

Replies by the Federal Republic of Germany to the
**Guiding Questions for the Focus Areas of the 9th Session of the Open-ended Working
Group on Ageing: Autonomy and Independence**

- 1) **In your country/region, how is the right to autonomy and independence of older persons defined in legal and policy frameworks?**
 - The German constitution also guarantees fundamental rights for older persons, persons with dementia, and for persons in need of assistance and long-term care; legal framework conditions, in particular as regards benefits for an independent, self-determined, and dignified way of living, are stipulated, for instance, in the Long-term Care Insurance Act too; for example, it lays down that assistance shall aim to restore or retain the beneficiaries' physical, intellectual and mental strengths and capacities, also by means of therapeutic care. In this regard, persons in need of long-term care have the right to choose. They can choose between institutions and services offered by various providers. As far as appropriate, their wishes and desires shall be met within the scope of the law relating to benefits and services. If possible, the long-term care recipients' wishes for same-sex caregivers shall be taken into account. Comparable provisions for persons with disabilities can be found in the Federal Participation Act, transposing the UN Convention on the Rights of Persons with Disabilities into national law.
 - In addition, adult guardianship is another instrument for persons affected in Germany that enables older persons to maintain their autonomy and, within their abilities, lead a life in line with their wishes. In contrast to the former guardianship system, which involved a legal incapacitation, the new adult guardianship has to be limited to matters which the person affected cannot manage on his/her own.

- 2) **What other rights are essential for the enjoyment of the right to autonomy and independence by older persons, or affected by the non-enjoyment of this right?**
 - Right to comprehensive information and counselling to maintain autonomy;
 - Protection against discrimination (e.g. the General Equal Treatment Act), inter alia on grounds of age.

- 3) **What are the key issues and challenges facing older persons in your country/region regarding autonomy and independence? What studies and data are available?**
 - Data is regularly collected through social reporting (Reports on the Elderly, the German Ageing Survey (DEAS), Long-term Care Reports, Reports on Poverty and Wealth, and the Federal Government Report on Participation with Regard to the Circumstances of Persons with Impairments);
 - Being in need of support can particularly limit the capacities for autonomous living and social participation, making the support potential of the family and neighbours more important;
 - Germany's Seventh National Report on the Elderly reveals wide regional and individual disparities;
 - It is important to prevent (also partial) heteronomy by the family, adult guardians, out-patient nursing services and facilities, funding parties of long-term care and support needs;
 - Challenge of financial autonomy in old age;

- 4) **What steps have been taken to ensure older persons' enjoyment of their right to autonomy and independence?**
 - A National Action Plan on Implementing the UN Convention on the Rights of Persons with Disabilities - amended by a second National Action Plan 2.0 in 2017 - was adopted with the involvement of all Federal Ministries and civil society.
 - The definition of long-term care needs was redefined in long-term care-related legislation (i.e. the Social Code Book Eleven, the Social Code Book Twelve, and the Federal War

Victims' Compensation Act), i.e. improved access to long-term care insurance benefits, broadening the group of beneficiaries, significant extension of benefits and services; the relevant criterion for assessing the grade of care is no longer the time needed for care tasks but the level of remaining autonomy;

- A multitude of publicly funded self-help groups, organisations, and contact points exists throughout Germany;
- Constantly raising public awareness of contemporary images of old age, funding of senior citizen organisations and pilot projects, construction and living programmes as well as encouraging commitment;
- Besides adult guardianship, the German law provides further opportunities for strengthening and maintaining self-determination, e.g. by issuing an enduring power of attorney. For instance, since 2017, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has been funding a pilot project called "SelbstBestimmt im Alter! - Vorsorgeunterstützung im Team" (Self&Determined in Old Age! - Prevention Support within a Team") at 15 sites throughout Germany.

5) What mechanisms are necessary, or already in place, for older persons to seek redress for the denial of autonomy and independence?

- Complaints and objections can be lodged with the Health Insurance Medical Service (MDK), supervisory bodies of residential institutions, or the National Agency;
- Where appropriate, contractual or tortious liability on the part of the residential institution may be claimed under civil law at ordinary courts.

6) What are the responsibilities of other, non-State, actors in respecting and protecting the right to autonomy and independence of older persons?

- Non-state actors, associations of older persons and their relatives, and self-help organisations, such as senior citizens' offices, represent the older persons' interests and support their autonomy and independence;
- Thanks to technical events and publications at all levels, senior citizen policy topics are established, circulated and kept up to date in cooperation with persons affected;
- Numerous - in particular voluntary - local actors together with their networking partners contribute to ensuring participation and involvement in old age;
- Local pilot projects offer suggestions, try new approaches and promote the knowledge transfer between non-state and governmental stakeholders.