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# Interactions between the international convention and the system of guaranteeing the rights of persons with disabilities in Ukraine

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## Abstract

The purpose of the study is to clarify the essence and outline the functions of the international convention-institutional mechanism for the observance and protection of human rights, as well as to reveal the directions of its interaction with the national system of administrative and legal protection of the rights and freedoms of persons with disabilities of Ukraine. We use methods of scientific knowledge, in particular system-functional, formal-legal, technical-legal, methods of analysis and synthesis. The National system of ensuring the rights and freedoms of persons with disabilities of Ukraine, which is presented in the form of a three-level structure, among which: organizational level - is implemented by the Commissioner of the President of Ukraine for the Rights of Persons with Disabilities and the Government Commissioner for the Rights of Persons with Disabilities; management level – the Cabinet of Ministers of Ukraine; functional level – individual central bodies of the executive power of Ukraine, their structural units and local self-government bodies. The key directions and principles of coordinated interaction of public administration subjects with relevant international institutions, primarily the UN and the Council of Europe, in the analyzed area are indicated.

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**Keywords:** convention-institutional mechanism; administrative and legal support system; law and freedom; persons with disabilities; public administration bodies.

## Interacciones entre la convención internacional y el sistema de garantía de los derechos de las personas con discapacidad en Ucrania

### Resumen

El estudio tuvo por objeto esclarecer la esencia y delinear las funciones del convenio internacional-mecanismo institucional para la observancia y protección de los derechos humanos, así como develar los sentidos de su interacción con el sistema nacional de protección administrativa y judicial de los derechos humanos y libertades de las personas con discapacidad en Ucrania. Utilizamos métodos de conocimiento científico, en particular métodos de análisis y síntesis sistémico-funcionales, formal-jurídicos y técnico-jurídicos. El Sistema nacional para garantizar los derechos y libertades de las personas con discapacidad de Ucrania, se presenta en forma de una estructura de tres niveles, los cuales son: nivel organizacional: es implementado por el Comisionado del Presidente de Ucrania para los Derechos de las Personas con Discapacidad y el Comisionado del Gobierno para los Derechos de las Personas con Discapacidad; nivel de gestión: responsabilidad del Gabinete de Ministros de Ucrania; nivel funcional: órganos centrales individuales del poder ejecutivo de Ucrania, sus unidades estructurales y órganos de autogobierno local. En las conclusiones del caso, se indican las direcciones y principios clave de la interacción coordinada de los sujetos de la administración pública con las instituciones internacionales relevantes, principalmente la ONU y el Consejo de Europa.

**Palabras clave:** convención-mecanismo institucional; sistema de apoyo administrativo y jurídico; derecho y libertad; personas con discapacidad; órganos de la administración pública.

### Introduction

Today, the public administration of Ukraine takes an active part in the functioning of the international human rights system of the UN and the Council of Europe, and has also officially assumed international obligations in terms of ensuring the rights and freedoms of persons with disabilities. A significant number of such obligations have been fulfilled, but a number of

provisions of the UN Convention on the Rights of Persons with Disabilities are still often ignored, which makes life difficult for this category of citizens.

In view of this, the need for further search and development of legal instruments for the interaction of international institutions and domestic subjects of power regarding the implementation of an effective system of administrative and legal means of ensuring the rights and freedoms of persons with disabilities in Ukraine does not disappear from the agenda.

It deserves special attention that the human rights activities of international organizations and international standards for ensuring the rights and freedoms of people, in particular persons with disabilities, by public authorities have become the subject of scientific research by many Ukrainian scientists. A number of important issues related to this problem have been subjected to theoretical and legal analysis, but the issues of interdependence of the implementation of Ukraine's international obligations and the effectiveness of the use of administrative and legal means of ensuring the rights and freedoms of persons with disabilities remain insufficiently considered.

## **1. Objectives**

The purpose of the study is to clarify the essence and functions of the international convention and institutional mechanism for ensuring human rights, as well as the main directions of its interaction with the national system of public realization and protection of the rights, freedoms and legitimate interests of persons with disabilities of Ukraine.

## **2. Materials and methods**

The article is based on a legal analysis of the international legal acts of the UN and the Council of Europe, the provisions of current Ukrainian legislation and a general overview of practice in the field of application of administrative and legal instruments regarding the observance and protection of the rights, freedoms and legitimate interests of persons with disabilities by certain competent bodies of the executive power and officials (Cabinet of Ministers of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Economy of Ukraine, Ministry of Reintegration of Temporarily Occupied Territories of Ukraine, Ministry of Justice of Ukraine, Commissioner of the President of Ukraine for the Rights of Persons with Disabilities, Government Commissioner for the Rights of Persons with Disabilities disability).

The methodological basis of the article is formed by a set of methods of scientific knowledge, in particular, systemic-functional, formal-legal, technical-legal methods contributed to the disclosure of the essence, content and functional orientation of the contractual-legal and organizational-legal aspects of the international convention-institutional mechanism for the observance and protection of human rights.

Taking into account the administrative-legal direction of international standards for ensuring the rights and freedoms of persons with disabilities, relevant international documents are systematized in five blocks. The specifics of the legal status of the relevant competent bodies of the public administration of Ukraine and officials are also revealed.

The structural-analytical method, methods of analysis and synthesis made it possible to reveal the levels of the national system of administrative and legal protection of the rights and freedoms of persons with disabilities and to propose priority measures for the fulfillment of Ukraine's international obligations in the field of implementation of the Convention on the Rights of Persons with Disabilities.

The specified measures provide for the introduction of a legal mechanism of state statistical monitoring in the field of education, construction and transport in relation to persons with disabilities, the development of project proposals for the use of funds of international financial support taking into account the needs of persons with disabilities, the development of a joint plan of measures to promote the provision of assistance by representatives of international organizations, who are in the temporarily occupied territories.

### **3. Results and discussion**

It is generally accepted in international law that the international convention-institutional mechanism for ensuring the rights and freedoms of a person includes two components: the contractual-legal (conventional) aspect - international acts and treaties on human rights, which define the list of relevant objects of state protection, general principles, ways, methods, directions of its implementation; organizational and legal (institutional) aspect – the statutory activity of international organizations and other relevant competent bodies and officials who, in order to realize their legal status, exercise control (supervision) over the correct implementation into the practical plane of the established international approaches to ensuring the rights and freedoms of man and citizen, take measures to stop relevant violations.

Based on the administrative-legal direction of international standards for ensuring the rights and freedoms of persons with disabilities, we systematize relevant international documents, which will allow us to determine the basic elements of the above-mentioned conventional component of the human rights protection mechanism.

The first block of legal acts includes the main doctrinal international acts of the UN, which are the basis of the global system of human rights protection. These documents establish the legal obligations of the public authorities to guarantee the rights and freedoms of the less protected population, as well as define the basic principles of the application of appropriate legal remedies and the restoration of violated rights (Kondratenko *et al.*, 2020).

The second block consists of numerous conventions and recommendations of the World Health Organization (WHO), the International Labor Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), which establish requirements in a recommended or mandatory form to national bodies of public administration in their spheres of competence. Such legal acts are not only of a general nature, but also a number of them are devoted to solving the problems of persons with disabilities in matters of employment and employment, education, social security, etc.

The third block concerns international European regional institutions, primarily conventions, resolutions and recommendations of the Parliamentary Assembly and the Committee of Ministers of the Council of Europe. Taking into account the provisions of legal acts on human rights, the legal grounds and conditions for the administrative and legal provision of the rights and freedoms of various categories of citizens of the member states of the Council of Europe have been expanded and specified.

The fourth block is of a specialized nature, which relate exclusively to the implementation and protection of the rights and freedoms of persons with disabilities, adopted mainly by the UN and the Council of Europe, their statutory bodies and relevant officials. The specified documents define the framework for the implementation of the legal status of public administration bodies and the use of appropriate administrative and legal means to ensure the rights and freedoms of persons with disabilities in the main spheres of social life.

The fifth block includes a significant number of documents adopted by various international organizations and other competent entities, but common to them is the regulation of certain important issues related to the implementation and protection of human rights and freedoms, where a certain number of provisions are partially or fully devoted to individuals with a disability.

The conventional component of the international mechanism for ensuring the rights and freedoms of persons with disabilities is a fundamental and systemic entity supplemented by legal means of an institutional nature. The statutory activities of relevant international organizations, including, if we speak directly about our country, the UN and the Council of Europe, are entrusted with the duty of ensuring compliance with international legal standards on human rights, while simultaneously promoting development taking into account modern requirements of international legislation on creating equal opportunities for people with impaired body functions. Along with a number of international bodies, the UN Committee on the Rights of Persons with Disabilities (Convention on the Rights of Persons with Disabilities, 2006) has a specialized nature.

The Council of Europe also pursues a similar goal in its activities, that is, achieving greater unity among its members in order to preserve and implement the ideals and principles that are the common property of the European community. In this context, ensuring the recognition of the principles of the rule of law and the exercise of human rights and fundamental freedoms by all persons under the jurisdiction of the said regional authority (Statute of the Council of Europe, 1949) comes first.

To enable the proper implementation of the provisions of the Convention on the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights (ECtHR) functions, which is extremely important within the outlined issues, because it acts as a court that, according to the established procedure, resolves disputes regarding violated individual rights on the territory of the member states of the Council of Europe. The practice of the ECtHR is a component of domestic law, while its decisions are binding on all subjects of public and private law in Ukraine (European Court of Human Rights, 2022).

International human rights mechanisms and the system of administrative and legal protection of the rights and freedoms of persons with disabilities in Ukraine are closely interconnected, where cooperation between them is implemented in general and special directions by competent bodies and officials of the public administration, as well as by other subjects authorized to apply appropriate legal remedies.

The general direction of interaction includes certain forms and types of coordination of agreed actions and decisions made regarding the implementation and protection of the rights of various segments of the population on the part of international institutions and national authorities, where the following vectors are the main ones:

1. participation in scheduled and unscheduled meetings of international organizations, as part of which includes our country;

2. international cooperation and conclusion of international agreements with international institutions and other countries in the field of human rights, where the leading role belongs to cooperation with the Council of Europe (Government portal. Unified web portal of executive authorities of Ukraine, 2022);
3. Ukraine's fulfillment of formal duties and obligations to respected international organizations, in particular the UN, the Council of Europe, the OSCE, as well as monitoring their compliance in accordance with the relevant recommendations and resolutions of the Parliamentary Assembly of the Council of Europe;
4. the functioning of human rights bodies and officials who cooperate with international institutions in their activities, in particular the Office of International Cooperation of the Secretariat of the Plenipotentiary of the Verkhovna Rada of Ukraine on Human Rights and the Government Plenipotentiary for ECHR Affairs (Official website of the Ministry of Justice of Ukraine, 2022).

The specifics of the legal and social status of persons with disabilities require the specification of the relevant elements of the international convention-institutional human rights mechanism in order to best enable the fulfillment of their needs on an equal basis with others, which is provided for by the provisions of the Constitution of Ukraine and the Convention on the Rights of Persons with Disabilities. (Sobol *et al.*, 2020).

Taking into account the criterion of our country's fulfillment of international obligations on human rights, the domestic system of ensuring the rights and freedoms of persons with disabilities should be presented in the form of a three-level structure, which includes the following steps: a) organizational level, which is implemented by the Commissioner of the President of Ukraine for the Rights of Persons with Disabilities and the Government Commissioner for the Rights of Persons with Disabilities; b) management level – the Cabinet of Ministers of Ukraine; c) functional level – individual central bodies of executive power, their structural subdivisions and local self-government bodies.

The organizational level plays an important role in the system of guaranteeing the fulfillment of international obligations on the issues of ensuring the rights and freedoms of persons with disabilities, where the following tasks are implemented: 1) monitoring compliance with and facilitating Ukraine's fulfillment of international obligations in the relevant field; 2) assistance to central and local subjects of public administration in the fulfillment of international obligations regarding the observance of the rights and freedoms of persons with disabilities, enshrined in international legal acts and international treaties; 3) implementation of image and information-explanatory activities at the international and national level



regarding the rights and freedoms of persons with disabilities, as well as the results of the activities of competent subjects of public administration at the expense of the effectiveness of ensuring compliance with and fulfillment of international human rights obligations.

The executive level of the implementation of international obligations on the rights and freedoms of persons with disabilities is implemented by the Cabinet of Ministers of Ukraine and provides for the following tasks: 1) implementation of measures to establish intergovernmental cooperation and conclusion of international agreements on the rights and freedoms of persons with disabilities; 2) development, approval and implementation of state target programs on the harmonization of domestic legislation and the implementation of law enforcement practices of public administration entities to ensure the rights and freedoms of persons with disabilities in accordance with international human rights standards; 3) direction, coordination and control over the activities of central and local executive bodies regarding the proper, full and timely fulfillment of international obligations to respect the rights and freedoms of people with persistent violations of body functions.

Practical implementation of international standards and international agreements on the rights of persons with disabilities is entrusted to a number of ministries and other executive authorities. The functional level of the fulfillment of international obligations to ensure the rights and freedoms of persons with disabilities involves the implementation of the following tasks: 1) ensuring the formation and implementation of state policy in the relevant areas regarding the creation of appropriate living conditions in society for persons with disabilities on a level with other citizens, taking into account international standards on human rights; 2) development of projects of normative legal acts on issues that belong to their competence regarding persons with disabilities, based on the provisions of the Convention on the Rights of Persons with Disabilities and other relevant international acts; 3) implementation of state social standards and guarantees for persons with disabilities, taking into account the rules and regulations established in international legal acts and international agreements; 4) application of a set of administrative and legal means aimed at ensuring the fulfillment of international obligations on the rights and freedoms of persons with disabilities; 5) implementation of coordination and analytical activities in relation to public administration bodies regarding the fulfillment of their duties to ensure the rights and freedoms of persons with disabilities according to international human rights standards.

The analysis of the updated regulatory and legal array made it possible to find out the list of unfulfilled planned measures provided for by the National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities for the period until 2025 (National

Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities for the Period until 2025, 2022). In connection with this, the meticulous fulfillment of assumed international obligations through the following measures, which must be implemented in the near future, looks urgent, in particular:

1. The Ministry of Education and Science of Ukraine and the State Statistics Service of Ukraine to introduce an effective legal mechanism of state statistical monitoring in the field of education, construction and transport regarding persons with disabilities;
2. To the Ministry of Social Policy of Ukraine and the Ministry of Economy of Ukraine to develop project proposals for the use of funds of international financial support, taking into account the needs of persons with disabilities, primarily in the field of education, culture and sports;
3. The Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine and the Ministry of Social Policy of Ukraine should work out a joint plan of measures to promote the provision of assistance by representatives of international organizations to persons with disabilities who are in the temporarily occupied territories.

## Conclusions

Based on the results of the research on the interaction of the international convention-institutional human rights mechanism and the national system of administrative-legal protection of the rights and freedoms of persons with disabilities in Ukraine, it is appropriate to draw the following general conclusions.

1. The international convention-institutional mechanism for the observance and protection of the rights and freedoms of persons with disabilities should be understood as a unified and formalized system of legal means, methods and forms provided for by the provisions of international human rights law and special legislation regarding people with special needs, which are carried out by competent international institutions with the aim of implementing, protecting and restoring the violated rights and freedoms of persons with disabilities, as well as a set of legal guarantees of compliance and implementation of international standards for ensuring the rights and freedoms of the specified category of persons by national public administrations.

2. The following functions are inherent to the international convention-institutional mechanism for ensuring the rights and freedoms of persons with disabilities:

- humanistic function - the spread of ideals in the world regarding the promotion and development of respect for the rights of persons with disabilities;
- integration function - promotion of interpenetration of provisions between international law on issues of ensuring the rights and freedoms of persons with disabilities and domestic law;
- law enforcement function – protection and restoration of violated rights and freedoms of persons with disabilities;
- regulatory function – establishment of legal prescriptions regarding the implementation and protection of the rights and freedoms of persons with disabilities, as well as the obligations of national public authorities on defined issues, objectified in international legal acts;
- control function – monitoring of the implementation of relevant international standards into national legislation, as well as control of the fulfillment of international obligations undertaken by national public authorities;
- jurisdictional function – consideration and resolution of cases of violation of the rights and freedoms of persons with disabilities and rendering of a justified court decision;
- coordination function - coordination of actions and adopted decisions of subjects of international law regarding the provision of rights and freedoms of persons with disabilities;
- informational and explanatory function - development and distribution among the relevant member states of international organizations of informational, methodical and other similar materials regarding the means, methods and forms of implementation and protection of the rights and freedoms of persons with disabilities.

The interaction between the subjects of the public administration of Ukraine and the international convention-institutional mechanism for ensuring the rights and freedoms of persons with disabilities is complex and multifaceted, based on the following principles: a) a functional combination of the primacy of international law and the independence of domestic law on the implementation and protection of rights and freedoms of people with disabilities; b) consistency of the goal and objectives of the implementation of the state policy of Ukraine to ensure the rights and freedoms of people with disabilities and relevant international standards; c) coordinated nature of joint actions and decisions taken to ensure the rights and freedoms of persons with disabilities between international organizations and public administration bodies; d) mandatory observance and fulfillment by public administration bodies of international obligations to ensure the rights and freedoms of persons with disabilities.

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