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A critical legal analysis of General Comment No. 4 on Article 24 (Education) of the Convention on the Rights of Persons with disabilities

The article examines the international and national legal frameworks governing the right to inclusive education, with a particular focus on the interpretation and application of Article 24 of the United Nations Convention on the Rights of Persons with Disabilities. The objective of the study is to examine the nature and scope of state's legal obligations. The study adopts a comparative legal analysis and interpretation of international legal documentation, with a particular emphasis on General Comment No. 4 of the Committee on the rights of persons with disabilities. The study identifies legal and practical contradictions, particularly with regard to the transformation of special educational institutions and the role of parents in choosing their child's educational form. The findings of the study provide substantiation for the perspective that inclusive education ought to be recognised not solely as a pedagogical or social paradigm but also as an individual right. The article concludes with a recommendation that inclusive and special education should be legally coordinated, and that learning environment should be created in the best interests of the child. Inclusion should be conceptualised as a complementary component of an integrated education system, rather than a complete replacement for special education.

Keywords: inclusion, right to education, special educational institutions, Convention on the Rights of Persons with Disabilities, right to inclusive education, rights of the child, Convention on the rights of the child, best interests of the child, special educational needs, human rights.

Introduction

The establishment of an inclusive society has been identified as a strategic priority for the United Nations (hereinafter — UN) and other international institutions, signifying a global commitment to the development of systems founded upon human rights and social justice. A fundamental objective of this initiative is to guarantee equal access to quality education for all individuals, irrespective of their health status, social position, or other characteristics. The fourth goal of the UN 2030 Agenda for sustainable development goals, which was adopted in 2015, explicitly calls for "ensuring inclusive and equitable quality education for all" [1]. Nevertheless, data from international organisations indicates that progress in this area remains limited. It is estimated that 251 million children worldwide are currently out of school, with only a marginal 1 % decrease since 2015 [2]. Contemporary international frameworks are placing greater emphasis on a more extensive approach to inclusion. This approach encompasses active social integration and the establishment of educational environments that are customised to meet the individual needs of learners [3].

The primary objective of this article is to provide a comprehensive legal analysis of the international right to inclusive education, with particular attention to the legal contradictions associated with the transformation of special education institutions and the role of parents or legal guardians in selecting the form of education. The objective of the research is to analyse the international obligations set out in Article 24 of the Convention on the Rights of Persons with Disabilities (hereinafter — CRPD), to critically assess General Comment No. 4 in 2016 of the Committee on the Rights of Persons with Disabilities (hereinafter — Committee) and to identify legal and institutional gaps within the Republic of Kazakhstan's (hereinafter — Kazakhstan) education system. A fundamental area of theoretical contention pertains to the relationship between inclusive and special education. There is a debate among scholars regarding the extent to which inclusive education should replace special forms of education, such as special schools or home-based instruction or alternatively whether these systems can coexist as flexible, adaptive options. Another unresolved issue pertains to the rights of legal guardians in relation to the selection of their child's educational format. In this context, the Committee's General Comment No. 4 (paragraph 10) asserts that the right to education is an individual entitlement of the child, rather than a right of the parent. It also states that the role of parents must

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be subordinate to the child's rights [4]. This position demands meticulous legal examination, especially regarding its accordance with broader international law, its legal accuracy, and the balance between competing rights and obligations. The relevance of the problem lies in the fact that despite the proclaimed international policy of inclusion, a number of countries continue to maintain and even expand their network of special schools, which indicates a contradiction between official strategies and educational practice [5]. This fact highlights the need to rethink the role of special schools and find the optimal balance with an inclusive model that ensures equal access to education for all children.

Methods and materials

The concept of inclusive education was established in 1994 with the adoption of the Salamanca statement and the framework for action, which reflected basic provisions aimed at safeguarding the rights of vulnerable groups of learners [6]. The adoption of the CRPD in 2006 signified a pivotal moment in the academic discourse on inclusive education. In 2016, the United Nations Committee published General Comment No. 4 on Article 24 of CRPD. Following this, a new wave of academic research has emerged, focusing on exploring inclusive education through legal, social, and political lenses. A paradigm shift in the focus of research is evident, with earlier studies concentrating on pedagogical and social approaches, and recent research increasingly focusing on the recognition of inclusive education as a fundamental human right. CRPD established new international legal standards, elevating inclusive education to the level of legal obligations binding on all state parties. Inclusive education should not be regarded solely as a pedagogical concept, but as a fully recognised subjective legal right [7; 45].

Kazakhstan has incorporated the development of an inclusive society into its long-term national development strategy. In accordance with Article 1 of the Constitution of Kazakhstan, the country is defined as a democratic, rule-of-law and social state, with the individual, his rights and freedoms recognised as the highest value. The principle of social justice is reflected in major political and programmatic documents, including the President's address "For All and for Each. Now and always" and the concept of Inclusive Policy in Kazakhstan for 2025–2030. These documents emphasise the imperative of ensuring the equal participation of persons with disabilities in the social, economic, and cultural life of society [8]. Nevertheless, for an extended period, the medical model prevailed as the prevailing paradigm within Kazakhstan's educational system. Substantial reform was initiated in 2011 with the introduction of the concept of inclusive education within Kazakhstan's legislation, specifically within the "On Education" law. This development signified the initiation of a procedure aimed at revising the prevailing legal framework governing this domain [9]. Kazakhstan has undergone a gradual transition from a medical and correctional approach to a rights-based model that is aligned with international legal instruments. Following the ratification of the CRPD in 2015, the Government of Kazakhstan undertook to ensure equal access to education for persons with disabilities, and to initiate the harmonization of its national legislation with international standards. In 2021, significant amendments were made to the Law "On Education". These included state guarantees for the provision of special conditions for children with special educational needs at all levels of education, as well as the regulation of procedures for assessing students' educational needs and mechanisms for their psychological and pedagogical support [10]. Moreover, the legislation has established the legal obligation for school administrators who violate admission procedures or fail to create appropriate conditions for inclusive education [11]. Consequently, the amendments to the legislation are intended to enhance inclusive mechanisms within the Kazakhstan's education system. Nevertheless, the advancement of inclusive education is contingent on the sustained efforts to refine the regulatory framework, augment the competencies of educators, and establish the requisite conditions for customizing the educational process to cater to the distinct requirements of students. This assertion is corroborated by the observation of the UN Committee in April 2024, which highlighted the persistent enrolment of children with disabilities in special educational institutions, special classes in schools, or home-based education [12]. It was observed that inclusive education in Kazakhstan has not yet attained the requisite level of quality, and the government should reconsider its approach.

The study uses a theoretical and legal analysis method, which allows for a deep understanding of the legal nature of reasonable accommodation as a key mechanism for realizing the right to inclusive education.

Results

The right to inclusive education is regarded in this study as one of the most progressive achievements of international law in the field of human rights. Article 24 of the CRPD holds particular significance, stating:

“States parties recognize the right of persons with disabilities to education... and ensure an inclusive education system at all levels and lifelong learning” [13].

The drafters of the Convention conducted a review and formally recognized a novel interpretation of the right to education for persons with disabilities. Even though the process of rethinking the concept of «right to education» commenced prior to the formal adoption of the Convention, this international legal instrument served to clearly establish the goal of inclusive education as an international legal standard in the field of human rights. This issue was then the subject of a resolution by the UN Human Rights Council in 2014. The issue was the subject of increased attention following the publication of General Comment No. 4 on the right to inclusive education by the CRPD Committee in 2016. Paragraph (b) underlines the necessity of ensuring the territorial accessibility of inclusive education for persons with disabilities, thereby underscoring the obligation of State Parties to provide equal access to quality and free primary and secondary education in the places of residence of learners. Consequently, the right to education is interpreted not solely as the right to be included in the general education system, but also as the right to be educated in conditions that are as close as possible to the child’s social and cultural context. This approach involves the transition from the placement of children with disabilities in specialized institutions, located remotely from their place of residence to the transformation of proximate general education schools into inclusive learning environments that are capable of catering to the diverse needs of all students. Paragraph 40 of this document stipulates that the maintenance of two education systems (mainstream and special/segregated) is incompatible. The Committee recommends that states parties reallocate financial and material resources from segregated educational institutions to inclusive schools. In this regard, countries which have ratified the CRPD are advised to be guided by these principles and to implement an inclusive model of education at all levels. Paragraph 40 of General Comment No. 4 is subject to criticism for several reasons.

Firstly, in the case of some children with severe multiple developmental disabilities, complex medical or behavioral needs, the necessity for specialized assistance is evident. However, within the current circumstances, this assistance often cannot be provided within the mainstream school system. Special educational institutions, frequently possessing the appropriate equipment, are staffed by specially trained personnel, and offer individualized programs that are tailored to the needs of such students. To date, the CRPD has been formally ratified by 192 states and the European Union, and its provisions are binding on state parties. While numerous countries have adopted favourable policies and incorporated inclusive education norms into their legal systems, in practice, the implementation of certain obligations remains inconsistent. As has been noted by the Committee on numerous occasions, this issue has been brought to their attention in the concluding observations and recommendations they have issued. For instance, statistical data from England in May 2017 showed an increase in the proportion of students with individual education, health, and care plans attending publicly funded special education institutions. Despite this, the proportion of children enrolled in special schools in England decreased from 37.9 % to 35.8 % by 2024, albeit at a gradual rate [14]. In Germany, the proportion of children with disabilities studying in special education institutions has remained significantly higher than in other countries for many years. In this regard, the UN Committee has expressed concern over the continued prevalence of an education system in which the majority of students with disabilities are enrolled in segregated schools [15]. By ratifying the CRPD in 2015, Kazakhstan assumed international legal obligations regarding the transformation of special schools. However, official data demonstrate that in 2023, 16,898 children were educated in special schools in Kazakhstan, representing an increase of 1,082 compared to the previous year [16]. The primary reason for parents opting for special schools is their desire to ensure that their child’s special educational needs are effectively met. These institutions offer adapted curricula and methodologies, and provide regular support from qualified specialists (e.g., special education teachers, speech therapists, psychologists), which is a significant advantage for many families. Research conducted in Kazakhstan indicates that general education schools often face shortages of special educators and support staff [17].

Secondly, an inadequate transition from special to inclusive education has the potential to result in a scenario in which a child with a disability is formally included in a mainstream classroom yet remains excluded from active participation in the educational and social life of the school. This model, in which the student is physically present in the classroom but does not receive adequate support, is often accompanied by forms of discrimination that are not immediately apparent, social isolation and psychological discomfort. Empirical studies reveal that, in numerous cases, parents express resistance to inclusive practices both explicitly and implicitly within the daily functioning of schools. This resistance constitutes a significant barrier to fostering inclusive environments [18]. Specifically, stigma is most frequently reported among individuals

with mental health conditions (67 %), intellectual, social, or behavioural and learning disabilities (67 %), memory impairments (62 %), fine motor impairments (54 %), and stamina or respiratory difficulties (51 %). Alarmingly, nearly 40 % of respondents within these groups reported feeling perceived as a burden by others, further illustrating the pervasive impact of social stigma on educational equity and inclusion [19]. A persistent issue pertains to the inclusion of children with disabilities in mainstream schools in some region of Kazakhstan, arising from inadequate environmental adaptation, societal prejudices, and a low level of tolerance [20].

Another critical issue in inclusive education relates to the relationship between the child's right to education and the parents' duties in raising and developing the child. The CRPD affirms the primacy of the best interests of the child and the child's right to participate in decision-making. Specifically, Article 7(2) of the CRPD requires that all actions concerning children with disabilities be guided by the child's best interests, which implies recognition of individual educational needs. Article 7(3) obliges states to ensure that children with disabilities have the right to express their views on matters affecting their rights, and that these views be given due weight in accordance with the child's age and maturity. However, paragraph 10 of the Committee's General Comment states: "Inclusive education must be regarded as a fundamental human right for all learners. In particular, education is an individual right of the child, not a right of the parent or guardian. In this regard, parental responsibilities must be subordinate to the rights of the child". This interpretation raises critical questions regarding the balance between the requirements of international legal norms, legal certainty, and fundamental legal principles.

First, the assertion that the right to education belongs exclusively to the child, without reference to the rights of parents, presents an absolutist view. This approach contradicts the provisions of several international agreements. Notably, Article 18 of the Convention on the rights of the child recognizes parents as the primary duty-bearers for the upbringing and development of the child [21]. Therefore, ignoring the parental role in ensuring the child's rights particularly by fully subordinating their responsibilities to the child's rights is problematic. The UN Committee on the Rights of the Child, in its General Comment No. 1, also underscores the crucial role of parents in realizing children's rights, including the right to education [22]. While parents have the right to choose the educational path for their child, this choice must align with the child's best interests. Ultimately, the state bears the obligation to ensure and protect this interest.

Secondly, this interpretation may also conflict with the principle of the best interests of the child, as enshrined in Article 3 of the Convention on the Rights of the Child and Article 7 of the CRPD. While inclusive education is recognized as the preferred model, it cannot be assumed to be a universal solution suitable for every child. For example, for children with severe sensory impairments or complex multiple disabilities, inclusive environments may not be adequately adapted to meet their needs. In such cases, the views of parents as legal representatives should be duly considered, and they should be recognized as key actors capable of accurately assessing the specific needs and capacities of their child. A fundamental component of inclusive education is the collaborative decision-making process, which involves respecting and incorporating the perspectives of learners, their families, and legal representatives in determining the most appropriate educational pathway.

Moreover, one of the fundamental principles of international law is the principle of priority of more favorable norms. According to Article 41 of the Convention on the Rights of the Child, if national legislation or other international obligations of a state provide for higher standards of protection of the child's rights, those standards must prevail. In legal doctrine, this principle is interpreted as the requirement to implement the most favorable solutions in the best interests of the child in each specific case [23]. It is particularly relevant to the realization of the right to education. If the national education system offers several forms of instruction, priority should be given to the one that meets best the child's interests and ensures the fullest realization of their rights.

Discussion

The Standard rules on the equalization of opportunities for persons with disabilities were adopted prior to the CRPD. The UN General assembly approved these rules in 1993, and they represented a significant international document. They sought to establish a coordinated approach to ensuring the rights of persons with disabilities, including in the field of education. These Standards underscored the imperative to transition towards an inclusive educational framework. However, they acknowledged that during the transitional phase, special education institutions could assume a pivotal role in preparing students for further education within the general education system. It can be extrapolated from the provisions of the document that special educa-

tion should not be considered a final or permanent solution, but rather should be oriented towards gradual integration into an inclusive educational environment. Paragraph 6.8 underscores the following: it is imperative that the quality of special education meets the same standards and requirements as general education and that there is a close link between the two [24]. The fundamental principle underpinning the agenda is the equitable allocation of educational resources to students with and without disabilities. It is acknowledged that, in certain instances, special education may constitute the optimal educational modality for specific categories of students. A comparable approach is delineated in the legal positions of the Committee. In particular, it emphasized that if full implementation of inclusive education is not feasible in the immediate future, states parties must ensure the continuity of educational services and provide alternative educational programmes. This wording reflects a realistic and flexible approach to building an inclusive system that takes into account the varying degrees of readiness and resource availability of education systems in different countries. Moreover, the Committee on economic, social and cultural rights acknowledges the admissibility of specific forms of education in General comment No. 13, "The Right to Education". Paragraph 33 states: in certain circumstances, the establishment of separate educational systems or institutions for groups defined in accordance with the category specified in Article 2(2) should not be considered a violation of the Covenant [25]. This provision serves to affirm that the existence of specialised forms of education does not, in itself, contradict international obligations, provided that the principles of non-discrimination and equal access are observed.

During the course negotiations on the draft CRPD, the issue of the admissibility of the parallel existence of general and special education systems was actively discussed [26]. Maintaining the capacity for both systems to function was proposed, with consideration given to the needs of children with severe sensory and multiple impairments. Conversely, there was a demand to recognize inclusive education as a universal model, within which reasonable accommodations and specialized support measures are provided. Following eight rounds of negotiations, on 13 December, 2006, the UN General assembly formally endorsed CRPD [27; 439]. Consequently, the right of persons with disabilities to education was enshrined as an international legal norm. This standard was further developed in the 2014 resolution of the UN Human rights Council and then in General comment No. 4, published by the Committee in 2016. Paragraph 40 of the document is of particular relevance in this regard, as it explicitly states that the maintenance of two parallel systems general education and special (segregated) education is incompatible with the provisions of the Convention. The Committee recommended that states reallocate financial and material resources in favour of inclusive schools, gradually reducing institutionalised forms of education.

Nevertheless, during the period under review, scientific approaches to inclusive and special education remained ambiguous. For instance, Hellahan and Kaufman proposed a model of a continuum of educational services in their study. This model posits that the education system should vary from full inclusion to special programs depending on the individual needs of students. The authors emphasized that it is impossible to educate all children with disabilities exclusively in an inclusive environment without adequate support [28]. In contrast, other researchers emphasized the imperative for comprehensive coverage of all students by general education schools, perceiving any form of isolation as a transgression against human rights. Consequently, the notion of "supportive schools" emerged as a response, with the objective of mitigating social isolation and enhancing the quality of inclusion. The concept of "reasonable accommodation" as an element of ensuring the right to education began to be defined in scientific and legal literature. Also, an inclusive education is a universal system that recognizes the uniqueness of each learner and removes barriers to learning. The role of special education is transforming as it should support inclusion by promoting the creation of an accessible and equitable educational environment that reflects the values of equality and is consistent with SDG 4 [29]. These debates continue to be relevant in the contemporary academic field. Of particular importance are the recommendations of the UN with regard to Germany. The Committee proposed a gradual reduction in the number of special schools to promote integration. It also emphasized the need for legislative and policy-level guarantees ensuring that mainstream schools admit children with disabilities without obstacles and in accordance with their own preferences [30]. In this context, the key point lies in the phrase "in accordance with their preferences", which reflects the child's right to freely choose their mode of education, emphasizing their autonomy in the learning process.

The issue of the relationship between the right to inclusive education and parental rights became a subject of criticism from certain organizations during the debate over the ratification of the CRPD in the United States. As Arlene S. Kanter notes, opponents of ratification expressed concern that the "best interests of the child" standard set forth in Article 7, as well as the provisions of Article 24 on the right to inclusive educa-

tion, might undermine parental autonomy in making decisions about the education of their children with disabilities. In particular, the Homeschooling legal defense association argued that the CRPD would restrict the right of parents to determine the form and setting of their child's education. However, according to Kanter, such concerns are unwarranted, as the Convention is aimed at protecting the rights of children with disabilities themselves, rather than interfering with parental authority and it does not override national regulatory mechanisms in the field of education [31]. The right of the child to express their own opinion, which is enshrined in Article 12 of the UN Convention on the Rights of the Child, emphasizes two key concepts. Firstly, it recognizes the uniqueness of the child's personality and ability to make decisions. Secondly, it acknowledges the potential risks associated with excessive freedom, highlighting the need for balance in decision-making processes that consider the best interests of the child [32].

Conclusion

A legal analysis of Article 24 of the CRPD and General Comment No. 4 allowed for the identification of both conceptual contradictions and practical limitations in global efforts to transform educational systems. Based on the conducted research, the following conclusions can be drawn:

First, inclusive education should be viewed not only as a pedagogical goal or a direction of public policy but also as a protectable individual human right. Such a status imposes legal obligations on States Parties to the CRPD for the progressive realization of an inclusive educational system that ensures accessibility, quality, and individualized support for all learners. At the same time, the text of the Convention does not explicitly prohibit the existence of special schools, which grants states a certain degree of flexibility in adapting their systems, taking into account local capabilities and social, cultural conditions. It is essential to emphasize that the quality of special education must meet the same standards and requirements as general education to ensure equal opportunities for all learners, regardless of their individual characteristics. Second, despite the fact that General Comment No. 4 promotes a model of a unified inclusive system, its categorical rejection of the parallel existence of special education and the limitation of parents' roles in choosing the form of education raise a number of legal and ethical questions. In particular, the principle of the best interests of the child a cornerstone of both the CRPD and the Convention on the Rights of the Child should be interpreted to consider both the child's opinion and the informed position of parents or legal representatives. Ignoring this balance could lead to a reduction in the effectiveness of parental involvement and an inability to meet the complex individual needs of children with disabilities. Third, the implementation of inclusive education requires considering the national context and systemic transformation. The example of the Republic of Kazakhstan demonstrates that formal legal reforms including constitutional guarantees, national strategies, and amendments to the Law "On Education" must be accompanied by tangible improvements in infrastructure, staff training, and the implementation of inclusive practices. In countries with transitioning education systems, inclusive and special education should not be viewed as opposing forces. Instead, they should be coordinated to ensure flexibility, non-discrimination, and equal educational opportunities for all children.

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Н. Сайранқызы

«Мүгедектер құқықтары туралы» Конвенцияның 24-бабына (Білім беру) қатысты № 4 жалпы ескертпеге құқықтық сыни талдау

Мақалада Біріккен Ұлттар Ұйымының «Мүгедектердің құқықтары туралы» Конвенцияның 24-бабының түсіндірілуін және қолданылуын ерекше назарға ала отырып, инклюзивті білім беру құқығын қамтамасыз етуге қатысты халықаралық және ұлттық құқықтық негіздер талданған. Зерттеудің басты мақсаты — инклюзивті білім беру жүйесін қалыптастыру жөніндегі мемлекеттердің құқықтық міндеттемелерінің ауқымы мен сипатын зерделеу. Зерттеу халықаралық құқықтық құжаттарды, оның ішінде Біріккен Ұлттар Ұйымының Мүгедектердің құқықтары жөніндегі комитеттің № 4 жалпы ескертуін салыстырмалы құқықтық талдау және интерпретациялау әдістеріне сүйенеді. Арнайы білім беру мекемелерін трансформациялау және ата-аналар, заңды өкілдердің баланың білім алу нысанын таңдаудағы рөліне қатысты құқықтық және іс жүзіндегі қайшылықтар көрсетілген. Зерттеу нәтижелері инклюзивті білім беруді тек педагогикалық немесе әлеуметтік тұжырымдама ретінде емес, сонымен қатар қорғалуға тиіс жеке адам құқығы ретінде тану қажеттігін дәлелдейді. Мақалада инклюзивті және арнайы білім беруді құқықтық тұрғыда үйлестіру, сондай-ақ баланың мүдделерін ескере отырып, бейімделген білім беру ортасын қалыптастыру қажеттігі жөніндегі ұсыныс жасалды. Инклюзия арнайы білімге толық балама ретінде емес, білім беру жүйесін өзара толықтыратын бір бөлік ретінде қарастырылуы керек.

Кілт сөздер: инклюзия, білім алу құқығы, арнайы білім беру мекемелері, «Мүгедектер құқықтары туралы» Конвенция, инклюзив білім беру құқығы, бала құқықтары, «Бала құқықтары туралы» Конвенция, баланың ең жақсы мүддесі, ерекше білім беру қажеттіліктері, адам құқықтары.

Н. Сайранкызы

Критический правовой анализ общего комментария № 4 к статье 24 (Образование) «Конвенции о правах инвалидов»

Настоящая статья посвящена анализу международных и национальных правовых рамок, регулирующих право на инклюзивное образование, с особым акцентом на толкование и применение статьи 24 Конвенции о правах инвалидов Организации Объединённых Наций. Цель исследования заключается в определении характера и объёма юридических обязательств государства по созданию инклюзивной системы образования. В работе применяются методы сравнительно-правового анализа и интерпретации международных правовых документов, в частности Общего замечания № 4 Комитета по правам инвалидов Организации Объединённых Наций к указанной Конвенции. Исследование выявляет как юридические, так и практические противоречия, особенно в вопросах трансформации специальных образовательных учреждений и определения роли родителей при выборе формы образования для ребёнка. Полученные результаты обосновывают подход, согласно которому инклюзивное образование следует рассматривать не только как педагогическую или социальную концепцию, но и как индивидуальное право. В заключение статьи представлена рекомендация о необходимости правового согласования инклюзивного и специального образования, а также создания адаптированной образовательной среды в наилучших интересах ребёнка. Инклюзия должна пониматься как взаимодополняющий элемент интегрированной системы образования, а не как полная альтернатива специальному образованию.

Ключевые слова: инклюзия, право на образование, специальные образовательные учреждения, Конвенция о правах инвалидов, право на инклюзивное образование, права ребёнка, Конвенция о правах ребёнка, наилучшие интересы ребёнка, особые образовательные потребности, права человека.

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