

The Improvement of Sports Rights Protection System for Persons with Disabilities in the Context of the New Sports Law

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ABSTRACT

Sports rights of people with disabilities are a fundamental right, the protection of human rights, and have special characteristics compared to the sports rights of ordinary citizens. The newly revised and adopted Sports Law in 2022 will include people with disabilities in the category of special groups of sports rights subjects, but compared to developed countries, China still has shortcomings in the protection of sports rights of people with disabilities: a single way of relief and the main body of supply are not diversified; the main body of responsibility is not clear. However, in comparison with developed countries, there are still shortcomings in the protection of sports rights of people with disabilities in China: there is a single way of relief and the main body of supply is not diversified; the main body of responsibility is not clear; the accountability and supervision system is not sound; and the public infrastructure society is not perfect. Therefore, this paper gives suggestions for the legal protection of sports rights of people with disabilities, taking into account the current sports rights protection system of people with disabilities in China and overseas experiences: improve the remedy channels, improve the accountability and supervision system, and improve the sports rights of people with disabilities from the perspective of anti-discrimination, hoping to promote the improvement of the public service system of sports for people with disabilities in China and the improvement of the sports rights protection system of people with disabilities.

Keywords: Disabled people, Sports rights, Guarantee, Sports law.

1. INTRODUCTION

The promulgation of the new Sports Law in 2022 legislatively confirmed that the sports rights of persons with disabilities are their due rights, which also marked the initial formation of the system for guaranteeing the sports rights of persons with disabilities in China. Although there is legislation on the sports rights of persons with disabilities in China, there are still many problems in the field of judicial practice due to the late start of the legislation and the economic model. This paper will discuss how to better protect the sports rights of disabled people in China by sorting out the current situation of sports rights protection for disabled people in China and drawing on overseas experience

2. THE SPECIFICITY OF SPORTS RIGHTS FOR PEOPLE WITH DISABILITIES

The protection of the rights of people with disabilities should not be "welfare," but a right. [1] The newly revised Sports Law of 2022 clarifies the status of persons with disabilities as subjects in the sports circle, allowing the rights of persons with disabilities in sports in China to be recognized by law and transforming them into actual human rights. This is conducive to the clarification of the responsibilities of the responsible subjects as well as to a better understanding of the law and the enjoyment of rights by the disabled community, so as to better regulate the infringements that the disabled may encounter in their participation in sports activities.

2.1 The Specificity of Sports Rights Compared to Non-disabled Citizens

Although people with disabilities are in a disadvantaged position in social life, they are also subjects of the law, and guaranteeing the rights of sports for people with disabilities is the maintenance of their subjectivity. The Declaration on the Rights of Persons with Disabilities, proclaimed by the United Nations on December 9, 1975, defines persons with disabilities as those who, because of congenital or non-congenital physical or mental deficiencies, are unable to obtain the necessities of life in society on their own. In order to ensure the continuity of the law, the Law on the Protection of Persons with Disabilities was amended in 2008, after the use of the term "persons with disabilities" instead of "handicapped persons", to define persons with disabilities as those who are physically or mentally incapable of performing an activity in a completely normal way. In 2008, China amended the Law on the Protection of Persons with Disabilities to define persons with disabilities as those who are physically or psychologically unable to perform an activity in a completely normal manner. The International Charter of Physical Education and Sport of 1978 states that the right to physical education and sport is a fundamental right and that all natural persons, including persons with disabilities, have the right to engage in physical education and sport as a general right. In order to guarantee that all citizens can participate in sports activities equally and freely, it is necessary to give special protection to the sports rights of people with disabilities who are in a disadvantaged position, and this special protection is a guarantee of human dignity compared with the sports rights of people without disabilities, which is conducive to promoting the comprehensive development of people with disabilities. Only the real implementation of the legal protection of sports rights for people with disabilities can help people with disabilities reduce economic inequality and better participate and integrate into society, which is an important guarantee of the rule of law to promote the realization of the goal of common wealth development and is also a response to the growing needs of people with disabilities for a better life.

2.2 The Protection of Human Rights Reflects the Special Nature of Sports Rights for People with Disabilities

The special provisions on the sports rights of persons with disabilities in the newly revised Sports Law of China in 2022 are similar to the provisions of the Convention on the Rights of Persons with Disabilities adopted and ratified by the United Nations General Assembly in 2006, which divide the sports rights of persons with disabilities into the right to sports activities for persons with disabilities and the right to physical education for persons with disabilities. This signifies that the right to sports for people with disabilities in China has been recognized by the law and has realized the transformation of due human rights into actual human rights. It can be seen that the right to sports for people with disabilities is a kind of sports-related right that is recognized by the state and granted by law to people with disabilities in all areas of social life without harming the interests of others. In addition to the general sports rights, that is, the rights enjoyed equally with the general citizens, the sports rights of persons with disabilities also enjoy special sports rights, such as the right to special protection for persons with disabilities in sports activities, the right to complain about unfair treatment, the right to cultivate special talents in sports, etc. To ensure that people with disabilities truly enjoy these rights, the state, society, families, and individuals, in a humanitarian manner, have the responsibility and obligation to give special care, love, and respect to people with disabilities, and this special care should be active and positive, not out of pity. People with disabilities are physically and psychologically different from other citizens and require "special treatment for special circumstances". To ensure that all members of society enjoy their rights equally in a civilized society and that the disabled community is not marginalized, the law needs to play a role in the deployment of social resources. [2] Only when the state provides special protection for the sports rights of people with disabilities can we ensure that they enjoy the same rights as other citizens in social life, thus reflecting the respect and protection of human rights.

3. THE CURRENT SITUATION OF SPORTS RIGHTS PROTECTION FOR PEOPLE WITH DISABILITIES IN CHINA

The principle of justice requires "equal treatment in the same situation and different treatment in different situations", and since China is the country with the largest number of disabled people in the world, in order to ensure that disabled people enjoy the right to sports like other ordinary citizens, China has introduced a number of laws and regulations to protect the rights of disabled people in sports. From China's first social security law, the Law on the Protection of Persons with Disabilities, to the Sports Law, which was just revised in 2022, China's laws and regulations on the protection of sports rights of persons with disabilities have initially formed a system, but many legal norms have not been put into practice, resulting in a large number of problems in the judicial practice of sports rights of persons with disabilities.

3.1 The Current Status of Legislation to Protect the Sports Rights of Disabled People in China

The revised Sports Law of 2022 provides special guarantees for the participation of persons with disabilities in sports activities and stipulates in the form of legislation that the subject of sports rights protection for persons with disabilities is the state. The main legislative norms involving the right to participate in sports, school sports, and competitive sports for people with disabilities at this stage in China are the following: First, the newly revised Sports Law in 2022, which provides special guarantees for the participation of people with disabilities in sports activities, and through the legislative form, the subject of sports rights protection for people with disabilities is the state, as Xi Jinping, General Secretary of the CPC Central Committee and President of China, emphasized "Persons with disabilities are equal members of the social family, an important force in the development of human civilization, and an important force in the adherence to and development of socialism with Chinese characteristics"; "Able-bodied people can live a wonderful life, and so can persons with disabilities", which is the basis for the guarantee of participation in sports and the beginning of the construction of a sports rights system in China.

Secondly, the new provisions in Articles 26 and 29 of the Sports Law stipulate that schools shall create suitable teaching conditions for students with disabilities; new provisions in Articles 82 and 84 stipulate that public facilities for sports shall be convenient and preferential for people with disabilities. Third, the Law on the Protection of Persons with Disabilities is also one of the important legislations in the field of social law to guarantee the rights of sports for persons with disabilities. It is formulated to protect persons with disabilities from vulnerable social groups and encourage social groups to eliminate discrimination against persons with disabilities and improve the quality of their social lives. Fourth, in order to put the protection of sports for persons with disabilities in the circle on the ground, administrative regulations have also been formulated, such as the Regulations on Public Cultural and Sports Facilities, the Regulations on Construction of Barrier-Free Environments, and the Regulations on Fitness for All, which facilitate individual regional governments to allocate barrier-free facilities according to different local conditions and realize the precision of sports service supply for persons with disabilities. In addition, in order to better adapt to the development of the market economy, China also formulated the National Fitness Plan (2021-2025), based on the development of the times combined with the specific socio-economic development, targeted to carry out various sports events for people with disabilities and strive to solve regional, urban, and rural differences. Finally, through regular "Disabled Persons' Fitness Week", "Disabled Persons' Ice and Snow Sports Season," and other nationwide sports activities for the disabled, we are building a good atmosphere for mass sports and motivating the disabled to participate in sports activities.

3.2 The Current Judicial Situation of Sports Rights Protection for People with Disabilities in China

Although China currently has part of the legislation to protect the rights of sports for people with disabilities, in the field of judicial practice there is still a single way of relief caused by the inadequate supply of sports services for people with disabilities, the lack of an ex post relief system regarding the accountability and supervision of obligated subjects, and the difficulty of conforming to the infrastructure for people with disabilities.

3.2.1 *Simple Way of Relief*

In China, sports supply services for people with disabilities are managed by the people's government, and the Sports Bureau is responsible for implementation, which puts the state in an absolute dominant position. Although China's 2022 revised Sports Law added a chapter on competitive sports disputes and sports arbitration [3], for sports disputes involving people with disabilities, usually only the same arbitration process as for non-disabled people can be applied; there is no special arbitration institution for the disabled group most of the time. Most of the time, only the same remedies as those for non-disabled people can be applied, which is inefficient and time-sensitive. The realization of sports rights strengthens the timeliness of sports rights and the coherence of the entire law. [4] The current single-subject model in our country is not a good one. The current single-subject model in China lacks the autonomy to meet the diverse and multi-level demand for sports rights among people with disabilities. In the context of the current market economy, it will be increasingly difficult to meet the needs of disabled subjects if we rely entirely on government regulation and do not take the initiative of the market economy.

3.2.2 *Lack of Relevant Means for Accountability and Supervision of Obligated Subjects*

The "National Fitness Regulations" (hereinafter referred to as "the Regulations") only have obligatory provisions; the legal consequences of the violation of some of the rights of the subject of the obligation are not clear enough. The Regulations provide for many subjects of obligation, involving the government and its departments, state agencies, enterprises and institutions, social groups, etc., but involving responsibility for the responsibility of the subject is far less than the subject of obligation. At the same time, the legislation on sports rights for people with disabilities has been relatively rich, but most of them only involve obligations, with no liability provisions after the breach of obligations, many of which are reduced to "rights on paper".

In addition, the obligations of the persons responsible for the sports rights of persons with disabilities will further define the content of the right, so that the freedom of sports of the subject of the right becomes a real right. [5] In judicial practice, many laws and regulations in the field of social security are hardly applied. In judicial

practice, many laws and regulations in the field of social security have hardly been applied, such as the Law on the Protection of Persons with Disabilities, the Law on the Protection of Rights and Interests of the Elderly, and the Law on the Protection of Rights and Interests of Women, which are mainly obligatory legal norms but are less used in judicial practice, which is not unrelated to the lack of relevant legal provisions for the accountability and supervision of obligated subjects.

3.2.3 *Lack of Basic Public Facilities*

On the one hand, it is difficult for the supply to meet the demand. The supply of public resources for sports for persons with disabilities is difficult to meet the development needs of their lives, which is one of the current shortcomings in the field of sports rights for persons with disabilities in China [6]. Although there are regulations on the construction of barrier-free environments in China in the "Regulations on the Construction of Barrier-Free Environments," the current construction of barrier-free environments in China is quite far from the requirements of participation and integration of people with disabilities. China is a single supply model led by the government, and it is difficult for market players to participate, which limits the construction of public facilities for sports by the government.

Moreover, different people with disabilities have different needs for public facilities in gymnasiums, which puts a higher demand on the precision of supply.

In school sports for people with disabilities, for the sake of improving the quality of education for people with disabilities, a dual education system is implemented for people with disabilities and able-bodied people, so that people with disabilities cannot enter ordinary schools, or students with disabilities are directly "exempted" from tests in some sports, which in fact discriminates against people with disabilities from another perspective and deepens the misunderstanding of society towards people with disabilities. This is, in fact, another angle of discrimination against people with disabilities and deepens the misunderstanding of society towards the disabled group. This phenomenon is the result of the "dual-track" education system that has been formed in China for many years and also the insufficient allocation of social resources to make all schools accessible to people with disabilities.

4. THE EXPERIENCE OF SPORTS RIGHTS PROTECTION SYSTEM FOR PERSONS WITH DISABILITIES IN FOREIGN COUNTRIES

The disadvantaged position of the disabled group in sports rights is not only due to their own physical and mental diseases but also due to the lack of complete public infrastructure and perfect institutional protection. China's sports for people with disabilities started late compared with developed countries, and the legislation involving the sports rights of people with disabilities in Japan and South Korea shows continuity. The current protection of the sports rights of people with disabilities in Britain and the United States has also formed a multi-subject cooperation model, which is lacking in China at present. Learning from the experience of other countries will help China speed up the solution of the current problems in judicial practice.

4.1 Related Legislation in Japan and Korea

Japan and Korea started earlier than China in the protection of sports rights of persons with disabilities and showed continuity in legislation, and both responded positively to international sports for persons with disabilities, attached importance to sports meetings for persons with disabilities, and supported persons with disabilities to participate in various international and domestic sports events.

4.1.1 Japanese Legislation

The first expression of Japanese legislation on sports for persons with disabilities is found in the book "Sports Establishment Strategy", which was subsequently included in the Japanese Basic Law of Sports. The basic concept is that in the process of promoting sports for people with disabilities, specific consideration should be given to the different situations and needs of the disabled population. The Basic Law of Sports also stipulates that the construction of sports infrastructure for persons with disabilities must meet the requirements of both safety and convenience and requires society to provide public infrastructure for persons with disabilities to participate in sports activities. In addition, Article 26(2) and (3) of the Basic Law of Sports include the National Sports Association for Persons with Disabilities, which

reflects the importance Japan attaches to the sports rights of persons with disabilities. In short, the enactment of this law is Japan's response to the international development of sports for persons with disabilities and reflects the importance that all sectors of Japan attach to the rights of sports for persons with disabilities.

4.1.2 Korean Legislation

The Korean government enacted and implemented the National Sports Promotion Act in 1962, and Article 25 of the Act explicitly prohibits differential treatment in the participation of citizens in sports activities, while Article 34 provides for the training of athletes with disabilities, including sports associations for the disabled, and the establishment of specialized institutions to manage sports facilities and athletic facilities for the disabled, providing legal protection for the rights of the disabled in sports in Korea. The subsequent enactment of the Welfare of Persons with Disabilities Act focused more on the daily social life of persons with disabilities and provided that the livelihood, labor, recreation, and other legitimate rights of persons with disabilities shall not be violated. Although only a small part of the Act on the Promotion of Special Education is related to the protection of sports rights of persons with disabilities, it has played a leading role in the development of special education for persons with disabilities, and the protection of sports rights of persons with disabilities has been further expanded. In response to the international development of sports for persons with disabilities and to strengthen the exchange and cooperation of international sports events for persons with disabilities, the Korean government has also formulated a medium- and long-term development plan for sports for persons with disabilities so as to better support the participation of persons with disabilities in various national and international sports events for persons with disabilities and to improve the sports cultivation environment for persons with disabilities.

4.2 Related Legislation in U.S. and U.K.

The guarantee of sports rights for people with disabilities in China is a single model, while the United States and the United Kingdom have multi-thematic models. The U.S. regulates sports activities for people with disabilities through the Disability Sports Commission, which was introduced in the U.S. Although the U.K. is

government-led, it can improve sports rights for people with disabilities by continuously adjusting social security laws.

4.2.1 *Relevant U.S. Legislation*

The United States has a comprehensive legal framework for sports for people with disabilities, which has been built on four landmarks: the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Individuals with Disabilities Education Act of 1990, and the Olympic and Amateur Sports Act of 1998. The Rehabilitation Act of 1973 was the first in the United States to include a specific provision prohibiting discrimination on the basis of disability, which laid a solid foundation for the enactment of other laws that followed. The Americans with Disabilities Act of 1990 was a landmark in U.S. human rights legislation and was designed to The Americans with Disabilities Act of 1990 is a landmark in American human rights legislation, and in order to ensure that people with disabilities are not discriminated against, the Act gives full play to the core and authority of the federal government and Congress, and the content related to the sports rights of people with disabilities is clear, consistent and highly operable; the Individuals with Disabilities Education Act of 1990 stipulates that students with disabilities enjoy the basic rights and interests of equal participation in physical education, equal access to sports opportunities, and fair access to training results, and requires educational institutions as the main body to ensure that students with disabilities The Law requires educational institutions to ensure that students with disabilities are not discriminated against and can participate equally in all sports activities at school. The enactment of the Act provided clear and specific policy guidelines for students with disabilities to access sports opportunities and created favorable conditions for the development of school sports in the U.S. The Olympic and Amateur Sports Act of 1998 is U.S.-specific legislation in the field of sports, and the Act is significant in establishing the identity of the U.S. as a major sports nation. The legislation repositioned the status and functions of sports, incorporated sports competition into national governance, regulated competitive sports activities, and promoted the sustainable development of sports for people with disabilities through the establishment of a special disability sports commission and other measures.

4.2.2 *Relevant U.K. Legislation*

The construction of sports protection for people with disabilities in the UK started early, and the UK government is constantly improving relevant laws and regulations as well as supporting and encouraging the development of Paralympic sports. For example, the Equality Act clearly stipulates that discrimination against people with disabilities is prohibited in sports, whether it is direct discrimination or indirect discrimination on the grounds of protection. People with disabilities have the right to participate in all sports activities, and the government is also obliged to exclude unfavorable facilities, equipment, and other hardware factors from their participation in sports activities. It is worth mentioning that the UK is a government-led country like China, but as a law-of-the sea country, the improvement of the protection of the rights of disabled people in sports is mainly achieved through the continuous and continuous revision of the existing social security laws, and new laws are seldom enacted in the existing areas, which also makes the legal norms related to the protection of the rights of disabled people in sports in the UK have a strong flexibility.

5. SUGGESTIONS FOR IMPROVING THE SYSTEM OF GUARANTEEING THE RIGHTS OF SPORTS FOR PEOPLE WITH DISABILITIES

As a socialist country, China has always been a government-led country in terms of the protection of most public interests, and the protection of sports rights for people with disabilities is no exception. Although China has also introduced social actors through regulations and policies, compared with the developed countries' model of clear responsibilities and cooperation among multiple actors, China is still lacking, and reforming the supply of sports resources for people with disabilities is imperative. On the basis of the experience of sports rights protection for people with disabilities in developed countries and the national conditions of China, suggestions are made on how to improve the system of sports rights protection for people with disabilities in China and promote the common development of sports for people with disabilities.

5.1 *Improving the Way of Relief*

As a kind of mass sport closely related to the majority of people with disabilities, it is difficult to

adapt to the needs of development by relying only on the power of the state, and some of the social organizations established in China now are government-led social organizations, which can play an extremely limited social role. We can learn from the useful experience of developed countries in the introduction of diversified subjects below a certain right to market subjects. In this way, from the viewpoint of the supply body, it helps to improve the administrative efficiency of the government. From the viewpoint of the supply object, it is more conducive to meeting the individualized and liberalized needs of disability sports development. However, it is more important to clarify the boundaries of government and social responsibility in such a corporate cooperation model. For example, diversified cooperation methods such as decentralization, service outsourcing, and franchising, tax exemptions for enterprises, and franchising are taken to give preferential treatment to enterprises' participation in public sports services for people with disabilities, so as to motivate more market players to enter the field of sports demand supply for people with disabilities on their own initiative, thus realizing the diversification of supplying subjects and breaking the single supply model in China.

5.2 Sound Accountability and Supervision System

Legal protection of sports rights for persons with disabilities requires active state action, which requires not only legislative regulation but also judicial external supervision of administrative organs. For example, through the introduction of public interest litigation in the process of ensuring the accessibility of sports facilities, the further convergence of the Sports Law and the Regulations on National Fitness can be promoted. For school sports for people with disabilities, in order to guarantee the right to physical education for this disadvantaged group of people with disabilities, the relevant legislation can be enacted to set up an in-school student sports rights defense agency to regulate the infringements that occur in schools and help people with disabilities enjoy the right to participate in sports activities and sports competitions in and out of school on an equal basis.

The legislation on the protection of sports rights of persons with disabilities should be more actively and effectively implemented in the judicial process so that the specific legislation on the protection of sports rights of persons with disabilities can be

better adopted by the courts. Compared to developed countries, the management of social organizations, the supervision of sports activities for people with disabilities, and social activities in China are usually based on administrative instructions, which are implemented by administrative forces with less involvement of social forces.

5.3 Safeguarding the Sports Rights of People with Disabilities from the Perspective of Anti-discrimination

The prohibition of discrimination in the Constitution and laws is the responsibility of the state. [7] In 1982, the United Nations World Programme of Action for Persons with Disabilities (WPA) called on member states to guarantee the right of persons with disabilities to sport through education, sport, and physical education. In 1982, the United Nations World Programme of Action for Persons with Disabilities called on member states to eliminate long-standing social discrimination against persons with disabilities through legislation in the fields of education and sports, and the Convention on the Rights of Persons with Disabilities pursued the goal of "moving from formal equality to de facto equality". The Convention on the Rights of Persons with Disabilities pursues the goal of "moving from formal equality to de facto equality". It can be seen that the goal of the rule of law in sports is to achieve fairness, equality, and anti-discrimination in the field of sports. [8] It is clear that the goal of the rule of law in sports is to achieve fairness, equality, and anti-discrimination. In order to solve this problem, on the one hand, we can solve it by introducing diversified subjects, and on the other hand, we need the attention of the state to appropriately increase the investment in the hardware and software facilities of sports for persons with disabilities and build the information network channels for persons with disabilities to increase the circulation of sports information for persons with disabilities. Only by putting more resources into mass sports for people with disabilities and in school sports, thus providing an environment in which people with disabilities can freely and fully develop.

6. CONCLUSION

Disabled people should enjoy the same rights as non-disabled people; recognizing that every person has equal legal status is one of the features of

modern law, and the protection of human rights in modern law also reflects the special nature of the sports rights of disabled people. Learning from the experience of developed countries' legal systems, we target to solve the difficulties encountered in the judicial practice of sports rights protection for people with disabilities in China and help people with disabilities to freely participate in sports activities, receive physical education, and take part in sports competitions by clarifying the responsible subjects and widening the channels of relief. Taking the newly revised Sports Law as an opportunity, we expect to deepen the research on the fields related to the sports rights of persons with disabilities by learning from overseas experiences, so as to better respond to the problems in the construction of the sports rights system for persons with disabilities in China, promote the development of sports for persons with disabilities in China, and respond to the trend of the development of sports for persons with disabilities in the world, so as to meet the pursuit of a better life for persons with disabilities.

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