



## The role of prosecution authorities of the Kyrgyz Republic in ensuring the rights of people with disabilities

Arstanbekov Sanzhar<sup>1</sup>, Mostofa Jaman Shourov<sup>2</sup>

<sup>1</sup> Research Scholar, School of Law, Central South University, Changsha, Hunan, China

<sup>2</sup> Research Scholar, School of Business, Central South University, Changsha, Hunan, China

### Abstract

The article is devoted to the currently actual problem of protecting people with disabilities rights (hereinafter PWDs). This problem has been little studied and requires further research. This article considers the role of the prosecution authorities of the Kyrgyz Republic in ensuring the rights of people with disabilities, the participation of the prosecutor of the Kyrgyz Republic in court with a statement in defense of the rights, freedoms and legally protected interests of PWDs. Moreover, the article discusses the concept of "disability". The author focuses the main attention on the review of the legislation of the Kyrgyz Republic on PWDs. Moreover, the article contains the UN Declaration of the Rights of PWDs in Resolution of the thirteenth session of the UN General Assembly 3447 (XXX), which establishes the basic principles of judicial protection for PWDs. Based on the analysis of legal acts in the field of the rights of PWDs, the authors come to the conclusion that it is very important to develop methodological guidelines for prosecutors' offices taking into account international practice and requirements of international legislation, as well as national legislation of Kyrgyzstan.

**Keywords:** disabilities, rights, freedoms, legally protected interests, Kyrgyz Republic

### 1. Introduction

The current Constitution of the Kyrgyz Republic, adopted by referendum on June 27, 2010 <sup>[1]</sup>, proclaimed the Kyrgyz Republic to be a legal social state in which a person, his rights and freedoms are the highest value, and their recognition, observance, and protection is the responsibility of the state. The most important among human rights and freedoms are the right to social security and the right to health protection and medical care <sup>[1]</sup>.

Based on the general legal principle of equal rights of citizens and the prohibition of discrimination, this statement can be fully attributed to persons belonging to the least well-off and poorly protected in social and legal terms or find themselves in a difficult situation due to the circumstances. A state that has declared itself social is obliged to strive to ensure social equality by establishing various kinds of benefits for those who have a health disorder with a persistent disorder of body function due to diseases, consequences of injuries or defects leading to disability and causing social protection. The need for close attention to this category of citizens on the part of the state is equally due to their high numbers and the objective limits of their ability to fully participate in society, to labor, to self-service.

### 2. The official statistics

About 10% of the world's population, or about 650 million people, are persons with disabilities (hereinafter PWDs). According to UNDP, 80% of PWDs live in developing countries.

According to the Ministry of Labor and Social Protection of the Kyrgyz Republic, about 133 thousand people with disabilities of various categories live in the republic, including war invalids — 3.2 thousand; invalids due to the accident at the Chernobyl nuclear power plant - 1.2 thousand; disabled children under the age of 16 - 17.1 thousand; persons

with hearing and vision disabilities - 10.9 thousand; disabled people in other categories –63 thousand. Thus, about 90% of people with disabilities are unemployed, out of 22 thousand children with disabilities under the age of 18, only 6 thousand attend schools. It turns out that 16,000 children do not have the opportunity to receive appropriate education and social support, which means that in the future they will not be able to find a job. The total number of people with disabilities in the total population of Kyrgyzstan does not exceed 2%, and among children, it is 1%. For comparison, in the Russian Federation - 10%, in the republics of Central Asia - up to 3%, in the UK - 15% [2, p.46].

### 3. Review of the legislation of the Kyrgyz Republic, establishing the legal status of PWDs

The Constitution of the Kyrgyz Republic separately does not contain the rights and freedoms of PWDs, the protection of their interests, as well as any other individual groups of the population, but their guarantees and provision, along with all Kyrgyz citizens, that is, on equal terms, is determined.

Social reforms of recent years have made significant adjustments to the legal regulation of this sphere, have formed new directions, priorities, and goals. As a result, new types of social protection also emerged, a different system of state bodies was formed, which was significantly different from the previous one in force in this area.

Currently, the state social security system continues to be reformed in Kyrgyzstan in order to bring it in line with the new socio-economic reality, there is a tendency to change in approaches to defining and solving PWDs problems in accordance with international standards [3, p.93].

The grounds for recognizing a citizen as a disabled person in the Kyrgyz Republic are:

1. Impairment of health with the persistent disorder of body functions caused by diseases, the consequences of injuries

- or defects;
- 2. Restriction of vital activity (complete or partial loss by a person of the ability or ability to perform self-service, independently move, orient, communicate, control his behavior, learn or engage in labor activity);
- 3. Need social assistance and protection.

In Kyrgyzstan, the rights of persons with disabilities to participate in society are enshrined by laws and a number of by-laws. They are aimed at providing PWDs with equal opportunities with other citizens for the realization of civil, economic, political and other constitutional rights and freedoms.

In the Kyrgyz Republic, there are a number of regulatory legal acts on PWDs, the main of which are:

-The Law of the Kyrgyz Republic "On the Rights and Guarantees of Persons with Disabilities" dated April 3, 2008<sup>[4]</sup>, which establishes guarantees of protection and assistance provided to persons with disabilities, as well as measures aimed at protecting public health, preventing disabilities and creating conditions for integration into society of PWDs; determining state policy in relation to PWDs in order to provide them equal opportunities with all other citizens of the Kyrgyz Republic in exercising their rights and freedoms, elimination of restrictions in their vital life, creating favorable conditions that allow PWDs to lead full-fledged lifestyles, and actively participate in economic, political and the cultural life of the community, as well as fulfill their civic responsibilities, stipulated by the Declaration on the Rights of Persons with Disabilities, adopted on December 9, 1975<sup>[5]</sup>, by the UN General Assembly, the Constitution of the Kyrgyz Republic, generally recognized principles and norms of international law by international treaties that have entered into force in the manner prescribed by law, of which the Kyrgyz Republic is a party;

-The Law of the Kyrgyz Republic "On the Protection of Citizens' Health in the Kyrgyz Republic" on January 9, 2005<sup>[6]</sup>, which regulates relations in the sphere of health care for persons with disabilities, determines that people with disabilities have the right to free health and sanitary care in state health organizations within The program of state guarantees, home care, as well as in the case of the impossibility of meeting the basic necessities of life - for the maintenance in the institutions of the system of social protection of the population [3, p.94];

- The Law of the Kyrgyz Republic "On the Basics of Social Services for the Population in the Kyrgyz Republic" dated December 19, 2001<sup>[7]</sup>, regulating relations in the field of social services for PWDs, which is one of the areas of social protection activities, establishes economic, social and legal guarantees for people with disabilities, based on the need to establish the principles of humanity and mercy in society;

-The Law of the Kyrgyz Republic "On State Benefits in the Kyrgyz Republic" on March 5, 1998<sup>[8]</sup>, enshrines, in particular, the right of PWDs to receive state assistance in the form of a set of social services, recruitment and provision of the latter;

-The Law of the Kyrgyz Republic "On Promoting Employment of the population" dated July 27, 1998<sup>[9]</sup>, regulates, in particular, the right of persons with disabilities to a labor pension and the conditions for its appointment [3, p.94].

The United Nations Declaration on the Rights of Persons with Disabilities in its Resolution of the thirteenth session of the

UN General Assembly 3447 (XXX)<sup>[10]</sup> establishes the basic principles of judicial protection of persons with disabilities. The term "disabled person" should be understood as any person who cannot independently provide fully or partially the needs of a normal personal and/or social life due to lack. Whether innate or not, his or her physical or mental abilities. The eleventh paragraph of this Declaration states that "disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account" [3, p.95].

The norms of this Declaration were fixed in the norms of the Civil Procedure Code of the Kyrgyz Republic of December 29, 1999 No. 146<sup>[11]</sup> and in the order of the General Prosecutor of the Kyrgyz Republic No. 14 on May 3, 2006<sup>[12]</sup>. For example, Article 45 of the Civil Procedure Code establishes:

1. A prosecutor shall have the right to appeal to the court in defense of the rights, freedoms and legally protected interests of other persons or an indefinite number of persons, as well as to enter into the case considered in court if it is required by the protection of rights, freedoms and legally protected interests of citizens, state or public interest.
2. An application in defense of the rights, freedoms and legally protected interests of a citizen may be filed by the prosecutor only at the request of the person concerned, if it is unable to go to court for good reasons (for health reasons, age, incapacity or other reasons). An application in defense of the interests of legally incapable citizens may be filed by the prosecutor regardless of the request of the person concerned.

Also, in accordance with the requirement of the Order of the Prosecutor General of the Kyrgyz Republic No. 12 of May 3, 2006<sup>[13]</sup>, in cases of detection of violations of the rights and freedoms of a person and citizen, protected by civil procedure, when the injured person for health reasons cannot personally defend his freedoms, or when the rights and freedoms of a significant number of citizens are violated, or for other reasons, the offense has acquired particular social significance, to submit and support claims in court in the interests of the victims.

In Part 1 of Article 15 of the Law "On the Prosecutor's Office of the Kyrgyz Republic" dated June 11, 2009 No. 224<sup>[14]</sup>, it is established that the prosecution authorities supervise the precise and uniform implementation of laws and other regulatory legal acts, legal acts of the Prosecutor General by the by subjects of law enforcement. Thus, the participation of the prosecutor in civil proceedings to protect the rights of PWDs is provided by the legislator in two forms: the entry into the process during the consideration of civil cases by the court of general jurisdiction to give an opinion, and the initiation of civil law disputes in the interests of persons specified in the law, and in other cases provided for by legal acts.

The specified norms of the legislation cover all parties and circumstances of the life situation, where the majority of PWDs do not know their rights or do not have the opportunity to protect their legal rights and interests. In such a situation, the work of the prosecution is immense.

The civil procedural legislation of the Kyrgyz Republic uses

the generalized term “prosecutor”, which covers not only the prosecutor but also his deputies, assistants, etc. Thus, the prosecutor participates in the consideration of the case in the court of the first instance, i.e. the general term is used [3, p.96]. At the same time, each form of participation of the prosecutor in civil proceedings (initiation of a case or giving an opinion) and at each stage of the civil process (from proceeding in the court of the first instance to the stage of reviewing judicial acts on newly discovered circumstances) is characterized by certain features. At any stage of the process and in any form, the prosecutor protects in court not his own, but the state and public interests, as well as the interests of others or an indefinite circle of persons. The participation of the prosecutor in court is a continuation of his activities to ensure the rule of law, in connection with which such participation helps the prosecutor to exercise his powers entrusted to him by the Constitution of the Kyrgyz Republic and the Law of the Kyrgyz Republic “On the Prosecutor’s Office of the Kyrgyz Republic”. Such a “service interest” characterizes the essence of the procedural position and the activities of the prosecutor in civil proceedings.

#### 4. The problems

However, prosecution authorities rarely pay attention to PWDs problems, and as a result of the passive and unprofessional activities of prosecutors some elemental PWDs rights (related to their housing rights; state obligations to install ramps and handrails to ensure unhindered access to objects of social infrastructure, pay them monthly payment) in our society are not protected [3, p.97].

In our opinion, the statistics on the number of PWDs per capita do not correspond to reality. Many PWDs do not know their rights, and they are not registered with social security agencies: because of the current negative public attitude to the problem of disability in general, some are just ashamed to stand on such an account; because of the lack of knowledge of the procedure for passing medical and social expertise. Herewith, many PWDs do not have full access to social assistance and other conditions that are created for such categories of people.

#### 5. The solution of problems.

We would like to note that it is very important to develop a methodological guide for the prosecution authorities taking into account international practice and the requirements of international legislation, as well as the national legislation of Kyrgyzstan.

Thus, the statistics itself, which is maintained in our country, is the subject of public discussion, and to solve the problem, new funds are needed for “developing innovative approaches to organizing medical and social expertise,” as well as improving the account of PWDs.

#### 6. Conclusion

The level of observance of the rights of persons with disabilities not least depends on the coordination of efforts of all interested structures. It is important that not only state structures cooperate, but also integration into the general system of interaction of public associations that express the interests of PWDs.

#### 7. References

1. Constitution of the Kyrgyz Republic adopted by referendum on June 27, 2010.

2. Proceedings of the international conference on children with special needs and their parents. Bishkek. 2011, pp. 46.
3. Protection of the rights of children, women, and persons with disabilities in court: possible collision, gaps and ways to solve them (information and analytical review of international standards and legislation of the Kyrgyz Republic). - B: Printhouse Publishing House. 2013, pp. 118.
4. The Law of the Kyrgyz Republic on the Rights and Guarantees of Persons with Disabilities dated April 3, 2008.
5. UN Declaration on the Rights of Persons with Disabilities on December 9, 1975.
6. The Law of the Kyrgyz Republic “On the Protection of Citizens' Health in the Kyrgyz Republic” on January 9, 2005.
7. The Law of the Kyrgyz Republic “On the Basics of Social Services for the Population in the Kyrgyz Republic” dated December 19, 2001.
8. The Law of the Kyrgyz Republic “On State Benefits in the Kyrgyz Republic” on March 5, 1998.
9. The Law of the Kyrgyz Republic “On Promoting Employment of the population” dated July 27, 1998.
10. Resolution of the thirteenth session of the UN General Assembly 3447 (XXX).
11. Civil Procedure Code of the Kyrgyz Republic of December 29. 1999; 146.
12. Order of the General Prosecutor of the Kyrgyz Republic No. 14 on May 3, 2006.
13. Order of the Prosecutor General of the Kyrgyz Republic No. 12 of May 3, 2006.
14. The Law “On the Prosecutor's Office of the Kyrgyz Republic” dated June 11. 2009, 224.