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Implementation of Inclusive Education Under the Convention on the Rights of Disabled People: A Comparative Legal Aspect

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Abstract

The article presents a comparative analysis of inclusive education training in the Russian Federation, Germany and Italy based on the analysis of the provisions of the United Nations Convention on the Rights of Persons with Disabilities, also related to the development of inclusive education in member countries. At a methodological level, the study was built on the basis of a dialectical approach to the study of legal phenomena and processes, using a general intellectual process for the processing of sources of type: (systemic, logical, analysis and synthesis), all within the framework of documentary observation close to legal hermeneutics. The study of the concluding observations on the initial report of the states participating in the Convention mentioned above allows concluding that the approaches to inclusion are heterogeneous in different countries of Western Europe before signing and ratifying the United Nations Convention on the rights of People with disabilities. Furthermore, the document sought to determine the level of development of inclusive education, its problems and prospects in Russia compared to the states of Western Europe.

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Keywords: United Nations Convention on the Rights of Persons with Disabilities; inclusive education; Committee on the Rights of Persons with Disabilities; comparative law; Russian Federation.

Implementación de la educación inclusiva en virtud de la Convención sobre los derechos de las personas con discapacidad: un aspecto jurídico comparativo

Resumen

El artículo presenta un análisis comparativo de la formación de educación inclusiva en la Federación de Rusia, Alemania e Italia basado en el análisis de las disposiciones de la Convención de las Naciones Unidas sobre los derechos de las personas con discapacidad, relacionadas además con el desarrollo de la educación inclusiva en los países miembros. A nivel metodológico el estudio se construyó sobre la base de un enfoque dialéctico para el estudio de fenómenos y procesos jurídicos utilizando un proceso intelectual general para el procesamiento de las fuentes de tipo: (sistémico, lógico, de análisis y síntesis) todo en el marco de la observación documental próxima a la hermenéutica jurídica. El estudio de las observaciones finales sobre el informe inicial de los estados participantes a la Convención mencionados anteriormente permite concluir que los enfoques de inclusión son heterogéneos en diferentes países de Europa occidental antes de firmar y ratificar la Convención de las Naciones Unidas sobre los derechos de las personas con discapacidad. Por lo demás, el documento buscó determinar el nivel de desarrollo de la educación inclusiva, sus problemas y perspectivas en Rusia en comparación con los estados de Europa occidental.

Palabras clave: Convención de las Naciones Unidas sobre los derechos de las personas con discapacidad; educación inclusiva; Comité de Derechos de las Personas con Discapacidad; derecho comparado; federación rusa.

Introduction

The result of analysis of domestic regulation of inclusive education in Russia, Germany and Italy, was a conclusion that the approaches to inclusion in Russia and Germany were similar at the time they ratified the UN Convention on the Rights of Persons with Disabilities and the differences in the Italian model of inclusive education in relation to the above states (Shengalts, 2016: 135; Bondarenko & Karanova, 2018: 1).

Italy is one of the first states to have chosen the path of development of education for people with disabilities in educational institutions together with students who do not have developmental features. The development course of the Italian education system for people with disabilities remains unchanged, gaining additional guarantees for its development after ratification of the UN Convention on the Rights of Persons with Disabilities. For determination the similarities and differences in approaches to an inclusive education system in Russia, Italy, and Germany, we will analyze the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities on the initial reports of these states, and identify the areas for improving inclusive education in Russia.

1. Methods

The study was built on the basis of a dialectical approach to the study of legal phenomena and processes using general scientific (systemic, logical, analysis and synthesis) and specific scientific methods. The latter comprise formal legal, linguistic legal, comparative legal. These methods were used in combination to study the texts of legislative and regulatory acts of Russia, Italy and Germany, the UN Convention on the Rights of Persons with Disabilities, and the Concluding Observations of the Committee on the Rights of Persons with Disabilities on the initial reports of these states. The choice of states for comparative analysis is conditioned by the similarity of the Russian and German approaches to the education of persons with disabilities, and directly opposite, contrasting, to some extent, exemplary methods of regulating inclusion in Italy. The comparison is made in the context of the impact of the ratification of the UN Convention on the Rights of Persons with Disabilities on their education systems in Russia and Western European countries.

2. Discussion and Results

The development of inclusive education in the Russian Federation is a topical theme for theoretical and practical research in a wide range of scientific disciplines. From the point of view of the legal analysis of inclusion in education, we note that the Russian Constitution (2014), which guarantees the right to education (Article 43) and social protection in the event of disability (Article 39), was the basis for constructing the current model of inclusive education.

Article 24 of the United Nations Convention on the Rights of Persons with Disabilities ratified by the Russian Federation (2012), states that “member countries recognize the right of persons with disabilities to education. In order to realize this right without discrimination and on the basis of equal opportunities, member countries shall provide inclusive education at all levels and lifelong learning.”

In the year of ratification of the UN Convention on the Rights of Persons with Disabilities, the Federal Law “On Education in the Russian Federation” was adopted, which enshrines the concept of inclusive education as “ensuring equal access to education for all students, taking into account the diversity of special educational needs and individual opportunities.” One of the principles of state policy and legal regulation of relations in the field of education enshrines “ensuring the right of *everyone* to education, *non-discrimination* in the field of education” in the law (Federal Law of December 29, 2012).

With a view of ensuring the implementation of the right to education of students with disabilities, “federal state educational standards for the education of these persons are established or special requirements are included in federal state educational standards” (Federal Law of December 29, 2012).

The federal state educational standard for primary general education of students with disabilities was approved by order of Ministry of Education and Science of the Russian Federation of December 19, (2014).

Thus, during the period under review, basic regulatory mechanisms were formed for equal access to education for all students in the Russian Federation, taking into account the diversity of special educational needs and individual opportunities.

The purpose of this study is to conduct a comparative analysis of the development processes of inclusive education in states that have ratified the UN Convention on the Rights of Persons with Disabilities at the periods comparable to the date of ratification of the Convention by the Russian Federation.

For comparison with the legal regulation in the Russian Federation, we chose the West European states Germany and Italy, which ratified the UN Convention on the Rights of Persons with Disabilities three years earlier than Russia.

It should be noted that it is advisable to compare inclusive education in Russia and Germany in connection with comparable trends in its development. So, before the introduction of the social model of disability in these states, the degree of segregation of children with disabilities was high; in both states, correctional education in specialized educational institutions

was widely developed. State that today, Germany's inclusive education in line with Russia's is characterized by uneven, fragmented development, depending on the policy of supporting children with disabilities in various federal states (Klemm, 2015: 7).

Another example of the development of inclusive education in Western Europe can be considered by the example of Italy, which ratified the UN Convention on the Rights of Persons with Disabilities on May 15, 2009. Inclusion in Italy has deep roots, and in fact, its implementation has begun long before the signing and ratification of the UN Convention on the Rights of Persons with Disabilities.

Since years 60s of the 20th century, active work to consolidate at the legislative level the right of students with special needs to receive compulsory education in secondary schools has been initiated in Italy. The principles of inclusion for all students with special needs between the ages of 6 and 14 have been established by Act 517 of 1977. The right of all students, including those with severe developmental disabilities, to receive education in secondary schools was confirmed in 1987 by a decision of the Italian Constitutional Court № 215. It can be stated that Italy's regulatory policy in the field of education is an exceptional example of an anti-discrimination approach to the education of people with disabilities (Ferri, 2018). The ratification of the UN Convention on the Rights of Persons with Disabilities for inclusive education in Italy was more likely to be of verification value, without introducing fundamental changes in the education system of citizens with disabilities.

The implementation of international legal standards for the education of persons with disabilities in states that have ratified the UN Convention is accompanied by certain control procedures by the UN Committee on the Rights of Persons with Disabilities. States must prepare the first report within two years after they become parties to the Convention, and subsequently submit reports at least once every four years or at other dates fixed by the Committee (The Convention on the Rights of Persons with Disabilities, 2006).

Civil society actors, in particular non-profit organizations, may submit to the Committee information on serious, gross or systematic violations of the Convention (The Convention on the Rights of Persons with Disabilities, 2006). This information must be reliable and indicate that a participating state systematically violates the rights contained in the Convention.

The comments of the UN Committee on the Rights of Persons with Disabilities to the reports of Germany, Italy and Russia were submitted respectively in 2015, 2016, 2018.

According to the Concluding Observations on the initial report of the Russian Federation (2018), the Committee on the Rights of Persons with

Disabilities “is concerned that the practice of segregated education persists despite the increase in the number of children with disabilities in the main education system in accordance with the concept of inclusive education.” It also expresses concern about the non-transparency of the allocated financial resources and the lack of mechanisms necessary to ensure equal conditions and support guaranteed by federal law to all persons with all types of violations in the general education system. In addition, the Committee is concerned about regional differences due to different conditions and the amount of available financial resources in different regions.”

The Committee encourages the Russian Federation to persevere with promotion and practical application of the concept of inclusive and quality education in accordance with General Comment N° 4 (2016) on the right to inclusive education. In particular, in order to ensure access to inclusive and quality education for all people with all types of disabilities, the Committee recommends for adoption of a long-term inclusive education roadmap and action plan, imposition of deadlines and criteria for their implementation, and allocation of an appropriate transparent budget.

The Committee on the Rights of Persons with Disabilities, in its Concluding Observations on the initial report of Germany, published in 2015, notes the concern that “the state party has an education system in which most students with disabilities attend separate schools for students with special needs” (Concluding observations of the UN Committee on the Rights of Persons with Disabilities on Germany’s initial report of May 13, 2015).

The Committee recommends that the participating state:

a) immediately develop a strategy, plan of action, timelines and targets to ensure access to a high-quality and inclusive education system in all lands, including the availability of the necessary financial resources and staffing at all levels;

b) reduce the number of segregated schools in order to develop their inclusive orientation, to ensure compliance with the right of children with disabilities to study in secondary schools, including their immediate school enrollment in accordance with their choice;

c) ensure reasonable accommodation at all levels of education, including the possibility of its actual implementation and judicial protection;

d) ensure the preparation of all teaching staff for inclusive education, expand access for persons with disabilities to the school environment, educational materials and programs, as well as ensure the use of sign language in secondary schools.

The conclusion about a higher level of development of inclusive education in Italy can be drawn from the Concluding Observations on

the initial report of Italy (2016). They note that the UN Committee on the Rights of Persons with Disabilities is concerned about the lack of data and criteria to monitor the quality of education and the inclusion of students with disabilities in secondary schools and classes. There is no control over the quality of education of teachers, including their preparation for work in the system of inclusive education. The Comments emphasize the improper implementation of legislative and other regulatory legal acts in the field of inclusive education.

The Committee recommends that Italy develop an action plan aimed at monitoring the implementation of legislative and other normative legal acts, the purpose of which is to improve the quality of inclusive education, provisions on the training of teaching staff for the implementation of inclusive education at all levels.

The Committee recommends that the participating state monitor and provide highly qualified sign language translators for deaf children in accordance with their requests, and refrain from recommendation of communication assistants as an alternative.

The Committee is concerned about the lack of available learning materials and the lack of assistive support technologies, which does not contribute to improving the quality of education under ordinary conditions.

The Committee recommends that the participating state, through legislative and other measures, including the recently developed decree on education, ensure the availability of adapted teaching materials and the timely provision of learning support technologies in order to guarantee the inclusiveness of education in the mainstream environment.

Based on the above points, it should be noted that the Comments of the Committee on the Rights of Persons with Disabilities for Italy are of a point-like nature and are related to the resolution of specific practical problems of the implementation of inclusive education. If in the comments for Germany and the Russian Federation the UN Committee raises the question of developing a strategy, concept, roadmap for the development of inclusive education, then Italy already has an integrated working system in which it is necessary to regulate the practical work of individual security arrangements.

Let us consider what measures are being taken by the Russian Federation to implement the recommendations set forth in the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities.

The long-term roadmap and the action plan for the implementation of inclusive education recommended by the Committee have not yet been developed.

In the Concluding Observations of the Committee on the Rights of

Persons with Disabilities on the initial report of the Russian Federation of April 9, 2018, it is stated that the official translation of the term “persons with disabilities” into Russian by the word “people with disabilities” does not reflect the human rights model. However, terminological transformations, in the first place, affected the sphere of education. Thus, the draft Federal Law “On Amending Certain Legislative Acts of the Russian Federation Regarding Ensuring the Right to Education of Persons with Special Educational Needs” provides for the substitution of the term “student with disabilities” for “student with special educational needs”.

Note that the proposed term does not contain a semantic charge identical to that in the term “student with disabilities”, and can be interpreted much more broadly. The draft Federal Law contains a significant number of innovations, and the purpose of its adoption is to improve the provisions of the Federal Law “On Education in the Russian Federation” (2012) taking into account the provisions of the Convention on the Rights of Persons with Disabilities (2006), and to fill the gaps and to resolve related problems of law enforcement practice.

The Ministry of Labor and Social Development of the Russian Federation, in pursuance of the recommendations stated in the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities on the initial report of the Russian Federation on the observance of the Convention on the Rights of Persons with Disabilities has developed a draft Concept for the development of a system of comprehensive rehabilitation and habilitation of handicapped persons and handicapped children and support in organizations of their living arrangements until 2025. According to the draft Concept, in the basic education system there are being created the centers for psychological, pedagogical, medical aid and special need facilities, the activities of which are regulated by the Federal Law “On Education in the Russian Federation”, as well as federal resource centers. Amendments to the Federal Law “On Education in the Russian Federation” have been prepared in terms of introducing the concept of psychological and pedagogical rehabilitation, determining the procedure for its implementation and the authority on its organization.

As part of psychological and pedagogical rehabilitation for children with disabilities studying in schools, it is planned to implement an intervention program, including various correctional and developmental courses and after-hours individual tuition programs aimed at socializing children with disabilities (additional education, sports and leisure activities).

Children with disabilities can acquire vocational education in vocational educational organizations and educational organizations of higher education, as well as in organizations engaged in educational activities under the main vocational training programs in which academic accommodations must be created.

In 2019, the State Program of the Russian Federation “Accessible Environment” (2019), was approved, it will have been implemented by 2025.

Among the expected results of the program, there is an increase preschool and educational institutions as a proportion of educational organizations in which a universal barrier-free environment for inclusive education of children with disabilities is created.

Final thoughts

Taking into account the provisions of the UN Convention on the need to ensure inclusive education at all levels and lifelong learning, we note that in the sphere of regulating inclusive education in Russia, positive tendencies are emerging, and domestic documents are being developed in accordance with the recommendations of the UN Committee on the Rights of Persons with Disabilities. This is greatly facilitated by the study of the inclusion development practice in the member countries of the Convention, their comparison with Russian approaches to the implementation of inclusive education. At the same time, quite a few acute problems remain, such as vocational education and vocational training of various separate categories of citizens, in particular people with mental and intellectual disabilities, their employment and adaptation in society. To solve these problems, it is necessary not only to reassess the system of legal regulation of this sphere, but also to take a long process of changing the attitude of society towards people with disabilities.

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