

ESTABLISHMENT OF STATE POLICY ON ENSURING THE RIGHTS AND FREEDOMS OF PERSONS WITH DISABILITIES: HISTORICAL AND LEGAL REVIEW

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Abstract. *The article is devoted to the study of the problems of state policy on ensuring the rights and freedoms of persons with disabilities in the context of historical and legal review. The relevance of the study lies in the expediency of studying the historical and legal origins of the formation of national legislation on the protection of the rights of persons with disabilities in modern Ukraine. For the purpose of complex theoretical study, the monuments of legal thought of the X-XX centuries are taken into consideration. The purpose of the article is to study the historical retrospective of the formation of modern state policy on the protection of the rights and freedoms of persons with disabilities and to describe the main trends in this area during certain periods of Ukrainian statehood. The study presents some historical stages, within which the issue of care for people with disabilities from the state and society is acute and accordingly develops the legislative aspect of regulating these processes as a result of strengthening the role of the state in them. In addition, the formation of state policy on persons with disabilities was influenced by external factors, namely the social system and legislation of those countries that included the ethnic lands of Ukraine. The scientific and practical value of the article lies in the ability to trace the preconditions for the formation of fundamental provisions for the protection of the rights of persons with disabilities and their evolution depending on the transformation of global legal trends.*

Key words: *persons with disabilities, persons with disabilities, social policy, state support, historical and legal review.*

JEL Classification: I14, I18, K36, Z18

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Introduction. For a long time, it was believed that restrictions on the exercise of the rights and freedoms of persons with disabilities are closely linked to their physical disabilities and mental disorders and, in fact, are their inevitable consequence. It is now recognized that the adverse factors they face, and the fact that they are often left out of their normal way of life, are not caused by their individual shortcomings, but rather by society's response to their shortcomings. State legislation and social policy are part of this response. Disability issues are increasingly seen as human rights issues. The basic idea of human rights law, based on the concept of respect for human dignity, is that all people have equal rights, especially the right to a full and dignified life. This reflects a simple and at the same time extremely important notion that each individual is a human being. With regard to individual rights, states have a duty to protect, respect and implement human rights. This reassessment involves significant changes in international law and national law. The UN Convention on the Rights of Persons with Disabilities, adopted in December 2006, reflects these changes. It is now widely recognized that the rights of people with disabilities need to be protected and promoted through general, as well as specially designed laws, measures and programs. Our study demonstrates current issues of development of legislative support for the rights and legitimate interests of persons with disabilities in Ukraine on the basis of historical and legal review.

Literature review. The issue of protection of the rights of persons with disabilities was considered by Ukrainian researchers such as T.O. Likhina, R.O. Pavlyukov, V.S. Tarasenko, O.Yu. Шинкарьова, M.B. Chichkan and others.

Aims. The aim of the article is a historical retrospective of the formation of national legislation on the protection of the rights and freedoms of persons with disabilities and its periodization in modern Ukraine during the X-XX centuries.

Methods. The author used the methods of historical and legal study, logical comparison, systematization and generalization, which made it possible to achieve the goal of the study.

Results. Considering the historical experience of formation and development of social policy of any state, it should be noted that its main aspect is the social protection of the population, its most vulnerable groups and categories depending on specific socio-economic circumstances, the level of society and the state. Today, scientists, politicians, and high-ranking officials are increasingly discussing the problems of social protection that have arisen against the background of the economic crisis and demographic processes and are accompanied by an increase in the proportion of older people, a decrease in the number of able-bodied people. Solving these problems. With this in mind, it is important to consider the history of the development of social protection in Ukraine in close connection with the socio-economic and cultural environment.

Over the years, the state social policy on persons with disabilities has gone through several stages of its formation. The precondition for the formation of legislation on the protection of the rights and freedoms of persons with disabilities is primarily the actual need to recognize persons with disabilities as a socially vulnerable category of the population and, accordingly, its consolidation by the state. It should be noted that the attitude to people with disabilities during the historical development has changed polarly, and their provision and protection by the state and society depended on this direction [3].

Therefore, the formation of legislative support for the rights of persons with disabilities in Ukraine can be divided into several periods.

In the ancient world, the attitude towards people with disabilities was biased, primarily because of their social isolation, their inability to fully participate in public and political life. However, among the population there was a dual position on people with disabilities: some believed that their disease was of demonic origin, others believed that God gave a gift to a person with disabilities and he has a high purpose while on Earth [3, p. 19].

Attitudes towards persons with disabilities at the initial stage of statehood were negative, and as for financial assistance, only one category of persons could claim maintenance from the state - soldiers who were injured as a result of hostilities [4].

However, it should be noted that the financial support and support of people with disabilities relied entirely on their families. A person with a physical disability was also restricted in terms of property rights. According to Article 4 of the Saxon Mirror as a source of law in the first half of the thirteenth century, it is stated that

freaks and dwarfs do not inherit, as do crippled children. The heirs and their closest relatives must take care of them [7, p. 205].

Thus, the status of a person with a disability at the beginning of the formation of the state reflected the then negative attitude of society to this category of persons, in which the task of recognizing their rights and freedoms was not declared by the state at all.

Significant influence on the formation of legislative consolidation of assistance to the needy was due to the adoption of Christianity. Thus, the formation of the basic postulates of morality in Russia resulted in the creation of the first charitable institutions to support orphans, cripples and beggars on the basis of churches. In fact, it was the churches that mediated the prince's will to care for and provide the necessary "beggars, the lame, the blind and the sick." The first normative reinforcements of such social policy of the prince found their expression, in particular, in the Statute of Vladimir in 996, in which he delegated authority to the clergy and church institutions to care for and supervise hospitals, baths, shelters for singles, and established a "tithe" for charities. [3, p. 8].

Some scholars believe that the first major Slavic document, which enshrined the principles of social policy in Russia was the "Russian Truth" of Prince Yaroslav [10].

It should be noted that at the first stage the social protection of the rights of persons with disabilities was mostly charitable in nature, rather than the established state policy. During this period, the system of church and charitable institutions that provided assistance to people with disabilities is actively expanding. However, the financial support of such persons still relies on the family and relatives of persons with disabilities.

By the end of the XVI century. In Russia, three main areas of charity and social assistance to the needy have historically developed and developed: state, zemstvo-church-parish, and private (personal). Throughout the next socio-historical period, until 1917, charity and care in the Russian Empire developed within these three main areas, changing only the forms and methods of providing assistance to the needy depending on the specific socio-economic conditions and features of socio-economic development states.

With the transition of Ukrainian territories to the Russian Empire in the seventeenth - eighteenth centuries. a new stage of state policy on the protection of the rights of persons with disabilities begins, which is characterized by the formation of more favorable living conditions for this category of persons. During this stage, the charity did not lose its position, but the formation of state support for the disabled began, which led to the adoption of regulations that enshrined the rights of these persons.

In n law of the seventeenth century. in a number of legislative acts certain features of the legal status of the persons who on a state of health and other signs were not able to be on "state service" are fixed.

Thus, Articles 17–18 of Section 7 of the Soborny Ulozhenie of 1649 regulate in sufficient detail the procedure for retirement of servicemen in old age, due to injury or illness [11, p. 276].

Similar provisions are also contained in the "Military Article" of 1715 in Chapter 9, which regulated the procedure for dismissal due to illness or injury [2, p. 340].

Before the reign of Peter I, social activity in Russia actually existed in the form of assistance to the needy by individuals and the church. Due to the meager wealth, homogeneity and underdevelopment of the needs of the people of that time, the forms of assistance to the needy were simple. The system of state protection of persons with disabilities was widely developed during the reign of Peter I, who first recognized the duty of the state to care for the sick, crippled and other categories of the needy. The issue of state care for persons with disabilities is reflected directly in the legislative enshrinement in the relevant decrees of Peter I.

For example, the Decree of 1712 required the organization of a network of hospitals "for the crippled themselves" in all provinces. And in 1720, Peter I issued an order to place former soldiers with injuries and illnesses in monasteries and almshouses to stay and care for them, providing them with lifelong maintenance on "garrison salaries". The decree of 1724 ordered to conduct a census within the empire of all beggars, orphans, the sick and the crippled, "who can not feed themselves with work" [3, p. 21].

Significant additions to this system were made during the reign of Catherine II. In 1763, with her participation, the first orphanage in Russia was opened, a specialized institution for the care and upbringing of children. Special state guardianship bodies (Orders) were established in each of the Russian provinces. They were tasked with performing a wide range of tasks - caring for public education, providing medical care, charity, moral education and overcoming defects. They were engaged in the arrangement of public schools, orphanages, hospitals, shelters for the terminally ill, almshouses, nursing homes, cared for the unemployed.

Under Catherine II, for the first time, specialized types of charitable institutions were created, which practically did not exist before the establishment of orders. Before, hospitals often served as almshouses, and homes for the terminally ill, and hospitals at the same time. And only in the last quarter of the XVIII century in our country the so-called pure types of charitable institutions were formed: orphanages and orphanages, almshouses and homes for the terminally ill, hospitals; working, noisy and crazy houses.

At the beginning of the twentieth century, a new milestone in the formation of state social policy for the protection of persons with disabilities begins. The formation of a state of the USSR, ideologically, politically, culturally different, necessitated an active search for ways to solve problems, which could contribute to the harmonious inclusion of the disabled in public space.

We will note that in the USSR the paternalistic social policy in exchange for loyalty of citizens was carried out. In modern economically developed countries, the government allocates significant funds for social needs in order to gain the support of the population. In the conditions of the industrial revolution, which marked the beginning of capitalism and marked the transition to new forms of labor, social assistance is based mainly on the principles of public care of a philanthropic nature.

By 1917, there were thousands of public and private charities in Russia. Not everywhere did these institutions function equally well. But the system worked, in these houses, shelters, hospitals and chapels, poor people found help, a piece of bread, a roof over their heads, a good attitude.

The further historical fate of the social protection of the rights of persons with disabilities was connected with the socialist revolution and marked by the adoption of provisions on the provision of persons with disabilities. Adopted in October 1918, the provision on social security for workers provided for the provision of state assistance to persons in the event of permanent loss of livelihood due to incapacity for work. Thus, since the early 1920's. social security for people with disabilities depends on the extent to which they have lost their ability to work, and the meaning of the term "disabled person" has been associated with disability.

Gradually, a certain level of guarantees was introduced and formed in this area, which led to the beginning of a new stage in ensuring the rights of persons with disabilities, when their rights were recognized as fundamental, enshrined in the constitution, and their protection became the responsibility of the state.

For the first time, the Constitution of the Union of Soviet Socialist Republics of 1936 in Article 120 enshrined the right of citizens of the USSR to material security in case of illness and disability [5, p. 360]. Subsequently, in 1937, such a rule was enshrined in the Constitution of the Ukrainian Soviet Socialist Republic [6, p. 379].

It should be noted that the period of the twentieth century. established itself in history as a period of great upheaval due to wars, revolutions and certain crises. In particular, all this has left its mark on ensuring the rights of people with disabilities.

Let us emphasize the period of the Great Patriotic War, when the provision of the disabled did not correspond to a sufficient level of the welfare state. As an objective result of the hostilities, poverty, hunger, high mortality and low living standards prevailed in the country, which failed to properly address the legal issues related to the realization and protection of the rights of persons with disabilities.

In addition, in 1918 the Ukrainian Red Cross Society was organized in Kyiv, which played a significant role in organizing assistance to refugees, the disabled, orphans, prisoners of war, as well as creating hospitals, food centers, and providing health education [1]. .

In turn, the Second World War significantly changed the vector of society's attitude and as a consequence of the state to protect the rights of persons with disabilities. International law in this area is actively developing, first of all, progressive provisions on the rehabilitation of persons with disabilities are being implemented. In 1950, the Geneva Conference was held with the participation of the UN Secretariat, the ILO, WHO, UNESCO, the International Organization for Refugees and UNICEF. It was dedicated to the coordination of specialized institutions in the field of rehabilitation of people with special needs and the establishment of international standards in the field of treatment, education and employment, which marked the beginning of an active exchange of experience between states in the field of rehabilitation [9].

Discussion. The analysis gives grounds to note that there are ongoing attempts to consolidate the institution of lobbying in the current legislation of Ukraine. At the same time, the mechanisms of legislative regulation differ, some lawyers propose to register lobbyists in special registers, others suggest registering them only in the Verkhovna Rada of Ukraine.

Conclusions. Summarizing the above, we can identify as a result of our study some historical stages, within which the issue of care for people with disabilities from the state and society is acute and accordingly develops the legislative aspect of regulating these processes as a result of strengthening the role of the state. Accordingly, the first stage is characterized by the lack of an active role of the state in protecting the rights of persons with disabilities, and the family is fully responsible for care. Further spread of Christianity led to increased assistance from the church and charities. The spread of charity in modern Ukraine is becoming one of the fundamental areas in the care of people with disabilities, which is already supported by financial support from the state. With the development of state law, first of all, we mean the constitutional enshrinement of the rights of persons with disabilities, we emphasize the recognition and protection of the rights and freedoms of this category of persons as a mandatory element of social policy. Guaranteeing rights, as well as regulating these aspects in the framework of state policy, financial and moral support is necessary for people with disabilities who could feel like full members of society and fully exercise their rights and freedoms.

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