



UMHCG

Association of Youth with Disabilities of Montenegro  
Udruženje mladih sa hendikepom Crne Gore

# PROFESSIONAL REHABILITATION AND EMPLOYMENT OF PERSONS WITH DISABILITIES

-POLICY STUDY-

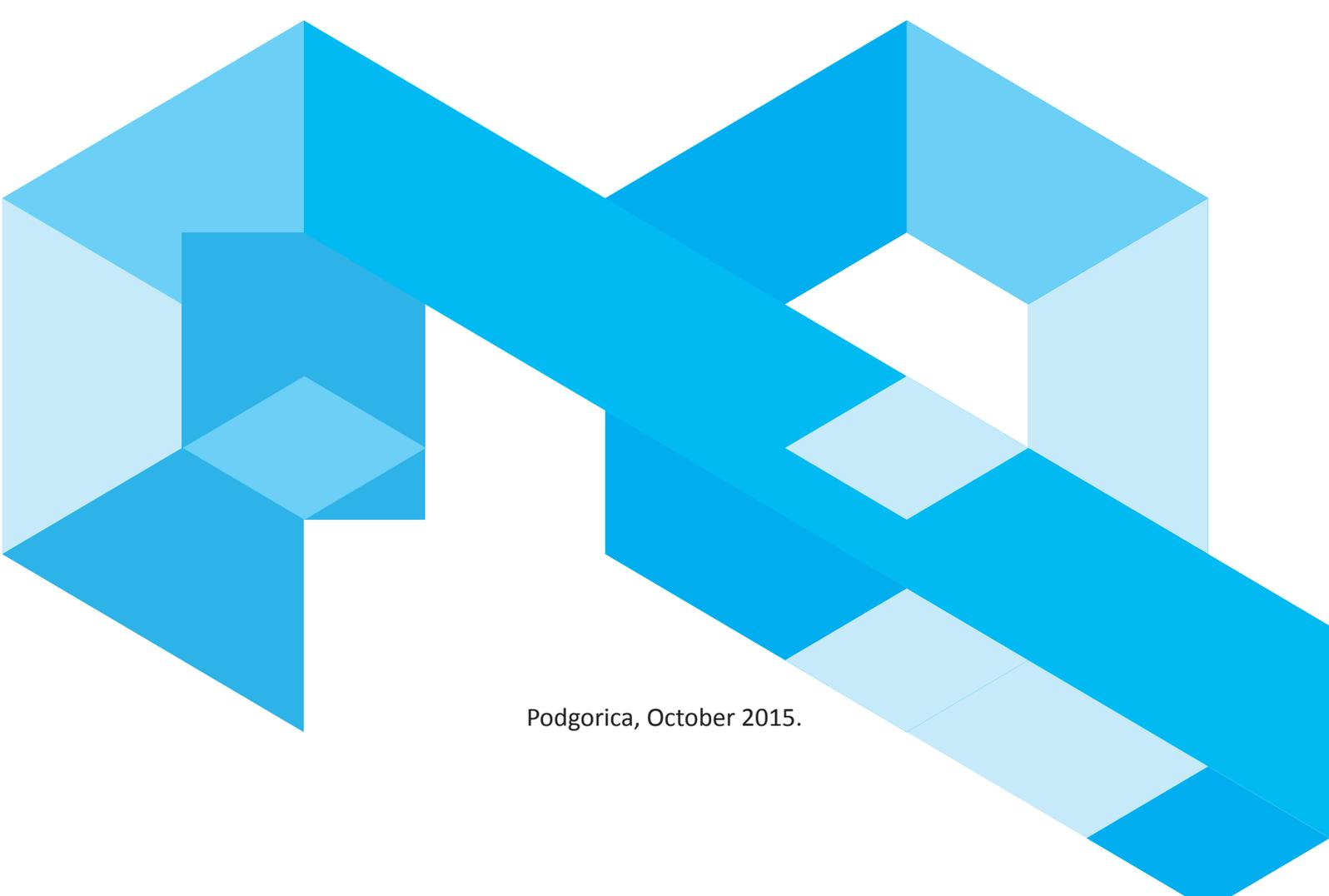


An EU funded project



PROFESSIONAL  
REHABILITATION AND  
EMPLOYMENT OF  
PEOPLE WITH DISABILITIES

STUDY OF PRACTICAL POLICY



Podgorica, October 2015.

Publisher:

**Association of Youth with Disabilities of Montenegro**

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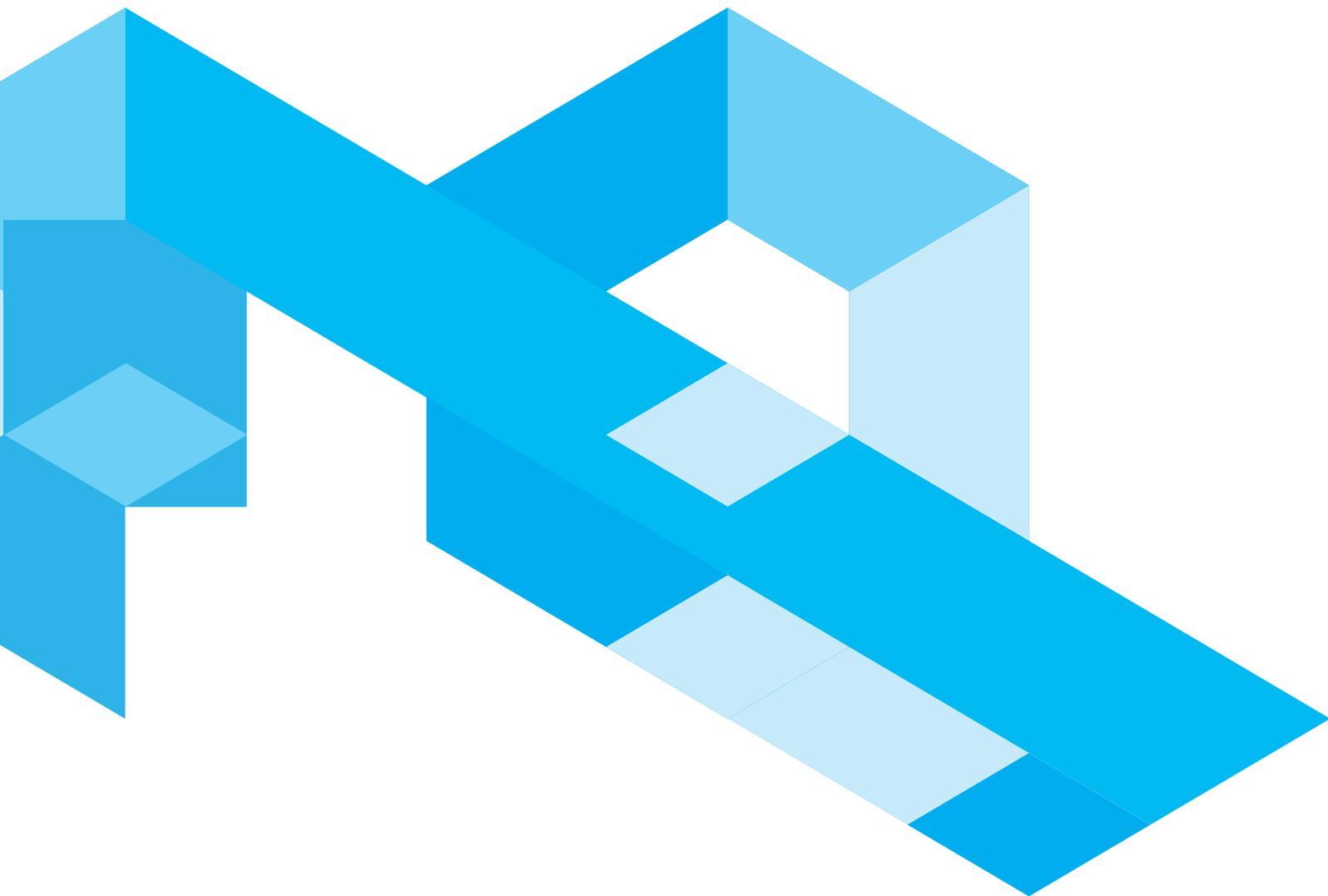
**Studio Branko**

Copies: 50

Study is a part of the project “Changing Capacities to Capacitate Changes” which is implemented by the Association of Youth with Disabilities of Montenegro in the partnership with the Netherlands’ organisation transFORMA, Union of Blind of Montenegro and Association of Youth with Disabilities of Nikšić, and is financed by the Delegation of the European Union in Montenegro.



Only AYDM is responsible for contents of this Study and it doesn't represent the official attitude of European Union.



# CONTENTS

I Foreword .....	7
About the project .....	7
Goal of the Study .....	7
II Introduction and basic terms .....	8
Working and employment .....	8
Professional rehabilitation.....	8
Process of employment and other related processes.....	9
III International legal and normative framework.....	10
Documents of United Nations and European Union.....	10
IV Domestic legal and strategic fram work.....	14
Laws and strategies in Montenegro.....	14
Estimation of the level of disability and measures of professional rehabilitation .....	16
Performers of professional rehabilitation and special organisations .....	18
Quota system special employment contribution .....	20
Subsidies .....	21
Resources of the Fund for professional rehabilitation and employment of people with disabilities .....	23
V Strategies and action plans which treat the area of employment of people with disabilities ...	24
National strategies that treat the area of employment of PWDs .....	24
Local plans in area of disability .....	27
VI Institutional framework and bodies that are dealing with the issue of employment and professional rehabilitation of people with disabilities .....	29
VII Employment of people with disabilities in practice – situation in Montenegro .....	31
Current state and social context.....	36

VIII	Possible scenarios of solving the status of the Fund for professional rehabilitation and employment of people with disabilities .....	35
	Scenario I - Status QUO .....	36
	Scenario II – Establishment of the Fund for professional rehabilitation and employment for people with disabilities as a separate legal body... ..	37
IX	Conclusions and recommendations .....	39
X	About the organisation .....	41
XI	Literature and references .....	43

# I FOREWORD

## ABOUT THE PROJECT

Project “Changing Capacities to Capacitate Changes” which is implemented by the Association of Youth with Disabilities of Montenegro from July 2014 until January 2016 is supported from the Delegation of European Union in Montenegro through the IPA – Montenegro 2013 Civil Society Facility Program.

Project is implemented in the partnership with the organisation transFORMA from the Netherlands, Union of Blind of Montenegro, Association of Youth with Disabilities of Nikšić and in cooperation of Montenegrin Ministry of Labor and Social Welfare.

## GOAL OF THE STUDY

The goal of the **Study of practical policy** (hereinafter Study) is to highlight positive solutions and results in the practice, improvements in this area, as well as problems and constraints in employing people with disabilities in Montenegro and to offer specific recommendations to the decision makers and other interested parties for improvement of the exiting situation, through the analyze of the relevant international legal and strategic framework and analyze of the implementation of the Law on the Professional Rehabilitation and Employment of people with disabilities (hereinafter Law) in practice. Separate section will be focused on the Fund for professional rehabilitation and employment of people with disabilities through the possible scenarios of solution of its status.

Also, by initiating specific conclusions and recommendations, in the time when the Law is about to be changed, we want to contribute with this Study to the reaching the goals of this project which are addressed to the more active participation of people with disabilities in initiating, creating, developing and monitoring the implementation of public policies in Montenegro on all levels as well as contribution to the European integration of our country through the public advocacy and changing governmental and local policies and strengthening cooperation of government bodies and NGOs which address the issue of people with disabilities.

Study was written in the period of fulfillment the primary measure for opening the Chapter 19 – Social politics and employment, i.e. in the period of implementation of the Action plan on Chapter 19, immediately before opening the Chapter. Study was created as the result of long-lasting monitoring of the social policies and employment policies by the AYDM.

## II INTRODUCTION AND BASIC TERMS

### Working and employment

Right to work and employment are basic human rights of every person. This one, as well as other basic rights, is guaranteed to people on the basis of *equality with others*, which includes *the same starting positions* in looking for and finding the job, in accordance with the gained educational background and qualification. Right to work includes, equal *earnings for the same work*, as well as possibility of *career advancement*, among other. When it comes to people with disabilities, that means also the choosing/or accepting the job *nearest to the place of living, in accessible environment and adapted and equipped working place* and working conditions that will facilitate, i.e. make working process inclusive. Right to work means also *job retention* after gaining disability, if it's possible, depending on connection between (gained) impairment<sup>1</sup> and performing this job. Also, this right includes promoting of and employment process itself on the *open labor market*, whenever it's possible, as prerequisite for *productive and independent life* and the highest possible level of *independence of people with disabilities*.

### Professional rehabilitation

Besides basic terms: work and employment, when it's about people with disabilities, it's important to understand the importance of the other terms, as: *professional rehabilitation, general and special employment conditions, employment on the open labor market and employment in special employment organisations* (institution of professional rehabilitation, working centre, sheltered workshop, sheltered section), *active measures of employment policy*, as well as *quote system of employment*.

About that, for people with disabilities, sometimes is important a **process of professional rehabilitation**, which means undertaking measures and activities<sup>2</sup> which are realized in order to train person with disability for work in proper way, to keep a job, advance in it or to change its professional career<sup>3</sup>.

Employment of people with disabilities without adapting the job, i.e. working place is called **employment under general conditions**. Employment of people with disabilities which includes adaptation of the job, i.e. working place and/or employment in special organisations for employment is called **employment under special conditions**. Person with disability is employed in **special employment organisation**, if it's impossible to be employed at the employers under the general conditions, i.e. with adaptation of jobs or working places.<sup>4</sup>

Between the **measures of active employment policy** which are recognised in the Law people with disabilities are stated: information about possibilities and conditions of employment, mediation in the employment, professional orientation, financing the internships, support to the self-employment

1 UN Convention on Rights of People with Disabilities is the first and most important document which gave the definition of people with disabilities, and recognized the terms as "impairment", "disability". So in Preamble of the Convention is stated that the phenomenon of disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others. So, a person has a impairment/impairments, and disabilities arises as interaction of person with the environmental barriers (physical, social, legal, in procedures etc.).

2 Measures and activities of professional rehabilitation are defined by the Article 12 of Law on Professional Rehabilitation and Employment of People with Disabilities, Official Gazette of MNE, No. 49/2008, 73/2010 and 39/2011

3 Article 4 of Law on Professional Rehabilitation and Employment of People with Disabilities, Official Gazette of MNE, No. 49/2008, 73/2010 and 39/2011

4 Article 15 of Law on Professional Rehabilitation and Employment of People with Disabilities, Official Gazette of MNE, No. 49/2008, 73/2010 and 39/2011

under the favorable conditions, education and training of adults, public work, scholarships and other measures addressed to the increasing employability and decreasing unemployment.<sup>5</sup>

**Quota system of employment** means the obligation of employer to employ certain number/percentage of people with disabilities, related on the total number of employees.<sup>6</sup>

## Employment process and other related processes

In order of more successful process of professional rehabilitation, Law recognises the **habilitation** as one of the terms (Article 11, point 6), as a system of measures and procedures of training children with the impairment that is innate or gained in the earliest age, to improve functioning in the everyday life needs. Habilitation is a measure that, in accordance with the Law, should be undertaken in the **special employment organisations**, i.e. in the institutions of professional rehabilitation.

Habilitation should be undertaken from the earliest childhood, i.e. after gaining disability, and should mean multidisciplinary attitude of different subjects and institutions, but, it's not recognized by the laws in other areas, even in the area of health protection.

Based on everything stated, it's clear that right to work and employment means a wide and complex range of measures and activities that should be undertaken to make possibilities for employment of people with disabilities on the equal basis with others, based on the principles of inclusion and affirmative action, without discrimination and isolation or segregation and grouping<sup>7</sup> based on disability. On the other side, it should be bear in mind that the process of employment of people with disabilities can't be considered separately of processes of *education, accessibility and support services*, while the *independent life* of people with disabilities, involvement in the society and the whole *standard of their lives* is to a large degree dependent on the employment and working engagement of people with disabilities.

However, the process of professional rehabilitation and employment of people with disabilities is still relatively unexplored in Montenegro, but also not enough presented to the wide public and employers by the authorised institutions, regardless on obligations proceeded from international, European and domestic documents. Just this statement is confirmed by the results of the poll among citizens which show that **even 71, 6% is not aware of the fact that the salary of people with disabilities is funded from the special Fund.**<sup>8</sup>

Employment of people with disabilities is still a new topic, weighted with different problems and challenges. But, on the other side about this topic, i.e. right to work of people with disabilities wasn't even spoken before adopting a separate law, Law on Professional Rehabilitation and Employment of People with Disabilities (2008), and there especially wasn't any evidence or results in practice. There were some isolated cases of employing people with disabilities on the open labor market and under the work contract.

Because of the all stated, we wanted to all the information, the current situation and its analyze, challenges, obstacles and problems, reasons of their arising and possible solutions sum up in the one document – the Study, in order to initiate improvement of the legal solutions, and situations in practice when it's about the area of professional rehabilitation and employment of people with disabilities.

5 Definitions of terms - Article 11 of Law on Professional Rehabilitation and Employment of People with Disabilities, Official Gazette of MNE, No. 49/2008, 73/2010 and 39/2011

6 Article 21 of Law on Professional Rehabilitation and Employment of People with Disabilities, Official Gazette of MNE, No. 49/2008, 73/2010 and 39/2011

7 New type of discrimination, recognized in the new Law on Prohibition of Discrimination of People with Disabilities, Article 10, Official Gazette of MNE, Issue No. 35/2015

8 Results of the research of AYDM realised within this project. Detailed on: [http://umhcg.com/wp-content/uploads/2013/11/Rezultati\\_Iz-vjestaj-istrazivanja\\_UMHCG-2015\\_ENG.pdf](http://umhcg.com/wp-content/uploads/2013/11/Rezultati_Iz-vjestaj-istrazivanja_UMHCG-2015_ENG.pdf)

## III INTERNATIONAL LEGAL AND NORMATIVE FRAMEWORK

### Documents of United Nations and European union

The most important document, preceding the United Nations Convention on the Rights of persons with Disabilities<sup>9</sup>, which drew attention to all countries to the problem of employment of people with disabilities more than two decades ago, are the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities<sup>10</sup>. In their 7<sup>th</sup> rule, Standard rules especially treat the area of employment.

These rules insist and emphasise the employment of people with disabilities on the open labour market, and only exclusively in so-called sheltered workshops. Also is recommended for countries to actively support *different measures like professional training, incentive-oriented quota scheme, reserved or designated employment, grants and scholarships for small business, priority production rights, tax concessions, contract compliance or other technical or financial help to the companies which employ people with disabilities.*

Our **Law on Professional Rehabilitation and Employment of People with Disabilities** (in Article 16) defines the obligation of employer who employs a person with disability on a open labour market so it could by its act establish working places for these persons and it only could employ a person with disability on this working place. Only in the case that there isn't any person with disability on the labour market which faces the conditions of that working place, a person without disability could be employed, but for a period not longer than one year.

Although the biggest number of these recommendations is defined by the norms of our Law on Professional Rehabilitation and Employment of People with Disabilities, here is a interesting recommendation for so called *contact compliances or priority production rights* which encourages development of companies that are lead by the persons with disabilities or have a significant number of employed people with disabilities. When signing the different types of contracts with the country, they get a sort of priority (tenders, public procurements etc.). This issue is not treated in our Law, and there is not that type of stimuli.

Development of the companies leaded by persons with disabilities is linked to the social entrepreneurship which is still not legally defined in Montenegro, although there were started processes of writing Draft Law on Social Entrepreneurship, which was withdrawn from the procedure by the initiative of Ministry of Labour and Social Welfare, as a proposer<sup>11</sup>. Therefore a concept of social entrepreneurship is not clear enough for many social actors.

On the other side, **Standard rules** recommend to countries to develop Action plans which will include:

- measures of *planning and adapting working places and working premises* in the way to make them accessible for people with different types of disabilities;

9 The UN Convention on Rights of Persons with Disabilities: UN Enable, eng : <http://www.un.org/disabilities/default.asp?id=150>

10 UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities - Resolution of General Assembly No. 48/96 of 20. December 1993.

11 Proposal of amending the Program of the work of Government of Montenegro for 2013 in the part in jurisdiction of Ministry of Labour and Social Welfare (21\_23\_24\_05\_2013.pdf Google search)

- support in using *new technologies and development and production of aids, tools and equipment*, as well as measures which facilitate the *availability of devices and equipment for people with disabilities*, in order to help them to find and keep a job;
- providing appropriate *training and employment of the permanent help through the assistant service and interpreting services*.

When it's about first two measures, they are partly met through the possibilities defined by our Law, which are addressed to the equipment of the working place and working conditions, but "*adaptation of the working place and working premises in the way to make them accessible for people with different types of disabilities*" means at first architectural adaptation of these premises. It's not precisely defined by the Article 15 of our Law<sup>12</sup>. On the other side, **Regulation on standards for the implementation of measures and activities of professional rehabilitation**<sup>13</sup> in the part of standard measures and activities of professional rehabilitation in Article 8 which is addressed to the measure – *Making the plan of adaptation of working place and working environment for people with disabilities* – is stated that the measure plan refers to the: adaptation of the working buildings, working tools, protective equipment, working environment, accessibility. It also includes adaptation of sanitarium, working furniture, process of tasks performing, as well as needed education and training for the work on the specific working place. Therefore, resources for equipping working place and working environment can be used for the architectural adaptation of working premises and buildings, if the entry to the premises is inaccessible, as well for adjustment, i.e. adaptation or reconstruction of interior premises, including the toilet, according to the Law.

Anyway, this is not provided in practice, although the amount for equipment of the working place and working conditions is not fixed and determined for a few last years<sup>14</sup>, but it depends on the assessment of performers of professional rehabilitation and decision of the Commission of professional rehabilitation, i.e. Director of the Employment Agency, with a previously submitted opinion of the Council of the Fund for professional rehabilitation and employment of people with disabilities. Keeping in mind the expected results of this measure defined by the Regulation: "*employment of person with disability on the working place where he/she will be effective to the expectations of employer, which will be done without danger for deterioration of health and which will be done safely for himself and other employees*", this measure should be provided as a **measure of reasonable adaptation** and it shouldn't be limited by costs, especially when the employee is engaged at the employer for unlimited time. Obviously or before it wasn't suggested by the performers of professional rehabilitation and/or accepted by the competent authorities because of the direct obstruction of expenditure of higher amount of resources from the **Fund for professional rehabilitation and employment of people with disabilities** or because of a thorough misunderstanding of the right to work and employment. Performers of professional rehabilitation should suggest this measure to the employee, i.e. beneficiaries and employer by performers' initiative.

Interpreting service, i.e. service of sign language interpreters is still not solved and supported by the Montenegrin system and for many persons with hearing impairments is crucial for inclusion in all social processes, as well as for process of working and employment. We could say that the assistance service is partly included in the way that our Law faces the assistants (helpers in work), but this type of support is provided only for persons with disability of 80% and higher. Furthermore, the fee for paying the costs of working assistants is 193€ in gross, which means it's calculated to the level of minimum wage by the regulations in the area of work and is definitely unstimulating for assistants and it doesn't reflect the real needs of employees with disabilities. Besides, although it's stated in the Article 3 of the **Regulation on conditions, criteria and procedure for exercising the subsidies**<sup>15</sup>, that "*depending on the time spent working*" and for eight-hour-working time, the amount is

12 Term "adaptation of the job" means adaptation of the working process and tasks, an term "adaptation of the working place" means technically-technological equipment of the working place, working supplies, facilities and equipment, according to the possibilities and needs of person with disability se.

13 Official Gazette of MNE No. 57/11

14 At first, amount was fixed and was 2700€ for each individual employee.

15 Official Gazette of MNE No. 39/2012

same. These expenses, actually, by the Law, refer only to the “personal expenses” of assistant, which means that assistants get paid only for basic expenses (travel, food).

A thing that is important in the Standard rules is a recommendation to employ people with disabilities in a public sector. When it’s about this recommendation this is not explicitly mentioned in our Law, and in practice a number of people with disabilities employed in a public sector is symbolic, while precise information about them, including employed in the state administration and local government aren’t available.<sup>16</sup>

Here we must mention the problem of **not existing a unique national data base** of people with disabilities, as well as lack of awareness of representatives of state bodies, as well as people with disabilities themselves about the disability and its types according to the UN Convention on rights of persons with disabilities, then list of diseases of **World health organization**, which is not followed by our national documents, and also by development standards in that area, i.e. world trends of bigger number of impairments and diseases which are understood as a disability on the international level. The level of exercising rights, as well as measures which country undertakes in order to exercise human rights of people with disabilities and improving the total position often depends on the (non) existing of the data base.

Based on the Standard rules, as well as on more evidential raising awareness on rights of people with disabilities, **UN Convention on Rights of Persons with Disabilities (UNCPRD)** in Article 27 defines the basic guidelines for contracting countries when it comes to the work and employment of people with disabilities. Besides general obligation of protecting from discrimination and promoting equality in all segments of employment, Convention also follows the Standard rules and promotes employment on the open labour market for people with disabilities, possibilities for self-employment, business, development of cooperatives and starting own business, employment of person with disability in the public sector, encouraging employers to hire people with disabilities in a private sector through appropriate measures and policies, providing the *reasonable working place and working environment adaptations*, as well as promoting professional rehabilitation and training. Convention promotes the choice of working place by the person with disability itself. Especially important is that Convention identifies *affirmative action*, as well as measures of reasonable working place and working environment adaptation, whilst it’s not identified in our Law.

UNCPRD, as well as other documents on the European level is based on the social model of disability attitude. So that concept is reflected in **EU Charter of Fundamental Rights<sup>17</sup>, Council of Europe Disability Action Plan 2006-2015<sup>18</sup>**. It means that people with disabilities have the same individual choices and control and make decisions in everyday life as people without disabilities make, especially about the right to independent life.

**Treaty on the Functioning of the EU - TFEU<sup>19</sup>** demands that the Union fights against discrimination based on disability while defining and implementing its policies and activities (Article 10) and gives it an permission to adopts laws which are addressed to prohibition of that type of discrimination (Article 19). This also applies to the area of work and employment.

**Directive 2000/78/EC or the Employment Equality Directive<sup>20</sup>** of 2000 year is a first legal instrument of a direct importance for people with disabilities, adopted By the Article 13 of the Treaty on European Union (now – Article 19 of the Treaty on the Functioning of the EU).

This Directive obliges Member States to undertake measures for elimination of discrimination and

16 Detailed in analyse of the action plans of the Strategy for integration of persons with disabilities.

17 EU Charter of Fundamental Rights (2007/c303/01), downloaded from: <http://skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/913/376-1732-.pdf>

18 Council of Europe Disability Action Plan 2006-2015 [http://www.coe.int/t/e/social\\_cohesion/socp/integration/02\\_council\\_of\\_europe\\_disability\\_action\\_plan/Council\\_of\\_Europe\\_Disability\\_Action\\_Plan.asp#TopOfPage](http://www.coe.int/t/e/social_cohesion/socp/integration/02_council_of_europe_disability_action_plan/Council_of_Europe_Disability_Action_Plan.asp#TopOfPage)

19 Treaty on the Functioning of the EU - TFEU [http://www.eudemocrats.org/fileadmin/user\\_upload/Documents/D-Reader\\_friendly\\_lat-est%20version.pdf](http://www.eudemocrats.org/fileadmin/user_upload/Documents/D-Reader_friendly_lat-est%20version.pdf)

20 Directive 2000 or Employment Equality Directive [http://europa.eu/rapid/press-release\\_MEMO-08-69\\_en.htm](http://europa.eu/rapid/press-release_MEMO-08-69_en.htm)

harassment based on disability (inter alia) and in the area of employment, including education and training. This directive obliges employers to provide reasonable adaptations in order to meet the needs of individuals, as well as to undertake positive measures (affirmative action) with the goal to *“compensate the barriers people with disabilities have been faced with through the history on the labour market.”*

**European Disability Strategy**<sup>21</sup> also obliges the Member States, in accordance with the Convention, to undertake activities in the areas of employment, accessibility, infrastructure and communicative tools.

The European Council adopted conclusions about the new **Strategy for growth and employment**<sup>22</sup>. This Strategy, known as **“Europe 2020”**, is a basic framework for actions to create “social Europe”. To achieve the goals set in the Strategy, the European Council has agreed to set up a five goals, which were used as a referent point for national goals, which Member States delivered to the Commission in 2011. People with disabilities should benefit from target measures of implementation, which are stated in some leading initiatives:

“European platform against poverty and social exclusion”;

“Youth on the Move”;

“Agenda for new skills and jobs”

“Innovation Union”

In 2012, Commission adopted an **Employment Package**, consisting of “Communication” and a few documents for employees, which complements priorities of the annual Employment Growth Review, by giving the mid-term guidance on employment policy. Measures stated in the Communication have a goal to: create new working places, promoting the reforms of the labour market, investing in skills and elimination of barriers for unhindered workers’ movement.

Although the especially hard position of endangered groups is recognised in the Communication, people with disabilities aren’t explicitly recognised in the definition of vulnerable groups, nor there suggested specific measures, even in the areas where barriers for people with disabilities are obvious, such as freedom of movement of employees in the EU Member States. None of the documents for employees which follow the Communication defines the specific measures in order to encourage employment of Europeans with disabilities. Considering that European social and economical context is very different in Member States, Employment Package couldn’t provide the same scope of rights to people with disabilities in mobility, i.e. movement from one to another Member State.

In the areas of **safety and health on the working place**, legislation of EU recognizes the need of “special measures” to protect employees with disabilities, such as adjusted working place, including: *doors, passages, staircases, showers and toilets and working stations that are directly by people with disabilities*. It’s certainly important to note that on the level of EU primarily are applied UNCRPD and Employment Equality Directive.

21 European Disability Strategy <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:em0047>

22 Europe 2020 <http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf>

## IV DOMESTIC LEGAL AND NORMATIVE FRAMEWORK

### Laws and strategies in montenegro

When it's about legal framework in Montenegro in areas of work and employment of people with disabilities, is most important to note Labour Law, Law on professional rehabilitation and employment of people with disabilities, Law on employment and exercising the right of unemployment insurance, Law on Safety and Health at Work, Pension and Disability Insurance Law, Law on Prohibition of Discrimination against Persons with Disabilities. When it's about normative framework, definitely the most important document is the Strategy for the Integration of Persons with Disabilities (2008-2016), then Strategy for Employment and Human Resource Development, Youth Employment Action Plan, Local action plans in area of disability etc. Recently inevitably important document is the Action plan for the Gradual Transposition of the Acquis in areas of Social policies and Employment – Chapter 19.

Below we will, however, deal with just some of these documents, according to the priorities set in the Study.

**Labour Law of Montenegro**<sup>23</sup> by its antidiscrimination norms protects the rights of people with disabilities and guarantees a special protection for them<sup>24</sup>. In this sense in Article 5 is stated that “**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, pregnancy, 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 organisations or any other personal feature **shall be prohibited**”. Labour Law doesn't consider as a discrimination special provisions of the Law, collective agreement and contract of employment by which is anticipated a special protection and support to the **people with disabilities** besides other categories.<sup>25</sup>

Therefore, Labour Law prescribes measures of affirmative action for the people with disabilities.

Labour Law, as well as Law on professional rehabilitation and employment of people with disabilities prescribes a right of people with disabilities to work in the place of residence i.e. “may not be deployed to work in another place outside the place of residence, or stay”<sup>26</sup>.

Employer, according to the Article 107 of Labour Law, is obliged to deploy a employed person with disability to position corresponding to his/her *remaining working ability* according to the level of professional qualification, and if the person couldn't be deployed to another position, employer should provide a professional training according to the Law and collective agreement person with disability couldn't deploy to another position, nor exercise the right of professional training, employer could establish he/she as a redundant employee, and in that case person with disability exercise rights related to people with disabilities established as redundant employees.

23 Official Gazette of MNE, No. 49/2008, 88/2009 – second law, 26/2009, 26/2010 – second law, 59/2011, 66/2012, 31/2014 and 53/2014 – second law

24 Articles 5 and 11, 103, 107 of the Labour Law, Official Gazette of MNE, No. 49/2008, 88/2009 – second law, 26/2009, 26/2010 – second law, 59/2011, 66/2012, 31/2014 and 53/2014 – second law

25 Article 9, paragraph 2 of the Labour Law Official Gazette of MNE, No. 49/2008, 88/2009 – second law, 26/2009, 26/2010 – second law, 59/2011, 66/2012, 31/2014 and 53/2014 – second law

26 Article 42 of the Labour Law, and Article 19 of the Law on professional rehabilitation and employment of people with disabilities

After having exhausted possibilities provided by the law, employer could establish person with disability as a redundant employee, with the provided severance.

If the disability is caused outside of the work or by disability, person with disability have a right to severance in amount of 24 average wages, and if disability is caused by the injury at work or by occupational disease, severance for person with disability is in amount of at least 36 average monthly wages in Montenegro. Amount of the severance can be determined according to the amount of average wage of employer if it's more suitable for person with disability.<sup>27</sup>

A person with disability, even in the case after he/she is paid severance, after one year, can start working in another company, public institution or another public service, government institution and state administration body or local government body.<sup>28</sup> This is supportive and especially important in the cases when the work process and type of existing position are such that that even by adapting working place and environment couldn't be adjusted to the possibilities of people with disabilities. In that sense, a person with disability has a possibility to be employed on another position, in another company/institution where the work process and type of work can be adapted after gaining impairment/disability.

**Law on Safety and Health at Work**<sup>29</sup> in the Article 14 (Providing protective measures) provides that employer is obliged to provide a special protection and health at work for employed women during pregnancy, people under 18 years of age, as well as people with disabilities, in accordance with this and other laws. Besides, authorized institutions for health care of employees must meet the requirements related to: *determine the cause of the disability of employees and suggest remedial action*, participating in the vocational rehabilitation and providing advice on the selection of another adequate job based on the "remaining working capacity"<sup>30</sup>. However, in this Law, according to the European standards *is missing accessibility as a mandatory element of protection at work*, and accessibility is treated by the laws in other areas. This obligation, i.e. right is especially important in extraordinary situations and for all categories of people with disabilities, especially those who have mobility or hearing and visual impairments.

Although the general laws in area of labour and employment guarantee the rights of people with disabilities, employment of people with disabilities is not enough encouraged or provided in practice by them.

Therefore by adopting the **Law on professional rehabilitation and employment of people with disabilities**<sup>31</sup>, which is defined as a measure of Action plan of the Strategy for the integration of persons with disabilities of 2008, are made favourable conditions for increasing employability of persons with disabilities, their equal participation on the labour market, with removing barriers and making equal employment possibilities.<sup>32</sup>

A person with disability, according to this Law, is a person with "permanent consequences due to physical, sensory, mental or emotional damage or disease, which cannot be eliminated by treatment or medical rehabilitation, and who is faced with social and other restrictions that affect the person's ability to work and employment opportunities, to maintain employment and advance within it, and which has no possibility or has a reduced ability to, under equal conditions, be included in the labour market".

This definition is complied with the UN Convention on the Rights of People with Disabilities and cov-

27 Article 94 of the Labour Law, Official Gazette of MNE, No. 49/2008, 88/2009 – second law, 26/2009, 26/2010 – second law, 59/2011, 66/2012, 31/2014 and 53/2014 – second law

28 Article 146a of the Labour Law, Official Gazette of MNE, No. 49/2008, 88/2009 – second law, 26/2009, 26/2010 – second law, 59/2011, 66/2012, 31/2014 i 53/2014 – second law

29 Official Gazette of MNE, No. 34/14

30 Article 49 of the Law on Safety and Health at Work Official Gazette of MNE, No. 34/14

31 Article 3 of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE, No. 49/2008, 73/2010 and 39/2011.

32 The goal of the Law defined by Article 2 of Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE, No. 49/2008, 73/2010 and 39/2011

ers people with all types of disability, and we can say it's especially adapted for the area of work and employment. Therefore it's complied with the Convention, means that in the Law itself is present a social attitude toward disability, which recognizes the social barriers as obstacles in employment of people with disabilities.

## Estimation of the level of disability and measures of professional rehabilitation

As already mentioned, the Law defines measures and activities of professional rehabilitation, i.e. process of professional rehabilitation, which includes: **counseling, fomentation, and motivation** of people with disability to actively seek for the job, and **accepting own disability**, assessment of the **remaining work capability**, help in **choosing** appropriate **professional goals** and in seeking for appropriate **working place**, analyze of the specific working place and working environment of people with disabilities, **making the plan of adaptation** of working place and environment and **making plan of needed equipments and supplies for work** for person with disability on that working place, **vocational training for working at a specific working place**, **monitoring and professional help** in training and education, monitoring of people with disabilities at the working place, after employment, **evaluation of success of the process of rehabilitation** for a individual person with disability, **assessment of working results** of employed person with disability.<sup>33</sup>

In order to exercise the rights in accordance with the Law, a person with disability has to have **assessed level of disability**, or to get into a process of professional rehabilitation to get a status of person with disability. Exercising of specific rights from the Law depends on the level of assessed disability, which is assessed by the **Commission of professional rehabilitation**<sup>34</sup>, in accordance with the **Regulation on the criteria and conditions for assessment the percentage of disability, remaining working capacity and employment possibilities**<sup>35</sup> and by the **Regulation on standards for implementation the measures and activities of professional rehabilitation**<sup>36</sup>, which will be discussed further later.

Right to professional rehabilitation can exercise a unemployed person with disability, which because of the „reduced working capacity couldn't be successfully included into a labour market, i.e. employed person with disability, which because of the reduced working capacity couldn't keep the existing job, i.e. be advanced within it“<sup>37</sup>. However, there is evident that professional rehabilitation is defined by the medical attitude towards disability, because the right to professional rehabilitation is related to the “reduced working capacities”. Measures of professional rehabilitation are not needed just for improvement of “working capacity”, but, at first, to make conditions for a more accessible working environment and to facilitate the working process of every person with disability, regardless of the type and level of disability.

Besides the main goal of the law is to encourage increased employment of people with disabilities, or employment on a larger scale, we can, also, conclude, based on the Article 6 which defines the users of the rights that the objective of this Law is to especially encourage employment of those persons which can be considered as “hardly to employ” among people with disabilities. It's the reason because of which some measures of professional rehabilitation, as well as process of professional rehabilitation itself, in accordance with the individual needs should be separated.

Before changes of the Law in 2011, **working capacity was related to the percentage of disability**, i.e.

33 Article 12 of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE, No. 49/2008, 73/2010 and 39/2011

34 Article 8 of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE, No. 49/2008, 73/2010 and 39/2011

35 Official Gazette of MNE, No. 6/12 and 46/14

36 Official Gazette of MNE, No. 57/11

37 Article 2 of the Regulation of methods and conditions of exercising the right to professional rehabilitation, Official Gazette of MNE, No.58/11 and 46/14

in the law was present a concept which was connecting the disability and (un)ability to work, which we face even today among professionals and laymen. However, in the Law in 2011, the concept was changed on the initiative of representatives of organisations of people with disabilities, by which was changed the attitude towards people with disability in this area from medical to social model. Consequently, specific rights gained a different meaning, by based on analyze of bylaws it can be concluded that the government institutions remained in a large extent in a medical model, i.e. that bylaws weren't changed. **Analyze of the majority of the Regulation shows that some definitions, conditions and procedures prescribed and have elements of medical model, or are totally related to the medical model of attitude towards disability.**

Conditions for assessment the percentage of disability, remaining working capacity and possibility of employment are prescribed by the **Regulation on the criteria and conditions for assessment the percentage of disability, remaining working capacity and employment possibilities.**

In order to exercise he right to professional rehabilitation, i.e. to start a process of undertaking the measures of professional rehabilitation, a person with disabilities and/or his/her legal representative, have to submit a **request for assessment the level of disability**<sup>38</sup> to the Commission of professional rehabilitation in local employment office or in National Employment Agency<sup>39</sup>. The employer should also submit a request for including into the measures of professional rehabilitation with the previous agreement of person with disability<sup>40</sup>.

The **counsellor for professional rehabilitation** of the employment agency, based on the final decision on entitlement to right of professional rehabilitation<sup>41</sup>, in cooperation with people with disability, make a **plan of professional rehabilitation**<sup>42</sup>, which is later supplemented by the undertaken measures 1 and 2 of professional rehabilitation.

Article 8 of **Regulation of methods and conditions of exercising the right to professional rehabilitation** (Sl. List CG, No. 58/11 and 46/14) defines that *Employment agency can merge procedures for assessment the percentage of disability and entitling the rights to professional rehabilitation*. However, in this Regulation is not made a classification of **measures of professional rehabilitation which unemployed people with disabilities which are seeking for a job should pass by and employed people with disabilities which need just some measures**, but not the "assessment of employment possibility", counselling and motivating for actively seeking for the job, help in looking for appropriate working place, monitoring and professional assistance in training and education etc.

Unemployed person with disability, during the professional rehabilitation and including in measure of active employment policy, training and education of adults, have a right to financial help<sup>43</sup> for the costs of travel, food etc. in amount of 15% of average monthly wage in Montenegro, which is financed from the resources of the Fund for professional rehabilitation and employment of people with disabilities. Right to the financial help for the costs of travel has also a companion of person with disability at the level of 50% of this amount.

Employed person with disability, in one calendar year, has a right to paid annual leave for a period of at least 26 working days<sup>44</sup>, while the legal minimum for people without disabilities is 18 working

38 Article 10 of the Regulation about the structure and way of working of the Commission of professional rehabilitation, Official Gazette of MNE, No. 20/11 and 20/12

39 Article 13 of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE, No. 49/2008, 73/2010 and 39/2011

40 Article 3 of the Regulation of methods and conditions of exercising the right to professional rehabilitation, Official Gazette of MNE, No.58/11 and 46/14

41 Article 4 of the Regulation of methods and conditions of exercising the right to professional rehabilitation, Official Gazette of MNE, No.58/11 and 46/14

42 Article 5 of the Regulation of methods and conditions of exercising the right to professional rehabilitation, Official Gazette of MNE, No.58/11 and 46/14

43 Article 37b of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011

44 Article 18 of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011

days.

Dismissal deadline for person with disability can't be shorter than 30 days, unless the dismissal is a consequence of that person's guilt<sup>45</sup>.

## Performers of professional rehabilitation and special organisations

Commission of professional rehabilitation assesses the „percentage of disability, remaining working capacity and employment possibility” based on the Criteria and conditions which are prescribed by the Ministry of Labour and Social Welfare<sup>46</sup>, after which a person with disability is sent to the **performer of professional rehabilitation**.<sup>47</sup>

A **Call for performer of professional rehabilitation** includes: type and scope of measures and activities of professional rehabilitation, area where measures and activities will be implemented depending on the number of persons with disabilities, type and level of their disability and needs of those persons, duration time of implementing measures and activities, criteria for choosing the performers, application deadline etc.<sup>48</sup>

The conditions that performer must meet are prescribed by the special Regulation.<sup>49</sup> Besides general rules, **institutions of professional rehabilitation** which have a licensed programme, i.e. **performers of professional rehabilitation** have to be located on a **flat terrain, which provides unobstructed entry of vehicles, and unobstructed movement of wheelchair users, and other persons with a reduced mobility**<sup>50</sup>. Entry to the object, door width and interior space must also meet the **standards of accessibility**<sup>51</sup>.

In accordance with the Article 5 of the Regulation, requirements which performer of professional rehabilitation, working centre, sheltered workshop and sheltered section must meet, for people with visual impairments are related to the **direct lighting of their working space**. Facilities have to have a **floor coverings protected from slipping and static electricity**, which don't absorb moisture and are easy to maintain, whilst edges of the halls have to be in **different colours, as well as floor coverings and bottom edges of the walls**.

Performers of professional rehabilitation have to have a professional team composed of five persons with a higher education of **medical, pedagogical, psychological, and sociological or other appropriate social sciences studies**, and which have a one year of experience in practice, in the work with people with disabilities.<sup>52</sup>

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45 Article 20 of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011

46 Article 8 of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011

47 Institution for professional rehabilitation, specialised schools or other legal entity which meets the conditions for executing measures and activities of professional rehabilitation is chosen on the basis of public Call announced by Ministry of Labour and Social Welfare. (Article 14 of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE, No. 49/2008, 73/2010 and 39/2011)

48 Article 14a of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011

49 Regulation on conditions that must meet performer of professional rehabilitation, working center, sheltered workshop and sheltered section, Official Gazette of MNE, No. 58/11

50 Article 2, paragraph 2 of the Regulation on conditions that must meet performer of professional rehabilitation, working center, sheltered workshop and sheltered section, Official Gazette of MNE, No. 58/11

51 Accessibility standards are defined by the Regulation on detailed conditions and way of adjustment the buildings in public use for access and motion of people with disabilities Official Gazette of MNE, No. 51/08, 34/11 and 35/13

52 Article 7 of the Regulation on conditions that must meet performer of professional rehabilitation, working center, sheltered workshop and sheltered section, Official Gazette of MNE, No. 58/11

Performer of professional rehabilitation during implementing measures of professional rehabilitation for employed person with disability has to cooperate with the employer of that person.

The Ministry sets the cost of implementation of specific measures and activities of professional rehabilitation, and professional person from the Ministry is assessing the quality of implementation of measures and activities of professional rehabilitation at the performer of the professional rehabilitation.<sup>53</sup>

In Montenegro there are two performers of professional rehabilitation: **ZOPT d.o.o. - Association of employment, education of adults, organising and implementing professional rehabilitation and Multidisciplinary educational centre - "PaMark"**.

Although the **employment in the special employment organisations** is stated in the Law, there is still wasn't founded any special employment organization, because there aren't conditions for that<sup>54</sup>. Therefore, a large number of people with disabilities is for years at the evidence of employment agency, without a job. This is primarily referring to people with intellectual disability, autism and combined types of disability, who hardly find or don't find a job on the open labour market. Therefore, despite of the goal of the Law on professional rehabilitation and employment of people with disabilities, government didn't make conditions for employment, i.e. working engagement and inclusion of large number of people with disabilities on the open labour market under the special conditions. Therefore, a statement of the state authorities, related to lack of interests among employers to employ people with disabilities is fully groundless, because the country is obliged to provide conditions, and to be employer of people with disabilities itself.

A country, as well as local government unit, can establish a public institution<sup>55</sup>.

Besides employment in special organisations, in the Article 41a of the Law is defined a possibility of **Program of social inclusion**. In this program is included a person with disabilities for whom is defined that is unemployable, in order to gain functional and social skills.

Program of social inclusion is a specific individual work with the individual or group member, adjusted to the specific needs and requirements of the individual, results of which are preservation and improvement of it's vital functional and social skills, such as:

- communication skills and types of behaviours - socialization;
- self-esteem and forming positive self-image;
- manipulative skills;
- taking responsibility for forming self future and independent solving the problems;
- dealing with conflict situations;
- interesting activities and hobbies.<sup>56</sup>

For performers of this program, the Ministry of Labour and Social Welfare issues a public tender, as well as for the performer of the professional rehabilitation. Commission which is formed by the Ministry does the procedure of selection of the Performer, and Minister makes a final choice based on the recommendation of the commission. The mutual rights and obligations between the Performer of the program of social inclusion and Ministry of labour and social welfare are regulated by contract.

53 Article 14b of the Law on professional rehabilitation and employment of people with disabilities (Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011)

54 Ministry of Labour and Social Welfare still didn't adopt the Regulation on financing special employment organisations.

55 Article 24 of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011

56 Call for the performers of the social inclusion programs <http://www.mrs.gov.me/organizacija/nvo/145892/JAVNI-KONKURS-za-izbor-izvodaca-programa-socijalne-uključenosti.html>

Ministry determines the price for implementation of this program, as well as for other programs. In the final paragraph of the Article 41a is stated that the program of social inclusion is financed by the budget of Montenegro. In that this program is different from other measures of professional rehabilitation and measures and activities which are realised by the special employment organisations. This program could be realised by all legal entities, which are based in Montenegro, with appropriate spatial, technical and technological and personnel conditions, that are required for implementation of the program and goal of which is improving the position of the people with disabilities in Montenegro and are directly responsible for realisation and preparation of the program. Program of social inclusion is also referred to the public works. However, none of the bylaws deals closer and more detailed with the program of social inclusion.

## Quota system and special employment contribution

The special newness of the Law is related to the **quota employment system** which defines the obligation of the employers to employ people with disabilities, and sanctions if they don't do that.

Employer who employs between 20 and 50 employees is obliged to employ at least one person with disability, and employer who employs more than 50 employees is obliged to employ at least 5% of persons with disabilities in total number of employees<sup>57</sup>. These obligations don't refer on the newly established employer for the first 24 months.

If employer has or employs a person with at least 80% of disability ("severe disability"), the employer is deemed in terms of this obligation, as if employing two persons with disabilities. However, although it employs a person with 80 and more percentage of disability, employer doesn't get a wider scope of rights, for example bigger amount for financing assistant (helper) in work, or other additional stimuli.

If employer fails to employ a person with disability, according to the obligations from the Law on professional rehabilitation and employment of people with disabilities, is obliged, for every person it doesn't employ, to pay a **special contribution for professional rehabilitation and employment of people with disabilities** while performing monthly payment of wages and compensation for employees<sup>58</sup>.

Although, employers are **legal or natural persons and entities and organisations which are financed by the budgets of Montenegro and local government**.<sup>59</sup>

Paragraph 2 of the Article 22 of the Law defines the rate of the special contribution in amount of 20% of the average monthly wage in Montenegro realised in the year preceding the year in which the contribution payment is made.

Employers which have less than 20 employees don't have a direct obligation of employing people with disabilities, but they are obliged to pay a special contribution in amount of 5% of the average monthly wage in Montenegro realised in the year preceding the year in which the contribution payment is made<sup>60</sup>.

*The organisations, i.e. associations of people with disabilities are exempt from the obligation to pay a special contribution, when they appear as employers<sup>61</sup>, as well as employers which have "enough"*

57 Article 21 of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011

58 Article 22 of the Law on professional rehabilitation and employment of people with disabilities (Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011)

59 Article 11 of the Law on professional rehabilitation and employment of people with disabilities (Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011)

60 Paragraphs 3 and 4 of the Article 22 of the Law on professional rehabilitation and employment of people with disabilities (Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011)

61 Article 22a Law on professional rehabilitation and employment of people with disabilities (Official Gazette of MNE No. 49/2008, 73/2010)

*number of employed people with disabilities.*

Although the state authorities and state administration bodies, local government bodies, public institutions established by the country etc. are also employers, these employers don't pay special contributions nor, as they state, could use subsidies defined by the Law. However, during consultations with the **State audit institution** we got information that these bodies and institutions could pay and account the contributions, but that the Ministry of Finance had to previously adopt the Instructions for that.

According to the Article 22 of the Law, contributions are paid into a **special account of the budget of Montenegro** – Fund for professional rehabilitation and employment of people with disabilities.

**Control of the accounting and paying special contributions performs a competent tax authority**, accordingly to the law governing tax administration (Article 23 of the Law). Our Request to Free Access to Information by which we asked the Department of Public Revenues<sup>62</sup> according to this Article, related to fulfilment a obligation of employers from the Articles 21 and 22 of the Law on professional rehabilitation and employment of people with disabilities was rejected and it's stated that Department of Public Revenues don't have a requested information, which is contrary to the Articles 5 and 6 of the Law on Tax Administration<sup>63</sup>. Besides, a Department of Public Revenues didn't address us to a body that have required information, if they have that information, according to the Law on Free Access to Information<sup>64</sup>. Until the conclusion of this Study, we filed the Complaint to the second instance authority. Therefore is unable to state any application of the Article 43 of the Law, which prescribes the penalty provisions<sup>65</sup> by the competent authorities.

Labour inspection in answer on our Request to Free Access to Information<sup>66</sup> stated that through their regular activities indicated this obligation to employers, through leaving the appropriate period for implementation. As state in the Labour inspection: "there were no sanctions for disregard of this legal obligation because employers behaved *responsibly*".

Although, it remains unclear what happened with the bodies for which State Audit Institution in their reviews of the previous years, stated that they don't perform their obligations related to the paying the special contributions. This was the case with the Central bank of Montenegro, as well with the Parliament of Montenegro for many years. Parliament of Montenegro just at the beginning of 2015 paid a total amount of special contributions for a period from the entry into force of the Law on professional rehabilitation and employment of people with disabilities, i.e. this obligation. State Audit Institutions stated this obligation even for the Ministry of labour and social welfare.

## Subsidies

Basic encouragements for employment of people with disabilities defined by the Law are encouragements related to subsidies<sup>67</sup>. Subsidies are, actually, financial stimuli for employers in order to employ people with disabilities, or for people with disabilities for self-employment, i.e. appearing as an employer.

So the employer, accordingly to the Article 36 of the Law, when it employs a person with disability

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and 39/2011)

62 Request to Free Access to Information No. 285/1-02, of 13.10.2015, Answer to request No. 62-01 of 02.11.2015.

63 Downloaded from: <http://www.poreskauprava.gov.me/biblioteka/zakoni>

64 Official Gazette of MNE, No. 44/2012

65 Legal person which doesn't pay a special contributions according to the Law on professional rehabilitation and employment of people with disabilities, and doesn't employ a people with disabilities, is obliged to pay a misdemeanour penalty in amount of 500€-20.000€. Natural person and responsible person in legal person, responsible person in public administration body, state authority and in local government body is obliged to pay for same violation penalty in amount of 1000€-2000€. For the same violation, businessman is obliged to pay a penalty of 500€-6.000€.

66 Request to Free Access to Information No. 285/2-02, of 13.10.2015, and Answer to Request No. 61- 01, of 30.10.2015.

67 Article 36 of the Law on professional rehabilitation and employment of people with disabilities (Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011)

have a right to:

- *nonrecurring resources for adapting working place and conditions for the employment of people with disabilities*
- *loans under favourable conditions for the purchase of machines, equipment and tools necessary for the employment of people with disabilities;*
- *participation in funding personal costs of the assistant (helper in work) of person with disability*
- *wage subsidy for the employed person with disability.*

For every individual person with disabilities which employs, a employer get subsidies. The same rights, according to the Article 36, has a person with disability which is self-employed, person who perform independent activity or found the company, or who is employed in the family household to perform agricultural activity as the only one, the main or the additional occupation.

**A request for obtaining a right to subsidy** on the wage of person with disability is submitted to the Fund for professional rehabilitation and employment of people with disabilities<sup>68</sup>, within 45 days from the day of employment of person with disability. In that case, right to subvention is in effect from the first day of employment of person with disability. If the request is submitted after this deadline, right to subsidy is in effect from the day of request submission<sup>69</sup>.

With the request for subsidy, employers are obliged to submit other documents, according to the Articles 5 and 6 of the **Regulation on conditions, criteria and procedure of exercising the right to subsidies**.

**Amount of the subsidy** for nonrecurring resources for adapting working place and conditions for the employment of people with disabilities, loans under favourable conditions for the purchase of machines, equipment and tools necessary for the employment of people with disabilities and for participation in funding personal costs of the assistant (helper in work) of person with disability is **100% of eligible costs**, according to the regulations governing state help.

Eligibility of the costs is “assessed” by the Commission of professional rehabilitation of the Employment Agency with obtained opinion of the Fund Council, based on the Report of the **performer of professional rehabilitation**. The decision on giving subsidy is made by director of the Employment Agency<sup>70</sup>.

However, the cases when the Report of implemented professional rehabilitation measures where opinions and recommendations of professional rehabilitation performers are visible, are submitted to the beneficiaries, i.e. employees with disabilities and to their employers, are sporadic. In not so low number of cases happens that employer get only a final Decision, on the basis of which is visible what was approved in the process of professional rehabilitation, but not the explanation why some “requests” were approved, and other weren’t.

Amount of the wage subsidy<sup>71</sup> for a employer which employs a person with disability is:

- 75% of the disbursed gross wage of person with disability for a whole period of employment, for employer which employs a person with at least 50% of disability;

68 Article 38 of the Law on professional rehabilitation and employment of people with disabilities (Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011)

69 Article 37a of the Law on professional rehabilitation and employment of people with disabilities (Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011)

70 Article 7 of the Regulation on conditions, criteria and procedure of exercising the right to subsidies, Official Gazette of MNE, No.39/12 and 46/14

71 Article 37 of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011

- for employer which employs a person with a disability of less than 50%, subsidy is: 75% and 60% in the first and the second year respectively and 50 % in the third and each other next year of the disbursed gross wage.

Accordingly to the aforementioned **Regulations**, Employment Agency and employer are obliged to sign a contract in which mutual rights and obligations, as well as responsibilities of Agency and employer will be defined. Besides, Contract has to include the amount of approved funds, their purpose and cases when the beneficiary of the subsidy is obliged to return given funds. State Audit Institution in their “Report on efficiency of using resources from the contributions for professional rehabilitation and employment of people with disabilities”<sup>72</sup>, stated that Agency in the previous period wasn’t signing such contracts<sup>73</sup>.

## Resources of the fund

As aforementioned, the Fund is a special account of the budget of Montenegro, and is based in the Employment Agency, as its organizational unit. Resources of the fund are exercised on the basis of paying the special contributions by employers, and also could be exercised on the basis of: budgets of the units of local governments on which territory a person with disability resides, donations and supports of domestic and international legal and natural persons, and other sources, according to the Law on professional rehabilitation and employment of people with disabilities.<sup>74</sup> However, in exercising the Fund’s resources, weren’t used other possibilities offered by the Law, except paying special contribution.

Although in the Law is stated that **for purpose use of the Fund resources is responsible a Council of the Fund for professional rehabilitation and employment of people with disabilities**, it has no jurisdiction to monitor all the Fund resources, because the Fund is not a separate legal entity, i.e. off-budget category, so the Council could give suggestions and opinions for implementation and approval of the specific measures and activities related to the employment and professional rehabilitation. The same jurisdiction in total even hasn’t a Employment Agency of Montenegro, whilst Employment Agency could suggest a much higher amount of the budget intended for employment and professional rehabilitation then previously suggested/approved and Agency definitely can realise a much greater scope of activities than it was the case before (Detailed in the paragraph Possible scenario of solving the status of the Fund for professional rehabilitation and employment of people with disabilities).

Resources of the Fund, according to the Law, can be used for: measures and activities of professional rehabilitation for unemployed and employed people with disabilities; co-financing of special employment organisations; programs of active employment policy where people with disabilities are included; all forms of subsidies prescribed by the Law on professional rehabilitation and employment of people with disabilities; financing of grant-schemes; financial aid for unemployed people with disabilities, during the professional rehabilitation and inclusion into measures of active employment policy, education and training of the adults for the costs of travel, food, etc. and for their companions for the costs of travel.<sup>75</sup>

Although among measures of active employment policy is stated **providing scholarships**, this measure is not detailed defined in the bylaws, nor is its implementation provided in practice. This measure could in a significant scope to contribute to the improvement of the employment conditions, especially for students and graduates with disabilities. Also, we already stated that conditions for

72 Report on “Efficiency of using resources from the contributions for professional rehabilitation and employment of people with disabilities”.

73 Pg. 35 of the Report on “Efficiency of using resources from the contributions for professional rehabilitation and employment of people with disabilities”.

74 Article 38 of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011

75 Article 39 of the Law on professional rehabilitation and employment of people with disabilities (Official Gazette of MNE No. 49/2008, 73/2010 and 39/2011)

establishing special employment organisations aren't provided, as well as conditions for their financing.

Also, first call for financing grant-schemes was announced in November 2014, because the **Regulation on procedure and methodologies of financing grant schemes**<sup>76</sup> was adopted in July same year, with a six year delay from adopting the Law, and for realisation of the project are used the resources from the budget of 2015. It was State Audit Institution that noted that Ministry of labour and social welfare, nor than Employment Agency didn't undertake all available measures for using a wider scope of Fund's resources, and by that they were not enough efficient in implementation of the Law<sup>77</sup>.

## V STRATEGIES AND ACTION PLANS WHICH TREAT THE AREA OF EMPLOYMENT OF PEOPLE WITH DISABILITIES

### National Strategies

The most important strategy document in area of disability in Montenegro, a **Strategy for the Integration of Persons with disabilities 2008-2016**<sup>78</sup> in a special area defines the measures and activities which are related with professional rehabilitation and employment.

Related to that, it has mandatory action principles:

- Integration of people with disabilities into a working environment;
- Cooperation, i.e. coordination of all subjects which participate in a process of professional rehabilitation and employment;
- Employment on a open labour market, only exclusively under special conditions for people which because of complexity and type of disability couldn't find a job on a open labour market;
- Usage of the remaining working capacities and compensation of disability by positive factors.

In that way, Strategy foresees the measures which, except adoption of appropriate legislative regulations, the need of multi-sectoral approach, also are related to: adoption of plans for development of professional rehabilitation, employment and work of people with disabilities; development and planning of implementation the standards of accessible working place through the area of health protection at work; encouraging and supporting inclusion of women with disabilities on a labour market; fomentation of self-employment, business and development of support programs for business and establishing small and medium enterprises by the people with disabilities; implementation

76 Official Gazette of MNE, No. 28 of July 4, 2014

77 Pg. 32 of the Report on "Efficiency of using resources from the contributions for professional rehabilitation and employment of people with disabilities"

78 Google search: [https://www.google.com/search?q=Strategija+za+integraciju+osoba+s+invaliditetom+za+period+2008+-+2016&oq=Strategija+za+integraciju+osoba+s+invaliditetom+za+period+2008+-+2016&gs\\_l=serp.3...46972.52915.0.53417.22.22.0.0.0.145.2158.0j18.18.0..0...1c.1.64.serp..20.2.259.x6-bx0Fw95U](https://www.google.com/search?q=Strategija+za+integraciju+osoba+s+invaliditetom+za+period+2008+-+2016&oq=Strategija+za+integraciju+osoba+s+invaliditetom+za+period+2008+-+2016&gs_l=serp.3...46972.52915.0.53417.22.22.0.0.0.145.2158.0j18.18.0..0...1c.1.64.serp..20.2.259.x6-bx0Fw95U)

of psychological empowering programs of people with disabilities; social cooperatives, i.e. manufacturing and service workshops established by people with disabilities and which make certain products for the needs of market; social economy, as a periodical or permanent forms of activation of people with disabilities, and forming special agencies for employment of people with disabilities.

It's important to state that this Strategy was adopted before the Law on professional rehabilitation and employment of people with disabilities, so it prescribes the measures which are related to need of adoption of legal regulations which will separately define the employment of people with disabilities and will contain the affirmative measures and encouragement for employing this population. However, a lot of aforementioned, planned measures of the Strategy weren't implemented yet, not just single measures, but also activities of some measures, such as bylaws of the Law on professional rehabilitation and employment of people with disabilities.

In order to implement the Strategy, there were adopted two years action plans. However, the main disadvantages of action plans in general, not just in the area of professional rehabilitation and employment, are not enough elaborated and imprecise indicators, as well as lack of qualitative measuring of measures impacts. Besides, the repeating of the some measures in the every of the action plans clearly shows the fact that some measures weren't realised. Every delay in adoption of some bylaws, i.e. regulations, wasn't allowed realisation of the Strategy measures, as well as the implementation of the Law in the full scope.

**Action plan for implementation of the Strategy for 2014 and 2015**, in the part related to professional rehabilitation and employment of people with disabilities, besides providing financial aid to attendants of professional rehabilitation and employment, have not some new measures which are distinctly different from a measures defined in the previous action plans. In this Action plan for one more year is repeated a measure of adoption the Regulation on procedure and methodology for co-financing special organizations for employment people with disabilities, and besides measures of permanent updating the data base in the area of professional rehabilitation and employment of people with disabilities, providing unobstructed work of commissions for professional rehabilitation, providing the multi-sectoral cooperation, implementation of the active employment measures, are also prescribed the following accompanying measures and activities:

- Provide awarding of subsidies to employers for employment of people with disabilities:
  - Awarding the wage subsidies, nonrecurring resources for adapting working place and conditions for the employment of people with disabilities;
  - **Credit support for the purchase of machines, equipment and tools and participation for personal costs of assistant (helper in work)**
- Encouragement and support inclusion of women with disabilities on the labour market:
  - **Priority inclusion of women with disabilities in the programs of professional rehabilitation and measures of active employment policy**
- Conduct a continuous programs of education for qualified staff who implement the programs of professional rehabilitation of people with disabilities:
  - **Education of qualified staff for work in professional rehabilitation**
- Provide awarding financial aid to attendants of the program of professional rehabilitation during the implementation of the program:
  - Signing the contracts between Agency and program attendants
  - Payment of financial aid
- **Provide co-financing of special organisations for employment people with disabilities (sheltered workshops, working centres and sheltered sections):**
  - Signing the contracts between Agency and program attendants

- Payment of financial aid
- Financing grant schemes:
  - Realisation of the projects financed by the grant scheme
- Create conditions for employment of people with disabilities in state administration bodies:
  - Implementation of campaign for employment of people with disabilities in state administration bodies.

Delay of adopting the **Regulation on procedure and methodology for financing grant schemes** had the consequence of inability of implementation of the projects and withdrawal of the resources for creating possibilities for working engagement, inclusion and motivation of the bigger number of people with disabilities, but also raising awareness of people with disabilities and public, as well as implementation of campaigns with a goal of more adequate possibilities and better position of the people with disabilities on the labour market, whilst a enormous resources from the Fund every year stayed unspent for the purpose defined by the Law. On the other side, that situation representatives of the state authorities, especially Ministry of Finance and Democratic Party of Socialists in the Parliament of Montenegro, when they were asked about inappropriately use of the resources tried to justify by the lack of “enough high-quality projects”, although this information absolutely can’t be an argument, on the contrary it shown unawareness or substitutions of theses.

The same were the answers of the Prime Minister during Prime Minister’s hour and parliamentarians’ questions, based on the answers that were prepared by the other bodies.

Also, although it’s permanently defined as a measure, fomentation and encouragement of inclusion of women with disabilities on a labour market wasn’t conducted separately nor specially for this population yet, but just in the global data and evidence of the Employment Agency of Montenegro is visible the number of engaged women with disabilities for year by year. When it’s about employment in the public sector, although it’s stated as a measure which should be continuously implemented and encouraged, as already stated, employment in the public sector of people with disabilities is still symbolic, and especially by this action plan intended campaigns weren’t implemented.

A Call for nominating members for the Working Group for preparation of **Regulations on procedure and methodology for co-financing special organisations for employment of people with disabilities** was announced in November 2015, after the report of State Audit Institution (DRI), in which, inter alia, was stated that this Regulations weren’t adopted.

After publishing the Report of State Audit Institution, AYDM submitted a application to the Parliament councils of health, labour and social welfare and economy, finance and budget in order to discuss the Report of DRI, and we invited a Ministry of Labour and Social Welfare to undertake all needed activities before the changes of the Law on professional rehabilitation and employment of people with disabilities, and which were planned by the measures of the Strategy for Integration of Persons with Disabilities.

Namely, in the answer to DRI, Ministry stated that the missing Regulation will be adopted after amendments to the Law, which would mean delay of this activity for at least two years.

State Audit Institution also analyzed the implementation of the action plans of the Strategy for integration of persons with disabilities 2008-2015 (pages 40-47 of the Report).

Besides Strategy for integration of persons with disabilities, it’s important to note the **National Strategy for Employment and Human Resource Development 2012-2015**<sup>79</sup> which is the basic program framework for defining the employment and human resources development policy, and in its third Priority – Promoting Social inclusion and Reducing Poverty, defines a special objective - Integration

of Disabled Persons in the Labour Market.

Also the way of implementing the strategic objective is explained: “Employment is one of the important methods on fight against social exclusion and on creation of opportunities for persons with disabilities to be integrated in the society, on removing prejudices against their potential and work abilities, on having more trust in their capacity, so that they can achieve their aspiration to become included in work processes, to provide means of subsistence for themselves and their families, and to feel that they are contributing to the society”<sup>80</sup>.

This objective will be realized through: programs of professional rehabilitation and counseling by which people with disabilities will be provided a help in choosing, change of the profession and seeking for the job; active employment policy programs, programs of professional rehabilitation and programs of employment through awarding subsidies and grants. This action plan also defines the measures related to business of people with disabilities.

The influence of the existing strategic documents in area of disability is obvious, so Action plan for implementation of this Strategy in the part related to people with disabilities should be harmonised with the Action plan of the Strategy for the Integration of Persons with disabilities, and it’s mainly relied to the measures and activities defined by that Action plan.

At the end of this part, we will consider **Action Plan for negotiation chapter 19 – Social policy and employment**<sup>81</sup>, taking into account that this document defines gradual harmonisation of the EU acquis and building necessary capacities for implementation of the EU acquis.

Action plan for this Chapter 19 was adopted in February 2015 and it also represents a initial criterion for opening negotiation process in this Chapter. Action Plan consists of few chapters, such as: labour relations, safety and health at work, social dialogue, employment policy, European Social Fund, social inclusion, social protection, antidiscrimination, equal possibilities.

Social inclusion and social protection, antidiscrimination and equal possibilities are definitely the *most important frames* of this Action plan, and also they form the basis of the Chapter 19, which measures are based on the EU Directives.

Action Plan for Chapter 19 in area of social inclusion includes Strategy Europe 2020, which we previously analyzed, as well as UN Convention on the rights of persons with disabilities.

However, as it was previously stated, none of our documents is totally harmonized with the UN Convention on the Rights of Persons with Disabilities, nor it includes all measures and obligations proposed by the Convention. Moreover, often in some our document is manipulated with the facts and there are listed documents or activities which don’t provide that that is proposed by the Convention and European legislative directly.

Thus in the Review on the screening for the Chapter 19 of February 2014 is stated that Montenegro has provided resources for harmonization of the Montenegrin legislative with the UNCRPD, although there is not clear to which resources is thought, and for which purposes they were spent.

## Local plans in area of disability

When it’ about normative framework, municipalities have dealt with the issue of employment people with disabilities primarily through the local action plans in area of disability and Local action plans on social inclusion.

In this part we will more detailed u elaborate the local action plans in area of disability, which should be based on the aforementioned UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities.

80 Page 39 of the Strategy for Employment and Human Resource Development 2012-2015

81 Google search: Akcioni plan 19

Unfortunately, municipalities which have adopted those plans (six of them)<sup>82</sup> didn't pay a lot of attention to the measures provided by these documents, nor on the appropriate way dealt with the issue of employment of people with disabilities in their communities. So, municipalities **Kotor**<sup>83</sup>, **Herceg Novi**<sup>84</sup> and **Nikšić**<sup>85</sup> in their action plans don't plan any special measures in area of employment, except indirectly in the part related generally on raising awareness of the people with disabilities.

**Municipality of Mojkovac**<sup>86</sup> in their plan recognises the needs when it' comes to the issue of employment of people with disabilities, like raising the level of awareness, education of employees in the institutions and more organised attitude to the employment of people with disabilities.

On the other side, **Municipality of Berane**<sup>87</sup> in their action plan defines the goal in area of employment people with disabilities: Implementation of the Law, training and employment of people with disabilities and providing conditions for adaptation to the labour market through education, trainings and vocational training, as well as adaptation of the market for the people with disabilities with the support of the local community.

As a solution, Municipality of Berane sees a implementation of activities like: organising work-shops about the employment of people with disabilities, employment in private and public sectors; education of people with disabilities for creative work and self-employment at home; creation of the targeted campaigns for raising awareness of the public with a goal to overcome negative attitudes and prejudices against workers with disabilities.

Also, according to this, are provided specific activities, such as different types of researches and educations with the employers and people with disabilities, promotion of employment of people with disabilities in private and public sector; help in forming companies for employment etc.

Similarly to the municipality of Berane, **Municipality of Bijelo Polje** defines the goal in the Local Action Plan: Providing conditions for adaptation of people with disabilities to the labour market, through education, trainings and vocational training, as well as adaptation of the labour market to the people with disabilities.<sup>88</sup>

This Plan also recognises the specific "needs" which are related to the adoption of the plan of professional rehabilitation, employment and work of people with disabilities, organising the campaign for raising awareness of working possibilities of people with disabilities, implementation of the continuous programs of education for assistants and staff which work on the services of professional rehabilitation and employment of people with disabilities, realisation of the good local government practice examples in employment of people with disabilities and adopting and implementation of the programs for psychological empowering of people with the goal of raising awareness of people with disabilities about their potentials and possibilities in the area of professional rehabilitation and employment.

None of the reviews on implementation of those plans is publicly available, so it's possible they have never been written.

82 Kotor, Herceg Novi, Nikšić, Mojkovac, Berane and Bijelo Polje

83 LPAI Kotor <http://www.cg.opstinakotor.org/images/stories/dokumenti/kultura/lpai.pdf>

84 LPAI Herceg Novi <http://www.hercegnovi.me/files/LPAI.pdf>

85 LPAI Nikšić <http://niksic.me/files/Lokalni%20plan%20akcije%20u%20oblasti%20invalidnosti.pdf>

86 LPAI Mojkovac <http://www.mojkovac.me/images/stories/dokumenti/akcioniplan20132017.doc>

87 LPAI Berane [http://www.stari.berane.me/fajlovi/opstina\\_berane/editor\\_fajlovi/skupstina/2010/1/Odluka\\_o\\_usvajanju\\_Lokalnog\\_plana\\_za\\_invalidide.pdf](http://www.stari.berane.me/fajlovi/opstina_berane/editor_fajlovi/skupstina/2010/1/Odluka_o_usvajanju_Lokalnog_plana_za_invalidide.pdf)

88 LPAI Bijelo Polje [http://www.bijelopolje.co.me/images/pdf/lokalni\\_plan\\_akcije\\_u\\_oblasti\\_invalidnosti.pdf](http://www.bijelopolje.co.me/images/pdf/lokalni_plan_akcije_u_oblasti_invalidnosti.pdf)

## VI INSTITUTIONAL FRAMEWORK

**Ministry of Labour and Social Welfare**<sup>89</sup> is a state administration body responsible, among other, for the area of work, and regulation of the issues in the area of labour relations and employment. In the Ministry of Labour and Social Welfare there is a **Directorate of Labour Market and Employment and Main Office of Labour Market and Employment**. Directorate is responsible for tasks such as: creation, monitoring and improvement of employment policy and labour market, normative-legislative affairs in this area, research topics of interest for implementation of the defined policy and functioning of the labour market, fomentation and support for the policy of labour market, creating, implementation, monitoring, control and reporting national policy of development the labour market according to the recommendations and guidance of EU; monitoring and developing indicators of implementation labour market policy; horizontal communication related to other sector policies influence to the labour market and employment; adult education; implementation of activities related to negotiation on Montenegro's assessment to the EU; establishment of cooperation with the Employment Agency of Montenegro, Ministry of education and other institution, NGOs and other associations; creating analyzes, reviews and information in areas of labour market and employment.

**Whilst in the Main Office of Labour Market and Employment** are performed the tasks related to: creating policy of employment and labour market, preparation of the draft law, i.e., Bill of the law in areas of employment and regulations adopted according to those laws; giving professional opinion about the implementation of those regulations; monitoring implementation of the conventions in this area; improvement of the employment system and solving the issue of unemployment; stimulation and support to the labour market policy; creating analyzes, reviews and information in area of labour market and employment; establishing cooperation with the Employment Agency of Montenegro and other institutions which have an influence to the labour market; NGOs and other associations; implementation of the activities related to the negotiations on Montenegro's assessment to the EU for a specific chapters.

**Employment Agency of Montenegro**<sup>90</sup>, according to its Statute, performs the tasks defined by the Law on employment and exercising the rights of unemployment insurance which are related, among other, to:

- **information about possibilities and conditions for employment;**
- **employment mediation;**
- **professional orientation and carrier-planning counselling;**
- **adult education and training;**
- **professional rehabilitation of hard-to-employ persons;**
- **public works;**
- **implementation of the other measures of active employment policy;**
- **providing the rights of unemployment insurance and other rights according to the law;**
- **maintaining records in area of employment, according to the special law;**
- **research of labour market trends and preparation of analytic and informative basis for de-**

89 [www.mrs.gov.me](http://www.mrs.gov.me)

90 <http://www.zzzcg.me/>

### **fining the employment policy;**

- implementation of the international employment contracts;
- cooperation with employers, education institutions and other legal and other legal and natural persons in implementation of employment tasks.

On the national level there are some **bodies which** directly and indirectly **deals** with the issues of people with disabilities, and therefore initiating, giving opinions and monitoring the implementation of **activities related to professional rehabilitation and employment of people with disabilities**, and which are defined by the previously listed documents.

**Council of the Fund for professional rehabilitation and employment of people with disabilities** is an advisory body of the Fund for professional rehabilitation and employment of people with disabilities, i.e. Employment Agency of Montenegro, constituted according to the Article 40 of the Law on professional rehabilitation and employment of people with disabilities. In the Law is stated that the Council is formed with the goal of “monitoring implementation of measures and activities related to the promotion of professional rehabilitation and employment of people with disabilities, so as to purposely use the Fund resources.”

President of the Fund have to be a person with disability. Council works on the sessions, according to the **Rules of procedure**<sup>91</sup>. In the Article 8 of the Rules is stated that at the invitation of the President of the Council of the Fund, a director of Employment Agency of Montenegro, management staff, as well as other persons, could be present on the sessions, if on the daily schedule are topics *which requires their presence*. Council of the Fund hasn't a web-page, nor is information on its work published on the web-page of the Employment Agency, which is a practice with all other advisory bodies which are the topic of this Study. Therefore that the Fund itself is a special budget item, non off-budget category which could have its own web-page, its management is not enough public, nor transparent and therefore the Council of the Fund is not.

**Council for the Care of People with Disabilities** which previously was a body of the Government, and since 2013 is a advisory body of the Minister of labour and social welfare, as one of its goals has a “promotion and improvement of the rights of people with disabilities in areas of social and health protection, education, vocational training and employment.” This Council on its sessions repeatedly dealt with the issues of importance for employment of people with disabilities.

**National Council on Employment and Development of the Human Resources**, which is a advisory body of the Minister of the labour and social welfare was formed by the decision of the Government in 2012, and which within its domain and tasks, among which the most important is monitoring of the National strategy on employment and development of the human resources and Action plan of employment, as a basic measure of the active employment policy, monitors all the measures and activities proposed by these documents which are related to the people with disabilities.

**Council for Protection Against Discrimination**, appointed by the Government in 2011, among its wide defined goals, also have the possibility on its sessions to discuss all topics important to people with disabilities, including on the issue of employment and discrimination in this area. This Council had a thematic session during 2014 dedicated to employment of people with disabilities.

**Local councils** which deal with the issues of importance for people with disabilities are formed just in few cities. On the other side, those councils, according to the information received from the local organizations of people with disabilities function badly, sessions are irregular, or they aren't held, so those bodies don't deal with the issue of employment people with disability on the local level quality and continuous. Partially an exception is a Council for issues of people with disabilities of the

Capital, which since formation of its second assembly at the end of 2014 held four sessions on which different topics important for people with disabilities were discussed.

In the work of all councils are included representatives of the organizations of people with disabilities, or organizations which deal with people with disabilities.

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## VII EMPLOYMENT OF PEOPLE WITH DISABILITIES IN PRACTICE –SITUATION IN MONTENEGRO

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### Current state and social context

Law on Professional Rehabilitation and Employment of People with Disabilities as a separate law was adopted in 2008, after which it was changed two times, and again, in 2015, it is in the amendatory process. Its adoption is planned for 2016.

Because it's very hard to talk about employment of people with disabilities before adoption of the Strategy for the Integration of Persons with Disabilities in Montenegro for 2008-2016 and adoption of the Law on Professional Rehabilitation and Employment of People with Disabilities in 2008, in this part of the Study we will deal with the facts and actual situation since 2008, and especially since May 2009, i.e. since constitution of the Fund for professional rehabilitation and employment of people with disabilities until now.

By the analyze of the number of unemployed persons with disabilities, registered at the records of Employment Agency of Montenegro, as well data on number of employed persons with disabilities during one calendar year, we definitely can conclude that from year to year progress in number of employed persons with disabilities is evident. Although, it's needed to still bear in mind that a certain percentage of people with disabilities don't have a decision on categorization, i.e. defined the type and level of disability, which is a consequence of stereotypical and traditional community, and attitude to people with disabilities, i.e. to disability as a condition. Besides, certain, not so little, number of persons with disabilities is even not registered in the records of Employment Agency, nor, because of previously gained rights (disability pension, family pension), are employed by the employment contract, because of which they don't have length of service.

Before adoption of the new Law on Social and Child Protection in 2012 and condition for exercising the right to personal disability allowance (on the basis of incapability for independent life and work) not so negligible percentage of people with disabilities stayed without right to work. System of social protection was set out in that way that exercising the rights which should be compensatory and arise as "disability allowance" precluded right to work. This is especially troublesome for mentality like Montenegrin, where people with disabilities didn't get support even of their families for seeking for a job, but often with the persuasion of the family, chosen "more secure" incomes. Deprivation of the right to work on the basis of acquired rights has passivated people with disabilities and frequently "turned" them only into social categories of population, entirely dependent of the country.

Social benefits, taking into account their amount, can't compensate unequal position, nor provide people with disabilities independent and decent life, and often they can't cover basic daily needs and expenses. Because the lack of support services, extent and type of barriers that people with disabilities everyday face with, financial support and "benefits" that people with disabilities can exercise in some areas can't not nearly "compensate" inequality.

Even today, as aforementioned, there are certain number of persons with disabilities, who are em-

ployed and engaged in public administration bodies, local government bodies, some companies, but who don't exercise the rights according to the Law on professional rehabilitation and employment of people with disabilities, therefore can't be more detailed covered by the topic of our Study. Just those persons usually have wrong and negative attitude to their disability, as them, as well as their employers, don't categorise themselves in that way, because of the fear of losing job, or often because of the wrong relation and connecting disability to the un/ability to work.

...

According to the Information about implementation of the Action plan of the Strategy for integration of persons with disabilities in 2008 there were 56 persons with disabilities included into active employment measures, 13 of which was employed for a indefinite period, while in the register of Employment Agency of Montenegro in the same year were 2536 (1960 so called "workers with disabilities" and 576 categorised persons).<sup>92</sup> During that year were realised public works and employment preparing programs. 36 persons with disabilities are employed for a definite period and one person for whom working place was adapted for an indefinite period.

At the end of 2009 in register of the Employment Agency there were: 2484 persons with disabilities (workers with disabilities – 1894 and categorised persons – 590), whilst 71 persons were employed during that year for a definite time. According to the data of the Fund for professional rehabilitation and employment of people with disabilities, during that year were also realised three pilot employment programs<sup>93</sup>.

During 2009 was spent 135.122,70€ for public works and monthly fees for members of the Council of the Fund for professional rehabilitation and employment of people with disabilities.

At the end of 2010, in the register of Employment Agency of Montenegro there were 2242 persons with disabilities (workers with disabilities – 1661 and categorised persons – 581). During that year were realised public works in which were employed 76 persons with disabilities, for an indefinite period, whilst eight persons with disabilities were employed, six of which for an indefinite period. Although the employers were recognised the right to subsidies, in the Fund for professional rehabilitation and employment of people with disabilities stated that during that year here weren't transformation of the working engagement from a definite, to indefinite period.

During 2010 were spent 481.374,04€, out of which for subsidies for employers were spent 19.246,80€.

At the end of 2011 in the register of the Employment Agency there were 2010 persons with disabilities (1419 workers with disabilities and categorised persons – 591). During that year also were realised public works in which 59 persons with disabilities were employed for a definite period. During 2011 were spent 386.561,34€ out of which for subsidies for employers were spent 91.858,86€.

During that year were employed 20 persons with disabilities, out of which five for a indefinite period. All employers had a right to wage subsidies. For one person with disability working engagement was transformed from definite for an indefinite period.

At the end of 2012 in the register of Employment Agency there were 1956 persons with disabilities (workers with disabilities – 1382 and categorised persons – 574), whilst 31 employer exercised the right to wage subsidies for 41 employed persons with disabilities and 11 for the indefinite period. 70 persons with disabilities take part in public works. In that year one person with disability was employed for an indefinite period. During 2012 were spent 268.521,65€. For the wage subsidies to employer were paid 228.624,99€, and 2.467,34€ je was spent for awarding nonrecurring resources for adaptation of the working place and conditions. The rest of the resources were spent for public works and fees to members of the Council of the Fund.

In the register of the Employment Agency on 31 December 2013 there were 1942 persons with disabilities, of which workers with disabilities – 1364, and categorised persons – 578, whilst at the

92 Information on the implementation of the AP for the Strategy for integration of the persons with disabilities for 2008.

93 Request to Free Access to Information No. 171-02, of 07.07.2015, and Answer to Request No. 37-01, of 24.07.2015.

end of 2013 39 employers exercised the right to wage subsidies, for 61 employed persons with disabilities. Two persons with disabilities during that year transformed working engagement from for a definite into an indefinite period.

At the end of 2014, 71 employers were employing 89 persons with disabilities, whilst in the register of the Employment Agency there were 2193 persons with disabilities, out of them 1358 – workers with disabilities and categorised persons – 578. In public works were included 37 persons with disabilities.

Seven persons with disabilities in 2014 transformed working engagement from a definite into for an indefinite period.

The only thing that is unavoidably easy to conclude is that number of employed persons with disabilities increased from year to year, as well as number of those who were included into active employment policy measures. It's also clear that a certain number of persons with disabilities were included into public works, but weren't employed. So, beside employment, were realized other types of "working integration" or measures of social inclusion.

According to the information of the Fund in period since 2009 to the end of 2014 persons who were employed for a definite period at employers, have extended contracts several times, with the same employers, also for a definite period, for one or two years.

However, about current state or improvement in employment of people with disabilities is impossible to talk only from the aspect of number of employed persons with disabilities, it's also very important to take into account working conditions, then the way on which measures of professional rehabilitation are implemented, to which extent the Law is implemented in general, whether people with disabilities are supported for self-employment and business, on which way some norms of the Law are interpreted, and consequently how it's implemented in general.

In Montenegrin practice we often hear that the Law on professional rehabilitation and employment of people with disabilities is relatively good, or the best in the region. This statement has arisen just as a result of increasing the number of employed persons with disabilities and possibilities which legal solutions offer.

However, the fact that Law already has been changed two times, and that it's in the amending process, has arisen just because of the need to additionally improve and specify the text in order to create possibilities for more appropriate implementation of the Law, i.e. inclusion of people with disabilities on the labour market.

Although the eight years passed from adoption of the Law, state, i.e. state institutions and state administration bodies and local government bodies significantly employ people with disabilities and don't respect the Law, which also them, as a employers, not only in the aspect of the Law, but also the Constitution and UN Convention on the Rights of Persons with Disabilities, obliges to employ persons with disabilities and to protect their rights in that way.

Although the definition of employer during law amending in 2011 was expanded to all legal and natural persons, as well bodies and organisations which are financed by state budget and local government (Article 11), state authorities state that, if employ persons with disabilities, they couldn't use subsidies. Also, according to the definition is not clear whether the definition of employer covers organisational units in the state authorities (public administration bodies).

A well known example for our public is a long time initiative of opening the **Centre for working in-**

**tegration of hardly-to-employ persons**, the project that wasn't realised after more than ten years. Minister of labour and social welfare Zorica Kovačević announced that this centre will be opened by the end of 2015.

It's also evident that people with disabilities didn't use a possibility of opening self business, establishing companies, nor that in the significant extent used a possibility of loans under favourable conditions. The reason for that is just a lack of information and empowering of people with disabilities themselves.

Social economy and social cooperatives didn't come to life in appropriate way.

Results of the research conducted within project since March 16 until March 26 2015 shown that most of the citizens (75,2%) think that people with disabilities should be a participants on the open labour market, and they are at least equally good workers as anyone else (55,0%) with same or better results achievement, and that they would rather employ a person with disability (67,9%) than pay special contribution to the Fund.<sup>94</sup>

In the other side, as area of the most often and biggest discrimination, citizens recognize the area of employment and working (46,8%), whilst 14% of citizens know about certain example of discrimination of person with disability. A special contribution to this was a case of Marijana Mugoša, but also a permanent speaking of representatives of organisations of people with disabilities in public about spending and "abuse" of the Fund resources.

From the Labour Inspection we also got answer that this inspection received 17 reports by the employed persons with disabilities, which relate to different violations on the job. Acting upon initiatives, the inspection undertaken measures and gave: eight fingerings with a deadline for elimination of irregularities, then two decisions and one fine with a misdemeanour report. By these measures, according to assertions of Labour inspections, were covered 33 persons, and they related to placement of persons with disabilities (after gaining disability), according to "remaining working ability" and determination of the earnings.

In situations when the injury or impairment is gained on the work or in the work process, employer, as well as state should provide a lot more support to a person, to avoid, if it's not necessary losing the job, i.e. interrupt working engagement. In that regard, a system must provide support to people with disabilities, after gaining disability, because actually in that case accepting of own disability could be the most important measure of professional rehabilitation.

On the other side, bearing in mind a level of education of the representatives of the institutions and other experts in some areas, just people with disabilities would in most appropriate way provide this type of training and support.

## VIII POSSIBLE SCENARIOS OF SOLVING THE STATUS OF THE FUND FOR PROFESSIONAL REHABILITATION AND EMPLOYMENT OF PEOPLE WITH DISABILITIES

In the Review about implementation of the Action plan of the Strategy for the Integration of Persons with Disabilities for 2008 is stated that on September 27<sup>th</sup> 2008 was opened the account of the Budget of Montenegro – Fund for professional rehabilitation and employment of people with disabilities, for payment of special contributions for professional rehabilitation and employment of people with disabilities. However, in other official documents there is information that the Fund was established and the paying of the special contributions started on May 29<sup>th</sup> 2009.

In the Article 22 of the Law on professional rehabilitation and employment of people with disabilities is defined that contributions are paid to the *special account of the Budget of Montenegro* - Fund for professional rehabilitation and employment of people with disabilities, whilst in the Article 38 is defined that the Fund is organised within the Employment Agency of Montenegro.

Those formulations, but also a solutions resulted in confuse of the public, especially interested groups and individuals, and especially people with disabilities, as in problems in practice in implementation of the Law.

**Incomes from contributions for professional rehabilitation and employment of people with disabilities were, in period since 2009 until 2014 36.509.776,67€, by years:**

2009	1.431.004,41€
2010	3.370.516,42€
2011	6.435.581,85€
2012	7.931.921,86€
2013	8.799.756,74€
2014	8.540.995,39€

**Purposely, i.e. for measures of professional rehabilitation and employment ending with 2014, were spent 1.972.313,35€. The rest in amount of 34.537.436.32€, state spent inappropriately.**

Fond In order to clarify the way in which the Fund works, but also to suggest possible scenarios of solutions while amending the Law on professional rehabilitation and employment of people with disabilities, hereafter we will offer two possible scenarios of solution of the Fund's status.

## Scenario I - Status quo

First scenario anticipates to keep the current state in the way that for using of Fund resources will be responsible Ministry of Finance, because the Fund is defined as a special account of the Budget of Montenegro, but this status don't anticipate the independence of using the Fund resources, although the formulations in the Law ostensibly confuse and aim to interpretation that Employment Agency of Montenegro is responsible for using the Fund resources.

This solution in practice results in that that the most of the resources which are paid as a special contributions to the Fund, are distributed in the way that Ministry of Finance, i.e. Government defines, according to the requests for diverting resources. On the other side, it's impossible to have a insight on which way the resources were spent, except for the part which was spent for the measures of professional rehabilitation and employment of people with disabilities.

This solution in practice still doesn't result in significant improvement of the working and employment conditions of people with disabilities, besides, it's opposite to the goal and subject of the Law.

As previously practice from year to year has shown, since 2009 ending with 2014, the total amount of the resources paid to the Fund was increasing, therefore this solution only and exclusively is good for the state, whilst it's bad for people with disabilities, and also employers. The main reason for this is absence of the review of this contribution as a special income in the budget, and also measures of the active employment policy as a special expense.

Employment Agency of Montenegro is not a separate legal entity and doesn't have own account. In this way, Employment Agency of Montenegro just "technically" managed the Fund, in the way that it processed to Ministry of Finance requests for awarding the resources.

In that way, although the Law defines establishment of the Fund within the Agency, until 2014 Agency hasn't any significant function, and for measures of professional rehabilitation and employment of people with disabilities resources were allocated form the measure of active employment policy which the Agency managed, apart from the Fund resources. Thus the Agency had fewer opportunities to implement the active employment policy measures, because the burden of measures of professional rehabilitation and employment was a part of those measures, and more budget resources for them weren't allocated.

Just in the end of 2014 on request of organisations of people with disabilities in the Budget Law for that year were provided resources in the amount of 2 million euro within the item „Program – Fund for professional rehabilitation” of the budget of Employment Agency of Montenegro. Those 2 million were expenses, whilst the total income wasn't shown. In the same way was provided the budget for 2015. In that way the Employment Agency was allowed to directly manage provided 2 million euro for a year, which resulted in increased amount of spent resources in that year (465.791,91€), but not in the insight in which way the rest of the earned resources which are paid as a special contribution for employment of people with disabilities is spent.

Also, although the Law prescribes that Agency in order of monitoring the measures and activities which are in function of improvement of the professional rehabilitation and employment of people with disabilities, as well as appropriate using of the Fund resources, establishes the Council of the Fund, event that body couldn't influence to the using of all resources that are paid to the Fund, but only decides on the requests which are submitted for exercising the rights of employees and employers. Actually, Council of the Funds gives opinions and suggests the way and purpose of spending the resources according to the submitted requests.

The Law also defines that supervisor of the Agency (Steering committee) decides on realisation of the measures and activities of professional rehabilitation and employment of people with disabilities, as well on appropriate using of the Fund resources, with a obtained opinion of the Council of the Fund, and that the Agency submits the annual review about realisation of the measures of professional rehabilitation, employment of people with disabilities and using of the Fund resources to

the Ministry of Labour and Social Welfare.<sup>95</sup>

The interweaving of the roles and roles which are defined as a jurisdiction of several bodies and authorities clearly are in the favour of the fact that those solutions don't unburden the administration, nor essential jurisdictions were given to different bodies (Council of the Fund, Employment Agency including its Steering Committee). Contrary, the given solutions resulted in often transfer of responsibilities from one state administration body to another and impossibility of influence on solving current situations, and in no way contributed to spending a bigger amount of resources according to the Law.

## Scenario II - Establishment of the Fund for professional rehabilitation and employment of people with disabilities as a separate legal body

About spending Fund resources, i.e. its status, have been discussed for years, especially after the amendments of the Law in 2011 and end of that calendar year when it became clear that resources are in the u consolidated account of the Budget of Montenegro and that, because of treasury operations are discounted to zero at the end of the year. It means, although the Fund was established by the Law on professional rehabilitation and employment of people with disabilities, by the Budget Law, it's not shown in revenue, nor in the expenditure sides, which means that while allocation and planning of the budget from year to year the Fund is not shown, although the unspent resources, including planned flow, are planned for the next year, they aren't allocated for the Fund nor for purposes defined by the Law on professional rehabilitation and employment of people with disabilities. Although the Law on professional rehabilitation and employment of people with disabilities in the Article 38 prescribes that the resources of the Fund should be provided from the Budget of Montenegro, it wasn't the case. However, just this norm is in favour of the fact that by annual Law in the budget unspent money from the previous year could be allocated for the next, which would provide the accumulation of the resources. However, it's definitely more complicated solution.

In this regard, it's necessary to define Fund as a separate legal body, and to adopt a special Law on the Fund in amendments of the Law on professional rehabilitation and employment of people with disabilities. In this regard it would be possible, while planning the year budget, to plan a amount of the unused resources from the current calendar year for the next year, by which the "accumulation" of the resources from year to year and spending only for the purposes defined by the Law would be provided. In that regard it's also possible to plan and create management structure of the Fund in different way, and therefore the way of the resources' allocation.

This solution would contribute to the more appropriate planning of the spending of resources in the way that possibilities which the Law prescribes, to more adequate development of the measures of professional rehabilitation and in the same moment to create prerequisites for implementation of the recommendations we gave, all with the goal of creating better conditions for employment and working of people with disabilities.

95 Article 41 of the Law on professional rehabilitation and employment of people with disabilities, Official Gazette of MNE, No. 49/2008, 73/2010 and 39/2011



# CONCLUSIONS AND RECOMMENDATIONS

- While amending Law on professional rehabilitation and employment of people with disabilities **to completely harmonise the current law decrees with the UN Convention on the Rights of Persons with Disabilities**, and to prescribe the missing mechanisms, i.e. the rights that are guaranteed by the Convention, (affirmative action, reasonable adaptations);
- create a **unique data base of persons with disabilities** through the multidisciplinary approach of several state authorities, with the coordination and jurisdiction of the Ministry of Labour and Social Welfare;
- develop a **unique data base of persons with disabilities** who are registered in the Employment Agency, which will be composed of information important for employment and working, including competences of persons with disabilities, as well interests for gaining additional skills and to establish a regular update and upgrade system, as well communication, i.e. regular electronic informing of the employers about the supply;
- **Establish the Fund** for professional rehabilitation and employment **as a separate legal body with a public authorities** (off-budget category);
- define **management structure of the Fund in the way that at least 40% of people with disabilities are part of it** out of the total management structure;
- **expand possibilities for using Fund resources** through organising **additional trainings and programs for education and training of people with disabilities**, which are directly related to employment, according to the interests of people with disabilities based on the personal choice in order of easier and more efficient finding of the job;
- define that **people with disabilities, who don't need additional training and qualifications** (especially people who are employed at the positions which are completely in accordance with the professional qualification and profession) **don't include in all measures of professional rehabilitation** (primarily measures 1 and 2, and, if it's defined that they are not necessary, measures 3 and 4), but just in those which will contribute to the better working conditions for them (equipment of the working place and environment, working assistant), based on the assessment of employer and choice of people with disabilities;
- define engagement of the **assistants (helpers) in work by the working contract**, so the assistants get a possibility to gain years of service;
- increase the amount of the allowance for assistants (helper) in work so the **minimum reimbursement for assistants is 80% of the average wage** in Montenegro in the previous year for a full working time;
- **define reimbursements for employers in order to provide and organise the travel of employees with disabilities**, (if employees don't exercise that right on the other way/according to another regulations) –reasonable adaptation;
- prescribe that in exclusive situations, **when the process of professional rehabilitation lasts longer than one month, provide financing of the 100% costs of the gross wage of employee from the Fund** for that period;
- **while amending the Law, include exclusive contracts or priority production rights, tax and contract reliefs** according to the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities;
- provide and ensure **implementation of the Law to all public institutions and by public institutions which fall within the definition of the employer** (concerning the employment, usage of the subsidies and payment of the special contribution);

- **Return to the preparation procedure the Law on Social Entrepreneurship.**
- **Prescribe the obligation of the accessible and safe working place and environment by the Law on Safety and Health at Work** according to the rules that define areas of spatial planning and building.

**In the process of implementing the Law is needed:**

- **announce a Call for grant schemes and implement the process of assessment of the projects and adopting of the Decision, including signing the contracts with grant holders, no later than the end of second quarter of the calendar year, including extending the deadline for submission of the projects' proposals;**
- **publishing score lists** and resumes of the projects, including the budget with a Decision of the Commission for financing grant schemes;
- **monitor** the realisation of the projects of grant schemes that are in process of realisation, and according to the results of monitoring implement future processes during Commission's deciding;
- define a **percentage of success of realisation of the previously supported projects** through the grant schemes as one of the assessment criteria, based on the monitoring of the realisation of those projects;
- **unable organisations** for which is determined that they **spent the resources inappropriately** to submit projects' proposals for the period of next four years (according to the EU practice) and demand from them to return the resources;
- **ease procedures and reduce the duration of the assessment process and professional rehabilitation** to stimulate employers to employ people with disabilities;
- **necessarily suggest the measures related to adjustment of the working place and conditions and plan architectural adaptation (accessibility) of the working place**, wherever it's needed, as a type of reasonable adaptation, regardless of assessed expenses;
- strengthen supervision on the implementation of the Law, and implement the penalty clauses for employers which don't pay a special contribution according to the Law (Article 43.);
- consult organisations of the people with disabilities and in cooperation with them **organise a PWD Job Fair.**

# ABOUT THE ORGANISATION

**Association of Youth with Disabilities of Montenegro** is non-profit and non-government organisation, founded on 22<sup>nd</sup> October 2001, which gathers young and students with every type of disabilities (cross-disability attitude), as well as other young people without disabilities who are ready to take part and together with us fight for availability and inclusion of PWD in every area of the Montenegrin society. AYDM deals with providing the psycho-social support, creating conditions for inclusive education, encouraging youth with disabilities to gain higher education, initiatives for appropriate legislative solutions, providing the support services, raising awareness of the society...

**Vision of AYDM:** For youth with disabilities, without barriers!

**Mission of AYDM:** AYDM promotes the equal status of the youth with every type of disability in the society through the initiatives and activities for establishing the legal, educational, cultural and social framework which allows that.

Our activities are implemented through 6 programs and one sub-program within which we implement individual projects, and that programs are: Legal program and antidiscrimination; Program of Education; Program of Employment and development of Human Resources; Program of Accessibility; Program of Independent Living – sub-program of guide dogs and service dogs, and Program of International Cooperation.

## **Program of Employment and Development of Human Resources**

**Program of Employment and Development of Human Resources** of AYDM is based on the goal of making possibilities and increasing the number of employed people with disabilities, through empowering and strengthening their capacities and abilities. It is being developed since 2004, and today through this program are developed many activities, as first employing people with disabilities and working engagement through the work of Association, then mediation in employing our users/youth with disabilities and in the end monitoring and initiating the respecting of the Law on professional rehabilitation and employment of people with disabilities. The most important characteristic of this program is employing and engaging students with disabilities during studies, in order to gain their first skills, working habits and abilities, as well as employing people with disabilities after the end of studies through the internships and then signing the employment contract for indefinite time.

Activities of the Program of employment and development human resources are closely related with activities from the Program of education, so one number of activities is developed through the Students' advisory office. The pilot **Employment support service** which is implemented in 2015 includes examination of the needs and interests of students with disabilities, their empowering and motivation and connecting with the potential employers.



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