

Studying Laws to Protect People with Disabilities: The Case of Vietnam

Author Details: Minh Tuyen Pham, Phd

People's Tribunal President of Bac Ninh province-46 Nguyen Gia Thieu, Suoi Hoa Ward, Bac Ninh City

Abstract:

The objective of this paper is to assess the current situation of the legal provisions on the rights and protection of the interests of people with disabilities in Vietnam and thereby analyze the difficulties and problems that need to be addressed. Based on an overview of the current legal provisions on the rights and protection of benefits for people with disabilities, the author analyzed the difficulties to overcome and recommended some solutions to ensure benefits and protect to protect people with disabilities in Vietnam.

Keywords: *Persons with disabilities, Law on persons with disabilities, Vietnam.*

1. Introduction

At the 61st meeting of the United Nations General Assembly on December 13th, 2006, the delegates agreed to adopt the Convention on the Rights of Persons with Disabilities (CRPD). This is the first international legal normative document confirming every access of persons with disabilities as provided in the Convention. The Convention aims to promote, protect and ensure that persons with disabilities enjoy full and equal rights of all human rights and fundamental freedoms, and at the same time, promote respect for their dignity. On March 30th, 2007, the CRPD and the Optional Protocol were officially opened to countries or territories that could be signed at any time at the United Nations headquarters in New York. After being ratified by 20 countries, the CRPD and the Optional Protocol officially took effect on May 3rd, 2008. As of September 2014, the CRPD has been signed by 158 countries, of which 150 have approved it.

Vietnam is one of the countries that are very active in joining international conventions related to human rights. Up to now, Vietnam has ratified most of the important international human rights Conventions. In 2010, the National Assembly promulgated the Law on Persons with disabilities to replace the Ordinance on persons with disabilities; State agencies, within their competence, amend, supplement and issue new relevant legal documents to ensure the basic rights of persons with disabilities according to CRPD's recommendations.¹

In this article, I focus on researching the laws of Vietnam on the protection of the rights of people with disabilities from reality and the problems that need to be overcome.

2. Literature review

2.1. The reality of persons with disabilities in Vietnam

In fact, the disabled workforce accounts for a significant proportion in Vietnam today. According to the statistics of the National Committee on persons with disabilities, by the beginning of 2018, there were about eight million people with disabilities from the age of five years old, accounting for 7.8% of the population. Among the persons with disabilities, 58% are women and 42% are men. Most of the persons with disabilities of working age live in rural areas with the main jobs are to help their family to work in the field of agriculture, forestry, fishery, and low income. About 40% of persons with disabilities are at working age and still have the working capacity, of which only 30% have jobs and income for themselves, their families and society. This means that about two million disabled people are able to work but they have not yet engaged in labor or without a job. This rate is expected to increase along with the population aging trend.²

According to the survey result, households with disabled members are often poorer; children with disabilities are at risk of having fewer chances of attending school than their peers; employment opportunities

¹ See the article of Bach Duong on the Law and Society Newspaper on July 3rd, 2018

² See Nhat Anh "Ensuring equal labor rights for persons with disabilities" on Electronic People's Newspaper dated March 30th, 2019

for persons with disabilities are also lower than those without disabilities. The survey results also showed that children with disabilities have fewer chances of attending school than children without disabilities. The higher the levels of education, the lower the chance of attending school for children with disabilities are. By high school, less than one-third of children with disabilities attend school at the right age, compared to two-thirds of children without disabilities. Although the integration of children with disabilities into other children and learning the same curriculum has had positive results, only 2% of primary and secondary schools are designed to be suitable for students with disabilities and about one-seventh of the schools have a teacher trained about disability.³

In particular, the number of persons with disabilities living in rural areas accounted for 75.5%. The education level of persons with disabilities in Vietnam is very low: 41% of them can only read and write; 19.5% finished primary school; 2.75% have professional secondary education or vocational certificates, and less than 0.1% have college or university degrees. The number of disabled people is high but has a low education level, making it difficult for them to find jobs. Currently, only 50% of people with disabilities of working age have jobs and mainly working in the agricultural sector (over 70%).⁴

2.2. Characteristics of persons with disabilities.

We first need to understand what are disabled people to understand their characteristics and difficulties.

Article 2 of Vietnam's 2010 Law on Persons with Disabilities has specific provisions on the concept of Persons with disabilities, whereby Persons with disabilities are those who have the defect of one or more body parts or functional impairments which are shown as the forms of disability make working, living and studying difficult.

Article 3 of the Law on Persons with Disabilities also specifies 6 types of disability and 3 levels of disability,

There are the following types of disabilities:

- Mobility disability;
- Hearing and speech disabilities;
- Visual disability;
- Neurological and mental disabilities;
- Intellectual disability;
- Other disabilities.

Persons with disabilities are divided by the following levels of disability:

- People with extremely severe disabilities are those who are unable to perform daily living activities by themselves due to their disability.

- People with moderate disabilities are those who, due to their disability, cannot perform some of the daily life activities;

- People with mild disabilities are those who do not belong to the two cases above.

From the above concept, it can be understood that persons with disabilities are the people who have one or more physical or mental disabilities. These defects directly affect the ability to move or intellectually of infected people. Such defects cause significant impairments and long-term effects on the lives of persons with disabilities. The physical or mental impairment of disabled people will reduce the ability to exercise and to think about cognition. Because persons with disabilities are often those who lack a part of their body or mind, which leads to difficulties in their movements, personal activities or cognitive limitations, so they really need to have the help of others.

Because of physical defects, the handicapped often have the following difficulty characteristics:

³ According to SGGP on Friday, January 11th, 2019

⁴ According to Tran Anh wrote on the website HOANHAP.VN on February 2nd, 2017

Firstly: They often have the mentality of self-deprecation, always withdrawn, self-contained and afraid to not communicate with other people. People with mental disadvantages often have a hard time affecting their learning, due to the intellectual disability restriction; the acquisition of knowledge is usually the slower other than people of the same age.

Secondly: Due to learning difficulties, it is very difficult for them to find jobs. Enterprises, production bases and organizations are not interested in recruiting disabled people. In case they are accepted to work, they have not been helped by colleagues. Qualifications and skills are also challenges for disabled people when finding jobs.

Thirdly: Difficulties in marriage. In fact, not all people with disabilities can be qualified for marriage. However, even in cases that people with disabilities are eligible for marriage (physiological and intellectual functions), they often have guilt about their poor physique and health. Besides, prejudices against the fact that people with disabilities get married and the fear of disability and the ability to take care of families are the issues that prevent people with disabilities from finding happiness. In addition, there are still many condemnable acts that are discrimination, disrespect, alienation, unfair treatment of a few people towards persons with disabilities when they integrate into the community.

2.3. The causes of the disabilities

It can be affirmed that a body with disability is the unexpectant of each individual, family, and society. But people with disabilities still suffer from disadvantages when they are born with physical and mental disabilities. Disability of people in Vietnam are often caused by the following reason:

Firstly: Due to the effects of the war, there is an increase in the number of disabled people in Vietnam.

Vietnam experienced two wars of horrific scale. The disabilities of veterans and civilians have direct consequences from bombs or acts of torture and imprisonment. Limbs (limb defects) are common types. In terms of psychological disorders, post-traumatic stress disorder - a form of obsession, fear of traumatic past, can occur with different severity depending on the severity of the trauma. The use of about 76.9 million liters of herbicides containing dioxin in the period from 1962 to 1971 that the US military sprayed on Central and Southern Vietnam with the original purpose of only defoliating forest trees to the guerrilla army of The National Front of Liberation of South Vietnam had no hiding places, which had serious consequences. Defects in babies born by parents who have been exposed are thought to be directly attributable to dioxin poisoning and may result in the direct exposure of 2.1 to 4.8 million people with dioxin in the period above.⁵

Secondly: Causes of birth defects.

This cause usually appears right in the mother's pregnancy with the risk of being sick, getting flu, being poisoned or inherited diseases causing birth defects to the fetus. It is also possible that in the process of nurturing, the mother did not have the necessary attention to take care of the child, resulting in malnutrition, dengue fever or meningitis, accident, etc.

3. Legal regulations of Vietnam on protecting persons with disabilities

It can be affirmed that the policies of caring and supporting persons with disabilities are always of special interest to our Party and State. Right from achieving national independence in August 1945, the 1946 Constitution stipulates: "All Vietnamese citizens are equal before the law, and they can participate in the government and the national construction according to their talent and virtue." Inheriting and promoting the 1946 Constitution, the Revised Constitutions in 1959, 1980, 1992 and the 2013 Constitution all stipulate: "In the Socialist Republic of Vietnam, political, civil, economic, cultural and social rights of human and civil rights

⁵ According to Wikipedia

are recognized, respected, protected and guaranteed in accordance with the Constitution. and the law”. Materializing the above Constitutions, the National Assembly has promulgated the Law on Persons with Disabilities, the Government has issued and implemented several policies to protect, care for and assist persons with disabilities, thus, spiritual life and position of people with disabilities have been increasingly improved in line with the socio-economic development. Awareness of disability and disabled people issues in Viet Nam is consistent with the regional and global approaches of human rights and citizenship. The respect of all levels of government, mass organizations and society for people with disabilities is a favorable condition for these people in Vietnam to rise up to integrate into the community and determine their own life and future.

Along with the positive change in awareness, support activities for people with disabilities have also changed radically, from philanthropic assistance to developmental perspective. In addition to ensuring living standards, the disabled are also facilitated to support jobs, vocational training, education, health, etc... All of these supports have created favorable conditions for persons with disabilities to eliminate their inferiority complex, confidently rise to social inclusion and contribute positively to the country's socio-economic development process.⁶

In particular, the Law on Vietnamese Persons with Disabilities, which was passed by the National Assembly of the Socialist Republic of Vietnam in 2010, has specific provisions on disability protection in Vietnam as follows:

Article 4. Rights and obligations of persons with disabilities

1. People with disabilities are guaranteed the following rights:

- a) Equal participation in social activities;
- b) Living independently and integrating into the community;
- c) To be exempted or reduced some contributions to social activities;
- d) To receive health care, rehabilitation, education, vocational training, employment, legal aid, access to public works, transportation, information technology, cultural services, sports, tourism, and other services appropriate to the type and level of disability;
- d) Other rights prescribed by law.

2. Persons with disabilities fulfill their civic obligations in accordance with the law.

Article 5. State policies towards persons with disabilities

1. Annually, the State allocates budget funds for the implementation of policies on persons with disabilities.

2. Prevention and minimization of congenital disabilities, disabilities caused by injury or diseases and other dangers of disability.

3. Social relief; support for persons with disabilities in healthcare, education, vocational training, employment, culture, sports, entertainment, access to public facilities and information technology, participation in transport; prioritized implementation of social relief policies and support for children and elderly persons with disabilities.

4. Incorporation of policies on persons with disabilities into socio-economic development policies.

5. Creation of conditions for persons with disabilities to have orthopedic operations and functional rehabilitation; to surmount difficulties, live independently and integrate into the community.

⁶ See more posts by Hong Phuong PM February 19th, 2019

6. Training and retraining of counselors and caretakers for persons with disabilities.
7. Encouragement of assistance activities for persons with disabilities.
8. Creation of conditions for the operation of organizations of persons with disabilities and organizations for persons with disabilities.
9. Commendation of agencies, organizations, and individuals that make achievements and contributions in assisting persons with disabilities.
10. Strict punishment of agencies, organizations or individuals that violate this Law and relevant laws.

Article 7. Responsibilities of agencies, organizations, and individuals

1. Agencies and organizations shall, within the scope of their respective tasks and powers, care for. and protect the legitimate rights and interests of persons with disabilities.
2. The Vietnam Fatherland Front and its member organizations shall campaign for social assistance to persons with disabilities in access to social services and integration into the community; to participate in and supervise the implementation of policies, laws, and programs as well as projects to assist persons with disabilities.
3. All individuals shall respect, support and assist persons with disabilities.

Article 8. Responsibility of families

1. Families are responsible for educating and creating conditions for family members to raise awareness about disability issues; apply measures to prevent and minimize congenital disability, disability caused by injury or disease and other dangers of disability.
2. Families of persons with disabilities shall:
 - a) Protect, nurture and care for persons with disabilities;
 - b) Create conditions for persons with disabilities to have healthcare and exercise their rights and perform their obligations;
 - c) To respect the opinions of persons with disabilities in deciding on matters related to their own lives and families;
 - d) To implement Clause 1 of this Article.

Article 14. Prohibited acts

1. Showing stigma or discrimination against persons with disabilities.
2. Infringing upon physical body, dignity, honor, property or legitimate rights and interests of persons with disabilities.
3. Enticing or forcing persons with disabilities to violate laws or social ethics.
4. Abusing persons with disabilities, organizations of persons with disabilities, organizations for persons with disabilities, images, personal information and status of persons with disabilities for personal profits or commission of violations.
5. Failing to perform or to fulfill the responsibility to nurture and take care of persons with disabilities by persons who have the responsibility to nurture and take care of persons with disabilities.
6. Obstructing the right of persons with disabilities to marriage or child adoption.
7. Being dishonest in determining the degrees of disability or granting disability certificates.

In order to ensure the unified leadership on the work of persons with disabilities, on November 1, 2019, the Secretariat of the Central Committee of the Communist Party of Vietnam also issued Directive No. 39-CT / TW on “Strengthening Party leadership on the work of Person with disabilities ”whereby the Party committees and organizations need to perform the following tasks well:

Firstly: It is necessary to raise the awareness and responsibility of the Party committees, party organizations, agencies, organizations, and people in implementing the Party's guidelines and views, the State's policies and laws on persons with disabilities

Secondly: Strengthening the effectiveness and efficiency of state management in the implementation of policies and laws on persons with disabilities

Thirdly: Promote socialization of activities to support persons with disabilities

Fourthly: Promote the role and responsibilities of the Vietnam Fatherland Front, socio-political organizations and social organizations towards organizations of people with disabilities

Fifthly: Improve the quality and performance of organizations of persons with disabilities

In addition to the provisions of domestic law to ensure the rights of persons with disabilities on March 11, General Secretary and President Nguyen Phu Trong signed a document approving Vietnam's accession to Convention 159 The International Labor Organization (ILO) on career re-employment and employment for persons with disabilities strongly affirms Vietnam's commitment to ensuring that workers with disabilities are not discriminated against in employment. do.

Accession to and implementation of the Convention 159 will be a new step in improving Vietnam's current legal framework to support people with disabilities, contributing to the continued improvement of labor market policies and institutions. modern direction, in accordance with international labor standards, ensuring the rights of disadvantaged groups in the labor market⁷

In order to protect persons with disabilities in Vietnam in legal proceedings, The Criminal Procedure Code also stipulates in Article 76 of the cases where defense counsels are required in criminal proceedings against persons with mental and physical disadvantages.

Under the provisions of Clause 2, Article 76 of the CrPC, in every case if the accused or defendant is a person with mental or physical disadvantages, the proceeding-conducting agencies must have the responsibility to request the Bar Association to assign them, defense counsels, for them, if no defense counsels in this case are serious violations of criminal procedure code. Such regulation reflects the State's policy to protect the rights of people with mental or physical disadvantages when they participate in criminal proceedings, without giving them the disadvantage of participating in the criminal proceedings. In addition, Article 51 of the Criminal code also stipulates extenuating circumstances for persons with disabilities who commit crimes:

“p. Offenders are persons with severe disabilities or particularly severe disabilities.

q. An offender is a person with a disease with the limited ability to perceive or control his / her acts.”

In closing: It can be affirmed that Vietnam is a developing country, besides focusing on economic development, social security policies are also very concerned, especially for persons with disabilities in Vietnam.

4. Discussion

Firstly, on the provisions of Vietnamese criminal law

As analyzed above, the Criminal Procedure Code does not have any specific provisions to protect persons with disabilities. Provisions relating to disabled people are only stipulated in the Labor Code and in the 2017 person with disabilities, while people with mental or physical disadvantages are only specified in Clause

⁷ See more posts by Hong Phuong PM February 19th, 2019

2, Article 76 of the CRPC. Up to now, there are not any specific documents to understand how people with mental or physical disadvantages have their rights protected like persons with disabilities. In fact, the current trial in Vietnam still considers those who are blind, dumb and deaf to be physically disadvantaged, while mental disadvantages are difficult to distinguish. Therefore, the protection of the rights of persons with disabilities and people with mental or physical disadvantages is very difficult to manipulate if not careful can lead to injustice or commit crimes in the cases considered are people with mental disadvantages.

Secondly, about employment for persons with disabilities

In fact, in Vietnam today, the disabled workforce accounts for a significant proportion. Statistics of the National Committee on persons with disabilities show that, by the beginning of 2018, there were about eight million persons with disabilities from the age of five years old, accounting for 7.8% of the population. Among persons with disabilities, 58% are women and 42% are men. The majority of working-age persons with disabilities live in rural areas, mainly assist families to work in agriculture, forestry, fishery, and low income. About 40% of persons with disabilities are at working age and have the working capacity, of which only 30% have jobs, creating income for themselves, their families and society. This means that about two million persons with disabilities are able to work but not yet engaged in labor or without a job.

Although Vietnam has a current system of legal documents, such as Law on People with Disabilities in 2010; Law on vocational education, Labour Law; Construction Law; Law on road traffic; Law on Health Insurance; Law on occupational safety and hygiene ... with many important regulations related to labor rehabilitation, vocational training, job placement counseling, job creation, with the support of the State and the community for persons with disabilities. However, in addition to the achieved results, creating jobs for persons with disabilities faces many difficulties, persons with disabilities still find it difficult to access preferential loans for vocational training or to open production and business establishments. The percentage of persons with disabilities after vocational training finding jobs is low and mainly due to self-employment. In addition, although the provisions of the Law on persons with disabilities require agencies, businesses, and organizations not to refuse to recruit qualified people with disabilities, many employers use many units and organizations are not ready to accept people with disabilities...⁸

5. Recommendations

- There should be separate provisions in the criminal procedure law when dealing with criminal liability for the disabled.

- There should be specific provisions and clear guidelines in determining how people are mentally or physically disadvantaged with people with disabilities to ensure fairness in Vietnam's Criminal Law.

- Need specific policies to support employment for persons with disabilities such as: To create the best conditions for persons with disabilities to access the State's capital and should not force them to bear interest when borrowing money to do business.

There are strict sanctions for business owners who do not have policies to receive and support employment for persons with disabilities in compliance with the provisions of the Law on persons with disabilities 2010 and for people who discriminate against persons with disabilities.

- In terms of social security policies, the State should further improve the level of allowances for people with severe disabilities who cannot work so that they can ensure a minimum life.

- Need specific policies to support employment for persons with disabilities such as Contests and playgrounds should be organized to create conditions for persons with disabilities to participate in social activities, thereby improving their morale. Material assistance is represented by practical valuable work such as wheelchair donation, donation of artificial limbs, hearing aids, surgeries, vocational training and free job hunting, etc.

- Create the best conditions for persons with disabilities to integrate into the community, helping them to eliminate anxiety and low self-esteem.

⁸ According to Nhat Anh on "Protection of equal labor rights for persons with disabilities"

References:

- i. *The Criminal Procedure Code 2015*
- ii. *The Criminal Code of Vietnam 2015*
- iii. *Law on persons with disabilities 2010*
- iv. *Law on Health Insurance*
- v. *Labour code*
- vi. *Convention on the Rights of Persons with Disabilities (CRPD)*