

DISCRIMINATION AGAINST PERSONS WITH DISABILITIES WHEN EXERCISING THE RIGHT TO EDUCATION IN THE RUSSIAN FEDERATION



ALTERNATIVE INFORMATION

on Russia's implementation of the UN Convention on the Rights of Persons with Disabilities
in connection with the review of the first state report
by the UN Committee on the Rights of Persons with Disabilities

For the 19th Session of the CRPD
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Discrimination against Persons with Disabilities when Exercising the Right to Education in the Russian Federation. For the 19th Session of the CRPD 14 February – 09 March 2018. Alternative information on Russia's implementation of the UN Convention on the Rights of Persons with Disabilities in connection with the review of the first state report by the UN Committee on the Rights of Persons with Disabilities.

This report was written with participation of the parent of a child with disabilities and the lawyer who represented A.S. (see below the case of a man with serious visual impairments refused the internship; the court recognized the violation of the right to education in his case supported by ADC Memorial in St. Petersburg, Russia).

The report is focused on the violations of the Article 24 "Education" of the UN Convention on the Rights of Persons with Disabilities.

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EXECUTIVE SUMMARY

Russian laws and practice still do not conform to the obligation to create equal rights and opportunities for the self-realization of persons with disabilities that is guaranteed by the Convention on the Rights of Persons with Disabilities and the Constitution of Russian Federation. In the most cases, persons with disabilities must decide not to pursue a higher education or choose a specialization based on a very limited list of institutions that are prepared to accept them.

Russian Government Resolution No. 697 “On the Approval of a List of Specializations and Fields of Study upon Admission,” which requires applicants to undergo “mandatory preliminary medical examinations (screenings) following the procedure established when entering into a labor agreement or work contract in the corresponding position or specialization” when enrolling at educational institutions, discriminates persons with disabilities. These medical examinations take any special aspects of the applicants’ health into account. In accordance with these special aspects, the medical commission may restrict or prohibit access to education at various types of educational institutions. These restrictions are based not just on the conditions for a student’s learning and training, but also on work conditions in various specializations after graduation.

Strict requirements of “medical permission” to receive an education in secondary and higher academic institutions in the Russian Federation is clearly discriminatory in nature and prevents people with various illnesses or forms of disability from receiving secondary and higher professional education.

The bans are based on the argument that students who have received diplomas in the specializations they selected will not be able to get employed, since medical commissions have high requirements for the state of health of employees seeking employment in certain professions. However, this argument does not correspond to the principle of ensuring the right to education and the right to labor guaranteed by the Constitution and the Law on Education, that declare that a person can exercise rights and freedoms without discrimination. People have the right to decide whether or not they will work in their chosen specializations, preventing students who cannot use the skills they learn during their training in employment due to the condition of their health is a violation of their rights.

People with disabilities are also often denied access to education they choose, since the vast majority of academic institutions in Russia are still unable to provide comfortable conditions for students with special educational needs and take responsibility for the health of these students. Absence of special conditions for teaching students with disabilities at educational organizations should not be a ground for denying them admission. However, instead of conducting effective work to create comfortable learning conditions for all categories of students, educational institutions search for reasons and various feeble pretexts for not creating these conditions.

INTRODUCTION

Russia still does not have a comprehensive anti-discrimination law, even though the Constitution, the Law on Education, and the Labor Code profess equality. After Russia ratified the UN Convention on the Rights of Persons with Disabilities, it adopted a number of measures to bring its laws into line with the requirements of the Convention: the law “On the Social Protection of Persons with Disabilities” was updated with articles reflecting the impermissibility of discrimination on the basis of disability and classifying discrimination as “any distinction, exclusion, or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment, or exercise, on an equal basis with all others, of the rights and freedoms guaranteed in the Russian Federation.”¹ The new term “abilitation” also appeared in this law; this term is understood as “the system and process of developing the capacity for everyday, social, professional, and other activities in persons with disabilities.”² Since July 1, 2016, facilities for communications and social, engineering, and transportation infrastructure have been required to provide the necessary means for ensuring access of persons with disabilities to these facilities, while means of transportation have been required to be outfitted with the necessary equipment to ensure barrier-free use by persons with disabilities. Another new feature of the law was the introduction of a federal register of persons with disabilities intended to systematize and organize information about persons with disabilities, including disability group, restrictions on activities, the extent of loss of capacity to work, rehabilitation measures, funds allocated to support persons with disabilities, and the needs of persons with disabilities.

Even though these amendments were aimed at integrating persons with disabilities into social life, they are for the most part not being properly implemented. Human rights defenders continue to record instances where these enshrined norms are not being put into practice, resulting in the inability of persons with disabilities to exercise their most fundamental rights. There have been cases when persons with disabilities were not allowed to enter cultural³ or entertainment⁴ establishments.

¹ Article 3.1 of Federal Law No. 181-FZ of November 24, 1995 “On the Social Protection of Persons with Disabilities in the Russian Federation” (as amended on December 29, 2017).

² Article 9 of Federal Law No. 181-FZ of November 24, 1995 “On the Social Protection of Persons with Disabilities in the Russian Federation” (as amended on December 29, 2017).

³ Rosbalt “V Peterburge iz kinoteatra vygnali rebenka-invalida” [Disabled child thrown out of movie theater in Saint Petersburg]. November 13, 2017.

⁴ Rossiiskaia gazeta. Article by Anna Timofeyeva “V Krasnoyarske devushku-invalida ne pustili v nochnoi klub” [Young disabled woman barred from nightclub in Krasnoyarsk], January 16, 2017.

THE PROBLEM OF BANS ON RECEIVING AN EDUCATION DUE TO STATE OF HEALTH

The annual orders of the Ministry of Health regarding rules for enrolling at academic institutions contain the following clauses regarding documents that applicants must submit (quoted from Clause 68 of the 2015 order): *for applicants within the special quota of disabled children, groups I or II persons with disabilities, persons who have had disabilities since childhood, and persons with disabilities resulting from military injuries or illnesses sustained during military service – an expert opinion from a federal medical and social assessment institution regarding the absence of any contraindications for studying at the corresponding institutions.*

Thus, people with various forms of disability are restricted from obtaining an education by the requirements of a medical and social assessment, which to all intents and purposes signifies the possibility that people will not be allowed to exercise their right to education if they suffer from illnesses seen as “contraindications” by experts.

In the majority of cases, persons with disabilities must decide not to pursue a higher education or choose a specialization based on a very limited list of institutions that are prepared to accept them (some institutions have a special department to teach people with hearing and vision impairments, but only in certain disciplines, and the capabilities of these special departments do not match the needs of an enormous country).

A real barrier for obtaining an education for persons with disabilities or special medical conditions is enshrined in Russian Government Resolution No. 697 of August 14, 2013, which contains a list of specializations requiring a medical examination of applicants that decides whether a student can enroll or not. This list is clearly discriminatory in nature and prevents people with various illnesses or forms of disability from receiving a higher professional education.

Pursuant to the federal law “On Education in the Russian Federation,” upon enrolling at an institution of higher education or a specialized secondary school in a specialization included in the List, applicants must undergo preliminary medical examinations.⁵ These medical examinations take any special aspects of the applicants’ health into account. In accordance with these special aspects, the medical commission may restrict or prohibit access to education at various types of educational institutions. These restrictions are based not just on the conditions for a student’s learning and training, but also on work conditions in various specializations after graduation.

For example, cerebral palsy is contraindicated in a number of specializations, even if the applicant is psychologically healthy and intellectually developed and there are pronounced speech, hearing, or vision impairments, allergic disorders, and so forth that cannot be directly connected with the learning process. In practice, it frequently happens that a decision to deny access to education does not depend at all on a person’s ability to study or to perform some practical tasks; instead it is of a preventative nature. Such decisions are exclusively restrictive in nature and do not offer a person the opportunity to study in their profession of choice during treatment or rehabilitation.

The federal law “On Education in the Russian Federation” indicates that, if necessary, professional training may be carried out under tailored educational programs, which implies the creation of a special learning process for students with special medical conditions. However, an applicant with an illness included in the “list of specializations and fields of study for secondary and higher education” will not be given access to the educational process on the basis of the results of a medical and social assessment, which renders the instructions in the federal law “On Education in Russia” demonstrably useless.

⁵ Clause 7 of Article 55 of the federal law No. 273-FZ of December 29, 2013 “On Education in the Russian Federation.”

These bans are based on the argument that students who have received diplomas in the specializations they selected will not be able to get employed, since medical commissions have high requirements for the state of health of employees seeking employment in certain professions. However, this argument does not correspond to the principle of ensuring the right to education and the right to labor guaranteed by the Constitution and the Law on Education, since the term “guarantee” is understood as the legal means and methods that help ensure that a person can exercise rights and freedoms specifically, and not obligations. People have the right to decide whether or not they will work in their chosen specializations, so preventing even those students who cannot use the skills they learn during their training in employment due to the condition of their health is a violation of their constitutional rights.

There is no logical explanation for many of the health-related restrictions placed on people enrolling at secondary and higher academic institutions, but people are denied their right to receive an education in their chosen specialization because of them. There are medical websites like <http://doctorpiter.ru/articles/7339/> providing a detailed list of these restrictions. It turns out that people may not be accepted to music college (*Specialization 050130*) due to vision impairments or to art and design schools (*Specialization 050139*) due to hearing impairments. In practice, applicants to Music College are required to present permission from an ophthalmologist. In one case known to ADC “Memorial,” a 15-year-old applicant who wanted to enroll in the specialization of musician-trumpet player had a problem with the medical permission to study at the Music College because of his myopia (diagnosis-nearsightedness, — 6-diopter). This clearly proves that even the least serious illnesses can become a formal impediment to a creative person’s professional realization.

Also, the large number of medical contraindications that can be used to reject people from the specialization **Education and Pedagogy** (*Specialization 050000*) is puzzling. These include “disorders of the spine, joints, and legs; chronic infectious diseases; skin diseases; respiratory diseases; diseases of the digestive system; and hemorrhoidal disease.”

And it is totally unclear how personal traits like “**fastidiousness, anxiety, lack of self-confidence, pronounced pessimism,**” which are included in the list of medical contraindications for preschool teachers, can be classified as such. Nevertheless, these characteristics of human nature might be “diagnosed” by a medical commission and become grounds for denying admission to a school if “detected.”

People with allergies, infectious diseases, musculoskeletal problems, and “neuropsychiatric” disorders are not allowed to train for many professions; they are not even allowed to study agriculture or fish farming (*Specialization 110000*), while people with a “tendency to suffer from cold-related diseases” cannot study to be an agricultural engineer.

Thus, medical contraindications may serve as a reason for denying the right to education to any person with any deviation from perfect health.

ABSENCE OF CONDITIONS FOR TEACHING PEOPLE WITH DISABILITIES AT EDUCATION INSTITUTIONS AS A REASON FOR REJECTING THEIR ADMISSION

In spite of the norms of the federal law “On the Social Protection of Persons with Disabilities in the Russian Federation” and the federal law “On Education in the Russian Federation,” which require the state to create conditions at academic institutions for persons with disabilities to receive an education and professional training,⁶ these requirements are frequently violated and people with disabilities are denied access to education, since the vast majority of academic institutions in Russia are still unable to provide comfortable conditions for students with special educational needs to learn or to take responsibility for the health of these students.

According to data from the Federal State Statistics Service, 123,000 persons with disabilities were registered in Russia in 2017. These included 13,000 people in Group 1 (the most severe disabilities), 59,000 in Group II (48.4 percent), and 43,000 in Group III (34.5 percent). Of the total, 55,000 were in the 18-30 age range, making them potential students at higher or secondary academic institutions.⁷ According to a 2017 study conducted by Ekaterina Kurbangaleyeva, a member of the Committee of the RF Civic Chamber for Social Policy, Labor Relations, and Quality of Life, on average, only one out of every 33 people with disabilities under the age of 30 becomes a student. This figure stands at one out of five for their peers who do not have medical conditions. This low percentage of persons with disabilities who have been able to take advantage of the opportunity to enroll in a higher or secondary academic institution is due to a number of difficulties that applicants with special educational needs face at the stage of enrollment.

Many of them are denied admission because there are no conditions for teaching persons with disabilities, even though an academic institution’s lack of specialized conditions to accommodate disabled students is a violation of the licensing requirements envisaged in the Regulation on Licensing Educational Activities.⁸ According to the study, the majority of disabled students (57 percent) have systemic diseases, while another 23 percent have musculoskeletal disorders. The fewest number of students had hearing (nine percent) and vision (eight percent) impairments, which happen to be the students who require additional personnel (tutors, sign language interpreters), special equipment, and special teaching methods that most universities and institutes do not offer.

Obligations to create conditions for educating persons with disabilities are envisaged in special acts on secondary and higher professional education. For example, Order of the Russian Ministry of Education and Science No. 36 of January 23, 2014 “On the Approval of a Procedure for Admission to Educational Programs of Secondary Professional Education” and Order of the Russian Ministry of Education and Science No. 464 of June 14, 2013 “On the Approval of a Procedure for Organizing and Implementing Educational Activities for Educational Programs of Secondary Professional Education” establish the obligation to create special conditions, including for entrance examinations. Order of the Russian Ministry of Education No. 1367 of December 19, 2013 “On the Approval of a Procedure for Organizing and Implementing Educational Programs of Higher Education—Bachelor’s Degree Programs, Specialist Degree Programs, Master’s Degree Programs” establishes “special aspects for

⁶ Article 19 of Federal Law 181-FZ of November 24, 1995 “On the Social Protection of Persons with Disabilities in the Russian Federation” and Article 79 of Federal Law No. 273-FZ of December 29, 2012 “On Education in the Russian Federation.”

⁷ Data taken from the website of the Federal State Statistics Service: <http://www.gks.ru>

⁸ Subclause j of Clause 6 of the Regulation on Licensing Educational Activities, approved by a resolution of the Government of the Russian Federation of October 28, 2013.

organizing the educational process for persons with disabilities” for higher education institutions. Contrary to these requirements, the study shows that only 46 percent of higher education institutions offer medical support for persons with disabilities. Most higher and secondary institutions do not have qualified personnel—deaf students cannot take entrance examinations due to the lack of sign language interpreters. The so-called “barrier-free environment”⁹ for students with disabilities is either poorly developed or entirely absent: buildings at these institutions lack wheelchair ramps, elevators, toilets for persons with disabilities, and special lighting for the visually impaired, which means that these kinds of students are generally denied admission. Additionally, many higher and secondary institutions lack specialized technical equipment for teaching disabled students like keyboards for blind people and textbooks with Braille formatting.

Special attention should be paid to educational institutions in the provinces, where individual economic needs are frequently ignored because the necessary norms are missing from regional laws. For example, in Arkhangelsk Oblast, the term of study for disabled people is standardized in spite of federal standards reducing the term of educational programs, and depends only on whether or not the student has obtained a complete secondary education or an incomplete secondary education.

INDIVIDUALIZED REHABILITATION PROGRAMS AS A REASON FOR DENIAL OF ADMISSION TO AN EDUCATIONAL INSTITUTION

Applicants with special educational needs have the chance to enroll in higher or specialized secondary institutions, but generally not in their preferred specialization.

Unlike other applicants, in addition to the standard packet of documents, applicants with disabilities must submit a certificate of disability and an individualized program for rehabilitation or abilitation indicating that there are no counterindications for studying at the given educational institution. This program is not mandatory for persons with special educational needs, but it can become a reason for denying enrollment at an educational institution in violation of their rights. Additionally, the process for receiving such a program is long and difficult and produces questionable results: with this program, disabled people may be deprived of their disabled status, their benefits may be slashed, and they may be prohibited from enrolling in certain specializations or obtaining any kind of higher education. Also, this kind of program is only issued in one copy, which is an obvious discriminatory restriction, since it only allows applicants with special educational needs to enroll in one specialization at one institution under a simplified procedure.

An example of this kind of violation is the discrimination encountered by A.S., a visually-impaired person, who was not admitted to the Saint Petersburg Bekhterev Psychoneurological Research Institute, even though he successfully passed all the entrance exams for his residency in psychiatry following his graduation with honors from Chuvash State University with a specialization in general medicine. The administration at Bekhterev Institute advised him to enroll in another specialization, explaining that he would have to complete an internship and that the institute does not have or plan to create special conditions for persons with special educational needs (in A.S.’s case, this was additional lighting). According to A.S. himself, one of the members of the admissions committee

⁹ The combination of requirements and conditions for city design, facility infrastructure, and transportation that makes it possible for persons with disabilities to move freely in space and receive the information they need to carry out their activities comfortably.

suggested that he abandon his individualized rehabilitation program, which would have in fact deprived him of the opportunity to assert his right to special conditions and would have made the education process impossible.

According to A.S.'s individualized program, acceptable work conditions for him correspond to classes 1-2, while work conditions for staff in all the Institute's departments correspond to class 3.1 or above, i.e. are classified as "harmful and dangerous." Thus, the institute has ignored the fact that internships do not equate to work activities, which means that norms relating to work activities cannot apply to them.

A representative for the institute stated that "current RF laws do not establish a procedure for training persons with special needs. Laws note that they may obtain an education in special programs, but these programs are not currently established. Thus, the Bekhterev Institute is guided by sanitary rules." However, sanitary rules only regulate conditions for work activities and cannot be applied to students at institutions of higher professional or post-graduate professional education.

A court found that the denial of admission to the Bekhterev Institute was illegal, but it did not find that this decision to deny admission was discriminatory.

Special guidelines describing the special needs of persons with disabilities seeking a higher education have been created for educational institutions. Specifically, these are the "Guidelines for Organizing the Admission of Persons with Disabilities to Educational Organizations of Higher Education"¹⁰ and the "Guidelines for Organizing the Educational Process to Teach Persons with Disabilities at Educational Organizations of Higher Education, including the Accessibility of the Educational Process."¹¹ Among other things, this document recommends using special teaching methods, creating subdivisions for intervention and support within the educational process that will control the creation of special conditions, creating a barrier-free environment, and so forth.

Federal Education and Science Supervision Agency Letter No. 01-50-174/07-1968 of March 6, 2015 "On the Admission of Persons with Disabilities" notes that the absence of special conditions for teaching students with disabilities at educational organizations should not be a ground for denying them admission. In spite of this, however, instead of conducting effective work to create comfortable learning conditions for all categories of students, educational institutions search for reasons and various feeble pretexts for not creating these conditions.

¹⁰ Approved by the RF Ministry of Education and Science No. AK-1782/05, June 29, 2015.

¹¹ Approved by the RF Ministry of Education and Science No. AK-44/05vn, April 8, 2014.

CONCLUSIONS AND RECOMMENDATIONS:

Russian laws and practice still do not conform to the obligation to create equal rights and opportunities for the self-realization of persons with disabilities that is guaranteed by the Convention on the Rights of Persons with Disabilities and the Constitution of Russian Federation. In spite of several professed antidiscrimination norms, their widespread violation in Russia deprives many people with disabilities of the right to receive an education, which intensifies their isolation in Russian society.

- **It is highly necessary to adopt complex anti-discrimination legislation, including a definition of discrimination and a ban on discriminating people on the basis of their health condition.**

Russian Government Resolution No. 697 “On the Approval of a List of Specializations and Fields of Study Upon Admission,” which requires applicants to undergo “mandatory preliminary medical examinations (screenings) following the procedure established when entering into a labor agreement or work contract in the corresponding position or specialization” when enrolling at educational institutions, should be found to be a manifestation of discrimination against persons with disabilities;

- **The strict requirements of “medical permission” to receive an education in secondary and higher academic institutions in the Russian Federation must be rejected.**

- **People with various illnesses cannot be denied the right to education due to the presumed impossibility of finding employment in their chosen specialization; instead, conditions for work must be created for persons with disabilities.**

- **All Russian academic institutions must create conditions for teaching persons with disabilities and preventing persons with disabilities from being denied admission on the basis of “the absence of the necessary conditions.”**

Anti-discrimination Centre Memorial is nongovernmental human rights organization, central focus of all the activities of ADC Memorial has always been defense of the rights of minorities and vulnerable groups, opposing discrimination.

Mission of Anti-discrimination Centre Memorial is to defend the rights of victims of discrimination through proactive response to human rights violations, including advocacy, strategic litigation, human rights education, research, and publications.

Our visionis: The main condition in compliance with Human Rights principles shouldbe non-discriminatory realization of all the rights of each person. In the world of the future should be no discrimination.

ADC Memorial strategic goals are: the eradication of all forms of discrimination; supporting adoption of anti-discrimination legislation; overcoming all forms of minorities' rights violation and promoting human rights education.

By ADC Memorial team expert work of analyzing discrimination and violations of the rights of vulnerable groups is carried out as well as preparing legal cases to courts. The experience of ADC Memorial in opposing discrimination in Russian and International Courts covers the rights of women (discriminated in the rights to choose their profession and way of work), rights of persons discriminated because of their health condition, ethnic minorities suffering from the hate-crimes and victims of dual or multiple discrimination. Website adcmemorial.org features reports on legal cases of particular strategic importance for ADC Memorial: defending the rights of disabled persons to education, defending the rights of HIV-positive foreigners who became victims of discrimination and fighting against discrimination of women in Russia.

ADC Memorial experts have written over 40 reports indicating the problems of minorities and discriminated groups. Some of these reports were covering not only the situation in Russia however most of them focus on violations of Human Rights in Russian Federation (latest submission to UPR and reports to UN Committees CSECR, CHR, CERD, CAT, CEDAW, CPC). Advocacy campaigns (domestic and international) are organizedto protect the interests of the target groups. Data collected by ADC Memorial help to document the most important gaps in legislation and practice. The adcmemorial.org web-site is important tool of communication, Human Rights education and awareness raising.

Web-site presents the advocacy campaigns, reports and legal work (cases and success-stories) and serves for the publications of personal opinion of ADC Memorial experts in the forms of columns, articles, tweets etc.



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