Rejecting the Medical Model of Disability in Belarusian Sports Law: A Long Way to Nowhere?

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Abstract: The article deals with the Belarusian legislation and international legal acts in order to answer the question whether the rejection of the medical model of disability is implemented in Belarusian sports law. The author studies the concept of a disabled person, models of disability and legal regulation of adaptive sports from the point of view of sports law and human rights. It is proved that despite the declaration of non-discrimination of persons with disabilities, the problems associated with the medical model of disability remain very relevant in Belarus. The Belarusian legislation uses the concept of formal equality, but it is supplemented by victimization of disability and objectification of persons with disabilities. The emphasis is shifted to the charity nature of medical care, which brings us back to the medical model. The article argues the importance of adopting a Draft Law on Adaptive Physical Culture and Adaptive Sports to eliminate the existing shortcomings of the legal regulation of sports for persons with disabilities. The author also emphasizes that equalization of opportunities in sports should be defined much wider than providing sports facilities, ensuring equal conditions and opportunities for the development of adaptive movement in relation to the conditions and opportunities for the development of non-disabled sports and non-disabled physical culture. Equalization of opportunities should include a freedom of adaptability as a key category and one of the basic principles of the adaptive movement.

Keywords: disabled person; person with a disability; medical model of disability; social mode of disability; Belarus; sports law; adaptive law

## Introduction

Medical model of disability is considered to be outdated as it does not meet modern human rights standards. In recent decades, other models of disability (such as the social model) have been established in international acts. The Belarusian legislation does not lag behind the trends and also declares the rejection of ableism and stigmatization of disability. It aims to protect human rights of persons with disabilities; however, a detailed study of domestic acts reveals that the real situation is quite different.

The problems of sports law for persons with disabilities are particularly acute, which is due to the fact that sports law and human rights of people with disabilities are considered to be two different areas. For a long time, the concepts of “disabled persons” and “sports” were regarded incompatible, so the sports law did not exist for people with disabilities either in theory or in practice.

Significant changes in this area began at the end of the 20th century with high achievements of Belarusian disabled athletes. For the first time the representatives of Belarus took part in the Paralympic games as a separate team in 1994 in Lillehammer. Since this year, Belarusian athletes with disabilities have been constantly participating in international competitions, winning hundreds of medals annually.

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Significant achievements of Belarusian athletes with disabilities especially contrast with the shortcomings of legal regulation. To improve the situation, the Parliament adopted a number of laws regulating human rights of disabled persons. However, the medical model of disability, remaining in people’s minds, continues to have a negative impact on legal instruments and their application in sports law. Being “the world’s largest minority” (Stein and Lord, 2010) disabled persons stay one of the most vulnerable social groups in Belarus.

The article proves that improvement of the situation is possible through the consistent rejection of the medical model of disability, which implies not only declarative provisions, but effective mechanisms to protect Belarusian athletes from ableism and stigmatization, provided for in the Draft Law on Adaptive Physical Culture and Adaptive Sports (APCAS).

I. Materials, Methods and Questions

The article is based on the analysis of domestic Belarusian legislation on sports rights of persons with disabilities and its comparison with the provisions of international law.

Domestic legislation includes such key acts as the Constitution of the Republic of Belarus, general legal acts (the Law on Physical Culture and Sports (2014), etc.), the Law on Prevention of Disability and Rehabilitation of Persons with Disabilities, PDRPD (2008) as a special act on rights of persons with disabilities and two draft laws. The Draft Law on the Rights of Persons with Disabilities and their Social Integration (RPDSI) is analyzed as an act which is fully updated and is expected to be adopted in the near future. The Draft Law on Adaptive Physical Culture and Adaptive Sports (APCAS) is studied as more relevant to sports law and one of the few acts developed with the participation of associations of disabled people. However, the Draft Law APCAS is at the early stage of its adoption. Commissions of the Parliament of the Republic of Belarus have repeatedly discussed its provisions, but the need to adopt such a law is now called into question. Some authorities say that the necessary regulations are either already included or will be included in the legislation in the near future. The
Draft Law APCAS is studied in the context of the importance of its adoption in protecting human rights of athletes with disabilities.


One of the most important acts of the recent decades is the Convention on the Rights of Persons with Disabilities, CRPD (2006). It does not establish new rights for persons with disabilities, but indicates ways to implement universally recognized human rights for persons with disabilities. Eighty-one states and the European Union signed the CRPD at its opening ceremony. It is “the highest number of opening signatures recorded for any human rights treaty” (Report of the Secretary-General as to the Status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol, 2007). The Republic of Belarus became the 160th country to sign it.

Despite the non-ratification of some international acts by the Republic of Belarus, their provisions may be applied according to part 1 of Art. 8 of the Constitution. It says that the Republic of Belarus recognizes the priority of generally recognized principles of international law and ensures that legislation complies with them. In practice, there is a problem in recognizing a provision as a generally recognized principle of international law. However, this problem is not very relevant to the article, since the provisions are studied in the context of their adoption into domestic legislation.

The article analyzes the wordings and general notions in international and domestic acts in order to define whether domestic legislation
fully covers and protects the rights of persons with disabilities in sports. The author examines the concept of a disabled person, models of disability and legal regulation of adaptive sports from the point of view of sports law and human rights and argues that the problems of the medical model of disability remain very relevant in Belarus.

In the article, the terms “a person with a disability,” “a disabled person,” “a person with impairments,” “a person with special features/characteristics” are used as synonyms, but the author fully supports the concept of the primacy of the person and the rejection of ableism and objectification of persons with disabilities.

II. Medical Model of Disability is Gone, Isn’t It?

The concept of “a disabled person” is changing over time and adaptable to the understanding of the main characteristics of disability. It is used in different international and domestic acts and cannot be recognized as a single one. To a large extent, the definition is related to a general model of disability.

The early approaches to regulating disability are now combined into the medical model (sometimes it is called biologistic or organicist (Domínguez and Luna, 2019, pp. 77–90). It “locates disability within individuals” (Marks, 2009) and looks at disability “as a defect or a disease that needs to be cured through medical intervention” (Rehabilitation International, “UN Convention on the Human Rights of People with Disabilities: Ad Hoc Committee Seventh Session — Daily Summaries,” 2006). Medical treatment is not necessarily emphasized in the definition, since it can only refer to the presence of a medical problem. Also, medical definition may emphasize the presence of a general medical issue rather than a problem. The most significant feature of the medical model is that it leaves the problem in a person, placing a negative emphasis on disability. In addition, it objectifies a person with disabilities as a person who needs special help and care.

For example, the Declaration on the Rights of Disabled Persons (DRDP) says that the term “a disabled person” means any person “unable to ensure by himself or herself, wholly or partly, the necessities
of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities” (p. 1). This definition focuses on the medical aspect, viewing it as the cause of the problems of a person with disability. In addition, it introduces the concept of normality and normal life, thus fixing the characteristic of abnormality for a person with disability.

The problem of “normality” (Ganterer and More, 2019, pp. 160–173), “normal” and “pathological” bodies (Campbell, 2009, p. 2), ableism and stigmatization of disability remains acute, despite the prohibition of discrimination. The Universal Declaration of Human Rights says that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood” (Art. 1). Art. 2 declares that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind.” Analyzing the similar provisions of the European Convention on Human Rights Fredman marks that the list of discrimination grounds is “a product of its time. On the other hand, it is non-exhaustive” (Fredman, 2016, p. 273). It provides “a list of such grounds which includes other status” (Arnardóttir, 2014, p. 648). Discrimination ground of disability “has been elevated by the European Court of Human Rights to the level of suspect discrimination grounds” (Arnardóttir, 2014, p. 649).

The recognition of disability as a discriminatory ground presupposes the rejection of the medical model of disability. Social, historical and legal evolution transformes the understanding of disability from a medical problem to “one that is defined by the complex interaction between the impairment of an individual and the sociopolitical environment” (Vanhalta, 2015). Rejection of the medical approach is usually associated with the adoption of the WPA (Kayess and French, 2008, pp. 1–3).

Modern Belarusian legislation also declares the rejection of the medical model. According to the Law PDRPD, disability is a social insufficiency caused by health disorders (Art. 1). Disability is recognized as a social problem, not a medical one. However, elements of the medical model still remain in the legislation. For example, Art. 47 of the Constitution says, that citizens of the Republic of Belarus are guaranteed the right to social care in the event of illness, disability and
other cases. On the one hand, this provision is a manifestation of social protection, but on the other hand, it stigmatizes and objectifies disabled persons. Disability is matched with the disease and is recognized as a sufficient reason for social care.

To eliminate such problems, Mabbett suggests using different definitions of disability in different spheres of social policy. “Within each sphere, definitions of disability are based on relevant comparisons which determine who should be recognized as disabled for the purposes of the policy” (Mabbet, 2005, pp. 215–220). However, despite the fact that persons with disabilities may need special facilities, they should be always treated as full members of society. In the absence of any additional legal circumstances, such persons are full-fledged subjects of law and legal relations. It is symbolic that the Declaration of Madrid (2007), which became the outcome of the Expert Group Meeting in Madrid “Making it work: civil society participation in the implementation of the Convention on the Rights of Persons with Disabilities,” ends with the words “Nothing about us without us.” Undoubtedly, disabled persons should not be viewed as “objects instead of partners and leaders” (Arstein-Kerslake et al., 2020, pp. 413–414). Thus, a single non-discriminatory approach to disability is more appropriate.

III. Equality and Rejection of the Medical Model

Rejection of the medical model raises a problem of formal equality. “The central premise of formal equality — the disregard of difference — is particularly problematic in a disability context... If the rights of human beings are the rights of all human beings, then it follows that these rights should also be the same for all human beings” (Mégret, 2008). For example, the Declaration on the Rights of Mentally Retarded Persons says that the mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings (p. 1). According to Art. 22 of the Constitution of Belarus everyone is equal before the law and has the right to equal protection of rights and legitimate interests without any discrimination.

In contrast to formal equality, substantive equality is proposed. It attempts to compensate for disadvantage and requires “alteration
of the norm to better reflect human diversity” (Kayess and French, 2008, pp. 1–34). The concept of diversity “claims the right to the full recognition of the dignity of these group of people, as they are just one possible expression of many diversities that, nowadays, are recognized in a positive way in our society” (Díaz and Ferreira, 2010, pp. 298–292).

Diversity involves rejecting the concept of normality and accepting the fact that a normal person is a theoretical model that cannot exist in reality. Diversity theory gives people the opportunity to have their own characteristics, while preserving equal dignity and rights, as guaranteed by the Universal Declaration of Human Rights and other instruments. For example, the CRPD expands the notion of personhood and requires more inclusive recognition of what it is to be human. “In relation to Article 12, it requires recognition of a pluralism of minds” (Arstein-Kerslake, 2017).

C.-M. Panaccio defends the validity of formal equality arguing its sufficiency (Panaccio, 2020, pp. 213–218), however, this applies more to the European legislation, where “formal EU equality law has always supported substantive equality and has gradually been mobilized to further substantive equality aims” (Vos, 2020, p. 64). In relation to Belarusian law the idea of adding substantive equality seems more reasonable, “efforts directed toward achieving formal equality should not stand alone without similar efforts to achieve substantive equality” (Burns, 2009, p. 23). Treatment of persons with disability equally requires specific recognition and accommodation of their difference.

Therefore, sports law substantive equality requires providing special care and it should be provided without stigmatization and objectification of persons with disabilities. According to the SREO the principle of equal rights implies that “the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation” (p. 24). The WPA establishes as one of its goals not only equal rights but “the equalization of opportunities for people with disability” (part 4). According to it, “Member States will assume responsibility for ensuring that disabled persons are granted equal opportunities with other citizens” (point 108). “Member States
will undertake the necessary measures to eliminate any discriminatory practices with respect to disability” (point 109).

According to the Rule 11 of SREA states will take measures to ensure that persons with disabilities have equal opportunities for recreation and sports. They will “initiate measures to make places for recreation and sports, hotels, beaches, sports arenas, gym halls, etc., accessible to persons with disabilities.” Such measures will encompass support for staff in recreation and sports programmes, “including projects to develop methods of accessibility, and participation, information and training programmes.”

To set the substantive equality and equal opportunities, the Draft Law RPDSI contains several provisions on non-discrimination. Art. 7 prohibits direct and indirect discrimination, insult by action and denial of reasonable accommodation. However, the Draft Law RPDSI does not contain specific mechanisms for implementing these norms in adaptive sports. In fact, while declaring the rejection of the medical model and discrimination, the Belarusian legislation does not provide for mandatory implementation of these provisions. As a result, elements of the medical approach and discrimination remain in certain areas of sports law for disabled persons (medical, rehabilitation and others).

IV. The Right to Health or the Duty to Be Healthy

Since the Constitution declares the Republic of Belarus as a social state (Art. 1), the legislation pays much attention to medical rights of persons with disabilities. International law also addresses this issue. The right to health, which is considered in this article as a synonym to the right to health protection, is proclaimed by the Universal Declaration of Human Rights according to which “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services” (para. 1, Art. 25). The International Covenant on Economic, Social and Cultural Rights obliges “the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (Art. 12).
According to Rule 2 of the SREO effective medical care to persons with disabilities is to be provided. “States will ensure that persons with disabilities are provided with any regular treatment and medicines they may need to preserve or improve their level of functioning” (point 6). That includes “working towards the provision of programmes run by multidisciplinary teams of professionals for early detection, assessment and treatment of impairment, which could prevent, reduce or eliminate disabling effects.” Such programmes will ensure “full participation of persons with disabilities and their families at the individual level, and of organizations of persons with disabilities at the planning and evaluation level” (point 1). States will also ensure that persons with disabilities are provided “with the same level of medical care within the same system as other members of society” (point 3).

Thus, international instruments assume that the right to health care is a human right. This implies a close relationship between the right to health and other human rights. However, in the Belarusian legislation, the emphasis is shifted to the charity nature of medical care, which brings us back to the medical model of disability (sometimes called the charity model). In particular, the Law on Health Care does not contain any principles related to the protection of human rights (Art. 3 and others).

According to the Constitution, citizens of the Republic of Belarus “are guaranteed the right to health protection, including free treatment in public health institutions. The state creates conditions for medical care that is accessible to all citizens” (Art. 4, 5). These provisions establish the right to free medical care and set fairly high standards in this sphere. Their implementation in sports law is regulated by the Law on Physical Culture and Sports. The Law pays much attention to health protection of persons involved in sports. According to para. 2 of Art. 70, medical support for athletes and other individuals engaged in physical culture and sports consists of medical services, including medical examinations, medical monitoring of health, and medical assessment of the adequacy of physical activity to the state of health.

In bylaws, under the influence of the medical model of disability, these high medical standards are transformed into a promise to prevent deterioration of health. Since a person with a disability is considered in
the context of the disease and its treatment, people with disabilities are allowed to be involved in sports only if it is not risky for their health condition. A person with disability ceases to be a subject of law, cannot make independent decisions about his/her life, becoming an object that is to be protected.

According to the current system a doctor cannot allow a person with certain diseases, the list of which is very long, to participate in competitions or classes in sports clubs. Specialists involved in medical support become responsible for the health of athletes. To reduce legal risks, doctors often do not give permission to novice athletes with disabilities to have physical activities. The right to health goes from being a legal benefit to being a restriction and discrimination.

The existence of a similar problem is noted by different authors. They emphasize the discriminatory nature of this situation: “Participants who deviate from the able-bodied norm are constituted as ‘impaired,’ ‘immoral,’ ‘supercrip,’ ‘unproductive,’ ‘(un)reproductive’... or as objects of care” (Sanmiquel-Molinero and Pujol-Tarrés, 2020, p. 550).

To overcome unequal opportunities of athletes, the Draft Law APCAS declares independence of sports rights from medical permission to be engaged in sports (Art. 4). Besides, the Draft Law provides a number of protective procedures: examination by medical commissions, the right to choose a doctor, the recommendation character of some medical reports (Art. 18, 24, 29 and others). These provisions become the implementation of the rejection of medical model of disability. They restore the right to sports and the right to health as elements of human rights, rather than human responsibilities. Besides, these provisions may encourage children’s adaptive physical culture and sports, since this is the area where the strictest boundaries and the most urgent need for physical culture exist.

**V. Is Rehabilitation a Right or a Pain?**

The right to medical care and the elimination of restrictions in implementing the right to sport for persons with disabilities contribute to the establishment of the right to rehabilitation. Being an important aspect of human rights of people with disabilities, rehabilitation is
sometimes even defined as a paradigm of the medical model. Based on health-disease parameters “the rehabilitation paradigm centred on disabled individuals, as they were understood to be suffering the consequences of a disease, trauma or health condition: this justified the aim of rehabilitating people so they adapt to their environment” (Domínguez and Luna, 2019, p. 78).

This approach has also an inverse relationship: rehabilitation is considered primarily in medical context, which is very narrow. On this issue, Rehabilitation International and the International Disability Caucus even “were of the view that habilitation and rehabilitation should be dealt with in a separate provision from the right to health because the placement of both in proximity to health risks reinforcing the medical model of disability... Rehabilitation has more to do with education than health” (Lawson and Beckett, 2020). This approach can hardly be called completely fair, since rehabilitation includes a wide variety of aspects, including medical ones.

According to the DRDP, disabled persons have the right to medical and social rehabilitation, vocational training and rehabilitation, aid, education, counselling, placement services and “other services which will enable disabled persons to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration” (p. 6). The SREO defines the term “rehabilitation” as a process aimed at “enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric and/or social functional levels, thus providing them with the tools to change their lives towards a higher level of independence.” It says that rehabilitation “may include measures to provide and/or restore functions, or compensate for the loss or absence of a function or for a functional limitation” (para. 23 of the introduction).

Thus, rehabilitation is assumed to include medical rehabilitation (consisting of rehabilitation therapy, reconstructive surgery, etc.), social and professional rehabilitation, helping a person with disabilities to orient or reorient professionally (in case of loss or significant restriction of work skills), get professional education and find a job, adapting to the work environment. Psychological rehabilitation is also an important part of it (Razuvaeva, Gut, Lokteva and Pchelkina, 2019) as well as
other types of rehabilitation. In particular, sexual behavioral aspects of rehabilitation are researched (Blockmans, 2019, pp. 170–179; Reel and Davidson, 2018, pp. 35–48).

Such a broad understanding of rehabilitation covers not only the adaptation to new living conditions, but also the adaptation to the features acquired at birth (i.e., habilitation). This approach does not allow us to take into account the specifics of rehabilitation and habilitation areas, as it unifies the set of adaptation measures offered to disabled people and often reduces their effectiveness. The DRDP declares that disabled persons have the right to psychological and functional treatment, including prosthetic and orthotic appliances. However, habilitation is much wider being related to persons with developmental disabilities that are present from an early age as therapeutic, social and other measures aimed at adapting them to existing living conditions.

Since many international and domestic acts assume that rehabilitation includes habilitation, this issue cannot be considered as resolved unambiguously. At the insistence of representatives of associations of the disabled persons, the Draft Law APCAS defines “habilitation” and “rehabilitation” as different concepts. It says that both physical rehabilitation and habilitation of disabled people aim restoration, correction or compensation of impaired, lost or temporarily lost body and other functions of persons with disabilities by using special instruments and methods of adaptive physical culture and adaptive sports (Art. 1). However, habilitation and rehabilitation may require different conditions, activities and measures (Art. 16).

Practice convincingly proves that social, mental and physical rehabilitation and habilitation of persons with disabilities are impossible without physical activity and social communication, which can be provided by training and participation in physical culture and sports events. That is why the Draft Law APCAS also distinguishes between active rehabilitation and habilitation as a set of activities with the use of physical culture and sports, aimed at ensuring self-service, maximum independence in everyday life, integration and social activity of persons with disabilities (Art. 1). The issues of active rehabilitation and habilitation of persons with disabilities, being closely related to the right to sports, are regulated in detail in the Draft Law APCAS (Art. 34–41).
Since the Draft Law APCAS has not been adopted yet, a problem of objectification of disabled people remains. The medical model of disability understands rehabilitation as a practice that is “done to” rather than “done with” the collaboration of the patient (Shakespeare, Cooper, Bezmez and Poland, 2018, pp. 61–72). In this context the right to sports for rehabilitation purposes becomes the duty of a disabled person to engage in special physical exercises. This approach also allows causing pain, discomfort, other kinds of physical and psychological pressure on the “rehabilitation object,” which of course is unacceptable in any humane society.

VI. Adaptation of a Person with Disability or Adaptation of Society?

The problem of objectification is partly related to the establishment of high requirements for the rehabilitation process. The Sunberg Declaration adopted by the World Conference on Actions and Strategies for Education, Prevention and Integration (1981) underlines the importance of rehabilitation and integration of disabled persons, steps being taken to ensure that every person receives support and assistance that might be needed to reduce the handicapping effects of disability, “in order to bring about the maximum possible integration of disabled persons and enable them to play a constructive role in society.” Arguing for these provisions, Rakhmatov says that people with disabilities “with appropriate training, are considered to be able to provide for their own existence, i.e., not to be a burden” (Rakhmatov, 2016, p. 7).

In this context, the right to rehabilitation becomes a duty to stop being “a burden” and start playing “a constructive role in society” through rehabilitation. This approach not only objectifies a person with disability, but also becomes an example of ableism. We believe that persons with disabilities, regardless of their capacity and activity, should never be considered in the context of “burden or not a burden,” being full members of society, capable of versatile and full realization of their potential.

Rehabilitation and habilitation of disabled people are carried out not only when having physical trainings or taking part in competitions,
but also when working as coaches, coordinators, sports judges. According to Rule 3 of the SREO, “persons with disabilities and their families should be encouraged to involve themselves in rehabilitation, for instance as trained teachers, instructors or counsellors.” Discrimination in labor relations is prohibited in Belarus (Art. 14 of the Labor Code), but in practice this provision meets a number of challenges. Disabled persons complain that new sports facilities provide infrastructure for disabled athletes, but not for managers or coaches with disabilities. This is largely due to the lack of legislation requiring the participation of representatives of associations of persons with disabilities in the design and construction of public buildings and structures.

To eliminate such a gap, the Draft Law ACPAS declares accessibility of sports facilities for training and participation in sports and entertainment events for disabled persons as one of the principles of legal regulation of adaptive movement (para. 1 of Art. 2). Its implementation is provided by the organization of building, renovation and maintenance of sports facilities (Art. 6, p. 1), ensuring the availability of all sports facilities for classes, work and participation in sports and entertainment events for people with disabilities (Art. 5, p. 1), public supervision of compliance with the requirements of regulatory and technical documents for creating a barrier-free environment (Art. 7, p. 4).

Thus, an important aspect of rehabilitation can be recognized as the rehabilitation of society itself, the change in victimizing attitudes towards persons with disabilities. Disability creates a need for adaptability (the ability to adapt to special conditions), and it requires an effort not only from a disabled person, but from other people, society and the authorities. “This generally requires investment by lawmakers, employers, service-providers, etc. to alter the environmental barriers that act as mechanisms of exclusion” (Vanhala, 2015).

Adaptability extends to different areas and includes a wide variety of measures involved in economic, social, political, technological, legal and other relations. With regard to sports the following key concepts of adaptability are included in the Draft Law APCAS.

Adaptive sports are an integral part of sports that have developed in the form of a special theory and practice of preparing people with disabilities for sports competitions and participating in them for the
purpose of physical rehabilitation, habilitation, social adaptation and integration, forming a healthy lifestyle and achieving sports results on the basis of creating special conditions, including communication conditions.

*Adaptive physical culture* is a type of physical culture, a field of activity that represents a set of spiritual and material values created and used by society for the physical development of persons with disabilities, which contains a set of effective means of rehabilitation and habilitation, social adaptation and integration, health promotion and contributes to the harmonious development of the individual.

*Adaptive sports movement (adaptive movement)* as a form of social movement aims to promote the development of adaptive physical culture and adaptive sports, the achievement of physical and spiritual perfection by persons with impairments, and the strengthening of international cooperation in the field of adaptive physical culture and adaptive sports.

Thus, the goal of the Draft Law ACPAS (Preamble) and the adaptive sports movement is to equalize opportunities in sports. The WPA defines the equalization of opportunities as “the process through which the general system of society, such as the physical and cultural environment, housing and transportation, social and health services, educational and work opportunities, cultural and social life, including sports and recreational facilities, are made accessible to all” (Objectives, Background and Concepts). However, we believe that equalization of opportunities in sports should be defined much wider than providing sports facilities, ensuring equal conditions and opportunities for the development of adaptive movement in relation to the conditions and opportunities for the development of non-disabled sports and non-disabled physical culture.

Equalization of opportunities should include a *freedom of adaptability* as a key category and one of the basic principles of the adaptive movement. The freedom of adaptability means that persons with disabilities have the right to engage in adaptive physical culture and accessible types of adaptive sports in the direction corresponding to their characteristics, as well as to engage in physical culture and sports with non-disabled persons. Each person with disabilities has the right
to independently decide whether to train, participate in competitions and other events or not. He/she can choose whether to do it within the framework of general (non-disabled) physical culture (sports) or adaptive physical culture (sports).

The last provision is especially relevant in Belarus where the development of the Paralympics, the Deaflympics, the Special Olympics and other kinds of professional sports movement for disabled persons do not have such active support from the government and public organizations as the Olympics. The bonuses and rewards granted to athletes in adaptive sports are still several times less than those of non-disabled athletes. At the same time, some of the athletes in adaptive sports (for example, some of the deaflympians) express their readiness to participate in competitions on an equal basis with non-disabled athletes.

Discrimination on the basis of disability, including a possible violation of the right to adaptability, cannot be considered as permissible, therefore the freedom of adaptability should be recognized as one of the principles of adaptive sports movement. There is no such provision in the current legislation of the Republic of Belarus, but it is provided for in the Draft Law APCAS (Art. 2).

VII. Human Diversity and Diversity of Adaptability in Sports

Rejection of stigmatizing provisions gradually transforms the concept of disability into the concept of special features. It assumes that each person is unique and has specific features, but in some cases these features require additional efforts to adapt.

In practice, it causes the need to list what features (impairments) require special attention and regulation. For example, the Convention on the Rights of the Child (1989) refers to mentally and physically disabled children (Art. 23.61). The Declaration on Social Progress and Development (1969) also takes into account physical and mental disabilities (Art. 11, par. C).

The Law PDRPD as well as the Draft Law RPDSI offers a broader list of impairments and defines a disabled person as a person “with
persistent physical, mental, intellectual or sensory impairments that, when interacting with various barriers, prevent a full and effective participation in society on an equal basis with others” (Art. 1). Restriction of a person’s life activity is expressed in the complete or partial loss of the ability or ability to perform self-service, movement, orientation, communication, control over the behavior, as well as engage in work.

The definition in the Draft Law APCAS is even wider. It says that health conditions or impairments do not necessarily prevent, and also may interfere with the full and effective participation in society. This definition is fully consistent with Article 1 of the CRPD.

Besides, to avoid stigmatization the Draft Law APCAS does not use the word “disability” in definitions. It mentions “a person with impairments in the functions of the musculoskeletal system, vision, hearing, intelligence and other functions as a person with physical, mental, intellectual or sensory characteristics, including: a person with diabetes; a person who has undergone a transplant; a person who has had cancer; a person who has or has had other persistent health disorders that require the creation of special conditions for the development (achievement) of results in physical and sports training that are commensurate with the results of persons who do not have these characteristics” (Art. 1).

The list of impairments is not exhaustive in the Draft Law APCAS, since many features (for example, albinism (Mswela, 2018, pp. 1–37)) are still debated as grounds for disability. The boundaries between the concepts of sickness and disability also “remain blurred” (Favalli and Ferri, 2016, pp. 5–35). In this case, the essential fact is that health conditions or impairments prevent or may prevent the full and effective participation in society. Special features of a person are only objective circumstances that do not affect someone’s personal characteristics.

Variety of special features assumes a non-exhaustive list of possible directions of adaptive movement. Currently, the sports movement for disabled persons in Belarus is coordinated and managed by the Paralympic Committee of the Republic of Belarus, the Belarusian Sports Federation of the Deaf Persons, the Belarusian Committee of Special Olympics, etc. These organizations are not connected and often do not
interact with each other, because, despite the general principles, their activities are very specific.

The Belarusian legislation either does not regulate different directions of adaptive sports, or does it with general provisions. For example, athletes with visual impairments need some assistance of leading athletes. However, the Belarusian legislation does not regulate the work of leading athletes, which puts them in a vulnerable position, limiting opportunities for business trips, participation in competitions, receiving social payments.

The Draft Law APCAS was prepared with the participation of different Belarusian sports associations of persons with impairments and it aims to fill the gap. According to Art. 3, adaptive movement includes the following directions:

— the Paralympics that develop adaptive physical culture and adaptive sports for people with disorders of the musculoskeletal system, other physical features, including visual features;
— the Deaflympics that develop adaptive physical culture and adaptive sports for people with hearing disabilities;
— the Special Olympics that develop adaptive physical culture and adaptive sports for people with mental disabilities;
— other areas that develop adaptive physical culture and adaptive sports for people with disabilities, including the Dia-direction for people with diabetes; the transplant direction for people who have undergone organ transplantation; the Onco-direction for people who have had cancer, etc.

The principles of adaptability are applied to all possible types of disability. A non-exhaustive list makes legal regulation more flexible. However, each direction of adaptability assumes its own characteristics and special needs. The Draft Law APCAS pays much attention to the specifics of each of the key areas of adaptive movement. It regulates in detail such issues as the legal status of leading athletes, sports and medical classification, special judges, etc. (section 4, 5).

Thus, the current legislation of the Republic of Belarus and the existing Draft Law RPDSI correspond to international acts in the field of non-discrimination of athletes with disabilities. However, they do not provide specific ways to implement these provisions in different
spheres of adaptive sports. The adoption of the Draft Law APCAS will help to reduce discrimination by creating effective ways to ensure equal opportunities for athletes.

VIII. New Models and Definitions of Disability: Are You Ready?

Modern society offers many models of disability to replace the medical one. The most well-known is social model. It focuses on the fact that the problems rise not from a person and his or her impairment, but from the interaction between a person and the setting in which the person lives. Quinn and Flynn describe “the shift from civil rights approaches to locating disability rights within a broader theory of social justice” (Quinn and Flynn, 2012, p. 26). Besides, disability studies scholars “refer to this transformation as the shift from the medical or charity model of disability to the social or human rights model” (Shakespeare and Watson, 2002).

The human rights model focuses “on the inherent dignity of the human being and subsequently, but only if necessary, on the person’s medical characteristics” (Quinn and Degener, 2002, pp. 13–14). The human rights model is considered to be a separate model or a part of the “social and human rights model of disability” (Lawson and Beckett, 2020). Perlin says, that “the human rights approach to disability endorses a social model of disability” (Perlin, 2013, p. 469). Besides, human rights and the social model are sometimes used as synonyms (Kanter, 2003, p. 241), but more often are separated as the initial and improved models (Degener, 2017, p. 31) or as complementary models (Lawson and Beckett, 2020).

Other models are also discussed. For example, Swain and French argue the affirmative model as “essentially a non-tragic view of disability and impairment which encompasses positive social identities, both individual and collective, for disabled people grounded in the benefits of lifestyle and life experience of being impaired and disabled” (Swain and French, 2000, pp. 569–582). Gabel and Peters explore resistance theory recognizing that “resistance appears to exist throughout all paradigms at play in disability studies while it is rarely explicitly addressed” (Gabel and Peters, 2004, p. 570).
The new theories do not absorb, but rather complement each other, defending the rejection of ableism, discrimination and objectification of disabled people, arguing for the social causes of disability and creating a foundation for the protection of human rights of disabled persons. Every new model emphasizes some aspects of non-discrimination, so all of them may gradually be supplemented. For the formulation of the concept of disability it is not the difference in theories that is important, but their overall contribution to the rejection of the medical model of disability.

Modern approach to disability leads to the softening of context and terminology. There is a discussion in English about the difference between “a disabled person” and “a person with disability.” Reasons for preferring the terminology of “people/person with disabilities” are advanced by proponents of “person/people first” language (Titchkosky, 2001, p. 125), according to which the reference to a person should be situated before reference to his/her characteristics.

The Belarusian legislation uses a term that can be translated into English as “a person with disability” (a “person first” model). However, non-involvement of people with impairments in the preparation of draft laws leads to the appearance of outdated and even offensive terms in the legislation. For example, the Law PDRPD can be literally translated into English as “the Law on Prevention of Invalidity and Rehabilitation of the Invalids.” It was adopted in 2008, and even back then such terminology was considered completely inappropriate.

The preparation and discussion of the Draft Law APCAS with the representatives of associations of persons with impairments showed the severity of the problem. It was recognized that even the term “a person with disability” can hardly be considered totally non-discriminating. The concept of disability implies that a person is not able to do something, while a person with special characteristics has the same abilities as any other one. It is true that “adaptive sports for people ‘with impairments’ are social activities in which, ‘athletes with impairments’ are no more people with disabilities, but people with ‘abilities’” (Marcellini, 2018, pp. 94–104).

Representatives of various associations of people with impairments emphasize the need for new terminology, so the Draft Law APCAS uses...
the term “a person with special characteristics or impairments in the functions of the musculoskeletal system, vision, hearing, intelligence and other functions (person with impairments).” This definition represents a new level of non-discrimination for the Belarusian legislation, since it means the rejection of stigmatization and it establishes a medical model in determining a person with impairments. However, the relevant terminology is still not well-developed, so there may be some issues with its implementation. It is clear that the terminology should become the subject of special scientific research and will be improved along with changes in the approach to disability and models of disability.

Conclusion

Modern legislation rejects the concepts of “normality” and “a normal person,” since they are a manifestation of stigmatization of disability and ableism. A medical model that leaves a disability within the individual is also considered outdated. However, the rejection of the old approaches meets in practice a number of obstacles.

The Belarusian legislation uses the concept of formal equality, but it is supplemented by victimization of disability and objectification of persons with disabilities. As a result, in the context of sports law the right to health is transformed into a duty to maintain the level of health, and the right to have rehabilitation and habilitation is transformed into a duty to use it to improve the medical indicators of a person with impairments. Thus, a person with a disability becomes an object of care and protection, deprived of his/her own will and legal personality.

The Draft Law APCAS suggests using a new model of disability and a non-discriminatory approach to legal regulation of adaptive sports. It introduces a completely new approach to the Belarusian legal terminology that implies the rejection of ableism. The Draft Law APCAS enshrines the freedom of adaptability, active rehabilitation and habilitation, it regulates different areas of adaptability, and provides mechanisms for the implementation of the right to sport as a manifestation of human rights. The adoption of the Draft Law APCAS may become an important step to protect human rights of athletes with disabilities.
References


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