# Sozialhelden e.V. is a non-governmental organization and an organization of persons with disabilities in Berlin, Germany under the leadership of the disability rights activist Raul Krauthausen. The organisation the following written submission for the General Discussion on Article 27 CRPD. The submission may be published on the CRPD website on the General Comment.

# Germany: Sheltered workshops and Article 27 CRPD

## Introduction

Sheltered workshops for people with disabilities are firmly anchored in German society. The image most Germans have of these workshops is one of protective places where severely disabled people, who are unable to pursue regular work, have meaningful employment while receiving loving guidance and support. Disabled workshops are consistently seen as something positive and worth preserving by the majority of Germans. The matter-of-factness with which the majority of Germans continue to accept this exclusionary system is cause for great concern. It is extremely difficult to shake up the system of sheltered workshops because of the interests of businesses, welfare organizations and the state. Entrenched mechanisms maintain this discriminatory system, even though it is in flagrant violation of the Convention on Rights of Persons with Disabilities. In 2015, the United Nations Committee on the Rights of Persons with Disabilities [recommended the gradual abolition](https://www.rehadat-recht.de/de/rehabilitation-teilhabe/rehabilitationseinrichtungen/werkstatt-fuer-behinderte-menschen/index.html?infobox=%2Finfobox1.html&serviceCounter=1&detailCounter=0&connectdb=veroeffentlichungen_result&wsdb=LIT&intlink=true&GIX=R/NV2085xSS*) of sheltered workshops in Germany, but little to nothing is happening in that direction.

Since the first sheltered workshops were established in the 1960s, laws have changed a great deal and inclusion and accessibility have advanced in many areas in Germany. There is also a greater variety of vocational support options available to people with disabilities now than there was 50 years ago. But despite this, the system of sheltered workshops has become more and more entrenched in German society through the years. People with disabilities are often given no alternative but to go directly from school - or from unemployment on account of an acquired disability - into a sheltered workshop. When the entire system leads a young person with a disability directly from a segregated school for “special” education into a sheltered workshop, when every wish to try something different is dissuaded by teachers, employment agencies, social service providers and often parents there is no room for freely chosen work, as guaranteed by Article 27 of the Convention. In addition, since state employment agencies have to give their consent to vocational training and continuing education programs and courses for people with disabilities who are in Germany’s rehabilitation and workshop system, a person’s right to choose a profession or field of work is greatly infringed upon.

## Facts and figures about sheltered workshops

Instead of slowly being phased out, the number of sheltered workshops is steadily increasing. In 2018, there were [736 workshops](https://www.bagwfbm.de/page/25) for the disabled in Germany while in 2002 they numbered only 668. Today more than 300,000 people with disabilities are employed in workshops in Germany. Of these, 75.5% have a cognitive disability, 20.97% have a mental health condition and 3.48% have a physical disability.

In recent years, the proportion of workshop workers who have dropped out of the general labor market and whose disability stems from a mental health condition is increasing. Also, almost 30% of workshop workers are over 50 years old. This proportion has also been rising steadily in recent years. The workshops are thereby becoming more and more of a catch basin for anyone who does not quite fit into the regular labor market. This is a far cry from the intent with which the workshops were created in the 1960s - which was to offer employment opportunities for severely, usually cognitively, disabled people, who otherwise would have no chance for work. It also means that more and more Germans are being kept from exercising their rights as defined in Article 27.

The situation of workshop workers

Workers in sheltered workshops do not have the legal status of employees in Germany. They do not have an employment contract or even a collective agreement. On average they earn only about [1,35 euros an hour,](https://www.bagwfbm.de/page/101) which is far less than the legal minimum wage in Germany. This minimal pocket money does not enable workshop workers to “gain a living by work”, as guaranteed by the Convention. Instead they are dependent on state assistance in the form of a basic living allowance. Since workshop workers are not considered employees, they only have a so-called “employment relationship”. Therefore, they are not represented by trade unions or employee representatives and are unable to “exercise their labour and trade union rights on an equal basis with others”. Furthermore, the employees cannot form a works council. Only workshop councils, which are modelled after works councils, can represent the interests of employees vis-à-vis management. However, their powers are severely limited in contrast to works councils. In this segregated world of work, therefore, discriminatory conditions prevail that would be inconceivable on the general labor market in Germany, where workers’ rights are generally relatively strong.

The idea that workers in workshops do not have a regular employee status only makes sense if they are considered to be in a rehabilitation program on their way to eventually being streamed into the general labor market. But since workshops only succeed in bringing a negligible amount of their workers onto the labor market the reality for 99% of workshop workers is that they are *not* in workshops temporarily. They are there permanently, fulfilling jobs for businesses from small start-ups to huge multinational corporations for a fraction of the wages that they would have to be paid if they were doing the same work outside of a workshop. Their right to “equal remuneration for work of equal value”, as guaranteed by the Convention, is violated every day. Some activists might even go so far as to argue that sheltered workshops are a form of servitude as prohibited by Article 27, Paragraph 2, because in the existing system it is the only possibility they have for realizing the basic human need for companionship and a sense of community, as well as a daily routine and (relatively) meaningful activity.

## The contradictory mandates of the sheltered workshops

The sheltered workshops in Germany have two legal mandates that contradict each other in many respects. On the one hand, sheltered workshops are supposed to [support and qualify](https://www.sozialgesetzbuch-sgb.de/sgbix/219.html) people with disabilities individually, rehabilitate them vocationally and place them in employment on the general labor market. On the other hand, the workshops are obligated to [operate economically](https://www.gesetze-im-internet.de/schwbwv/__12.html) in order to survive as businesses. This balancing act is impossible to maintain and leads to a conflict of goals - at the expense of the rehabilitation of the workers. The rehabilitation mandate requires the workshops to let their most capable employees go again as quickly as possible. However, this jeopardizes the economic viability of the workshop. These economic constraints lead to the very employees who would have the best chances on the general labor market to *not* being placed out. This is why the percentage of workshop workers who are placed into the general labor market has been below 1% for years. The workshops’ rehabilitation mandate is therefore being failed by a wide margin. This is partly due to the fact that the general labor market is not yet open and inclusive in many respects. Yet above all, it is due to structural problems in the system of the sheltered workshops itself.

The economic weight of sheltered workshops

Sheltered workshops have long since become economic heavyweights: The annual turnover of the sheltered workshops in Germany is around [8 billion euros](https://www.bayerische-staatszeitung.de/staatszeitung/politik/detailansicht-politik/artikel/arbeit-ohne-lohn.html#topPosition). Countless large and medium-sized companies have their products manufactured in sheltered workshops or outsource services there. This includes companies and organizations such as Volkswagen, Thyssen Krupp, Siemens, Daimler, Panasonic, and the Goethe Institute. The range of services and products offered by the workshops is large, diverse and of high quality. The workshops for the disabled must be economically efficient and are in competition with other low-wage providers from abroad. Accordingly, orders must be processed efficiently and on time. Workdays of eight hours, piecework, dull assembly line work and deadline pressure are often part of everyday work in a sheltered workshop.

Even companies and start-ups that otherwise apply Fairtrade standards, outsource work to the sheltered workshops. GEPA, the largest European importer of fair trade food and handicraft products from the southern hemisphere, is one such company. While carefully monitoring the rights of workers in other countries, these companies ignore the rights of disabled German workers in the supply chain.

## An interest in keeping everything as it is

Workshop workers do not appear in the unemployment statistics. It seems reasonable to assume that state institutions have a clear interest in keeping it that way. After all, people with disabilities outside of sheltered workshops spend twice as long on average looking for work on the general labor market than people without disabilities. In general, state institutions are tightly interwoven with sheltered workshops. For example, many German states are shareholders in workshops for the disabled or operate them themselves. State social service providers pay the sheltered workshops an average of [16,592 euros per person](https://de.wikipedia.org/wiki/Werkstatt_f%C3%BCr_behinderte_Menschen) employed each year. In addition, the state also pays the workers themselves a basic living allowance. According to [one study](https://www.bagwfbm.de/page/sroi_ergebnisse), about 50% of the public funds paid to sheltered workshops flow back into the public purse through levies, social security payments, etc. In addition, public contracts do not have to be put out to [EU-wide tender](https://www.reguvis.de/xaver/vergabeportal/start.xav?start=%2F%2F*%5B%40attr_id%3D%27vergabeportal_14409161355%27%5D), as is usually the case, if they are awarded to sheltered workshops. In some cases, workshops are also allowed to charge a reduced VAT rate of 7% on their services. Extrapolated, workshops for people with disabilities provide the public sector with a plus of 400 million euros per year. It is therefore clear that workshops for the disabled are politically desired and structurally established, with influential politicians sitting on their Boards of Directors.

All the money invested into sheltered workshops would be much more wisely spent on supporting workshop workers on their way into employment in the general labor market. There are many very capable organizations in Germany that have been accompanying and coaching people with disabilities and their employers very successfully for years. Some of these organizations have a success rate of 50-70% in bringing their clients into employment, a stark contrast to the 1% rate of the sheltered workshops. Their approaches and methods could be scaled dramatically if they would receive the support and funding that sheltered workshops receive. Instead they are dependent on project funding and donations to do the work that should be done by the well-financed workshops.

## The compensatory levy

Germany has an employment quota for people with disabilities for companies with 20 or more employees. These companies must fill at least 5% of their job positions with disabled employees. However, this employment obligation can be circumvented very easily by means of a compensatory levy. This levy amounts to between €125 and €320 per month per unfilled position. However, this penalty is not high enough to really be felt by employers in a way that would move them to fulfill their legal responsibility. The compensatory levy is therefore not an incentive for more inclusion, but rather a way of buying one's way out. In addition, there is a very contradictory element to the levy system: companies can offset 50% of the value of any contracts they award to sheltered workshops against their compensatory levy. This creates an incentive to not hire people with disabilities and instead to support sheltered workshops by outsourcing work to them. Another paradox is that funds from the compensatory levy are used to finance sheltered workshops and various programs that support the employment of people with disabilities in the general labor market. The financing of these programs therefore depends on companies employing too few people with disabilities and therefore having to pay the compensatory levy. This means that the levy system also plays an important role in further solidifying the workshop system. Instead of fulfilling its obligation to “safeguard and promote the realization of the right to work”, the German State has put strong mechanisms into place that actually accomplish the opposite.

One such mechanism that actually dissuades sheltered workshop workers from leaving the system and venturing forth into the general labor market is that they are guaranteed a relatively good pension after 20 years in a workshop. This pension after only 20 years in many cases is higher than what they might receive after retiring from a low-paying job after more years on the general labor market. This argument is repeated again and again in every discussion and used to convince young people only just starting out that they do not even need to bother to try to find other employment. Here lawmakers urgently need to find a solution so that nobody is penalized for deciding not to work in a sheltered workshop and that people with disabilities are guaranteed a fair pension regardless of where they choose to work.

Conclusion

The system of sheltered workshops in Germany runs like a well-oiled cogwheel. Everything is coordinated and intertwined with each other. In order to break these long-standing connections, it is no longer enough to express a will to change. People with disabilities have waited long enough for their human right to be implemented in the field of work. Sheltered workshops for the disabled must finally be evaluated consistently on the basis of their main mandate: to bring workshop workers into jobs on the general labor market. As of now sheltered workshops are failing drastically on this point and therefore violating the rights of their workers as guaranteed by Article 27 of the Convention on the Rights of People with Disabilities