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The Federal Republic of Germany - Answer to the

**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**

**Preliminary remarks*:***

With regard to the results of the 9th session of the OEWGA of July 2018*,* the elements intended to strengthen the rights of older people presented by Germany as part of the session are forwarded as follows.

With these, Germany would like to make an additional constructive contribution to further promote the substantial public debate on strengthening the rights of older people on the group of themes stated before. Germany does not wish to give the impression of striving for a binding, normative ruling at UN level. **On the contrary, the elements listed below describe the parameters within which the substantial debate should be held, in Germany's view. *[[1]](#footnote-1)***

**National legal framework**

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

*Answer:*

*The rights of older people with and without a need for assistance are enshrined in the German Basic Law. According to that, all people have autonomy. The UN Convention on the Rights of Persons with Disabilities with its legal definition of "autonomy" (in article 3 and article 12 as well as article 19) corresponds to federal law in Germany. And the Long-Term Care Insurance Act (Social Code Book XI)[[2]](#footnote-2) for instance also promotes an independent and self-determined way of living of older people in need of long-term care.*

**Normative elements**

2. What are the key normative elements of the rights to autonomy and independence? Please provide references to existing laws and standards where applicable.

*Answer:*

*All people have autonomy – it refers to the subject as a sovereign of himself or herself and of his or her individuality. Therefore it can neither be "earned" nor does one have to be "capable" of it. It does not have an expiration date and thus stays the same irrespective of age and level of need for assistance. Autonomy is closely linked with concrete options to choose from.*

*Autonomy as a basic human rights principle is inextricably linked with human dignity and the principle of equality.*

*Autonomy is impaired when the individual is robbed of their scope of decision-making consisting of options and support, for example when society does not offer any assistance within the context of its responsibility.*

*According to the Long-Term Care Insurance Act for example, people in need of assistance can choose between care facilities and – if appropriate – their wishes and preferences (same sex of the caregiver) are also taken into account. Thus, autonomy is taken into account and strengthened.*

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

*Answer:*

*Autonomy as a basic principle of human rights is inextricably linked with human dignity and the principle of equality. (see answer to question no. 2)*

**Implementation**

4. What are the policies and programmes adopted by your country to guarantee older person’s enjoyment of their right to autonomy and independence?

*Answer:*

*In Germany, the instrument of legal guardianship is currently being investigated in a broadly conceived participatory discussion process, with a view to article 12 UN Convention on the Rights of Persons with Disabilities, with the objective to better protect the autonomy and right to self-determination of people in need of care and to improve the quality of legal guardianship.*

*Within this framework it is discussed, inter alia, how prior to legal guardianship so-called "other“ assistance can be used in such a way as to avoid establishing legal guardianship or to decrease its extent and to delay it respectively.*

*In another field of action, the Federal Government seeks to combat "ageism" effectively. Thereby we understand "ageism" as social and economic discrimination of individuals based on their advanced age. Here awareness campaigns are helpful, such as the exhibition "Images of Ageing", which Germany has made widely available in three languages now – nationally and internationally.*

*Additionally, Germany has notably strengthened participation in particular of senior citizens and their organisations, especially in legislative procedures which concern senior citizens to a special degree but also in political discussion processes. This also pertains to participation in international discussion processes such as the OEWGA on strengthening the rights of older people. Before and after the OEWGA debates, multipliers from science, practice and also senior citizens' NGOs in Germany are informed and involved. The Federal Ministry of Health is conducting a scientific project on the subject of "Self-determined living in a long-term care institution – human dignity of people in need of care during the last phase of life".*

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

*Answer:*

*Currently, we already have tried-and-tested mechanisms in Germany in the area of criminal law and courts, and there are also possibilities to complain and lodge appeals in the field of long-term care. We face the challenge of how to also accept and possibly support the voluntary relinquishment of self-determination, for instance to dependents, as an autonomous course of action. The voluntary relinquishment of autonomy also needs to be protected.*

**Equality and non-discrimination**

6. 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 groups in vulnerable situations?

*Answer:*

*Please see answers to questions no. 1 and 4.*

**Participation**

7. Does the design and implementation of a normative and political framework related to autonomy and independence include an effective and meaningful participation of older persons?

*Answer:*

*Both for increased participation and for improved self-determination and autonomy in social environments accessibility, security, mobility of the individual and a functioning infrastructure are essential, especially in the fields of consulting and provision as well as cultural participation offers. Therefore, such concrete improvements/measures are always to be taken into account with normative as well as political framework elaboration. At the same time, it is also necessary to strengthen educational processes throughout, since being informed is a prerequisite for an autonomous decision.*

**Accountability**

8. 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?

*Answer:*

*In the field of long-term care for example, complaints can be addressed to the Health Insurance Medical Service (MDK) or to the supervisory bodies of inpatient care facilities; if applicable, accountability on the part of the inpatient institution can be enforced by way of a proceeding under civil law at general courts of law. (also see answer to question no. 5)*

1. *Several of the following elements are taken from already existing human rights treaties which are binding for the contracting states in international law;*  [↑](#footnote-ref-1)
2. *Social Code (XI) - Eleventh Book - Social long-term care insurance*  [↑](#footnote-ref-2)