**Macedonian regulatory framework of vocational rehabilitation for persons with disabilities**

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*Abstract*

*The legislation regarding the regulation of rights of persons with disabilities is complex and split in different laws and relevant bylaws, often specified by areas: social protection, child protection, health care, education, employment, rights based on pension and disability insurance etc. These legislative practices create certain difficulties reading the law but also there are certain overlapping and inconsistencies in the implementation of laws especially that in most cases there is an imposing need for multi-sectoral action.*

*The paper gives an overview of the regulation related to vocational rehabilitation services for the persons with disabilities, identifies legislative gaps and recommends proposals for legal changes.*

Kew words: vocational rehabilitation, person with disabilities, legislation.

Introduction

The aim of this paper is to give an overview of the systemic and institutional context in which people with disabilities exercise with the law guaranteed rights, especially rights in the social security system as well as services related to vocational rehabilitation. The purpose of the review is not to determine all aspects of the rights for disabled persons and the ways to achieve them, but primarily to identify the elements of the rights that are closely related or have a common basis with the right to vocational rehabilitation and to provide the necessary knowledge for the transition of a right for vocational rehabilitation from specialized right toward general right that can be utilized by all persons with disabilities.

The paper emphases in details the positive law regarding the regulation of vocational rehabilitation as a right which does not arise from the social protection system, but as a right exercised by employed disabled persons based on the regulations for pension and disability insurance. Finally, the paper presents recommendations on how to improve the legal framework for vocational rehabilitation, through legislative interventions in relation to the scope of the law and persons with disabilities to be addressed by right and the conditions for exercising the right to vocational rehabilitation.

1. Brief overview of relevant legislation related to the rights of persons with disability

Rights for special protection are constitutionally guaranteed in Article 35 of the Constitution which provides care of the state for social protection and social security of citizens in accordance with the principle of social justice. The Republic guarantees the right of assistance for the weak and unable for work. The Republic provides special protection for disabled persons and their inclusion in society.

The main legislation related to persons with disabilities presented in this paper is in the area of social and child protection.

1.1. The rights of persons with disabilities in the area of social protection

The Law on Social Protection defines persons with disabilities as persons with mental or physical disabilities. The measures and activities focused at preventing and overcoming health risks (illness, injury and disability) in the system of social protection are grouped in:

* Non-residential protection that is exercised in or by the Centre for social work includes the right to: Initial social service on social protection of beneficiaries, individual assistance, assistance of families, home care and assistance of an individual and the family, daily and temporary sheltering and protection as assistance to an individual and family, placement in a foster family, placement in a small group home, and organizing supported living.
* Institutional protection includes the right to training for work-productive activity and the right to accommodation in social protection institution. The right to training for work-productive activity has a person with moderate and severe mental disabilities. The right to training for work-productive activity includes referral to social protection institution or other legal entity that meets the required conditions, reimbursement for accommodation and meals, reimbursement for training for work-productive activity and compensation for transportation costs.
* Rights to financial assistance from the social protection regarding disabled persons are: permanent financial assistance (requires an assessment of work ability), cash allowance for assistance and care by another person, supplement for blindness and mobility, supplement for deafness.

The system of social protection envisages rights intended for parents with children with disabilities such as salary compensation for reduced working time for the care of a child with physical or mental disabilities, as well as financial assistance to single parent who has a child with disabilities.

1.2. The rights of children with disabilities in the area of ​​child protection

As a child in terms of the Law on Child Protection, is considered any person up to 18 years of age, and persons with physical and mental development by the age of 26 years.

For a child with special needs up to 26 years of age which have physical or mental disabilities or multiple disabilities a special allowance as material compensation is provided. Decision, assessment and opinion on the need of exercising the right on special allowance are given by a professional body for assessing the type and degree of disability of individuals with mental or physical disabilities.

The same law provides care and education of children with mental disabilities or physical disability, in conformity to the type and degree of disability in kindergarten. As children with mental disabilities or physical disabilities are defined blind and partially sighted children, deaf children, children with speech difficulties, children with physical disabilities, and children with difficulties in behavior and personality.

1.3. Law on Employment of Disabled Persons

Disabled person within the meaning of the Law on Employment of Disabled Persons is a person with visual impairments, hearing impairments, with voice, speech and language impairments, a physically disabled person, a person with impaired individual growth and persons with multiple disabilities who due to the degree of disability has specific working needs. A disabled person is considered disabled worker with remained or decreased working ability and if it is evidenced by the Employment Agency as unemployed. Disability based on applied request by the disabled person, his parent or guardian shall be determined by the Commission for assessment of the working ability of the Pension and Disability Insurance Fund, unless the disability of the person is not determined by any other competent authority.

With the definition of disabled persons according to the original text adopted by the Parliament were included people with psychosis. With the changes and amendments to the Law on employment of disabled people, people with psychosis were taken out definition which ruled out the possibility that these persons may be employed in the labor market under the conditions set out in this Act, and in that sense to be able to use the advantages for employment.

The Law on Employment of Disabled Persons regulates the special conditions for employment and working of disabled persons: when they perform activities as individual entrepreneurs, with an employer or act like an employer, in state administration, local government units, public enterprises, institutions, agencies and funds and other state institutions as well as the conditions for establishing and benefits for the working as trade association for employment of disabled persons in sheltered enterprises.

The Law on Employment of Disabled Persons in a separate chapter regulates right to vocational training of disabled persons. Vocational training, in terms of this Act is to enable the disabled person to practical work on specific tasks in line with the needs of the employer and the disabled persons. Unemployed disabled person is referred to vocational training for employment with the employer by the Employment Agency. An employer is referring employed disabled person, who is not competent to perform specific works, to vocational training. Job training can be done with the employer and with another employer under special programs, under conditions and in a manner determined with the Act of the Agency.

Employment of disabled persons is made from the registered unemployed people in the Agency. The Agency shall keep records of unemployed disabled persons in the beneficiary country.

Disabled person may be employed at a job position for which has an appropriate education for occupation, that may be employed or redeployed to another job position if he/she meets the general and special conditions and is competent to perform the duties of the position, and if it has the assessment for working ability that is in position to work on the appropriate work position.

Disabled person that is referred to vocational training have no status of an employee at the employer where was referred for vocational training, unless employed by him.

However, it is a general conclusion that this right was not put in practice regularly, as a result of the burdened of the procedure with a great number of required documents, and the amount that was separated for this purpose is lower compared to other advantages provided with this law.

1.4. Law on Disability Organizations

The Law on Disability Organizations while defining persons with disabilities referrers to the Law on Social Protection and the Rulebook on assessment of specific needs of people with physical or mental development, although further it gives a definition that is in line with new trends in international law. Namely, as a person with a disability is defined an individual that due to its natal or acquired injuries and disabilities acquired or created by its physical or living environment, alone cannot partially or fully meet the personal, family and life necessities in the living environment.

2. Current situation related to the legal regulation of the right of vocational rehabilitation

2.1. The rights of disabled people under the Law on Pension and Disability Insurance

The right to vocational rehabilitation is regulated by the Law on Pension and Disability Insurance, as right to pension and disability insurance exercised on the basis of disability. Disability is related to two main indicators: health condition and work ability. The disability exists when at the insured person, due to a change in health status that cannot be removed by treatment or medical rehabilitation, working ability is permanently reduced by more than half compared with physical and mental health of an insured person with the same or similar education and ability.

Disabled by labour in terms of this Law, an insured person that based on disability exercise the rights to pension and disability insurance. Disability can occur due to disease, injury outside of work, work injury or occupational disease.

Work positions for which assessment of working abilities of the insured person is made encompasses all work positions that are suitable to its physical and mental abilities, and are considered to be suitable to the current activities.

Disability is determined in two categories: 1) Category I if the work ability of the insured is reduced by more than 80% there is a permanent loss of work ability (general inability to work) and 2) category II if the work ability of the insured is reduced by more than 50% and up to 80% (professional inability for work).

If the working ability of the insured is reduced by 50% compared to the physically and mentally healthy insured person with the same or similar education and ability due to which cannot perform full-time its work tasks, can work part time or needs to be changed to another work in accordance with the regulations pertaining to labor relations and collective agreement.

When the insured person has determined professional inability for working, remaining work ability is determined in regards to his/her health condition, age, education and ability, and with vocational rehabilitation may be trained to work full-time for another job.

2.2. Rights based on the remaining work ability and conditions for implementation

Rights based on the remaining work ability are determined as:

* The right to vocational rehabilitation has an insured person with whom disability occurred before the age of 50 years and if according to remaining work ability can be trained for another full-time job.
* Disabled workers who acquired vocational rehabilitation are trained to perform another job that requires professional qualifications which match the activities that he has performed at his work prior to the occurrence of disability.
* Notwithstanding vocational rehabilitation can be provided for other work requiring professional training higher than the one that corresponds to the works which the insured person has performed prior to occurrence of disability, if such training is justified according of their expertise, their age, work experience and preferences and if there is a real opportunity for employment after completion of training.

If the professional incapacity for work arose due to injury at work or occupational disease, the insured person is entitled to vocational rehabilitation regardless of the length of the pension insurance. In cases where professional inability for work is resulting from injury outside of work or illness, the insured person is entitled to vocational rehabilitation if he has pension insurance that cover at least one-third of the period of fulfilled of at least 20 years of age to the date of occurrence of disability (work life), considering the work life of full years.

3. Rights of persons with disabilities according to the Law on Labour Relations

In the Law on Labour Relations there is a separate chapter which provides protection of disabled people with entitlement to vocational rehabilitation. The employer provides protection of disabled people at time of employment, training or adjustment in accordance with the law. As rights of insured disabled workers are predicted:

* To the insured disabled worker entitled to vocational rehabilitation on the basis of professional inability to work the employer is obliged to provide conditions for vocational rehabilitation and to give him another full-time job in accordance with the regulations from retirement and disability insurance.
* To an employee in an immediate risk of occurrence of disability, the employer is obliged to ensure the deployment to another job and wage compensation amounting to the difference between the wage received by employee before deployment and the wage of the new job post.
* An employee with an identified reduced ability by 50%, according to the regulations on pension and disability insurance has the right to part-time job or to be deployed to another job, with the right to a wage in accordance with the collective agreement.

Risk of occurrence of the disability occurs when performing certain working tasks, working conditions despite the measures that are applied or may be applied, affects the health condition and working ability of the employee to an extent of evident deterioration of his health, which requires reassignment to another job post corresponding to his education and ability, in order to prevent the occurrence of disability. The existence of risk of becoming disabled with findings, assessment and opinion is prescribed by the Commission for Assessment of Work Ability in the Pension and Disability Insurance Fund.

4. Key issues in the legal regulations related to developing the services for vocational rehabilitation

The review of legislation is conducted in the function of the basic goal for social inclusion of disabled people through utilization of services of vocational rehabilitation and employment on the open market and under specific conditions. The key points that emerge from the analysis, closely related to the legal regulation of vocational rehabilitation, are:

* in the legislation, the right to vocational rehabilitation arises from the pension and disability insurance and encompasses only the insured disabled workers.
* in different laws, the disabled persons are differently defined as beneficiaries of rights based on exposure to the social risks of illness, injury, or disability.
* part of the rights includes vocational training, which represents an essential element of vocational rehabilitation.
* part of the rights assume identification of same or similar indicators as the basis for exercising the right to vocational rehabilitation: findings and opinion on the type and degree of disability and reduced work ability.
* the lack of a unified legal basis for assessment of persons with disabilities creates a complex network of institutions (commissions, bodies) that for different needs, in the same or similar area, act parallel, whereby persons with disabilities are administratively burdened in terms of time, money, efficiency and similar.
* monitoring of the work of the commissions in the first instance is mostly made through revision of findings and opinions by a commission established by the Minister.

The extension of the implementation of the right to vocational rehabilitation as a general right for all other categories of disabled persons required legislative intervention with the following key issues:

4.1. Terminological determination and dilemmas regarding person with disabilities

The analysis of laws shows that most of them use different terms and definitions depending on the coverage of people with different types and degree of disability to which the relevant rights are referring. In the legislation, these terms are used: persons with disabilities, disabled persons, people with special needs, invalids, people with handicap, children with developmental and special needs, developmental problems, special needs, special developmental needs, etc.

In most of the definitions the medical approach (model) of disability is noticed according to which disability is an individual problem directly related to illness, injury or other impairment of health which causes the necessity of medical assistance and care provided by professionals. The basic way of solving this problem, according to this model is treatment, rehabilitation and adaptation of the personality on the actual situation, where perceptions on the nature of the disability refer only to individual, his physical, sensory and intellectual impairments. Only in the definition of disabled persons in the Law on Disability Organizations, and besides the fact that the definition refers to the Law on Social Protection and the Rulebook on assessment of specific needs of people with physical or mental disabilities, social approach (model) of disability is applied which assumes that systemic barriers, negative attitudes, understanding and exclusion by society are key factors that determine who is a disabled person and who is not in society. This model recognizes that while some people have physical, sensory, intellectual or psychological differences that sometimes cause individual limitation or disability, they not having to lead to disability unless society fails to take proper care to involve people regardless of their individual differences. This model does not deny that some individual differences lead to limitation or disability, but they should not be the reason for individuals or group of people to be excluded.

Due to unification of terminology and developing a definition of disabled persons according to the contemporary approach to disability there is a need to follow the definitions provided in the UN Convention on the Rights of Persons with Disabilities, adopted in our domestic legislation through the National Strategy for Equal Rights of Persons with Disabilities (revised version) 2010-2018.

* Disability: the disability arises from the interaction of people with disabilities, with the obstacles in the environment and barriers that are reflected in attitudes of society and hinder the effectiveness and completeness of participation of persons with disabilities in the system.
* People with disabilities: In Article 1, paragraph 2 of the Convention on the Rights of Persons with Disabilities, under the term persons with disabilities are considered those persons with long-term physical, mental, intellectual or sensory impairment, who in interaction with various barriers may hinder their full and effective participation in society on an equal basis as others.

Introduction of the new concept of vocational rehabilitation entails changes in the general provisions and definitions relating to persons with disabilities, new ways and methods of determining the disability namely gradual abandonment of the medical model and adoption of the social (functional) model of determination of disability. Such changes would lead to changes in the social protection system of persons with disabilities, and gradual supplementing of compensational model with the rehabilitation model of protection of persons with disabilities.

4.2. Vocational training versus vocational rehabilitation

Vocational rehabilitation is a multidisciplinary area that encompasses various activities aimed at professional and vocational training, employment and work of persons with disabilities. Vocational rehabilitation is a set of rehabilitation-educational, social, psychological, legal, work-technological and technical as well as economic measures aimed at gaining working knowledge, skills and habits aimed with a program at the faster involvement of people with disabilities into work, profession or occupation where they will achieve the most favorable operating performance with the least possibility of further reduction of remaining work and general capabilities (Zhunich, 2001). Accordingly, vocational training is part of vocational rehabilitation, and in the positive law appears as an autonomous right in two cases:

* the right to training for working-production activity provided by the Law on Social Protection includes referral to in an institution for social protection or other legal entity that meets the required conditions, reimbursement for accommodation and food, reimbursement for training for working-productive activity and compensation for transportation costs. In this case, there is no overlap with the right to vocational rehabilitation and it is proposed that the same regulation is maintained.
* vocational training in terms of the Law on Employment of Disabled People is the training of the disabled person for practical work on specific tasks in line with the needs of the employer and the disabled persons. In this case it appears that vocational training is only part of the procedure for professional rehabilitation, therefore it is proposed for this section to be deleted and replaced with a separate chapter on vocational rehabilitation.

4.3. Regulatory approach: a special law or interventions in the existing systematic laws

Comparative experience shows that the right to vocational rehabilitation can refer to different vulnerable groups that are in disadvantaged position on the labor market. Such coverage of beneficiaries of the law implies adoption of a special law lex generalis which would regulate all general issues, but also specifics in regards of the group that will exercise the right. While the ultimate goal of the introduction of the right to vocational rehabilitation should be coverage of all vulnerable groups for easier access to the labor market, at this point a gradual introduction of the right to vocational rehabilitation is recommended through coverage of only a vulnerable group, persons with disabilities.

Considering the current regulation, according to which the right to vocational rehabilitation is given only to certain categories of disabled persons (insured disabled workers) an introduction of the legal possibility for exercising this right by unemployed disabled persons and other disabled persons who are not covered by the Law on Pension and Disability Insurance is recommended. Introduction of legal provisions that define the model of vocational rehabilitation, the competent authorities as well as the procedures for exercising the right to vocational rehabilitation is an intersectoral issue of the Ministry of Labour and Social Policy, Ministry of Education and Science and the Ministry of Health. The Law on Employment of Disabled Persons is the most suitable law that would regulate the right to vocational rehabilitation of unemployed persons with disabilities, considering that the aim of the law is in line with the objectives to be achieved through implementation of measures and activities of vocational rehabilitation. The legislative initiatives foresee establishment of a Center for vocational rehabilitation, which under precisely determined conditions will provide services for vocational rehabilitation for persons with disabilities. Regarding the financial implications of the enforcement of the law, the funds for vocational rehabilitation services delivery for the insured disabled workers would be provided from the Pension and Disability Insurance Fund, whereas funds for unemployed persons with disabilities from the Special Fund established with the Law on Employment of Disabled Persons.

Relevant legislation

Law on Social Protection (Official Gazette no. 79/09, 36/11,51/11,166/12, 15/13, 79/13, 148/13, 164/13, 187/13, 38/14, 44/14, 116/14, 180/14, 150/15, 192/15, 33/15, 72/15, 104/15, 173/15, 30/16, 163/2017)

Law on Child Protection (Official Gazette no. 23/13, 12/14, 44/14, 144/14, 10/15, 25/15, [27/16)](http://www.mtsp.gov.mk/content/pdf/zakoni/402853faec974f4d9ad6beb6032e8b1c.pdf)

Law on Employment of Persons with Disabilities (Official Gazette no. 44/2000, 16/2004, 62/2005, 113/2005, 29/2007, 88/2008, 161/2008, 99/2009, 136/2011, 129/15, 147/15, 27/16)

Law on Employment and Insurance in the Case of Unemployment (Official Gazette of RM no. 37/97, 25/2000, 101/2000, 50/2001, 25/2003, 37/2004, 4/2005, 50/2006, 29/2007, 102/2008, 161/2008, 50/10, 88/10, 51/11, 11/12, 80/12, 114/12, 39/14, 44/14, 113/14, 56/15, 129/15, 147/15, 154/15, 27/16, 119/2016)

Law on Prevention and Protection of Discrimination (Official Gazette no. 50/2010, 127/10, 44/14, 150/15)

Law on Labor Relations - official consolidated text text (Official Gazette no. 167/2015, 27/2016)

Law on Invalids Organizations  [(Official Gazette no. 89/08](http://mtsp.gov.mk/WBStorage/Files/Microsoft%20Word%20-%20Zakon%20za%20Invalidski%20Organizacii.pdf), 59/12, 23/13)

Law on Pension and Disability Insurance (Official Gazette no. 98/12, 166/12, 15/13, 170/13, 43/14, 44/14, 97/14, 113/14, 160/14, 188/14, 20/15, 61/15, 97/15, 129/15, 147/15, 154/15, 173/15 and 217/15, 27/2016)

Law on Vocational Education and Training (Official Gazette no. 71/2006, 117/08)

Law on Use of Sign Language (Official Gazette no. 105/09)

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National Strategy for Deinstitutionalization 2008-2018, Ministry of Labour and Social Policy, 2007

National Strategy on Equality and Non-Discrimination 2016-2020, Government of the beneficiary country, Ministry of Labour and Social Policy 2016

National Strategy for Equality and Non-Discrimination on the Grounds of Ethnic Affiliation, Age, Mental or Physical Disability and Gender, Government of the beneficiary country, Ministry of Labour and Social Policy 2011.