

REVIEW ARTICLE

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PROTECTION OF THE RIGHTS OF PERSONS WITH DISABILITIES TO WORK: KAZAKHSTAN'S EXPERIENCE FROM THE PERSPECTIVE OF INTERNATIONAL LAW AND EU LAW

***Abstract:** In spite of the ratification of Convention on the Rights of Persons with Disabilities, by the majority of States, this human category still faces various challenges. The gap between the declarative nature of the equal rights of the persons with disabilities and the practical implementation of the concept of equality is especially evident in the field of access to employment. Although the majority of countries, including Kazakhstan, have transposed the ideas of equal treatment of the persons with disabilities into national legislation, the situation remains unsatisfactory, and one can ask: why? This is especially relevant in labor area and connected to the insufficient governmental supervision of how legal principles are enforced by private actors in the workplace. Specific national effective enforcement mechanisms and remedies are needed, hand-in-hand with international supervision, to minimize the discrepancy between what the countries have committed to and how they comply with the obligations to safeguard the rights of the persons with disabilities. Kazakhstan needs to complement its commitment to these rights with a national action plan.*

Key words: right to work of the persons with disabilities, inclusive education, law as practice, declarative nature of human rights law, international conventions, local legislation.

1. INTRODUCTION

All countries have persons with disabilities. According to World Health Organization (WHO) statistic, 1.3 billion people – or 16% of the global population – experience a significant disability today.¹ Yet the re-

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1 World Health Organization, 2022, *Disability and Health*, (<https://www.who.int/ru/news-room/fact-sheets/detail/disability-and-health>, 12. 04. 2023).

sponses to this group can be analyzed from multiple perspectives. First, there is the question of recognizing persons with disabilities as a distinct vulnerable group in need of enhanced protection. This is a matter influenced by culture and beliefs and may exhibit cultural relativism. Secondly, independently from social and cultural relativism, contemporary human rights law has articulated several significant principles safeguarding the rights of persons with disabilities.² For instance, freedom from discrimination and the general idea of equality is mentioned in Articles 1 and 62 of UN Charter. They can be found in key instruments, and countries are expected to transpose the idea of equality and freedom from discrimination into their national legislation. For example, the Convention on the Rights of Persons with Disabilities (CRPD) imposes specific obligations for contracting countries.³ And third, building on the freedom from discrimination, there are specific entitlements which have been developed in regard to the persons with disabilities in order to enhance their participation in the society. Here, the capability to enter workforce despite hindrances from disabilities, stands out as a measure with real, positive and effective consequences for this vulnerable group. As such, it is mentioned in the International Covenant on Economic, Social and Cultural Rights (Arts. 6 and 7), and the CRPD (Art. 27). These matters will be the focus of this article, whereby the EU approaches from the most general matters raised toward specific normative regulation will be compared to the situation in Kazakhstan. According to data from 2022, among the population of 19 million in Kazakhstan, there are 700,000 individuals with disabilities.⁴ In the background of this inquiry lies the question how certain human rights ideas and principles develop – whether they exhibit direct transposition from global domain into national spheres, and to what extent specific human rights entitlements to social benefits are unaffected by time and place. The article elaborates on these matters in its conclusion. The methodological approach follows another threefold division into commitment and compliance of human rights obligations.⁵ Specifically,

2 US Department of State, 2021, Country Reports on Human Rights Practices: Kazakhstan, (<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/kazakhstan/#:~:text=Significant%20human%20rights%20issues%20included,of%20family%20members%20for%20offenses,12.04.2023>).

3 Art. 4. of the UN Convention on the Rights of Persons with Disabilities, 2006.

4 Temirgaliyeva, A., 2022, *Number of Disabled People Increasing in Kazakhstan*, Inform Buro Kazakhstan, (https://www.inform.kz/en/number-of-disabled-people-increasing-in-kazakhstan_a3951479,12.04.2023).

5 Sano, H. O., 2013, Human Rights and Development: Human Rights Principles and Their Indicators, *Nordic Journal of Human Rights*, Vol. 31, No. 3, pp. 381–401.

the article looks at the degree to which the situation in Kazakhstan, related to the protection of rights of persons with disabilities to work, differs or approaches the comparable aspects in the EU. The EU countries were chosen for comparative analysis as representing a region with a long-term and highly-developed system of human rights policy.

The phenomena of labor rights of persons with disabilities have been researched by numerous scholars around the globe.⁶ The authors focused on the various issues of employment of persons with disabilities in Kazakhstan, from the perspective of international law, and in particular compared it to the experiences of EU countries, while also considering of primary resources represented by range of international human rights conventions, such as the 2006 UN Convention on the Rights of Persons with Disabilities, the 1989 UN Convention on the Rights of the Child, the 1948 Universal Declaration of Human Rights. Another important primary resource was EU legislation and legal acts of Kazakhstan, such as the Decree of the Government of the Republic of Kazakhstan “On approval of sizes, sources, types and rules for provision of social assistance to citizens who receive social assistance”, the Decree of the Government of the Republic of Kazakhstan “On approval of workplace standards for a person with a disability”, Labor Code of the Republic of Kazakhstan, and the Administrative Offences Code of Kazakhstan.

The interconnection of the right to labor of persons with disabilities and the general concept of international law and human rights was obvious from the literature review. That is why the authors considered the publications of scholars who dealt with general issues of human rights and international law as an appropriate framework. Various approaches can be taken. For instance, Arnaud, Decken and Susi⁷ consider the contemporary rhetoric of human rights in general in modern society while Korosteleva⁸ addresses the employment of persons with disabilities in a more specific way.

Secondary resources used in the research included social and mainstream media articles analyzing the current situation in the labor market for persons with disabilities in Kazakhstan and EU states, rates of disability

6 In this introduction, some sources are only mentioned and references not provided, this is done later in the article where these sources are used for content analysis. They also appear in the literature review.

7 Arnaud, A. von, Decken, K. von der, Susi, M., 2020, *Cambridge Handbook on New Human Rights of the 21st Century: Rhetoric, Recognition and Novelty*, Cambridge, Cambridge University Press.

8 Korosteleva, N., 2012, Social Model of Disability as a Basis Formation of a Tolerant Attitude Towards the Disabled, *Bulletin of the Chelyabinsk State Pedagogical University*, 8, pp. 81–94.

benefits, as well as access to basic commodities. This data significantly improved comparative efforts of the given article.

Special attention was paid to the publications by Kazakhstani authors, who have considered the very cases of persons with disabilities of Kazakhstan related to employment, inclusive education and other relevant issues.⁹

However, their analysis, although solid and valuable, has certain limitations particularly addressing the specific agenda of the disabled groups in the countries.

This research article aims to discuss some of the specific issues contributing to the area.

1.1. INTRODUCTORY REMARKS REGARDING KAZAKHSTAN

The three-fold approach reveals at first glance the following features in Kazakhstan. In accordance with law of Republic of Kazakhstan on “approval of the Rules for the provision of social assistance, establishing the amount and determining the list of certain categories of citizens in need”, persons with disabilities are socially recognized as a vulnerable group in need of enhanced protection.¹⁰ The Constitution guarantees a minimum wage and pension, social security based on age, illness, or disability.¹¹ Recognition of the disabled persons as a distinct group in need of enhanced protection has found normative articulation in several instruments. Dominant pieces of legislation based on the ideas of equality and non-discrimination include the Law of the Republic of Kazakhstan No. 39 “On social protection of disabled persons in the Republic of Kazakhstan”, dated 13

9 This list includes contributions by Alayev, V., 2016, *Peculiarities of Attracting PWDs to Work in the Republic of Kazakhstan*; Bugubaeva, R., Turlubekova, M., 2021, *Comparative Analysis of the Process of Organizing Inclusive Education in Foreign Countries and Its Application in Conditions of Kazakhstan*; Kaltaeva, L., 2019, *Needs Assessment on Social Gender Issues Persons with Disabilities in Kazakhstan with a Focus on the Special Needs of Women with Disabilities Who Have Been Subjected to Violence*.

10 Decree of the Government of the Republic of Kazakhstan “On Approval of Sizes, Sources, Types and Rules for Provision of Social Assistance to Citizens Who Receive Social Assistance” (Әлеуметтік көмек көрсетілетін азаматтарға әлеуметтік көмектің мөлшерін, көздерін, түрлерін және оны беру қағидаларын бекіту туралы), No. 320, dated 12 March 2012, (<https://adilet.zan.kz/eng/docs/P1200000320>, 12 April 2023).

11 Art. 28. of the Constitution of the Republic of Kazakhstan (Қазақстан Республикасының Конституциясы): *A citizen of the Republic of Kazakhstan shall be guaranteed a minimum wage and pension, and guaranteed social security in old age, in case of disease, disability or loss of a breadwinner and other legal grounds*, (https://online.zakon.kz/Document/?doc_id=1017178, 12. 04. 2023).

April 2005, and the Code of the Republic of Kazakhstan “On public health and healthcare system”, dated 7 July 2020. Article 5 of the former legal act states that the state policy of the Republic of Kazakhstan in the field of social protection of persons with disabilities is based on the principles of legality, humanity, observance of human rights, non-discrimination on grounds of disablement,¹² while Article 134 of Code on Health stipulates the right of any patient to receive medical assistance in accordance with the priority determined solely on the basis of medical criteria, without the influence of any discriminatory factors.¹³ However, these documents had very little content regarding matters of inclusive education, equal opportunities for employment, and accessibility of public places to persons with disabilities. Therefore, the question can be raised whether after the ratification in 2015 of the UN Convention on the Rights of Persons with Disabilities, specific measures followed, in positive law, to render the general obligation more efficient. What has changed in the country over the past seven years in this regard? Due to the numerous political and economic crises, such as consequences of the COVID-19 pandemic and effects of the military conflict in Ukraine,¹⁴ Kazakhstan is still on its way to developing its civil society.

Building on the comparison of the human rights protection of persons with disabilities in countries with a long history of civil society and the high human rights standards of the European states on one side, and the Republic of Kazakhstan on the other, the aim of this article is to identify the most suitable ways for introducing of the European standards. This may include recommendations to Kazakhstan policy-makers for improving the situation in this area, as well as providing inspiration for the emerging civil society and for the judiciary. The article aims to consider issues such as employment of persons with disabilities, their inclusion in different spheres of civil life and corresponding duty of government to implement welfare policy.

12 Law of the Republic of Kazakhstan “On Social Protection of Disabled Persons in the Republic of Kazakhstan” (Қазақстан Республикасында мүгедектері бар адамдарды әлеуметтік қорғау туралы), No. 39, dated 13 April 2005, (<https://adilet.zan.kz/eng/docs/Z050000039>, 12. 04. 2023).

13 Code On “Public Health and Healthcare System of the Republic of Kazakhstan” (Халық денсаулығы және денсаулық сақтау жүйесі туралы) of the Republic of Kazakhstan dated July 7, 2020, (<https://adilet.zan.kz/eng/docs/K2000000360>, 12. 04. 2023).

14 Putz, C., 2022, Kazakhstan: After the Pandemic Recovery and New Pressures from the Ukraine War, *The Diplomat Newspaper*, (<https://thediplomat.com/2022/04/kazakhstan-after-the-pandemic-recovery-new-pressures-from-the-ukraine-war/>, 12. 04. 2023).

Regarding the general matter of elimination of discrimination against persons with disabilities, some information can be obtained from international and national sources. For example, the report of the United States Embassy – 2021 Country Report on the Human Rights Practices: Kazakhstan, reports by Amnesty International and Human Rights Watch, indicate discrimination against persons with physical, sensory and mental disabilities in access to employment, education, healthcare and other public services. The report identifies the formulation of norms in positive law as the main source of discrimination, and it is suggested that there has been a significant level of discrimination also in practice. For instance, the US Embassy Report states that “[t]he law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, education, access to healthcare, and in the provision of other government services, but significant discrimination occurred. Human rights defenders were concerned regarding gaps in the country’s legislation. The law does not give a clear definition of discrimination, making it impossible to protect the rights of persons with disabilities, particularly in instances of indirect discrimination.”

Human rights defenders have also expressed concerns about the gaps in the country’s legislation. Despite the prohibition of discrimination in the Constitution, it is claimed that lower-level laws do not clearly define discrimination, which makes it impossible to protect the rights of persons with disabilities, especially in cases of indirect discrimination.¹⁵

In 2021, the Agency of the Republic of Kazakhstan for the Regulation and Development of the Financial Market reported on productive work on the financial inclusion of persons with disabilities. Representatives of persons with disabilities claim that a lot has been done, but that all proposals are only advisory, and that bankers ignore the recommendations. Discrimination has forced persons with disabilities to seek help from the UN.¹⁶ The bank infrastructure is not set up to serve customers with disabilities. For example, financial institution buildings often lack ramps, and disabled entrepreneurs are almost always denied loans. Furthermore, ATMs are too tall for wheelchaired users, therefore the screen is not visible, it is impossible to enter the PIN code. The point is that the Law “On social protection of persons with disabilities” contains a ban on

15 US Department of State, 2021, Country Reports on Human Rights Practices: Kazakhstan, (<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/kazakhstan>, 12. 04. 2023).

16 Ledovskih, I., 2021, Persons with Disabilities Intend to Sue the Country’s Largest Banks, *DKN World News*, (<https://dknews.kz/ru/eksklyuziv-dk/201432-lyudi-s-ogranichennymi-vozmozhnostyami-namereny>, 12. 04. 2023).

discrimination based on disability, while the Law “On banks” has a recommendatory nature, with the wording “if possible”.¹⁷ These are examples that highlight the discrepancy between general level prohibition of discrimination and the possibilities to eliminate discrimination in practice.

The issue of employment is persistent. According to *zakon.kz* (one of the most prominent internet resources in Kazakhstan on legal and economic matters), a quarter of persons with disabilities of working age were employed. Activists note that employers lack incentives to hire persons with disabilities. The law requires companies to reserve 3% of jobs for persons with disabilities, and the government has put in place strategic measures to expand economic opportunities as part of the president’s 2050 development strategy; however, it has been reported that persons with disabilities face difficulties in integrating into society and finding work.¹⁸

The recent COVID-19 quarantine seriously impacted persons with disabilities. This means that at the times of crisis, vulnerable groups are the first to suffer negative consequences. The following observations are taken from various sources of mainstream and social media, so it is not necessary to provide specific references, but the narrative appears as follows. Many persons with disabilities lost their jobs in sectors where remote working was not possible. In addition, due to the quarantine of public transport, many persons were unable to commute to work, and taxi services were not operational. Schoolchildren and students with disabilities faced similar problems. If they did not have computers at home, they were left without access to online learning. Another problem during the quarantine isolation was the closure of medical institutions, which made medical care inaccessible to both adults and children with disabilities.¹⁹

The conclusion that can be drawn from these observations advances the thesis of the discrepancy between the legal recognition of the right of persons with disabilities to work, and the practical realization of this right. Holistically taken, one may wonder which is easier to change – the legislation or the practice. We leave this question to be answered further in the article.

17 Law of the Republic of Kazakhstan “On banks and banking activities in the Republic of Kazakhstan” (Қазақстан Республикасындағы банктер және банк қызметі туралы), No. 2444, dated 31 August 1995 (https://online.zakon.kz/document/?doc_id=1003931&pos=45;-55#pos=45;-55, 12. 04. 2023).

18 Stativkina, A., 2020, Employment of the Disabled. Actual Problem of Real People, *Zakon Kz*, (<https://www.zakon.kz/5044116-trudoustroystvo-invalidov-aktualnaya.html>, 12. 04. 2023).

19 Yergebekov, M., Temirbekova, Zh., 2021, *Kazakhstan and COVID-19: Media, Culture, Politics*, (<https://library.fes.de/pdf-files/bueros/kasachstan/18218.pdf>, 12. 04. 2023).

2. THEORETICAL ASPECTS OF THE PROTECTION OF RIGHTS OF PERSONS WITH DISABILITIES TO WORK

2.1. THE JUSTIFICATION OF ADVANCING THE IDEA OF THE NEED TO GUARANTEE THE RIGHT OF PERSONS WITH DISABILITIES TO WORK

Across the world, the idea of enhancing the right of persons with disabilities to work has found support. This carries intuitionistic and rhetoric elements already at first glance. In the other words, such enhancement is found to be self-evident within the intuitionistic meaning of fundamental rights,²⁰ and is usually expressed in the statement that “disabled persons have the right to work ...” within the rhetorical function of fundamental rights.²¹ Yet rhetoric and intuitionistic statements can often remain superfluous without more specific justification. In this case, such justification can flow from judicial-theoretical and sociological arguments. In combination, they provide sufficient ground to argue that persons with disabilities have valid claim to the right to work.

The judicial-theoretical justification entails three overarching considerations that apply to the issue of the right to work for persons with disabilities. The first is related to general prohibition of discrimination, while the second to the right to development, which do not necessitate further discussion here, although some doubts may be raised whether the right to development can be justified as a fundamental right or whether it should be viewed as a political instrument.²² The third is related to the claim derived from this general prohibition of discrimination, *i.e.* the right of persons with disabilities to work. It is a matter of some theoretical importance whether such a claim can be considered as a stand-alone fundamental right, or whether it should be viewed as a specific aspect of the general prohibition of discrimination. The following can be said about this aspect.

Although international human rights law does not currently recognize a stand-alone fundamental right of disabled persons to work, it does not immediately mean that such a claim could not be theoretically justified. It is because the development of fundamental rights is usually incremental and there is always a period of contestation between the

20 Alexy, R., *Discourse Theory and Fundamental Rights*, in: Menéndez, A., Eriksen, E. (eds.), 2006, *Arguing Fundamental Rights*, Berlin, Springer, p. 19.

21 Arnaud, A. von, Decken, K. von der, Susi, M., 2020, *Cambridge Handbook on New Human Rights of the 21st Century: Recognition, Novelty, Rhetoric*, Cambridge, Cambridge University Press, pp. 34–49.

22 *Ibid.*

emergence of a specific new human right claim until its full recognition by international organizations.²³ One can note that the right of persons with disabilities to engage in the labor force unhindered has been articulated in a large number of international legal instruments, some of which are soft law, but others are part of international positive law. For example, ILO Convention No. 159 concerning Vocational Rehabilitation and Employment of Disabled Persons, from 1983, calls on member states to ensure that appropriate vocational rehabilitation measures are made available to all categories of disabled persons and to promote employment opportunities for disabled persons in the open labor market, based on the principle of equal opportunity between disabled workers and workers generally.²⁴ Likewise, the EU Charter of Fundamental Rights Article 26 stipulates the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.²⁵ The EU Directive on Discrimination prohibits indirect or direct discrimination on the basis, *inter alia*, of disability, and applies, also *inter alia*, to employment and working conditions.²⁶ A comprehensive overview of multiple instruments has been compiled by O'Reilly.²⁷

Clearly the dominant beacon is the United Nations 2006 Convention on the Rights of Persons with Disabilities (CRPD),²⁸ which contains specific provisions on the rights of the disabled persons to work and employment. Article 27 para. 1 of the CRPD reads: "States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labor market and work environment that is open, inclusive and accessible to persons with disabilities." The Article then proceeds to list eleven specific steps that the Member States have committed to undertake, including through amended legislation.

Against this background, it is now time to ask whether the position can be defended that the right of the persons with disabilities to work is

23 Donnelly, J., 1989, *Universal Human Rights in Theory and Practice*, Ithaca, Cornell University Press, p. 223.

24 C159 – Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).

25 Charter of Fundamental Rights of the European Union, 2012/C 326/02.

26 Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation, *OJL* 303, 2 December 2000, pp. 16–22.

27 O'Reilly, A., 2003, *The Right to Decent Work of Persons with Disabilities*, ILO, p. 14.

28 UN Convention on the Rights of Persons with Disabilities, A/RES/61/106, 13 December 2006.

a stand-alone fundamental right. There can be two opposing viewpoints, the first confirming the possibility of the existence of such specific new fundamental rights, and the other denying such a possibility. The concurrent view is based on Alston's quality control theory of human rights development,²⁹ which lists a number of conditions that would allow to speak of a new self-standing fundamental right. The criteria put forward by Alston are presented below with our comment on whether the right in question would "pass" the quality control. The criteria that a proposed new human right should meet, according to Alston, are:

- (i) *Reflect a fundamentally important social value.* It seems undeniable that the possibility of the disabled persons to work represents the value of social inclusion.
- (ii) *Be relevant throughout a world of diverse value systems.* The mere fact that more than 160 countries have ratified the CRPD and numerous previous instruments addressing the matter attests that this right indeed is time- and place-independent.
- (iii) *Be eligible for recognition on the grounds that it is an interpretation of UN Charter obligations in various judicial traditions.* There can be no question that the particular right of the disabled persons is an extension of several rights enshrined in the UN Universal Declaration of Human Rights, in particular the right to equality in dignity (Art. 1), the right to the free development of personality (Art. 22), and the right to employment without discrimination (Art. 23).
- (iv) *Be consistent, but not merely repetitive of the existing body of international human rights law.* The rich body of various legal instruments and policy documents referred to above leaves no doubt that the particular right meets this condition.
- (v) *Be capable of achieving a very high degree of international consensus.* The mere fact that the majority of countries in the world have ratified the CRPD shows that this condition is fulfilled.
- (vi) *Be comparable or at least clearly not incompatible with the general practice of the states.* With some reservation, this condition can be considered to be met. The reservation is related to the distinction between normativity and practice. While it can be said that the majority of countries have transposed obligations toward the persons with disabilities into their national laws, including the right to decent working conditions, there is a lack of

29 Alston, P., 1984, Conjuring up New Human Rights: A Proposal for Quality Control, *The American Journal of International Law*, Vol. 78, No. 3, pp. 607–621.

implementation of these obligations in practice. Such discrepancy is evident, for instance, from the data and conclusions of the report conducted in 2011, since although at that time various countries had acceded to the Convention on the Rights of Persons with Disabilities (CRPD), many disabled persons still faced serious problems and obstacles in benefitting from this right.³⁰

- (vii) *Be sufficiently precise as to give rise to identifiable rights and obligations.* The concrete right in question once again appears to *prima facie* meet this condition.

Against this background it can be asserted, that the right of persons with disabilities to work fully meets the quality control criteria advanced by Alston decades ago. So, the question emerges whether it is justified to speak of such right as a stand-alone fundamental right? There are doubts emerging from the decrease in abstractness and universality hypothesis, advanced by Susi in *The Cambridge Handbook of New Human Rights*.³¹ This hypothesis adds two elements to the conceptualization of rights development. As a rule, new human rights claims exhibit either a lower level of abstractness in comparison with their “parent right”, or they are less universal because they apply only to certain groups instead of everyone. The right of persons with disabilities to work, if viewed under this thesis, seems clearly a concrete entitlement rather than an abstract, and it also is not even applicable to all disabled persons, but rather only to those who have an interest in employment. Therefore, a position can be advanced which questions whether this right can be considered as a self-standing right, or whether it is more appropriate to speak of it as bridging the general prohibition of discrimination and everyone’s right to development and employment. We support the latter position and see no justification to consider this right as a stand-alone new human right. For the purposes of this article, the focus of interest will be on the normative approach to this matter in Kazakhstan.

The sociological justification of the right to employment of persons with disabilities is rooted in available picture of the difficulties faced by this vulnerable group in circumventing discrimination and engaging in the labor force. There is a lot of available evidence, some of which can be presented here. O’Reilly notes that despite a voluminous body of both

30 Council of Europe, 2017, Disability and Disabilism, (<https://www.coe.int/ru/web/compass/disability-and-disabilism>, 12. 04. 2023).

31 Susi, M., Novelty in New Human Rights: The Decrease in Universality and Abstractness Thesis, in: Arnaud, A. von, Decken, K. von der, Susi, M., 2020, *The Cambridge Handbook of New Human Rights. Recognition, Novelty, Rhetoric*, Cambridge, Cambridge University Press, pp. 21–33.

binding and non-binding legal instruments, the intended effect remains unsatisfactory: “Available statistics indicate that the unemployment rate among workers with disabilities tends to be at least twice or three times that of other workers.”³² According to the WHO information, it is estimated that more than 1 billion people globally are affected by disability. This is approximately 15% of the world’s population, with up to 190 million (3.8%) of people ages 15 years and older experiencing significant functional limitations, often requiring medical services.³³ Persons with disabilities are not a homogeneous group. Their needs, types of assistance they require, and measures to ensure their access and participation may vary, depending on their form of disability. We can note, therefore, a paradox of wide discrepancy between the commitment of the international community to safeguard the right of persons with disabilities to be provided decent and non-discriminating working opportunities, on one side, while on the other side, the compliance of the states to put into effect the obligations that they have taken on by joining various initiatives and instruments. Thus, the discrepancy between the promise of law and the possibilities for its implementation does not appear to be specific only to Kazakhstan. The relevant question can only be the extent of this discrepancy.

This statement is based on reliable statistical information. For instance, according to the World Health Organization report, one of the essential documents in the field of human rights of persons with disabilities, the most widespread obstacles to participation in the workforce for persons with disabilities are the lack of access (physical and language barriers, underdeveloped infrastructure, unavailability of information) and institutional segregation (in educational institutions, the workplace and in public institutions).³⁴ The roots of discrimination in the workplace have multiple reasons and sources, which are not the specific focus of this article, but are usually traceable back to a lack of inclusive education. For example, *The Education for All Fast Track Initiative*, an overview of 28 countries on policies for inclusive education, found that 18 countries provide little or no detail on their proposed schooling strategies for children with disabilities or do not address disability issues or inclusion at all.³⁵ Another hindrance to engaging in the workplace is related to access to infrastructure.

32 O’Reilly, A., 2003, *The Right to Decent Work of Persons with Disabilities*, ILO, p. 73.

33 World Health Organization, 2022, Disability and Health, (<https://www.who.int/ru/news-room/fact-sheets/detail/disability-and-health>, 12. 04. 2023).

34 OSCE, 2017, People with Disabilities and Ensuring Their Right to Participate in Public and Political Life, (<https://www.osce.org/files/f/documents/c/6/340251.pdf>, 12. 04. 2023).

35 Bines, H., Lei, P., 2007, *Education’s Missing Millions: Including Disabled Children in Education Through EFA FTI Processes and National Sector Plans*, Milton Keynes,

In other words, in order to be able to work, the person physically needs to get there. Lack of access to transportation is a common reason for persons with disabilities not to look for work or a factor in limiting access to healthcare.³⁶

All of the above leads to the most fundamental question: when there is a sizable body of instruments in international and national arenas recognizing the right of the persons with disabilities to employment, with corresponding obligations of the states, and when the majority of countries have committed to fulfilling these obligations, why is the possibility for persons with disabilities to secure decent employment highly concerning? The situation has existed for decades. The particular right therefore seems illusory and theoretical instead of being practical and effective. We will not seek to provide a holistic answer, but rather, as the article progresses, we will address this discrepancy in the context of Kazakhstan.

2.2. THE MAIN FEATURES AND DYNAMICS OF THEORETICAL DEBATES REFLECTED IN LEGISLATIVE INSTRUMENTS

In the case of the rights of persons with disabilities, one can face particular problems due to the lack of the universally accepted definition of “disability”, although there have been several attempts to develop one. The WHO in its International Classification of Functioning, Disability and Health (ICF) takes into account the social aspects of disability and does not consider disability only as a “medical” or “biological” disorder. The WHO distinguishes between two main concepts: (1) disorder, is defined as any loss or abnormal functioning of a mental, physiological or bodily structure or function, such as paralysis or blindness, and (2) disability, is defined as any limitation or absence (associated with a disorder) of the ability to carry out activities in a manner or within limits considered normal for a person.³⁷

Modern researchers distinguish between two models of understanding the disability – medical and social. The medical model originated in the healthcare system in the 19th century, and considers the physical and mental differences between persons in terms of pathological abnormalities

World Vision UK, (<https://assets.worldvision.org.uk/files/4613/8029/8799/Educa-tions-Missing-Millions-Main-Report.pdf>, 12. 04. 2023).

36 World Health Organization, 2011, World Report on Disability, (<https://extranet.who.int/agefriendlyworld/wp-content/uploads/2014/06/WHO-World-Report-on-Disabil-ity-Russian.pdf>, 12. 04 2023).

37 Anderson, T., 1975, An Alternative Frame of Reference for Rehabilitation: The Help-ing Process Versus the Medical Model, *Archives of Physical Medicine and Rehabilita-tion*, Vol. 56, No. 3, pp. 101–104.

and defects; in other words, disability is an ailment, a disease, a defect. A person with a disability in the framework of the medical model is a patient with deviant behavior.³⁸ Such an understanding requires medical correction, in some cases isolation, which in turn affects the possibility of integrating a person into society, since the ideas of accessibility of education, employment, leisure, recreation, sports to such persons are not considered at all.

The opposite of the medical model is the social model of understanding disability, which emerged in the mid-20th century. The authors of this model were persons with disabilities themselves. The first impetus for the creation of this model appeared in Paul Hunt's *The Critical Condition*, indicating that persons with disabilities face prejudices that are expressed in discrimination and oppression.³⁹ In 1976, the Union of the Physically Impaired Against Segregation (UPIAS, United Kingdom) built on Hunt's ideas and put forward a new definition of disability as an obstacle or limitation in activity caused by a modern social arrangement that pays little or no attention to persons with disabilities and physical defects, and thus excludes their participation from the society's main social activities. Thus, the social model defines disability as a consequence of the unfair structure of society, implies the provision of all rights and freedoms to persons with disabilities, full access to all spheres of society, activation of life potential and full inclusion of persons with disabilities in society on their own terms.⁴⁰ Here, the right of persons with disabilities to non-discrimination, coupled with the specific measures undertaken by public institutions, stands out. It seems obvious that the social model enables to a greater extent the recognition and implementation of this specific right in comparison with the medical model. The right of persons with disabilities to employment is connected to the social model.

The UN Convention on the Rights of Persons with Disabilities of 2006 states that "disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others". According to Article 1, "persons with disabilities include those who have long-term physical, mental,

38 Korosteleva, N., 2012, Social Model of Disability as a Basis Formation of a Tolerant Attitude Towards the Disabled, *Bulletin of the Chelyabinsk State Pedagogical University*, No. 8, pp. 81–94.

39 Goering, S., 2015, Rethinking Disability: The Social Model of Disability and Chronic Disease, *Current Reviews in Musculoskeletal Medicine*, Vol. 8, No. 2, pp. 134–138.

40 Smolina, S., Telegina, N., 2016, *Modern Approaches in Describing and Solving the Problems of Disability*, (https://elar.urfu.ru/bitstream/10995/81626/1/978-5-91416-007-1_2016-241.pdf, 12. 04. 2023).

intellectual or sensory impairments”⁴¹ The extent to which these violations deprive a person of opportunities depends on the level of barriers that exist in society.

Disability is not specifically addressed in any major international human rights instruments developed prior to 1961, when the European Social Charter was adopted. The Charter is the first international treaty to contain specific provisions on the rights of persons with disabilities. In addition to the International Bill of Human Rights, there is a plethora of various instruments, which do not necessitate specific analysis here.⁴²

The documents above contain a notable shift from the medical approach of disability issues to the social one, which started in the 1970s with the emphasis on the social involvement and non-discrimination of persons with disabilities. Also included in the discussion was the distinction between formal and material equality of persons with disabilities.⁴³ The right to employment of persons with disabilities is related to both. However, we have noted earlier that there is a discrepancy between these aspects, *i.e.*, the available data indicates that formal equality is a matter of legislation, and material equality is the matter of enforcement of the existing positive legislation. The discrepancy appears to be wide, which means that it is always important to keep such distinction in mind when speaking about the equality of persons with disabilities.

For instance, the 1971 Declaration on the Rights of Mentally Retarded Persons states that a mentally retarded person has, to the maximum extent possible, the same rights as other persons, as well as has

41 Convention on the Rights of Persons with Disabilities, A/RES/61/106, 13 December 2006.

42 For instance, the rights of persons with disabilities are specifically addressed in the following core documents:

- Declaration on the Rights of Mentally Retarded Persons, UN doc. A/RES/2856(XXVI) (20 December 1971);
- Declaration on the Rights of Disabled Persons, UN doc. A/RES/30/3447 (9 December 1975);
- World Program of Action Concerning Disabled Persons, UN doc. A/RES/37/52 (3 December 1982);
- International Decade of Persons with Disabilities, UN doc. A/RES/39/26 (23 November 1984);
- UN Standard Rules for the Equalization of Opportunities for Persons with Disabilities, 1993;
- Vienna Declaration on Human Rights, UN doc. A/CONF.157/23 (12 July 1993).

43 See for reference of the topic: Hendriks, A., 1995, Disabled Persons and Their Right to Treatment: Allowing Differentiation While Ending Discrimination, *Health and Human Rights*, Vol. 1, No. 2, pp. 152–173.

the right to material security and a satisfactory standard of living, the right to work productively and engage in other useful business to the fullest extent of their ability.⁴⁴ The 1975 Declaration on the Rights of Disabled Persons also contains provisions such as the right to the same civil and political rights as other persons, the right to measures aimed at self-sufficiency, the right to medical, psychological and functional treatment as needed, and the right to economic and social security, including the right to work, etc.⁴⁵

The crucial decade for the issues of persons with disabilities was the International Decade of Disabled Persons 1983–1992. In a short period of time, a solid paradigm shift took place regarding the perception of persons with disabilities, and, therefore, the attitudes toward them. From its initial emphasis on philanthropy and medical considerations, the international community moved toward a model that recognizes social and environmental barriers as real obstacles to the enjoyment of human rights by persons with disabilities. It is in this interaction between the disadvantaged person and their environment that discrimination and rights violations occur, resulting in incapacity, and it is only by overcoming this type of social aspects that persons with disabilities will become fully integrated into their communities.⁴⁶ Employment possibilities have *prima facie* a significant role here.

The issue of the right of persons with disabilities to work has specific aspects which build upon the general understanding of equality and the right to personal development. This is not merely a matter of rhetorical acceptance of the idea of equality and agreeing to legislative instruments, but rather it reaches beyond rhetoric to practical implementation. The obvious point is that despite positive law provision and policies, the efficiency of these provisions and the idea of equality at the end of the day depend on what happens in the public and private sectors, where the disabled persons actually can seek employment.⁴⁷ We will now proceed to discuss how these issues appear in Kazakhstan, and what may be the broader conclusions from the national perspective.

44 Declaration on the Rights of Mentally Retarded Persons, UN doc. A/RES/2856(XXVI) (20 December 1971).

45 Declaration on the Rights of Disabled Persons, UN doc. A/RES/30/3447 (9 December 1975).

46 Devandas-Aguilar, C., 2015, *Report of the Special Rapporteur on the Rights of Persons with Disabilities*, Human Rights Council twenty-eighth session, (<https://www.ohchr.org/en/statements/2015/06/statement-ms-catalina-devandas-aguilar-special-rapporteur-rights-persons>, 12. 04. 2023).

47 UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993, (<http://humanrts.umn.edu/instree/Rdisabilitystandards.html>, 12. 04. 2023).

3. THE RIGHT OF PERSONS WITH DISABILITIES TO WORK IN KAZAKHSTAN: LEGISLATION AND PRACTICE

3.1. LEGISLATION PERTAINING TO THE RIGHT OF PERSONS WITH DISABILITIES TO WORK

The national policy on persons with disabilities in Kazakhstan is reflected in the normative legal acts and conceptual documents. The fundamental regulatory legal act is the Law of the Republic of Kazakhstan No. 39 “On social protection of persons with disabilities”, dated 13 April 2005. This law defines the main directions of the state policy in the field of social protection of persons with disabilities in Kazakhstan, which are: disability prevention; social protection, including rehabilitation for persons with disabilities; and integration of persons with disabilities into society.⁴⁸ Thus Article 5 of the Law states that accessibility and equal rights of disabled persons, along with other citizens, to health protection, education and free choice of form of activity, including labor; Article 14 protects the disabled individual’s full socio-economic and personal rights and freedoms, including education, free choice of form of activity, including labor and professional training and retraining, vocational rehabilitation and arrangement of labor. In the same time, Article 35 declares that local executive bodies are required to provide employment for disabled persons by: establishing a quota for workplaces for persons with disabilities in the amount of two to four percent of the number of jobs, without taking into account workplaces for heavy work, work with hazardous, dangerous working conditions in accordance with the legislation of the Republic of Kazakhstan on employment; creating additional jobs for persons with disabilities through development of individual enterprises, small and medium businesses; organizing professional education for persons with disabilities, etc.⁴⁹

At present, in accordance with Constitution of the RK, everyone has the right to work, free choice of occupation and profession, everyone has the right to working conditions that meet safety and hygiene requirements,

48 Interstate Statistical Committee of the Commonwealth of Independent States, 2018, *Statistics About Life of People with Disabilities in the Countries of the Commonwealth of Independent States*, (<http://new.cisstat.org/documents/124986/218150/Contentinval2018.pdf/752e4602-f10f-f01b-2f74-b8d74dd3e0df>, 12. 04. 2023).

49 On Law of the Republic of Kazakhstan No. 39 “On social protection of disabled persons in the Republic of Kazakhstan” (Қазақстан Республикасында мүгедектігі бар адамдарды әлеуметтік қорғау туралы), dated 13. 04. 2005.

to remuneration for work without any discrimination. Everyone has the right to rest. Employees working under an employment contract are guaranteed the length of working hours established by law, weekends and holidays, and paid vacation (Art. 24).⁵⁰ The Law “On social protection of the rights of persons with disabilities”, defines the prohibition of discrimination on the basis of disability and the right to employment. Refusal to conclude an employment contract, withhold promotion, dismissal at the initiative of the employer, transfer of a person with a disability to another job without their consent, on grounds of disability, are not allowed, except in cases where, based on a medical report, their state of health interferes with the performance of professional duties or threatens their health or the safety of others (Arts. 5, 14, 32).⁵¹ Article 25 of the Labor Code of RK states that disability cannot restrict the right to conclude an employment contract, except in the cases stipulated by the Code. Thus, unreasonable refusal to employ persons with disabilities is prohibited by law. The refusal may be legitimate, on the general grounds provided for all candidates for a vacant position, for example, in the case of non-compliance with the company’s requirements regarding the qualifications, work experience, or professional skills of the candidate. Also, the law requires that the employment contract with a disabled person include the conditions for equipping the workplace, taking into account their individual needs (Arts. 26, 28).⁵² The Decree of the Minister of Health and Social Development of the Republic of Kazakhstan No. 519. “On approval of workplace standards for a person with a disability”, dated 14 June 2016, defines the approved necessary standards for: wheelchair bound individuals, the workplace of a person with a disability, and with complete loss of vision and with complete loss of hearing.⁵³

It is also necessary to mention the obligations of the employer regarding medical insurance and social security for employees with disabilities. In line with the Article 122 of the Labor Code, the employer is required to provide compensation for harm caused to the life and health of an employee in the performance of their labor (official) duties. The provisions of Law “On approval of workplace standards for a person with a disability” require the employer to create conditions for persons with disabilities who

50 Constitution of the RK (ҚР Конституциясы).

51 On the Law of the Republic of Kazakhstan, No. 39.

52 Labor Code of the Republic of Kazakhstan (Қазақстан Республикасының Еңбек Кодексі), dated November 23, 2015, No. 414-V.

53 Decree of the Government of the Republic of Kazakhstan, No. 10370 “On approval of workplace standards for a person with a disability” (Мүгедектігі бар адамның жұмыс орны стандарттарын бекіту туралы), dated 22 January 2015.

have received an industrial injury or an occupational disease through the fault of the employer, to access industrial buildings, structures and premises, by designing and adapting the workplace. The employer, at their own expense, in accordance with this Law, must provide vocational training or retraining, and create of special jobs for persons with a disability caused by an industrial injury and/or an occupational disease received through the fault of the employer.⁵⁴

Based on the previous, it can be asserted that the legislative framework for safeguarding the right of persons with disabilities to work in Kazakhstan has undergone rapid development in recent years. The legal framework reflects important values of dignity and equality. The following research should explore whether these ideas are effectively implemented for the benefit of persons with disabilities.

3.2. EMPLOYMENT OF PERSONS WITH DISABILITIES

According to the Ministry of Labor and Social Protection of Republic of Kazakhstan, 7.5% of country's population, or 697,000 persons, have been certified as having disabilities. The share of working-age persons in the total number of persons with disabilities is 60%, or 419,000.⁵⁵ Nonetheless, only a quarter of these persons (104,000) are employed. For comparison, the United Nations reports that "in developing countries, 80% to 90% of disabled persons of working age are unemployed, whereas in industrialized countries the figure is between 50% and 70%."⁵⁶ During the study conducted by UNICEF for the Statistics Committee of the Ministry of National Economy of the Republic of Kazakhstan, 32% of participating persons with disabilities highlighted barriers to employment as one of the most important problems that degrade the quality of life for persons with disabilities in Kazakhstan.⁵⁷

54 Law of the Republic of Kazakhstan "On approval of workplace standards for a person with a disability" (Мүгедектігі бар адамның жұмыс орны стандарттарын бекіту туралы), dated July 13, 2016.

55 Ministry of Labor and Social Protection of Population of the Republic of Kazakhstan, Statistics on the Persons with Disabilities, (<https://www.gov.kz/memleket/entities/enbek/docu-ments/1?lang=ru>, 12. 04. 2023).

56 UN Factsheet on Persons with Disabilities, 2022, (<https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities/disability-and-employment.html>, 12. 04. 2023).

57 Ministry of National Economy of the Republic of Kazakhstan Statistics Committee, 2015, Final report on the results of the sample survey "Quality of life of persons with disabilities, taking into account gender specifics".

For comparison, we will consider the legal approach to the employment of persons with disabilities in some states of the European Union. For example, the population of France is a little over 60 million; in particular, there are 9.5 million persons with disabilities in the country with various disabilities, of which more than 1.8 million have the disabled status. Some of them work in ordinary enterprises, and around 120,000 work in enterprises with special working conditions.⁵⁸ The law of June 30, 1975⁵⁹ announced the French national strategy for the training and social and professional integration of persons with disabilities into society. In accordance with this law and the 2001 Social Modernization Act, a person, regardless of their age or disability, has the same fundamental rights as all others. These laws, as well as the Rehabilitation and Employment of Persons with Disabilities Act, passed in 2005, are directed against discrimination against persons with disabilities when hiring and the perception of other types of human differences caused by the existing disability.⁶⁰ These laws introduced assistance for persons with disabilities and created governmental and non-governmental structures to provide such persons with assistance in attracting them to regular or limited work. Moreover, each administrative region (there are 96 in France) has a Committee on the Rights and Autonomy of People with Disabilities (CDAPH), subordinate to the Ministry of Health and Human Services General Directorate of Social Services. Any citizen wanting to exercise their social security rights must contact the local county office where they reside. The Committee acts in accordance with Law No. 2005–102 of February 11, 2005 on Equal Rights and Opportunities, Participation and Citizenship of Persons with Disabilities⁶¹ and grants the status of a disabled person, assesses the incapacity for work in accordance with the principles it applies, and provides its opinion on the professional suitability for work, taking into account the existing restrictions.⁶²

In addition, France has employment centers for persons with disabilities (for example, Cap Emploi), which provide employment for persons

58 French Experience of Social Protection of Citizens with Disabilities, 2009, (<https://dislife.ru/articles/view/2654>).

59 Calves, M., 2005, *The 2005 Disabilities Policy in France. An Opportunity for The Development of Disabilities Studies*, (<https://shs.hal.science/halshs-00535890/document>, 12. 04. 2023).

60 Prokofiev, V., 2019, *Special Purpose Bridge*, (<https://rg.ru/2019/04/15/vo-francii-na-programmy-po-podderzhke-invalidov-tratiatsia-desiatki-mlrd-evro.html>, 12. 04. 2023).

61 Employment Policies for Persons with Disabilities, Social & Inclusion Division 2017 (https://www.hi.org/sn_uploads/document/Employment-and-Disability_Fact-sheet-FRANCE_EN.pdf)

62 Law No. 2005–102 of February 11, 2005 on Equal Rights and Opportunities, Participation and Citizenship of Persons with Disabilities (<https://www.legifrance.gouv.fr/loda/id/LEGIARTI000006682228/2005-02-12/#LEGIARTI000006682228>)

with disabilities in specialized jobs. In total, there are 1,400 specialized institutions for persons with disabilities in France, employing 120,000 persons with disabilities. At the same time, the ILO recognizes the rejection of persons with disabilities, the existence of discrimination. The unemployment rate among persons with disabilities (19%) is 2.5 times higher than in the population. A person may be denied a job even if they are overweight or stutter. Therefore, in accordance with the Law, France has created the ‘High Authority against Discrimination and in favour of Equality’ (*HALDE*) – the highest independent administrative structure with the power of a court.⁶³

Another example is Finland, which has developed an extensive legal framework to ensure the organization of a system of rehabilitation and social adaptation for persons with disabilities. The legislative level of the integration of rehabilitation activities into the sphere of social protection encompasses fixed population, healthcare, employment, social insurance, education, and mechanisms of their cooperation.

The laws on healthcare and social welfare include provisions on adaptive learning, the aim of which is the maximum development of all opportunities for social inclusion and the maximum possible employment of persons with disabilities. The provision of adaptive services is entrusted to the social welfare services, healthcare, and insurance companies.⁶⁴

Finnish legislation pays special attention to free vocational rehabilitation of persons with disabilities, which is represented by a three-level system with integration of training, vocational education, on-the-job training, as well as vocational guidance and employment, professional development, and assessment of the results of rehabilitation.

Legislation provides support for the employment of persons with disabilities either by: subsidizing employers when hiring a disabled person or organizing special municipal services and state work for persons with disabilities.⁶⁵

As a result, when hiring a person with a disability, the Finnish employer does not bear additional costs for workplace adaptation, transportation, and is insured against possible employee accidents. Finland is the friendliest country in the world in regard to disabled persons, and the state fully complies with its commitments, stimulating the employment of citizens with disabilities.

63 *Ibid.*

64 Sansyzbaeva, G., Ashirbekova, L., 2015, Foreign Experience of Employment and Social Protection of Persons with Disabilities, *Vestnik KazNU*, Vol. 3.

65 Alayev, V., 2016, *Peculiarities of Attracting Persons with Disabilities in the Republic of Kazakhstan, (case study Almaty and Almaty region).*

As is apparent from the experience of countries with well-developed welfare services and legislation for persons with disabilities, the employment issue is quite a complex problem. Successfully solving it requires appropriate education, availability of social and transport infrastructure services, availability of public transport routes, accreditation of experts to carry out work to protect the rights of persons with disabilities to an accessible environment and socially significant facilities.⁶⁶

When persons with disabilities in Kazakhstan apply for a job, they often face psychological problems: potential employers often reject applicants with plausible pretexts, due to their unwillingness to face certain difficulties – frequent sick leave for the employee, incompatibility with a “healthy” team, etc.⁶⁷ According to the Labor Code of the Republic of Kazakhstan (Art. 205), employers who refuse job applicants on the grounds of disability violate the right of persons with disabilities to work. By law, persons with disabilities have the right to conclude employment contracts with employers either in specialized organizations that use the labor of persons with disabilities, taking into account personal rehabilitation programs, or in enterprises with normal working conditions.⁶⁸ A job fair held in March 2022 in Almaty showed the true state of affairs: recruitment agencies were reluctant to cooperate with associations of persons with disabilities and direct employers ignored the provisions of the UN Convention on the Rights of Persons with Disabilities.⁶⁹ The legislation of Kazakhstan provides for administrative liability for violation of the rights of persons with disabilities. Thus, according to Article 87–1 of the Code of Administrative Offenses, violation of the rights of persons with disabilities to work by officials and legal entities carries an administrative fine:⁷⁰

- for an official – in the amount of 20 to 40 MCI (EUR 129 to EUR 258);
- for a legal entity that is a small or medium-sized business – in the amount of 70 to 200 MCI (EUR 451 to EUR 1,290);

66 *Ibid.*

67 Chumachenko, A., 2017, *Note to the Employer: The Main Responsibilities in the Framework of the Employment of Persons with Disabilities*, (https://online.zakon.kz/Document/?doc_id=370807812, April 2023).

68 Labor Code of the Republic of Kazakhstan (Қазақстан Республикасының Еңбек Кодексі) No. 414-V, dated 23 November 2015.

69 Every Fifth Private Company Violates the Rights of Persons with Disabilities in Kazakhstan to Work, 2011, (https://online.zakon.kz/Document/?doc_id=30989469, 12. 04. 2023).

70 *Ibid.*

- for a legal entity that is a large business – in the amount of 200 to 400 MCI (EUR 1,290 to EUR 2,580).⁷¹

A reason for refusal, which would not violate the right of persons with disabilities to work, is the inability to create special conditions that would comply with the criteria of the employee's rehabilitation program. The same reason gives management the right to fire an employee, which many employers have been known to take advantage of.⁷²

Overall, we can claim that in regard to the level of legislation and policies, the situation of Kazakhstan is comparable to the situations in European Union countries.

3.3. COMPARISON OF ISSUES RAISED AND DISCUSSED IN THE EU AND KAZAKHSTAN

In the comparative analysis of the issue, we have also considered the current situation in EU. As the European country with the second-largest disabled population (20.9%), Switzerland offers the largest amount of financial support to its most vulnerable citizens with disabilities (estimated at 1.8 million people) entitled to an average monthly disability allowance of GBP 7,149.55.⁷³ Switzerland is followed by Norway, which despite one of the lowest numbers of disabled in Europe (10.7%), provides a monthly allowance of GBP 2,561.19 to 373,660 disabled persons.⁷⁴ Not only that, but Norway offers disability benefits as a universal right, in contrast to many other countries which only offer benefits to those in the labor market.⁷⁵ Denmark takes the 3rd place where a monthly disability allowance of GBP 2,198.53 is provided to 16% of the population. Not only is this the third highest financial package in Europe, but disability pensions are

71 Administrative Offences Code of RK No. 155 (Әкімшілік құқық бұзушылық туралы), dated 30 January 2001.

72 Chumachenko, A., 2017, *Note to the Employer: The Main Responsibilities in the Framework of the Employment of Persons with Disabilities*, (https://online.zakon.kz/Document/?doc_id=37080789, 12. 04. 2023).

73 HR News, 2022, *These Countries Have the Highest Disability Rates in Europe*, (<https://hrnews.co.uk/these-countries-have-the-highest-disability-rates-in-europe/>, 12. 04. 2023).

74 Zeitzer, I., 1994, *Recent European Trends in Disability and Related Programs, Social Security Bulletin*, Vol. 57, No. 2, (<https://www.ssa.gov/policy/docs/ssb/v57n2/v57n2p21.pdf>, 12. 04. 2023).

75 Crocker, M., Hutchinson, C., Mpundu-Kaambwa, C. *et al.*, 2021, *Assessing the Relative Importance of Key Quality of Life Dimensions for People with and without a Disability: An Empirical Ranking Comparison Study, Health Qual Life Outcomes*, Vol. 19, No. 264. (<https://hql.o.biomedcentral.com/articles/10.1186/s12955-021-01901-x>).

means-tested and there are housing allowances that may be added to pensions. The German government is effectively engaged in the social and labor rehabilitation of persons with disabilities. Germany is included in the list of European countries where payments to the disabled is a less effective strategy than their specialized training and employment, and many state institutions, as well as church and public organizations, are involved in caring for persons with disabilities.⁷⁶

Lithuania has developed a rather interesting system of benefits for the disabled. Candidates who lost at least 45 percent of their ability to work will receive benefits, with a basic pension of EUR 115, while the rest of the supplement depends on the length of service. The state offers this group favorable discounts on the use of public transport, additional vacation time, tax cuts and special housing subsidies.⁷⁷ Poland provides benefits to disabled persons over the age of 30 and having five years of work experience, and in the case of younger persons – from one to four years of work experience. If the income of such a citizen exceeds 70% of the average salary in Poland, the allowance will not be paid in full. In any case, the disability pension cannot be less than USD 216.⁷⁸

Before the pandemic, only 50.8% of persons with disabilities around the world were in employment, compared to 74.8% for persons without disabilities.

The EU Disability Rights Strategy tries to address persons with intellectual disabilities, for whom the situation is significantly worse. For example, in Ireland only 36% of adults with an intellectual disability were engaged in some form of work: 29% in sheltered centers, and only 7.1% in the open labor market.⁷⁹ In Scotland, only 6% of persons with learning disabilities have a job⁸⁰ and this situation is even worse in some other countries in Europe. To address this, states must provide persons with intellectual disabilities with proper education. In segregated schools, where the labor market exclusion starts, the curricula lack proper qualifications development. Life-long, vocational training must become inclusive too,

76 Spiridonov, V., 2021, “Normal Life”: How People with Disabilities Are Taken Care of in Europe, *Ria News*, (<https://ria.ru/20170607/1495994209.html>, 12. 04. 2023).

77 Inclusion Europe, 2015, Financial Assistance to People with Disabilities Compared across the World, (<https://www.inclusion-europe.eu/financial-assistance-to-people-with-disabilities-compared-across-the-world/>, 12. 04. 2023).

78 Griesser, S., 2018, *Personal Assistance for Disabled People in Germany and Sweden in the Context of the Independent Living Philosophy and the UN Convention on the Rights of People with Disabilities*. Master thesis, (https://www.independentliving.org/files/MasterThesis_SelinaGriesser.pdf, 12. 04. 2023).

79 Spiridonov, V., 2021.

80 *Ibid.*

with digital and language skills as a priority. This education, however, is traditionally denied to persons with intellectual disabilities, while being essential for finding a job.

There is also so much more that needs to be done to improve access to work both from employers, and from the states. As we hear about shortages of workers all over Europe, it is time for employers to stop overlooking this talent pool. We can note a pattern that exists across borders and cultural factors: despite policies and legislation aimed at enhancing the rights of the disabled persons to decent work, the challenges appear at the level of implementation. This is what happens when a person with disabilities tries to find employment. As we can conclude, policies and legislation are often not enough. The same applies to Kazakhstan.

4. INCLUSION FOR PERSONS WITH DISABILITIES

The right of the persons with disabilities to decent work is closely connected to other specific rights. We will refrain here from labelling these rights as fundamental rights due to the decrease of the universality and abstractness thesis, and find it more accurate to speak about entitlements or rights. No matter the choice of concrete expressions, these entitlements or rights are based on the interest of the persons with disabilities toward non-discrimination. Since the latter is a broad overarching concept, it can surely be justified that the interest in non-discrimination is revealed in a multitude of specific entitlements. We will also map the contours of another specific entitlement – the right to inclusion of persons with disabilities. The goal is to make some observations regarding the features from the comparison of the EU and Kazakhstan, in terms of the rights of the persons with disabilities, and whether they can be generalized to encompass more specific entitlements.

The idea behind creating an appropriate environment for disabled persons to exercise their right to equality, is inclusion and inclusive education that allows overcome various barriers in the coexistence of “normal” people and individuals with disabilities. Inclusive education is the joint education of “normal” children and children with disabilities, *i.e.*, it implies equal rights and opportunities to meet all the needs and requirements of children in education, regardless of their state of health.⁸¹ Usually this means that children with from various backgrounds study in the same classroom, following the same curricula.

81 Golnik, O., Volokovaya, T., 2022, *Inclusive Education in Kazakhstan: Features and Prospects for Development*, (<https://www.nur.kz/family/school/1715660-inkluzivnoe-obrazovanie-v-kazahstane-i-za-rubezom/>, 12. 04. 2023).

This approach has not been ignored in Kazakhstan. The education of children with disabilities is defined in the laws of the Republic of Kazakhstan “On education”, “On rights of the child in the Republic of Kazakhstan”, as well as in a number of regulatory legal acts. Among those, the Government of the Republic of Kazakhstan approved Resolution No. 752, on 30 June 2014, which provided a set of measures for the further development of the inclusive education system in 2015–2020. Since 2020, most schools in Kazakhstan have been schools with inclusive education.⁸²

On 26 June 2021, the President of the Republic of Kazakhstan Kassym-Jomart Tokayev signed the Law “On amendments and additions to certain legislative acts of the Republic of Kazakhstan on inclusive education”,⁸³ according to which the state undertook the creation of conditions for children with special educational needs to receive education within the educational system, taking into account their individual developmental characteristics (Art. 8, para. 1–1). Special educational programs are being developed for children with disabilities. Pre-schools and secondary schools must accept all children who live in their territory, including children with special educational needs (Art. 26, para. 2).⁸⁴

However, in spite of the variety of laws and amendments made after ratifying the CRPD, very few schools and universities are in fact prepared to teach students with special requirements. There are two main problems connected to the implementation of the laws on inclusive education: the first is the shortage of teaching staff with appropriate skills, and the second is that since different students have different requirements, it is practically impossible for one school to accommodate all the needs of students with disabilities. For example, the needs of blind students differ in substance from the needs of deaf students.⁸⁵ It appears that the civil society and

82 Ospanbekova, G., 2021, *Modern Problems of the Legal Mechanism in the Development of Inclusive Education in the Republic of Kazakhstan*, (https://elib.gsu.by/bitstream/123456789/37364/1/%D0%9E%D1%81%D0%BF%D0%B0%D0%BD%D0%B1%D0%B5%D0%BA%D0%BE%D0%B2%D0%B0_%D0%A1%D0%BE%D0%B2%D1%80%D0%B5%D0%BC%D0%B5%D0%BD%D0%BD%D1%8B%D0%B5_%D0%BF%D1%80%D0%BE%D0%B1%D0%BB%D0%B5%D0%BC%D1%8B.pdf, 12. 04. 2023).

83 Law of the Republic of Kazakhstan No. 56-VII “On the introduction of amendments and additions to some legislative acts of the Republic of Kazakhstan on issues of inclusive education” (Қазақстан Республикасының кейбір заңнамалық актілеріне инклюзивті білім беру мәселелері бойынша өзгерістер мен толықтырулар енгізу туралы), dated 26 June 2021.

84 *Ibid.*

85 Inform Buro Kazakhstan, 2022, *Inclusive Education in Kazakhstan: in 80% of Schools There Is No One to Teach Special Children*, (<https://informburo.kz/novosti/inklyuzivnoe-obrazovanie-po-kazaxstanski-v-80-skol-osobennyx-detei-nekomu-ucit>, 12. 04. 2023).

public sector are aware of the challenges and difficulties of implementing legislative requirements, but awareness does not change the situation affecting the children in need of inclusive education. The situation clearly depicts the discrepancy between the two dimensions of human rights law: the idea-normative and the practical. The proponent of Dworkin's idea that law is practice⁸⁶ might ask whether the right to equality exists for persons with disabilities in Kazakhstan. As Dworkin would of course reply affirmatively, perhaps adding that it is a challenge everywhere in the world to close the gap between the ideal dimensions and effective implementation of law. A brief look at whether a comparable gap can be observed in the European Union countries will complement the picture.

In the EU member states and candidate countries, there is a tendency to develop laws that consolidate the possibility of teaching children with disabilities in ordinary schools by creating special conditions for implementing these requirements. This approach follows the traditional perception that for each right there needs to be a corresponding obligation. For inclusive education, this obligation is implemented by making provisions on engaging additional staff, specialized teachers, technical means, and training for teachers.⁸⁷

Overall, the EU countries can be divided into three groups according to education legislation. First, there are countries whose laws and practices guarantee the possibility of integrated learning for all or almost all children with disabilities.⁸⁸ This is achieved by creating special conditions in regular schools. This category includes Spain, Greece, Portugal, Italy, Sweden, Iceland, Norway, and Cyprus. Secondly, some countries provide parallel possibilities for studying in regular schools or in special schools. Integration is achieved through various methods of interaction between these systems.⁸⁹ This is the approach in Denmark, France, Ireland, Luxembourg, Austria, Finland, Latvia, Liechtenstein, Czech Republic, Estonia, Lithuania, Slovenia, and Slovakia. The third category includes countries that have two separate systems: a special education system and a "regular

86 Dworkin, R., 1982, Law as Interpretation, *The Politics of Interpretation*, Vol. 9, No 1, pp. 179–200.

87 General Description of Legislation and Practice in the EU and Candidate Countries, 2017, (<https://2017.perspektiva-inva.ru/en/protec-rights/law/foreign/71-obshchaya-kharakteristika-zakonodatelstva-i-praktiki-v-stranakh-es-i-v-stranakh-kandi-datakh>, 12. 04. 2023).

88 *Ibid.*

89 Malofeev, N., 2018, From Institutionalization to Inclusive Education of Children with Special Educational Needs, *Almanac*, Vol. 34, No. 4, (<https://alldef.ru/ru/articles/almanac-34/from-institutionalization-to-inclusive-education-of-children-with-special-educational-needs>, 12. 04.2023).

education” system. Children with disabilities study in the special education system. As a rule, the program of special schools differs from the regular program. These systems are governed by different laws: the Education Act and the Special Education Act. Such systems exist or existed in Switzerland and Belgium.⁹⁰

The legislation in Austria, the Netherlands, Great Britain (as a former member of the EU), and Lithuania enshrines the right of parents to choose the type of school for their children. In some countries, the law has been amended to transfer the responsibility for creating special conditions from the central government to local governments or the schools themselves. This is the case in countries such as Great Britain, Finland, the Netherlands, Lithuania, Czech Republic. In the UK (as a former member of EU), local governments grant schools the freedom to manage the school budget in order to take into account the needs of all pupils, including pupils with disabilities.⁹¹

Today, the idea of inclusive education is speedily developing in Kazakhstani society, but the normative documents governing this process have not fully caught up. According to the Education Act, a person with special educational needs is defined as a child who, due to health problems, has permanent or temporary difficulties in obtaining education. This has led to the interpretation of inclusive education as education of children with disabilities, despite such children being only one of the categories of children with special educational needs. Questions have been raised in relation to the full transposition of the concept of inclusive education based on “foreign experiences”.⁹²

International experience shows that the development of inclusive education systems, as one of the forms of integration of children with special educational needs, is a long-term strategy that requires patience, tolerance, consistency, continuity, and a comprehensive approach to its implementation. In this case, integration in the broad sense is a developmental process, the result of which is the achievement of unity and integrity within the system, based on the interdependence of individual professional elements.

The intensive development of auxiliary classes and schools for mentally handicapped children is directly related to the introduction in West-

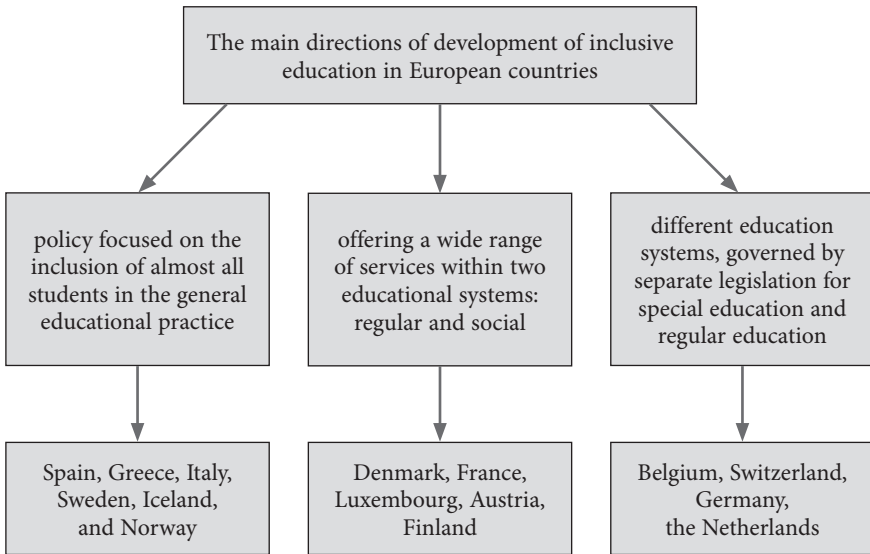
90 Krasnova, G., Mozhaeva, G., Polushkina, E., 2017, *Development of Continuous Professional Education Abroad*, Tomsk, Publishing House of Tomsk State University, p. 78.

91 Kesälähti, E., Väyrynen, S. (eds.), 2013, *Learning from Our Neighbours: Inclusive Education in the Making*, (<https://lauda.ulapland.fi/handle/10024/59480>, 12. 04. 2023).

92 Nogaibaeva, G., Zhumazhanova, S., Korotkikh, E., 2017, *Framework for Monitoring Inclusive Education in the Republic of Kazakhstan*, Astana, IAC, p. 28.

ern European countries of the General Law on Primary Education. Having begun the education of all children without exception, the state was forced to create a parallel education system for those children who were unable to achieve the educational standards within the set timeframe. Thus, the mentally handicapped children were classified as a special category of students with special educational needs.

Taking into account foreign experience, three main directions of development of inclusive education can be distinguished:⁹³



Based on this study it can be concluded that inclusive education is multidimensional in nature. In the case of Kazakhstan, the organization of inclusive education is certainly not as simple as it seems, due to the lack of teachers in general educational institutions, teachers’ poor awareness of how to teach inclusive classes, the low level of educational and technical equipment, teachers’ low level of knowledge about active learning, etc.

The results show that the state should provide significant support to persons with disabilities in order to provide them with the same rights and obligations as the population as a whole, and to provide financial resources for the exercising of these rights and obligations.⁹⁴ Yet, the legislative

93 *Ibid.*

94 Bugubaeva, R., Turlubekova, M., 2021, Comparative Analysis of the Process of Organizing Inclusive Education in Foreign Countries and Its Application in Conditions of Kazakhstan, *Journal of Karaganda Economic University of Kazpotreboysuz*, Vol. 5, p. 112.

and policy basis for inclusive education is a pre-condition for safeguarding the rights of the persons with disabilities. Concrete enforcement plans are needed to close the gap between the rhetoric of supporting the rights of persons with disabilities and achieving the goal in practice.

5. CONCLUSION

Contemporary human rights approach to persons with disabilities, enshrined in the Convention on the Rights of Persons with Disabilities, is based on the principles of non-discrimination, and full and effective involvement and inclusion in society. Regardless of individual characteristics, persons with disabilities should be accepted in all human societies, and this approach reflects the ideas of diversity and equality of opportunity, as part of human diversity in democratic societies. Article 4 of the Convention claims that

States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, the States Parties undertake: to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention; to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.

This article presents a review of how globally accepted ideas, policies, and normative standards regarding the rights of the persons with disabilities, are reflected in legislation and judicial and administrative practices in Kazakhstan. We have found that although globally accepted ideas in this sphere have found their way (perhaps not fully and comparably with the EU countries) into the Kazakhstan society and normative architecture, their declarative nature prevails over practical efficiency. Hence, one can conclude that the current situation in Kazakhstan is in contravention with Article 25 of the CRPD.

Using the examples of the Labor Code of RK and the Bank Law, we witness that local legislation of Kazakhstan still has gaps allowing discrimination of persons with disabilities in the case of labor rights and accessibility rights. The system of employment of disabled persons also claims certain amendments. In view of the comparatively small disability payments by the government of Kazakhstan, this category of persons is not always able to obtain necessary commodities. Thus, this issue is essential to those disabled persons who are still able to work.

One can assume that in order to overcome all the disadvantages in this area, local policy makers should look to the experience of the EU countries regarding the enforcement of the rights of persons with disabilities, fair payment, and labor legislation. Further recommendations include founding an international body for the supervision of fulfilment of the CRPD requirements for participating states and creating a clear action plan. This body would be authorized to oversee the states' participants compliance with the Convention provisions and issue recommendations on measures aimed at minimizing the shortcomings.

Inclusive education is another very important part of the human rights approach to disability. It lays the foundation for the comfortable future coexistence of persons with disabilities and conditionally healthy individuals, because the former will not feel inferior and the latter will not perceive disabled persons as someone alien. The countries of the European Union have a long and varied experience in this area. For the successful implementation of programs and laws on inclusive education, one can look to the experiences of Austria, Norway, and Denmark, where resource centers will be able to provide experts and necessary teaching aids to secondary schools and universities. Also, as was the case in Poland, it is possible to introduce individual educational programs for students with special needs and define them at the legislative level. Cooperation between the EU countries and the Kazakhstan authorities is therefore encouraged, on the principle of sharing experiences and best practices. The somewhat declarative approach toward inclusive education can be overcome through such cooperation.

We can conclude that the overall normative backbone for enhancing the rights of the persons with disabilities is in place in Kazakhstan at the most general level. Non-discrimination and equality are undisputed principles. The concept that law is not what is written into documents and instruments, but what happens in practice, is more than relevant to the situation of the persons with disabilities in Kazakhstan.

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ZAŠTITA PRAVA NA RAD OSOBA SA INVALIDITETOM:
ISKUSTVO KAZAHSTANA IZ UGLA
MEĐUNARODNOG PRAVA I PRAVA EU

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Mart Susi

APSTRAKT

Uprkos ratifikaciji Konvencije o pravima osoba sa invaliditetom od strane većine država, ova kategorija lica se i dalje suočava sa različitim izazovima. Jaz između deklarativne prirode jednakih prava osoba sa invaliditetom i praktične implementacije koncepta jednakosti posebno je evidentan u oblasti mogućnosti zapošljavanja. Iako je većina zemalja, uključujući Kazahstan, prenela ideje o jednakom tretmanu osoba sa invaliditetom u nacionalno zakonodavstvo, situacija je i dalje nezadovoljavajuća, pa se možemo zapitati zašto? To je posebno relevantno u oblasti rada i povezano sa nedovoljnim nadzorom vlade nad načinom na koji privatni akteri na radnom mestu primenjuju pravne principe. Neophodni su specifični domaći efikasni mehanizmi i pravni lekovi, ruku podruku sa međunarodnim nadzorom, kako bi se umanjila neslaganja između onoga na šta su se zemlje obavezale i načina na koji se pridržavaju obaveza zaštite prava osoba sa invaliditetom. Kazahstan treba da dopuni svoju posvećenost ovim pravima nacionalnim akcionim planom.

Ključne reči: pravo na rad osoba sa invaliditetom, inkluzivno obrazovanje, pravo kao praksa, deklarativnost prava ljudskih prava, međunarodne konvencije, domaće zakonodavstvo.

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