

The Right to Social Protection of Persons with Disabilities According to International Standards

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Abstract. The relevance of the subject under study is determined by the socio-economic state of the country and the long-term armed conflict in the Donbas, in particular, as a result of which thousands of people were injured and disabled. Insufficient funding for the healthcare system, lack of rehabilitation programmes for persons with disabilities, lack of housing and appropriate equipment for the movement and full functioning of the life of persons with disabilities in Ukraine lead to the fact that such people are discriminated against in society. Therefore, the purpose of this paper is to investigate the right to social protection of persons with disabilities in the context of compliance with international standards. Based on the monitoring study, available rehabilitation programmes, theoretical material, legislative analysis, and reports of international organisations, the authors came to relevant conclusions and made recommendations for the authorities, namely relevant ministries. The study discovered that the attitude towards people with disabilities is being transformed in the world, and their rights to a full-fledged, high-quality, non-discriminatory life in society are being consolidated. The need to reform national legislation and bring it in line with international standards was confirmed. It is proved that the main standards relate to the accessibility and adequacy of the right to social protection. The main elements of accessibility and adequacy of the right to social protection are highlighted. Key international regulations in the field of protection of the rights of persons with disabilities are analysed. The study investigated the term “discrimination for persons with disabilities”. It was established that the integration of persons with disabilities is possible if the problems with focusing attention on the category of persons with disabilities due to war are thoroughly studied. The practical value of this paper is to provide recommendations for relevant ministries, considering the monitoring study conducted by the authors in 2019-2020, which will contribute to improving the right to social protection as such

Keywords: international standards, human rights, social security, social standards, elements of accessibility, elements of adequacy, armed conflict

Introduction

At the present stage, social protection in Ukraine is a priority for the country. This is primarily conditioned upon the forced internal displacement of persons from the east of Ukraine, which is the largest in Europe and the first large-scale displacement in the entire history of Ukraine. Due to the armed conflict in the Donbas, the percentage of people receiving disabilities is increasing. These factors are also influenced by the psychological state of people in connection with the eight-year armed conflict, and the proximity of territories to military operations in eastern Ukraine. Most people living on the contact line are injured. Most frequently, people who are injured, receive disabilities as a result. The problem of armed conflict in the country adversely affects the statistics of people with disabilities. In this connection, the problem of their social protection is particularly relevant.

In recent years, the work of a considerable number of Ukrainian researchers has been devoted to the investigation of the subject of legal protection of persons with disabilities

and international standards in this matter. Thus, Doctor of Law V.L. Kostiuk noted that persons with disabilities require adequate support from society and the state, and accordingly they need to be provided with proper social protection on an equal basis with other members of society [1]. At the same time, the author justified the need for the development of an inclusive society, “the development and approval of a system of international social standards on the rights of persons with disabilities (considering the provisions of the UN Convention on the Rights of Persons with Disabilities [2]. It is worth agreeing with the candidate of legal sciences V.P. Melnik [3], who notes the need for international legal regulation of social protection of persons with disabilities in the field of rehabilitation and labour. This issue is particularly relevant today, especially during the period of economic instability of the country, which is in a state of armed conflict in the Donbas.

In his dissertation research, S.M. Prylypko [4] first developed new conceptual approaches to outlining the scope

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and defining the subject of social security law; the concept and content of social security law. At present, the issue of increasing guarantees for the implementation of the right to social security, which is discussed in the scientist's study, remains relevant. For their part, researchers Yu.O. Voloshyn, O.V. Martseliak and A.O. Yanchuk [5] conclude that the introduction of the Commissioner for Healthcare in Ukraine will allow identifying certain legislative gaps in national legislation and supervising the elimination of these issues. In particular, researchers draw attention to the special role of the Ombudsman as the main figure in guaranteeing human rights in the context of medical reform. Finally, L.M. Sinova notes that the activity of social protection of the entire population is a mandatory component of any modern state [6]. Furthermore, the author concludes that the issues of strengthening social protection of both elderly and disabled citizens are crucial in modern conditions of implementing a strategic course for building a socially oriented market economy and integrating into the global economic and legal space. Accordingly, the authors of this paper join this conclusion, since the majority of persons who have received a disability are unemployed or elderly people in particular.

The issue of social protection of persons with disabilities should be considered in accordance with international standards for the protection of human rights. Nowadays, there are already developments of researchers, lawyers, and practitioners, which are indicated above and are relevant for scientific research [7; 8]. The imperfection of domestic legislation, insufficient financial resources in the country, as well as the duration of the armed conflict in the Donbas determine the necessity of harmonising the national legislation with international standards, considering international practices in dealing with such issues. One of the essential tasks is to develop an efficient model of adaptation of persons with disabilities in the conditions of Ukrainian society.

The purpose of this paper is to analyse the right to social protection of persons with disabilities, factoring in the international standards.

Materials and Methods

The study is based on the results of monitoring the right to social protection of civilians who have received disabilities as a result of military operations on the territory of the ATO/JFO [9], investigating scientific publications on related topics. The study was conducted based on an analysis of Ukrainian and international law. To achieve the scientific objectivity of the research results, a complex of general scientific and special methods of cognition of legal phenomena was applied. The main one is the general scientific dialectical method, which allowed determining the essence of the right to social protection of persons with disabilities according to international standards. During the analysis of theoretical works, categories, and techniques of formal logic (concepts, definitions, judgments, analysis, synthesis, analogy, comparison, generalisation, etc.) were used. One of the leading methods is the structural and system analysis, which allows shedding the light on the right to social protection of persons with disabilities, ensuring the right to rehabilitation. This method helps justify the need to bring the Ukrainian legislation in the field of social protection of persons with disabilities into accordance with international standards. Dogmatic analysis of the legislation of Ukraine, the right to social protection of persons with disabilities, regulations contributed to the

identification of their shortcomings and the development of proposals to the corresponding ministries of Ukraine to improve legal norms according to international standards. The method of analogies allowed discovering ways to improve the right to social protection of persons with disabilities. A systematic analysis suggested that it is worth focusing on guaranteeing the rights and freedoms of persons with disabilities without discrimination.

Using structural-functional and formal-legal research methods, the study analysed the Ukrainian legislation and international standards in the field of social protection of persons with disabilities. Furthermore, upon processing the theoretical framework of this study in the form of scientific papers of Ukrainian and foreign researchers, methods of analysis, synthesis and generalisation were applied. Other methods of scientific research were also employed to identify gaps and other shortcomings in the current legislation of Ukraine and provide proposals to the relevant ministries of Ukraine on its improvement. These methods were used comprehensively.

Results and Discussion

Universal characteristics of the right of persons with disabilities: Ukrainian and European contexts

The protection of the rights of persons with disabilities is highlighted in international instruments, such as the Declaration on the Rights of Persons with Disabilities of December 9, 1975 [10], UN Standard Rules on the Equalization of Opportunities for People with Disabilities of December 20, 1993 [11] and several other acts. Article 22 of the Universal Declaration of Human Rights specifies every person as a member of society [12] as having “the right to social security and to exercise the rights necessary for its dignity and for the free development of its individual in the economic, social, and cultural spheres through the domestic resources of countries and international cooperation”.

Just like in the advanced countries of the European Union, Ukraine pays a lot of attention to the social protection of the rights of persons with disabilities. This is a national priority for the country, as indicated in the Ministry of Social Policy of Ukraine. According to statistics from the official website of the Ministry of Social Policy, at the end of the 20th century, the total number of people with disabilities was 3% of the total population of the country, today – about 6% of residents of Ukraine [13]. The statistics are impressive, especially notable is the improvement of material support for persons with disabilities, maintaining the psychological state of such persons, and access to appropriate services. Many problematic issues arise precisely with access to the appropriate range of services, such as access to state authorities in the frontline territories of eastern Ukraine, the arrangement of ramps for enterprises, organisations, and institutions that provide services for people with disabilities.

To create an equal environment for people with disabilities in society, it is necessary to take appropriate actions to implement the national policy [14]. At this stage, the protection of persons with disabilities in Ukraine is quite low, and further integration of such persons is impossible without a thorough study of the problems, monitoring the system of social services and providing recommendations to state bodies to improve the situation with the protection of the rights of these persons. Within the Council of Europe, there is a special committee of experts on the rights of persons with disabilities, which provides recommendations and support to some other

Council of Europe bodies and Member States. To date, the Special Committee has been tasked with preparing the Council of Europe's Disability Strategy for 2017-2023 [15, p. 157-158].

Ukrainian legislation raises issues of social protection of persons with disabilities, considering international social standards. International law has a considerable impact on the establishment and development of national law norms, imposing on states the performance of obligations undertaken by them when signing various international legal treaties (previously they were obliged by the 1989 CSCE Vienna Document [16]). Therefore, understanding the functional role of the principles of conscientious compliance with international treaties and sovereign equality of states legally justifies the influence of international law on domestic law, notes N.V. Proniuk [8]. V.P. Melnik emphasises that according to the provisions of the Constitution of Ukraine [17], international treaties form part of the legislation of Ukraine. These international treaties are to be performed and have pre-emptive legal force [3]. In this context, the authors of this paper would like to focus the attention of readers on the studies of researchers Yu.O. Voloshyn, O.V. Martseliak, A.O. Yanchuk, who note that "the trend of constitutional and legal development of the modern Ukrainian state is the further process of recognising international standards in the field of human rights, improving national legislation in this area" [5]. The authors of this paper believe that the above is absolutely the right way to develop in the current situation in Ukraine, which is in a state of war and requires compliance with international standards on the rights of persons with disabilities, protection of human rights in armed conflict. Notably, Yu.O. Voloshin [18] draws attention to regional security as a component in international security within a certain part of the world, region, or continent. The researcher points out that regional security refers to the state of relations within and between socio-territorial communities of a certain region, wherein all its states and peoples, public institutions and groups are protected from their vital interests. This statement is relevant in the context of the security of a part of the territory of Ukraine that is currently temporarily beyond the control of the Government of Ukraine.

Modern international law fully regulates the rights of persons with disabilities. International UN documents recognise the right to social security and prescribe it in Article 9 of the International Covenant on Economic, Social, and Cultural Rights [19], which states as follows: "Member States to this covenant [19] recognise the right of everyone to social security, including social insurance". The UN Convention on the Rights of Persons with Disabilities [2] has expanded this rule. Persons with disabilities include persons with persistent physical, psychological, intellectual, or sensory disabilities. Attention is drawn to the fact that in ordinary society these persons may be discriminated against, and this affects their full and effective involvement in the life of society, comparing to other persons [15, p. 156-157]. The right to social protection for persons with disabilities is contained in the convention [2, Article 28]. In particular, Article 11 of the Convention refers to the right to an adequate standard of living [2] and Article 28 of the Convention [2]; the right to the most attainable level of physical and mental health in Article 12 of the Convention [2]; the right to an independent lifestyle and involvement in the local community in Article 19 of the Convention [2]; Prohibition of discrimination based on disability in Article 5 of the Convention [2]; the right to

rehabilitation in Article 26 of the Convention [2].

The state is obliged to take measures to provide persons with disabilities, namely persons with disabilities acquired as a result of armed conflict, with the possibility of independence, as well as any opportunities for social life, professional development, retraining if necessary and all other aspects of a full life without discrimination. This purpose is contained in the Preamble of the Convention [2], as well as in the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights of the Committee on Economic, Social, and Cultural Rights [19], the UN Standard Rules for the Equalization of Opportunities for Persons with Disabilities [11]. Apart from these international documents, this purpose to avoid discrimination against persons with disabilities is contained in the report of the UN Special Rapporteur on the rights of persons with disabilities Catalina Devandas Aguilar [20]. Catalina draws attention to the impact of the Convention on the Rights of People with Disabilities [2]. The report highlights the importance of listening to people living with disabilities and what United Nations agencies can do to support their further empowerment [20]. According to the official UN website, people with disabilities make up 15% of the world's population, which is 1.2 billion people with disabilities [21]. UN High Commissioner for Human Rights Michelle Bachelet emphasises the importance of "the principles and provisions of the Convention on the Rights of Persons with Disabilities [2], which help all of humanity by helping us in the fight against isolation and segregation" [21].

The fundamental standards of the right to social protection of persons with disabilities

In the context of the issue of adapting the right to social security for persons with disabilities, it is necessary to refer to the best practices of Ukrainian researchers. In particular, V.P. Melnik notes that the social protection system should ensure the adaptation of persons with disabilities in society, their quality of life [3]. V.L. Kostiuk emphasises that "international social standards are closely related to fundamental social human rights" [1]. S.M. Prylypko notes that social security is "one of the fundamental rights of citizens, it is guaranteed by the corresponding legal forms, the introduction of which should ensure a standard of living not lower than the subsistence minimum" [4]. This is something to be agreed upon, especially regarding the fundamental nature of the right to social security. Finally, in 2019-2020, the Helsinki Foundation for Human Rights of Poland conducted a monitoring study where the authors refer to the main standards concerning the accessibility and adequacy of the right to social protection. The authors determine that the accessibility and adequacy of the right to social protection constitute fundamental elements of the right to social protection [9]. It is through the lens of these two mentioned elements – accessibility and adequacy – that the right to social protection of persons with disabilities is evaluated [9]. According to the above, the accessibility of the right to social protection includes the following elements:

- conditions entitling to benefits. Conditions should be reasonable, commensurate, and transparent. It is necessary to develop simplified procedures, for example, disability due to injuries for civilians with disabilities, received as a result of the armed conflict in eastern Ukraine. It is necessary to think through mechanisms for protecting persons with disabilities in the territory that nowadays, according to the current legislation,

is not controlled by the government of Ukraine. Provide support from the state for access to social benefits to such persons;

- persons with disabilities should have access to information about the procedures for applying for participation. For most people with disabilities, information is either inaccessible or incomprehensible to the average citizen. Therefore, in this case, a person with a disability does not have sufficient material resources to contact lawyers, advocates for protection of their rights and explanation of procedures to get correct reliable information regarding the procedure for applying for the relevant legislatively established benefits. A separate category that was noticed during the study is residents of the contact line and the frontline territories of eastern Ukraine. It is worth focusing on access to information, namely for people with disabilities who live in frontline zones, on the contact line, and who do not always have access to internet resources and receive information from local state authorities (military-civil administrations of Donetsk and Luhansk Oblasts);

- social security programmes should be available to people with disabilities, as far as cost is concerned. Costs, both direct and indirect, cannot jeopardise the exercise of the rights of such persons;

- state social support should be paid on time, and beneficiaries should have physical access to social security services to receive benefits and information. As noted above, especially those persons with disabilities resulting from the armed conflict in the Donbas and those who live on the contact line, in the frontline zone of Donetsk and Luhansk Oblasts, deserve attention. The issue concerns access to such special state bodies that provide social support, the Department of Social Protection of the military-civil administration of the eastern regions of Ukraine;

- a separate category should include migrants who are persons with disabilities, and provide comprehensive support from the state, especially for children with disabilities, namely, studying in schools, universities, and other educational institutions;

- beneficiaries of social security programmes should be given the opportunity to take part in the management of social programmes, namely they should be involved in the development, implementation, and monitoring of programmes of organisations that protect the rights of persons with disabilities. Special attention should be paid to the permanent advisory forms of work with the beneficiaries of these programmes.

Informing about the rights of persons with disabilities and implementing their rights is the main task of the state. In particular, state bodies should provide recommendations on the development and implementation of programmes aimed at understanding people with disabilities their rights and opportunities, expanding the scope of information measures in the field of implementing the rights of such persons.

Apart from the concept of accessibility, this paper analysed the concept of adequacy of the right to social protection as a necessary element. Therefore, adequacy should include, first of all, adequate support, which, in terms of the size and duration of reception by a person with a disability, could meet all the basic needs of a person [9]. This adequate support should be such that every person with a disability can fully exercise their right to an adequate standard of living, access to medical services and rehabilitation (if necessary). Adequate social support should be such that persons can provide

themselves and their family with a minimum standard of living. Secondly, adequate social support should cover any additional expenses of persons with disabilities, as well as those who are engaged in them. Additional expenses include rehabilitation equipment, vehicles, auxiliary devices, or other possible technologies for the life of people with disabilities. To meet basic human needs, it is necessary to ensure access to services at the home level at the community level involving additional personnel of social services, patronage services, and other latest technologies of modern life (using the example of leading European countries). A person with a disability needs to be in an adequate psychological state and feel part of society and take part independently in the life of society. In this context, it is advisable to refer to the opinion of international experts in this area. In particular, the authors of this paper believe that the report of the UN Special Rapporteur on the protection of the rights of persons with disabilities Catalina Devandas Aguilar states the main thing: people with disabilities do not have basic access to medical care: “in some places, people with disabilities cannot even access medical centres. Admittedly, barriers are not just physical. Misconceptions about people with disabilities are an important issue, and this affects their interaction with healthcare systems” [2]. Accordingly, the right to social support should also be implemented without discrimination. In the monitoring study of the right to social protection of civilians with disabilities obtained as a result of the military conflict in the Donbas [9], the authors identified that:

- 1) “discrimination based on disability” includes any exclusion, restriction or preference, or refusal to create reasonable conditions based on disability; disability may complicate the exercise economic, social, or cultural rights;

- 2) Member States should also eliminate discrimination at the level of the law”.

Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms [22], which refers to “the enjoyment of the rights and freedoms recognised in the Convention [22], the right must be secured without discrimination on any grounds”. The concept of discrimination includes cases where a person or group, without proper justification, is treated worse than another, even if the convention [22] does not require a more favourable attitude.

On February 9, 2006, the Law of Ukraine No. 3435-V was signed, which ratified two protocols to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms – Protocol No. 12 and Protocol No. 14 [23]. Article 14 of the Convention [22], like Article 1 of Protocol No. 12 [24], contains an indicative list of grounds for which discrimination can occur. Protocol No. 12 to the Convention [24] establishes a general prohibition of any discrimination. This applies not only to the rights defined in the Convention [22]. Protocol No. 14 to the Convention [25] changes the Convention’s control system [25], makes provision for the reform of the Convention’s control mechanism [25] by improving the efficiency of the functioning of the European Court of Human Rights.

According to the fundamental principles of the UN Convention on the Rights of Persons with Disabilities [2], there is also non-discrimination, and therefore one should focus on guaranteeing the rights and freedoms of persons with disabilities without discrimination. “Changing attitudes towards people with disabilities should be a priority”, – Ms. Catalina [20], the UN Special Rapporteur on the rights of persons with disabilities, said in the report.

Regarding the issue of eliminating discrimination against persons with disabilities, M.V. Kravchenko noted that the modern system of social protection of persons with disabilities in the country covers not only state social support, a system of benefits and compensations, but also includes healthcare, as well as social and professional rehabilitation and social integration into society [7], which the authors of this paper consider correct due to a necessity of increasing funding for social support to persons with disabilities and rehabilitation opportunities at the expense of public funds. Since the armed conflict continues in Ukraine, it is also worth considering the category of civilians with disabilities as a result of the armed conflict in the eastern Ukraine. "Victims of war are also subject to international protection if one of the warring states does not recognise a state of war" [26]. Regardless of the official state in the country, the Anti-Terrorist Operation (ATO), the Joint Forces Operation (JFO) or the declared war, people must be protected upon declaring any state in the country.

Thus, it can be concluded that the full life of people in society requires full protection of the state according to the international standards, support for persons with disabilities not only financially, compensation and benefits according to the legislation of Ukraine. Notably, any person, and especially a person with a disability, requires socialisation, providing comprehensive support from the state to adapt such people.

Conclusions

Thus, this study addressed the need to improve the national legislation of Ukraine on the protection of the rights of persons

with disabilities according to the international standards. It was found out that the effectiveness of international partners' assistance in ensuring the right to social security for persons with disabilities in Ukraine depends on the proper regulatory framework, on the level of state activity to implement initiatives for international partners. The study confirmed the necessity of long-term decisions of Ukraine to protect the right to social security for persons with disabilities, and appropriate funding for solving complex issues of this category of persons. Accordingly, it was concluded that the recognition of international human rights standards contributes to improving the effectiveness of ensuring human rights and freedoms, namely the rights of persons with disabilities. Furthermore, it was revealed that the problem of building a modern system of rehabilitation of such persons and financing with all the necessary resources to ensure the full and high-quality functioning of the life of these persons is relevant for social security of persons with disabilities. It is noted that the requirement of persons with disabilities to adapt today is rather acute and requires immediate resolution at the legislative level. It is proposed to draw on the practices of leading European countries and reform Ukrainian legislation according to the international standards. The following recommendations are given to public authorities:

- to conduct regular monitoring of the availability and efficiency of existing programmes for persons with disabilities;
- to develop an assessment of social services, its development based on modern latest technologies;
- to coordinate the system of social protection of persons with disabilities, promote the sequence of introduction of rehabilitation programmes for these persons.

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Право на соціальний захист осіб з інвалідністю за міжнародними стандартами

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Анотація. Актуальність обраної теми дослідження визначається соціально-економічним станом країни і тривалим збройним конфліктом на Донбасі зокрема, внаслідок якого тисячі людей отримали поранення та інвалідність. Недостатність фінансування системи охорони здоров'я, відсутність програм із реабілітації осіб з інвалідністю, незабезпеченість житлом і відповідним обладнанням для переміщення та повноцінного функціонування життя осіб з інвалідністю в Україні призводять до того, що такі люди зазнають дискримінації у суспільстві. Відтак метою наукової статті є дослідження права на соціальний захист осіб з інвалідністю в контексті дотримання міжнародних стандартів. На основі проведеного моніторингового дослідження, наявних програм реабілітації, теоретичного матеріалу, законодавчого аналізу, звітів міжнародних організацій автори дійшли відповідних висновків і надали рекомендації для органів влади, зокрема профільних Міністерств. З'ясовано, що у світі трансформується ставлення до людей з інвалідністю, закріплюються їхні права на повноцінне, якісне, без дискримінації, життя в суспільстві. Підтверджено необхідність реформування національного законодавства і приведення його у відповідність до міжнародних стандартів. Обґрунтовано, що основні стандарти стосуються доступності та адекватності права на соціальний захист. Виділено основні елементи доступності та адекватності права на соціальний захист. Проаналізовано ключові міжнародні нормативно-правові акти у сфері захисту прав осіб з інвалідністю. Досліджено поняття «дискримінації для осіб з інвалідністю». З'ясовано, що інтеграція осіб з інвалідністю можлива за умови досконалого вивчення проблем з фокусом уваги до категорії осіб з інвалідністю внаслідок війни. Практична цінність наукової роботи полягає в наданні рекомендацій для профільних Міністерств з урахуванням проведеного моніторингового дослідження авторами у 2019–2020 роках, що сприятиме вдосконаленню права на соціальний захист як такого

Ключові слова: міжнародні стандарти, права людини, соціальне забезпечення, соціальні стандарти, елементи доступності, елементи адекватності, збройний конфлікт