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## **THE EDUCATION AND EMPLOYMENT OF PERSONS WITH DISABILITIES IN MONTENEGRO: *LEGE LATA* AND EUROPEAN STANDARDS**

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*The paper aims at reviewing the position of persons with disabilities in Montenegro within the context of the legislation reform necessitated by the need to harmonise the country's legislation with the EU standards. In the Montenegrin legislation, a number of laws were passed that not only adequately protect the status of persons with disabilities, but also integrate a number of stimulating measures for employers that encourage the employment of persons with disabilities. However, the employment of people with disabilities seems to face a number of obstacles. Legislative imperfections become negligible in relation to problems related to the education of persons with disabilities, their agility, and certain problems regarding the willingness of employers to employ them.*

*From the methodological aspect, a number of scientific methods of research and data processing were used in the work: - Historical-descriptive is important in order to see the development process of the protection of persons with disabilities in terms of appropriate legislation and measures that contribute to their employability;- Descriptive method is important when defining basic terms such as: disability, persons with disabilities and the like;- Quantitative analysis was used dominantly in the analysis of the representation of persons with disabilities in the total population, in the labor market, both in terms of the number of employed and unemployed; - The dogmatic method is used in the study of national rights, both in their entirety and in parts, but also in the study of the European legal framework; - Comparative analysis is important when comparing certain provisions in European legislation and national legislation;- The analysis method is used throughout the work, and it is used to analyze basic legal terms, positive law and statistical and other data; - The synthesis method is particularly important for determining conclusions and providing answers to the set goals of this research.*

**Key words:** *persons with disabilities, legislation of Montenegro, European standards.*

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## I INTRODUCTION

The introduction provides a brief overview of the international and European regulations concerning the position of the persons with disabilities. It is followed by an overview of Montenegrin legislation governing the position and rights of the persons with disabilities with an emphasis on higher education and the challenge of accessibility of educational facilities to the youth with disabilities studying at Montenegrin universities. Nevertheless, the focus of the paper is on employability and employment of persons with disabilities which is closely connected with vocational rehabilitation. This section outlines the main challenges persons with disabilities in Montenegro face as regards employment and employment-related inclusion. The paper ends in the conclusion that the solid legislation still needs to be put into practice in terms of accessibility and adaptation of workplaces to persons with disabilities.

The issue of protecting the rights enjoyed by persons with disabilities is an integral part of human rights education in general. Due to a large number of people with disabilities and the consequences of disability, the issue of protecting their rights has become a serious problem of large scale. The great specifics pertaining to this category of population in terms of realization of their basic rights call for an active role of state authorities as well as an appropriate level of protection of the rights enjoyed by persons with disabilities. The rights of special importance for persons with disabilities are the right to equality, the right to education and vocational training and the right to work. In order to achieve the essential equality of persons with disabilities, the conditions must be provided for them to enjoy basic human rights equally and effectively.

The United Nations has long dealt with the issue of policy development aimed at protecting people with disabilities, which is confirmed by numerous documents that have been issued within this organization. Persons with disabilities are entitled to all human rights and fundamental freedoms set forth in the general instruments of international public law such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and Freedoms, the International Covenant on Economic Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women. However, none of the above documents explicitly prohibits discrimination based on disability, which, nevertheless, occurs in practice. In most constitutions, people with disabilities are guaranteed equality. Since people with disabilities are not specifically protected by any of the above-mentioned conventions and covenants, a need presented itself for adopting a new document that would serve as an important tool for people with disabilities. The UN General Assembly adopted the text of the Convention on the Rights of Persons with Disabilities at its 61st session held on December 13, 2006. The Convention established international standards on the rights and freedoms of persons with disabilities, clarified the principles of human rights in the context of persons with disabilities, and created mechanisms to monitor the implementation of these rights.

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Numerous European Union resolutions refer to the issue of the protection of rights of persons with disabilities. Member States are invited to undertake the necessary actions in order to implement a comprehensive and coordinated policy of vocational rehabilitation, as well as to achieve equal participation of persons with disabilities in all aspects of social life.<sup>1</sup>

The European Social Charter of 18 October 1961 was the first international charter that explicitly mentioned persons with disabilities. The Charter obliges member states to undertake positive actions in order to improve full integration of persons with disabilities into society through measures aimed at overcoming obstacles in communication and mobility, as well as at providing access to education, transport, housing, cultural activities and leisure activities<sup>2</sup>.

The principle of non-discrimination is defined in Article 14 of the European Convention on Human Rights and Fundamental Freedoms and Article 1 of Protocol No. 12 to the Convention. These provisions stipulate that: ‘The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’<sup>3</sup>. Conventions together with protocols have a binding significance for the national legislative system and practice.

The Convention and Protocol No. 12 to the Convention do not recognize disability as a basis for prohibiting discrimination, and the Council of Europe has, therefore, adopted an Action Plan to promote the rights and full participation of persons with disabilities in society. It is important to note that the European Union outlined the measures contributing to the independence and full enjoyment of human rights of persons with disabilities, in the Strategy for People with Disabilities 2017-2023. Strategies and action plans are of great importance for member countries in terms of recommendations that can contribute to the achievement of the goals of the aforementioned conventions.

## II PERSONS WITH DISABILITIES IN MONTENEGRIN LEGISLATION

Following the restoration of independence in 2006, Montenegro established accession to the European Union as one of the main foreign policy priorities. The process of accession to the European Union implies the fulfillment of certain requirements of legal, political and economic nature. In that sense, the modernization of the legal framework supported by the labor market carries a special significance.

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<sup>1</sup> Ž. Stojkova, *Megunarodni normi i standardi za licata so hendikep*, Skoplje, 2004, 112.

<sup>2</sup> L. Samuel, *Fundamental Social Rights - Case-law of the European Social Charter*, Second edition, Council of Europe, 2002, 314.

<sup>3</sup> *The European Convention on Human Rights*, Internet und IPR: [https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/Convention\\_ENG.pdf](https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/Convention_ENG.pdf), accessed on: 22 June 2022.

Among the newly adopted legislative framework, the Labour Law and the Law on Professional Rehabilitation and Employment of Persons with Disabilities are of particular importance. Montenegro's overall commitment is to actively participate in international flows in all areas including the field of the rights of persons with disabilities. Thus, Montenegro signed and ratified the Convention on the Rights of Persons with Disabilities as well as the Optional Protocol to the Convention at the UN General Assembly session in New York on September 27, 2007.

The Constitution of Montenegro<sup>4</sup> proclaims the following as the fundamental values of the public order: freedom, respect for human rights and freedoms, the rule of law and democracy. Article 8 states that direct or indirect discrimination on any grounds shall be prohibited<sup>5</sup> and introduces regulations and special measures to achieve the equality of persons who are in unequal position, on any grounds. According to Article 17, paragraph 2, all persons shall be deemed equal before the law, regardless of any particularity or personal feature<sup>6</sup>. In addition, the Constitution prohibits the restriction of human rights and freedoms beyond the scope allowed by this Act.

According to Article 39, everyone is guaranteed freedom of movement and residence and it may be restricted if required so for conducting the criminal procedure, prevention of contagious diseases spreading or for the security of Montenegro<sup>7</sup>. Article 68 guarantees special protection of persons with disabilities, while the principle of public order and the principle of non-discrimination and equality are regulated in more detail in the Law on Prohibition of Discrimination and the Law on Prohibition of Discrimination against Persons with Disabilities<sup>8</sup>. The Law on Prohibition of Discrimination against Persons with Disabilities in Article 5, Paragraph 1 sets out the obligation for legal and natural persons to adopt and implement regulations and special measures aimed at achieving equality of persons with disabilities.

### **III THE ASSOCIATION OF DISABLED YOUTH OF MONTENEGRO AND HIGHER EDUCATION**

According to the World Health Organization, it is estimated that in Montenegro people with disabilities account for at least 10% of the total population. The issues important for persons with disabilities in Montenegro are mainly within the

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<sup>4</sup> The Constitution of Montenegro, *Official Gazette of Montenegro*, No. 1/2007 of 25 October 2007.

<sup>5</sup> Ž. Rašević, *Korporativna odgovornost za poštovanje međunarodnih ljudskih prava*, IV nacionalna naučno-stručna konferencija "Trendovi u poslovanju", Kruševac, 2020, 80-81.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> The Law on Prohibition of Discrimination, "*Official Gazette of Montenegro*", No. 46/10 of 06. 08. 2010; 40/11 of 08. 08. 2011; 18/14 of 11. 04. 2014.

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competence of the Ministry of Labour and Social Welfare, but other ministries take on a part of the responsibility by performing functions within their competence.

In Montenegro, 32 organizations dealing with the protection and promotion of the rights of persons with disabilities are registered, as can be seen from the results of the research The role of organizations of persons with disabilities in improving the position of persons with disabilities in Montenegrin society, which was conducted by the non-governmental organization Center for the Development of Non-Governmental Organizations (CRNVO, 2021). The most significant role is played by the Association of Youth with Handicap, since they implemented the most significant number of projects compared to other NGOs and associations, and also provided the greatest contribution to the creation of numerous legislative solutions.

The Association of Youth with Disabilities of Montenegro (AYDM) was founded on October 22, 2001 and it aims to promote and contribute to the equal position of young people with all kinds of disabilities in society, through different initiatives and the establishment of a legal, educational, cultural and social framework that enables it. The AYDM offers several programs: an education and training program, an employment and human resources development program, an independent life program, an accessibility program, a legal and anti-discrimination program, and an international cooperation program. The support for students with disabilities is provided through the Student Advisory Office.

At the moment of writing this paper, according to the AYDM data, there were 95 students with disabilities currently studying at Montenegrin universities. Out of these, 55 were students at the University of Montenegro, 10 at the University of Donja Gorica (a private university), while 31 students were enrolled at other universities and independent university units.

According to the Law on Higher Education, higher education is accessible to all persons and cannot be restricted, either directly or indirectly. According to Article 70, paragraph 4 of this Law, students with disabilities are exempt from paying tuition fees. In addition, under Article 90, paragraph 5 of this Law, a student with a disability has the right to take the exam in a manner adapted to his/her educational needs in accordance with the statute of the institution. In July 2015, the AYDM signed a memorandum on cooperation with the University of Montenegro. The aim of the memorandum was to encourage inclusion and provide equal opportunities for students with disabilities in higher education, thus creating conditions for transition to an open labour market so as to enhance the respect and enjoyment of the human rights of persons with disabilities. *Accessibility* is one of the key factors for enrollment at a university of persons with disabilities. In the analysis of the accessibility that AYDM carried out in 2016, out of a total of 16 university departments in Podgorica, 12 were only partially accessible and 4 completely inaccessible. Among the partially accessible were the Faculty of Law, the Faculty of Political Science, the Faculty of Economics and all faculties at the University of Donja Gorica.

#### **IV VOCATIONAL REHABILITATION AND EMPLOYMENT OF PERSONS WITH DISABILITIES IN MONTENEGRO**

Employment of persons with disabilities in Montenegro is regulated by *lex specialis* – the Law on Professional Rehabilitation and Employment of Persons with Disabilities, which provides for the possibility of employment of these persons under general and special conditions. Employment of persons with disabilities under the general conditions is considered to be employment to the employer without adjustments of jobs i.e. work position. Employment of persons with disabilities under the special conditions is considered to be employment with the employer to adjust jobs and work position and employment at specific organizations for employment<sup>9</sup>.

Vocational rehabilitation is an integral part of a complex and continuous process of general rehabilitation and its aim is to enable a disabled person to secure, retain and advance in suitable employment and thereby to further such person's integration or reintegration into society.<sup>10</sup> In the case of employment under general conditions, the Law provides for a mixed employment model. This mixed model implies the obligation of employers to employ a certain number of persons with disabilities in relation to the total number of employees (a quota-based system), on the one hand, and on the other, subsidies received by the state if they provide employment for a person with disabilities. From the quota-based system, it follows that the right of priority is enjoyed by persons with a degree of disability. Sometimes it can be a problem if a person with a disability wants to keep secret information about his/her health status. The issue of personal data protection is the subject of a number of international documents, and in some European countries, such as, for example, Slovenia, when recruiting employees it is forbidden to seek information concerning their health status, except insofar as these data are relevant for the performance at the workplace for which they apply.<sup>11</sup>

By integrating within their working environment, persons with disabilities are also given the opportunity to participate in other collective activities such as trade union activities, so that their employment also provides security against social exclusion.<sup>12</sup>

The Law on Professional Rehabilitation and Employment of Persons with Disabilities provides for the establishment of the Fund for Professional Rehabilitation and Employment of Persons with Disabilities which is used for the development and improvement of vocational rehabilitation and employment of persons with

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<sup>9</sup> The Law on Professional Rehabilitation and Employment of Persons with Disabilities, 2017.

<sup>10</sup> Vocational rehabilitation and Employment of Disabled Person, 1998.

<sup>11</sup> E. Korpič Horvat, *Varstvo delavčeve osebnosti, zasebnosti in dostojanstva v delovodni zakonodaji republike Slovenije*, in: *Socijalna pravda i dostojanstvo na radu* (zbornik radova), Zlatibor, 2008, 69.

<sup>12</sup> R. Kličković, *Zapošljavanje invalida, osnov njihove ekonomske i socijalne sigurnosti*, in: *Socijalna pravda i dostojanstvo na radu* (zbornik radova), Zlatibor, 2008, 556.

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disabilities, co-financing of special organizations, payment of subsidies for employers who employ persons with disabilities, co-financing programmes for maintaining the employment of persons with disabilities, and financing and other activities related to the vocational rehabilitation of persons with disabilities.

In accordance with the regulations governing state aid, if they fulfill their legal obligations, employers who employ persons with disabilities in the open labour market and under general conditions are entitled to subsidies in the amount of 100% of the eligible costs which refer to: grants for adjusting the workplace and working conditions for employment of persons with disabilities; loans under favourable conditions for the purchase of machines, equipment and tools necessary for the employment of persons with disabilities; participation in the financing of personal expenses of an assistant to persons with disabilities. In addition, employers are entitled to wage subsidies for each disabled person they employ. The amount of the subsidy depends on the employee's disability. Thus, an employer who employs a person with at least 50% disability rating has a right to a subsidy of 75% of the gross wage paid for the whole period of employment, while for an employer employing a person with disability less than 50%, the subsidy amounts to: 75% in the first year of employment, 60% in the second, and in the third and each subsequent year of employment, 50% of the reimbursed gross salary amount.

Nevertheless, in contrast to some of the earlier solutions<sup>13</sup> under the current regulations, persons with disabilities can be made redundant. If they are not entitled to any of the rights stipulated by a special programme, their employment is terminated, with the right to a severance payment, the amount of which depends on whether the disability was caused at work or outside work.

The Labour Law of Montenegro protects the rights of persons with disabilities and guarantees them special protection. According to this Law, direct or indirect discrimination of a person seeking employment and an employed person, on the grounds of gender, birth, language, race, religion, colour of skin, age, health condition, or disability, nationality, marital status, family responsibilities, sexual orientation, political or other belief, social background, financial status, membership in political and trade union organizations or any other personal feature shall be prohibited.<sup>14</sup>

The Labour Law does not consider as discrimination special provision of the Law, collective agreement and contract of employment relating to special protection

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<sup>13</sup> The 2003 Labour Law ("Official Gazette of the Republic of Montenegro", No. 54/03), prohibited the termination of employment for persons with disabilities in the event they are determined the status of a redundant employee, but the law was amended by the Law on Amendments to the Labour Law ("Official Gazette of the Republic of Montenegro", No. 79/04).

<sup>14</sup> The Labour Law of Montenegro, "Official Gazette of Montenegro", No. 49/2008, 88/2009; 26/2009, 26/2010; 59/2011, 66/2012, 31/2014 and 53/2014.

and assistance for specific categories of employees, and in particular those governing the protection of persons with disabilities.<sup>15</sup>

One of the important rights provided for by the Labour Law, as well as the Law on Professional Rehabilitation and Employment of Persons with Disabilities, is the right of persons with disabilities to work at their place of residence, that is, an employed person with disability may not be deployed to work in another place outside the place of residence, or stay.<sup>16</sup> By adopting the Law on Professional Rehabilitation and Employment of Persons with Disabilities, more favourable conditions have been created for increasing the employment of persons with disabilities, as well as their equal participation in the labour market.

Persons with disabilities are among the categories of persons with the greatest obstacles to employment. On December 31, 2015, 1,640 persons with disabilities were registered with the Employment Agency of Montenegro. 1,064 (315 women) of them were persons with work related disability, and 576 were categorized persons (221 women). On December 31, 2015, a total of 93 employers were entitled to a wage subsidy for 128 persons with disabilities (49 women). Out of the 128 employed persons with disabilities, 97 were full-time employees. Most of these people worked in non-governmental organizations, especially in organizations of people with disabilities and with private employers, while there were no data on employment in the public sector.

In order to implement the measures and activities of vocational rehabilitation and employment of persons with disabilities and other difficult-to-employ persons, the first instance and second-instance vocational rehabilitation commissions operate within the Employment Agency. In 2015, the first instance commissions gave findings and opinions on the determined percentage of disability for 462 persons (50% of them were women), the inclusion in the measures and activities of professional rehabilitation of 157 persons with disabilities and the remaining working capacity for 86 persons with disabilities. In addition, they made an assessment on the possibility of employment for 21 persons with disabilities and adopted 726 decisions.

Nevertheless, it is evident that there is insufficient employment of persons with disabilities, and the reasons for this are numerous:

- employers' prejudices as regards the skills of persons with disabilities;
- inaccessible environment, poor adjustment of the workplace and working environment to the needs of the persons with disabilities, including the *inaccessibility* of facilities, which prevents the arrival and stay of persons with disabilities;
- a number of unemployed persons who have not been identified as persons with disabilities;

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<sup>15</sup> *Ibid.*

<sup>16</sup> The Law on Professional Rehabilitation and Employment of Persons with Disabilities, "Official Gazette of Montenegro", No. 49 / 08 and 73 / 10.

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- a number of persons with disabilities who have exercised the right to disability or family pension although they are capable of working, and they do not dare enter into a contract of employment for fear of losing their pension;
- low level of social support;
- a lack of motivation to seek employment which is often caused by over-protection in the family and the use of social benefits as a kind of pretence of social security;
- inadequate educational structure of unemployed persons with disabilities, a lack of knowledge or work experience, as well as numerous barriers to obtaining education<sup>17</sup>.

The strategic goal in the field of employment in Montenegro until 2020 is to improve the conditions for increasing the employability of persons with disabilities and their equal participation in the labour market. The European Disability Strategy 2010 -2020 is a framework for action at the European level as well as for national activities aimed at improving the position of people with disabilities, regardless of gender and age.

## V CONCLUSION

Due to a large number of persons with disabilities, the protection of their rights has gained in importance. The question of the protection of these persons is the subject of interest both nationally and internationally. Since its founding, the United Nations has been particularly interested in improving the legal and other status of persons with disabilities. The former can be concluded on the basis of a large number of conventions.

Vocational rehabilitation and employment of persons with disabilities is a complex undertaking that aims to include people with disabilities in the work process and is also a condition for their social integration. In this way, people with disabilities are involved in social trends and become equal members of society. In order to ensure full equality of persons with disabilities, laws have been passed which guarantee the prohibition of discrimination in all areas of social life. Within the EU, there is a significant number of regulations and strategies that deal with the protection of the rights of persons with disabilities.

In Montenegro, there are very few opportunities for employment of persons with disabilities. Therefore, the adoption of the National Strategy for the Integration of Persons with Disabilities is of special importance, as well as the adoption of a number of laws regarding persons with disabilities, among which, the Law on Vocational Rehabilitation and Employment of Persons with Disabilities. This law contains

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<sup>17</sup> *The Strategy for the Integration of Persons with Disabilities in Montenegro (2016-2020)*, Internet: <http://www.mrs.gov.me/ResourceManager/FileDownload.aspx?rid=251538&rType=2&file=STRATEGIJA%20ZA%20INTEGRACIJU%20LICA%20SA%20INVALIDITETOM%20U%20CRNOJ%20GORI%202016-2020.doc>. Accessed on: 30 June 2022.

provisions that provide employers with the opportunity to recognize their own interest in employing persons with disabilities. On the path towards the European Union, it is necessary to create adequate conditions for persons with disabilities to participate, as active and equal citizens, in the process of European integration of Montenegro. It will be very important to put into practice the concept of adapting workplaces to persons with disabilities since the solid legislation can only be effective when international standards are applied in all essential areas of social life.

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## **ОБРАЗОВАЊЕ И ЗАПОШЉАВАЊЕ ОСОБА СА ИНВАЛИДИТЕТОМ У ЦРНОЈ ГОРИ: *LEGE LATA* И ЕВРОПСКИ СТАНДАРДИ**

### ***Резиме***

*Рад има за циљ сагледавање положаја особа са инвалидитетом у Црној Гори у контексту реформе законодавства која је неопходна због потребе усклађивања законодавства земље са стандардима ЕУ. У црногорском законодавству донијет је низ закона који не само да на адекватан начин штите статус особа са инвалидитетом, већ и интегришу низ стимулативних мјера за послодавце, које подстичу запошљавање особа са инвалидитетом. Међутим, изгледа да се запошљавање особа са инвалидитетом суочава са бројним препрекама. Несавршености законодавства постају занемарљиве у односу на проблеме везане за образовање особа са инвалидитетом, њихову агилност и одређене проблеме у погледу спремности послодаваца да их запосле.*

*Са методолошког аспекта, у раду је коришћен низ научних метода истраживања и обраде података: - Историјско-дескриптиван је важан како би се сагледао развојни процес заштите особа са инвалидитетом у смислу одговарајућег законодавства и мјера које доприносе могућности њиховог запошљавања; - Дескриптивна метода је важна при дефинисању основних појмова као што су: инвалидитет, особе са инвалидитетом и слично; - Квантитативна анализа је доминантно коришћена у анализи заступљености особа са инвалидитетом у укупној популацији, на тржишту рада, како по броју запослених тако и по броју незапослених; - Догматски метод се користи*

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*у проучавању националних права, како у цијелини тако и у дјеловима, али и у проучавању европског правног оквира; - Компаративна анализа је важна када се пореде одређене одредбе европског и националног законодавства; - Метод анализе се користи у цијелом раду, а користи се за анализу основних правних појмова, позитивноправних и статистичких и других података; - Метода синтезе је посебно важна за доношење закључака и давање одговора на постављене циљеве овог истраживања.*

**Кључне ријечи:** *особе са инвалидитетом, законодавство Црне Горе, европски стандарди*