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The main problems with the implementation of the international standards for the employment of persons with disabilities in the Republic of Kazakhstan

Abstract. *At present, the issue of employment is a cornerstone for all groups of the population around the globe. A job has a direct relation with the living standards or survival of a contemporary individual. However, for people with disabilities labor problem is more severe than for others. As a rule, representatives of this group are not able to obtain appropriate work without the aid of the state. At this stage, for the necessary provision of human rights for disabled people, the state must possess legislation that corresponds to the international standards and mechanisms of its implementation. The article traces the problems of the disabled people's employment in the Republic of Kazakhstan and provides the foreign experience in this area to be possibly adopted by the Kazakhstan state.*

The present research aims to identify the basic international trends in labor and human rights legislation for people with disabilities, and includes the analysis of the international conventions, a review of the successful foreign experience, as well as local legislation in the labor area for disabled people. It also assesses the steps of the Republic of Kazakhstan to bring its legislation in correspondence with the international standards and elaborates on recommendations for the improvement of the current situation in the labor area for disabled people.

Unlike most studies used as support material for this research, the present article not only specifies the problems of job issues for the disabled people but also gives recommendations on how to amend the current legislation to make the process of jobs getting to people with disabilities more favorable. The actuality and novelty of the research are also supported by the recommendations on the creation of beneficial conditions by the employers to attract and hire disabled employees on the proper basis, excluding potential grounds for social exclusion and discrimination of the latter in their workplace.

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

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Introduction

Citizens of all countries require proper respect for their Human Rights from their governments. Yet, for some groups of individuals, the Human Rights issue is vital. People with disabilities in this case are one of the most vulnerable groups of the population. For several reasons (physical or social), they are unable to solve the issues by themselves. Here, the problem of employment appears to be highly relevant for them amongst others, if not a vital one. Employers are often unwilling to hire these vulnerable groups or provide appropriate conditions for their work experience. At this point, a state becomes a crucial institution to directly influence the situation in the labor market and create a favorable environment for job activity for people with limited abilities.

The Republic of Kazakhstan, within the scope of contemporary international experience and trends, also attempts to solve the employment problems of disabled people. The first President N. Nazarbayev in his Address to the people of Kazakhstan «The Kazakhstani way - 2050. One goal, one interest, common future» dated January 17, 2014, mentioned the priority tasks to involve the citizens of the Republic of Kazakhstan with disabilities into active life, and according to him, they will not just receive benefits, but they will be aware of themselves as members of society [1]. Moreover, in 2015, Kazakhstan ratified the Convention on the Rights of Persons with Disabilities 2006, and in 2019 a national plan to ensure the rights and improve the quality of life of persons with disabilities in the Republic of Kazakhstan was issued [2, 3]. All these steps have been undertaken for adjusting the legislation for more effective work on improving the quality of disabled people's lives, including their labor involvement and activities.

Despite of the efforts done, people with disabilities still face multiple obstacles when applying for a job. According to the data of the former Minister of Labor and Social Protection of Kazakhstan Birzhan Nurimbetov, in 2020 the number of people with disabilities was about 705 000, with 94 thousand of them as children, 181 thousand are pensioners, and only 23 % (or 100

thousand out of 430 thousand able-bodied), have jobs today [4].

The novelty, importance, and relevance of the research on the social opportunities of the disabled category are rather difficult to overestimate. Since modern societies are in search of socially oriented governance, the vulnerable groups are a special focus. The model of the social welfare state facilitates the need for the government to elaborate a holistic approach to promote and implement the social policies into reality. The establishment of corresponded institutions and organizations are other tasks for the Kazakhstani policy-makers. Yet, any policymaking requires the legislature to be founded as a prior process, opening the floor for the social transformations and guarantees to start. The economy, in its turn, also becomes the object of socially structured metamorphosis, with the assistance of the vulnerable population groups as a priority mission.

This article sets the following goals and objectives:

- to trace the problematic areas of Kazakhstan's situation with the employment of the disabled people;
- to analyze the domestic legal framework for the employment of the disabled people;
- to evaluate state social institutions' involvement into this process;
- to assess the international experience of the abroad states in dealing the similar issues.

The structure of the article includes an introduction, methodology and materials review, results and discussion, conclusion with recommendations, and literature used.

Experimental: Research Methodology and Literature/Materials Review

As a methodology, this article applies the content analysis of the international and domestic legal documents (conventions, constitution, state strategies), as well as the articles devoted to the problematics.

The research also aims to apply the comparative analysis of the practices and conditions in the Republic of Kazakhstan and some western countries (France, Canada, and Finland) to assess the latest trends in social and

legal problem solving, recommendations, and lessons that Kazakhstan can derive from such. The experience of these countries in disabled groups' employment and social inclusiveness would serve as a platform to indicate and apply the model of a social state that Kazakhstan acquires at present.

Apart from the official legal documents served as primary sources, the problems of disabled people's employment conditions were studied by Prokofiev (2019), Alayev (2016), Sansyzbaeva & Ashirbekova (2015), Kaltaeva (2019), Osetrova (2020), etc [5, 6, 7, 8, 9].

Most of these authors consider problematical issues of employment of people with disabilities from different perspectives: social, economic, and legal. Generally, all studies represent different areas and each of them gives detailed analysis in its own sphere.

As for the legal basis of the disabled people's employment in the Republic of Kazakhstan (RK), a number of articles address the given problematics. For example, the Constitution (Article 24) states that every citizen of RK has the right to freedom of work, free choice of professional occupation without any discrimination, as well as the right to working conditions that meet safety requirements [10]. Moreover, after the ratification of the UN Convention on the Rights of Persons with Disabilities in 2015, Kazakhstan adopted all obligations described in the previous section.

The main documents governing the recruitment of persons with disabilities in RK are the Labor Code of the country and the Law «On employment of the population». In accordance with paragraph 2 of Article 25 of the Labor Code of the Republic of Kazakhstan, disability cannot limit the right to conclude an employment contract, except for cases provided for by the Labor Code. Thus, the legislator has provided for the possibility of a disabled person exercising his right to work. According to paragraph 2 of Article 28 of the Labor Code, "an employment contract concluded with a disabled person must contain conditions for equipping workplaces, taking into account their individual capabilities" [11].

It is important to mention here that based on paragraph 2, Article 25 of the Labor Code

of RK, in case the state of health of a disabled person does not interfere with the performance of the professional duties, the refusal to hire, concludes an employment contract or change the working conditions by the management is illegal. Moreover, there is a violation (paragraph 2, Article 14, Constitution of RK), according to which no one can be subjected to any discrimination based on origin, social, official and property status, gender, race, nationality, language, attitude to religion, beliefs, and residence or for any other circumstances [10]. Additionally, paragraph 2, Article 24 of the Constitution states that everyone has the right to working conditions that meet the requirements of safety and hygiene, and to remuneration for work without any discrimination, as well as to social protection against unemployment. For such offenses, at the request of a disabled employee to the State Labor Inspector, the employer may be held administratively liable for the violation of the labor legislation of the Republic of Kazakhstan [11].

The legal framework of our country also stipulates the working hours of the disabled groups' work performance. For instance, the Clause 3 (Article 69) of the Labor Code stipulates that workers with disabilities of the 1st and 2nd groups shall have a reduced working time, - of no more than 36 hours per week; the duration of daily work (work shift) of disabled workers of I and II groups cannot exceed 7 hours [11]. This provision is binding to all employers and employees. Consequently, the employer does not have the right to hire disabled workers of the first and second groups with normal conditions. In case the employee is a disabled person of the 3rd group with no medical contraindications, the employer has the right to offer a contract with her/him under normal working conditions [11].

A rather precise approach in the domestic legal framework is taken toward the annual leaves of disabled employees. According to paragraph 2 of Article 89 (Labor Code), employees with disabilities in groups 1 and 2 are provided with the additional paid annual leave of at least 6 calendar days [11]. Moreover, the Labor Code establishes monthly wages differentially

depending on the qualifications of the employee, the complexity, quantity, and quality of work performed, as well as working conditions. Consequently, the size of wages, along with other characteristics, also depends on the duration of working hours. Thus, with a reduced duration of working hours, the number of wages will be lower in comparison with the number of wages with a normal duration of working hours or the summarized accounting of working hours. The fact that the salary of a disabled employee will ultimately be less than that of an ordinary employee cannot be regarded as discriminatory, since salaries are paid in proportion to the hours worked [11, 12].

Thus, one can note that the Republic of Kazakhstan is in the process of developing the legal basis for the implementation of the state public policies and resources for the vulnerable groups' social involvement to promote their rights and contribution to society. However, it needs to be constantly advanced further to avoid the loops existing, which in practice create problems for disabled groups' employment rights. The latter represents a challenge our country needs to solve in the nearest future so that the model of a social state that Kazakhstan has undertaken recently would fully realize the goal of prosperity and sustainability.

Results and Discussion

1. Discussion of the legal basis of the disabled people's employment in the Republic of Kazakhstan

As one may observe, the legal approach to the employment issue of the disabled groups is evolving in Kazakhstan, attempting to improve the situation with rights and non-discrimination. Yet, there are specific areas of disabled people's employment that are clearly undeveloped. For example, there is a clear gap in the area of remuneration for disabled workers, since the Labor Code of RK does not strictly regulate this issue. This circumstance allows the employer to pay the specified category of workers at his own discretion. According to paragraph 3, Article 69 of the Labor Code, employees with disabilities

of groups I and II are set to work shorter hours - no more than 36 hours per week, the duration of daily work (work shift) of disabled workers of I and II groups cannot exceed 7 hours [11]. It follows from the stated norms of the law that the legislator strictly limits the employer in establishing working time regime for a disabled employee [11]. Additionally, clause 4 of Article 69 of the Labor Code stipulates that the remuneration of employees to establish reduced working hours is to be made in accordance with the specified Code (ibid.). Finally, paragraph 1, of Article 107 of the Labor Code, defines that the salary of an employee is founded on an employment contract based on the employer's wage system, while the remuneration system can be formed based on a tariff, tariff-free, or mixed system. The tariff system of remuneration includes tariff rate (salaries), tariff scale, and tariff coefficients.

A natural question appears at this point on salary specifics for the disabled persons. Here, the legislation establishes that labor remuneration can be made according to piece-rate, time-based and other systems. In this case, two forms of payment stand out:

- Piecework, - that is wages are paid to the employee based on the actually manufactured products or the time spent on their manufacture;
- Time-based, - the amount of wages is determined based on the actual hours worked and the established tariff rate (official salary).

A simple time-based wage system assumes wages based on the indicator of the hours worked/conducted. Therefore, this system allows the employee to have an official salary, which is calculated as follows: if a disabled person of the 2nd group works shortened working time (36 hours per week), the full working time (100%) for this position is 40 hours per week. Thus, the calculation is based on the proportion: 40 h - 100%
36 h - X, where X is the amount of remuneration for shortened working time (36 hours) set for a disabled employee, as a percentage of the employee's full pay for normal working hours (40 hours). $X = 36 \text{ h} * 100/40 = 90$ [9].

Thus, for shortened working time, which is 90% of the full working time of an ordinary employee, a disabled employee should be credited with 90%

of the full wage. In addition to the above method, labor remuneration can be made in accordance with Article 106 of the Labor Code, in which the terms of labor, collective agreements and (or) the employer's act may establish hourly wages for actually performed work with shortened working time, as well as for payment for work of a temporary or one-time nature. In such cases, the law permits the use of hourly wages for actually performed work [11]. The application of such payment can be regulated in the labor and collective agreement, as well as by acts of the employer. All that provides a zoomed picture on the realistic techniques applied or omitted in relation to the disabled group and employer effects, and points out the fragmentary or at times embryonic state of affairs in the area.

Since there is an absence of legal regulation on this issue, either party to the employment contract has the opportunity to initiate the conclusion of a collective agreement, which will contain provisions on the terms of remuneration of employees with disabilities. Again, the Labor Code determining the disabled people of the 1st and 2nd groups, with a fully remunerated reduced working hours limited to 36 hours per week can be mentioned as a tool. It is also necessary to mention the tax policy for people with disabilities in Kazakhstan. The Code of the RK «On taxes and other obligatory payments to the budget», states that from the income of an individual subject to taxation, income for the year is excluded within the 55-fold minimum wage established by the law on the republican budget for disabled persons of the 1st, 2nd, and 3rd groups. From the stated norm of tax legislation, it follows that disabled workers are exempt from paying individual income tax within the amount established by law [13]. Yet these two are indicating a serious lack of other legal and public policies. Such legal rareness produces misunderstandings and constraints for better professional involvement of the disabled groups.

Currently, the legislation contains only attempts to protect the interests of disabled people. According to the legislation of Kazakhstan, employers can accept people with disabilities by a certain quota (3-4% of the total workplaces).

Under Kazakhstan's conditions, employers often deny people with disabilities a vacancy place, unwilling to face certain difficulties. Among such are frequent sick leaves for disabled workers, and the inability to create special conditions that would meet the criteria for the employee rehabilitation program.

This situation testifies that the abovementioned legal mechanism in practice turned out to be rather ineffective, and today does not suit neither employers, nor disabled people, or the state. With the proclaiming of the status of the socially oriented state, Kazakhstan is challenged with the creation of the favorable conditions for all categories of its citizens. Such innovations as digitalization and electronic governments are aiming to simplify the accessibility of such groups to the public resources, where employment opportunities are essential.

Sustainability programs and loyalty to the international standards on human rights oblige the Republic of Kazakhstan to promote the inclusive approach to the social responsibilities concept at all levels. The international companies today in many countries include social responsibilities projects and policies, and equal opportunities for employment is one of them. The role of media and non-governmental structures is also vital in this regard, enabling civil society to become conscious of the rights and opportunities each social group may enjoy. Yet, the superiority of the law prior to the following social policies is out of doubt. When two shepherds are singular in their goal setting, the social state function of decreasing the poverty level and increase of the living standards will be achieved. This area, thus, is at stake and to be developed in RK.

From our perspective, in order to learn about the more favorable labor conditions for such groups, it would be necessary to pay attention on successful experience of some other states.

2. Discussion of the International documents on labor, which indicate the rights of persons with disabilities to work

The necessity to create mechanisms for the protection of the rights of persons with disabilities was laid down in the Universal Declaration of Human Rights of 1948, which established

the right to security within unemployment, illness, disability, widowhood, old (senior) age or any other case of loss of livelihood due to circumstances beyond his control [13].

Since 1950, the ILO, WHO, UNESCO, and UNICEF have been actively involved in the rights protection of persons with disabilities. The growing attention to disability issues from the international community has stimulated the development of mechanisms for monitoring the situation with the rights of persons with disabilities in many countries. The primary results indicated discrimination of people with disabilities in various spheres of life and suffering from social exclusion. The scale of these problems became a starting point for the progressive development of international cooperation in the promotion and protection of the rights of persons with disabilities [14].

The 1966 International Covenant on Civil and Political Rights, and the 1966 International Covenant on Economic, Social and Cultural Rights did not fully address the disability issues. However, later the world community adopted a number of significant international legal documents, such as:

- The 1971 Declaration on the Rights of the Mentally Retarded;
- The 1975 Declaration on the Rights of Persons with Disabilities;
- The 1982 World Program of Action for Persons with Disabilities;
- 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities;
- The 2006 Convention on the Rights of Persons with Disabilities and its Optional Protocol;
- ILO Industrial Disability Insurance Convention No. 37, 1933;
- ILO Agricultural Disability Insurance Convention No. 38, 1933;
- Disability, Old Age and Survivor Benefits Convention No. 128, 1967;
- Convention No. 159 on Vocational Rehabilitation and Employment of Persons with Disabilities [14, 15].

The 2006 Convention on the Rights of Persons with Disabilities states that disability is an

evolving concept and is the result of interactions between people with disabilities and attitudinal/environmental barriers that prevent them from participating fully and effectively in society on an equal basis with others [16].

Paragraph 3 of the 1971 Declaration on the Rights of Mentally Retarded Persons establishes the right of a mentally retarded person to work productively or fully engage in any other useful activity of his capabilities.

The Convention on the Rights of Persons with Disabilities contains a separate article 27 (Labor and Employment) in order to establish common labor standards for the world community for persons with disabilities. The right of persons with disabilities to work on an equal basis with others is recognized, which includes the right to be able to earn in the workplace the person with a disability freely chooses or consents to within an open, inclusive and accessible work environment. Moreover, the following norms should be reflected in the national legislation of each state:

- a) the prohibition of discrimination on the basis of disability in all matters pertaining to all forms of employment, including conditions of recruitment, employment and employment, job retention, career advancement and safe and healthy working conditions;
- b) protecting the rights of persons with disabilities, on an equal basis with others, to just and favorable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and redress of complaints;
- c) ensuring that persons with disabilities can exercise their labor and trade union rights on an equal basis with others;
- d) empowering persons with disabilities to effectively access general technical and vocational guidance programs, employment services and vocational and continuing education;
- e) enhancing the employment and promotion opportunities of persons with disabilities in the labor market, and assistance in finding, obtaining, maintaining and resuming employment;

f) expanding opportunities for self-employment, entrepreneurship, development of cooperatives and starting their own business;

g) recruitment of persons with disabilities in the public sector;

h) encouraging the recruitment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programs, incentives and other measures;

i) providing persons with disabilities with reasonable accommodation of the workplace;

j) encouraging the acquisition of work experience by persons with disabilities in an open labor market;

k) promotion of vocational and vocational rehabilitation, job retention and return to work programs for persons with disabilities [14, 15].

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the UN General Assembly in 1993, contain Rule 7, which regulates the employment of persons with disabilities. The rule calls for a full and free access to the national labor market. In addition to overcoming negative attitudes and prejudices towards the working people with disabilities, states are encouraged to create incentive quotas, small economic units with various programs framework for people with disabilities.

Needless to point out that the ILO is the main actor in international standard-setting in the world of work. It is a leading international organization whose competence includes issues of protecting the labor rights of persons with disabilities and the creation of an international legal framework that ensures decent work for this category of workers.

Within the framework of the ILO, conventions have been adopted that define the legal status of persons with disabilities in the course of their employment. These include the following items to list: ILO Industrial Disability Insurance Convention No. 37, 1933; ILO Agricultural Disability Insurance Convention No. 38, 1933; Disability, Old Age and Survivor Benefits Convention No. 128, 1967; 1983 Vocational Rehabilitation and Employment Convention

No. 159 for Persons with Disabilities [15, 17]. Finally, not the last role is performed by the international experience of the social state model of a social-democratic side, rooted in the concepts of welfare via the social justice paradigm. The welfare approach to achieving the life standards minimum allows for minimizing the social inequalities created by unemployment and economic fraud.

3. Discussion and analysis of foreign experience

France

This European country is proactive in the creation of an inclusive type of society with liberties, rights, non-discrimination, and respect values as core ones. The concepts of liberalism and non-discrimination are the central pillars of public policy elaborations and implementation. The population of France is a little more than 60 million; in particular, there are 9.5 million people with disabilities in the country with various disabilities, of which over 1.8 million people have a disabled status. Some of them work in ordinary enterprises, and about 120 thousand - in enterprises with special working conditions [18]. The law of June 30, 1975, proclaimed a French national strategy for the training and social and professional integration of people with disabilities into society. In accordance with this law and the 2001 Law on Social Modernization, a person, regardless of his age or disability, have the same fundamental rights as all others. These laws, as well as the Employment of Persons with Disabilities Act, passed in 2005, are directed against discrimination against persons with disabilities in hiring them and the perception of other types of human differences that result from the existing disability [5]. The companies and firms in the country are open toward the disabled groups since these laws introduced assistance for people 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 Technical Commission for Referral and Career Guidance (COTOREP), subordinate to the General Directorate of Social

Services of the Ministry of Health and Human Services. Any citizen willing to exercise their social security right must contact the local county office where they reside. COTOREP recognizes the status of a disabled person, assesses the incapacity for work in accordance with the principles that apply, expresses its position on professional suitability for work, taking into account the existing restrictions.

In France, there are three categories of restrictions:

- Restriction > 80% - the citizen is considered unfit for the normal work environment and can receive a special allocation called the Adult Disability Allowance;

- Restriction of 50-79% - a citizen has the right to special measures of assistance from social security authorities and is not entitled to a special allocation for disabled people; • restriction <50% - A citizen is considered to be able to find work in an ordinary environment without special assistance ("French Experience", 2009).

The employment of people with disabilities in the open labor market is handled by the State Employment Service (Paul Emploi), which in December 2008 was reorganized as a result of the merger of 2 organizations: for the payment of assistance and the registration of the unemployed. Today the employment service has 45 thousand employees for 2.4 million unemployed in France and 800 workers in the central office [7].

In addition, France has employment centers for people with disabilities (Cap Emploi), which provide employment for people with disabilities in specialized jobs. In total, there are 1,400 specialized institutions for the disabled in France, where 120 thousand disabled people are employed. At the same time, as sources indicate, the ILO recognizes the rejection of people with disabilities, the existence of discrimination. The unemployment rate among disabled people - 19% - is 2.5 times higher than the level among the population. A person may be denied a job, even if she/he is fat or stutters. To eliminate such negative factors, France advanced its legal institutional support by creating a Supreme Anti-Discrimination Body - the highest independent administrative structure with the rank of a court

[18, 5, 7]. In general, the specialized agencies in highly developed states are playing a substantial role in catalyzing the shortcomings of the issue. Spreading a good will and power of a law in social spheres.

Canada

Notable enough, Canada is the first country to include the equality clause persons with disabilities in its Constitution: "Every individual is equal before the law without any discrimination, including based on race, nationality, religion, sex, and age, mental or physical disadvantages" [2]. As a result, the problem solution strategies led Canada to have an extensive legislation to protect the rights and interests of disabled people. In particular, these are: «Act on the Blind», «Act on the Disabled», «Act on vocational rehabilitation of persons with disabilities», the Human Rights Act in Canada, the Act "On labor", the Law "On compensation for employees" and a number of other Legislative Act [19].

The whole process of organization of social protection, rehabilitation and employment of people with disabilities in Canada, a special Department of Health and Human Development is involved. The country has services for the examination of the ability to work, consultations, career guidance, rehabilitation, information, training and employment of people with disabilities. Also, there are many federal, provincial and local targeted programs for various aspects of rehabilitation of disabled people.

A great work has been done by Canada to create the conditions for the efficient provision of equality of persons with disabilities. The infrastructure adapted to the needs of disabled citizens ensured the availability of architectural structures and all types of public transport, which in general has a large impact on the quality lives of Canadians.

Moreover, the education system in Canada legally provides for the opportunity to study for disabled people at all levels: from pre-school and high school to university education. Here, the form of integrative and inclusive education prevails, special technical means and individual programs. Among Canadian

students of universities, at least 1% are disabled. Within the framework of the special program «Youth Employment Strategy» [19], a number of measures are envisaged for young people, including those with disabilities, special or higher education, employment; benefits are provided for employers employing young people with disabilities; compensation mechanism works the cost of equipment required for limited liability persons.

Finally, according to the Labor Law, for an employer who has accepted a person with a disability the state covers the costs of his retraining and pays for work as an intern. Meanwhile, the insurance system guarantees payments from accidents to all citizens for the workplace [19, 3].

Finland

Finland has also developed an extensive legal framework to ensure the organization of a system of rehabilitation and social adaptation of disabled people. At the legislative, level the integration of rehabilitation activities into the sphere of social protection is fixed population, health care, employment, social insurance, education, and mechanisms of their cooperation and cooperation have been formed.

The Laws «On Health Care» and «On Social Welfare» include provisions for adaptive learning, the purpose of which is determined by the maximum development of all opportunities for social inclusion and the maximum possible employment for disabled people. The provision of services of an adaptive nature is entrusted to the service-social welfare, health care, and insurance companies [7].

Special attention in Finnish legislation is paid to free vocational rehabilitation of disabled people, 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.

The legislation provides support for the employment of disabled people: 1) subsidies to employers when hiring a disabled person; 2) specially organized by municipal services and state work for people with disabilities [6]. Thus, according to the Law «On national welfare

«, when hiring a person with a disability, the employer within the framework of his region:

1) informs the representation of the National Conciliation Committee on rehabilitation;

2) the state commits itself to organizing the workplace disabled person, taking into account his individual characteristics and, if necessary, adapts infrastructure of the premises / building where the company is located [6].

Such important aspects of rehabilitation are provided by special regulations disabled people, such as building planning, traffic management, transportation of disabled people, home service, provision of an interpreter, adaptation training, measures workplace support. The Rehabilitation Insurance Compensation Act provides for the insurance of the disabled from an accident at work and in transport. The insurance provides for social, medical and vocational rehabilitation.

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 accidents of employees. Finland is the friendliest country in the world in relation to the disabled, and state fully complies with commitments, stimulating the employment of citizens with disabilities.

As we can see from the experience of countries with well-developed care service and legislation for people with disabilities, employment issue is quite a complex problem. For its successful solution it requires appropriate education, availability of services of organizations of social and transport infrastructure, availability of public transport routes, accreditation of experts to carry out work to protect the rights of people with disabilities to an accessible environment, socially significant facilities [7, 3, 6].

Yet, again, the gateway to the reforms and structural transformations is the creation of the clear judicial basis that would start, implement and them protect the rights of all groups of employees, regardless the public or private sectors of the economies. The employment contracts and employers' incentives towards the workers with disabilities are in direct dependence on national legislature. The more the legislature

is specific and developed, the less ambiguous and ambivalent is the employment practice.

Foreign experience in this case demonstrates a successful way to manage the problem of the employment policies towards the employees with disabilities, providing the latter with a normal life-style and labor activities, and employers with a socially healthy image and altruistic nature of the contract practice. The employers in this case assist significantly to the government, by enabling a large portion of the population with earnings, labor time, socialization and professional skills advancement. Needless to overestimate such practices, which increase general social awareness, tolerance and recognition of the contribution and role the disabled groups potentially carry for the society. Positive attitudes and acceptance of all groups' rights boosts the democratic and ethical values in building the socially oriented state.

Conclusion

As mentioned above, Kazakhstan has undertaken certain measures for the correlation of local legislation with international standards. For instance, the Resolution of the Government of the RK on approval of the National Plan to ensure the rights and improve the quality of life of persons with disabilities until 2025 contains many provisions on the problems of people with disabilities, and ways of its solution [20]. This is becoming vital for the motivation and enforcing the initiatives in solving the issues in this sphere, which is clearly stagnated. For example, one of the main obstacles in the labor market for people with disabilities is persecution towards the disabled from other's people side. The founder of the public association «Arba» in Uralsk, a 42-year-old Gulmira Batpakulova in 2020 said that after 5 years since the moment of ratification of the UN Convention 2006, she does not see much improvement over the past five years: the obstacles that existed at the time of the ratification of the convention remain to this day. Batpakulova claims that discrimination, inaccessibility of the environment, infringement of rights - all this is still relevant, when some executive bodies tell us: "Why do you need public transport? Stay at

home» [4]. Entrepreneurs think in the same way, suggesting that the corporate parties or banquets should not be for the disabled, as they "confuse their visitors (ibid.).

From our perspective, to avoid such an attitude toward people with disabilities in Kazakhstan, it is quite necessary to take several steps. First, the government must speed up the process of the implementation of inclusive education. It is vital for children to see people with disabilities around them; in accordance with the opinion of different professionals, it will change their attitude toward such individuals in adult life. Second, the government must conduct various activities for the modernization of the consciousness of the local population. One should note here a low level of education in society on matters of disability, quality of life, and protection of the rights of people with disabilities, accompanied by insufficient advocacy at the local level to eliminate discrimination against persons with disabilities among employers. Finally, it is necessary to continue promoting and expanding the number of programs, television programs, or/and mass educational events. In an age of rapidly spreading information and new technologies, this measure will help to increase the coverage of the population of Kazakhstan and its education on this issue. With the help of the media and other modern means of disseminating information, it is necessary to promote the potential and contribution of people with disabilities to various spheres of society, which will also affect the formation of a positive image of a person with disabilities.

Another crucial responsibility of the state is to cause the interest in employers in attraction to hire people with disabilities to the job places. According to the research by Public Association «Namys», entrepreneurs do not know the specifics of tax legislation, are not familiar with the nuances of working with people with disabilities, and often have prejudices, but nevertheless, there are institutions that are willing to work with disabled. It turned out that many of the entrepreneurs do not know about legislative acts, regulating the employment of

people with disabilities (67%), and, accordingly, do not know about the sanctions, which apply to organizations that do not comply with the law [8]. However, sanctions, in this case, would be the worse way to stimulate the labor market for people with disabilities. It is quite necessary to find an environment where the entrepreneur will see an objective profit from giving the job place to the disabled person.

When taking a disabled person to work, the employer is obliged not only to provide him with a workplace but also to provide equipment for such a workplace, considering the individual needs of the disabled employee. At the same time the conditions for equipping the workplace, according to the requirements of the Labor Code, must be fixed by the parties in the employment contract. In fact, special requirements for equipping workplaces are established for the following disabled workers:

- 1) with complete loss of vision;
- 2) with complete hearing loss;
- 3) moving in a wheelchair [11, 12].

Such requirements are reducing not only the acquisition by the employer for the needs of employees of special equipment (e.g. computers for blind workers), but also very the implementation of measures like certain location of equipment, furniture used by the employee compliant with certain sanitary and hygienic requirements, the presence of a sign language interpreter, etc. It is obvious that such requirements cause additional

expenses for employers, hence owners of the private enterprise will try to avoid hiring persons with limited abilities.

To provide the conclusions with possible recommendations, one should cumulatively assess and evaluate the local legal and social realms and foreign experience. Having done such, we can assume that to make private entrepreneurs interested in attracting to work people with disabilities, a state will need to:

- Cover all expenses related to providing appropriate conditions for the disabled people;
- Increase tax incentives for companies where people with disabilities work;
- Bring labor legislation into line with the Convention on Rights disabled people, which is now being done by a working group of active leaders of NGOs disabled people;
- Provide for the interests of employers: compensation for training disabled people for employers, compensation for re-equipment of the workplace of a special employee;
- Think over an incentive for participation in public procurement of organizations with the successful experience in hiring disabled people.

Yet, behind the social and economic scopes, the legal aspect of the issue comes forward. In the examples of the foreign countries disposed above, one can clearly trace the superiority of the legal reforms made by their governments, later followed by the social and economic transformations.

References

1. Nazarbayev, N. Nurly Zhol – Way to the Future. 2014 Message from the President to the People of Kazakhstan. [Electronic resource]. Available at: http://www.akorda.kz/ru/addresses/addresses_of_president/page_215750_poslanie-prezidenta-respubliki-kazakhstan-n-nazarbaeva-narodu-kazakhstan-17-yanvarya-2014-g (Accessed: 01.10.2021)
2. Constitution of Canada dated 1982. [Electronic resource]. Available at: <https://www.booksite.ru/fulltext/1/001/004/082/5.htm#14> (Accessed: 08.10.2021)
3. The right to work for people with disabilities. Experience of Developed Countries. Shyrak Association. [Electronic resource]. Available at: <http://www.shyrak.kz/rus/files/issledovanie.pdf> (Accessed: 01.10.2021)
4. How Kazakhstan implements the Convention on the Rights of Persons with Disabilities. Radio Azattyk. [Electronic resource]. Available at: <https://rus.azattyq.org/a/kazakhstan-convention-on-the-rights-of-persons-with-disabilities/30980837.html> (Accessed: 08.10.2021)

5. Prokofiev, V. Special Purpose Bridge. Rossiyskaya Gazeta [Russian Newspaper], 83(7841), 2019. [Electronic resource]. Available at: <https://rg.ru/2019/04/15/vo-francii-na-programmy-po-podderzhke-invalidov-tratiatsia-desiatki-mlrd-evro.html> (Accessed: 06.10.2021)
6. Alayev, V. Peculiarities of attracting persons with disabilities in the Republic of Kazakhstan. Soros Foundation Report 2018. [Electronic resource]. Available at: https://www.soros.kz/wp-content/uploads/2018/02/features_to_attract_people_to_work.pdf (Accessed: 10.10.2021)
7. Sansyzbaeva, G. & Ashirbekova L. Foreign experience of employment and social protection of disabled people. [Electronic resource]. Available at: <https://articlekz.com/article/15276> (Accessed: 05.10.2021)
8. Kaltaeva, L. Office research Social and Gender Needs Assessment of People with Disabilities in Kazakhstan, with a focus on the special needs of women with disabilities who have experienced violence. UNFPA Report 2019. [Electronic resource]. Available at: <https://kazakhstan.unfpa.org/sites/default/files/pub-pdf/> (Accessed: 25.09.2021)
9. Osetrova, I. Labor of workers with disabilities. [Electronic resource]. Available at: <https://defacto.kz/ru/content/trud-rabotnikov-invalidov> (Accessed: 08.10.2021)
10. Constitution of the Republic of Kazakhstan dated 1995 amended at 2019.
11. Labor Code of Republic of Kazakhstan dated 2015 amended at 2021.
12. Law of the Republic of Kazakhstan «On employment of the population» dated 2001 amended at 2021.
13. Tax Code of Republic of Kazakhstan dated 2015 amended at 2021.
14. Universal Declaration of Human Rights dated December 10, 1948.
15. Kiselev, I. Comparative and International Labor Law. (Moscow: Delo, 1999, 728p).
16. The UN Convention on the Rights of Persons with Disabilities dated December 13, 2006.
17. Bekyashev, D. International labor law. (Moscow: Prospect, 2013, 896p).
18. French Experience of Social Protection of Citizens with Disabilities. [Electronic resource]. Available at: <https://dislife.ru/articles/view/2654> (Accessed: 10.10.2021)
19. Canadian Disability Legislation dated 2017. [Electronic resource]. Available at: http://www.invalid.kz/new_site/index.php?p=370&mod=&textonly=1 (Accessed: 25.09.2021)
20. Resolution of the Government of the Republic of Kazakhstan on approval of the National Plan to ensure the rights and improve the quality of life of persons with disabilities in the Republic of Kazakhstan until 2025 dated 2019.

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**Қазақстан Республикасында мүгедектерді жұмыспен қамтудың
халықаралық стандарттарын енгізу мәселелері**

Аңдатпа. Қазір жұмыспен қамту бүкіл әлемдегі барлық топтардың тірегі болып табылады. Еңбек қазіргі заманғы адамның өмір сүру деңгейімен немесе өмір сүруімен тікелей байланысты. Алайда, мүмкіндігі шектеулі адамдар үшін еңбек проблемасы басқаларға қарағанда өткір. Бұл топтың өкілдері тиісті көмекті мемлекеттің көмегінсіз ала алмайды. Осы кезеңде мүгедектердің қажетті адам құқықтарын қамтамасыз ету үшін мемлекетте халықаралық стандарттарға сәйкес заңнама және оны жүзеге асыру тетіктері болуы керек. Мақалада Қазақстан Республикасында мүгедектерді жұмыспен қамту мәселелері баяндалған және қазақ мемлекетінде жүзеге асырылуы үшін осы саладағы шетелдік тәжірибелер келтірілген.

Бұл зерттеу еңбек заңнамасы мен мүгедектерге арналған адам құқықтары саласындағы негізгі халықаралық тенденцияларды анықтауға бағытталған және халықаралық конвенцияларға талдауды, табысты шетелдік тәжірибені шолуды, сондай-ақ мүгедектерге арналған жергілікті еңбек заңнамасын қамтиды. Ол, сондай-ақ, Қазақстан Республикасының заңнамасын халықаралық стандарттарға сәйкестендіру бойынша қадамдарын бағалайды және мүгедектерге арналған жұмыс әлеміндегі қазіргі жағдайды жақсарту бойынша ұсыныстар әзірлейді.

Осы зерттеуді қолдау үшін қолданылған зерттеулердің көпшілігінен айырмашылығы, мақалада мүмкіндігі шектеулі адамдарды жұмыспен қамтуға қатысты проблемалар анықталып қана қоймай, со-

нымен қатар қолданыстағы заңнамаға мүгедектерді жұмысқа орналастыруды жеңілдету үшін түзетулер енгізу және оны неғұрлым қолайлы ету үшін негізделген. Зерттеудің өзектілігі мен жаңалығы жұмыс берушілерге мүгедектігі бар жұмысшыларды тартуға және жалдауға қолайлы жағдайлар жасау үшін қолайлы жағдайлар жасау бойынша ұсыныстармен расталады, бұл жұмыс орындарында әлеуметтік оқшаулау мен кемсітушіліктің мүмкін негіздерін қоспағанда.

Кілт сөздер: мүгедектер, адам құқықтары, жұмыспен қамту, еңбек, заңнама, мемлекет, үкімет, халықаралық стандарттар.

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Проблемы внедрения международных стандартов трудоустройства инвалидов в Республике Казахстан

Аннотация. В настоящее время проблема занятости является краеугольным камнем для всех групп населения во всем мире. Работа имеет прямое отношение к уровню жизни или выживанию современного человека. Однако для людей с ограниченными возможностями трудовая проблема стоит острее, чем для других. Как правило, представители этой группы не могут получить соответствующую работу без помощи государства. На данном этапе для необходимого обеспечения прав человека в отношении инвалидов государство должно иметь законодательство, соответствующее международным стандартам, и механизмы его реализации. В статье прослеживаются проблемы трудоустройства инвалидов в Республике Казахстан и приводится зарубежный опыт в этой области для возможного внедрения в казахстанском государстве.

Настоящее исследование направлено на выявление основных международных тенденций в законодательстве о труде и правах человека для людей с ограниченными возможностями и включает в себя анализ международных конвенций, обзор успешного зарубежного опыта, а также местного законодательства в области труда для людей с ограниченными возможностями. Оно также оценивает шаги Республики Казахстан по приведению своего законодательства в соответствие с международными стандартами и разрабатывает рекомендации по улучшению текущей ситуации в сфере труда для людей с ограниченными возможностями.

В отличие от большинства исследований, используемых в качестве вспомогательного материала для данного исследования, данная статья не только определяет проблемы, связанные с трудоустройством инвалидов, но и дает рекомендации о том, как внести поправки в действующее законодательство, чтобы облегчить процесс трудоустройства людей с ограниченными возможностями и сделать его более благоприятным. Актуальность и новизна исследования также подтверждаются рекомендациями по созданию работодателями благоприятных условий для привлечения и найма работников с ограниченными возможностями на должной основе, исключающей возможные основания для социальной изоляции и дискриминации последних на рабочем месте.

Ключевые слова: люди с ограниченными возможностями, права человека, занятость, труд, законодательство, государство, правительство, международные стандарты.

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