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Problems of legal regulation of benefits indexation to persons with limited opportunities in Kazakhstan

Abstract. *The global political situation, Russian-Ukrainian conflict, as well as the consequences of the COVID-19 pandemic has severely influenced the situation in Kazakhstan at many levels, – economic, social, and political ones. In this regard, the cornerstone for the most of the RK citizens became the price formation on commodities and medicines. The pandemic has deprived many people of their source of income in the country, whereas the wage growth undergoes rather slowly. In that context a significant part of the population, including people with disabilities, entirely depends on governmental assistance. The prices rise for essential products and medicines, along with meager benefits, drives the disabled group up to the brink of survival, violating their human rights and categorically contradicts the concept of international conventions ratified by Kazakhstan, as well as local legislation regulations in this area.*

In the given article, the authors will attempt to consider the current benefits for people with disabilities and its correlation with continuous growth of commodities and medicines from the human rights perspective and offer some recommendations for the improving of the situation by means of the legal mechanisms.

Keywords: *People with disabilities, Human Rights, benefits, payment, Legislation, State, Government, International Standards, social state.*

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Introduction

The economic, social and cultural rights of the humanity are very significant issues of the contemporary Human Rights study. It is definitely a crucial point for such vulnerable people as handicaps, or individuals with disabilities. This category of population is not always able to provide for themselves, whereas the governments is responsible to pay a sharp attention to the solution of a number of problems in this particular area.

To ensure the rights and legitimate interests of persons with disabilities in Kazakhstan, there is a multi-level system of

social protection created. The latter includes state assistance, social benefits and payments, compensation for the lost body functions within the framework of social rehabilitation, and a provision of specific social services [1].

After the ratification Convention On The Rights Of Persons With Disabilities (CRPD), Kazakhstan has succeeded significantly to improve the situation of people with disabilities in a number of areas with the vivid example of the influence of the convention on the current legislation of the Republic of Kazakhstan. The overview and analytical portal Strategy 2050 informs that the Minister

of Labor and Social Protection of the Population of the RK S. Shapkenov presented a draft law «On amendments and additions to some legislative acts of the Republic of Kazakhstan on issues of social protection of certain categories of citizens» in 2021 [2]. In accordance with claims of Shapkenov, the bill was elaborated to implement and facilitate a number of aims. Among them one can point the implementation of the norms of the UN Convention on the Rights of Persons with Disabilities, to eliminate discriminatory terms in the legislation, to improve social protection of persons with disabilities, to stimulate the employment and economic activity of disabled; people, provide social package to the low-income families, process documents for special social services and inva-taxi through the Social Services Portal (from 2023) [ibid.].

Methodology

The theoretical basis of the paper is founded on the international conventions adopted by the Republic of Kazakhstan as well as the domestic legal and legislative ground adopted by 2022. Among them are UN Convention on the Rights of People with Disabilities, Universal Declaration of Human Rights, and the RK approval of the provision of social support to disability from an industrial injury or occupational disease in technical means of rehabilitation at the expense of the state in case of impossibility of fulfilling obligations by the employer [3, 4]. The theoretical basis could be added by the adopted by Kazakhstan's government of the *social state* policies. The concept adopts the economic, political, health, employment and other needs of the vulnerable groups of population and incorporates them into the social life as an integral part. As any state strategy, the legal branch facilitates it. In this context, the accepted at the legislature level of the extension of the period of caring for a disabled child up to 18 years old (previously 16 years old), and the division of children aged 7 to 16 by disability groups and the benefits increase [ibid.].

On October 12, 2021 the law was signed by President of Kazakhstan Kassym-Jomart Tokayev noted with the appreciation such novelties, as the introduction of benefits to

persons who care for disabled people of group I, regardless of the cause of disability [3]. Additionally, the Kazakhstan's law provides for amendments and additions to 75 legislative acts including 10 codes [2]. Apart from the legal and legislative acts, the literature includes the review of the relevant points of the «Strategy of RK – 2050», where the key strategic aims are depicted, positioning Kazakhstan as a social state attentive to all groups of population. All those acts are shaping the successful path of the country towards the socially oriented state with yet some challenges to overcome and improve.

Methodology of the paper is logically connected with the theoretical basis, forming a qualitative analysis of the problem settled. Conducting the content analysis of the international and domestic legal documents (conventions, constitution, state strategies), the authors depict and analyze the problematics, discussion, and findings on the issue.

Literature Review

The literature includes legal normative acts of the Republic of Kazakhstan towards the disabled people, as well as the International Conventions in the area of human rights and Disabled groups. Naturally, the article involves the analysis of the latest analytical reports (Forbes, etc.) on the quality and future positions of the Kazakhstani markets and economic situation. The statistics on disabled groups in CIS allowed to observe and analyze the current difficulties faced by the groups, especially relevant in the realms of the Covid-19 and recent global events. Kazakhstan Human Rights Situation Report 2020 assisted on understanding the latest trends in RK in the area, while using the articles on foreign countries situation with the disabled people allowed comparing the problem and elaborating on the recommendations based on the foreign experience.

Numerous analytical researches considering problem of benefits for individuals with disabilities were issued by such activists in disabled people human rights field as Kaltaeva Lyazzat and Veniamin Alaev, however, these articles do not give complete international legal analysis when one is trying put forward requirements for a state-member

of a number of important international human rights instruments.

Discussion

Despite the development of the social state concept and practice, as well as inclusive society norms and values, people with disabilities still face numerous problems in Kazakhstan. During the confidential interviews, many of them expressed concerns on rather low disability benefits.

On the eve of December 3, 2021- the International Day of Persons with Disabilities, thousands of Kazakhstanis signed a petition demanding to double the amount of benefits for people with disabilities. Despite the fact that the state has ratified the UN Convention and has assumed numerous obligations, the situation of persons with disabilities in the country has not changed much [5].

On November 17, 2021, R. Zhumasheva, a 47-year-old disabled resident of the Shu district (Zhambyl region) posted a petition on the Egov.press website addressing an open letter to the President of Kazakhstan and requesting to draw the attention of the authorities to people with disabilities [5]. She declared that among 19 million population of Kazakhstan only about 700 thousand are people with disabilities, existing on a meager allowance spent on treatment, paying for rented housing [ibid.]. Having become disabled, they found themselves overboard, feel a clear neglect from the Government, and demanding the disability benefits increase

by 100 percent, and collected about seven thousand signatures [ibid.].

The government left the petition without response. The indirect answer from the deputy of the Maslikhat of Almaty and the Chairman of the Association of Disabled Women «Shyrak» Lyazzat Kaltayeva followed the petition, mentioning that among people with disabilities a «dependent mood» has developed [5]. In her opinion, it is necessary to increase the potential and opportunities for people with disabilities by employment and a decent salary on equal terms [ibid.].

Despite the logics in that point, it is impossible to apply this principle for all universally. There are various people with disabilities who are not able to work at all, moreover, the conducting reforms on enhancing of labor skills of people with disabilities and providing the appropriate conditions for them on the job places is indeed a long-term process, while the disabled must survive the current needs for food, remedies, housing and renting.

Considering the situation in figures, the statistics provides the ground to assume that due to the increase in the Minimum Calculated Index by 146 tenge in Kazakhstan, the amount of social payments and benefits were changed in the beginning of 2022, with the indexation of the subsistence minimum and the minimum calculated indicator by 5% [6]. Following that, the living wage will be summed of 36,018 tenge, MCI of 3,063 tenge, the minimum wage of 60,000 tenge, with disability benefits in 2023 as follows:

Tab. 1

Group of disability	Payment amount
1st group	77 889 tenge
2nd group	62 068 tenge
3rd group	42 190 tenge

Source: [6].

It is also necessary to realize the real capability of people with disabilities, as many are not able to do some activity that can allow them to get additional income. This scheme applies as:

Tab. 2

Group of disability	Characteristics
1st group	a person constantly needs help and care from outsiders
2nd group	the ability to self-service is partially lost: the disabled person is able to maintain and move around, but only with the use of special tools or with the help of others
3rd group	a person can serve themselves. For training requires a special mode, the help of other people. Can't work in the profession, forced to perform less skilled work

Source: [7].

The real situation with the growth of prices on basic commodities, however, does not correspond to the indexation of allowance for people with disabilities. For the clear perspective of the situation, it is necessary to consider the official statistic of the prices rate prices in Kazakhstan, related with the inflation of tenge (local currency) and global economic situation, given in the analysis below.

The acceleration of inflation is mainly affected by the rise in the cost of food products, but prices for non-food products and services are also rising.

As Forbes reports, inflation in February 2023 year on year was 21.3%. Prices for food products increased by 26.2%, for non-food products – by 20.5%, for paid services – by 15%. Compared to February 2022, onions have risen in price by 105%, laundry soap – by 90.3%, stationery – by 71.8%, cucumbers – by 56.8%, bleaches, baby soap – by 56.3%, sugar – by 55%, canned milk – by 49.1%, rice – by 44.9%, pasta – by 41.1%, flour – by 40.2% [8]. As we can see here are mentioned only essential products, however, there are other things that necessary for daily life for all people including people with disabilities.

For instance, in accordance with data of Kazinform agency on 2023 among non-food products, the largest increase in prices in February was observed for detergents and cleaning products. Thus, compared with the previous month, prices for laundry soap increased by 2.8%, washing powder, dishwashing detergents – by 2.5%, bleaches

– by 2.4%, toilet paper – by 2.1%. Liquefied gas in cylinders has risen in price by 1.6%. An increase in prices was noted for air passenger transport services by 21.5%, railway – by 2.3%. For utilities, there is an increase in tariffs for central heating by 7.1%, hot water – by 6.3%, sanitation – by 3.1%, housing maintenance – by 1.8%, cold water – by 1%, electricity – by 0.7% [9]. As one can see, we even do not consider growth price on cloth, let alone entertainment sector, although in 21st century it must be natural right for all categories of population.

In terms of regions, food prices increased the most in Astana and Shymkent – 2.2%, respectively. On January 31 of 2022, the head of state, Kassym-Jomart Tokayev, criticized the authorities of the capital for rising prices. At the end of January 2023, it became known that Kazakhstan was ahead of other EAEU countries in terms of rising food prices. Food prices rose by 19%. Products have risen in price significantly in Belarus and Kyrgyzstan – growth for the year amounted to 16.5% and 16.4%, respectively. The smallest growth was recorded in Armenia (12.5%) and Russia (14.9%). The overall indicator for food products amounted to 15.4% [19]. As can be seen from the above data, our country occupies a leading position in this dubious ranking.

Yet, the authorities of Kazakhstan fail to contain prices. In accordance with data of 2021 officially, inflation reached 8.9 % in the first nine months, but residents of cities and villages complain about an almost two-fold

increase in prices, primarily for food. Sellers in shops and markets report that many buyers have begun to take groceries in installments, and the «stabilization measures» from the state do not work, as showed a trip to the market of Shymkent considered as a «cheap» city in the past [10]. An average resident of Shymkent, a father of five children, with the wife is on maternity leave has monthly salary of 200,000 tenge (\$470). The family also receives a child allowance of 55,000 tenge (\$130). However, now the income of a large family is barely enough to feed. This information on the average income person with no disabilities and comparatively good month income depicts difficulty of the disables without additional income to survive in current realms[*ibid.*]. After 2 years situation became more severe, and of course it reflects on vulnerable groups, such as people with disabilities.

One may assume the increase of the price to be consequences of the COVID-19, Russian-Ukrainian war, and other world challenges [20]. A number of researches project the new economic paradigms in the nearest years, while food deficit in some continents become a reality. This price and inflation rise becomes a global trend, whereas the most vulnerable groups of the population, including disables, suffer from the lack of human rights and opportunities. Yet, for Kazakhstan, the task these days becomes to become a self-providing state, with grains, ores and hydrocarbons to be exported and provide a revenue. Moreover, this economic task correlates with the social perspective and aim of the social state that needs to act in the interest of the Kazakhstanis, and increase its financial and social attention to the people of the country. This has been supported by the Referendum held in June 5, 2022, with the package of reforms concerning the national possessions and ownership of public resources.

At the same time, Kazakhstan is a participant of the most Human Rights Conventions and proclaims itself as a social state. Social state is to frame legally the approach and values, as well as policies and resources to allocate to the social groups problems solutions. Most of them claim from the Member State fulfillment of commitments on provision of the worthy life level for all

groups of population. Article 22 and 25 of the Universal Declaration of Human Rights declares every member of society to have the social security right and to the exercise the rights necessary for the maintenance of dignity and free development of personality in economic, social and cultural fields, through national efforts and international cooperation, according to the structure and resources of each state. Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other loss of livelihood due to circumstances beyond his control [16]. Moreover, Article 11 of International Covenant on Economic, Social and Cultural Rights declares following ideas: States Parties to the present Covenant recognizing the right of everyone to an adequate standard of living, adequate food, clothing and housing, and to the continuous improvement of living conditions. The participating States will respond appropriately to ensure the exercise of this right, recognizing the importance in this respect of international cooperation based on free consent [17].

Article 28, of Convention on the Rights of Persons with Disabilities 2006, says that States Parties recognize the right of persons with disabilities to an adequate standard of living including and shall take appropriate measures to ensure and promote the realization of this right without discrimination on the basis of disability [11]. Moreover, it says that State must take measures to ensure that persons with disabilities and their families living in poverty have access to government assistance to meet disability-related costs, including appropriate training, counselling, financial assistance and respite care [*ibid.*].

As for the local policies, Constitution of the Republic of Kazakhstan guarantees the citizens minimum wage and pension, social security for elderly, in case of illness, disability, and loss of a breadwinner and for other legal reasons [12]. Article 5 of the Law on social protection of disabled people in the Republic of Kazakhstan declares such principles as the state policy of the Republic of Kazakhstan.

In the field of social protection of disabled people is carried out based on the following principles: legality, humanity, observance of human rights; guaranteeing social protection, ensuring the availability of medical, social and professional rehabilitation [13]. However, in practice, the low disability benefits paid by the state violate these principles, forcing people to live on the brink of survival.

If we take for comparison experience of other states, we would see that in Poland disabled persons over 30 years of age receive benefits if they have 5 years of work experience, and younger representatives from 1 to 4 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 \$216, while in Germany people with a severe disability that prevents them from working more than three hours receive a full benefit of about nine thousand euros per year [14]. That allows local government to revise and consider the European experience of the benefit indexation, effectively enforcing the Kazakhstan's capabilities into action towards the disabled groups' state assistance and a proper public budget allocation.

The sustainable development plan also serves as a solid conceptual basis for the support and improved benefits indexation mobilizing the internal resources and market capacity. Domestic economy, healthy taxation and resource management are to generate the financial pillar for the indexations, even in crisis periods. Together with the social state policies, they are aimed to counter the global scarcities and COVID-19 aftermath, combatting the latter at the state level. Indexation and appropriate budget governance are feasible in Kazakhstan, moving the vulnerable groups of disabled to the frontiers of the key recipients of the proper state care. Local legislature of RK is to conduct these policies rightly.

Results

In accordance with Kazakhstan Human Rights Situation Report 2022 of US Embassy & Consulate in Kazakhstan, the problem of employment persisted. According to akron.kz, a quarter of persons with disabilities of working age were employed. Activists noted

that employers do not have enough incentives to hire people with disabilities. Companies are required by the law to reserve 3% of jobs for people with disabilities, and the government has put in place strategic measures to expand the economic opportunities as part of the President's 2050 Development Strategy [15]. Yet, persons with disabilities were reported to have difficulty integrating into society and finding employment.

Moreover, in accordance with official data, the average sealery in Kazakhstan on 2023 is 338 715 tenge [18]. If compare it with figures mentioned in Tab.1, it would be obvious tremendous gap. It should be taken into account that people with limited abilities in some cases have much more expenses, than comparatively healthy individuals. For those disabled, who do not have additional income, taking in account present prices the situation seems catastrophic.

It's also necessary to mention the appearance of such document as new Social Code of the Republic of Kazakhstan (dated 20.04.2023). The Code will replace 9 separate documents aimed at social protection of the population, which will greatly facilitate the work of social services. At the same time, the new code will ensure the preservation of all social guarantees and forms of social support that are available today, both from the budget and from the state social insurance fund [21]. The code reflects seven main areas of social support for Kazakhstanis, measures to promote employment and pensions, including social protection of persons with disabilities [22]. The chapter 13 of the code is dedicated to the issues of state support for persons with disabilities, it covers a lot of social aspects, such as: medical and social expertise, habilitation and rehabilitation of persons with disabilities, prevention of disability, vocational rehabilitation of persons with disabilities, procedure for the appointment and payment of state benefits for persons with disabilities, social benefits in case of disability. However, Law still does not reflect indexation of disability benefits in situation of continuously raising prices on basic commodities. Disability benefits are formed by the state based on the annual budget, but the final amount of benefits in monetary terms

does not always correspond to the real needs of people with limited abilities in Kazakhstan.

Conclusions

In light of all of the above, we treat that Kazakhstan have to undertake several serious steps to the improving of real situation of Kazakhstani individuals with limited abilities. First of all, on the international level it is necessary to join to the Optional Protocol of CRPD (in 2008 our country just signed this document, but still has not ratified [23]). This state of affairs deprives persons with disabilities to file complaints with the UN human rights committee, what contradicts to the building of democratic and social state, following provisions of international conventions.

Next, we offer to make new amendments in legislation related with disable people. For instance, the main document regulating the issues on people with disabilities is the *Law On social protection of disabled people in the Republic of Kazakhstan*. Article 16 of the Law says that the social assistance to the disabled includes payments in the form of state benefits, compensations and other payments, including charity, provided for by the legislation of the Republic of Kazakhstan. Local executive bodies, employers and other organizations may provide additional types of social assistance [13]. However, the article does not contain any information on indexation of payments in accordance with the growth of prices on basic commodities. Six months ago, significantly differ this crucial, when 77 889 tenge in buying capacity to the present value. Hence, our proposal on indexation of payments in regard with price growth will make life easier for people with disabilities.

In addition, the article 32-3 says that disabled persons, based on an individual program for the rehabilitation of a disabled person, place an order for the purchase of goods and (or) services through the social services portal. A disabled person, when acquiring goods and (or) services through the portal of social services in accordance with an individual rehabilitation program for a

disabled person, has the right to reimbursement by local executive bodies of their cost, but not more than the amount of the guaranteed amount provided for in paragraph 3 of this article. The difference between the guaranteed amount and the actual cost of the purchased goods and (or) services is paid by the disabled person at his own expense [13]. In the same time, 3d paragraph of the article declares that The guaranteed amount provided as a reimbursement for the cost of goods and (or) services purchased through the social services portal is paid in the manner and in the amount determined by the authorized body in the field of social protection of the population [ibid.]. From our point of view, this wording is not clear enough and may have inconsistencies, it is necessary to clearly state the guaranteed amount and the possibility of its indexation in the event of a change in price growth.

Moreover, it is possible to elaborate new legal mechanisms for the indexation of payments for the people with disabilities in condition of economic conditions changing and pandemic challenges.

The new social code of RK in it's article 176, 177, 178 [22] contains no information about indexation of the disability benefits as well. We believe that some provisions should be added to this law that will correlate pensions on disability with the average official salary in Kazakhstan, which will help to derive a more adequate amount of benefits in the end.

Another crucial aspect is the role of international organizations. In our opinion government of Kazakhstan has to provide wide access to the International Organizations (for instance special bodies of UN) for the control of situation with Rights of People with Disabilities. Government must oblige all kinds of state bodies to fulfill all recommendations of international organizations without any reservations.

The ideas proposed in the present article can help not only to the people with disabilities in particular, but to all groups of population in Kazakhstan in formation of our country as constitutional state.

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Қазақстандағы мүгедектерге берілетін жәрдемақыларды индекстеуді құқықтық реттеу мәселелері

Аңдатпа. Жаһандық саяси жағдай, ресейлік-украиндық қақтығыс, сондай-ақ COVID-19 пандемиясының салдары Қазақстандағы жағдайға көптеген деңгейде – экономикалық, әлеуметтік және саяси деңгейде қатты әсер етті. Осыған байланысты, Қазақстан азаматтарының көпшілігі үшін тауарлар мен дәрі-дәрмекке бағаның қалыптасуы негізгі тірек болды. Пандемия елдегі көптеген адамдарды табыс көзінен айырды, ал жалақының өсуі өте баяу жүріп жатыр. Бұл тұрғыда халықтың едәуір бөлігі, соның ішінде мүмкіндігі шектеулі жандар толығымен мемлекеттік көмекке тәуелді. Ең қажетті өнімдер мен дәрі-дәрмек бағасының өсуі шамалы жәрдемақылармен қатар мүгедектер тобын өмір сүрудің шегіне дейін жеткізеді, олардың адам құқықтарын бұзады және Қазақстан ратификациялаған халықаралық конвенциялардың тұжырымдамасына, сондай-ақ осы саладағы жергілікті заңнама нормаларына үзілді-кесілді қайшы келеді.

Бұл мақалада авторлар мүгедектерге берілетін қазіргі жеңілдіктерді және оның тауар мен дәрі-дәрмектің үздіксіз өсуімен байланысын адам құқықтары тұрғысынан қарастыруға тырысады және құқықтық тетіктер арқылы жағдайды жақсарту бойынша кейбір ұсыныстарды ұсынады.

Түйін сөздер: Мүгедектер, Адам құқықтары, жәрдемақылар, төлем, Заңнама, Мемлекет, Үкімет, Халықаралық стандарттар, әлеуметтік мемлекет.

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Проблемы правового регулирования индексации пособий лицам с ограниченными возможностями в Казахстане

Аннотация. Глобальная политическая ситуация, российско-украинский конфликт, а также последствия пандемии COVID-19 серьезно повлияли на ситуацию в Казахстане на многих уровнях – экономическом, социальном и политическом. В связи с этим краеугольным камнем для большинства граждан РК стало ценообразование на товары и лекарства. Пандемия лишила многих людей источника дохода в стране, а рост заработной платы идет довольно медленно. В этом контексте значительная часть населения, в том числе люди с инвалидностью, полностью зависят от государственной помощи. Повышение цен на товары первой необходимости и лекарства при мизерных льготах ставит группу инвалидов на грань выживания, нарушая их права человека и категорически противоречит концепции международных конвенций, ратифицированных Казахстаном, а также нормам местного законодательства в этой сфере.

В данной статье авторы попытаются рассмотреть текущие льготы для людей с инвалидностью и их взаимосвязь с непрерывным ростом цен товаров и лекарств с точки зрения прав человека и предложить некоторые рекомендации по улучшению ситуации с помощью правовых механизмов.

Ключевые слова: люди с инвалидностью, права человека, льготы, выплаты, законодательство, государство, правительство, международные стандарты, социальное государство.

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