**ENIL’s Written contribution for the General Discussion on the right to of persons with disabilities to work and employment**

**March 2021**

**Summary**

Equal opportunities for employment are one of the 12 pillars of Independent Living[[1]](#footnote-1), without which the right to live independently and to be included in the community is not possible. The European Network on Independent Living - ENIL therefore welcomes the new General Comment on Article 27 of the UN Convention on the Rights of Persons with Disabilities (CRPD), as means of clarifying obligations of States Parties and promoting better access of disabled people[[2]](#footnote-2) to work and employment. In this submission, we aim to highlight a number of points that should be included in the upcoming General Comment.

**I. Points of particular relevance to ENIL, which should be included in the General Comment on Article 27**

**1. Access to Personal Assistance**

Personal assistance is considered to be a key tool for Independent Living; it is explicitly mentioned in Article 19 CRPD and defined in the General Comment No. 5 on Article 19. In a number of countries, Personal Assistance is available only to disabled people in their homes. This can be a restriction imposed by law, or it can be the result of a lack of hours or funding that is available to disabled people (and which means they use their assistance to cover only their basic support needs)[[3]](#footnote-3). In some cases, Personal Assistance is, on the other hand, restricted to employment or is only available to those disabled people considered as ‘fit to work’. In both situations, it leads to exclusion of many disabled people from the labour market and deprives them of opportunities to live independently and to be included in the community.

It is, therefore, important to highlight in the General Comment the need for **adequate access to properly funded Personal Assistance for all disabled people** who require this service, whatever their age, support needs and wherever they live. There should be no restrictions on what Personal Assistance can be used for, and disabled people should not be forced out of work due to decreasing access to assistance as they get older, or for any other reason.

Should disabled people be offered work in another part of the country, they should be able to move their Personal Assistance and other parts of their support package. At the moment, many people are unable to transfer their support within the same country, or abroad. This includes disabled people in the European Union, where the freedom of movement (for work or study) is one of the main rights of EU citizens[[4]](#footnote-4). Lack of access or transferability of Personal Assistance therefore prevents disabled people from taking up better (or any) employment opportunities, and restricts them to a particular location.

**2. Abolishing of segregated working environments and alternatives to work**

ENIL has information about the use of European Union (EU) funds for supporting segregated working environments for disabled people, despite the EU’s ratification of the CRPD, its Employment Equality Directive, the Fundamental Rights Charter and other relevant legislation and policy at the EU level[[5]](#footnote-5). There is also not enough clarity on what constitutes sheltered employment.

It is imperative for the General Comment to **define ‘sheltered employment/sheltered workshop’**, ensuring that it is described not only as a place where only disabled people work, but also where there is a disproportionate number of disabled people. The General Comment should also **call for any public or private funds to be used to promote access of disabled people to the open labour**, through various education and employment-related initiatives, and prohibit investment in different forms of segregated employment.

In addition to sheltered workshops, many disabled adults spend their days in day care centres, which are often considered as an alternative to employment for those ‘unfit to work’. There, they spend their days doing crafts, drawing or other activities (which are often not appropriate to their age). Given the **prevalence of day care centres for adults in many countries, the General Comment should make it clear that they should not be considered as an alternative to employment for disabled adults**. States Parties should be encouraged to transition away from day care centres, to train and offer employment opportunities to all disabled people, in line with their needs.

Finally, the General Comment should make it clear that **the right to work and employment cannot be considered as implemented in any form of institutional care, of any size**. Where disabled people are forced to work in institutional care settings, providing support to fellow residents, helping with the maintenance of the institution or any other role, this should not be considered as providing work and employment opportunities. In fact, it may amount to forced or compulsory labour. Therefore, any **deinstitutionalisation strategies and action plans should set out how disabled people will be supported to move into employment in the open labour market** after leaving the institution.

**3. Fair wages and working conditions**

In a recent survey[[6]](#footnote-6) among members of ENIL, 96% of the respondents described access of disabled people to the mainstream labour market as inadequate or requiring improvement. Respondents from all European countries reported that their country had legislation to protect disabled people in the labour market; however only 10% described this legislation as adequate to protect against discrimination. Furthermore, 18% of the people replying to the survey were not aware of the existence of the legislation in their country.

Discrimination of disabled people in the labour market manifests itself in many ways. Commonly, disabled people are paid below the national minimum wage, are given ‘pocket money’ instead of a salary, or are not paid at all. In at least one country, in the context of deinstitutionalisation, disabled people (mainly people with psycho-social disabilities) are placed in adult foster care in rural areas, where they are then made to work by their foster families. This is presented as part of their “rehabilitation”[[7]](#footnote-7). The General Comment should make it clear that **such practices should be strictly prohibited and sanctioned, and that States Parties must put monitoring systems in place to ensure that disabled people are not exploited in exchange for being provided with support or housing**.

Where people under guardianship are employed, they may also lack any rights as employees and are often given ‘pocket money’ instead of a salary. Sometimes, such initiatives are presented as good practices, because they provide disabled people with employment. It is important that the General Comment makes clear **the link between Article 12 and Article 27, and that alongside initiatives to promote work and employment, States Parties must work to abolish guardianship laws** **and put in place supported decision making**. The right to legal capacity is key to ensuring that disabled people are not discriminated in employment, are paid fair wages and provided with decent working conditions, among other.

**4. Disabled people as employers**

Disabled people often act as employers, when they have access to personal budgets/direct payments and employ their own personal assistants. Being able to employ their PAs provides many disabled people with the opportunity to live independently and to be included in the community.

A survey among ENIL members[[8]](#footnote-8) showed that disabled people identify fair working conditions as essential for the development of genuine community-based services, such as Personal Assistance.

General Comment 5 should **recognise the role of disabled people as employers**, and should encourage States Parties to provide them with financial and other support in exercising this responsibility (such as training on how to employ PAs, accessing additional funding for dealing with administration etc.). It should also support DPOs and user cooperatives, as means of providing peer support and other forms of support to disabled people that manage their assistance. Moreover, adequately funded access to personal assistance is key to disabled people’s ability to provide decent working conditions to their assistants, rather than having to employ their family members and look for assistants willing to work for a minimum wage.

States Parties should also be encouraged to provide supported decision making to those who cannot employ their assistants without additional support.

**5. Sufficient flexibility in social support and benefits**

Conclusions and recommendations of the Committee’s inquiry into implementation of Article 19, Article 27 and Article 28 (adequate standard of living and social protection) in the United Kingdom[[9]](#footnote-9), under article 6 of the Optional Protocol, should be used to draw up recommendations on how *not* to promote access to work and employment. In this case, the State Party promoted reforms to decrease “dependency on benefits” among disabled people and move people into work. This was done without any awareness of disability rights and specific needs of disabled people, especially people with intellectual and psycho-social disabilities. Combined with the State Party’s actions in relation to Articles 19 and 28, this has led to grave and systematic violations of the rights of disabled people.

The General Comment should **highlight the recommendations of this inquiry report**, which should provide a roadmap to other States Parties on how to promote access to work and employment, without pushing disabled people deeper into poverty and leaving them without the necessary support services and allowances. There are other countries, in addition to the UK, where ENIL is aware of disabled people having to choose between employment and their disability status and/or their support and allowances, which cover their disability-related expenses.

The following recommendations, in particular, should be reflected in the General Comment. State Parties should:

“Ensure that any intended measure of the welfare reform is rights-based, upholds the human rights model of disability and does not disproportionately and/or adversely affect the rights of persons with disabilities to independent living, to an adequate standard of living and to employment. To prevent adverse consequences, the State party should carry out human rights-based cumulative impact assessments of the whole range of intended measures […]

Ensure that any intended legislation and/or policy measure respects the core elements of the rights […], that persons with disabilities retain their autonomy, choice and control over their place of residence and with whom they live, that they receive appropriate and individualized support, including through personal assistance, and have access to community-based services on an equal basis with others, that they have access to security social schemes that ensure income protection, including in relation to the extra cost of disability, compatible with an adequate standard of living and ensure their full inclusion and participation in society, and that they have access to and are supported in gaining employment in the open labour market on an equal basis with others;

Introduce the adjustments necessary to make all information, communications, administrative and legal procedures in relation to social security entitlements, independent living schemes and employment/unemployment-related support services fully accessible to all persons with disabilities;

Take appropriate measures to combat any negative and discriminatory stereotypes or prejudice against persons with disabilities in public and the media, including the assertion that dependency on benefits is in itself a disincentive to seeking employment […]

Ensure that, in the implementation of legislation, policies and programmes, special attention is paid to persons with disabilities living on a low income or in poverty and to persons with disabilities at higher risk of exclusion […]”[[10]](#footnote-10)

**6. Importance of inclusive education to finding employment**

The General Comment should highlight the link between Article 27 and Article 24 (right to education), not just in relation to vocational training, but from early childhood. We know from members of ENIL that disabled people who have been able to access mainstream education (at primary, secondary and higher/tertiary level) are in a much better position to find employment. On the other hand, those placed in special schools are not prepared for today’s competitive labour market. Therefore, it is important that the General Comment makes it clear that State Parties must take sufficient measures to promote access of all disabled children and young people to inclusive education, as a precondition for enjoying their right to work and employment, and accelerate the transition from special schools to inclusive education.

**II. About the European Network on Independent Living - ENIL**

The European Network on Independent Living (ENIL) is a Europe-wide network of people with disabilities, with members throughout Europe. ENIL is a forum for all disabled people, Independent Living organisations and their non-disabled allies on the issues of Independent Living. ENIL represents the disability movement for human rights and social inclusion based on solidarity, peer support, deinstitutionalisation, democracy, self-representation, cross disability and self-determination.

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1. European Network on Independent Living (2015) *Independent Living Manual*, p. 21, available at: <https://www.enil.eu/wp-content/uploads/2012/06/Independent-Living-Manual-FINAL.pdf> [↑](#footnote-ref-1)
2. ENIL prefers the term ‘disabled people’ over ‘persons with disabilities’ or ‘people with disabilities’, in order to reflect the fact that people are disabled by the environmental, systemic and attitudinal barriers in society, rather than by their impairment. This is in line with the social model of disability. [↑](#footnote-ref-2)
3. See ENIL’s Independent Living survey (2020), available here: <https://enil.eu/independent-living/independent-living-survey/> [↑](#footnote-ref-3)
4. ENIL (2019) *Freedom of Movement*, available at: <https://enil.eu/wp-content/uploads/2019/10/Freedom-of-Movement_Background-Paper_Final-1.pdf> [↑](#footnote-ref-4)
5. See, for example, ENIL and GUE/NGL (2020) *Lost in Interpretation: the Use of ESI Funds during 2014 – 2020 and the impact on the right of persons with disabilities to independent living*, available at: <https://enil.eu/wp-content/uploads/2020/12/Study_EP_EN_09122020.pdf> [↑](#footnote-ref-5)
6. See ENIL’s Independent Living survey (2020), available here: <https://enil.eu/independent-living/independent-living-survey/> [↑](#footnote-ref-6)
7. Ombudsman for the Rights of Persons with Disabilities (2016), *The rights of people with disabilities in foster care and family homes,* available at: <https://posi.hr/wp-content/uploads/2018/02/zadnja-verzija-Publikacije-17.2.pdf> (in Croatian) [↑](#footnote-ref-7)
8. ENIL (2019) *PA Checklist – A Tool for Assessing Personal Assistance Schemes,* available at: <https://enil.eu/wp-content/uploads/2019/02/Mladenov_Pokern_Bulic-PA_Checklist.pdf> [↑](#footnote-ref-8)
9. CRPD/C/15/4, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/326/14/PDF/G1732614.pdf?OpenElement> [↑](#footnote-ref-9)
10. CRPD/C/15/4, para 114. [↑](#footnote-ref-10)