European Economic and Social Committee

Labour Market Observatory Conference on the labour market participation of people with intellectual impairment or relational problems November 2012

‘Included or Excluded’

Brussels
6 November 2012

"The right to inclusion of people with disabilities on the labour market".

Communication

from

Dr Pauline Conroy Ireland
The right to inclusion of people with disabilities on the labour market

Employment rights and exclusion - What can be done?

Introduction

Ireland is a small peripheral country of 4.6 million people (2011). It is well within its limits to address the persistent and substantial exclusion of people with intellectual and relational disabilities from the labour market. Since 1996 Ireland has invested in considerable legislative and administrative reforms to promote the equal status of persons with and without disabilities in relation to education, training, services, employment and social and cultural opportunities. Despite well meaning efforts results are lacking.

Since 1996, Ireland has developed a relatively comprehensive legal framework to specify, implement and define the scope of employment rights of people with disabilities. These include Anti-Discrimination legislation, provision for reasonable accommodation and non-discrimination in access to education and vocational training. However, since the austerity programme of 2008, a part of this institutional equality architecture is being dismantled or is experiencing reduced funding.

The UN Convention on the Rights of Persons with Disabilities is extremely important as a universal standard for Ireland which has not yet ratified the Convention (Conroy, 2012). The fact of ratification or non-ratification might now be considered a moot point since the judgement of the European Court of Human Rights in the 2009 case of Glor v. Switzerland (ECHR 2009, para. 52). In ratifying the Convention an important number of States advanced reservations under some Articles, while others have expressed opposition to these reservations. Ratifying is not a clear-cut issue.

‘In the not-too-distant past a person with an intellectual disability was viewed not as a second-class citizen, but rather as one who possessed no citizenship’ (Parmenter, 2011,4). Ireland has a centuries long tradition and legacy of confinement of persons with disabilities to the charitable realm and to segregated schools and institutional residences frequently established by not for profit bodies or Catholic religious orders fleeing France after the Revolution of 1798. And that is how more than 80 per cent of children and adults with intellectual disabilities ended up in the care of religious orders or not-for-profit bodies. For
persons with relational difficulties arising from society’s punitive or segregationist attitude towards autism, mental health or brain injury – the path to recognition of personal rights in education, training and employment has been most difficult.

<table>
<thead>
<tr>
<th>Order</th>
<th>Year of establishment</th>
<th>Origin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sisters of Charity of Jesus and Mary</td>
<td>1861</td>
<td>Belgium</td>
</tr>
<tr>
<td>Bon Secours</td>
<td>1861</td>
<td>France</td>
</tr>
<tr>
<td>Society of the Sacred Heart</td>
<td>1779</td>
<td>France</td>
</tr>
<tr>
<td>Poor Clares</td>
<td>1825</td>
<td>France</td>
</tr>
<tr>
<td>Salesian Sisters</td>
<td>1872</td>
<td>Italy</td>
</tr>
<tr>
<td>Marists</td>
<td>1817</td>
<td>France</td>
</tr>
<tr>
<td>Oblates of Mary Immaculate</td>
<td>1856</td>
<td>France</td>
</tr>
<tr>
<td>Faithful Companions of Jesus</td>
<td>1820</td>
<td>France</td>
</tr>
<tr>
<td>Vincentians</td>
<td>1832</td>
<td>France</td>
</tr>
</tbody>
</table>

**What the data story recounts**

Of some things there is quite a profusion: reports, statistics, sectoral plans and data.

About 13% or 595,335 persons in the population reported having a disability. This high proportion may be partly due to how the question was asked in the 2011 Census.

Of the 595,335 persons with a disability, 338,208 were aged 15 years to 64. Just 105,502 of these were at work 31% per cent (CSO, 2012). This is an extremely low proportion.

The 2011 Census identified 57,709 persons with an intellectual disability.

A more specific examination of the employment rates of people with intellectual disabilities is possible.

Did persons with an intellectual disability benefit from Ireland’s labour market boom?
### Table 1
**Persons with an intellectual disability and their reported employment (narrow definition) status on/off labour market 2004-2011**

<table>
<thead>
<tr>
<th>Data Year</th>
<th>Employed in Enclosed enclave</th>
<th>Employed in Supported Employment</th>
<th>Employed in Open Employment</th>
<th>Total in Employment Cols 2+3+4</th>
<th>Persons in receipt of services aged 18+</th>
<th>Col.5 as % of col. 6 = employment rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>15</td>
<td>953</td>
<td>138</td>
<td>1,124</td>
<td>15,743</td>
<td>7.1</td>
</tr>
<tr>
<td>2005</td>
<td>23</td>
<td>957</td>
<td>167</td>
<td>1,147</td>
<td>16,030</td>
<td>7.1</td>
</tr>
<tr>
<td>2006</td>
<td>20</td>
<td>907</td>
<td>150</td>
<td>1,077</td>
<td>17,054</td>
<td>6.3-</td>
</tr>
<tr>
<td>2007</td>
<td>12</td>
<td>957</td>
<td>145</td>
<td>1,114</td>
<td>17,094</td>
<td>6.5+</td>
</tr>
<tr>
<td>2008</td>
<td>14</td>
<td>993</td>
<td>186</td>
<td>1,193</td>
<td>17,278</td>
<td>6.7+</td>
</tr>
<tr>
<td>2009</td>
<td>13</td>
<td>951</td>
<td>187</td>
<td>1,151</td>
<td>17,484</td>
<td>6.6-</td>
</tr>
<tr>
<td>2010</td>
<td>12</td>
<td>929</td>
<td>181</td>
<td>1,110</td>
<td>17,686</td>
<td>6.3</td>
</tr>
<tr>
<td>2011</td>
<td>9</td>
<td>860</td>
<td>156</td>
<td>1,025</td>
<td>17,924</td>
<td>5.7</td>
</tr>
</tbody>
</table>


In 2011, 84 per cent of those in employment were in supported employment. This is typically a part-time job which is combined with receipt of State Disability Allowance. Those with an intellectual disability tend to have the lowest earnings from work at less than €120 a week (DSP, 2012, 75) and also lower compared to non-disabled employees (WRC, 2008).

Despite employment legislative reforms, non-discrimination legislation, employer financial incentives through grants and fiscal measures, the open market employment rate of people with intellectual disabilities was impervious to the boom in the Irish economy up until 2008. The employment rate of adults
with intellectual disabilities was 6.3% in 2006 and 6.3% in 2010. The numbers of persons seeking public services is rising each year as both adults themselves and their families become more aware of their rights and appreciate that in many senses employment is a passport to citizenship.

Effectively, in Ireland, there are four parallel employment policies running in tandem:

- One promotes the employment, vocational training and labour market opportunities of people with disabilities on a non-discriminatory basis on the open labour market
- A second incentivises the claiming of social welfare supports combined with small part-time jobs on a marginal labour market at the minimum wage
- A third is segregated spaces with little progression to any labour market
- A fourth is alternative communes/communities and social farming

Reviewing the status of measures to promote the employment of people with disabilities in Ireland the OECD was singularly unimpressed (Grubb et al., 2009). They found the distinction between disability and unemployment poorly demarcated with some people possibly on the ‘wrong’ programme. People with disabilities on training and other supported measures were generally with specialist service providers and the costs of this were quite high. However despite ‘a continuing drive to increase the participation of people with disabilities in regular employment’ the OECD review had trouble identifying evidence that this was actually occurring (Grubb et al., 2009: 117).

While allegedly moving away from the medical model of disability policy, the social model is not working, if indeed it is the social model of policy which we are assessing and this is far from clear. (Apostopolou, 2012)

Reflecting on this seminar, I undertook some visits to people and places supporting, offering or preparing people with intellectual disabilities, autism and relational difficulties for more independent living or employment.
Supported Employment

Dave Walsh¹ in the Kildare Consortium for Supported Employment (KCSE) has been working with private sector employers in villages and towns in the County of Kildare in the greater Dublin commuting area to promote the employment of people with disabilities over decades. His service is part of EMPLOYABILITY – a state supported service to promote the integration of people with disabilities into the labour market. He regards financial incentives for employers who employ a person with a disability as crucial. These take the form, amongst others, of wage subsidies for persons working more than 20 hours a week, fiscal advantages for employers as well as supported employment programmes.² He is concerned however that some employees who are placed with firms are never promoted even after years of efficient service to that employer and remain on the minimum wage of €8.65 indefinitely. Attitudes among those who form opinion and among employers could be perceived as going backwards.

Citizenship a first step to engagement

Tony McDaid³ in the village of Raphoe on the border with Northern Ireland (UK) launched a cross border programme with colleagues in MENCAP Western Area in the town of Strabane in Northern Ireland under the EU INTERREG IVA programme in 2012. The 20 participants in the Speaking-Up Reaching-Out project from Ireland North and South are being supported to move out of the isolation of their homes to engage with civil and public society and to ready themselves for some of the barriers to be overcome. The use of public transport is an essential part of widening horizons, as is obtaining accessible transport and the cross border recognition of special ‘Transport Passes’ are part of the rights that participants have been exploring. At present, people with disabilities from Ireland may not use their transport cards in Northern Ireland just 3-4 kilometres over the border. The participants have visited their public representatives in the Parliaments in Belfast and in Dublin. They look forward to the implementation of Chapter III of the EU Regulation on the rights of disabled persons and persons with reduced mobility as passengers in bus and coach transport to come into effect in March 2013.⁴

¹ The views expressed here are the interpretation of the author.
² See section for employers on: www.employability.ie
³ The views expressed here are the interpretation of the author.
Camphill – an Alternative Practice

There are 18 Camphill Communities in Ireland where persons with disabilities live with mainly volunteer co-residents in a shared living experience based on reciprocity, contributing work according to one’s ability and expressing respect for Christian values and the value of nature. The Bridge Community in the village of Kilcullen, Kildare is a 3.6 hectare organic farm, with a farm shop and a bakery serving its own café in the village. Eighteen residents work in all the social enterprises as well as in the chicken hatchery, in the orchard and fruit gardens. Director Mischa Feketa and social worker Miriam Fagan explained that among the residents able to contribute to the work of the community were those who had had difficulties at home or in city environments or were unable to speak or whose behaviour had previously been misunderstood. They would be critical of the casting of persons with intellectual or other disabilities as passive recipients of social services and of the contemporary consumerist ethos which drives industrial scale production. The Camphill Community has just built a nature trail through its land for and with the villagers and provides farm experiences for the local Primary School as well as a café for the public.

The conclusions I drew from the visits are:

- people with intellectual disability have the right to be included in mainstream disability support services and need not be isolated into separate programmes by themselves
- preparation to assert or manifest oneself as a citizen is an essential precursor to employment or civil society engagement
- accessible and seamless transport for all modes is necessary to extend the small radius of job seeking to a larger labour market
- alternative ways of viewing the world should be judged on their merits

The UN Convention has now been signed and ratified by 24 of the EU Member States. Just Ireland, Netherlands and Finland have not ratified. Article 27 (see Appendix) is of particular interest in that it makes no reference whatsoever to segregated employment, separate employment or separate sheltered employment. The Convention presumes that people with disabilities have a right to independent living and to their citizen rights on the mainstream labour market.

---

5 The views expressed here are the interpretation of the author.
6 This project was supported by the extensive volunteer labour of 250 staff of the US financial services company Fidelity Investments. See also: www.kilcullenbridge.blogspot.com
7 European Parliament resolution of 23 October 2012 on passenger rights in all transport modes (2012/267 (INI)).
Notwithstanding the reference to mainstream labour markets, European public procurement rules have attempted to adapt the otherwise strict market coordination requirements to both sheltered workshops, employment and to social considerations in its European Regulations. However there appears to be little examination of whether public procurement uses social considerations in the Member States and to what effect (Commission, 2012). The 2013 Commission review of public procurement implementation in Europe should ask Member States to supply such information as is available on Articles 28 and 46.

Yes, there is a European disability strategy 2010-2020.9

Yes there is a Commission staff Working Paper on concrete actions which should be undertaken to achieve it.10

They risk becoming cathedrals in the desert. Member States and employers groups are not sufficiently listening and respecting the rights of those persons with disabilities experiencing the most prejudicial treatment.

The Maastricht Treaty promised social cohesion—what we witness is economic exclusion. There is a promise of a new Fund for Deprivation (2012) but not for widespread discrimination. We need fundamentally new initiatives such as an ERASMUS programme for projects, services and participants engaged in countering labour market exclusion among those with intellectual disabilities and relational difficulties.

We need plans for the enfranchising and voting in the next European Parliament elections in June 2014 for those who have hitherto not been able to exercise the right to vote.

We should not permit the emergence of an underclass of people locked out of the ideals of Europe of Jean Monnet, Robert Schumann and Simone Weil.

---

Bibliography


UN Convention

Article 27
Work and employment

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;

(g) Employ persons with disabilities in the public sector;

(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.