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| Wilders Plads 8K  DK-1403 Copenhagen K  Phone +45 3269 8888  Direct  CELL  nini@humanrights.dk  humanrights.dk  Doc. No. 17/01382-2 |
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| Committee on the Rights of Persons with Disabilities  Human Rights Treaties Division  Office of the United Nations High Commissioner for Human Rights  Palais Wilson - 52, rue des Pâquis  CH-1201 Geneva  Switzerland |

Submission to the CRPD Committee regarding Draft General Comment No. 5 on article 19

The Danish Institute for Human Rights is Denmark’s independent National Human Rights Institution. It has an A-status and a national and international mandate by law to promote and protect human rights and equal treatment in Denmark and abroad. In July 2009 Denmark ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD). At the same time, the Danish Institute for Human Rights was appointed by the Danish Parliament to monitor and promote the implementation of the CRPD in Denmark.

The Danish Institute for Human Rights submits this document pursuant to the call for comments on Draft General Comment No. 5 on article 19: The right to live independently and be included in the community. The Danish Institute for Human Rights thanks the Committee on the Rights of Persons with Disabilities (the Committee) for this opportunity to make a submission and would like to make the following comments.

First of all the Danish Institute for Human Rights is delighted that the Committee has chosen to make a General Comment on the right to live independently and be included in the community. The Danish Institute for Human Rights is in agreement with the general principles of the Draft General Comment and considers the document to be a valuable tool in the interpretation and implementation of article 19.

The Danish Institute for Human Rights notes that States Parties are obliged to ensure that support in accordance with article 19 is granted to persons with disabilities on an equal basis, whoever is responsible at the national level. It seems to remain an issue in both the public and private sector that employees often lack an appreciation of the concepts of independent and community living as well as personal assistance and struggle to apply the principles of these concepts. The Danish Institute for Human Rights therefore suggests that in the General Comment the Committee encourage agencies to consider how they can better train and support their employees to embrace these concepts.

Moreover, the Danish Institute for Human Rights would like to stress the relationship between article 19 and the general obligations in article 4 of the CRPD, for instance the obligation of article 4 paragraph 1 subparagraph (f) of development and promotion of universal design. The Danish Institute for Human Rights suggests that this relationship is explicitly emphasised in either Section I of the Draft General Comment (Introduction) or Section IV (Relationship with other provisions of the Convention).

In regard to de-institutionalization the Danish Institute for Human Rights welcomes that the Draft General Comment in paragraph 15 (c) clarifies that institutionalization is not defined by the setting (e.g. the size of buildings) but first and foremost by the character of a living arrangement, which causes lack of control over a person’s life. Furthermore, the Danish Institute for Human Rights finds it important that the Committee clearly states in paragraph 56 that de-institutionalization requires implementation of structural reforms, which goes beyond the closure of institutional settings. Seen from a Danish perspective, it is highly relevant that de-institutionalization is not only a question about formal abolition of the concept of ‘institution’. Notwithstanding the fact that in Denmark the term ‘institution’ was abolished with the Danish Social Service Act in 1998, some persons with disabilities continue to live in institution-like facilities. Moreover, there is an increasing tendency that the housing provided under the Danish Social Service Act is constructed with a size and location that cause it to take on institutional characteristics.

Furthermore, the Danish Institute for Human Rights is pleased to note that in paragraphs 44 and 45 the Draft General Comment emphasizes that the duty of progressive realization entails a presumption against retrogressive measures in the enjoyment of economic, social and cultural rights; and in addition that States parties are prohibited from taking retrogressive measures with respect to the core elements of the right to independent and community living listed in paragraph 40 of the Draft General Comment. Very recently, the question of compatibility between retrogressive measures and the rights enshrined in the CRPD has been highly relevant in Denmark in connection with an amendment of the Danish Building Regulations, which involved a significant deterioration of accessibility requirements for buildings.

Finally, the Danish Institute for Human Rights takes this opportunity to encourage the Committee to maintain a close dialogue with all stakeholders, as it is of great importance that the work of the Committee is well received by as many stakeholders as possible. The work of the Committee has already received significant attention in Denmark and it is vital for the future development of the CRPD that the legitimacy of the Committee is unquestioned.

The Danish Institute for Human Rights is at disposal for any further information and look forward to continued collaboration with the Committee.

Yours sincerely,

Nikolaj Nielsen

Teamleader, Disability, Equal Treatment