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THE RIGHT TO HEALTH OF PERSONS WITH DISABILITIES

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Abstract. *Today, people with disabilities face a huge number of problems, especially the realization of the right to health. Realization and protection is an urgent issue both for Russia and for the international community as a whole.*

The formation of the right to health for people with disabilities is considered to be one of the fundamental human rights. At the international level, there is no comprehensive approach to studying the formation of the very content of the right to health. The provisions on the right to health contained in the main international human rights agreements recognize the inadmissibility of discrimination in all its forms in the realization of this right. The issue of the general status of persons with disabilities in international law and the specifics of international protection of the right to health of persons with disabilities is particularly relevant. Providing convincing evidence that the right to health of persons with disabilities is an integral element of the right to health in general, it is noted that the right to health of persons with disabilities is influenced by the following factors: social, cultural, economic, which together have an impact on the physical and mental health of persons with disabilities. It emphasizes the importance of specifying the definition of the “right to health of persons with disabilities” and determining the role of the right to health of persons with disabilities in the system of international law.

Keywords: *persons with disabilities, disability, right to health, international law, human rights.*

The human right to health has various formulations in universal and regional human rights treaties, state constitutions, and national legal acts. Nevertheless, with regard to the realization and protection of the right to health, there are problems of economic, political, financial, legal, administrative, social and other character. These issues also affect persons with disabilities. In this regard, in order to study the right of persons with disabilities to health in international human rights law, it is necessary, first, to comprehensively study the history and the formation of the right of persons with disabilities to health as a human right.

It should be noted that the science of international law in general and international human rights law, in particular, lacks a comprehensive approach and study of the very formation of the right to health. Some aspects of this issue have been discussed indirectly within the framework of analyzing the general history of development and formation of international human rights law, which, accordingly, cannot fully disclose the issue of the formation of the right to health.

Attention should be paid to the development of the right to health of persons with disabilities within the framework of international human rights law.

The WHO Constitution enshrined the following provision: “the enjoyment of the highest attainable standard of health is a fundamental right of every human being without distinction of race, religion, political opinion, economic or social condition”¹.

On July 26, 1945, the UN Charter was adopted, which entered into force on October 24, 1945. According to many authors, it was the UN Charter that laid down the principle of promoting and respecting human rights and defining the powers of all six principal UN bodies without exception in the promotion of human rights and freedoms².

The American Declaration of the Rights and Duties of the Human Being of May 2, 1948, also enshrined the right to health in its content. One of the articles of this Declaration states that everyone has the right to preserve and maintain his or her health by taking the necessary sanitary and social measures with respect to food, shelter, clothing, and medical care, according to the capacity of public and community resources³.

Nevertheless, looking at Article 25 of the Universal Declaration of Human Rights, it already contains the enshrinement of a social right. Article 25 of the Universal

¹ See, e.g. The Constitution of the World Health Organization was adopted by the International Health Conference held in New York from 19 June to 22 July 1946, and signed on 22 July 1946 by representatives of 61 countries (off. Rec. Wld Hlth Org. 2, 100). The amendments adopted by the XII World Health Assembly (resolution WHA12.43) entered into force on October 25, 1960.

² The Oxford Handbook on The United Nations / Ed. by Th. G. Weiss, S. Daws. Oxford University Press, 2007. 810 p.

³ American Declaration of the Rights and Duties of Man (Bogotá, May 2, 1948) Art. XI // [www.cidh.oas.org](http://www.cidh.oas.org: [Electronic resource].): [Electronic resource]. — URL: <http://www.cidh.oas.org/Basios/English/Basic2.American%20Declaration.html>. (date of address: 11.11.2019).

Declaration of Human Rights states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care and necessary social security”¹.

Health-related aspects are closely related to a person’s “standard of living” that is “necessary for the maintenance of health”. This refers to the right to “adequate food, clothing, housing, medical care and social security”². This article is also an affirmation that the right to health is linked to other human rights.

The International Covenant on Civil and Political Rights³ and the International Covenant on Economic, Social and Cultural Rights also affirm the link with other fundamental human rights and freedoms.

More recently, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 14, confirmed that the right to health is closely linked to and dependent on the realization of other human rights⁴.

Article 12, Paragraph 1 of the International Covenant on Economic, Social and Cultural Rights states:

“1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

Paragraph 2 of this Article lists a number of measures necessary for the full realization of this right:

“2. The measures to be taken by the States Parties to the present Covenant for the full realization of this right shall include the measures necessary to:

- a) ensuring the reduction of stillbirths and infant mortality and the healthy development of the child;
- b) improving all aspects of environmental and industrial hygiene;
- c) preventing, treating and controlling epidemic, endemic, professional and other diseases;
- d) creating an environment that provides everyone with health care and medical attention in the event of sickness”⁵.

¹ Prava cheloveka: sbornik mezhdunarodnykh dogovorov. T.I (chast pervaya): Universalnye dogovory [Human rights: a compilation of international treaties. Vol. I (part one): Universal treaties]. OON. Nyu-York; Zheneva, 2002. P. 5.

² Universal Declaration of Human Rights (adopted by the UN General Assembly on 10.12.1948, Article 25 // www.consultant.ru: [Electronic resource]. — URL: https://www.consultant.ru/document/cons_doc_LAW_120805/707fa15f83b08460bda25bf3ee28aeb05ede183f/?ysclid=lbavl5ive993864061 (date of address: 02.09.2020).

³ Quinn G., Degener T. Human rights and disability: the current use and future potential of United Nations human rights instruments in the context of disability. NY: Geneva: United Nations, 2002. P. 89.

⁴ International Covenant on Economic, Social and Cultural Rights. Adopted by UN General Assembly resolution 2200A (XXI) of December 16, 1996 // www.un.org: [Electronic resource]. — URL: http://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml. (date of address: 02.02.2021).

⁵ Ibid.

It should also be noted here that this list of measures is quite illustrative, but not exhaustive. In our opinion, this Article gives the broadest notion of the right to health.

At the same time, many scientists believe that the wording of the right to health in Article 12 of the International Covenant on Economic, Social and Cultural Rights brings clarity of conceptual character, which, in turn, contributes to the realization of the right to health¹.

In Paragraph 1 of Article 12 of the International Covenant on Economic, Social and Cultural Rights recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”².

Let us note that in this Covenant the concept of “health” is not used as a concept of complete physical, mental and social well-being, but implies exactly the “attainable” level of health, mental and physical.

And the “highest attainable level of physical, mental health” is not limited to the right to health care.

They perceive medical care here as a very real, tangible service that can be provided to a citizen and guaranteed by the state. It is important to note that attention is emphasized on the need to guarantee the provision of citizens with a minimum level of medical care by the state.

The “accessibility” of medical facilities, goods and services, which “must comply with the requirements of medical ethics and not contradict the cultural traditions of the population” is a certain criterion in this case. Achieving equality here in access to health services for a vulnerable group depends on a multitude of constantly changing socio-economic factors³. With this in mind, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 14⁴, has identified a number of general and mandatory conditions necessary to lead a healthy life and maintain health.

The Convention on the Rights of Persons with Disabilities, 2006, in addition to the core Article 25, which states that States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without

¹ See: The Core International Human Rights Treaties. United Nations Human Rights Office of the High Commissioner. United Nations. New York; Geneva, 2014. P. 11–27.

² International Covenant on Economic, Social and Cultural Rights. Adopted by UN General Assembly resolution 2200A (XXI) of December 16, 1996 // www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml. (date of address: 02.02.2021).

³ Women and Gender Equity Knowledge Network. “Unequal, Unfair, Ineffective and Inefficient-Gender Inequity in Health: Why it existand how wechangeit?” // Final Report to the WHO Commission on Social Determinants of Health. September, 2007. P. 12–13.

⁴ Economic and Social Council. Committee on Economic, Social and Cultural Rights. Twenty-second session. Geneva, April 25-May 12, 2000 // [Electronic resource]. — URL: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1AVC1NkPsgUedPIF1vfPMJ2c7ey6PAZ2qaojTzDjMCO0Gx5V%2FxFevrspahcSeU9T883zaKN3UwGR3%2BTLPPXXkRXGwl1t8htgWj9T8vsFZ11>.

discrimination on the basis of disability, States shall take all appropriate measures to ensure that persons with disabilities have access to gender-sensitive health care services, including health rehabilitation. For example, Paragraph 2 of Article 22 — States Parties shall protect the confidentiality of information on the identity, health status and rehabilitation of persons with disabilities on an equal basis with others. Article 27 not only recognizes the right of persons with disabilities to work on an equal basis with others, but also, in Paragraph (a), prohibits discrimination on the basis of disability with respect to matters relating to all forms of employment, including the provision of safe and healthy working conditions¹.

These agreements recognize the right to health and specify its realization in relation to specific categories of people, such as persons with disabilities.

With regard to the role of the right to health of persons with disabilities in the system of international law, it should be borne in mind that persons with disabilities are “special” participants in relations, which is due to a number of factors. In particular, many factors, their personal characteristics, the participation not only of legal representatives of persons with disabilities in the realization of their rights and interests, but also of persons with disabilities themselves are important. It is of interest to study the differences between the general status of persons with disabilities in international law and the peculiarities of international protection of the right to health of persons with disabilities. Within the framework of the general status of persons with disabilities in international law belongs to the totality of human rights enshrined in international treaties.

The right to health belongs to the group of inalienable natural rights and freedoms of a person accompanying the vital activity of a person, this is applicable to the right to health of persons with disabilities. The Universal Declaration of Human Rights of 1948 establishes its essence in a general formulation: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care and necessary social services. Motherhood and infancy are entitled to special care and assistance”².

It should be noted that the implementation of international legal norms is, as a rule, a much more complex and responsible task than their adoption. The resolution of this issue is possible only if there is an optimal mechanism of implementation as a certain set of legal and organizational means used by subjects

¹ Convention on the Rights of Persons with Disabilities: UN General Assembly Resolution 61/106 of December 13, 2006 // www.un.org: [Electronic resource]. — URL: https://www.un.org/ru/documents/decl_conv/conventions/disability.shtml (date of address: 29.09.2019).

² Vseobshchaya deklaratsiya prav cheloveka / Osnovnye mezhdunarodnye dogovory po pravam cheloveka [Universal Declaration of Human Rights / Basic International Human Rights Agreements]. — Organizatsiya Obedinennykh Natsiy, Nyu-York i Zheneva, 2006. P. 7.

of international law at the international and national levels in order to implement the prescriptions of the norms of international law¹.

In our opinion, with a comprehensive approach to the definition of the right of persons with disabilities to health, we can talk about both individual and collective rights.

A. M. Solntsev includes the environmental factor in the definition of the right to health and notes the close interaction of the right to health in general with environmental human rights. This position is also applicable to the definition of the right to health of persons with disabilities².

The position of the World Health Organization (WHO) is that the state of health is influenced simultaneously by many factors, primarily individual biological features and socio-economic status, which are not under the direct influence of the state. In addition, the right of a disabled person to health correlates with the right to use a set of goods, means, services and conditions intended for their realization.

WHO's position emphasizes the obligation of States to care for the health needs of their populations, including persons with disabilities. The concept of moving from access to decent and cost-effective health protection and health services to the human right to reproductive health is emphasized. The right to health imposes a legal obligation on States to ensure access to timely, acceptable and affordable health care of adequate quality, as well as relevant determinants of health, such as safe drinking water, sanitation, food, housing, health-related information and health education, and gender equality³. For example, Article 35 of the Charter of Fundamental Rights of the European Union of 2000 confirms that health protection is the right of a person with disabilities to have access to preventive health measures and to benefit from health care under the conditions provided for in the legislation of the Member States of the European Union⁴. In other words, it is the realization of a set of social, economic, and medical standards for the well-being of the human person, taking into account the fulfillment of the above-mentioned obligations by the member states.

¹ *Pleskach V.N.* Prava cheloveka i mekhanizmy ikh zashchity v sovremennom mire: ucheb pos. [Human rights and mechanisms of their protection in the modern world: textbook] SPb.: Izd-vo SPbGUSE, 2012. P. 160.

² *Solntsev A.M.* Zashchita ekologicheskikh prav cheloveka v kontekste internatsionalizatsii konstitutsionnogo prava [Protection of environmental human rights in the context of internationalization of constitutional law] // *Vestnik Kostromskogo gosudarstvennogo universiteta* [Bulletin of Kostroma State University]. No. 4, 2016. Pp. 196–199.

³ *Karkishchenko E.I.* Mezhdunarodno-pravovye aspekty deyatel'nosti Vsemirnoy Organizatsii Zdravookhraneniya: dis. ... kand. yurid. Nauk [International legal aspects of the activity of the World Health Organization: dissertation of the Candidate of Legal Sciences]: 12.00.10 / Ekaterina Igorevna Karkishchenko. M., 2004. 107 p.

⁴ *Chetverikov A.O.* Charter of fundamental rights of the European Union (Nice, December 7, 2000) // *eulaw.ru*: [Electronic resource]. — URL: <https://eulaw.ru/treaties/charter/> (date of address: 12.02.2021).

Scientific ideas about the content of the right to health protection began to emerge in the Soviet period. Thus, F. M. Rudinskiy distinguished four main powers of the right in question: the right to protection of inviolability of life and health, the right to free qualified medical care provided by state health care institutions, the right to ensure the possibility of a long and active life, the right to the highest attainable level of physical and mental health¹.

The right to health of persons with disabilities is monitored at the international level through the submission of reports to the Committee on the Rights of Persons with Disabilities and the Conference of States Parties to the Convention. Prior to the establishment of the Committee on the Rights of Persons with Disabilities, the problems of persons with disabilities were considered by the UN Economic and Social Council. In January 2013, 17 persons with disabilities joined the Committee.

In addition to the Committee on the Rights of Persons with Disabilities, the International Labour Organization (ILO) and the World Health Organization (WHO) are concerned with the inclusion of persons with disabilities. As for the World Health Organization, it supports and monitors the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities in relation to health care, rehabilitation, training for persons with disabilities.

The right to the enjoyment of the highest attainable standard of physical or mental health, as established in the International Covenant on Economic, Social and Cultural Rights of 1966 (Article 12)², is conditioned by access to the benefits of scientific progress in health and to high quality social and health services. The measures taken by States Parties to the Covenant to realize it include: ensuring the reduction of child mortality, the healthy development of children, the improvement of all aspects of hygiene, the prevention, treatment, and control of epidemic, endemic, professional and other diseases, and the creation of an environment conducive to health care and medical attention. General Comment No. 14, adopted by the UN Committee on Economic, Social and Cultural Rights at its regular session in 2000, clarifies the essential elements that define the human right to health and their direct impact, including in relation to persons with disabilities:

- a sufficient number of functioning health facilities, goods, services, and programs and their accessibility;
- medical ethics and cultural criteria;

¹ Rudinskiy F. M. Zhizn i zdorovye sovetskogo cheloveka kak obekt konstitutsionnoy okhrany. Sovetskoe gosudarstvo i pravo [Life and health of a Soviet human being as an object of constitutional protection. Soviet State and Law]. M.: Nauka, 1979, No. 1. Pp. 5–12.

² International Covenant on Economic, Social and Cultural Rights. Adopted by UN General Assembly resolution 2200A (XXI) of December 16, 1996 // www.un.org: [Electronic resource]. — URL: http://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml. (date of address: 02.02.2021).

— availability of qualified medical personnel, quality medicines and medical equipment, safe drinking water and adequate sanitation¹.

The last element is the most important for the realization of the right to health among persons with disabilities.

It should be noted that a comprehensive approach to the right to health in general was noted in earlier international instruments, as the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms does not explicitly guarantee the right to protection of health or the right to be healthy.

The mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health was established by the UN Commission on Human Rights in 2002 and renewed by the UN Human Rights Council in 2019².

The mandate aims to: collect, request, receive and exchange information on the realization of the right to health; coordinate cooperation with stakeholders in this field; prepare reports on the realization of the right to health and recommendations for its promotion and protection; and address specific issues related to alleged violations of this right³.

General Comment No. 9 (2006) of the Committee on the Rights of the Child noted that children with disabilities face discrimination in all aspects of their lives, including in the realization of the right to health⁴. Specific provisions relating to the rights of children with disabilities were formulated in the Convention on the Rights of the Child in 1989. It prohibits discrimination against children on the basis of health status (Art. 2) and introduces an obligation to care for children with disabilities in order to ensure the child's fullest possible inclusion in social life (Art. 23). An Article of the Convention on the Rights of Persons with Disabilities is also dedicated to children (Art. 7), stating that States have an obligation to ensure

¹ General Comment No. 14 on the right to the highest attainable standard of health (2000) Committee on Economic, Social and Cultural Rights // [tbinternet.ohchr.org](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=9&DocTypeID=11): [Electronic resource]. — URL: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=9&DocTypeID=11 (date of address: 15.02.2021).

² Ensuring healthy lifestyles and promoting well-being for all at all ages. 16 United Nations: The Sustainable Development Goals Report, 2020 // [unstats.un.org](https://unstats.un.org/sdgs/report/2020/): [Electronic resource]. — URL: <https://unstats.un.org/sdgs/report/2020/> (date of address: 07.02.2021).

³ The mandate of the Special Rapporteur was established by Resolution No. 2002/31 of the UN Commission on Human Rights, supported and renewed by Resolution No. 6/29 of the UN Human Rights Council 2007. The mandate was renewed by Resolution No. 42/16 of the UN Human Rights Council 2019.

⁴ General Comment No. 9, "Rights of children with disabilities" (2006): Committee on the Rights of the Child. Para. 11 // [tbinternet.ohchr.org](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=5&DocTypeID=11): [Electronic resource]. — URL: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=ru&TreatyID=5&DocTypeID=11 (date of address: 09.12.2018).

the realization of all rights of children with disabilities on an equal basis with other children, to act in their best interests and to ensure the realization of their right to be heard and taken seriously. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identity is enshrined as a principle of the Convention on the Rights of Persons with Disabilities (Art. 3), as is the general obligation of States (Art. 4, Para. 3) to consult children through their representative organizations in the development of relevant legislation and policies.

The right to attain the highest attainable standard of health and the right to quality and affordable health care are inalienable rights of every child. However, in many countries around the world, discrimination, inaccessibility, and lack of targeted health-care programs that take into account the specific needs of children with disabilities continue to impede the realization of the health rights of children with disabilities. Many health insurance schemes discriminate against persons with disabilities when considering the cost of the health care they require. Some social insurance programs do not take into account the additional costs incurred by families with a child with disabilities, whose costs for goods and services often exceed those of other families. Measures should be taken to target services to mitigate the negative impact of disability and to promote universal, non-discriminatory and accessible health care, whereby health care for children with disabilities should be based on their free and informed consent, as well as to remove barriers to the realization of the rights of children with disabilities and recognize the importance of international cooperation to improve the lives of children with disabilities in every country.

Analysis, its history of the emergence and formation at the international legal level of the right to health allows us to assess the gradual development of human rights and freedoms in the field of health, understanding the importance of protecting this right. The human right to health was enshrined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and other fundamental international human rights treaties of universal and regional character. As a separate category of human rights, this right has been prioritized in the policies and practices of States. It should be noted here that at the domestic level, the right to health has also become important, and states have assumed obligations to realize it to the fullest extent. According to the relevant international legal instruments, caring for the health of each individual should be seen as an obligation of the state, not as a state prerogative to take any positive action in the field of health care.

The realization of the right to the highest attainable standard of health is possible only through an effective and integrated health system based on legal and regulatory mechanisms that operate in accordance with universally recognized international standards and national and regional priorities.

The right to health and access to health services is recognized in national legislation in most countries of the world. Health is a state of complete physical, mental and social well-being and not merely the absence of disease or physical defect. The WHO Constitution specifies the enjoyment of the highest attainable standard of health as a fundamental right of every human being. The right to health includes access to timely, acceptable and affordable health care of adequate quality. The promotion of the right to health also requires Member States to create an environment in which everyone can enjoy the highest attainable standard of health and that health services are provided on the basis of free and informed consent.

Based on the mentioned above, the right to health of persons with disabilities in the system of international law can be defined as an institution of international law in the sector of international human rights law. As an institution of international law, it can be defined as a system of international legal norms and principles that predetermine the protection of the right to health of persons with disabilities through the formation of international standards in this area and the creation of special mechanisms to control the observance of a set of relevant rights in the field of health care by states.

The right to health of persons with disabilities is a set of rights designed to ensure the highest attainable level of physical and mental health of persons with disabilities, a decent standard of living for persons with disabilities, taking into account the principle of non-discrimination and their specific needs, by ensuring equal access to health care, education, information, proper working conditions, ecology, appropriate housing and sanitary conditions.

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