



REPUBLIC OF CROATIA
Ombudsman

Zagreb, 6 April 2018

Formal input for the Ninth Session of the Open-ended Working Group on Ageing

- Autonomy and Independence

Following the request by his Excellency, Mr. Martín García Moritán, the Ombudswoman of the Republic of Croatia, as an “A status” NHRI, hereby submits formal input to the work of the forthcoming Ninth Session of the Open-ended Working group on Ageing, on the issue of autonomy and independence.

The right to autonomy and independence of older persons in Croatia is presumed without being explicitly stated, since all persons over the age of 18 have full legal capacity, unless a court of law decides otherwise. Nevertheless, autonomy and independence of older persons are often hindered, both as a consequence of legal proceedings to limit their legal capacity, as well as by a lack of support and understanding from their healthcare professionals, social workers, and society in general.

In cases where older persons are fully legally capable, but might foresee a deterioration in their health, they are free to choose a temporary guardian for any future legal capacity proceedings and give a do-not-resuscitate order. Also, in cases of age-related mental difficulties, the autonomy of older persons is limited since they are, in regards to some of their actions and affairs, either personal (eg. decisions on whether to move, or regarding their health) or property-related (managing the existing estate and handling present and future income), put under guardianship. At this time, there is no legal framework for supported decision making for persons with limited legal capacity, although it is envisaged by the National strategy for equal opportunity for persons with disabilities 2017-2020. Furthermore, by 2020 there should be a possibility for supported decision making for persons with full legal capacity based on co-determination, which could be very significant for older persons.

For many older persons with caring needs who do not have the possibility to receive care at home, LTC is a necessity, and not a choice. A fully autonomous decision on care requires stronger support systems and policies that will provide older persons with at-home support and allow their family members to combine work life with their caring duties. Although 17% of persons in the ages between 35 and 49 provide care to their older family members, they have no institutional support, no option to use a sick or unpaid leave, and often rely on the good will of their employers.



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As society perceives older persons as a homogenous group dependant on others, they are often treated in an unacceptable manner. The professionals they rely on the most, such as doctors and social workers, show little restraint in describing older persons as „difficult, unreasonable and attention-seeking“. According to one research, 9% of older persons in Zagreb were denied medical assistance due to the perception that they visit the doctor because they are bored or hypochondriac, which, as a consequence, prevents them from making decisions about their health and even suggests that those decisions should be made by others. This was the case with an 85-year-old woman who wanted to discuss her upcoming medical procedure and brought a family member as company. However, she was very unpleasantly surprised as her doctor ignored her and her questions, and explained the options and medical risks of the surgery only to the family member. Another example is a 94-year-old woman who reported her granddaughter for domestic violence, however, the social workers, despite their obligation, failed to contact the victim and inform her about her rights and options, because the granddaughter assured them that the victim was delusional and off her medications.

When the autonomy of older persons is limited, either legally or de facto, an array of their rights is brought into question – their right to life, liberty and security, freedom from torture, exploitation, violence and abuse, their right to privacy and mobility, their freedom of expression and access to information.

Older persons should not be limited in their decision making even out of best of intentions, aiming to protect them. At the 8th session of the OEWG on Ageing, we emphasized that maintenance-until-death contracts, can lead to financial abuse of older persons. In the context of autonomy and independence of older persons with full legal capacity who wish to enter such contracts, prohibitions that could lead to overprotection go against their autonomy – in order to fully respect it, the state has to provide quality information, protection mechanisms and timely judicial proceedings, as well as a welfare safety net for the worst case scenario.

However, at this time, Croatia still lacks national policy documents that will recognize the right to autonomy and independence of older persons and provide appropriate mechanisms to seek redress.

OMBUDSWOMAN OF CROATIA

Lora Vidović