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ORGANIZATION OF PERSONS WITH DISABILITIES IN TRADE UNIONS – Égalité – Plus de Parole –

This paper reflects on the analysis of the existing system of trade union organization in accordance with the national solutions, the European and the aspects of the International Labour Organization, primarily through the views and needs of persons with disabilities. The paper presents an overview of the normative aspects of organizing the trade union organization of persons with disabilities, as well as the challenges and the scope of the current system regarding the requests submitted by these employees. The paper provides guidelines and future steps that should be taken both within the national legislation and in relation to international tendencies, and in order to promote the right to trade union organization of persons with disabilities. Persons with disabilities in context of syndicalism are recognized as a separate group of employees, but for whom in science existed different views and attitudes regarding the issue of their organization into union.

Key words: *Persons with disabilities. – Trade union organization. – Syndicalism. – Labour rights.*

1. THE NOTION OF TRADE UNION

A trade union¹ is a professional association of workers (employees, self-employed, free lancers, as well as unemployed individuals and pensioners), based on the values (virtue) of solidarity, and in order to promote the collective – social, economic, cultural, moral interests (professional ethics) and dignity (and privacy) in labour, social welfare, protection of individual and collective rights of members (work), de-

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1 The term trade union: En. Trade, labour union; Fr. le syndicat; Ger. Gewerkschaft; Ital. sindacati.

velopment of social dialogue and regulation of working conditions and the relationship between employees and employers as well as the development of social (industrial, participatory) democracy.² Syndicalism is a trade union movement, that is, an active union process in order to achieve the goals of union existence.

The term trade union implies association among the trade unions from the lower levels of organization to higher levels of organization in the national and international frames. This organization can be in a form of trade union federations (sectoral, branch, industrial union) and trade union confederations (so-called trade union centers in national and international frameworks). The manner in which trade unions act, that is, the methods for achieving trade union goals is based on opposing, disputing, negotiating, requesting, participating in decision making (taking part), cooperation (coordination) and protection of rights.³

The main feature in organizing trade unions is that they are autonomous, professional associations compared to employers and the state. This implies that they freely and independently choose their representatives and authorities, the methods of acting and the way of functioning. The internal relations in the union are regulated primarily by statute, and in a certain sense by law, without jeopardizing the autonomy of the union in relation to the state. Also, the relations between the trade unions themselves, trade union federations and confederations, as well as the international trade union organizations are regulated by a statute.

The autonomy of a trade union organization and the way it functions is a very important right which is part of the fundamental civil rights and freedoms, which includes freedom of movement, freedom of association and freedom of assembly, freedom of opinion and expression of opinion, freedom of speech and so on which presupposes the existence of a democratic constitutional and legal framework in the country. It can be said that the union is a partner, i.e., a “growing opponent” in the social dialogue that can be bipartite (having employer in the private or public sector), tripartite (engaging involvement of the public authorities and the employers’ associations) and multipar-

2 B. Lubarda, *Radno pravo – rasprava o dostojanstvo na radu i socijalnom dijalogu*, Pravni fakultet Univerziteta u Beogradu, Belgrade, 2013, 815.

3 *Ibid.*

ty (with the inclusion of civil society – social and non-governmental organizations).⁴ In addition to political, cultural, religious dialogue and tolerance, social dialogue is the cornerstone of contemporary civilization, as well as part of the legal organization of the state within the EU – the European Social Model.

2. THE EMERGENCE AND DEVELOPMENT OF TRADE UNIONS IN THE WORLD AND EUROPE

With the emergence of the first workers in the capitalist – market economy, the need for a certain organization of workers emerged. At the outset, due to underdeveloped economic relations that did not require a large workforce, the organization of workers was at a low level. The workers themselves did not feel the need for an organized appearance on a larger scale to protect their rights. During the development of capitalist relations and as the degree of abuse of workers increased by the so-called ‘bourgeoisie’, people belonging to working circles started to organize their ideas and to join in organized units in order to better express their demands. Although the idea of an organized appearance of citizens is older and arises primarily from political motives, in capitalism this idea got weight and meaning. The workers were the ones who actualized it and put it into force, regardless the fact that in the beginning it was not legal, i.e. it was not recognized by the law. But there are significant differences in the emergence and development of the organizations (unions) of workers in capitalist countries, regarding the time in which capitalism appeared. Since the temporal occurrence of capitalism from country to country is different, the organization of trade unions is also specific and varies according to the country.⁵

4 *Freedom of Association – Digest of decision and principle of the Freedom of Association Committee of Governing Body of the ILO*, ed. International Labour Office, Geneva, 2006, 13–15.

5 Each country has its own characteristics in the development of trade union movement that are different and depend on several economic and political factors. For more information see: B. Lubarda, *Kolektivni ugovori o radu*, Radnička štampa, Belgrade, 1990, 20–57.

3. SYNDICALISM AND PEOPLE WITH DISABILITIES

Following the development of trade unions, the tendencies and the stages through which syndicalism has been moving since its beginnings until present date, it can be noticed that the issue of employment of, and in general, people with disabilities has been rarely a subject of interest or discussion. Persons with disabilities do not represent a specially segregated group of employees that are part of the union agenda, but are mostly part of the general system of protection of union membership. It is precisely this fact, i.e. the lack of initiative for commitment to persons with disabilities within the framework of trade union activities, and not putting it on the agenda or not being part of the union goals (special protection of persons with disabilities within the framework of employment), speaks of the awareness and the level of the maturity of syndicalism at the moment. In fact, there is no specially singled out union of employees on a union basis that unites people with disabilities within the labour force.

Organizing persons with disabilities into a separate group of employees, who form indigenous trade union, can, however, cause certain dilemmas and different attitudes. They range from the understanding that there is no need for such an organization due to the fact that trade unions should be consolidated and strengthened, to the view that for the sake of better protection of persons with disabilities there is a need for special unions that will include persons with disabilities into professional – personal basis of association.

On the other hand, the factual situation depicts a picture where persons with disabilities are part of the trade unions and their rights are protected as employees, but not as a separate group of employees. This situation does not correspond to the international legal reality, mainly not to the conventions and recommendations of the International Labour Organization, as well as the acts of the European Union. In fact, there is already a developed system of special protection of persons with disabilities in the labour relations frameworks as a separate group of employees. Moreover, the dilemma of whether the need of special trade union for people with disabilities within their professional engagement is a necessity or not still persists.

3.1. Trade unions in Macedonia and protection of persons with disabilities after 1991

The change of the social system led to a change in the trade union movement in Macedonia. Syndical pluralism was established where several unions appeared. In addition to the already existing TUM, a Confederation of Free Trade Unions – CFTU, Union of Independent Trade Unions of Macedonia – UNSM were formed as well. In addition to these three main trade unions, other branch unions appeared at the national level, which unite health and pharmacy employees. There were also unions with a sign “independent” and so on.

The main characteristic of syndicalism in this period is the reduction in the number of trade union members and in a certain sense between trade union relations that go in line with conflicting attitudes rather than cooperation.

In the past 27 years of independent trade union activity in Macedonia, trade unions have been facing a number of challenges. Among them have been the increase in the number of unemployed persons on a large scale, the transformation of the economic system, the creation of a new legal framework for trade union performance and connection with international trade

The issue regarding persons with disabilities in the labour force is still not active on the agenda of the trade unions, although it has received significant attention. Unions have continued to treat employed persons with disabilities in the same ignorant manner as before. Namely, there is no special trade union agenda or program that would provide for the protection of the employment rights of persons with disabilities, nor there is an understanding of the significance of the social and communal integration that has the employment for persons with disabilities. The existence of special programs that would financially support disabled people are not yet recognized by trade unions, but for the time being, it is only part of the activities that the state conducts.

Particularly problematic is the fact that employed persons with disabilities have a relatively high level of abuse of their labour rights, which is often initiated and carried out by certain employers. Namely, according to the legal framework for employment of persons with disabilities, a system of financial incentives and tax incentives has been

developed in the country, which should help to achieve faster and more effective employment of persons with disabilities, as well as for their more active integration in the entire social system through labour engagement. But the practice has shown that there are certain abuses regarding the payment of salaries and other benefits for these people, and it also pointed to fake presence of people with disabilities at their workplace which occurred only in papers so that employers could use the benefits for their employment.

Also, there is no separate unique trade union system or a concept that would mean a special, active and direct union organization of employed persons with disabilities. In practice, there are special organizations of persons with disabilities, but there are no special trade unions that would unite employed persons with disabilities working in different sectors and branches (industrial, service, private or the public sector) on a personal level. On the other hand, the disability phenomenon has its own psychological component. In practice, this means that there are some persons with disabilities who do not consider that the disability is an obstacle in carrying out their tasks, or they do not consider that they are persons with disabilities. In addition, it can be said that the Macedonian society has partially recognized the problem of disability as an intriguing issue fairly late and thus this issue hasn't been well tackled. There is still insufficient sensitivity of all social actors in terms of disability, and especially from the labour-legal aspect. That is why the issue of disability in the labour market and the formation of special trade union organizations is still not current on any grounds, nor is it tackled by the unions. Nevertheless, there are certain scientific observations that have analyzed the position of persons with disabilities in labour and the aspects of special protection in employment.⁶

4. INTERNATIONAL AND EUROPEAN STANDARDS

The international legal standards have special importance in the exercise of trade union rights and freedoms as basic social rights. The creation of a special mechanism for the control and supervision

6 L. Jovevski, *Систем на заштити на здравје и безбедноста при работа и заштитата Ratione personae*, Skorje, 2016, 221–238.

of the exercise of these rights and freedoms is directly related to the importance of trade union rights in terms of establishing a social equilibrium, social justice and social peace, for the functioning of democracy, the achievement of social well-being.⁷ The international legal framework consists of the acts of the United Nations (UN), the International Labour Organization (ILO) and the Council of Europe (CoE). Compared to these, the acts of the European Union constitute a special system of so called Communal Law.

Given the importance of the trade union in the society, and especially with regard to the protection of the rights of the citizens, that is, the workers, the International Labour Organization undertakes certain normative activities for regulating the issues related to trade unions. Syndical freedom can be said to occupy a special place among the fundamental human rights of the ILO. Syndical freedom is an inevitable and indispensable condition of any progress that leads to social justice. Thus workers and employers are guaranteed the right to create trade union organizations, or to become members of the existing ones⁸. The freedom of association of workers and employers as a fundamental right is guaranteed by internal law, but also with the international law. Of particular importance is the international regulation, since in this way the freedoms and rights of the unions are given certain international verification and greater weight. Thus, the struggle of workers for the right to trade union and the collective exercise of certain rights is gaining international weight and importance and it is finally being recognized as a fundamental workers right.

In that sense, the International Labour Organization brings a number of conventions and recommendations. Thus, the first convention, adopted in 1921, is the Convention No. 11 on the right to association and coalition of workers in agriculture. Further, in 1947, Convention No. 84 on the right to association and regulation of labour disputes. In 1948, Convention No. 87, on trade union freedoms and the protection of trade union rights (a particularly important convention regulating the basic principles of trade union organization and the exercise of trade union rights – all the countries of Southeast Europe have ratified it). Following year a particularly important convention was adopted regarding the organization of workers and the

7 B. Lubarda (2013), *op. cit.*, 833.

8 B. Šunderić, *Pravo Međunarodne organizacije rada*, Belgrade, 2001, 19.

right to collective bargaining, that is the Convention No. 98.⁹ In the following years, i.e. in 1951, two recommendations were made, which are Recommendation No. 91 for collective agreements and No. 92 for Reconciliation and Arbitration. Further, in 1971, Convention No. 135 on protection and relief given to workers' representatives in enterprises. Recommendation No. 143 was adopted the same year regulating workers' representatives.

In addition to acts issued by the ILO in relation to trade unions, that is, trade union rights and freedoms, as well as trade union representatives, there are other acts of the United Nations and the Council of Europe that regulate certain issues in this field. Thus, in the General Declaration of Human Rights of 1948 in Article 23 para. 4 the right to trade union is recognized. The Pact for Economic, Social and Cultural Rights in Article 8, as well as Article 22 of the Covenant on Civil and Political Rights, all regulate rights regarding similar issues.

All this international normative activity confirms the importance and significance of the unions in the world, especially as organizations that actively participate in the negotiation process when concluding the collective agreements. The very right of collective bargaining is closely related to the right to trade union organization and to the protection of workers' (union) representatives. With the ratification of conventions and the acceptance of recommendations, the ILO member states contribute in the direction of strengthening and securing the right to trade union organization, thus paving the way for collective bargaining. The reasoning is that without union movement and free trade unions there is no collective negotiation, at least not in the real sense.

A special role is played by the European Union with its normative activity through the so-called Communal Secondary Collective Law which includes collective negotiations, directives, decisions, opinions, recommendations, etc. Also, certain bodies participate in the building of the EU's Collective Law, the Economic and Social Committee of the EC and the European Social Fund.

9 *Zbornik konvencija i preporuka Međunarodne organizacije rada*, Institut za političke studije, Belgrade, 1996, 19–29.

4.1. International Convention for the Protection and Promotion of the Rights of Persons with Disabilities

The issue of disability has been recognized and already normatively treated in the United Nations, the Council of Europe and the European Union, which we have previously discussed. As we can see, discrimination is often associated and perceived in terms of labour relations and the equal opportunities of these persons in the labour force. In addition to the instruments we talked about, which are typically labour-legal, we will again refer to another instrument that refers to persons with disabilities, and regulates the issue of discrimination in the wider framework of the current ones related to the employment relationship. That instrument is the International Convention for the Protection and Promotion of the Rights of Persons with Disabilities, adopted in 2006 by the UN.¹⁰

This Convention applies to all persons with disabilities and focuses on rights that would mean greater overall integration of such persons in the area of education, free movement, independent community life, employment, access to information, obtaining appropriate health care, participation in politics, cultural and sporting events, independent decision-making, etc. The Convention distinguishes women and children with disabilities as separate groups within the persons with disabilities. On all grounds, discrimination, that is, unequal treatment in all spheres of regulation of the Convention is prohibited, and accordingly, in the labour. But why was the adoption of this Convention necessary? Basically, people with disabilities still are prevented to exercise their fundamental rights and fundamental freedoms, and disability of most people is taken “*for granted*”. Primarily, people with disabilities are still seen as “objects” that need to be taken care of or provided medical treatment, rather than as rights holders. Therefore the Convention emphasizes that persons with disabilities enjoy the same human rights as everyone else and that persons with disabilities are able to lead their lives as citizens exercising their rights and freedoms and who can make a significant contribution to society if given the same opportunities as

10 The Convention was adopted by consensus on 13 December 2006 by the General Assembly. It entered into force on May 3, 2008. More on: <http://www.ohchr.org>.

others.¹¹ These values were also transferred to the part which refers to the employment of these people set out in Article 27 of the Convention.

Through this article, the way of employment of people with disabilities has been paved, a way that means work on an equal footing with others (paragraph 1). Work should be available for people with disabilities, and employment should be promoted, first and foremost, by the public sector of the Member States (paragraph 1). The latter makes it clear that the state should be the one who will have the initial role in the employment of persons with disabilities. This should be done through direct employments in the public sector and through a legal framework that will stimulate employment in the private sector.

Otherwise, employers often have resistance to employ persons with disabilities or *a priori* reject their applications in the recruitment procedure, thinking that they will not be able to accomplish their work assignments and/or that they will be overpriced to employ them. It is about fear and stereotypes, with much more attention being paid to the disability these people have, rather than to the abilities of the disabled. On the other hand, many empirical data say that people with disabilities have a higher degree of performance and durability, as well as more regularity than their colleagues without disabilities. But more than that, the cost of adapting to workers with disabilities is often minimal, and very often even no further adjustment is required at all.

All of this has been taken into account in the adoption of the Convention, so the provisions in Article 27 which provide for the measures for employment and integration through labour that the state should take should not amaze us in any way whatsoever. Any kind of discrimination in all forms of employment and work status is prohibited, and it is also emphasized the need for safe and healthy working conditions for the disabled (Article 27, paragraph 1, item 1).¹² It also prohibits unequal reward for the same working hours for equally valuable work. Collective rights are also guaranteed, and Member States are encouraged to promote and advance the employment and career building at people with disabilities. An important field where not only discrimination is prohibited but also stimulative measures are envis-

11 For the reasons that led to the adoption of this convention, more in: *From exclusion to equality...*, *op. cit.*, 4–5.

12 For more info: E. Lucas, *Adjusting to disability rules*, Professional Manager Magazine, Vol. 13, 5/2004.

aged is the field of education, vocational guidance, vocational training, as well as professional rehabilitation. Member States should, inter alia, provide for appropriate policies and measures to encourage the employment of these persons (point 8). The Convention also provides for the provision of reasonable work accommodation for persons with special needs (item 9).

All these measures should be taken with one and only goal, which is increasing the employment of the disabled, their protection against discrimination in the field of employment and exercising the rights arising from their labour relations. In addition to the recruitment of people with disabilities, there is also a large number of studies that showed that the benefits of those who employ people with disabilities are increasing, among which the most promising is the improvement of the working environment and improvement of consumers' mood.

An important place in the whole system of the Convention regarding the promotion of the employment of the disabled is the introduction of opportunities for self-employment, entrepreneurship and starting their own business, as important elements for the independence of persons with disabilities (item 6).¹³

Regarding trade union rights, item 3 of Article 27 stipulates that the signatory states should work to ensure that persons with disabilities have the right to exercise their labour and trade union rights on an equal footing with others, as particularly important provision. From this follows that trade union organization is not only a right of persons with disabilities, but also states that have signed and ratified the convention (including the Republic of Macedonia) should actively work to secure this right. This means that the state should encourage the exercise of the right to trade union organization of persons with disabilities and to promote it.

In addition to this normative provision within the United Nations,¹⁴ we come across several more acts at regional level within the Council of Europe and the European Union.

13 *Ž. Stojkova, Od ideja do realnosti: Seofajna i unieiralna mežunarodna konvencija za zaišiiia i unaiureduvanje na iravaiia i dostioinšivoio na ličiaiia so hendikei, Justicija, Skopje, 2005, 64.*

14 Within the framework of the UN, discrimination, or its prohibition, is also addressed by the UN Charter; The Universal Declaration of Human Rights; The International Covenant on Economic, Social and Cultural Rights; The Con-

4.2. *European normative standards for protection of persons with disabilities in labour*

Within the CEE, several acts have been adopted aimed at broad social integration of persons with disabilities, their protection, prohibition of discrimination and affirmative measures for its implementation. Such are the Resolution AP (95) 3 on the Charter for the Professional Assessment of Persons with Disabilities; Resolution ResAP (2001) 3 towards the full citizenship of people with disabilities through integrative new technologies; Recommendation 1592 (2003) 1 on the full social inclusion of persons with disabilities; Recommendation no. P (92) 6 on coherent policies for people with disabilities, and others.¹⁵

In Resolution No. 3 of 2001, we find provisions that provide incentive measures and promote active employment policies for disabled people and retention of employment through new technologies. New technologies should be applied in the direction of workplace adaptation, access to training, flexible working relationships, such as work at home, appropriate equipment and access infrastructures. These are measures aimed at creating appropriate conditions for employment and work. This act aims to increase the employment of disabled people whose number stands on the top of the list of unemployed people in Europe through new technologies that rely more on information skills and precision in electronic skills and information technology rather than on their physical strength.¹⁶

Recommendation no. 6 refers to the pursuit of having coherent policy in the field of employment that will involve affirmative actions for the employment of persons with disabilities in a regular working environment, or as an alternative, in the so-called “protective employment”. The advantages of working from home or abroad (other locations) that can be alleviating circumstances for the disabled are highlighted. This Recommendation, as its name suggests, recommends a strategy for employment and integration of persons with disabilities,

vention on the Elimination of All Forms of Racial Discrimination; The Convention on the Elimination of All Forms of Discrimination Against Women, etc. Regarding the paper's subject, these acts are not a field of our profound interest given their content.

15 See: Collection of documents of the Council of Europe concerning disability, Skopje, 3.

16 *Ibid.*, 24.

while banning all discriminatory actions, and promoting additional measures that will mean maximum efficiency in employment, financial assistance and vocational training and inclusion of persons with disabilities.¹⁷

The most important legal act of the European Union regarding the prohibition of discrimination and employment of the disabled is undoubtedly the Directive 2000/78/EC, which we previously discussed. In addition to this Act, the Recommendation 86/379/EEC has been adopted altogether with several other acts that prohibit discrimination in the Union for the protection of persons with disabilities.

Among the numerous acts I would especially refer to the Resolution of the Council for Employment Promotion and Social Integration of Persons with Disabilities which was adopted in 2003. This Resolution promotes the full integration and participation of disabled people in all spheres of social life, recognizing that they have the same rights as other citizens. The Act states that the inclusion of disability issues in the preparation of Member States' national plans relating to social issues and poverty, as well as paying particular attention to issues related to women with disabilities should be on the future national normative agenda. The resolution calls on the Member States, the Commission and the social partners to make efforts to remove the barriers to the integration and participation of disabled people in the labour market by implementing measures for equal treatment and enhancing integration and participation at all levels of the education and training system.¹⁸ These measures exclude the discrimination of persons with disabilities in terms of accessibility of jobs. This means that the workplace needs to be adjusted according to the needs and opportunities of persons with disabilities.

In line with the prohibition of discrimination, Directive 76/207/EEC for equal treatment was replaced by Directive 2002/73/EC.¹⁹ The new Directive is a basic directive which prohibits discrimination on several grounds, including disability. The Directive provides that employer should refrain from discrimination in employment regarding people with disabilities, as well as to provide appropri-

17 See: Chapter VII, *A coherent policy for the rehabilitation of the people with disabilities*, Strasburg, 1992, 74–77.

18 F. Watson, *Social Law and Labour Law in the EU – Policy and Practice of an Enlarged Europe*, Skopje, 2009, 112.

19 [2002] OJ L 303.

ate conditions and accommodation at the workplace and equal treatment. Regarding the professional integration of the disabled, a joint 1999 Declaration was adopted stating that discrimination based on reasons that are not relevant to the performance of tasks is socially unacceptable and economically unjustified. It was certainly thought of disability. Regarding the employment of persons with disabilities, Recommendation 86/379/EEC was first adopted, which, of course, was not binding on the Member States. This recommendation affirmed the ways of creating jobs, special employment, professional rehabilitation and training, and so on.

The 1996 Council Resolution on Equal Employment Opportunities for Persons with Disabilities²⁰ foresees a special emphasis on promoting employment opportunities in the Member States' national policies, in coordination with the social partners and the non-governmental sector. Equal employment opportunities are achieved through workplace adjustment, developing qualifications and skills needed for work, access to employment services, access to new information technologies, all of them quite resembling Resolution No. 3 of the 2001 adopted by the Council of Europe.

A number of acts that prohibit the discrimination of persons with disabilities have been adopted within the Union and provide for adequate rights for social and professional integration of these persons. On this occasion, I would like to emphasize that the Charter of Fundamental Rights of the European Union of 2000²¹ (adopted in Nice) prohibits discrimination based on disability, which is one step more protection than that provided for in Article 14 of the Amsterdam Treaty. In addition to these, acts were passed regarding the prohibition of discrimination on access to information technologies, violence against persons with disabilities, access to culture, integration of children and youth with disabilities in the permanent education system, recognition of parking cards, equal opportunities for education of students and students with disabilities, etc.²²

20 Resolution of the Council on Equal Employment of Persons with Disabilities [1996] OJ C 12/1.

21 [2000] OJ L 303.

22 All acts adopted within the European Union, as outlined in this section of the paper, are available at: http://europa.eu.int/eur-lex/en/lif/reg/en_register_1640.html.

With this normative system in the Union an attempt is being made to complete the protection of persons with disabilities from discrimination and in particular from discrimination in employment and work environment. Slowly but surely the European Union understands the importance and role of the non-discriminatory protection of persons with disabilities has had and the affirmative measures and actions to be taken to fully integrate these individuals. The acts regarding employment and health safety with the acts adopted on the basis of non-discriminatory agenda should be seen as an inseparable whole, and this is especially evident in the area of creating appropriate conditions for employment and adequate accommodation within the framework of the employment relations.

Having in mind all the aspects of protection from discrimination of persons with disabilities, especially taken from the perspective of labour relations and employment, it is more than obvious that this protection, i.e. the practical realization of it, can and should be achieved through trade union organizations. The very protection of persons with disabilities within the labour force framework is a fundamental human and social right, and hence the inclusion of labour rights of people with disabilities on the agenda of trade unions which also leads to the fact that trade union protection goes in line with the Convention as well as with the other European standards. There is no dilemma that the protection from discrimination in employment can be done more easily, faster and more efficiently through trade unions, that is, by imposing the force of trade unionism within the framework of social dialogue at national level, by adopting laws, and also at sectoral level when adopting collective agreements.

4.3. Syndicalism and the appropriate conditions for employment and work – reasonable accomodation

When talking about the reasonable trade union organization of persons with disabilities, we can not proceed without looking back to the right to appropriate conditions for employment and work, as a basic right that needs to be protected and promoted precisely through trade unions. However, it seems that within the existing trade unions in Macedonia not only is this right neglected, but rarely is its content and meaning known and referred to. In view of this, it is necessary to

mention something more about this aspect of trade union protection, explaining the content of the right of reasonable accomodation.

In the previously reviewed acts, we have tackled the issue of creating appropriate employment and working conditions that involve adaptation and accessibility of jobs for people with disabilities, several times. This is expected because if the relevant conditions for persons with disabilities are not integrated into policies and plans related to transport, physical infrastructure and the education system, they are often excluded from employment opportunities.

The conditions for reasonable accommodation in the context of employment are accepted in different parts of the world, but will be new to many countries. Therefore, both employers and workers will need help and explanations in determining what reasonable accommodation is needed. For that purpose, the UN Convention on the Rights of Persons with Disabilities covers reasonable accommodation and the conditions necessary for it.

Article 2 of the Convention gives a definition on what is a reasonable accommodation, stipulating that: "...it means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms". This is a definition that encompasses the general system of reasonable accommodation in all spheres of living for persons with disabilities. Consequently, we should distinguish a reasonable accommodation that applies to all areas of life and a reasonable accommodation in labour and employment as a separate type of adjustment. This division of general and special type of accommodation should be taken conditional, because the accommodation of the workplace and the working environment is directly related to the accommodation, for example, in education, shipping, architectural approach, etc.

The Convention recognizes the fact that failure to provide reasonable accommodation constitutes discrimination on disability basis. Refusal to undertake reasonable accommodation is considered as an act of discrimination.²³ According to the definition, reasonable accommodation implies the task of adapting the way of meeting the needs of

23 *From Exclusion to Equality ...*, *op.cit.*, 60.

people with disabilities in all spheres, and hence in the labour relation. It would mean reasonable corrections, adaptations or measures, or effective and appropriate modifications to the working environment, and even more than that. Enabling a person with reasonable accommodation means, for example, adjusting the workplace and work environment, the education system, health care facilities, transport services, in order to remove barriers that prevent a person with disabilities from participating in the activities of overall social significance, as well as in the field of labour relations and employment. In the case of employment, reasonable accommodation usually means physical modification of working conditions, procurement or modification of equipment, provision of appropriate training or supervision, change of standard working hours or transferring some duties arising from the workplace to another person.²⁴

When talking about a reasonable accommodation in employment, the obligation should be undertaken and applied on a case-by-case basis. Since various types of disability affect work performance differently, that is, the ability or inability to perform a certain task, then the accommodation needs to be individualized. Reasonable accommodation then allows for creation of appropriate employment conditions and appropriate workplaces, which ultimately results in appropriate employment for the person with disabilities.

The widespread scope of reasonable accommodation is also reflected outside of the employment relationship. As mentioned before, even if some jobs are available to people with disabilities, they can nevertheless be discouraged from competing and seeking work. Thus, for example, if they do not have access to the employment contest, or if they do not have adequate education or access to and from the workplace, these factors can all be discouraging when applying for a job.

These principles of reasonable accommodation are based not only within the UN frame, but also in the Council of Europe and the European Union. As can be noted, a number of acts adopted by the Council and the Union refer precisely to the conditions for reasonable adjustment, although not always specifically for labour and employment, but for education, architectural barriers, making the employment itself accessible.

24 *Ibid.*

Regarding the employment of the disabled, we should distinguish the reasonable accommodation from certain concrete affirmative actions aimed at increasing the employment of persons with disabilities, above all, in quantitative terms. The most prominent such measure is the existence of a quota for the employment of persons with disabilities. They represent the promotion of equal opportunities in order to overcome certain structural difficulties that relate to a precisely defined group. These measures are most often temporary and last most often until the structural problem is overcome (for example, the unemployment of people with disabilities). In contrast, reasonable accommodation means intercepting the individual needs of the person with disabilities in the sphere of labour or in any other social sphere. Such affirmative measures in the region of Southeast Europe are encountered in Serbia when employing persons with disabilities.

We could say that reasonable accommodation is a “modus vivendi” of the concept of equality of persons with disabilities in labour force and the basis of the possibility for these people to be employed and to work. In addition to this, through reasonable accommodation in the part of working relations, the health of persons with disabilities is protected. This is very important because even if they have the opportunity to work without special adjustments at the workplace, it is quite another question whether such conditions would negatively impact their health. Eventually, the conditions necessary for reasonable accommodation should be seen as part of the concept of non-discrimination of persons with disabilities in employment and part of the special protection in employment. Bearing in mind this objective, the European and international normative system is developed on such grounds, as well as the very idea of protecting people with disabilities. Of course, this idea should be an integral part of the trade unions activities and protection of persons with disabilities in the labour relations at national level.

5. TRADE UNION ORGANIZATION OF PERSONS WITH DISABILITIES

Trade union organization of persons with disabilities can and should be seen through the objective of the International Acts, above all the International Convention for the Protection and Promotion of the

Rights of Persons with Disabilities, as well as within the Macedonian positive regulations.

There is no doubt that the right to trade union organization of persons with disabilities is a right that is an inalienable and basic social right for all employees, and therefore of persons with disabilities. We need to look at this right through the aspect of employment of persons with disabilities preceding it, as well as the retention of employment. It is precisely the establishment and preservation of the employment of persons with disabilities and the key to further building the system of trade union organization as part of the collective labour and social rights of this special group of employees. We say a special group, primarily from the aspect of enjoying larger and more extensive rights in relation to the other employees, but The Convention for Protection of Persons with Disabilities, the acts of the International Labour Organization, the Council of Europe and the European Union point to the conclusion that there is an international system of protection that provides a sufficient framework and clarity on where and to what extent is headed the international idea of equality, employment and trade union organization of persons with disabilities within the labour force. The exercise of individual rights from the employment of persons with disabilities can best be channeled through their trade union and professional organizations in form of trade unions.

Trade unions not only have the opportunity to protect the employment rights of already employed people, but they can also help in promotion of an adequate national normative system for easier employment and reasonable accommodation in the country.

In national, Macedonian frameworks, the Law on Labour Relations, in accordance with its provisions, does not prevent any rights regarding the trade union organization of persons with disabilities. On the contrary, the legal provisions are in line with the equal exercise of this right for all employees. Of course, in practice, the question remains whether the system of integrated trade union organization of persons with disabilities will be accepted within the already existing trade union organizations in the country, or the system of special trade union organization of persons with disabilities within special professional organizations on a personal (personal, subjective) basis will be further developed and enhanced.

The first system of integrated union approach, which already exists in the country, failed to properly recognize and protect the needs of persons with disabilities within the labour force, and even less with regard to job application procedures and employment. Within this framework, persons with disabilities are part of the general staff of employees and protection of employment rights is within the general activity of the union as for each employee. This approach of trade union protection of persons with disabilities in or out the employment area, due to certain specifics of disability in the labour force, fails to pay special attention and to recognize the necessity of different trade union actions for protection of persons with disabilities in relation to other employees. This is due precisely to the structural organization of the trade unions, where each employee is only an employee and a member. However, when international acts, as well as national labour legislation, provide for special rights and protection of persons with disabilities in labour, then how much more unions should recognize these members and develop a special strategy and agenda for the protection and promotion of the rights of employed persons with disability. This especially applies in terms of preventing abuse by employers, as well as breaking stereotypes and stigmatizing persons with disabilities in employment, and hence in the society.

The second approach involves trade union organization of persons with disabilities in special trade union organizations where workers with disabilities will be united on two grounds. First of all, of course, will be on professional basis, that is, labour and labour relations, and the second base of union organization will be the disability itself as a subjective (personal) characteristic of the employee, which can but does not have to influence the employment relationship. This approach provides an opportunity for real and effective recognition of the employed persons with disabilities needs and protection of their labour rights.

6. VISION AND GOAL

The basic vision is to create a society in which disability will be one more opportunity for giving a good example and inspiration. This implies equal treatment of persons with disabilities by all social entities, and especially with regard to those within the labour force, bear-

ing in mind the importance of the integration and inclusive power that labour and work have in general.

This objective can be achieved through adequate treatment of persons with disabilities within the framework of labour, which includes working relations without discrimination, a system of employment and retention of employment, and reasonable accommodation. In order to achieve the objective, there are several tools, but the basic instrument is the syndical organization of persons with disabilities through which the rights of persons with disabilities in the employment and protection of the rights of persons with disabilities should be protected and promoted. The goal is for trade unions to help within the framework of the social dialogue, working in partnership with the government to create an appropriate and efficient legal framework that will provide the best way of exercising rights from and in employment. These goals can be achieved through responsible trade unions that care about the protection and promotion of the working rights of persons with disabilities, trade unions who will actively work to prevent the abuse of employers towards these workers and will be ambassadors of equality and inclusiveness in labour and society.

7. INSTEAD OF A CONCLUSION

Taking into account the knowledge gained in this paper work, while striving for the realization of the vision and the objectives set in it, it is necessary to take certain steps for their realization.

- It is necessary to adopt an appropriate legal framework regarding the employment rights and employment status of persons with disabilities, which will reflect the real needs of persons with disabilities;
- It is necessary to put on the agenda the issue of disability in the labour force already existing trade unions. This involves informing trade unions about the rights they need to protect regarding persons with disabilities, the manner and methods of protection, as well as getting acquainted with reasonable accommodation. However, preceding all of this, it is more than necessary to get a more detailed introduction to the normative framework and international standards that refer to

the issue of disability in labour. In order to realize this strategic goal, it is necessary to hold workshops, trainings and seminars, as well as to actively participate in international conferences and activities that tackle this issue;

- Within the existing trade unions, there is a need for specially trained persons who will know in detail the national and international standards that apply to employed persons with disabilities;
- It is necessary to work on development and operationalization of the idea of setting up trade union organizations of persons with disabilities based on professional and personal foundation, i.e. allocation of separate trade union organizations that will professionally integrate persons with disabilities in labour relation;
- Joint coordinated actions should be considered between trade unions, non-governmental sector and state institutions for promotion and enhancement of employed persons with disabilities rights;
- It is necessary to increase the intensity of cooperation between syndicates and employers' organizations in terms of employment and employment rights of persons with disabilities;
- It is necessary to teach and inform the employers and their organizations about the advantages in employment of persons with disabilities, as well as the rights that these persons have.

If these recommendations and guidelines are at least partially achieved or are aimed at their realization, we could talk about moving things in a positive direction in terms of exercising the rights of employment for persons with disabilities through trade unions and awakening of trade unions and the trade union movement in direction of protection and promotion of persons with disabilities rights.

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ORGANIZACIJA OSOBA SA INVALIDITETOM U SINDIKATE

Rezime

Ovaj rad se fokusira na analizu postojećeg sistema sindikata, u skladu sa nacionalnim rešenjima, evropskim aspektima, kao i standardima Međunarodne organizacije rada, prvenstveno kroz mišljenje o potrebama osoba sa invaliditetom. U radu su prikazani pravni aspekti regulacije sindikalne organizacije osoba sa invaliditetom, kao i izazovi postojećeg sistema u pogledu zahteva od strane ovih zaposlenih. Ovaj rad daje smernice i buduće korake koje treba preduzeti kako u nacionalnim pravnim sistemima, tako i u vezi sa svetskim trendovima, a u cilju promovisanja prava sindikalnog organizovanja osoba sa invaliditetom. Osobe sa invaliditetom u kontekstu sindikalizma prepoznaju se kao posebna grupa zaposlenih, ali za koja u nauci postoje različita mišljenja i stavovi u vezi s pitanjem njihove organizacije u sindikate u odnosu na ostale radnike.

Ključne reči: *Osobe sa invaliditetom. – Sindikati. – Radnička prava. – Sindikalizam.*