

Current trends in the development of the Chinese social security system for people with disabilities

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Abstract: The Law on the Protection of Disabled Persons is the first social security legislation in China, with more than 50 laws directly related to the legal protection of the rights of persons with disabilities and career development for people with disabilities. In terms of employment protections for disabled people, it is important to focus on effective legal implementation, utilizing legal rulings to limit employment discrimination against people with disabilities. Educational protections are an important precondition for enabling people with disabilities to be able to live with dignity; we should ensure that people with disabilities are provided "reasonable accommodation" educational conditions. A barrier-free environment is a necessary condition for social integration of people with disabilities. At the same time, it also benefits other members of society such as the elderly. Through rehabilitation and exercise, most people with disabilities can return to society to a significant degree. The country should gradually expand the legislative scope of rehabilitation service fee reductions and legal categories of auxiliary appliances, issuing guiding documents that provide specifications for the relevant "dormant" legal provisions.

Key words: people with disabilities, legislation, social security

1. Introduction

There are 85 million people with disabilities in China, the world's largest population of people with disabilities. The Law on the Protection of Disabled Persons is the country's first social security legislation, leading the way for the formulation of other important social legislation. Currently, there are more than 50 regulations relating directly to the protection of the rights of people with disabilities.

The implementation of the Regulations on the Education of People with Disabilities, the Regulations on the Employment of People with Disabilities, and the Regulations on the Construction of Barrier-Free Environments, along with the establishment of the Regulations on Disability Prevention and Rehabilitation, produced clearer and more specific social security provisions on rights of people with disabilities to education, employment, rehabilitation, and barrier-free environments.

At the same time, China has supported and conscientiously implemented the United Nations' World Programme of Action Concerning Disabled Persons, and participated in the formulation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. China was among the first signatories to the Convention on the Rights of Persons with Disabilities, and the protection of disabled persons is a highlight of China's human rights field, hailed by former UN Secretary General Kofi Annan as a model for developing countries. At the 2014 APEC Economic Leaders Meeting in Beijing, China held a special series of activities on "helping disabled

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people to share in the fruits of economic and society development,” and will write an appendix to the 22nd APEC Economic Leaders Meeting on “the Problems of People with Disabilities.”

China values legislation as a means to protect the employment rights of people with disabilities, but there have not yet been fundamental changes to the weak status of disabled persons in seeking employment, and discrimination in the course of seeking employment still exists. Even after the implementation of the Regulations on the Employment of the Disabled and the Disabled Persons’ Employment Security Fund, there was still no substantial change in the employment rate for people with disabilities. Therefore, we need to firmly establish the concept that there are only positions that are not suitable for people with disabilities; there are not people with disabilities who are not suitable for working. At the same time, we should put even greater emphasis on the results of legal implementation, suppressing employment discrimination against the disabled through adjudication and ensuring that existing protection provisions are actually implemented. The highly criticized Disabled Persons’ Employment Security Fund should also be utilized to promote the employment of people with disabilities and increase the employment rate of disabled persons.

In order to fully protect the educational rights of disabled people, China promulgated the Regulations on the Education of Disabled Persons, and specially created a chapter on education in the Law on the Protection of Disabled Persons providing that “the government guarantees the right of disabled persons to educational equality.” Special education for children and youths with disabilities has been set up on a national scale, with special education classes established in regular compulsory education schools. There are also special vocational training courses for people with disabilities. Higher education equally recruits people with disabilities, and has also established graduate degrees in disability research. But we should also provide "reasonable accommodation" special education guarantees for people with disabilities, and universities should also set up special education programs for disabled persons.

A barrier-free environment is a necessary condition for the integration of disabled persons into society. At the same time, it also benefits the elderly and other members of society. In the Regulations on the Construction of Barrier-Free Environments, the construction of accessible roads and buildings, renovation of roads and buildings to improve accessibility, safeguarding and maintenance of accessible facilities, the sharing of information accessibility, and accessible community services are all standardized from a legal perspective. But the occupation of accessible facilities is widespread, which is also an important reason that disabled people cannot be seen in public spaces. Therefore, we should focus on the question of how can legal relief be implemented when accessible facilities are occupied or blocked? Who will investigate accessibility violations?

Through rehabilitation treatment or training, the majority of people with disabilities can return their level of functioning to the greatest extent possible, enabling the highest expression of physical, mental, social, educational, and employment ability so that they can be integrated to a large extent into society. We must issue the

Regulations on Disability Prevention and Rehabilitation as soon as possible, providing operable provisions for the content of the Law on the Protection of Disabled Persons.

2. Achievements of China's social security system for people with disabilities

China has 85 million people with disabilities, which is the largest national population of people with disabilities in the world.² Since China's reform and opening up, along with social and economic development, China's disability field has also achieved remarkable and world-renowned success. The Law on the Protection of Disabled Persons led not only to China's social security legislation; it also led to the prioritization of institutionalized legalization of the country's social security system.³ China has formed a comprehensive legal system for the protection of disabled persons' rights and promotion of disabled persons' employment that relies on the constitution as a foundation, that uses criminal, civil, and administrative law as a base, that is guided by the Law on the Protection of Disabled Persons, that is supplemented by administrative laws such as the Regulations on the Education of Disabled Persons and the Regulations on the Employment of Disabled Persons, and that is complemented by local laws and regulations that preference and assist people with disabilities. There are more than 50 laws that relate directly to the protection of the rights of disabled persons.⁴

The implementation of the Regulations on the Education of Disabled People, the Regulations on the Employment of Disabled People, and the Regulations on the Construction of Barrier-Free Environments and the formulation of the Regulations on Disability Prevention and Rehabilitation provided more clear and specific provisions for disabled persons' rights within social security to education, employment, rehabilitation, and barrier-free environments. The education level and employment

² "Our country executes disability standards relatively strictly, but even so, the disabled population in our country is greater than 85 million, accounting for 6.34% of the total population, involving nearly 300 million households." Wang Zhijiang, "Studies of the Legal System on Anti-Discrimination Employment for the Disabled," Huaxia Publishing House, 2014, page 2.

³ The Law on the Protection of Disabled Persons was passed on December 28, 1990, during the seventh meeting of the seventeenth session of the Standing Committee of the National People's Congress, and took effect on May 15, 1991 (April 24, 2008). The Law on the Protection of Minors was passed on September 4, 1991 during the seventh session of the twenty-first National People's Congress Standing Committee meeting, (revised on December 29, 2006 and October 26, 2012), and took effect on January 1, 1992. The Law on the Protection of the Rights of Woman was passed on April 3, 1992, during the fifth meeting of the seventh National People's Congress, and took effect on October 1, 1992 (amended on August 28, 2005). The Law on the Protection of the Rights of the Elderly was passed on August 29, 1996, during the eighth sessions of twenty-first National People's Congress Standing Committee meeting, and took effect on October 1, 1996 (revised on August 27, 2009 and December 28, 2012).

⁴ "These laws, including not only laws specifically related to disabled persons, but also involving broader laws involving disabled persons, reflect the integration of special protection for disabled persons and comprehensive protection." Pan Yue: "More than 50 laws and regulations form the legal system for safeguard the rights of persons with disabilities in China," The People's Daily, September 9, 2008. <http://politics.people.com.cn/GB/1026/7872619.html>. Visiting date: January 6, 2015.

rate of disabled persons was generally improved, and many people with disabilities obtained the opportunity for rehabilitation. Statistics show that in the five years between 2008 and 2012, more than 2.8 million urban disabled workers received social security, and 4.98 million urban residents with disabilities received basic medical insurance. People with disabilities participating in the new urban and rural resident social pension system received full coverage. 3.25 million and 13.38 million urban and rural people with disabilities received urban residents' social pensions and new rural social pensions; participation rates were 58.4% and 63.8%, respectively. Among participants over the age of 60 with severe disabilities, more than 94% received government assistance, enjoying full or partial preferential tax policies. More than 6 million impoverished urban and rural disabled people received the minimum livelihood guarantee.⁵

At the same time, China has always been active in the international disability rights protection field, supporting and conscientiously implementing the United Nations' World Programme of Action Concerning Disabled Persons, and participating in the establishment of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. The Convention on the Rights of Persons with Disabilities is the first international legal instrument on the systemic protection of the rights of disabled persons, covering disabled persons' rights to life, family, education, health, employment, personal safety, obtaining legal protection, political participation, and public life. China was among the first signatories to the Convention; protection of the human rights of disabled persons is a highlight of China's human rights field, hailed by former UN Secretary General Kofi Annan as a model for developing countries.

In April 2008, the revised Law on the Protection of Disabled Persons introduced the novel concept of "prohibiting discrimination based on disability." Highlighting the idea of a rights-center approach, it clearly set forth a state guarantee that people with disabilities will receive social security and other rights, strengthening the legal responsibility for violations of the rights and interests of disabled persons.⁶

At the 2014 APEC Economic Leaders Meeting in Beijing, China held a special series of activities on "helping disabled people to share in the fruits of economic and society development,"⁷ and will write an appendix to the 22nd APEC Economic Leaders Meeting on "the Problems of People with Disabilities," emphasizing the creation of a favorable environment for disadvantaged groups, especially women,

⁵ Shi Yucen: "Let disabled groups share the achievements of economic and social development---an interpretation of the State Council's executive meeting on the deployment of a series of measures on protecting and improving the livelihood of the disabled," Xinhua, December 24, 2014, http://news.xinhuanet.com/gongyi/2014-12/25/c_127333330.htm. Visiting date: January 6, 2015.

⁶ China Disabled Persons' Federation: "China earnestly implements the Convention on the Rights of Persons with Disabilities, improving the conditions of the disabled," Central Government Portal Website, November 8, 2010, http://www.gov.cn/fwxx/cjr/content_1740464.htm. Visiting date: January 6, 2015.

⁷ APEC authorization release: Peng Liyuan participated in the 2014 APEC Economic Leaders Meeting, attending a special series on "helping disabled people to share in the fruits of economic and society development." Xinhua News Agency, November 10, 2014. http://news.xinhuanet.com/world/2014-11/10/c_1113190367.htm Visiting date: January 6, 2015.

youths, disabled people, and indigent people to participate in economic activities, and committing to strengthen entrepreneurship, employment, health, food security, sustainable agricultural development, women's participation in the economy, youths, people with disabilities, disaster prevention and mitigation, social responsibility, business ethics, anti-corruption and secure trade cooperation.⁸

China is comprehensively promoting the rule of law, providing new opportunities for the development of social security for people with disabilities. In terms of social security, there will be a social security system that comprehensively covers both urban and rural residents; China will improve the social assistance system and the social welfare system, supporting the development of the charity sector; and will strengthen the social security and service system for disabled people, conscientiously safeguarding the rights and interests of disabled persons. For the development of China's social security for people with disabilities, and to satisfy the higher, newer, and more specific requirements of the legal system of social security for people with disabilities, we will need legal workers, especially workers who have seriously studied and can effectively implement rights protection for people with disabilities.

3. Improving China's social security legal system for people with disabilities

3.1 Job security for people with disabilities

For society in general, employment is vital to people's welfare. For workers, employment is the path to survival. For people with disabilities, employment is not just about survival; dignity is even more important. Through employment, disabled people participate in society, achieving full equality to those without disabilities and proving that people with disabilities are entirely the same as able-bodied people.

China attaches great importance to utilizing legislation to protect disabled persons' employment rights. China's Constitution, the Employment Promotion Law, and the Law on the Protection of Disabled Persons all include special regulations guaranteeing the employment rights of people with disabilities. The State Council also issued special administrative regulations, Regulations on the Employment of Disabled Persons, and the Ministry of Human Resources and Social Security has a series of initiatives protecting the employment rights of disabled people. But there have not been any fundamental changes to the weak position of people with disabilities on China's open labor market; employment discrimination against people with disabilities still exists. In 2010, according to monitoring data regarding conditions for disabled people in China, the employment rate among urban disabled people with the ability to support themselves was 34%. Among rural disabled people, this rate was 49.2%. These numbers are well below those for non-disabled persons. In the 2011 World Report on Disability, produced by the World Health Organization and the World Bank, the employment rate among men with disabilities was 8% lower than non-disabled men; the employment rates among women with disabilities was 10% lower than non-disabled women. Compared with these figures, China's data reveals a

⁸ Declaration of the 22nd APEC Economic Leaders Meeting in Appendix 3: "APEC Consensus" innovation and development, reform and economic growth, People's Daily, November 12, 2014. <http://news.12371.cn/2014/11/12/ARTI1415752769622892.shtml>. Visiting date: January 6, 2015.

significant disparity.⁹

Regarding employment protections for the disabled, the establishment of a legal system must be preceded by key concepts. We need to firmly establish that there are only positions that are not suitable for people with disabilities; there are not people with disabilities who are not suitable for working. Employment discrimination against disabled people is an infringement of their basic rights. Legislation is the fundamental method for eliminating employment discrimination against people with disabilities. The special protection of disabled persons cannot be regarded as discrimination against others. In reality, there are active measures such as reserving spaces for people with disabilities in the Civil Service Exam, but there are also cases such as 1-meter-tall Hai Lulu, who successfully completed her undergraduate education and received outstanding grades but in the course of her job search, experienced society's cruelty and unfriendliness. There were those who thoughtlessly asked, "Can you reach a computer?" There were those who impatiently waived her away. Even so, people seem to expect that "Even if can't give her the job, they should at least show respect to her."¹⁰ In fact, those offices should not only give her the job, but should provide her with "reasonable accommodations" or "necessary conditions" for her position.¹¹ This

⁹ Wang Zhijian: *Studies of Anti-Discrimination Employment for the Disabled Legal Systems*, 22, 20 pages, Huaxia Publishing House, 2014.

¹⁰ Yuan Guangkuo, "Viewing the challenges of employment for the disabled through the job search of Hai Lulu," *Hainan Daily*, June 13, 2014. Hai Lulu was an outstanding graduate student from Luoyang Normal University who was repeatedly discriminated against during her internship search. She felt a bit like the ancient Greek myth of Sisyphus, as if it were her fate to experience this over and over again. The first time she looked for an internship was during summer vacation in 2013; she wore high-heeled shoes of three or four centimeters, and brought her resume and design portfolio to look for a job at design stores along the road. A copy shop's answer was "Are you an adult? Can you reach the computer desk?" After completing her dissertation in June of this year, Hai Lulu begun to apply for a job. In order to reduce her embarrassment and avoid wasting her time, she told her height to companies first, and went to interviews where employers did not express concern. But the result was: "Not because you are not good, but considering the whole quality of the company, your comprehensive ability test is not a good fit for the job." (Liu Jiao, "1-meter height college student Hai Lulu's employment record," *The People's Daily*, June 10, 2014. After her story was reported in the news, more than ten companies were willing to provide job opportunities for her, http://www.sn.xinhuanet.com/2014-06/10/c_1111074588.htm. Visiting date: January 6, 2015. <http://dpls.ruc.edu.cn/show.php?contentid=2063>. Visiting date: January 6, 2015.

¹¹"Reasonable accommodation" is a very important and useful concept from the Americans with Disabilities Act. Disabled people in China do not benefit from this concept or system. Reasonable accommodation refers to the concept that when an employee's disability may hinder their work, he may require employers to make reasonable accommodations, including the provision of new equipment, improvement of existing equipment, special equipment, such as aids for deaf people, special telephone software, enlarged print, braille or protuberance print, hands-free phones, audible timer display lights and so on. The employer may only avoid providing the accommodation when they can establish that the accommodation would cause damage to the employer such as extreme difficulty, significant cost, negatively impact on the staff's organization, structure, function, or geographical position, etc. China should learn from these. There is no such concept of "reasonable accommodation" in China; the corresponding disability legislation in China cannot guarantee this aspect of employment rights for disabled people. This only adds to the difficulties concerning employment of disabled persons, as well as school attendance. (Li Jianfei: "Comparison and Explanation of American and Chinese Disability Law," *The Chinese Law (in English)*, 2014, 2.)

is the legal protection for the employment rights of disabled people; it is also the legal duty of employers.¹² There should be serious legal consequences for violating these legal duties by discriminating against people with disabilities. At the same time, we must also note that there was no substantial change in the employment of people with disabilities after the implementation of the Regulations on the Employment of People with Disabilities and the Disabled Persons' Employment Security Fund. It is an awkward reality that some companies prefer to pay the fine rather than accept the required proportion of disabled employees. "Enterprises seek efficiency. In general, the work efficiency of people with disabilities is fairly low, and in some cases requires taking accessibility into account, which also increases the cost of hiring people with disabilities." Some private service industry corporations specially allocate Disabled Persons' Employment Security Fund fees to their subsidiaries, which are submitted to the government; this means that companies would rather pay the fee than hire disabled employees.¹³

Therefore, regarding employment protections for people with disabilities, we should emphasize the effective implementation of the law, suppressing employment discrimination through adjudication and ensuring that employment protection regulations are actually implemented. At the same time, more detailed regulation is required in specific systems such as proportional employment, preferential employment, specialized production, preferential production and management, and preferential procurement. For example, giving priority to products produced by

¹² There was a real-life example that represented the complete opposite of "reasonable accommodation": In August 2012, visually-impaired person named Li was hired for "special post-production recording" by Beijing China Open Online Advertising Co., LTD. On October 11, Li started to work at the company; his main responsibilities were editing video clips and producing videocassettes. The company adjusted his position to "video post-production," but more than a month later, he received the company notice that "our company does not have any positions suitable for you, as your eyes can't accomplish inspection and performance," and required him to carry out the resignation procedures that day; he had no choice but to sign the "resignation certificate." "Knowing that I am visually impaired, they changed my position to video post-production. Wasn't this forcing me to resign?" Li asked. Claiming that the company affected his employment confidence, he sought a court order forcing "China Online" to publicly apologize, as well as "emotional distress compensation" for the economic loss of more than RMB 120,000. This was the first "disabled employment discrimination case." (Zhang Yuan: "video of adjustable duty for blind," Beijing News, July 30, 2013. <http://www.bjnews.com.cn/news/2013/07/30/275823.html>. Visiting date: January 6, 2015.

¹³ Li Zheng, "Jiangxi: A variety of reasons lead to low cultural level among disabled, people with disabilities face employment discrimination," China - Jiangxi Net Information Daily, March 21, 2013. <http://www.jxcn.cn/system/2014/03/31/013017957.shtml>. Visiting date: January 7, 2015. A chemical plant in Guangdong had total number of 382, including 82 migrant workers. According to the Guangzhou Implementing Rules for Proportional Employment of Disabled Persons, the factory should have employed 6.3 disabled people; however, the enterprise would rather pay the Disabled Employment Security Fund fee of RMB 115,900 per year rather than employ a disabled person. The explanation of the factory leadership was that paying money was more "cost-effective" than recruiting people with disabilities, and people with disabilities' "appearance is not that good, and their ability is ordinary," so "receiving a small fine is no big deal." (Zhou Lingang, "A theoretical perspective on employment discrimination against the disabled—an interpretation of several typical cases in Guangzhou", China Disabled Persons, January 7, 2015. <http://www.cqvip.com/QK/71135X/201107/24573197.html>. Visiting date: January 7, 2015.)

welfare enterprises in government procurement bidding. For high output, low tech goods such as office paper, notebooks, pens, and paper cups, the government may relax pricing and purchase from welfare enterprises or other disability employment units, so that these active employment protection measures are effective and uphold corresponding legal responsibilities. The unpopular Disabled Persons' Employment Security Fund should also be utilized to promote the employment of people with disabilities and increase the employment rate of disabled persons.

3.2 Education protections for people with disabilities

High quality education is every person's fundamental right. Education is the basis of people's comprehensive development. It plays a decisive role in disabled persons' development, and in sharing in the fruits of economic and social development. It is a necessary precondition for disabled people to live with dignity. The Convention on the Rights of Persons with Disabilities, specifically requires that signatory states ensure that people with disabilities enjoy the right to education, realizing this right under circumstances free from discrimination and offering equal opportunity. It requires that signatory states ensure inclusive education at all levels and lifelong learning.

To fully protect the rights of disabled people to receive education, China enacted the Regulations on the Education of Disabled Persons, and specially created a chapter on education in the Law on the Protection of Disabled Persons providing that "the government guarantees the right of disabled persons to educational equality." Special education for children and youths with disabilities has been set up on a national scale, with special education classes established in regular compulsory education schools. There are also special vocational training courses for people with disabilities. Higher education equally recruits people with disabilities, and has also established graduate degrees in disability research. In December of 2014, Beijing Union University obtained the country's first authorization for a masters program in clinical medicine (TCM) for visually impaired students and carried out independent recruitment in accordance with the requirements for the national graduate entrance exam, improving China's higher education system for people with disabilities, filling an empty space in higher education for people with disabilities, and helping people with disabilities to achieve their dreams of enjoying higher education like non-disabled people.¹⁴

But we also see "the rejection of disabled student Liu Wanling, whose university entrance exam was 549 points." The school stated that she was "medically unfit" and asserted, "She will face the same problem in taking the university entrance exam."¹⁵

¹⁴ On December 27-28, 2014, the first national graduate student independent entrance exam for visually impaired students was held at the Beijing Union University Institute of Special Education. 18 visually impaired students with bachelor's degrees from Beijing, Liaoning, Shandong, and Xinjiang participated in the examination. Previously, Chinese higher education for disabled persons consisted of only two levels of undergraduate courses and specialized subjects, which did not meet disabled persons' high demand for higher education. The exam will be scored from high to low, and is expected to recruit five students for the first time. (Dutin: "Visually impaired students for the first time sit for an entrance exam; the Beijing General Assembly approved the first domestic masters program for visually impaired students." Beijing News, January 5, 2015. <http://www.zgxzw.com/ZhaoSheng/View.asp?ID=194492>. Visiting date: January 6, 2015.

¹⁵ Liu Wanling is a physically disabled student who was accepted at Jiangxia College with a

We also see that on June 7, 2014, cerebral palsy patient Liu Jianxiao sat in his seat for the first day of the college entrance examination. At 8:44 a.m., after nine minutes in the classroom, he left in tears. This was because 30-year-old regulations require students to write the answers to questions by hand—but as a person with cerebral palsy, who relies on a wheelchair, who is very short sighted, and who is hardly able to write using his hands, Liu Jianxiao was not able to write the exam. He had hoped that he could use a method by which someone else read him the questions, and he answered orally, with someone else writing down his answers—his family had communicated with the Ministry of Education many times, but ultimately was not able to obtain permission. The law should not only protect the right of Liu Jianxiaos to participate in the college entrance examination; but also their right to special safeguards, such as “reasonable and necessary” special classrooms, special examination rooms, special stationary items for special tables and chairs, special voice services, special exam questions, and particularly, extended testing times, to provide them with more reasonable and adequate time in comparison with other students. Only in this way can we look back on Liu Jianxiao, weeping in the school building and shouting, “Wait for me, one day I will come back to take the college entrance exam!” and make this a reality.¹⁶

university entrance exam score of 549 points. After receiving a phone call from the school admissions office to ask whether she would switch to an unpopular major, Liu Wanling said yes immediately, but her acceptance was still withdrawn. For many years, except for the fact that she is unable to walk long distances and requires assistance traveling up and down stairs, she has been self-reliant in all other aspects of life. A representative of Jiangxia College admissions, said that according to a comparison of the Liu’s medical and surgical diagnosis, and in accordance with the related regulations, the school had decided to withdraw her acceptance, and was approved by the Fujian Provincial Education Bureau. “We are sorry to do this, but if she did not pass the physical examination, she will face the same problem as when attending the university entrance exam.” (Meng Zhaoli, “Disabled girl with 549 points on the university entrance exam, file withdrawn because she failed the physical examination,” Beijing Youth Daily, August 5, 2014. http://epaper.ynet.com/html/2014-08/05/content_77349.htm?div=-1. Visiting date: January 7, 2015. Later, after Liu Wanling’s rejection was reported in the news, Xiamen University Jiageng College Admissions decided recruit Liu Wanling to study financial management. Fujian Beauty Biological Technology Co., LTD, provided a 600 yuan living allowance per month for Liu Wanling, and created a working-agreement to recommend Liu for a relatively good corporate job.

¹⁶ Liu Jianxiao was born in Ya 'an in 1987, and was diagnosed with spastic cerebral palsy when he was less than one year old. After rehabilitation treatment, he still cannot walk normally or use both hands. With more than 2000 degrees of myopia, he can only read with a magnifying glass. In addition to his regular courses in elementary school, junior high school, and high school, he also taught himself 14 core law courses. He wanted to go to college to study the legal system. Despite his physical disability, he thought he would be able to engage in theoretical legal research, and could help more people like him through his legal knowledge. In order to attend the university entrance exam, on June 22, 2013 Liu Jianxiao sent a letter to the Sichuan Provincial Disabled Persons' Federation, and the Provincial Disabled Persons' Federation told him by telephone that as long as he was able to show the relevant certificates for people with disabilities, he could participate in the local college entrance examination. Because his spastic cerebral palsy affects the coordination of his limbs, requiring a half a page of A4 paper to write a single character, his grandmother Li Huarong requested that the Ya 'an Education Bureau, provide him with an individual testing room, where someone else would read him the question, he would answer orally, and the person would write the answer down or enter it into a computer. “To the present, for decades the traditional way of taking the exam has been through written answers, there is no precedent of using verbal answers, so it is not viable for the time being.” Deputy Director of Ya’an

Recently, a student with hemophilia who concealed his medical history on physical exam forms for the university entrance exam was expelled from the university.¹⁷ This kind of student, and students with physical and mental disabilities, chronic diseases and AIDS are should not be discriminated against in terms of enrollment or education. Under the international law framework, people with disabilities, rare diseases or any defect of body and mind should have an equal right to higher education. Article 13 of the UN International Covenant on Economic, Social, and Cultural Rights, which China has ratified, states: "Higher education shall be made equally accessible to all, on

Management Liu Xingshuang said. On the morning of June 7, at 8 o'clock, wheelchair-bound Liu Jianxiao, wearing sportswear and a pair of glasses as thick as the bottom of a beer bottle with a rubber band on the back of his head, was pushed by his mother Li Xin to Ya'an high school's 2014 college entrance examination site. Li Xin said to the test supervisor: My son cannot write the answers properly, can you arrange a separate examination room, and can he answer questions orally? This was not the first time that Li Xin had made the request, but it was still rejected. "Anyway, today we came to the examination room, and it won't work; why don't we go home?" Liu Jianxiao sat silently in the wheelchair. Li Xin also remained silent and put her head down, and began to push him away. "No! I want to look at my university entrance exam seat." Liu said loudly, startling the people around them. 001, the examination room for liberal arts, was at the end of the second floor of the teaching building. There were more than 20 steps between the square where Liu Jianxiao sat and the building. Seeing that there was a handrail on the stairs between the first and second floors, Liu insisted on slowly climbing up, supported by his own hands. He said: "As long as you give me some help, I believe that I can do it!" A staff member pushed Liu into the examination room. At 8:35 am, Liu sat in his wheelchair, looking at the other candidates with his spine straight. "If you insist on sitting in the room, you must wait for one and a half hours before you can leave," The supervisor reminded him. Li Xin didn't have the heart to hurt her son and said: "Sitting here has no meaning, we should go." At 8:44 am, 20 meters outside of the classroom, Liu Jianxiao suddenly vigorously pushed himself by his arms up in his wheelchair and tried to stand up. He turned his head toward the classroom and yelled, "wait for me, one day I will come back to attend the university entrance exam!" He put his beer-bottle thick glasses on his forehead and cried when he was outside of the school gate. (Gu Aigang: "26-year-old with cerebral palsy's nine minute the university entrance exam: 16 minutes before the exam, leaving the room in tears." Chengdu Commercial Daily, June 9, 2014.

<http://scnews.newssc.org/system/20140609/000392813.html>. Visiting date: January 7, 2015.

¹⁷ In 2014, a student with Hemophilia B, Zheng Qing (psuedonym), faced cancellation of his student status at the China Academy of Labor Relations for failing to pass the university entrance physical exam. The Chinese Institute of Labor Relations issued the following statement on the cancellation of his student status: during the physical examination, Zheng Qing was found to have a blood abnormality, mild anemia with significantly decreased platelets. Peking Union Medical College Hospital next engaged in further inspection, issuing the diagnosis that Zheng Qing suffers from hemophilia (FIX). The school asked for Zheng Qing's medical history and found out that he was diagnosed with hemophilia at the age of 6. The school canceled Zheng Qing's student status in 2003, on the basis of the Ministry of Education's Guidance on University Enrollment Physical Examinations. According to the document, "the school can reject accepted students with the following diseases: severe blood diseases, rheumatic disease, and diseases of the endocrine and metabolic system." The decision also said that Zheng Qing did not reveal his history of hemophilia in the university entrance exam, so that he passed the exam. According to the second provision of the Regulations on the Management of Student Registration, "whoever violates the provisions of enrollment by engaging in fraud or embezzlement to obtain admission, the school shall revoke student status whenever it is found and affirmed." The chief of admission of China Labor Relations College, Cai Yue said that if Zheng Qing had originally filled out the medical history column to reflect his hemophilia in the college entrance examination, the school likely would not have admitted him. (Liu Dun: "Ill college student faces cancellation of student status," China Education Daily, December 19, 2014. <http://edu.people.com.cn/n/2014/1219/c1053-26238738.htm>. Visiting date: January 7, 2015.)

the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education” Article 24 of the Convention on the Rights of Persons with Disabilities, states that “States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.” In other countries, China’s “college entrance physical exams” are not required and moreover, schools are forbidden from requesting applicants’ medical histories. Also, higher education institutions must adopt reasonable accommodations for students with physical or mental disabilities for educational and extracurricular activities. For example, universities must create special education plans for students with chronic illnesses; they must install elevators and provide equally-priced, accessible housing for students with wheelchairs; they must provide hearing assistance systems for hearing-impaired students; they must provide large font or braille textbooks for visually-impaired students, and so on. Universities not only do not require physical examinations for enrollment, they also provide special subsidies for mentally or physically disabled students or students with chronic illness. These subsidies cover special equipment (such as braille software) and human assistance (such as hiring sign language interpreters). Physicist Stephen Hawking was diagnosed with amyotrophic lateral sclerosis at the age of 21, but Oxford University, where he obtained his undergraduate degree, and the University of Cambridge, where he was a graduate student, did not expel him—otherwise, they would have violated the Protection Act for the Rights and Interests of (Physically and Mentally) Disabled Persons, the Handicapped Persons Law, and the Equal Rights Law.¹⁸

a. Ensuring Barrier-Free Environments for People with Disabilities

A barrier-free environment is a necessary condition for social integration of people with disabilities. At the same time, it also benefits other members of society such as the elderly. The Law on the Protection of Disabled Persons and the CRPD both include provisions on barrier-free environments. According to a 2009 survey, 66.8% of urban people with disabilities were satisfied with accessible facilities. 79.5% of the towns in which respondents lived had at least one kind of barrier-free facility, reflecting the results of barrier-free construction. The majority of hospitals, banks, railway stations, shopping malls, cultural and sports facilities, and public transportation had improved accessibility services for people with disabilities. There was significant progress in information accessibility. The provision of braille and sign language was supported and protected. The majority of provincial-level television stations established sign language news programs. An increasing number of film and television programs included subtitles. In June 2012, the State Council issued the Regulations on the Construction of Barrier-free Environments, in which the construction of accessible roads and buildings, renovation of roads and buildings to improve accessibility, the safeguarding and maintenance of accessible facilities, the

¹⁸Zhou Wei, "Overseas high school admissions: everyone is equal regardless of disease," NetEase News, December 24, 2014. <http://dpls.ruc.edu.cn/show.php?contentid=2290>. Visiting date: January 7, 2015.

sharing of information accessibility, and accessible community services are all standardized from a legal perspective.

It is difficult for disabled people to board planes: they must apply for tickets at designated locations, there must be “advanced notification,” and moreover, there are strict limitations regarding the number of disabled people. For instance, there was an incident in which 27 “deaf and dumb” people were not allowed to board a plane.¹⁹ This was in accordance with the Chinese Civil Aviation Administration’s Measures for the Air Transport of Disabled Persons (Provisional), which stipulates that for flight occupancies of 51-100 people, there cannot be more than 2 disabled people; for flight occupancies of 101-200, no more than 4; for 201-400, no more than 6; for over 400, no more than 8. When the number of disabled people exceeds the aforementioned provisions, the number of accompanying personnel must be increased on a 1:1 ratio, but the number cannot exceed double that of the aforementioned provisions. When transporting a disabled group, under the preconditions of increasing the number of accompanying personnel, the carrier can adopt corresponding measures, and can use their discretion to increase the number of disabled people. The revised Measures for the Administration of Air Transport for the Disabled took effect on March 1, 2015. This revision references the Convention on the Rights of Persons with Disabilities and the Law on the Protection of Disabled Persons, the Regulations on the Construction of Barrier-Free Environments, the U.S. Department of Transportation’s Non-Discrimination on the Basis of Disability in Air Travel, and the E.U.’s Concerning the Rights of Disabled Persons and Persons with Reduced Mobility When Travelling by Air. It clarifies that the relevant departments must help people with disabilities to board planes, must fully respect the privacy of people with disabilities, and specifically provides that airports should set up independent, private spaces for security inspections of disabled people. Additionally, the advanced notification requirement for when disabled people have oxygen tanks, check electric wheelchairs, or have service dogs has been shortened. These regulations not only provide convenient, barrier-free travel for people with disabilities; they also provide examples for the implementation of upper-level laws.

The major problems in the drafting and implementation of the Regulations on the Construction of Barrier-Free Environments are: 1) How can legal remedies be implemented once accessible facilities are obstructed or occupied? 2) Who is responsible for investigating this illegal behavior? 3) What kind of responsibility

¹⁹ On the afternoon of December 29, 2014, a travel agency organized a tour to Taiwan with 39 travellers, including including 27 deaf tourists, in Wuhan. They were told by the airline that they could not board because the number of disabled people exceeded the limit. The airline also said that according to the related regulations, so as to maintain the quality of service, a sign language interpreter must accompany every four deaf people. Immediately leading to a dispute, Huang Liang rushed to the airport to negotiate until the flight took off, but the tour group was not able to board the plane. Both sides were at a stalemate until 8 pm that evening, and Huang Liang had to lead the visitors to return home. After the incident, “We don’t understand,” said some of the deaf people, and some cried in disappointment. (Lin Yongjun, “The number of disabled people boarding flights are limited, and a deaf tour group was denied boarding,” Jingchunet, May 31, 2014. <http://news.cnhubei.com/xw/sh/201405/t2942512.shtml>. Visiting date: January 7, 2015.

should the offenders assume? In China, the occupation of barrier-free facilities is widespread; this is an important reason that people with disabilities cannot be seen in public places. Take, for instance, handicapped parking spaces. Legally, this is not a logical problem. The biggest problem is the rarity of parking spaces. In Beijing, through September 2012, the city had 5.12 million vehicles. But through May 2013, there were only 2.17 million parking spaces. Therefore, many people opposed the reservation of parking spaces for disabled persons. They believed that it would be a waste, and would lead to greater traffic issues. But the legislation persisted, and this clause became law in Beijing's Implementing Measures on the Law on the Protection of Disabled Persons. However, because there are no regulations requiring owners or managers to remove barriers to public facilities, disabled persons' parking difficulties remain. Relatedly, the occupation of roads for the blind is very prominent. In recent years, China's urban construction has focused on the renovation of roads for the blind, and has invested significant expenses into this project. However, even in large, modern cities like Beijing, Shanghai, and Shenzhen, the obstruction of roads for the blind is very prominent. In some high-grade office buildings with modernized coloring and labeling for accessible facilities, some facilities only serve display functions, but are not usable—such as where wheelchairs cannot turn once they enter, so it is impossible to turn around. Relevant technical standards and legislation are still not followed.

b. Rehabilitation for People with Disabilities

Through rehabilitation treatment or training, the majority of people with disabilities can return their level of functioning to the greatest extent possible, enabling the highest expression of physical, mental, social, educational, and employment ability so that they can be integrated to a large extent into society. According to statistics, in 2009, 6.2 million people with disabilities received different types of rehabilitation services. China has set up 1,578 rehabilitation centers for deaf children, nearly 5,000 rehabilitation and training institutions for people with physical disabilities, and more than 2,000 assistive device services. 1,727 cities and counties have carried out preventative and rehabilitative psychiatric work, and 807 districts and 1,569 counties have implemented community rehabilitation work. The disability service system in the countryside has gradually improved; 1,887 disability services were established on the rural county level, 18,979 disability service sub-divisions were established on the rural township level, and disability services (and sub-divisions) reached 28,601 people.

The International Labor Organization's Vocational Rehabilitation and Employment (Disabled Persons) Convention and the United Nations' World Programme of Action Concerning Disabled Persons are significant documents for ensuring the rehabilitation of people with disabilities; their primary goal is, through effective actions to prevent disability, to enable disabled persons to receive rehabilitation and achieve the goal of equal participation. Therefore, we must provide disabled persons with opportunities for education, training, and work, enabling people with disabilities to enter the country's human resource development plan through the

mobilization of more human resources and integrating the process of fully excavating human potential and ability.

Through the development of human resources, people with disabilities will be able to effectively exercise their complete rights as citizens. People with disabilities are the masters of their fates, not the objects of care. As an individual or a group member, they should be able to participate equally as members of the decision-making process. Through community-based services provided by the government and NGOs which strengthen the capacity of disabled people and their family members and increase the autonomy of people with disabilities, people with disabilities will be able to participate in the development of society. The government should recognize and support disabled persons' organizations which are effective in helping disabled people to take responsibility for their own lives.

To this end, we must launch the Regulations on Disability Prevention and Rehabilitation, providing operable regulations for the related content of the Law on the Protection of Disabled Persons. We must clarify the responsibilities of all levels of government and rehabilitation agencies, formulate the rehabilitation measures for people with disabilities, and provide corresponding regulations for the content, provision methods, and service standards of rehabilitation services. At the same time, we must refine the related legal responsibilities for rehabilitation services. For disabled persons in situations with fairly poor economic conditions and limited ability to bear burdens, we should encourage society to provide rehabilitation services, formulate special legislation on business registration, tax exemptions, and subsidies. Looking to foreign examples of providing funding support for technologies and equipment, we should increase the level of support for people with disabilities to enjoy rehabilitation services and assistive devices, gradually expanding the scope of subsidized rehabilitation services and the variety of assistive devices in legislation. On the basis of further research on balancing the rehabilitation needs of disabled people with medical insurance funds, gradually expanding the scope of medical reimbursements to include more rehabilitation projects.

4. Conclusion

In recent years, the phenomenon of "heavy legislation, light implementation" has been highly criticized. In the field of social security law, a prominent phenomenon is that after the formulation of some laws, they are not applied as judicial remedies. Some rules of conduct such as the Civil Law, Criminal Law, and Labor Contract Law are frequently and repeatedly cited in court decisions, but laws such as the Law on the Protection of the Rights of Women, the Law on the Protection of the Rights of the Elderly, and especially the Law on the Protection of the Rights of Disabled Persons, are very rarely directly invoked in court decisions. Thus, we must consider this problem, and think about what, after all, is the significance of this type of legal norm? What is its implementation value? What are its legal effects? Why do these laws have no relation to adjudication?

After stipulating the rights of people with disabilities in special legislation, how can we deal with its relationship to general legal norms? For example, in terms of citizens'

employment rights, originally you would apply the relevant provisions of the Labor Law, but now the Regulations on the Employment of Disabled Persons have specific provisions. According to legal principles, special laws must be more effective than regular laws; otherwise these special laws and regulations can become redundant. Therefore, we should more actively and effectively implement legislation on the protection of the rights of disabled persons in the judicial process, ensuring that special legislation on protecting the rights of disabled persons is accepted by the judiciary, and is more strongly reflected in the judicial decision-making practice.

As for the so-called “sleeping clauses” in the Law on the Protection of the Rights of Disabled Persons that have never been used, we should emphasize the government’s responsibility for social security, issuing concrete national guidance documents that refine the relevant laws and regulations. In fixed processes such as government procurement bidding and competitive negotiation, how can we preference welfare enterprises, and how can we implement single product sourcing from people with disabilities? The Ministry of Finance should also improve and refine government procurement policies for supporting the employment of disabled persons as soon as possible, and should clarify that when local Finance Bureaus formulate government procurement policies and government procurement product lists for development and environmental protection bureaus, they should fully consider the situation of people with disabilities and formulate specific measures to ensure that the relevant legal provisions have genuine vitality.