**WRITTEN SUBMISSION TO THE DRAFT GENERAL COMMENT ON ARTICLE 27**

**from Croatian Ombudsman for Persons with Disabilities**

In line with the Committee on the Rights of Persons with Disabilities’ call for submissions to the draft General comment on article 27 of Convention on the Rights of Persons with Disabilities on the right to work, please take into consideration the following submission.

Ombudsman for persons with disabilities is an an independent body protecting, promoting and monitoring the rights and interests of persons with disabilities based on the Constitution of the Republic of Croatia, international agreements and legislation. Since the CRPD is the most important international document for the rights of persons with disabilities, the ombudswoman for persons with disabilities protects, promotes and monitors the CRPD in line with Art. 33, para. 2 of the CRPD.

**a) Page 14 paragraph 49 The Provisions of reasonable accomodation**

**Comment:**

According to this article, only applicants and employees with disabilities are entitled to reasonable accommodation. However, the experience of the Ombudsman for persons with disabilities shows that employers need to also extend the right to reasonable accommodation to employees who are associated with a person with disability (employee´s child, parent, spouse etc.). Since most national laws recognise discrimination by association there should also be reasonable accommodation by association where its denial would constitute discrimination.

This issue has been brought before Municipal Civil Court in Croatia in a case which is still pending. The case concerns father of a child with disabilities who asked his employer to adjust his working hours so that he could drive his daughter to hospital in other city for necessary treatments for her serious health condition. Since this had to be done at least three times per week, leave rights could not cover this particular situation.

We would like to draw your attention to the similar practice in the USA where a Californian Court of Appeal in Castro-Ramirez v. Dependable Highway Express, Inc.[[1]](#footnote-1) decided that employees associated with individuals with disabilities are entitled to reasonable accommodation, if possible, that enables them to perform their essential job functions. The court’s primary rationale is that the statute protects employees associated with individuals with disabilities on the same basis as it protects employees with disabilities themselves. The court reasoned that the “associated person’s” disability in fact is the employee’s disability for the purpose of the accommodation obligation.

In our opinion, judgment of the European Court of Justice in Case C-303/06 Coleman v. Attridge Law and Steve Law [2008][[2]](#footnote-2) supports this need for expanded reasonable accomodation when it introduces the principle of discrimination by association: The European Court of Justice has held that the Framework Employment Directive (2000/78/EC) does cover direct discrimination and harassment against an employee on the ground of his or her association with a disabled person. The ECJ concluded that the prohibition on direct discrimination in the Framework Employment Directive is not limited to individuals who are themselves disabled. Since Directive prohibits discrimination 'on the grounds of religion or belief, disability, age or sexual orientation' and denial of reasonable accomodation is a form of discrimination, **we suggest to clarify obligation for the expanded reasonable accomodation duty under UN CRPD to employees associated with persons with disabilities.**

**b) Page 14 paragraph 50 The Provisions of reasonable accomodation**

**Comment:**

The article states that ˝the duty to provide reasonable accomodation is … process applicable from the moment a request for accomodation is received and requires the employer to enter into dialogue with the employee˝. Analyzing case law based on the most common complaints, we have noticed that apliccants with disability who need some kind of reasonable adjustment of the recruitment process usually lack trust that once they ask for adjustments they will be treated equally. This is particularlly emphasised by the low level of awareness on the persons' with disabilities right to work in the society. Therefore, and taken into consideration the power balance during the recruitment process it is more likely that an applicant will be more open about his/her disability and the required adjustments if it is the employer who starts the conversation on the topic. In order to do so, for example an employer can emphasise in a job advertisement that reasonable accommodation is available during the recruitment process and later at work to all applicants who may require and that asking for it will not put an applicant at a disadvantage. Employers should also be cautioned not to use any information the applicants provide to discriminate against them.

Therefore, **we suggest to clarify an employer's obligation to make adjustments if they know, or could be reasonably excpected to know, that a person with disability has applied for the job. Once an employer knows or should have known it, they must take steps to find out whether any adjustments are needed and what those adjustments are. If an employer has not asked whether an applicant needs ajdustments or if an applicant has not told the employer in advance, the employer must still make the adjustments that applicant needs when they arrive, if it is reasonable to do so.**

Thank you for considering our proposals.

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1. https://caselaw.findlaw.com/ca-court-of-appeal/1731055.html [↑](#footnote-ref-1)
2. <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-303/06> [↑](#footnote-ref-2)