# Submissions on the Draft General Comments on the right of persons with disabilities to work and employment (Article 27 of the Convention on the Rights of Persons with Disabilities)

## Submission of the Czech Public Defender of Rights

The Public Defender of Rights protects persons against the conduct by authorities and other institutions if such conduct is contrary to the law, does not correspond to the principles of democratic rule of law, or in case the authorities fail to act. The Ombudsman also protects people from discrimination, performs visits to facilities housing people restricted in their freedom, strives to prevent ill-treatment and monitors the rights of people with disabilities.

The Czech Public Defender of Rights welcomes this opportunity to submit comments on the Draft General Comment, that will surely provide valuable guidance to State Parties in the implementation of their obligations under the Convention.

We attach below a few points that we think should be included in the methodological guidance of the General Comment:

**Paragraph 16 – Quotas and sheltered workshops**

The existence of sheltered workshops may also be supported through quotas (for example outsourcing products and/or services from sheltered workshops as a way to avoid the fines) or affirmative actions (mainly financial contributions) aimed at the sheltered market.

## Paragraph 17 and 31 - The right to equal remuneration for work of equal value

**Paragraph 17 – Same situations are observed in residential social services in relation to work-related activities.**

**Paragraph 31 - The commentary does not cover situations on how the boundary between activation, social rehabilitation, trial work and actual employment is established. (**For example, clients of residential social service perform same activity in one workshop, but some clients are rewarded for it and for some is this activity considered therapy or activation.)

**Paragraph 22, 49 and 50 - Reasonable accommodation**

The Draft doesn’t provide answers to these important questions:

* Reasonable accommodation in the form of reduced amount of work while maintaining wages. We would welcome some guidance in this matter.
* Financing of some reasonable accommodations, such as e.g., sign language interpretation or personal assistance, and the concurrence of job assistance and personal assistance in the workplace (including personal and job assistance during telework). State Parties must implement such measures, that will ensure well-functioning and flexible system of individualised support services.
* Promoting a better understanding of what reasonable accommodation is, and is not (to both the public and private sectors).
* That obligation to provide reasonable accommodations extends to all persons with disabilities, not only to those who qualify for quota protections.
* Where should State Parties find the „correct“ interpretation of terms “reasonable accommodations” or “undue or disproportionate burden.”[[1]](#footnote-1)

**Paragraph 43 and 44 - Employment in the public sector**

Incorporate the obligation of States Parties to provide public sector employers with the necessary methodological guidance on the employment of people with disabilities and strictly require the fulfilment of quotas in the right way.

**Paragraphs 44 and 46 - Affirmative action measures**

We would appreciate it if the General Comment answers to the following questions:

* How to deal with the problem when employers fill quotas by employing people with disabilities with “need of low levels of support” and people with “need of higher levels of support” are left unemployed?
* How to motivate employers (e.g., by affirmative action programs?) to use reasonable accommodations and employ people with high support requirements, and not looking for employees who do not need them?
* Ensure that quota mechanisms do not directly or indirectly continue to sustain sheltered workshops because they encourage employers to avoid fines for non-compliance with the quota, by outsourcing to sheltered workshops for products and/or services.

**Paragraph 68**

The non-profit sector and organisations focused on promoting the employment of people with disabilities should also be included.

**Not assigned to any paragraph**

* The General Comment doesn’t provide a definition for the terms such as “open and inclusive labour market”, “sheltered market” or “social business”.

Public Defender of Rights thanks the Committee for providing the opportunity to submit on the General Comment.

**Contact:**

Denisa Kramářová

[denisa.kramarova@ochrance.cz](mailto:denisa.kramarova@ochrance.cz)

1. A complaint dealt with by the Public Defender of Rights concerned a postwoman, who, due to long-term health problems, lost her fitness to perform the work of a (walking) postwoman and asked her employer to be assigned a vehicle delivery position. The employer refused such reassignment and terminated her employment contract. The complainant turned to the District Labour Inspectorate which found no errors in the employer’s conduct, particularly due to the fact that according to their survey, even postmen on a vehicle delivery had to walk over greater distances. The test used by the Inspectorate to assess the fulfilment of the reasonable accommodation condition was the existence of a suitable position under the present organisation of work (not whether the reorganisation of work in the branch – in particular, the redrawing of delivery districts – would impose an undue or disproportionate burden on the employer). [↑](#footnote-ref-1)