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THE PROBLEM OF ABLEISM AS A NEGATIVE WORLDVIEW OF SOCIETY

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In essence, ableism as a sociocultural phenomenon reflects society's individual and social attitudes, which leads to the devaluation of the legal status of individuals and restrictions in the implementation of their constitutional rights and freedoms, which determines the socio-legal significance of the chosen topic. This work aims to present a comprehensive analysis of the ontology of human rights from the point of view of international standards and foreign sources. To achieve this objective, the author attempted to determine the historical origin of ableism as a social phenomenon, its legal nature and its main types, and to point out scientific assumptions to combat discrimination. The research employed the following methods: logical, formal-legal, and system analysis. Based on the results, the author identified current theoretical and empirical problems of ableism and developed his understanding of the legal protection of the rights and fundamental freedoms of people with disabilities. This work presents a systemic and comprehensive examination of what societies consider discrimination against people with disabilities and its legal consequences. It expands the understanding and significance of ensuring constitutional guarantees for citizens and draws attention to the social difficulties of people with disabilities.

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1. INTRODUCTION

Economic development, political stability of the state and the implementation of democratic principles are the determinants of the realization of each person's legitimate interests and freedoms. The constitutional rights of any individual, regardless of health, social status, gender, race, nationality, religion and other factors, are the guiding principles for the formation of a social state and global peace (Nosyreva, 2023). In fact, citizens with disabilities, due to the presence of signs of limited vital activity due to health conditions, require the functioning of a special mechanism of legal integration, protection through specialized institutions, access to justice and free legal assistance, as well as the need for additional social benefits from the state. However, in practice, people with disabilities are more likely to face discrimination in public life and injustice in receiving social benefits, which is called ableism or ablism (there are also specialized terms such as handicapism, surdophobia, mentalism, heightism, and others). In essence, ableism influences the formation of an intolerant atmosphere in society (Nosyreva, 2023) since ableism «does not recognize human diversity» (Rogozhkina, 2018).

As L. Dominelli correctly noted, today, the decisive factor for the full self-realization of legal status and awareness of the moral value in society is the «social context», which can guarantee freedom in the realization of a person's legitimate interests or «turn a person into a big burden» (Dominelli, 2004), which destroys traditional values. These manifestations mediate the difficulty in implementing the special legal status of an individual, as well as the importance of compensatory and protective measures of the state to compensate for violations of the rights of people with disabilities, which is the key issue of this study. In particular, it is the available legal protection mechanism and government guarantees that can influence the implementation of inclusion programs, weaken exclusivity, accumulate their social interaction and support personal independence (Nosyreva, 2023).

For a comprehensive analysis of the proposed topic, a comprehensive study of foreign sources was carried out: R. Amundson, G. Taira (Amundson, Taira, 2005), L. Begiraj (Begiraj, 2017), R. Duncan (Duncan, 2022), V. Chassis (Chassis, 2022), V. Chouinard (Chouinard, 1997), D. Goodley (Goodley, 2018), D. Pfeiffer (Pfeiffer, 1994) and many others, as well as Russian works: N. F. Bondarenko (Bondarenko, 2002), L. Dominelli (Dominelli, 2004), T.P. Vasilyeva, T.V. Volkodav (Vasilyeva, Volkodav, 2016), A.A. Savina (Savina, 2017), Zh. B. Usmanov (Usmanov, 2015).

The conducted scientific study of the problem of ableism as a form of social discrimination constitutes a scientific novelty due to the review of doctrinal knowledge that is new for domestic science, revealing the general patterns of the formation of social and legal problems of citizens as well as the author's theoretical understanding of protecting the legal status of people with disabilities.

2. THE PHENOMENON OF ABLEISM

The 2006 Convention on the Rights of Persons with Disabilities proclaims the need to establish social and legal protection for people with disabilities in the law enforcement systems of countries in order to ensure their full and equal enjoyment of guaranteed rights and fundamental freedoms, as well as respect for personal dignity. The fundamental principles comprehensively characterize the concept of building a welfare state and the principles of constitutionalism. However, in practice, people with disabilities face discrimination everywhere. Discrimination, derived from the term: «discrīminātio» (Dammeyer, Chapman, 2018), is a phenomenon in which a person, having a certain characteristic (gender, disability, race, nationality, etc.), is deliberately prejudiced or excluded from the process of life, subjected to sexual, psychological violence and pressure.

In essence, discrimination does not allow the implementation of the principle of universal respect and equality of citizens, in which in society «there are no more significant or less significant» (Bondarenko, 2002). In the scientific literature, discrimination against people with disabilities is called: «ableism», «ablism» (you can also find the terms «disablism», «anapirophobia», «anapirism»), which promotes an «anthropocentric view of human health deficiencies» (Garland, 2020).

Ableism reveals a socio-legal phenomenon that focuses attention on the negative stereotypes of our time, actualizing, in turn, the fight against this phenomenon, improving the legal mechanism for protecting people with disabilities and cultural changes.

In fact, ableism, in relation to the definition of discrimination, is a special term that reveals prejudiced treatment of people with disabilities (including children with disabilities), which leads to negative social and legal consequences. Also, in science you can find related definitions of «ableism» and «disablism», where the difference in concepts is barely noticeable, if «ableism» is discrimination against people with disabilities, devaluing and limiting their potential in favor of able-bodied citizens, while

«disablism» is a set of conscious or unconscious assumptions and practices that contribute to differential or unequal treatment of people with disabilities. But in turn, in practice, the following definitions have been popularized: discrimination against people with disabilities (an integrative, broad term) and «ableism» (a specialized, new term) (Duncan, 2022).

Delving into scientific sources, we can highlight the main provisions that ableism is a special vision of public life, based on outdated prejudice towards a social group or citizen (child) who has «peculiarities» of health or development. In fact, ableism contributes to the creation of divisions in society.

R. Duncan compares ableism to a particular form of suprematism (derived from the Latin word «supremus», namely «supreme» or «superior»), leading to the superiority of the able-bodied working population and the devaluation of the status of people with disabilities based on their perceived or actual lack of abilities that do not serve the interests of society (Duncan, 2022). This form of discrimination can be built into the institutions, systems and legal culture of society, antagonism and exclusion, which is aimed at excluding people with disabilities (Nosyreva, 2023). As L. Madeira rightly noted, ableism is difficult to recognize today because such discrimination has become so unreasonably normal and widespread that we do not even notice Duncan (2022).

Scientist V. Chouinard emphasizes that ableism is an ideology about social relations, implying the perception of legal reality from a position of competitiveness, leading to the marginalization of citizens with disabilities (Chouinard, 1997). R. Amundson, G. Taira consider ableism as a false idea of the burdensome status of people with disabilities for the entitled entity (employer, contractor, legal representative), which impedes their freedom (Amundson, Taira, 2005).

Thus, ableism is, on the one hand, a stigmatized ideology of human «inferiority» (lack of actual equality), which affects not only human rights and fundamental freedoms but also significantly affects their self-determination. On the other hand, ableism views people with disabilities as a burden for the state, prompting them to provide them with guarantees, cash benefits, and subsidies (Nosyreva, 2021).

It is worth emphasizing that ableism, as a phenomenon of social stigma, creates a feeling of guilt in a person only for the presence of health or developmental characteristics. In particular, people with disabilities (children with disabilities) may be treated differently than other citizens under the same life circumstances or conditions. In public life, people with disabilities everywhere face injustice, segregation

and dependence on government subsidies due to the lack of basic opportunities to use their rights, which are commonplace for other citizens (for example: traveling by public transport, going for a walk, communicate with peers or colleagues, getting a job placement, seeking legal assistance etc.).

3. HISTORICAL ANALYSIS OF THE ABLEISM PHENOMENON

The modern concept of ableism emerged in the late 1960s and early 1970s, with the promotion of disability activists as a civil and political issue in the UK and the USA. In turn, the definition of ableism was first used in 1986 in a press release mentioned by the Council of the London Borough of Haringey (Tulloch, 1991). In particular, public awareness of the problem of "ableism" increased during the International Year of Persons with Disabilities in 1981.

In accordance with the position of D. Goodley, ableism emphasizes the socio-political foundations, which he understands as «oppressive practices of modern society that restrict citizens, inconsistent with the capitalist imperative». It is difficult to disagree with the position of researcher V. Chassis, who argues that just as «patriarchal society promotes and propagates male-dominated norms, as a result of which women face discrimination, people with disabilities are also limited in their ability to participate in public life when expanding, the concept of neoliberal competition of citizens» (Chassis, 2022). N. Campbell defines ableism from the perspective of «beliefs, processes and practices of society that project ideality and typicality» (Chouinard, 1997). Therefore, as S. Cherney pointed out, «the main principle of ableism is based on the correlation of legal capabilities with the physical (mental) state of a person, which provides the justification for illegal discrimination» (Chouinard, 1997).

It is worth remembering the historical events that took place in Nazi Germany, where people with disabilities were considered «biologically inferior and posed a threat to the creation of a genetically superior race». As a result, more than 300 000 disabled citizens were sterilized, and more than 200 000 were killed during the Nazi regime (under the «Aktion T4» program). Also, the regime of the Cambodian ruler Pol Pot, to create an ideal farming commune in the name of «Maoist» communism, led to events similar to the Holocaust (Pot's, 2020).

In particular, in the United States, sterilization of disabled people was sanctioned during the heyday of the ideological movement «Eugenics». Thus, from 1907 to 1932, 32 states passed laws that allowed the government to sterilize citizens with intellectual, mental, physical and other disabilities, including citizens with any form of addiction, due to their inability to make decisions independently and bear the consequences (Villarosa, 2022).

At the same time, these sterilization programs found legal support in the US Supreme Court. Thus, in the case of *Buck v. Bell* (1927) in Virginia, Carrie Buck was sterilized by court order for having an intellectual disability and promiscuity (having a child out of wedlock). In the decision, Supreme Court Justice Wendell Holmes offered a disparaging opinion: «It would be better for all the world if, instead of waiting for degenerate offspring to be executed for crimes or allowing them to starve, society could prevent those who are clearly unfit from continuing their kind... Three generations of imbeciles are enough» (Fisher, Purcal, 2017).

The defense of forced sterilization was based on the principle: «*parens patriae*», which broadly means «the authority of the father», who, both biological creator and legal subject, acts in the best interests of the child. Thus, repressive measures, such as euthanasia, isolation, and sterilization of disabled people were considered from the perspective of preventive (fighting vagrancy, prostitution, the spread of crime and increasing morbidity) and protective (protecting the rights of the civilian population, reducing the number of suicides of mentally ill citizens, reducing the birth rate) functions.

For example, the North Carolina Act of 1975 (General Provisions 35-50) provided for sterilization of the «mentally defective» as *parens patriae* in the best interests of the individual or the public interest. It included the provision that a «mentally disabled person» is a person who does not have a mental illness but who, due to «retarded mental development», cannot independently perform actions, control their actions, or judiciously manage themselves and their affairs. At the same time, in order to sterilize such a citizen, the district authorized person had to obtain only a court order (Pfeiffer, 1994).

Twenty-two states had similar laws, including Arizona (Revised Statute 36-532), California (Penal Code 2670), Connecticut (Gen. Stat. 17-19), Delaware (Gen. Code 5701), Indiana (Indiana Stat. 16-13), Maine (Revised Statute 34-2461), Michigan (Code 14.381), Minnesota (Code 252A.13), New Hampshire (Revised Statute 1741), South Carolina (Code 44 4710) and Virginia (Code 37.1, 15-871) (Pfeiffer, 1994).

Of course, today, all these laws have been repealed (the state of Washington has preserved the historical version of the law) (Villarosa, 2022). Currently, monuments have been created in Indiana, Virginia and North Carolina to commemorate those who were sterilized under government-sanctioned programs. However, only three states—Virginia, North Carolina, and California—have established compensation programs for the physical and mental health of victims of forced sterilization (Kozlova, 2016).

Along with this, in 1924, the United States passed the Immigration Act, restricting the entry of paupers into the country, which the establishment considered «genetically inferior». Many anti-humanistic studies appeared, which stated that «defective» (citizens with disabilities) are the source of most social problems (projects by V. Goddard and S. Laughlin) (Pfeiffer, 1994).

In particular, it is worth quoting the position of S. Laughlin, who was confident that citizens with intellectual disabilities («feeble-minded; mentally ill; epileptics; persons infected with sexually transmitted diseases; dependent; blind and deaf, and so on») represent a «parasitic, predatory class incapable of self-sufficiency or control of one's mind. Dementia is the mother of crime, pauperism and degeneration» (Pfeiffer, 1994).

Meanwhile, since 1925, the right to create a family has been limited to persons with neurological and mental disabilities, limiting the principle of equality. One of the first regulations was adopted in Connecticut, followed by Michigan, Minnesota, Kansas, Massachusetts, Ohio, and the District of Columbia. For example, in Massachusetts, the General Law (Section 5) was in force, which prescribed that «a person of unsound mind, idiot or feeble-minded person who is institutionalized, under the guardianship or supervision of a welfare agency, cannot marry».

In addition, the right of persons with disabilities to parent and raise their children has been limited by the US Supreme Court on grounds of health or safety of the minor. As a result, a parent with a disability was required to prove his worth in raising and supporting the child. In the 1967 Richardson case, a California couple with sensory impairments (speech and hearing) who were fully capable of raising children was prevented from adopting a child.

For example, in the McDonald case (1978), a California trial court «deprived a father of custody of his two minor children» because of his disability (paraplegia). The trial court took the absurd position

that «a disabled person can never be a good parent because he cannot, for example, play catch with his son». The California Supreme Court, in «Re Marriage of Carney» (1979), overturned a district trial court in Idaho that «denied a mother custody of her two children because she had epilepsy» (Pfeiffer, 1994).

In the United States, since colonial times, people with disabilities have been considered «inferior» and therefore unable to participate in society like other citizens. Only at the beginning of the 21st century did people with disabilities begin to express their civic position and participate in the life of society, which was previously prohibited. The Los Angeles Code of Civil Procedure (1872) did not allow persons with disabilities (especially mental, sensory, or cognitive problems) to serve as jurors. The reason was that this category of citizens was considered, according to the code, «decrepit and deprived of all their natural abilities» (Savina, 2017).

In particular, from the late 1860s to the 1970s, several states in America had «ugly laws» that prohibited «non-compliant» citizens from appearing in public places («exposing themselves» in the city center), and also demonstrate their social problems. These included people with disabilities (Civil War veterans), citizens on the verge of poverty, immigrants, etc. (Pfeiffer, 1994). One of the first decisions was made in San Francisco (California) in 1867, in Pennsylvania a law was passed in 1890, in Chicago (Illinois) the order was in effect in 1881, and so on. According to state regulations, the city could impose a fine of up to \$50 for each violation and, for repetition, imprisonment.

By its legal nature ableism is a global problem, which, if not combated, may give rise to new forms of discrimination in the future, creating even more inequality in society (Chassis, 2022). The popularization of «negative culture» gives rise to the exclusion of citizens from the process of life, and in the best case, creates new, insurmountable requirements for the realization of their opportunities (employment, receiving a decent salary, starting a family, raising (adopting) children, etc.).

As J. Chesney correctly states, ableism connects abilities with the physical and (or) mental state of a citizen, which provides justification for discrimination and, further, marginalization of people with disabilities. But it is worth understanding that the problem of social and legal integration of disabled people is not associated with the presence of health deficiencies that cause limitations in the realization of social potential, but with the labeling of «inability», which even limits the opportunity to demonstrate one's knowledge (skills), realize one's legitimate interests and freedom. Therefore, ableism is rooted in the behavior of the discriminatory person and not in the citizen's status as disabled. Therefore, only through a

loyal attitude and respect for the rights of another person, formed in society, regardless of the presence of special features of health, legal education, or a human rights mechanism, can ableism be counteracted, which will subsequently have a positive impact on the legal status of people with disabilities.

4. TYPOLOGY OF ABLEISM IN MODERN SOCIETY

Ableism as a socially acute problem can take different forms. As a result, the discriminatory person can devalue the legal potential in different ways, and consequently, a person can face distinctive derogations and deprivations of his self-esteem (Sharakshane, 2007).

Depending on the social barriers that people with disabilities face, ableism is usually divided into two types: physical and mental (mental) (Resnick, 2022). The first, physical ableism, is a form of deliberate discriminatory treatment in which the main reason for excluding a citizen from the legal field and public life is indirect physical barriers (for example: the lack of a ramp for citizens with musculoskeletal disabilities in government, social, educational and other institutions; lack of Braille for citizens with sensory health problems, etc.).

The second, mental (mental) ableism is the deliberate restriction of a citizen from the social environment due to psychological barriers (humiliation of human dignity, insult, sexual harassment and much more) (Resnick, 2022).

In addition, depending on the manifestation of discrimination, they distinguish: explicit discrimination and microaggressions. Explicit discrimination is a form of restriction of the rights and freedoms of people with disabilities based on the actions (inactions) of a person to exclude people with disabilities (for example: refusal to hire, a significant reduction in wages, restrictions on admission to an educational institution mainly due to disability, and so on).

Unlike explicit discrimination, which is obvious to everyone, microaggressions are much more subtle. Microaggression involves an indirect form of discriminatory manifestation associated with the devaluation of social value (for example: when performing work activities, a disabled person was deprived of the opportunity to participate in a project, which was indirectly due to the uselessness of his skills or experience), the significance of health characteristics for society (in particular: some mental disabilities

are not recognized as a basis for reasonable accommodation in the workplace), as well as the use of «labels» in society («abnormal», «helpless»).

Depending on the sequence (repetition) of discriminatory actions or inactions against individuals, ableism is classified as random or systemic (Resnick, 2022). The first, accidental ableism can be one-time in nature, mediating a climate of «non-acceptance» (for example: the use of negative statements to insult the appearance of a person with a disability, unspoken stigmatization of disability). Casual ableism often takes the form of microaggressions (a hidden or unintentional form of discrimination).

Second, systemic ableism has a constant and complex scope of spreading through the foundations of society, destroying constitutional and democratic principles. It can be sanctioned by the state, medical practice or social norms (legalized sterilization procedures, abortions among women with disabilities, propaganda of hatred in the media, formation of political courses and social programs etc.).

Three categories are grouped into spheres of influence: informational, economic, institutional and legal ableism (Goodley, 2018).

Information ableism is associated with the establishment of discriminatory practices in the information space and negative propaganda, which gives «invisible» preference to the working population. In addition, certain forms of intervention are formed in order to obtain a certain type of desired behavior (Duncan, 2022) (establishing a parallel between «normality» and «inferiority»; encouraging fertility among the «socially disadvantaged» population and others).

Economic ableism, as D. Goodley noted in his scientific work (Goodley, 2018), has a different name: «neoliberal ableism» defends the ideology of the free market and self-responsibility of citizens who are able to use their socio-economic resources (Goodley, 2013). At the same time, economic ableism is an opponent of building the principles of a welfare state, since, according to economic feasibility, citizens who are not capable of competition in the labor market (disabled people, elderly citizens, people on the verge of poverty, and so on) become a burden for the state systems of the country and the general welfare of the civilian population. For example, this type may manifest in refusal to employ a qualified employee solely due to disability, lack of reasonable accommodation in the workplace, restrictions on employee retraining, unreasonable extension of the probationary period, illegal reduction of wages and so on.

Institutional ableism is a restriction of citizens with disabilities in access to social benefits (for example: social, engineering and transport infrastructure, obtaining information, using inclusive technical devices and others) (Duncan, 2022), as well as to government subsidies, benefits and social necessary rehabilitation services (habilitation). Thus, there have been repeated cases of refusal to provide medical services (sanatorium-resort treatment, provision of prosthetics, surgical intervention), social services (household adaptation, provision of psychological and legal assistance), professional assistance (assistance in employment, general and vocational education), technological services (provision of wheelchairs, orthopedic products, sound amplification devices), and others.

Legal ableism is determined by problems of the legal status of a citizen: in the understanding of his rights and constitutional guarantees, lack of access to justice and qualified free legal assistance (pro-bono), which deprives them of the opportunity to defend their legitimate interests (Nosyreva, 2021). Foreign researchers note that access to justice as a key principle of the legal mechanism for protecting the rights and fundamental freedoms of people with disabilities depends on the existing anti-discrimination legislation of the state aimed at providing «equal opportunity for their participation in the justice system» (Begiraj, Namara, Wicks, 2017).

Also, scientific sources distinguish the following forms of ableism: medical, structural, cultural, internalized, hostile, charitable, and ambivalent (a mixed type of hostile and charitable form).

Medical ableism views disability as a disorder that needs to be treated and rehabilitated, or as a deviation from a normal state of health that requires medical attention (Lock, Nguyen, 2010). This form of ableism is based on two principles: firstly, people with disabilities are a category of citizens who need medical care; secondly, physical and(or) mental disabilities can become a key factor in limiting or depriving them of legal capacity (Nosyreva, 2021). In fact, the discriminatory phenomenon manifests in the medical parallel between people with disabilities and other citizens (namely, with the standard «normal» physiological and psychological state of the body and health deficiencies). In this form of discrimination, there is a belief that people with disabilities are citizens who need correction, so they cannot function as full members of society.

Structural ableism is a form of discrimination that creates systemic barriers, particularly through inaccessible infrastructure (lack of ramps, elevators, special education, inclusive website features, lack of sign language interpreters in court proceedings, etc.). By its legal nature, this form of discrimination is

similar to institutional ableism, which we discussed earlier. However, structural ableism extends to a narrower sphere of life, mainly covering only the areas of social, engineering and transport infrastructure, as well as inclusive technologies (software, computer equipment, special means of communication, the Internet, etc.).

Cultural ableism is a prejudice in the social identity (Nosyreva, Gavrilova, 2023) of citizens based on health status, conditioned by the social, historical and cultural development of the state (stigmatization; creating an image of «defectiveness» of citizens in order to humiliate the dignity of the individual) (Nosyreva, 2021). Thus, R. Hughes pointed out that «ableism is the systematic oppression of a group of people based on the presence of impaired functioning of the body or mind, which is the result of cultural ignorance. Racism, sexism, ageism, lookism, ableism and other negative social trends are serious challenges to justice, equality and democracy in the state».

Internalized ableism is the most unique form in which discrimination is committed by citizens with disabilities in relation to themselves (other disabled people) within the community (for example: devaluing the importance of «features» of health in relation to other forms of disability; competition in obtaining social benefits; focusing on disability, etc.) (Nosyreva, 2021). In fact, internalized ableism is difficult to identify, but it is socially harmful to a person's legal status.

Hostile ableism is associated with the formation of dangerous forms of discrimination (for example: cruel treatment, torture, mediocre performance, the use of mental pressure and (or) sexual violence), which subsequently lead to grave consequences for the victim (physical and mental harm, requiring treatment; incitement to suicide; forced sterilization, etc.).

Charitable («benevolent») ableism is characterized by the hypertrophied influence of a special or authorized body that devalues the legal capacity of people with disabilities, which leads to the restriction of constitutional rights (illegal disposal of a disabled person's bank account by a legal representative; the action of a guardian in his own interests; instilling the expediency of carrying out abortions among women - disabled people and others) (Begiraj, Namara, Wicks, 2017).

A. Pulling, in his scientific work, distinguishes, depending on the degree of influence of ableism, personal and political (Pulling, 2021). Personal ableism is directly related to negative public consciousness and has three forms. The first is that other citizens feel «uncomfortable» next to a person with a disability

who is considered «inferior». The second form concerns stigmatizing phenomena (for example: the use of offensive expressions – «cripple», «feeble-minded», «deaf» etc.; the prejudice of a person's «insecurity» or the perception of a disabled person as a «burden» for the state and society as a whole). The third is the spread of the stereotype of «special treatment» or «special privileges» for people with disabilities, mediated by the hatred of society, for example, due to the receipt of material subsidies, benefits, rehabilitation and habilitation services, free legal assistance, the need for tax redistribution from the income of the working population, and so on (Vasilyeva, Volkodav, 2016).

Political ableism has a comprehensive segregationist nature that permeates the country's state system, which does not meet generally accepted international standards and principles. For example, the adoption of regulations that restrict the freedom and equality of people with disabilities; the formation of social policies aimed at discriminatory «guardianship» through intensive surveillance and isolation; the use of practices that reduce or eliminate citizens from public life (lack of social benefits, guarantees and reasonable accommodation).

Thus, ableism manifests itself not just as individual or social prejudices but also as a systematized political and legal form of discrimination that neglects the needs of people with disabilities, which determines the organization of a human rights mechanism, upholding the constitutional rights and freedoms of people with disabilities in order to compensate for the injustices of the past and present. Today, the anti-ableist activist movement (antiableism) is beginning to gain particular relevance - an ideology and strategy that challenges ableism, prejudice and discrimination, based on the principles of a positive attitude towards any individual, regardless of health status, protection of universal values and equality in receiving social benefits.

5. CONCLUSIONS

The principle of equality is enshrined in the 1948 Universal Declaration of Human Rights: «All human beings are born free and equal in dignity and rights». This concept is embedded in the foundation of modern democracy and the Constitutions of countries, which are obliged to protect vulnerable population groups from discriminatory (exclusive) treatment (Mauck, 2019).

According to generally accepted international principles, all citizens with disabilities should be guaranteed opportunities: political, economic, social, cultural and other activities as a full member of

society, stemming from the principle «I exist. Therefore, I have rights and inherent dignity as a person» (Usmanov, 2015).

Compliance with the principle of equality determines the axiom of «equal treatment» in all cases, except for circumstances in which the restriction (special treatment) is objective and reasonable, meeting the requirements of the law and international principles of human rights. For example, a ban on the employment of disabled people in working conditions characterized by the presence of harmful production factors, forced hospitalization of a mentally ill citizen who is dangerous to himself and his loved ones, restriction of an incapacitated citizen from making large household transactions, etc. In essence, such a restriction is a precaution to protect the legitimate interests of the individual and a fundamental beginning of the formation of law and order in society.

The principle of equality and prohibition of discrimination does not entail only the establishment of an obligation not to discriminate (differential treatment contrary to the requirements of law and morality) but also the obligation to recognize differences between people and take measures to provide benefits (social benefits and subsidies) for the actual equalization of legal status citizens. Therefore, state guarantees must meet the principles of taking into account special opportunities (health characteristics), accessibility to social institutions, adaptability to the various needs of the population (living conditions, financial status, provision of inclusive communication and information technologies, etc.), taking into account the uniqueness of citizens (legal status women with disabilities, children with disabilities).

Human rights obligations related to the principle of equality and the prohibition of discrimination are consistent with the international promise to establish a domestic human rights mechanism that will compensate for disabilities due to health reasons and counter discrimination (ableism). Most countries have a mechanism for the legal protection of citizens with disabilities, which obliges the branches of government (legislative, executive and judicial) to ensure the implementation of constitutional guarantees, taking into account the special legal status of citizens.

The rule of law not only bears responsibility for policies that promote the creation of an accessible environment but is also obliged to protect the civil rights of people with disabilities by preventing and restoring violated (limited) rights from any form of discrimination, including ableism. In practice, people with disabilities face inequality and injustice everywhere. They are denied equal access to health care, work and employment, education, transportation, public buildings and so on due to the existence of

negative preconceived notions about people with disabilities. Such repressive practices of modern society exclude citizens with «special needs» from public life and, in turn, give rise to new forms of discrimination in the future, creating even more divisions and deepening inequality. It is clear that confronting and eliminating the consequences of ableism (functional limitations) is a difficult task for the law enforcement system. In addition, the principle of prohibiting discrimination based on disability is a novelty for the domestic law enforcement system.

However, it is the anti-discrimination mechanism for protecting the rights of people with disabilities that is the legal basis through which societies can achieve the rule of law and build a democratic society. In essence, the fight against all forms of discrimination includes the development of strategic directions based on the ideology of respect for the dignity of the individual and increasing the level of legal literacy among the population. In particular, more decisive actions by the state, updating the problem of ableism in modern society, and regulatory adjustments can be a step towards achieving equality and eliminating discrimination against citizens, which constantly leads to dire consequences around the world.

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EL PROBLEMA DEL CAPACITISMO COMO UNA VISIÓN NEGATIVA DEL MUNDO DE LA SOCIEDAD

RESUMEN

En esencia, el capacitismo como fenómeno sociocultural refleja las actitudes individuales y sociales de la sociedad, lo que conduce a la devaluación del estatus legal de los individuos y a restricciones en la implementación de sus derechos y libertades constitucionales, lo que determina la relevancia sociojurídica del tema elegido. Este trabajo tiene como objetivo presentar un análisis integral de la ontología de los derechos humanos desde el punto de vista de los estándares internacionales y fuentes extranjeras. Para lograr este objetivo, el autor intentó determinar el origen histórico del capacitismo como fenómeno social, su naturaleza jurídica y sus principales tipos, además de señalar supuestos científicos para combatir la discriminación. La investigación empleó los siguientes métodos: lógico, jurídico-formal y análisis sistémico. Con base en los resultados, el autor identificó problemas teóricos y empíricos actuales del capacitismo y desarrolló su comprensión sobre la protección legal de los derechos y libertades fundamentales de las personas con discapacidad. Este trabajo presenta un examen sistemático y completo de lo que las sociedades consideran discriminación contra las personas con discapacidad y sus consecuencias legales. Amplía la comprensión y la importancia de garantizar las garantías constitucionales para los ciudadanos y llama la atención sobre las dificultades sociales de las personas con discapacidad.

Palabras clave: capacitismo, discriminación, protección de personas con discapacidad

作为社会负面世界观的问题：能力歧视

摘要

本质上，能力歧视作为一种社会文化现象，反映了社会的个体和社会态度，导致了对个人法律地位的贬低以及其宪法权利和自由在实施中的限制，从而确定了所选主题的社会法律重要性。本研究旨在从国际标准和外国资料的角度，全面分析人权的本体论。为实现这一目标，作者试图确定能力歧视作为一种社会现象的历史起源，其法律本质及其主要类型，并指出了应对歧视的科学假设。本研究采用了以下方法：逻辑分析、形式法律分析和系统分析。基于研究结果，作者识别了能力歧视的当前理论和实践问题，并发展了对保护残疾人权利与基本自由的法律理解。本研究系统且全面地审视了社会对残疾人歧视的定义及其法律后果。它拓展了对确保公民宪法保障的重要性的认识，并引起了对残疾人社会困境的关注。

关键词：能力歧视、歧视、残疾人保护