**GUIDING QUESTIONS FOR THE NORMATIVE FRAMEWORK OF THE ISSUES EXAMINED AT THE IX SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING:**

**Long-term and Palliative Care**

**National legal framework**

1. **What are the legal provisions in your country that recognize the right to long-term and palliative care? Do they have a constitutional, legislative or executive foundation?**

As regards long-term care, it is stipulated by Section (5) of Article XV of the Fundamental Law of Hungary that “by means of separate measures, Hungary shall protect families, children, women, *the elderly* and persons living with disabilities”.

Pursuant to Sections (1)-(2) of Article XIX, (1) Hungary shall strive to provide social security to all of its citizens. Every Hungarian citizen shall be entitled to assistance in the case of maternity, illness, disability, handicap, widowhood, orphanage and unemployment for reasons outside of his or her control, as provided for by an Act.

Hungary provides social security through a system of social institutions and social measures in the case of those in need listed in Section (1) and others.

Long-term care is typically provided to older persons in Hungary in residential care homes, in old-age homes. The main rules of the operation of old-age homes are set out in Act III of 1993 on Social Governance and Social Benefits, as well as in SzCsM (Ministry of Social and Family Affairs) decree No. 1/2000. (I. 7.) on the Professional Responsibilities of Social Institutions Providing Care and the Conditions of their Operation.

In the framework of home care, the care necessary for maintaining independent living should be provided in the senior citizen’s own residential environment. Within this, in the context of personal care, a supportive relationship with the user of the service should be established and maintained, care and nursing tasks should be performed, as well as, among others, participation in preserving the hygiene of the residential environment, as well as in household activities should be ensured, furthermore, assistance with the prevention of dangerous situations and averting emergencies should be provided.

In the Hungarian law, the right to pain relief appears in Section 6 of the Act on Health. Furthermore, Section 99 provides on the end-of-life care of terminal patients, which is called hospice care in this law, while Section 98 of the Act gives a very general definition of nursing. ESzCsM (Ministry of Health, Social and Family Affairs) decree No. 60/2003. (X. 20.) on the Minimum Requirements for Providing Health Care Services contains the minimum personal and objective criteria concerning the chronic internal medicine departments and the nursing departments.

**Normative elements**

1. **What are the key normative elements of the rights to long-term and palliative care?**

**Please, provide references to existing laws and standards where applicable.**

In Hungary, the right to long-term and palliative care is not specifically defined, only the right to health care is specifically mentioned.

On the statutory aspects of long-term care, see Question 1. According to the general rule, persons who have a care need defined by the law but do not require regular in-patient medical care, and who have reached the relevant retirement age may receive care in an old-age home. In an old-age home, it is also possible to provide care to patients who are older than 18 years of age and who are not able to take care of themselves due to their illness or disability, who have a specific care need, as long as their care cannot be provided in another type of nursing and residential care facility.

In an old-age home where specialized nursing services are also provided, it is possible to provide such care to patients who are older than 18 years of age and who are in need of the type of care that is provided in an old-age home, who need specialized nursing due to their condition but who do not require acute in-patient medical care and permanent medical supervision, and who have been referred to a specialized nursing institution by their therapist, or if they are the residents of an institution, by the medical doctor of the social institution.

1. **How should *long-term care* and *palliative care* be legally defined?**

The concept of long-term care is not defined in detail in Hungary, neither is a separate long-term care system in place; the services of long-term care are provided in the framework of the health care and social service systems. According to the Social Act, those persons who are not able to take care of themselves, or are only able to do so with constant assistance should be provided at least three meals a day, if necessary, clothes and medical textiles, they should receive mental care and health care services as specified in a separate law, as well as housing (hereinafter referred to as: comprehensive care) at the nursing and residential care facility where they live, provided that their care cannot be ensured in any other way.

Palliative care means services provided to those who suffer from seriously debilitating or life-threatening diseases, and the goal is to improve their quality of life through satisfying the special (physical, emotional, social, cultural, spiritual) needs of the patients and the persons who are in contact with the patients, irrespective of the age of the patients, the stage of the disease or the treatment plan.

**Implementation**

1. **What are the policies and programs adopted by your country to guarantee older persons’ enjoyment of their right to long-term and palliative care?**

We are not aware of any policies or programs specifically targeting older persons. We have described the forms of long-term care accessible to older persons when answering the previous questions.

1. **What are the best practices and main challenges in adopting and implementing a normative framework to implement these rights?**

The long waiting lists in residential care homes appear as a challenge. Due to the introduction of a care need as a condition for admission to the old-age homes, elderly persons in ever poorer conditions are admitted, the provision of nursing services imposes an ever increasing workload on the staff and the budgets of the institutions, however, these institutions have not received any extra funds. It is a best practice that some of these care homes organize self-help, awareness-raising groups for the relatives of patients with dementia or Alzheimer’s disease, on which occasions the family members may get familiar with the nature of the disease and they may share their experience and receive support.

There is a special examination on hospice-palliative care for medical doctors. Some service providers that operate as foundations provide services that approach the European standards.

As compared to the 50 beds for 1 million inhabitants recommended by WHO, there are only 278 beds for 10 million inhabitants, which is obviously insufficient. There would be a higher need for such beds, although the situation is that there is an extraordinarily low level of information on this form of care both among the medical doctors providing primary health care and the population, which results in that the patients concerned start receiving this form of health care too late. The average care time was 25.6 days in 2017. The number of full-time professionals is also low.

**Equality and non-discrimination**

1. **Which are the measures adopted to ensure equitable access by older persons to the enjoyment of the right to long-term and palliative care, paying special attention to those who are vulnerable or in a vulnerable situation?**

There are no specific laws that refer to older persons. The residential care homes have waiting lists in place, as far as we know, all the institutions have “out of turn /emergency” waiting lists too, on which vulnerable persons in an especially difficult situation may be put.

**Participation**

1. **Does the design and implementation of normative and political framework related to long-term and palliative care include an effective and meaningful participation of older persons?**

In its decree of February 2012, the Government provided on establishing the Human Rights Working Group, the key task of which is to monitor the enforcement of human rights in Hungary, to consult with civil society organizations, advocacy and professional organizations, as well as constitutional organs, furthermore, to promote the professional communication related to the enforcement of human rights in Hungary. It is in this context that the Thematic Working Group Responsible for the Rights of the Elderly is operating as well. Such thematic working groups discuss the current human rights issues and submit proposals to the decision-makers.

The Hungarian Seniors Council run by the HungarianGovernment comments on the draft high-priority government decisions and draft laws that directly affect the living conditions of the elderly, except for the draft municipality decrees, as well as monitors the enforcement of these. It can also make proposals for government actions and intermediates the proposals made by the elderly, as well as religious communities and civil society organizations.

**Accountability**

1. **What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for denial of their right to long-term and palliative care?**

As long as the admission of an applicant to a residential care home is rejected, the applicant or their statutory representative may turn to the maintainer within eight days from receiving the notice on the rejection. In this case, it is the maintainer who decides on such application for health care service. The court may be requested to review the decision adopted by the maintainer.

Otherwise there is no complaint or redress mechanism in place specifically in relation to these forms of care. It causes problems that there are no records on the free beds, if there are any, that are accessible for the patients and primary care experts, as the general waiting time for these types of care is usually long. According to figures of December 5, 2018, as many as 34,288 patients are waiting for some form of social care, for example, for admission to an old-age home and more than three quarters of those on the waiting list applied for residential care.

**GUIDING QUESTIONS FOR THE NORMATIVE FRAMEWORK OF THE ISSUES EXAMINED AT THE IX SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING**

**Autonomy and Independence**

**National legal framework**

1. **What are the legal provisions in your country that recognize the right to autonomy and independence? Do they have a constitutional, legislative or executive foundation?**

The Fundamental Law of Hungary defines the right to dignity as a fundamental human right under Article II. Even though there is no explicit reference to a right to self-determination or autonomy in the Fundamental Law, the Hungarian Constitutional Court directly derived the individual’s right to self-determination from the right to dignity (Article II.), therefore, the individual’s right to self-determination has a clear constitutional basis. The right to dignity and self-determination covers most areas of autonomous living, however, an explicit right to autonomy cannot be identified in Hungarian law.

**Normative elements**

1. **What are the key normative elements of the rights to autonomy and independence?**

**Please, provide references to existing laws and standards where applicable.**

Autonomy and independence do not appear explicitly in existing laws. The normative elements of individual autonomy have been defined by the Constitutional Court under the right to dignity and self-determination. Although there is little explicit reference to a right to autonomy, the key normative elements may still be observed, as the right to self-governance includes the right to express and unfold one’s personality, as well as it generally safeguards the person from undue intervention through the principle of non-interference. Independence is at the heart of autonomous living as the right to self-governance primarily protecting the individual from undue interference.

1. **How should *autonomy* and *independence* be legally defined?**

A legal definition of autonomy and independence has to be flexible in order to sufficiently reflect the variability of autonomous living. Autonomy implies self-rule or self-governance, a right not to be interfered with by the state or by others. However, autonomy solely as the paradigm of non-interference would fail to reflect the intrinsic value of autonomy: autonomous living and decision-making are of core importance for human personality. It has to be noted that there are cases when a person’s decision threatens to cause significant harm to the person; certain persons may require assistance to live autonomously. There is a delicate balance between respecting personal autonomy and also protecting the vulnerable person’s best interests. A right to autonomy should guarantee the paradigm of non-interference while also providing effective safeguards for persons with limited capacity, implying positive obligations for states to take proactive measures to enhance individual autonomy while resorting to the least restrictive measures in doing so.

**Implementation**

1. **What are the policies and programs adopted by your country to guarantee older persons’ enjoyment of their right to autonomy and independence?**

We are not aware of any special policies that refer to older persons.

1. **What are the best practices and main challenges in adopting and implementing a normative framework to implement these rights?**

The new Civil Code of Hungary implemented supported decision-making as a less restrictive alternative to substitute decision-making through guardianship. Supported decision-making has been recently introduced to Hungarian law and its key idea includes guardianship. A decision-making supporter is appointed by the guardianship authority or the court if the person requires assistance but his or her reduced mental capacity does not necessitate substitute decision-making and the restriction of legal capacity. The greatest challenge of the regulation is that the structures of supported decision-making and guardianship are not separated, the same authority is responsible for monitoring and supervision. Furthermore, the same persons may be appointed public guardians or supporters.

**Equality and non-discrimination**

1. **Which are the measures adopted to ensure equitable access by older persons to the enjoyment of the right to autonomy and independence, paying special attention to vulnerable groups or those in a vulnerable situation?**

We are not aware of any special policies that refer to older persons.

**Participation**

1. **The design and implementation of normative and political framework related to autonomy and independence included an effective and meaningful participation of older persons?**

In its decree of February 2012, the Government provided on establishing the Human Rights Working Group, the key task of which is to monitor the enforcement of human rights in Hungary, to consult with civil society organizations, advocacy and professional organizations, as well as constitutional organs, furthermore, to promote the professional communication related to the enforcement of human rights in Hungary. It is in this context that the Thematic Working Group Responsible for the Rights of the Elderly is operating as well. Such thematic working groups discuss the current human rights issues and submit proposals to the decision-makers.

The Hungarian Seniors Council run by the HungarianGovernment comments on the draft high-priority government decisions and draft laws that directly affect the living conditions of the elderly, except for the draft municipality decrees, as well as monitors the enforcement of these. It can also make proposals for government actions and intermediates the proposals made by the elderly, as well as religious communities and civil society organizations.

**Accountability**

1. **What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for denial of their right to autonomy and independence?**

According to Hungarian law, a person’s legal capacity is restricted if the person is proved to be lacking mental capacity, thus the court orders guardianship and appoints a substitute decision-maker (guardian) for the person. The ward may petition to the guardianship authority or the court (without regards to his or her limited legal capacity) against ill-treatment or misuse of the guardian’s powers.

**GUIDING QUESTIONS FOR THE FOCUS AREAS OF THE X SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING**

**Education, training, life-long learning and capacity-building**

**National legal framework**

1. **In your country / region, how is the right to education, training, life-long learning and capacity-building in older age guaranteed in legal and policy framework?**

The Fundamental Law of Hungary[[1]](#footnote-1) ensures the right of participating in higher education to any older person. The possibility to pursue academic level studies is open to older persons with the same conditions as for the other generations, on the basis of the statutory criteria of the admission procedure to higher education.

In Hungary, the earning of the first and second qualifications that are recognized by the state is provided by the state for free, within the framework of school system professional training, irrespective of the age of the students, the legal background for which is ensured by the laws on public education and those regulating the system of vocational training.

The right of older persons to life-long learning and capacity-building is typically enforced by academic training and vocational training outside the school system. The legal background of academic training is partly provided by the law on higher education, partly by the law on vocational training, while the legal background and framework of professional qualifications outside the school system are provided by the laws on adult education.

**Availability, accessibility and adaptability**

1. **What are the key issues and challenges faced by older persons in your country / region with regard to the enjoyment of of all levels of quality education, training, life-long learning and capacity-building services?[[2]](#footnote-2)**

The legal regulation of adult education in Hungary ensures the legal conditions and frameworks of life-long learning but the realization of the required situation is often hindered by the narrow-minded approach of the society and the way that the older persons relate to their own age.

In the aging Hungarian society, very few persons participate in adult education, which is partly due to financial problems, partly to issues in approach, and partly to the scarcity of training programs. The low rates of participation can also be explained by geographical reasons, i.e. there are significant inequalities between the different regions.

Furthermore, there are not enough training programs adjusted to the needs of the elderly, there is a scarity of funds for training programs aimed at preserving the active lifestyle of older persons in the different tender systems. It may become necessary to further develop the certification systems in adult education.

As regards higher education, it does not undertake a sufficiently active role in the education and cultural activities of elderly people, there are very few majors that are specifically meant for the older generation.

1. **What steps have been taken in your country / region to ensure that education, training, life-long learning and capacity-building services are available and accessible to all older persons, adapted to their needs, suited to their preferences and motivations, and of high quality?**

It was a key objective of the strategies applied in Hungary to bridge the digital gap in the country. In order to achieve this goal, several IT courses and training programs aimed at reducing the digital divide were launched, as a result of which older persons can enter the different target programs as beneficiaries.

Joining the Bologna Process has brought about a number of changes in higher education, as a result of which the participation of this generation in higher education had to be reconsidered and various concessions had to be granted, especially in taking secondary school final examinations and in complying with foreign language requirements.

In order to promote active old age, several initiatives have been taken in higher education in the recent years, as a result of which the institutes of higher education began to be more open to the older generations:

<http://www.ppk.elte.hu/rendezveny/hke>

<https://uni-milton.hu/bevezeto/>

1. **In your country / region, are there studies and / or data available on the access of older persons to the right to education, training, life-long learning and capacity-building in older age?**

In Hungary, the data required for exercising the rights of, and meeting the obligations of those taking part in higher education are contained by the Higher Education Information System, while the data are handled by the Educational Authority (<https://www.oktatas.hu/>).

When the training programs are completed, the institutions that provide adult education also have to supply data on their training programs, and the operation of the Adult Education Information System is currently the responsibility of the Pest County Government Office (http://www.kormanyhivatal.hu/hu/pest/szervezeti-egysegek-elerhetosegei/szakkepzesi-es-felnottkepzesi-foosztaly/felnottkepzesi-osztaly/kapcsolodo-anyagok felnottkepzes/adatszolgaltatas).

In the framework of the National Statistical Data Collection Program (Hungarian acronym: OSAP), the Central Statistical Office also keeps statistics on adult education, about participation in various training courses (http://www.ksh.hu/osap).

**Equality and non-discrimination**

1. **In your country / region, is age one of the prohibited grounds for discrimination in relation to education in older age?**

Any discrimination on grounds of age is prohibited by the Fundamental Law of Hungary[[3]](#footnote-3).

Using the services provided by higher and adult education is not age dependent, older persons are also free to choose from the majors and training programs offered by the institutions. The criteria for participation in a course, the input and output requirements are equally valid for everyone, however, the participation of this age group in higher and adult education is more difficult for various reasons[[4]](#footnote-4), this is why positive actions should be taken by the state, in order to ensure as wide participation of the elderly in higher and adult education as possible.

**Accountability**

1. **What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to education, training, life-long learning and capacity-building?**

In Hungary, older persons have the same options for legal remedy as those that are ensured for anybody by the legal provisions regarding higher education, as well as the laws regulating vocational and adult training.

**GUIDING QUESTIONS FOR THE FOCUS AREAS OF THE X SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING**

 **Social protection and social security (including social protection floors)**

**National legal framework**

1. **What are the legal provisions in your country that recognize the right to social security and social protection, including non-contributory and contributory old-age benefits? Do they have a constitutional, legislative or executive foundation?**

Article XIX of the Fundamental Law of Hungary

(1) Hungary shall strive to provide social security to all of its citizens. Every Hungarian citizen shall be entitled to assistance in the case of maternity, illness, disability, handicap, widowhood, orphanage and unemployment for reasons outside of his or her control, as provided for by an Act.

(2) Hungary shall implement social security for the persons referred to in Paragraph (1) and for other persons in need through a system of social institutions and measures.

(3) The nature and extent of social measures may be determined in an Act in accordance with the usefulness to the community of the beneficiary’s activity.

(4) Hungary shall contribute to ensuring the livelihood for the elderly by maintaining a general state pension system based on social solidarity and by allowing for the operation of voluntarily established social institutions. The conditions of entitlement to state pension may be laid down in an Act with regard to the requirement for stronger protection for women.

Sections 32/B-32/C of Act III of 1993 on Social Governance and Social Benefits (allowances to the elderly), as well as government decree No. 63/2006. (III. 27.) on the claims for and determination of social benefits in cash and in kind, as well as detailed rules on disbursement

**Availability**

1. **What steps have been taken to guarantee universal coverage, ensuring that every older person has access to social security and social protection schemes including non-contributory, contributory and survivor old-age pensions, to ensure an adequate standard of living in older age?**
2. **What steps have been taken to ensure that every older person has access to social security and social protection schemes which guarantee them access to adequate and affordable health care and support services for independent living in older age?**

2-3: The following benefits are in place for terminating the absolute lack of services but not for maintaining a reasonable standard of living:

a.) *Allowances to older persons* meana financial social benefit that is provided to elderly persons who have no income to secure their livelihood, depending on social needs, which is the competence of the district government offices (an amount between HUF 25,630 and 40,700, appr. EUR 80-100).

b.) The *old-age benefits to be provided to those who provide long-term care* were introduced with effect from January 1, 2018 by the amendment of the Social Act. Those retiring parents who have been raising their children who have a permanent condition or a severe disability for at least 20 years may apply for this new form of benefit. Act CLXXVIII of 2017 on the Amendment of Some Laws on Family Support and Other Laws introduces a new type of supplementary pension allowance called old-age support for those who provide long-term care. In order to compensate for the situation in which parents who provide long-term care to their children cannot pursue any gainful activities, or can only do so to a limited extent, the amount of pension that can be given to them may be lower.

Pursuant to the Social Act, public health care services are also available on grounds of social need, which means an allowance provided for a socially needy person to contribute to reducing their expenses of preserving or restoring their health conditions, which is accessible for older persons in the same way as for those who are in active age.

**Adequacy**

1. **What steps have been taken to ensure that the levels of social security and social protection payments are adequate for older persons to have access to an adequate standard of living, including adequate access to health care and social assistance?**

Social security amounts include pensions and social benefits. As long as they exceed the amount of subsistence wages, they allow independent living in old age, however, they are often not sufficient to ensure a reasonable living standard.

A widow’s pension is a regular financial allowance that is based upon earnings that constitute a pension contribution base, which may be provided to the spouse or common-law spouse of a deceased insured person in the case of achieving the predefined service period, if certain criteria are met.

Old-age pension is a pension granted on a universal basis, which the person who is not in an insurance relationship receives after reaching a certain age (retirement age) and achieving a predefined service period. The eligibility criteria should be met in conjunction. Those persons are eligible to receive full old-age pension who have reached the retirement age that has governing effect for them, have achieved a service period of at least 20 years and have no insurance relationship either in Hungary or abroad.

**Accessibility**

1. **What steps have been taken to ensure that older persons have adequate and accessible information on available social security and social protection schemes and how to claim their entitlements?**

We are not aware of any steps that have been taken specifically to help older persons have adequate and accessible information.

1. **The design and implementation of normative and political framework related to social security and social protection benefits included an effective and meaningful participation of older persons?**

In its decree of February 2012, the Government provided on establishing the Human Rights Working Group, the key task of which is to monitor the enforcement of human rights in Hungary, to consult with civil society organizations, advocacy and professional organizations, as well as constitutional organs, furthermore, to promote the professional communication related to the enforcement of human rights in Hungary. It is in this context that the Thematic Working Group Responsible for the Rights of the Elderly is operating as well. Such thematic working groups discuss the current human rights issues and submit proposals to the decision-makers.

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**Equality and non-discrimination**

1. **Which are the measures adopted to ensure equitable access by older persons to social security and social protection, paying special attention to vulnerable groups or those in a vulnerable situation?**

Within the pension system, equitability pensions (extraordinary old-age pension, widow’s pension and orphanage benefits) and one-time pension benefits are accessible in the case of the existence of predefined criteria, in exceptional circumstances.

Within the framework of the social security system, social benefits to the elderly is a form of support provided to older persons without an income securing their livelihood in the case of the existence of predefined criteria.

**Accountability**

1. **What mechanisms are in place to ensure that social security and social protection schemes are effective and accountable?**
2. **What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for denial of their right to social security and social protection?**

8-9.: Seeking redress is possible through claiming social security allowances, the procedure that is so conducted qualifies as an administrative procedure, thus also, the administrative legal remedies such as appeals belong to this category, as well as an administrative lawsuit conducted before a court.

Furthermore, anyone may turn to the Commissioner for Fundamental Rights if they think that any action or omission of an authority infringes a fundamental right of the person submitting the petition or presents an imminent danger thereto (hereinafter referred to together as: ’impropriety’), provided that this person has exhausted the available administrative legal remedies, not including the judicial review of an administrative decision, or that no legal remedy is available to him or her.

1. Pursuant to Paragraphs (1)-(2) of Article XI of the Fundamental Law of Hungary, every Hungarian citizen shall have the right to education. Hungary shall ensure this right by extending and generalizing public education, by providing free and compulsory primary education, free and generally accessible secondary education, and higher education accessible to everyone according to his or her abilities, and by providing financial support as provided for by an Act to those receiving education. [↑](#footnote-ref-1)
2. including, for example: literacy and numeracy programs; adult education; vocational and professional training; information and communication technologies (ICT); and informal, recreational and community-based programs, including volunteering [↑](#footnote-ref-2)
3. Pursuant to Paragraph (2) of Article XV of the Fundamental Law of Hungary, “Hungary shall guarantee the fundamental rights to everyone without discrimination and in particular without discrimination on grounds of race, color, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.” [↑](#footnote-ref-3)
4. See Section 2 (Availability, accessibility and adaptability) [↑](#footnote-ref-4)