

March 15 2021, Stockholm, Sweden

**Submission to the CRPD general discussion on a General Comment on the right of persons with disabilities to work and employment**

To Ms. Janna Iskakova (email: jiskakova@ohchr.org), Ms. Margherita Stevoli (email: mstevoli@ohchr.org) and the Committee on the Rights of Persons with Disabilities,

Independent Living Institute (ILI) is a policy development center specializing in disabled peoples' rights to self-determination, self-respect and dignity. We are based in Sweden and our networks are global.

I am honoured to submit some findings by ILI and practical issues that need clarification. My hope is that this submission may support the Committee in the immensely important work to finalise a General Comment on the right to work and employment of persons with disabilities.

Firstly, we find that community based services often are a precondition for accessing the mainstream labour market. Personal assistance is unprecedented in its flexibility regarding where the assistance is delivered and how. We find the definitions of personal assistance and independent living in the Committee’s General Comment no 5 (GC5) to be useful for policy creation in different areas of society. Of particular importance are the points regarding the relationship of article 19 to other articles of the convention in p. 91 of GC5:

“91.The existence of individualized support services, including personal assistance, often is a precondition for effective enjoyment of the right to work and employment (art. 27). Furthermore, persons with disabilities should also become employers, managers or trainers in disability-specific support services. Implementing article 19 will thus help to phase out sheltered employment.”

Sheltered workshops should be phased out in favour of systems in line with article 19 of the convention. Of particular concern is the occurrence of sheltered workshops being placed in connection with group homes when the arrangement has not actively been sought out by the persons within them. Although sheltered workshops sometimes allow for some people to break isolation where community based services are lacking, we find that sheltered workshops on a systematic level disproportionately contribute to increased segregation. When legal capacity has been revoked through guardianship systems and a person lives under these conditions, there is a violation of articles 12, 19 and likely 27. We urge the Committee to provide guidance for how the transition from sheltered workshops should be implemented according to article 27 of the convention, especially in relation to article 19, in practice by the States Parties.

Secondly, we find a systemic need for clarification regarding the interrelatedness of the right to work, accessibility, individualized support such as personal assistance, and reasonable accommodation. One example is the case of Richard Sahlin v. Sweden, CRPD comm. 45/2018, where the right to employment was hindered by denial of reasonable accommodation. Where the committee ended the assessment there, the provision of sign language interpretation is not a right in Sweden for disabled people including deaf, hearing impaired and people with deaf-blindness. Similarly, a lack of personal assistance provided by the public in individual cases leads to the reluctance of most employers to hire a person with a disability that need individualized support services.

The undue burden test in employment needs clarification. How much can be claimed as reasonable accommodation, and how much can the employer rightfully claim to constitute an undue burden? What is the responsibility of the state to facilitate better access to the labour market of persons with disabilities? Are these matters in the world of work best related to article 19 b) duties or reasonable accommodation duties that can be rebutted if constituting an undue burden? The answer to these questions must be grounded in securing the effective and equal right to work and employment of persons with disabilities. The ILO norms and system should be involved in the further dialogue regarding the General Comment.

Finally, Access to Justice in labour disputes, including discrimination litigation, must be ensured by states. In many places the loser pays rule has a chilling effect on disabled people’s claiming their rights through the legal system. Remedies must include dissuasive damages, equitable relief or injunctions to remove barriers for disabled people’s participation in the labour market on par with others.

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