

AUTONOMY AND INDEPENDENCE

1. *In your country/region how is the right to autonomy and independence of older people defined in legal and policy frameworks?*

With regard to positive legal regulations, in the Republic of Serbia the right of older people to autonomy and independence is not defined as a separate citizens' right. The Constitution of the Republic of Serbia, as well as ratified international documents, guarantee to the citizens of the Republic of Serbia human and minority rights, freedoms and their direct implementation. The right to legal personality defines that everyone shall have legal capacity. Upon becoming of age all persons shall become capable of deciding independently about their rights and obligations¹. A person may be fully or partially deprived of legal capacity only in the legally stipulated procedure before the competent court². Accordingly, we may speak about the real right of every legally capable citizen to be autonomous and independent in making their own decisions, and in doing so, to act pursuant to positive legal regulations.

2. *What other rights are essential for full enjoyment of the right to autonomy and independence by older people or affected by non-enjoyment of this rights?*

This group of rights definitely includes economic rights, and the right to health care and social security. If the citizens' subsistence is threatened, and at the same time they are old and are not able to earn a living, it may threaten their right to autonomy and independence in making decisions concerning their own life. In his Annual Report for 2017, the Protector of Citizens points out that the elderly, although they make a significant part of the population of the Republic of Serbia, are not sufficiently recognised in the society as a particularly vulnerable group. According to all surveys³, older people fall into one of the groups which most often face discrimination in Serbia encouraged by stereotypes and prejudice against older people.

A precondition to preserve and implement the right to autonomy and independence is their full legal capacity. Although the act of depriving them of their right to legal capacity and appointing a guardian is established in the legal system for humane reasons to protect person and person's best interests, in practice this institution is often misused for the purpose of misappropriation of property and income of the person whose rights and interests the guardian should look after. Older persons fall into a group of citizens who are at heightened risk for partial or full loss of legal capacity, most often due to their poor health.

¹ Article 37, Constitution of RS, „Official Gazette of RS“, issue No. 98/06.

² „Official Gazette of RS“, issue No. 18/05, 72/11 - State Law and 6/15.

³ Surveys: „Position of Older persons in Cities“ and „Well-kept Family Secret - the Abuse of Older Persons“; read more at: <https://www.redcross.org.rs/media/1670/dobro-cuvana-porodicna-tajna-e-knjiga.pdf>.

3. *What are key issues and challenges facing older people in your country/region regarding autonomy and independence? What studies and data are available?*

Economic vulnerability and lack of support in the community may be defined as most serious challenges to autonomy and independence of older people. The problems that most often bother older people are poverty and neglect by their family members, including disposal of their property without their consent, dissatisfaction with exercising their right to financial support when they find themselves in a state of poor financial and other living conditions. Austerity measures, despite amendments to the law⁴ which brought a slight increase in pension payments, still do not generate sufficient financial resources, further leading to the situation in which older people cannot provide for necessary medication, food and other basic needs. In addition to the measures which provide for the subsistence benefits for this group of citizens, other benefits payable by the state are not sufficient to improve the quality of living. In compliance with positive legal regulations in the sphere of social insurance, support services rendered to elderly members in a community fall within the competence of local self-government. Through its work, and based on the addresses of the citizens and NGOs, the Protector of Citizens has noticed a lack of long-term support services for older members of the community which would enable them an independent life, as an alternative to residential accommodation. When speaking of the studies on this topic, we mention here the „Dimmed City Lights“ – a study on the position and the needs of elderly households in New Belgrade, published by „AMITY“ – The Power of Friendship, Belgrade, 2017.

4. *What steps have been taken to ensure older persons enjoyment of their right to autonomy and independence?*

Thanks to the work of independent institutions for the protection of human rights in Serbia, NGOs and international organisations, the problem of insufficient independence of older people in making decisions has been recognised, first of all regarding their decision-making about the selection of the residential accommodation as their housing option, as well as of the right of people who have already been accommodated residentially to decide for themselves about many issues regarding the arrangement and organisation of their everyday life at retirement homes. Of course, there are many concrete things yet to be done, first of all in the field of informing older citizens about their rights and how to ensure that their rights are respected and protected.

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

With reference to this specific question, we point out once again that the right to autonomy and independence of older people is not defined as a separate right. Accordingly, if in a specific case one keeps in mind the protection of the right of the

⁴ Budget System Law, „Official Gazette of RS“, issue No. 54/09, 73/10, 101/10, 101/11, 93/2012, 62/13, 63/13 - revised, 108/13, 142/14, 68/15 - State Law, 103/15, 99/16 и 113/17.

residentially accommodated persons vis-à-vis the institution in which they stay, they may lodge a complaint to the Social Welfare Inspectorate of the Ministry of Labour, Employment, Veteran and Social Policy. Namely, the Law on Social Welfare sets out that in addition to monitoring professional expertise of the social welfare institutions and the providers of social welfare services the competent Ministry also carries out inspections of their work through social welfare inspectors.

If speaking about tangible and intangible damage suffered by person, he may address the competent court in order to execute his right to compensation, in accordance with the law (The Law on Obligations⁵, The Civil Procedure Law⁶). Also, the citizen has the right to lodge a constitutional complaint with the Constitutional Court against acts and actions of government bodies or statutory authorities which violate or deny him his human and minority rights and freedoms guaranteed to him by the Constitution in case other legal remedies for their protection have been exhausted or have not been provided, or they have no legal right to be protected by the Court. Besides, the constitutional complaint may also be lodged even if all legal remedies have not been exhausted, in case when the person's right to legal proceedings is violated within a reasonable time.

As has been already mentioned, the right to autonomy and independence of older people is not defined as a separate right. However, the need to protect older people in this regard is being increasingly recognised. Therefore, it is advisable that the state, through amendments to the existing laws defines the right of older people to autonomy and independence as a separate right and, accordingly, to establish new mechanisms for its protection, because the existing mechanisms in their essence do not enable older people to efficiently protect their right to autonomy and independence.

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

In the Republic of Serbia there is a number of associations which are exclusively focused on the rights of the older people. Their role is very significant in making the problems older people in Serbia are facing in their everyday life visible, to propose better legal solutions for improving the status of older persons, as well to give support to older people through various activities carried out by these associations.

⁵ Official Gazette of SFRJ", No. 29/78, 39/85, 45/89 - Decision by CCY and 57/89, "Official Gazette of FRY", No. 31/93 and "Official Gazette of SCG", No. 1/03 - Constitutional Charter

⁶ Official Gazette of RS", No. 72/11, 49/13 - Decision by CC, 74/13 - Decision CC and 55/14.