities and their subordinate organizations to instruct (train) staff on the provision of services to persons with disabilities in a format accessible for them, ensuring that they receive the required assistance;
- Article 3.1 "Inadmissibility of persons discrimination on the basis of disability" is introduced into the Federal Law # 181-FZ "On Social Protection of Persons with Disabilities in the Russian Federation" dated November 24, 1995 [4];
- create a federal registry of persons with disabilities;
- a new concept is introduced: "habilitation person with disabilities", which is a system and a process aimed at forming of everyday, social, professional and other abilities that are absent in persons with disabilities;
- a mechanism is created for interaction between federal medical and social assessment agencies and regional, municipal bodies, rehabilitation organizations, which are responsible for carrying out the activities stipulated by the individual program of rehabilitation or habilitation of persons with disabilities.

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Georgyi Nickolaevich Kuleshov, Russian State Social University (RSSU), Moscow, Russian Federation.

Alla Andreevna Neznamova, Russian State Social University (RSSU), Moscow, Russian Federation.

Maria Alexandrovna Volkova, Russian State Social University (RSSU), Moscow, Russian Federation.

Anna Leonidovna Shilovskaya, Russian State Social University (RSSU), Moscow, Russian Federation.

Renata Romanovna Lenkovskaya, Russian State Social University (RSSU), Moscow, Russian Federation.

B. Importance of the Problem

Some social integration issues in relation to persons with disabilities and physically challenged person are considered in the articles by Verkhovtsev [5], Shestakov and Svintsov [6], Zhavoronkov [7], Sitnikova et al. [8], Svirin et.al. [9], Tchinaryan et.al. [10].

Issues of protection of information about persons with disabilities were raised in the papers drawn up by Kurbanov et.al. [11], Starodumova et.al. [12], certain aspects of the protection of persons with disabilities are covered in articles by Malcev et.al. [13], Shilovskaya et.al. [14].

II. PROPOSED METHODOLOGY

A. The Method section

During the research, the authors applied general scientific and specific law-related methods of cognition. They most actively used such general scientific methods as analysis and synthesis, generalization and analogy, as well as special methods of cognition: formal legal method and legal analysis. The combination of these approaches made it possible to analyze comprehensively and thoroughly the studied phenomenon: identify problematic issues in the field of social integration of people with different categories of disabilities, analyze national legislation and international legal acts within the framework of the studied issue, as well as judicial precedents and scientific literature.

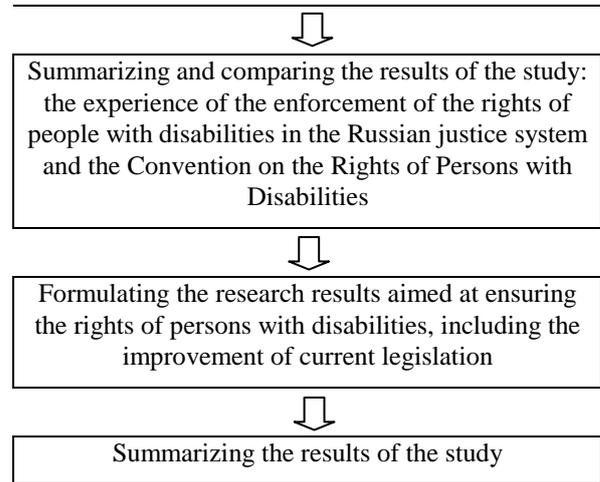
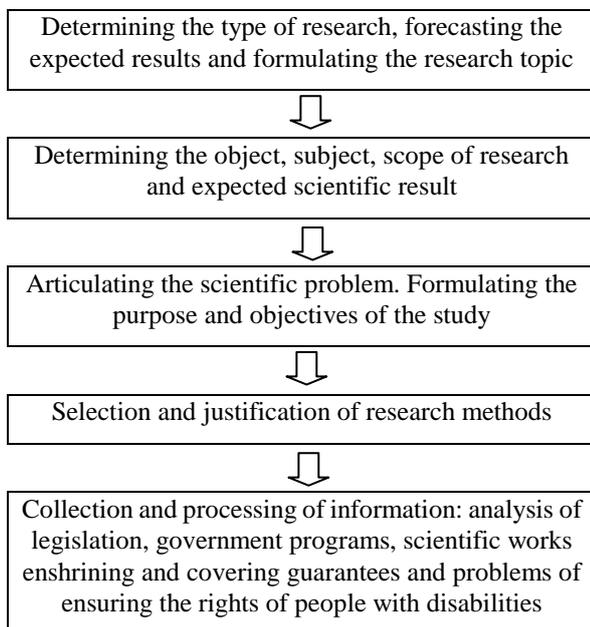
B. Algorithm

The study of the mechanisms for the enforcement of the rights of disabled people was based on a linear algorithm.

In the course of the study, the authors analyzed the process of integration of the Russian Federation into the world social space, summarized the guarantees for an accessible and barrier-free environment for people with disabilities established in the Constitution of the Russian Federation and the fundamental norms of international law.

In order to complete the study, they offered recommendations on improving the legislation of Russia.

C. Flow Chart



III. RESULTS

We believe that to a some extent people with certain categories of disabilities are prevented from exercising of their right to work by the reluctance of employers to hire such categories of people, despite the fact that the law obliges employers to establish quotas of work places [4].

We have determined that the legislation of the constituent entity of the Russian Federation requires that employers whose number of employees exceeds 100 people employ persons with disabilities in the amount of 2 to 4 percent of the average number of employees. For employers whose number of employees is not less than 35 people and not more than 100 people, the legislation of a constituent entity of the Russian Federation may establish a quota for employment of persons with disabilities in an amount not more than 3 percent of the average number of employees.

We have found that the labor legislation of the Russian Federation does not oblige people with different categories of disabilities to provide employers with an individual rehabilitation program so that they could create a workplace in accordance with the requirements of the law, taking into account their dysfunction and life activity restrictions [15]. We believe that in order to improve legislation in terms of the implementation of the right to work for people with disabilities, it is necessary to expand article 65 of the Labor Code of the Russian Federation with the obligation to provide an individual rehabilitation program when employing people with various degrees of disabilities.

We have determined that the legislation of the Russian Federation needs to consolidate measures of psychological adaptation of the persons with disabilities to their new places of work and the creation of appropriate training programs for the personnel working with persons with disabilities in order to eliminate negative attitudes towards them.

IV. DISCUSSION

As part of providing an accessible and barrier-free environment for the persons with disabilities in Russia, the "Accessible Environment" State Program for the years 2011-2020 was adopted, which involves most regions of the Russian Federation.



The draft “Accessible Environment” State Program of the Russian Federation for the years 2011-2020 includes measures aimed at:

- further development of accessibility of social, transport and engineering infrastructure for persons with disabilities and other people with limited mobility;
- formation of a modern rehabilitation system for persons with disabilities, including industries for the production of goods for physically challenged persons, including technical means of rehabilitation;
- the resolution of problems associated with the education and employment of the person with disabilities, the formation of a barrier-free environment [16].

The national educational initiative “Our New School” approved by the President of the Russian Federation in February 2011 requires creating a “barrier-free environment” in each educational institution. Such an environment implies not only the provision of ramps, special equipment, Braille fonts, etc., but also teachers, who have undergone special training and use special educational programs adapted for person with disabilities. The previously implemented program “Accessible Environment” for the years 2011-2015 was aimed at creation of a network of educational institutions for joint studying of healthy children and children with disabilities through combination of the material and organizational capabilities of federal and regional authorities under the control of public organizations of persons with disabilities [17].

From 2016, the accessible environment will be formed out not only in schools, but also in kindergartens, and institutions of additional education. However, it should be noted that this issue is somewhat problematic. In practice, a little over 200 thousand children with disabilities are covered by the state education system and have the opportunity to attend an educational institution, which is less than one third of the total number of children with disabilities who need education [18]. V.N. Gerasimov identified the problem for children with disabilities, who are not able to use fully their right to education. The psychological-medical-pedagogical commissions largely make decisions on inability of children with disabilities to study. The home form of education remains virtually unclaimed [19].

When creating an accessible barrier-free environment in an educational organization, it is necessary to take into account the needs of such categories of persons as physically challenged persons and persons with disabilities, such as persons with visual impairments, hearing impairments, or limited locomotor functions. In order for the persons with disabilities and physically challenged persons to have higher education pursuant to educational programs, the educational organizations should provide:

1) for the persons with disabilities and persons with visual impairments: an alternative version of the organization’s official website on the Internet for the visually impaired persons; publication of reference information on the schedule of training sessions in the places accessible for students who are blind or visually impaired, such information should be in

forms adapted to their special needs; the presence of an assistant who provides the student with the necessary assistance; ensuring the release of alternative formats of printed materials; providing access of the student, who is blind and uses a guide dog, to the building of the educational organization;

2) for persons with disabilities and persons with hearing impairments: duplication of audio reference information on the schedule of training sessions with visual means (installation of monitors with the possibility of broadcasting subtitles); providing adequate reproduction information acoustic systems;

3) for persons with disabilities and persons with musculoskeletal dysfunctions, the material and technical conditions must ensure the possibility of unimpeded access to classrooms, canteens, toilet facilities and other facilities of the organization, as well as staying in the above facilities (availability of ramps, handrails, extended doorways, elevators, local lowering of racks-barriers, availability of special seats and other devices).

It should be noted that an educational organization may create a structural unit responsible for ensuring of the conditions for inclusive education of the physically challenged persons and persons with disabilities, or the corresponding powers may be transferred to existing structural divisions. The tasks of this structural unit include pre-university training and vocational guidance of applicants with disabilities, support of inclusive education for students with disabilities, development and maintenance of information technology basis of inclusive education, distance learning of persons with disabilities, social and cultural rehabilitation, promotion of employment of graduates with disabilities, and the creation of a barrier-free architectural environment [20].

According to E.Y. Sinelshchikova, an important issue in the area of creating an accessible and barrier-free environment for persons with disabilities is the issue of accessibility of the physical environment facilities, here we are talking primarily about the accessibility of residential infrastructure. Creation of conditions for unhindered access of the persons with disabilities to the block buildings and residential premises should be a responsibility of the management company [21]. Unfortunately, there are still unresolved issues of the employers’ compliance with regulations on quotas for people with disabilities, the creation of work places meeting safety requirements for them, accounting for their health condition in accordance with an individual rehabilitation program.

According to E.G. Sitnikova, N.V. Senatorova, E.A. Serebryakova, the obligation to create special labor conditions arises with the employer from the moment it becomes aware of the person’s disability. This moment is not always the same as the moment of the person’s disability establishing. Workers sometimes conceal information about their health fearing that they will be denied employment. Except for the cases when the work requires preliminary or periodic medical examinations, the employer does not have access to information about the state of the employee’s health neither when (s)he is applying for a job, nor in the future. At the same time, the

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legislation does not oblige employees to notify employers about their state of health, unless the employees are absent from the workplace due to temporary disability [8].

Thus, the implementation of guarantees established for an employee with disabilities primarily depends on the employer notification about the person's disabilities. Moreover, such information must be certified with documents.

If the employee does not submit an individual rehabilitation program to the employer, this can be interpreted as a refusal of the person with disabilities from this program. In accordance with Part 7 of Art. 11 of the Law on Social Protection of Persons with Disabilities, such a waiver relieves the employer from responsibility for the implementation of the rehabilitation program. This conclusion is confirmed by judicial precedents [13], [22].

This question is quite controversial from the point of view of law enforcement practice, since the Labor Code of the Russian Federation contains an exhaustive list of documents that the employee must provide when applying for a job. Neither a certificate of person's disability, nor any other documents confirming (non-)existence of such disability are on the list. In addition, one needs to consider the necessity to protect such information when applying for a job [11], [12]. Thus, the Labor Code of the Russian Federation does not oblige a person to inform the employer about the state of health and the presence of a disability. The only exception is the case when the person's disability leads to a situation that represents a threat to the life and health of people, the safety of the employer's property.

Information about the state of human health is a part of the special personal data (part 1 of article 10 of the Law # 152-FZ dated Jul-15, 2006 [23]); hence, such data can be provided only with the consent of the employee (paragraph 4 of Article 86 of the Labor Code of the Russian Federation [24]).

The problem of employers' evasion from providing employment authorities with information about the availability of vacancies and opened positions, as well as already created or allocated jobs for employing a person with disabilities in accordance with the quota is also quite important.

Employers are required to provide monthly information to the employment authorities on the availability of vacancies and open positions, created or allocated jobs for hiring the persons with disabilities in accordance with the established quota for their employment, including notification on local regulatory acts containing information on these jobs, the implementation of quotas requirements for employment of persons with disabilities (Ruling on Appeal of the Vologda Regional Court # 33-1336/2014 dated Mar-19, 2014).

The Order of the Government of the Russian Federation # 1063-p dated July 3, 1996 (as amended by the Order of the Government of the Russian Federation # 942-p dated July 14, 2001) plays a significant role in the system of social services for the population. This document enshrines the standards and norms for the creation of rehabilitation institutions rendering social services to the population.

It should also be noted that the system of social protection of the population includes institutions for children with disabilities.

The Order of the Ministry of Social Protection of the

Population of the Russian Federation # 249 "On Approval of the Approximate Provision on a Rehabilitation Center for Children and Adolescents with Disabilities" dated December 14, 1994 defined the main goals, objectives, structural units of the center and staff standards.

The rehabilitation center for children and adolescents with disabilities is an institution of the state system of social protection of the population, carrying out social rehabilitation of children and adolescents with mental and physical disabilities from birth to age of 18, as well as families, in which such children are brought up [10].

The main objective of the center is to provide physically or mentally challenged children and adolescents with qualified medical and social, psychological and social, and pedagogical assistance, ensuring their fullest and most timely social adaptation to life in society, family, to learning and working [9], [14].

V. CONCLUSION

Summarizing the above, we may conclude that the current legislation of the Russian Federation in terms of provision of accessible and barrier-free environment requires constant improvement. The solution of these issues would contribute to an even greater social integration of persons with disabilities, would enable them to satisfy their needs in many spheres of public life.

In this regard, in accordance with Article 23 of the Law "On Social Protection of Persons with Disabilities in the Russian Federation", organizations, regardless of their organizational and legal form, should create labor conditions allowing employing persons with disabilities in accordance with an individual program of rehabilitation and habilitation. Similar provisions are enshrined in Art. 224 of the Labor Code of the Russian Federation, according to which the employer is obliged to create work conditions for persons with disabilities in accordance with their individual rehabilitation programs.

When hiring a person with disabilities belonging to the first category of disabilities, the employer has to make sure that the organization has the appropriate work for the person with disabilities, and then create special work places. At the same time, the employer needs to remember that the minimum number of special jobs for employment of persons with disabilities is established by the executive authorities of the constituent entities of the Russian Federation for each enterprise, institution, organization within the established quota for hiring persons with disabilities (paragraph 2 of article 22 [4]).

This article covers only a part of the studied issues in the framework of the ratification of the Convention on the Rights of the Persons with Disabilities aimed at providing an accessible and barrier-free environment for the persons with disabilities.

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