

ON SOME FEATURES OF THE IMPLEMENTATION OF THE RIGHT TO INCLUSIVE EDUCATIONS OF HUMAN WITH DISABILITIES IN UKRAINE

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Abstract

Purpose: This article is devoted to the search for effective solutions to modern legal problems of the realization of human rights, including children, for inclusive education in Ukraine.

Methodology: The method of integral analysis of legal regulation in the field of inclusive education in Ukraine has allowed us to consider it in development and interconnection to reveal the existing directions and patterns as a whole. The comparative method has come in handy in the study of legislation governing the right of people to inclusive education. Modeling, analysis, and synthesis methods have revealed the advantages and disadvantages of legal regulation in the field of inclusive education.

Main findings: The article discusses the features of legal problems of the implementation of rights to inclusive education of humans with limited opportunities in Ukraine. Possible ways of improving the legal regulation of the implementation of human rights to inclusive education are proposed. According to the authors, one of such methods is the passing of separate legislative, legal norms regarding the development of inclusive education for children with various functional disorders, the development of inclusive education at higher educational institutions. The authors substantiate the conclusion that the human right to inclusive education at the international level is a legal human right that has great practical value for students with disabilities and should exclude any form of discrimination.

Implications: This article can be used in the practical activities of lawyers, students, and teachers of law higher education, and is also recommended for review by persons with disabilities.

Novelty: This study examined the problems of legal support of human rights to inclusive education in Ukraine and suggested ways to solve them.

Keywords: *Rights, Inclusive Education, Human with Disabilities, Legal Regulation, Problems of Legal Realization, Protection from Discrimination.*

INTRODUCTION

One of the fundamental human rights is the right to education; security this right is the key to achieving other rights: cultural, social, civil, political, economic rights ([G. de Beco et al., 2019](#)). Depriving any child of their education is both a violation of international law and human rights ([Waddington L. & C. Toepke, 2014](#)).

A student with disabilities has the right to inclusive education, which in turn ensures his right to protection from discrimination ([Gordon J., 2013](#)). The right of children to access inclusive education is broadly confirmed in global human rights law; international conventions affirmed by their members and by most human rights documents ([Ozel E. et al., 2017](#)). Children with disabilities experience constant segregation in special education classes or are otherwise deprived of education. This is although states are legally obligated to offer affordable and inclusive education to all students. The deprivation of any child of education is a violation of international law and a violation of human rights ([Waddington L. & Toepke C., 2014](#)). Access to quality education is an essential condition for ensuring the equal rights of people with disabilities along with other citizens of the country ([Kanter, Arlene S., 2017](#)).

Many scholars around the world have explored ways to develop inclusive education. So, in the United States, special state free education in the legal aspect has become available to all children with educational needs since 2004 since the adoption of the first special regulatory act in the United States. Such a regulatory act was the Law on Improving Education for Persons with Disabilities. However, in practice, the process of introducing inclusive education took more than ten years ([Hosain M., 2012](#)). [Tanner, C., Kenneth L. D., Galis S. A. \(1996\)](#) indicate school staff concerns and caution regarding co-education of children with ordinary educational needs and children with disabilities. [DeMatthews,](#)

[D. E., Knight, D. S. \(2019\)](#) describe cases when the school's administration or staff deliberately or unconsciously created situations with the subsequent refusal of applicants with disabilities to receive special education.

The problem of inclusive education was raised in many countries of the world: Sweden, Iceland, Norway, and others. In Iceland, all children study in a regular school. In some countries, there is still a special education that has three areas: the first for students with disabilities, the other two for children with behavioural problems ([Andriichuk N., 2017](#)). [Vasianovych H., Budnyk O. \(2019\)](#) indicates that each child with special needs is unique, and his rational approach is his active communication, the search for directions in the formation of thinking, culture and abilities. In Indonesia, scientists [Rubini R. and Cahya E. \(2019\)](#) investigated the features of providing inclusive education to a specific group of people with visual impairments. The authors found that such children learn to read Arabic letters in the Qur'an for the blind, practicing finger reading Braille and memorizing Arabic letters. Since 2015, the National Education Policy of Malaysia has a special program for the visually impaired in secondary schools. However, its implementation has many problems in supporting teaching and learning, the lack of teaching aids ([Puji T, Mohd A., Azimah S., 2015](#)).

[Souza, F. F, Dainez, D. Smolka, A.L., Scian, R., Hulshof, C. \(2014\)](#) analyzed some of the contradictions in inclusive education. The authors note the tension in everyday relations among students inside the school in the field of inclusive education and the need for improvement of personnel when working in this field. [Rivero, R. \(2015\)](#) turned his attention to the need for educational reform in Chile, pointed out the lack of a clear policy in this area, and the lack of equality in access to education. In Brazil, there are various legal provisions regarding the entry of children with special needs into schools. Such norms contribute to the development of inclusive education strategies; however, there is a problem of lack of resources and adaptation of curricula ([Nascimento, FF, Cruz, MM, & Braun, P., 2017](#)). [Matveieva N. \(2018\)](#) focuses on the economic, organizational and educational factors that affect children with educational needs and without which it is impossible to create a high-quality inclusive education. [Matveieva N. \(2019\)](#) also reveals the problem of the attitude of youth in schools towards people with disabilities and indicates an increase in tolerance for them. But [Barnard-Brak L., Schmidt M. and Almekdash M. \(2018\)](#) found that students with disabilities are more likely to attend public schools than charter schools.

[Westling D.L. \(2018\)](#) conducted a detailed analysis of the development of inclusive education and its effectiveness in 50 US states, depending on financial conditions, level of education, and severity of the disability. [Koh M. and Shin S. \(2017\)](#) noted that the number of people receiving such an education in the United States doubled in 2017, but the staff of general education was not adequately prepared for teaching students with disabilities. In this regard, the inclusive program was not more effective than the previous system of general and special education. [Silva K. C., Oliveira, Martins S. E., Leite L. P. \(2018\)](#) also indicate an increase in the number of students with special needs receiving higher education. In this regard, [Cabral L. \(2018\)](#) notes the need to rethink university culture regarding the development and implementation of inclusive education. In 2014, [Freitas M. and Campos J.](#) studied in detail the features of inclusion of students with intellectual disabilities in the educational process. Many researchers have argued for the need for reforms in inclusive education ([Waitoller, F. R., Kozleski, E. B., 2015; Nascimento, F. F., Cruz, M. M., Braun, P., 2017](#)).

According to the Ministry of Health of Ukraine, about 2% of the country's children's population are children with disabilities. At the same time, only 2.2 thousand children in Ukraine study in inclusive classes, where all relevant conditions are provided, and more than 100 thousand children with disabilities are integrated into general educational institutions where there are no special conditions ([State Report on the Situation of Children in Ukraine, 2017](#)). The above indicates that the modern model of legislative support of inclusive education in Ukraine and some other countries of the world does not always match the set goal in reality.

So the objective of the study is to search for effective solutions to modern legal problems of the realization of human rights, including children, for inclusive education in Ukraine.

METHODOLOGY

The method of integral analysis of legal regulation in the field of inclusive education in Ukraine has allowed us to consider it in development and interconnection, to reveal the existing directions and patterns as a whole. The comparative method has come in handy in the study of legislation governing the right of people to inclusive education. Modeling, analysis and synthesis methods have revealed the advantages and disadvantages of legal regulation in the field of inclusive education.

MAIN FINDINGS

International legal acts regulate the human right to access to inclusive education. So, everyone has the right to education. Any type of education: from technical, vocational to higher education, should be accessible to everyone. The acquisition of education contributes to the comprehensive development of the individual and the growth of respect for human rights and fundamental freedoms (art. 26). ([Universal Declaration of Human Rights, 1948](#)). The right to education for all children, including children with disabilities, was confirmed in the UN Convention on the Rights of the Child, passed in 1989 and ratified by Ukraine in 1991.

The state should ensure equal access to primary, secondary, and higher education for any person with disabilities (from a child to an adult). Thus, by this, it should be understood that the education of persons with disabilities is included in the

structure of general education ([Standard Rules for Equal Opportunities for Persons with Disabilities, UN, 1993](#)). The 1994 Salamanca Declaration states that people with special needs should have access to education in regular schools, where they must be provided for pedagogical methods ([Salamanca Declaration, 1994](#)). The Convention on the Rights of Persons with Disabilities defines that each participating States is committed to ensuring the right of people with limited opportunities to receive any kind of education. To realize this right, taking into account the equal opportunities and access of persons with disabilities to education, excluding any manifestation of discrimination, the participating States undertake to provide inclusive education throughout the life of a person with limited opportunities. This contributes to:

- a) The development of self-esteem of a person with a disability contributes to the full disclosure of his potential, confidence in ensuring his rights and freedoms;
- b) The full development of personality, the maximum manifestation of all the talents, mental and physical abilities of persons with limited opportunities;
- c) Ensuring the right of such persons to take an active part in society without any restrictions and discrimination (art. 24). ([Convention on the Rights of Persons with Disabilities, 2006](#)). The foregoing international documents recognize the right of people with disabilities to education, without discrimination. Education should be aimed at the full development of human personality and increasing respect for human rights and fundamental freedoms.

The national regulatory legal acts of Ukraine also ensure the human right to inclusive education. Thus, article 53 of the Constitution of Ukraine specifies the state's obligations to provide full access to absolutely free any kind of education (pre-school, general secondary, vocational, higher and postgraduate education) in state educational institutions with the provision of state scholarships and benefits ([Of the Constitution of Ukraine, June 1996](#)).

According to the Law of Ukraine "On Education", inclusive education should mean a whole system of educational services, the unquestioning implementation of which is guaranteed by the state. This system takes into account all possible facets of the manifestations of human talents and eliminates any kind of discrimination (Article 1). ([The Law of Ukraine "On Education" September 2017](#)).

State and local governments in Ukraine provide for the conditions for ensuring the rights and opportunities of people with special educational needs for their education at all levels of education, taking into account their individual needs, capabilities, abilities, and interests (Article 19) ([The Law of Ukraine "On Education" September 2017](#)). Thus, in Ukraine, mandatory inclusive groups or classes are created to educate people with special educational needs, provided such persons or their parents contact the educational institution. Government and local self-government institutions form inclusive-resource centers to ensure the implementation of the right to education and the psychological and pedagogical support of children with special educational needs. (Article 20) ([The Law of Ukraine "On Education" September 2017](#)). The laws of Ukraine "On vocational education", "On general secondary education", "On pre-school education", "On higher education", "On the basics of social protection of people with disabilities in Ukraine" regulate the right of people with disabilities to receive an education. For example, in accordance to the Law of Ukraine "On the basics of social protection of people with disabilities in Ukraine" ([The Law of Ukraine "On the Basics of Social Security of People with Disabilities in Ukraine", 1991](#)) disabled people have the right to priority enrollment in higher educational institutions, and since 2014, group III disabled people, as well as children from low-income families in which parents are disabled, also received this right. People with disabilities are also assigned the right and state guarantees are provided for obtaining an education at a level corresponding to their abilities and capabilities, desires and interests, taking into account medical indications and contraindications for the next labour activity. To satisfy educational, social needs, organize correctional development work as part of preschool education institutions, based on a written request from parents or legal representatives of a person with special educational needs, inclusive and/or special groups are obligatory formed for the education and training of children with special educational needs (Article 12) ([Law of Ukraine "On pre-school education" July 2014](#)). So, in Ukraine, at the legislative level, the human right to inclusive education is guaranteed and actively implemented. The norms of the Law of Ukraine "On Higher Education" dated 1.07.2014 introduce the concept of a person with special educational needs, which is suggested to mean people with disabilities, need additional support to ensure higher education ([Law of Ukraine "On Higher Education", July 2014](#)).

Analysis of statistical data shows that for 2010, out of 129 thousand children with special educational needs in Ukraine, which were integrated into general educational institutions, 45 percent are children with disabilities. For such children in secondary schools were not taken into account their features of educational activities. Therefore, the mismatch of the forms and methods of pedagogical influence on such children can create prerequisites for the formation of a negative attitude towards learning, a manifestation of deviant behaviour ([Order of the Ministry of Health of Ukraine of October 1, 2010](#)). A positive aspect of this concept of inclusive education is that it demonstrates one of the main democratic ideas that all children are valuable and active members of society.

However, for 2017 in Ukraine at the local level there are not enough qualified specialists, funds to ensure the provision of services to families with children, and the development of inclusive education. Inclusive education and pre-school educational institutions cover in general less than 2 percent of children with disabilities ([Cabinet of Ministers of Ukraine dated August 9, 2017](#)). But as of 2018, 8417 inclusive classes were opened in 3790 secondary education institutions. Over the 3 years the number of inclusive classes increased 3.1 times, the number of schools with inclusive classes

increased 2.5 times, and the number of children getting an education in them increased 2.8 times. As of April 2019, the number of registered inclusive-resource centers was 557. The above means the active development of the provision of inclusive education services in Ukraine.

The objectives of the state policy on inclusive education in Ukraine include: ensuring the right of people with disabilities to receive a quality education, without taking into account the state of health of such persons and their place of residence; equal access to higher education; the formation of an informational, architectural and socially accessible inclusive educational environment for students with disabilities, increasing their mobility; improving and optimizing the educational process through the introduction of modern scientific achievements and the latest pedagogical technologies; creation of an integrated system of training support; providing a material and technical base adapted to the needs of students; assistance to graduates with disabilities in finding employment through the state employment service; ensuring the harmonious development of students with special educational needs and their participation in public life ([Azhazha M., 2019](#)).

Inclusive education is based on such priorities as the social adaptation of the child at each age stage; continuity of the inclusive process at all age stages; the conformity of educational (in the broad sense) tasks and methods which allow overseeing a child, taking into account his characteristics and the general logic of development; development of communicative competencies, skills to interact with other people; prevention and overcoming of disability and artificial isolation of the family of a special child ([Slyusareva, E., & Morozova, A. V., 2019](#)).

The Ministry of Education and Science of Ukraine annually improves normative legal acts in the field of development of inclusive education: 1) a mechanism has been developed for providing for inclusive groups in preschool educational institutions; 2) the position “assistant of kindergarten teacher” was introduced to the classifier of professions DK 003: 2010 with code 3340; 3) the positions “assistant to the kindergarten teacher” were introduced in the list of posts of teachers; 4) 56-day leave is provided for the teacher and assistant teacher working in an inclusive group of kindergarten; 5) a procedure for opening and admission in inclusive groups for children with special educational needs was developed; 6) instructive guidelines for organizing the activities of inclusive groups in preschool educational were developed; 7) the position of assistant teacher in inclusive groups of preschool educational institutions was provided; 8) the conditions for the remuneration of the teacher's assistant are regulated; the restriction on the increase in the number of teachers in educational institutions was cancelled; 9) the financing of students with special educational needs was increased 2.6 times ; an Action Plan was developed to ensure the right to education of children with special educational needs in the general educational space ([Tomalya T., 2018](#)).

In scientific circles, there is no single point of view on the effectiveness of teaching all students in the same class. Some researches indicate that preschool children in need of correction of their psychophysical development have the right to take full advantage of the opportunities of society and must communicate with their healthy peers ([I. Kuzava, L. Stasiuk, & N. Savchenko, 2017](#)). Children with disabilities should attend regular schools ([G. de Beco, 2014](#)). Children also demonstrated a level of sympathy for children with disabilities and expressed high sympathy for children with disabilities, regardless of age and education. ([Gasser L. et al, 2013](#)). Some authors notice, that it is possible to involve autistic children into the educational system of Ukraine ([L. Rybchenko, & I. Ostrovskii, 2015](#); [Khanzeruk L., 2016](#)). There is a point of view of authors who dispute the general idea that inclusive education, that is teaching all students in the same class, is a moral human right ([Gordon J., 2013](#)). Children with special educational needs can be educated in special educational institutions ([Tkachenko L., 2018](#)). We support the point of view that children with disabilities can be educated with their healthy peers. Specialized correctional assistance and psychological support for children with disabilities should be provided in full.

The lack of financing for inclusive education is an urgent problem, and this slows down and sometimes makes it impossible to introduce inclusive education in practice (organizing transportation of students with special needs, providing special equipment, textbooks, and teaching materials, salaries for assistants. There is no departmental interaction when introducing inclusive education in Ukraine. There are no developed normative acts from representatives of all responsible departments ([Tomalya T., 2018](#)).

Besides, in the legal literature, the problems of the development of inclusive education in Ukraine include the creation of more suitable conditions for the life of people with disabilities, the exclusion of the teachers that they did not accept the inclusive teaching method, an adaptation of the physical environment for the normal functioning of people with disabilities; overcoming professional stereotypes of psychological acceptance by teachers of educational institutions of the inclusion opportunities; financing of educational institutions where the introduction of inclusive education is planned; the creation of special education programs for schools with inclusive education, as well as the training of qualified specialists to work in an inclusive educational and developmental environment ([Dubkovetska, I., Budnyk, O., & Sydoriv S., 2016](#)). Numerous problems remain for people with disabilities regarding studies at higher educational institutions ([Talanчук, I., 2015](#)). According to statistics among 2.5 ml of students of domestic educational institutions of I-IV levels of accreditation, no more than 10,000 are people with special needs. Everything that was done by the Ukrainian government it was the including children with disabilities of groups I-III into the list of categories who receive the so-called “social scholarships”. Other issues are being resolved in the format of the administration of particular universities or local authorities. In particular, some Ukrainian universities even declare a certain specialization in

working with certain groups of people with disabilities. (Hevko I., 2019). To realize the full life of youth with disabilities, there are some problems and obstacles associated with access to quality education, including higher education, healthcare, housing, rehabilitation, social protection (Kramarenko I., 2015).

CONCLUSION, RECOMMENDATION AND LIMITATION OF THE STUDY

From the above concepts, it can be concluded that inclusive education is a priority of the state educational policy of Ukraine. The main goal of inclusive education and upbringing is to provide for conditions for personal development, and the affirmation of the human dignity of children with special needs, creative self-realization. The right to education of these children is characterized by a tendency of transformational changes from institutionalization to inclusion, a reduction in special educational institutions for children with disabilities, a decrease in their pupils along with a significant increase in inclusive education.

The legislation of Ukraine stipulates that children with special educational needs have the right to study at any educational institution, taking into account their place of residence. Also, such children have the right to psychological and pedagogical support. Inclusive education of children with disabilities was introduced starting from preschool age, a new type of general educational institution was created - an educational and rehabilitation center for children with complex developmental disabilities, the position of assistant teacher in inclusive groups of preschool educational institutions was introduced.

However, there are many problems in the legal regulation in the implementation of the human right to inclusive education: the education of children with disabilities in higher education institutions remains declarative; the content of normative legal acts is not always timely and correctly conveyed to teachers of educational institutions; there is no implementation in practice regarding rehabilitation, social protection of people with disabilities; the issue of involving children with various functional impairments in inclusive education remains unresolved; lack of funding for inclusive education, at the local level there are not enough qualified specialists, etc. No normative legal acts are regulating interagency cooperation in the implementation of inclusive education in Ukraine.

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