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EDITORIAL

Comments on the consolidated text of the general law on rights of persons with disabilities and their social inclusion

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Last December, coinciding with the *International Day of Persons with Disabilities*, also saw the publishing of Royal Decree 1/2013, which approved the consolidated text of the General Law on the Rights of Persons with Disabilities.

It is a document that consolidates three Laws into one, with the aim of adapting them to International Convention on the Rights of Persons with Disabilities. The three Laws are: Law of 1982 on the social integration of persons with disabilities (LISMI), the Law of 2003 on Equal Opportunities, Non-Discrimination and Universal Accessibility of Persons with Disabilities, and the Law of 2007, which establishes the system of infringements and penalties on matters of Equal Opportunities, Non-Discrimination and Universal Accessibility of Persons with Disabilities.

We are reminded that the Convention on the Rights of Persons with Disabilities was approved by the United Nations (UN) General Assembly in December 2006, which not only sets out the rights of persons with disabilities, but also obliges the Member States to promote, protect and ensure these fundamental rights and liberties. Thus, these States are committed to adopt all legal and administrative measures to ensure the full realization of such rights. It came into force in Spain in May 2008, after the Convention and its Optional Protocol was ratified. According to the Spanish Constitution, from this date, it now forms part of the national legislation and, thus, the adaptation and modification of a series of regulations will be required to adapt them to this Convention and to be able to implement those rights set out in this Convention. Thus, in 2011, Law 26/2011 on Regulatory Adaptation to the Convention was approved that, among other Laws, modified some on health matters. For example, the General Health Law includes disability as a new cause of non-discrimination of the person in his/her relationship with the health authorities. It also regulates the right to information in formats that are accessible and understandable to persons with disabilities, as well giving

consent in different health care settings. Law 41/2002, a Regulatory Law on the freedom of the patient and the rights and obligations on matters of clinical information and documentation, governs the giving of informed consent of patients with disabilities, as such that it has to provide information with the necessary support measures to help them give their consent by themselves.

On the consolidated text, without playing down the legal aspects as such, other important points need to be mentioned. In the first place, the definition of what is a disability: it is understood as an interaction between personal circumstances and the *different barriers that may limit their full participation in society in conditions of equality with everyone else*. Along the same line, it is already expressed in Law 26/2011, which mentions disability as a result of the differential trait of some individuals with an inadequate and exclusive environment.

This concept, fully inspired in the Convention, differs from what we can find in previous laws, which only focus on the difficulty of integration in people with deficiencies whether they are congenital or not.

Thus, the mention of the environment as an essential element is remarkable, as in the case of being inadequate and exclusive, it means that the people who have a differential trait cannot enjoy the conditions like the rest.

We also positively value that it includes a chapter dedicated to the rights and express recognition that persons with disabilities are owners of rights and stop being considered as persons that need protection and care. The exercise of these rights must involve the freedom to take decisions. The right to an independent life is recognised among others that include the right to an inclusive education and, on the legal right to health, it places special emphasis on mental health and sexual and reproductive health.

How it tackles the right to work, for me, is one of the weakest points of the text. While it is true that it introduces

work with support as a service to ensure insertion into an ordinary business, conceptually the text is not sufficiently convincing or clear on when to prioritize working in an ordinary company. In this sense, the LISMI made it more clearly

on saying that “it is essential, that persons with disabilities must work in the ordinary market”. In this way, protected work stops being an exceptional route to becoming an ordinary route, contravening the spirit of the Convention.