

SOCIAL GUARANTEES OF THE STATUS OF DISABLED IN CONSTITUTIONAL TEXTS OF THE CIS COUNTRIES

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Abstract

Purpose: In the article, based on the analysis of constitutional texts of CIS countries to reflect the social guarantees of persons with disabilities in them, the socially-guaranteeing and social-status models of such consolidation are identified.

Methodology: The research was based on a dialectical approach to the research of legal phenomena and processes using general scientific (system, logical, analysis and synthesis) and private scientific methods. Among them are formal legal, linguistic legal, comparative-legal, which were collectively used to study the constitutional texts of 12 post-Soviet countries in order to identify options, features, and models of securing social guarantees for persons with disabilities.

Result: The first model includes norms reflecting guarantees for the realization of socio-economic rights through the adoption of principles of a social state or through blanket norms (Georgia) and enshrining guarantees of socio-economic rights, including the right to social support and state assistance (Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Uzbekistan, Ukraine). The second one implies the existence of norms on state support for both disabled people (Armenia, the Russian Federation, Turkmenistan) and disabled children (Tajikistan). It was noted that with all the variety of approaches of this focus group of states, constitutional texts reinforce the imperative of social security for the rights of persons with disabilities.

Applications: This research can be used for universities, teachers, and students.

Novelty/Originality: In this research, the model of Social Guarantees of the Status of Disabled in Constitutional Texts of the Cis Countries is presented in a comprehensive and complete manner.

Keywords: *Constitution, Disabled Person, CIS, Guarantees, Social Security.*

INTRODUCTION

At the end of the 20th – beginning of the 21st century, the “theory of disability” became the subject of study of the so-called sociology of urban space, developed by R. Imre. According to the author, all people are divided into two groups: those who have access to the urban environment (“non-disabled”), and those who do not have it (disabled) (Imrie, 2001, pp. 232). Such “spatial” discrimination creates, according to some authors, a “barrier”, “limited”, “exclusive” environment (Gleeson, 2004).

Traditionally, in constitutional-legal science, issues relating to the rights of disabled people (disabled) are combined with the sociality of the state (Markheim, et al. 2015), a joint society and are considered on the basis of constitutional provisions of a particular country (Barnes, 2019; Heyer, 2017), in connection with the protection of the rights of athletes with disabilities (Blauwet and Willick, 2019), in the course of evaluating inclusive education (Peters, et al. 2015), as well as from the position of interaction between society and the disabled (Finkelstein, 2019). At the same time, there are no developments in the legal doctrine concerning the identification of models for securing guarantees of the status of persons with disabilities. Filling this gap, let us analyze the texts of constitutions of post-Soviet countries in order to reflect in them the imperative of such consolidation.

METHODS

The research was based on a dialectical approach to the research of legal phenomena and processes using general scientific (system, logical, analysis and synthesis) and private scientific methods. Among them are formal legal, linguistic legal, comparative-legal, which were collectively used to study the constitutional texts of 12 post-Soviet countries in order to identify options, features, and models of securing social guarantees for persons with disabilities. The choice of this focus group is determined by the unity of previous constitutional construction within the USSR and an equal period of sovereign post-Soviet development. This circumstance allows us to assume, on the one hand, the existence of a common approach of post-Soviet countries to the formalization in constitutional texts of the imperative on the social provision of the rights of disabled persons, on the other, the sovereign diversity in its formulation.

RESULTS AND ITS DISCUSSION

The analysis of the constitutional texts of post-Soviet states showed the presence of two models for securing the guarantees of the status of persons with disabilities: a socially-guaranteed and a social-status. Let us consider in more detail each of them.

The socially-guaranteed model is represented by two groups of norms, which are:

- Reflect the guarantees of the realization of social rights, including through the approval of principles of the welfare state or through blanket norms;
- Enshrine guarantees of social rights, including the right to social support and state assistance.

The first group of norms is reflected in the constitutional text of Georgia. It should be noted that of the 12 constitutions of the post-Soviet countries, in the texts of only one (Georgia) there are no specific indications of state guarantees for the social security of their citizens, as well as the disabled (people who have lost their ability to work). However, in Part 2 of Art. 4 of this constitution is fixed that "the Constitution of Georgia does not reject other universally recognized rights, freedoms, and guarantees of a person and a citizen, which are not mentioned in it, but in themselves follow from the principles of this Constitution" (Finkelstein, 2019).

The second group of norms is represented in a constitutional format by several post-Soviet countries: (Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Uzbekistan, Ukraine).

The Constitution of Azerbaijan, in contrast to the Constitution of Georgia, in part III. Art. 38 establishes the right of "everyone" to social security, including disability and in the event of a disability. It is worth noting that in part IV of the named constitutional norm, the right to receive social benefits for these groups of citizens is regulated. Based on the provisions of the Azerbaijani Constitution, it follows that the legislator regards persons with disabilities and persons who have lost their ability to work as two separate groups.

A similar approach to the formalization of guarantees for persons with disabilities is used in the Constitution of the Republic of Belarus. So, Art. 47 guarantee citizens the right to social security, including in the event of disability and loss of ability to work.

The Constitution of Kazakhstan in Art. 28 establish the existence of social security guarantees for specific groups of citizens: "the minimum wage and pensions, social security by age, in case of illness, disability, loss of a breadwinner and on other legal grounds. Voluntary social insurance, the creation of additional forms of social security and charity are encouraged".

Article 53 of the Constitution of Kyrgyzstan contains the following provisions concerning the guarantees of the rights of persons with disabilities / disabled persons: "Citizens are guaranteed social security in old age, in the event of illness and disability, loss of a breadwinner in cases and procedures provided for by law". It should be emphasized that this constitutional norm, unlike the texts of other constitutions of the focus group under research, does not contain provisions concerning the guarantees of disabled people. This circumstance is apparently due to the fact that the legislator proceeds from the equality of persons with disabilities and persons who have lost their ability to work. In addition, in Part 2 of Art. 16 of the considered Constitution, which concerns the prohibition of discrimination, among the signs of named disability.

The Constitution of the Republic of Uzbekistan (Art. 39), by analogy with the aforementioned constitutions, also guarantees the right to social security "in the event of disability". It should be especially emphasized that, unlike the constitutions studied earlier, with the exception of the Constitution of Azerbaijan, such a right is granted not only to citizens of the republic but also to "everyone", which means, on the one hand, the legislator's non-personal approach, and on the other, narrowing the circle of people needing social protection from the state.

Article 46 of the Constitution of Ukraine, repeating the provisions of the basic law of Kyrgyzstan in terms of "not using" the category of "disabled", guarantees the right of citizens to social "their provision in case of full, partial or temporary disability ...".

Social-status model includes norms:

- On state support for persons with disabilities (Armenia, Russian Federation, Turkmenistan);
- On state support for children with disabilities (Moldova, Tajikistan).

According to Art. 83 of the Constitution of the Republic of Armenia "Everyone has the right to social security for ... disability ...". It is worth noting that in paragraph "8" Art. 86, which regulates the main directions of the state policy, among the goals are called: "the implementation of programs for the prevention, treatment of disability, restoration of health of persons with disabilities, promotion of the participation of persons with disabilities in public life" Unlike other constitutional texts of the post-Soviet countries, only the Constitution of Armenia establishes the implementation of programs for disabled people as the main goal of the policies being pursued.

The Constitution of the Russian Federation, by analogy with other constitutional acts of the CIS countries, enshrines the social guarantees of the rights of persons with disabilities. In addition, Part 2 of Art. 7 of the basic law of Russia contains provisions guaranteeing the availability of support for persons with disabilities from the state. It should be noted that in addition to the mentioned constitutional provision, provisions on social guarantees for the provision of persons with disabilities are contained in Part 1 of Art. 39, the addressee for which stands "everyone."

Article 34 (part 1) of the Constitution of Turkmenistan guarantees the right of citizens "to social security by age, in case of illness, disability ..." At the same time, Part 2 of the aforementioned constitutional provision contains provisions on state

support of persons who have lost “health while protecting the state or public interests”. Benefits for this category of citizens are provided from public and state funds.

The second group of norms of the social-status model of securing the guarantees of the rights of persons with disabilities differs in that the constitutional acts contain provisions not only on the protection of the disabled but also on the protection of disabled children.

So, in Part 2 of Art. 47 of the Constitution of the Republic of Moldova enshrine the right of citizens to social security "in cases of ... disability ... or in other cases of loss of livelihood due to circumstances beyond their control". At the same time separately in Part 1 of Art. 51 is regulated that “Persons with disabilities enjoy the special protection of the whole society. The state provides them with normal conditions for treatment, rehabilitation, and education, training, and social integration.” Protection of the rights of children with disabilities is regulated in Part 3 of Art. 50, with an emphasis on government allocations for them.

Article 39 of the Constitution of the Republic of Tajikistan guarantees the right of everyone to receive social security "in cases of ... disability ... and in other cases defined by law." In this article 34, devoted to the state patronage of motherhood and childhood, enshrines the provisions that "the State cares about the protection of orphans and the disabled, their upbringing and education."

It should be emphasized that the constitutions of the post-socialist states clearly trace the priority of individual rights and freedoms, while the sections on rights and freedoms, as a rule, immediately follow the sections on general constitutional provisions. Constitutions contain a uniform regulation of personal, political, socio-economic rights and freedoms. Such formalization is due to the fact that the texts of the constitutions, in fact, incorporated the provisions of such generally recognized acts of international law as the Universal Declaration of Human Rights, international covenants of 1966.

In view of the foregoing, we note that the constitutions of the post-socialist states clearly trace the priority of individual rights and freedoms. The constitutional acts of the studied group of countries contain a similar regulation of guarantees of the rights of persons with disabilities to social security. At the same time, some countries (Georgia) approve such guarantees through the approval of the principles of the welfare state, others - by consolidating the following provisions: on social support and assistance of states (Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Uzbekistan, Ukraine); on state support, assistance and protection of the rights of persons with disabilities (Armenia, the Russian Federation, Turkmenistan) and children with disabilities (Moldova, Tajikistan).

FINDINGS

The analysis of the texts of the constitutions of the post-Soviet countries helped to identify the socially-guaranteeing and social-status models for securing the guarantees of the status of persons with disabilities.

Socially-guaranteed model includes norms:

- Reflecting the guarantees of the realization of social rights, including through the approval of the principles of the welfare state or through blanket norms (Georgia);
- Securing guarantees of social rights, including the right to social support and state assistance (Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Uzbekistan, Ukraine).

Social-status model includes norms:

- On state support of persons with disabilities, persons who are mentally and physically weak (Armenia, the Russian Federation, Turkmenistan);
- On state support for children with disabilities (Moldova, Tajikistan).

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