



Maidaik Serhii Viktorovich,
Postgraduate Student of the European Union
Law Department, Yaroslav Mudryi National
Law University, Ukraine, Kharkiv
e-mail: s.v.maydanik@nlu.edu.ua
ORCID 0000-0001-7837-5265

doi: 10.21564/2414–990X.154.234227
UDC 341.231.14–056.24:061.1ЄС

INTERNATIONAL LEGAL REGULATION OF THE RIGHTS OF PERSONS WITH DISABILITIES: PROBLEMS OF FORMATION AND DEVELOPMENT

At the level of international legal regulation disability policy is currently one of the priority areas. However, such attention to the international legal protection of the rights of persons with disabilities has not always been the case, as the problems of persons with disabilities have long remained unnoticed by the international community. Rare attempts to improve the situation with persons with disabilities were usually limited to medical protection and integration into the labor market, while the task of their full and actual involvement in public life was not even set. The article analyzes the preconditions, reasons and features of the evolution of the system of international legal protection of the rights of persons with disabilities, as well as examines the transformation of approaches to defining the concept of “disability” at the level of international law. The article defines the main stages of the formation of international cooperation in the field of protection of the rights of persons with disabilities. The article presents the results of the analysis of international legal documents on disability policy for the period from the beginning of the twentieth century to 2020.

Keywords: persons with disabilities; disability; disability rights; Equal Rights; social model; Social Policy; non-discrimination; Convention on the Rights of Persons with Disabilities.

Майданік С. В., аспірант кафедри права Європейського Союзу, Національний юридичний університет імені Ярослава Мудрого, Україна, м. Харків.
e-mail: s.v.maydanik@nlu.edu.ua ; ORCID 0000-0001-7837-5265

Міжнародно-правове регулювання прав осіб з інвалідністю: проблеми становлення та розвитку

На рівні міжнародно-правового регулювання політика у сфері інвалідності наразі є одним із пріоритетних напрямків. Однак така увага до міжнародно-правового забезпечення прав осіб з інвалідністю була далеко не завжди, проблеми осіб з інвалідністю тривалий час залишалися непоміченими міжнародною спільнотою. Поодинокі спроби певним чином покращити становище осіб з інвалідністю зводилися зазвичай до медичного захисту та інтеграції на ринку праці, тоді як завдання щодо їх повноцінного і фактичного залучення до суспільного життя навіть не ставилося.

У статті окреслено передумови, причини і особливості еволюції системи міжнародно-правового захисту прав осіб з інвалідністю, а також досліджено трансформацію підходів до визначення поняття «інвалідність» на рівні міжнародного права. Розглянуто основні етапи становлення міжнародного співробітництва у сфері захисту прав осіб з інвалідністю. Подано результати аналізу міжнародно-правових документів щодо політики в сфері інвалідності за період від початку ХХ ст. до 2020 р.

Ключові слова: особи з інвалідністю; інвалідність; права осіб з інвалідністю; рівні права; соціальна модель; соціальна політика; недискримінація; Конвенція про права осіб з інвалідністю.

Problem setting. The protection of the rights of persons with disabilities is central to the social policy of any democratic, social state governed by the rule of law. This is not surprising, given that about 15% people in the world live with some form of disability and their number continues to grow despite the efforts of both national governments and the international community [28, p. 8].

However, this was not always the case – the problems of people with disabilities have long remained unnoticed by the international community. Accordingly, the protection of their rights was considered as prerogative of states alone that solved the problems of this category of persons based on the priorities of their own social policy and financial capabilities.

The global nature and severity of the problem, the democratization of international law required the inclusion of the problem of protecting the rights of persons with disabilities on the agenda of the international community. This, in turn, led to the adoption of the Convention on the Rights of Persons with Disabilities in 2006. Given that the Convention is a universal legally binding international treaty, its adoption has been an important step in the development of the international human rights law system.

At the same time, despite the changes taking place at the international level in the field of protecting the rights of persons with disabilities, this problem does not lose its relevance and practical significance. The phenomenon of disability is closely related to a number of other acute problems, namely: social exclusion, discrimination, poverty, unemployment, etc. Persons with disabilities often face negative attitudes and various barriers that prevent them from participating fully in society. That is why the tasks of implementing and realizing the obligations assumed by the states in this area remain extremely urgent. That is why the tasks of implementing and realizing the obligations assumed by the states in this area remain extremely urgent.

Analysis of recent research and publications. The problem of protection of the rights of persons with disabilities is given considerable attention in the works of primarily foreign authors: M. Priestley, G. Quinn, T. Degenera, Lisa Waddington, D. E. Lord, M. Modine and others. However, most of these developments are devoted to the protection of individual rights, analysis of the content of the Convention on the Rights of Persons with Disabilities and the peculiarities of the legal regulation of the legal status of persons with disabilities in individual countries.

Among domestic authors, the problem of social protection of persons with disabilities is raised in the works of V. P. Melnik, V. L. Kostyuk, V. I. Shcherbina,

L. Yu Malyuhy and others. Issues related to the evolution and development of international legal regulation and protection the rights of persons with disabilities in the domestic science of international law remain insufficiently developed.

Statement of the article objective. The purpose of the article is a theoretical study of a set of issues related to the evolution of approaches to the international legal consolidation of the rights and freedoms of persons with disabilities, determining the place of the rights of persons with disabilities in international human rights law.

Presentation of the main body of the article. The protection of the rights of persons with disabilities, as well as the development of international human rights law in general, began to develop actively only after the Second World War. However, the first steps towards improving the situation of persons with disabilities were made even within the framework of the International Labor Organization (hereinafter – ILO), established in 1919. The purpose of the international agreements concluded before the establishment of the UN was to ensure certain categories of human rights, and not to create a comprehensive system of human rights protection. This was due to the fact that the protection of human rights has long belonged to the internal jurisdiction of states. Therefore, in the first decades of the ILO's activity, the cooperation of states was aimed at creating guarantees of social protection in the event of a person's disability. The focus on this issue was due to the increasing the number of people with disabilities during the war, as well as the necessity of skilled workers to fill the vacant jobs that appeared after the mobilization.

Acts of the ILO, adopted in the interwar period, were mainly compensatory in nature and provided the social assistance payment and pensions for the loss of working capacity to disabled people. Thus, the ILO Recommendation No. 43 “Invalidity, Old-Age and Survivors’ Insurance Recommendation” in p. 16 provided: “A pension should be awarded to an insured person who by reason of sickness or infirmity is unable to earn an appreciable remuneration by work suited to his strength and ability and his training; remuneration which is less than one-third of the ordinary remuneration of a fit worker of similar training and experience should not be deemed to be appreciable” [13].

In general, measures in the field of protecting the rights of persons with disabilities during this period were focused mainly on providing social assistance to workers with disabilities, resolving issues of vocational training and establishing compensation guarantees for accidents at work. It should be noted that a charity approach was applied to persons with disabilities during this period, as a result of which they were considered not as subjects, but as objects of social protection.

The beginning of the next stage, related to the formation of universal norms of international human rights law, can be associated with the creation of the UN. The UN Charter became the first international treaty that contained a provision on the obligation of states to respect and observe human rights. In addition, the Charter provided for the establishment of a system of international human rights bodies and a mechanism for the coordination of their activities.

In the context of affirming the principle of respect for human rights, the UN General Assembly in 1948 adopted the Universal Declaration of Human Rights. It contained a list of fundamental human rights that the international community still adheres to. The Universal Declaration established a fundamental regulatory framework on which international legal norms and standards relating to persons with disabilities were subsequently developed. The Universal Declaration contains a number of provisions (Articles 2, 3, 6, 7) that form the basis of international acts on the protection of the rights of persons with disabilities, based on the principle of equality. Although the Declaration did not focus on the rights of persons with disabilities, Article 25 contained a reference to disability: "... the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control" [33].

In 1966, the International Covenant on Civil and Political Rights [17] and the International Covenant on Economic, Social and Cultural Rights [18] were adopted. Article 2 of both Covenants obliges each state that is a party to the relevant treaty to respect and ensure to all persons within its territory and under its jurisdiction the rights recognized in them, without any distinction as to race, color, sex, language, religion, political or other beliefs, national or social origin, property status, birth or other circumstance. Although according to article 2 rights are guaranteed to all categories of persons without exception, the Committee on Economic, Social and Cultural Rights in the General comment No. 5 (1994) indicated that persons with any form of disability have a clearly defined right to enjoy the full range of rights recognized in the Covenant [35].

The first decades of UN activity in the field of protection of the rights of persons with disabilities were aimed at providing social and medical assistance to this category of persons, creating conditions for their rehabilitation. Other issues related to the protection of the rights of persons with disabilities remained out of the UN's focus.

Thus, ECOSOC Resolution 309E (XI) of July 13, 1950 "Social Rehabilitation of the Physically Defective" emphasized the need to develop an international program for the readaptation of the "physically defective". ECOSOC Resolution 1921 (LVIII) of 6 May 1975 called on States to take measures to prevent and restore persons with disabilities incapacity for work including guaranteeing "care, education, training, vocational guidance and appropriate work, as well as social security assistance" [38, c. 210].

In the context of the research question, it is expedient to describe at least in general terms the main approaches to understanding disability, since they played a key role in the formation of the system of international legal protection of the rights of persons with disabilities.

For a long time, the medical model of disability was dominant. It originated in the depths of health and social care systems, as a result of which it is sometimes called the "administrative model". For a long time this model was considered scientifically grounded and humane [29, p. 9].

In the narrative of the medical model, disability is understood as an individual and/or a medical phenomenon that results in limited functioning that is seen as deficient. Disability is considered to be a result of impairment of body functions and structures, including the mind, and can be caused by illness, injury or health conditions. Similar to ill health, disability, in particular problems with the mind or body, is viewed as a problem that needs to be medically cured in order for people to function in society. This point of view is strongly normative. It means that people are considered disabled on the basis that they are unable to function the way so-called normal people do [20].

The medical model focuses mainly on the functional impairment of a person, which is considered as a source of inequality. Human needs and rights are subordinated to the provision (or imposition) of medical care or are identified with it. Individual needs and rights are subordinated to the provision (or imposition) of medical care or are identified with it. A person's needs and rights are subject to or identified with the provision (or imposition) of medical care. According to the medical model, a person can be "put in order", brought back to society through therapy or rehabilitation. Within this approach, environmental factors are not considered, and disability is considered as an individual problem [14, p. 9–10].

From the medical model of disability, a definition of functional limitation is also derived, which describes inferiority as the inability of a person to perform certain functions along with healthy people [29, p. 10].

The social model is based on a different view of the problem: disability is recognized as the result of an individual's interaction with the environment, which does not take into account the characteristics of the individual. Such a vision of the problem prevents the participation of the individual in the life of society. Inequality is not due to functional impairments, but to the inability of society to remove barriers to the life of persons with disabilities. The person is at the center of this model, not his or her own impairments; thereby recognizing the values and rights of persons with disabilities as members of society [14, p. 10–11]. Such a vision of the problem prevents the participation of the individual in the life of society. Inequality is seen not due to functional impairments, but to the inability of society to remove barriers, which may hinder their full and effective participation in society. The person, not his or her own impairments, is at the center of this model; thereby the values and rights of persons with disabilities as members of society are recognized [20, p. 10–11].

The social model does not deny the existence of physiological differences and supports the idea that treatment and rehabilitation should be left to specialists, but the results of their activities should not affect whether a person with a disability will be a full member of society. The social model of disability can be effectively used to identify / delineate existing barriers in all aspects of social life of persons with disabilities, and then completely eliminate them. Thus, the social model encourages states to create a "society for all" [2, p. 48].

Freedom, dignity, trust, evaluation and self-evaluation – these are the characteristics of the social model. Within the social model, disability is not a “mistake” of society, but one of the elements of its diversity.

The next stage of international legal regulation of disability issues is related to the adoption of special international legal acts in the field of protection of the rights of persons with disabilities.

Since the 1970s International and European movements of persons with disabilities have initiated political discussions at the global and regional levels that have led to a gradual change in the perception of persons with disabilities, their rights, full participation and removal of structural barriers to inclusion. During this period, the concept of the human rights of persons with disabilities was embodied in the Declaration on the Rights of Mentally Retarded Persons (1971) [8] and the Declaration on the Rights of Disabled Persons (1975) [7].

The realization that disability and mental illness are two separate policy areas (“two policies and two philosophies”) has been quite difficult at both the national and international levels [10]. Today, the term “mentally retarded”, which was used in the 1971 Declaration, is not used because it does not correspond to the modern understanding of disability [23].

Although it is implied from the texts of the declarations that persons with disabilities must have respect to their dignity and the need to be as independent as possible, their content shows that at the time of their adoption, disability in international law was still viewed through the prism of the individual’s own inferiority. Thus, the Declaration on the Rights of Disabled Persons contained the following provision: “disabled person” means “any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities” [7]. In this definition, disability is revealed through the “inability” to maintain self-sufficient life and the reason for this inability - “lack of ... mental or physical ability”. Despite the recognition that persons with disabilities and persons with intellectual impairments have rights, the declarations did not set out the measures that states should take to realize the rights of persons with disabilities.

In 1982, there were more than 500 million people in the world who were disabled as a result of mental, physical or sensory disorders [37]. These data indicated the scale of the problem and the general spread of such a phenomenon as disability. In order to draw the attention of states to the problem of protection of one of the socially vulnerable groups of the population, the UN General Assembly in Resolution 31/123 declared 1981 the International Year of Persons with Disabilities. On December 3, 1982, the UN General Assembly adopted the World Programme of Action concerning Disabled Persons. This Program of Action became the first large-scale international document aimed at protecting the rights of persons with disabilities, which contains recommendations on public policy in the field of disability in three main areas: prevention of disability, rehabilitation and creating opportunities for people with disabilities.

During the United Nations Decade of Disabled Persons, a number of important international legal instruments were adopted: ILO Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons) (1983) [11] and in addition the ILO Recommendation No. 168 on Employment Promotion and Protection against Unemployment [12]. The Convention on Vocational Rehabilitation and Employment provided for measures to be taken by States in the provision and evaluation of career guidance, vocational training, employment and other related services to enable persons with disabilities to receive and retain employment [11].

It should be noted that it was during this period when a system of universal international human rights treaties was formed. From 1979 to 1990, a number of conventions were adopted: Convention on the Elimination of All Forms of Discrimination against Women [4] International Convention on the Elimination of All Forms of Racial Discrimination [15] Convention on the Rights of the Child [6], Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [3] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families [16]. On the basis of these treaties, a system of international human rights bodies (committees) has been established to carry out international control and monitoring in the field of human rights.

But despite the fact that many international legal acts were adopted in the field of human rights protection, which, of course, also apply to persons with disabilities, states paid insufficient attention to the practical implementation of these rights.

As noted in the report of the UN High Commissioner for Human Rights, «despite the right to protection under all human rights treaties in accordance with the general principle of equality and non-discrimination, persons with disabilities generally remained “invisible” in the human rights system and absent from human rights discourse» [34].

In 1993, the UN General Assembly, following the results of the International Decade of Persons with Disabilities, adopted the Standard Rules for the Equalization of Opportunities for Persons with Disabilities (hereinafter referred to as the Rules). These Rules reflect significant conceptual changes that have taken place in relation to persons with disabilities and disability. The main purpose of these Rules is to create an opportunity for disabled people to “exercise their rights and obligations on an equal basis with others” and “fully participate in the activities of society” [26]. Thus, if during the Decade of Persons with Disabilities the influence of the medical model was still felt, then after the adoption of the Standard Rules we can talk about changes in the understanding of disability and the final acceptance of the social model by the international community.

The Standard Rules also contain definitions of “disability” and “handicap” that indicate a change in attitudes towards people with disabilities. In chapter 1, paragraph 17 it is stated that the term “disability” summarizes a great number of different functional limitations occurring in any population in any country of the world. The most interesting is the concept of “handicap” which in paragraph 18 of the same section is defined as the “loss or limitation of opportunities to take part

in the life of the community on an equal level with others and it describes the encounter between the person with a disability and the environment”. Importantly, it is further noted that the term “handicap” is used “to emphasize the focus on the shortcomings in the environment and in many organized activities in society, ... which prevent persons with disabilities from participating on equal terms with others” [26]. Thus, compared to previously adopted international acts (and even the World Program of Action), the Standard Rules already clearly emphasize a new element of disability – “the shortcomings in the environment and in many organized activities in society”, which means a transition to a new understanding of disability at the level of international law.

Although the Standard Rules on the Equalization of Opportunities for Persons with Disabilities are not legally binding (except for the establishment of the Special Rapporteur on the Rights of Persons with Disabilities within the UN ECOSOC Commission for Social Development), they have been adopted by many States and imply a strong moral and political commitment of the States to adopt measures to ensure equal opportunities for persons with disabilities. The Standard Rules are in fact the first universal instrument that specifically addresses persons with disabilities and also contains an extremely wide range of rights to equal opportunities [19]. However, it should be noted that at the time of the adoption of the Standard Rules, states were not ready to assume the relevant international legal obligations regarding the rights of persons with disabilities.

In the 1990s, the formation of regional systems for the protection of the rights of persons with disabilities started – European, Inter-American, Asia-Pacific. In 1992, the Council of Europe adopted Recommendation №R (92) 6 of the Committee of Ministers to Member States on a coherent policy for people with disabilities [25], followed by the Disability Action Plan 2006-2015 [31]. In 1999, Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities was adopted [14].

Despite the progress made, the Special Rapporteur has drawn disappointing conclusions from the analysis of the first national progress reports submitted on the implementation of the Standard Rules. The traditional approach to solving the problems of people with disabilities remains a priority in public policy. Most states focus on issues of rehabilitation and disability prevention, and to a lesser extent – on ensuring the accessibility of the social environment and removing social barriers.

Thus, the Standard Rules proclaimed the need to integrate persons with disabilities into society, but this did not guarantee that people with greater needs (persons with disabilities) would receive the resources they need to participate in society. According to R. Lemay, one gets a sense that the SR are concerned primarily with the notion of physical integration and nothing more. Except for the expression “full participation”, no one understands how the Standard Rules will translate into the day to day reality of social coexistence. Physical integration might be a necessary precondition for social integration but it is certainly not sufficient [21].

Therefore, despite the emergence and development of a social approach to understanding disability, it was still quite common to view people with disabilities as passive recipients of assistance, and not as subjects who fully use their rights, that is, charity and medical approaches dominated, according to which people with disabilities were considered inferior, need to be cared for and who are completely dependent on the affection and compassion of others.

As a result of the awareness of the need to move to a qualitatively new level of international protection of the rights of persons with disabilities and the adoption of a legally binding international treaty on the rights of persons with disabilities, the Convention on the Rights of Persons with Disabilities (hereinafter the Convention) [5] was signed in 2006 together with the Optional Protocol [32], which entered into force in 2008.

The Convention approaches to the understanding of the concept of “disability” from a different perspective. First, unlike previous documents aimed at protecting the rights of persons with disabilities, it does not disclose or use the term “incapacity”. The Convention also does not contain an exhaustive definition of disability. The preamble recognizes that “disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others” [5]. In this way, it develops the approach outlined in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in 1993.

The Convention catalogs the various human rights recognized in international human rights treaties. Thus, Article 5 is devoted to equality and non-discrimination, Articles 6 and 7 contain special guarantees for disabled women and children with disabilities respectively, Article 15 proclaims freedom from the use of degrading treatment and punishment, and so on. The list of rights enshrined in the Convention contains all groups of rights: civil, political, economic, social and cultural.

Unlike previous international documents in the field of protection of the rights of persons with disabilities, the Convention departs from the need to create special, including rehabilitation programs and requires that all development programs be equally accessible to persons with disabilities (Part 1 of Art. 4). The Convention repeatedly emphasizes that persons with disabilities have rights “on an equal basis with others” and enjoy these rights “without any discrimination”.

The Convention establishes a control mechanism typical for universal international human rights treaties - the Committee on the Rights of Persons with Disabilities (Article 34) and the Conference of States Parties (Article 40), and also provides for cooperation between states and international bodies to achieve the objectives of the Convention (Article 38) [5].

In turn, Article 33 of the Convention provides for the need to establish national monitoring systems. It prescribes a three pillar structure of national implementation and monitoring system that is entirely new to the human rights treaty system. Member States need to designate one or more focal points within governments ‘for

matters relating to the implementation' of the treaty. In addition, they need to have an independent national monitoring system and civil society needs to take an active role in the monitoring process [9, p. 9–10].

Special attention should be paid to the non-discrimination provision in the Convention. The Convention differs from other human rights treaties in that it contains a broader definition of discrimination. Discrimination is defined not only as “any distinction, exclusion, restriction or preference based on disability which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”, similar definitions can be also found in The Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. Discrimination based on disability also includes “refusal to provide reasonable accommodation”. The latter is defined as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms” [5].

The adoption of reasonable accommodation and its innovative linkage to non-discrimination provision is essential for enhancing the realization of social rights, as it has an immediate effect not only on civil and political rights, but also on economic, social and cultural rights.

The main difference between positive obligations of the state and reasonable accommodation is that the former are general and the latter is individualised, which results in the former generally not creating subjective rights (thus preventing individuals from challenging their implementation), whereas the latter creates clear legal standing precisely because of its direct connection to non-discrimination [1, p. 97–98].

Another important feature of the Convention is that the participation of persons with disabilities and their organizations in the process of monitoring and implementing its provisions at all levels is implicitly and explicitly woven into the whole structure of the text. This has been perhaps one of the most progressive achievements in the field of human rights enshrined in the Convention. It reflects the fundamental principle that the persons most affected have the right to participate in decisions that impact them. In the disability context more specifically, it represents a sharp turn from marginalization and lack of voting rights in decision-making processes. Moreover, the experience of the Ad Hoc Committee sessions demonstrates that including the targeted group facilitated negotiations by educating states representatives about these individuals as well as lending credibility to the substance of the treaty [27, p. 699–700].

Ratification of the Convention will require states to think strategically about accessibility and reasonable accommodation for people with disabilities in all areas of life. Under the paradigm shift, persons with disabilities are regarded as being

entitled to the same human rights as people without disabilities. Traditional human rights instruments provided nominal protection to persons with disabilities, but the interpretation of these instruments often discounted their rights. Now the rights are applied to focus upon true equality. Under the CRPD disability is not regarded as a medical condition that requiring assistance but as an aspect of social diversity. The challenge is to realize the potential of the CRPD and to achieve the change that the adoption and rapid ratification of the CRPD has created [24].

Thus, it can be noted that the Convention has formed legally binding international standards for the rights of persons with disabilities, taking into account the specifics of this category of persons, which are aimed at providing persons with disabilities with equal social opportunities, respect for their dignity and integration into all spheres of society and established guarantees for their implementation at the national and international levels.

Conclusions. Summing up the above, it should be noted that during the period of creation and development of international legal regulation in the field of protection of the rights of persons with disabilities, there have been significant changes in the understanding of disability and approaches to protection of this category of persons. At first, the prevailing opinion was that persons with disabilities were inferior and that it was necessary to “correct” them by applying rehabilitation programs and placing persons with disabilities in rehabilitation centers, that is, the medical model of understanding disability was applied. People with disabilities were perceived as passive recipients of assistance, as individuals who could not take care of themselves and therefore states considered it necessary and sought to mitigate the social consequences of health disorders for people with disabilities by separating them from society and placing them in protected areas of social activity.

But gradually the focus shifted from the medical aspects of disability to the interaction of people with disabilities and society and an understanding of the need to integrate people with disabilities into society and that society itself needs to remove barriers that interfere with the normal life of people with disabilities. This evolution has been quite rapid, because while the 1975 Declaration on the Rights of Persons with Disabilities reflected a medical approach to understanding disability, the 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities marked a complete transition to a social model of understanding disability. It is worth noting that the development of the international concept of disability throughout the 20th century took place mainly in recommendatory acts, therefore the legally binding Convention on the Rights of Persons with Disabilities became a new stage in the development of international human rights law and the guarantor of the protection of the rights of persons with disabilities.

References

1. Anisic, M. (2016). The UN Convention on the Rights of Persons with Disabilities as a Tool for Stronger Social Rights Realisation. *Human Rights of Persons with Disabilities in International and EU Law*. D. Estrada-Track (Ed.). EUI Working Papers, AEL 2016/01, 92–113.

2. Bayda, L.Yu., Krasnyukova-Enns, O.V., Burov, S.Yu., Azin, V.O. Gribalskiy, Ya.V., Nayda, Yu.M. (2012). Invalidnist ta suspilstvo. Bayda L.Yu., Krasnyukova-Enns O.V. (Eds.). Kyiv [in Ukrainian].

3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984. URL: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

4. Convention on the Elimination of All Forms of Discrimination against Women. Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979. URL: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>.

5. Convention on the Rights of Persons with Disabilities. URL: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

6. Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. URL: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

7. Declaration on the Rights of Disabled Persons. Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975. URL: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightsOfDisabledPersons.aspx>.

8. Declaration on the Rights of Mentally Retarded Persons. Proclaimed by General Assembly resolution 2856 (XXVI) of 20 December 1971. URL: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightsOfMentallyRetardedPersons.aspx>.

9. Degener, T. (2016). Challenges and Compliance of the UN CRPD. *Human Rights of Persons with Disabilities in International and EU Law*. D. Estrada-Track (Ed.). EUI Working Papers, AEL 2016/01, 7–45.

10. Henckes, N. (2012). Entre maladie et handicap: repenser la critique psychiatrique de la loi du 30 juin 1975 d'orientation en faveur des personnes handicapées. *ALTER, European Journal of Disability Research*, 6, 242–254.

11. ILO Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons), 1983. URL: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312304.

12. ILO Recommendation No. 168 on Employment Promotion and Protection against Unemployment, 1988. URL: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C168:NO.

13. ILO Recommendation No. 43 on Invalidity, Old-Age and Survivors' Insurance, 1933. URL: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R043.

14. Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities. URL: <https://www.oas.org/juridico/english/treaties/a-65.html>.

15. International Convention on the Elimination of All Forms of Racial Discrimination. Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965. URL: <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>.

16. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Adopted by General Assembly resolution 45/158 of 18 December 1990. URL: <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>.

17. International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. URL: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

18. International Covenant on Economic, Social and Cultural Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. URL: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

19. International Norms and Standards Relating to Disability. United Nations. 2003. URL: <https://www.un.org/esa/socdev/enable/comp00.htm>.

20. Haegele, J., Hodge, S. (2016). Disability Discourse: Overview and Critiques of the Medical and Social Models. *Quest*, 68:2, 193–206. DOI: 10.1080/00336297.2016.1143849. URL: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

researchgate.net/publication/297722476_Disability_Discourse_Overview_and_Critiques_of_the_Medical_and_Social_Models.

21. Lemay, R.A. (1994). A Review of the “Standard Rules on the Equalization of Opportunities for Persons with Disabilities”. United Nations Department for Policy Coordination and Sustainable Development. *The International Social Role Valorization Journal*, 1(2), 47–51.

22. Lukasheva, E.A. (2011). Prava cheloveka. Moscow: Norma [in Russian].

23. Maidanik, S.V. (2020). European union disability policy: supranational level of legal regulation. *Problemy zakonnosti – Problems of Legality*, issue 150, 332–353. doi: <https://doi.org/10.21564/2414-990x.150.209404>.

24. Paul, H. (2012). Embracing the new disability rights paradigm: the importance of the Convention on the Rights of Persons with Disabilities. *Disability & Society*, 27:1, 1-14. doi: 10.1080/09687599.2012.631794. URL: https://www.researchgate.net/publication/262971067_Embracing_the_new_disability_rights_paradigm_The_importance_of_the_Convention_of_the_Rights_of_Persons_with_Disabilities.

25. Recommendation No. R (92) 6 of the Committee of Ministers to Member States on a coherent policy for people with disabilities. Adopted by the Committee of Ministers on 9 April 1992. URL: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804ce0f8>.

26. Resolution adopted by the General Assembly. [on the report of the Third Committee (A/48/627)] 48/96. Standard Rules on the Equalization of Opportunities for Persons with Disabilities. URL: <https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html>.

27. Stein, Michael Ashley and Lord, Janet E. (2010). Monitoring the Convention on the Rights of Persons with Disabilities: Innovations, Lost Opportunities, and Future Potential. *Human Rights Quarterly*, Vol. 31, 691–730. URL: <https://scholarship.law.wm.edu/facpubs/1101/>.

28. Summary: World report on disability 2011. *World Health Organization & World Bank*.

29. Tarasenko, E.A. (2001). Sotsialnaya politika v oblasti invalidnosti: krosskulturnyy analiz i poisk optimalnoy kontseptsii dlya Rossii. *Zhurnal issledovaniy sotsialnoy politiki*, 2(1), 7–28 [in Russian].

30. The Convention on the Rights of Persons with Disabilities: Training Guide. Professional Training Series No. 19, United Nations publication. (2014). URL: https://www.ohchr.org/Documents/Publications/CRPD_TrainingGuide_PTS19_EN%20Accessible.pdf [in Russian].

31. The Council of Europe Disability Action Plan 2006-2015. Adopted by the Committee of Ministers of the Council of Europe on 5 April 2006. URL: <https://www.coe.int/en/web/disability/action-plan-2006-2015>.

32. The Optional Protocol to the Convention on the Rights of Persons with Disabilities. URL: <https://treaties.un.org/doc/Publication/CTC/Ch-15-a.pdf>.

33. The Universal Declaration of Human Rights. Proclaimed by General Assembly resolution 217 A of 10 December 1948. URL: <https://www.un.org/en/universal-declaration-human-rights/>.

34. Thematic study by the Office of the United Nations High Commissioner for Human Rights on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities. A/HRC/13/1 2 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General. Geneva: UN, 22 Dec. 2009. URL: <https://digitallibrary.un.org/record/680177>.

35. UN Committee on Economic, Social and Cultural Rights (CESCR). *General comment No. 20: Non-discrimination in economic, social and cultural rights* (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20. URL: <https://www.refworld.org/docid/4a60961f2.html>.

36. World Health Organization. (1980). International classification of impairments, disabilities, and handicaps: a manual of classification relating to the consequences of disease, published in accordance with resolution WHA29.35 of the Twenty-ninth World Health Assembly, May 1976. URL: <https://apps.who.int/iris/handle/10665/41003>.

37. World Programme of Action concerning Disabled Persons. Adopted by the General Assembly resolution 37/52 of 3 December 1982. URL: <https://www.un.org/development/desa/disabilities/resources/world-programme-of-action-concerning-disabled-persons.html>.

38. Yakovleva, E.N. (2015). Osnovnyye etapy stanovleniya mezhdunaradnogo sotrudnichestva v sfere pooshchreniya i zashchity prav invalidov. Istoricheskiye, filosofskkiye, politicheskkiye i yuridicheskkiye nauki, kulturologiya i iskusstvovedeniye. Part II. *Voprosy teorii i praktiki*, 9 (59), 209–212 [in Russian].

Майданик С. В., аспирант кафедры права Европейского Союза, Национальный юридический университет имени Ярослава Мудрого, Украина, г. Харьков.

e-mail: s.v.maidanik@nlu.edu.ua ; ORCID 0000-0001-7837-5265

Международно-правовое регулирование прав лиц с инвалидностью: проблемы становления и развития

На уровне международно-правового регулирования политика в сфере инвалидности в настоящее время является одним из приоритетных направлений. Однако такое внимание к международно-правовому обеспечению прав лиц с инвалидностью было далеко не всегда, поскольку проблемы лиц с инвалидностью долгие периоды оставались незамеченными международным сообществом. Единичные попытки определенным образом улучшить положение людей с инвалидностью сводились обычно к медицинской защите и интеграции на рынке труда, тогда как задачи по их полноценному и фактическому привлечению к общественной жизни даже не ставились. В статье анализируются предпосылки, причины и особенности эволюции системы международно-правовой защиты прав лиц с инвалидностью, а также исследуется трансформация подходов к определению понятия «инвалидность» на уровне международного права. Рассматриваются основные этапы становления международного сотрудничества в сфере защиты прав лиц с инвалидностью. Приводятся результаты анализа международно-правовых документов по политике в сфере инвалидности за период от начала XX по 2020 г.

Ключевые слова: лица с инвалидностью; инвалидность; права лиц с инвалидностью; равные права; социальная модель; социальная политика; недискриминация; Конвенция о правах инвалидов.

Рекомендоване цитування: Maidanik S. V. International legal regulation of the rights of persons with disabilities: problems of formation and development. *Проблеми законності*. 2021. Вип. 154. С. 288–301. doi: <https://doi.org/10.21564/2414-990X.154.234227>.

Suggested Citation: Maidanik, S.V. (2021). International legal regulation of the rights of persons with disabilities: problems of formation and development. *Problemy zakonnosti – Problems of Legality, issue 154*, 288–301. doi: <https://doi.org/10.21564/2414-990X.154.234227>.

Надійшла до редколегії 11.06.2021 р.