**Joint submission by AGE Platform Europe, HelpAge International, The Law in the Service of the Elderly and the National Association of Community Legal Centres Australia[[1]](#footnote-1)**

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**Normative elements of the right to autonomy and independence**

**Authors**

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**Question 2: Normative elements**

**Normative elements of the right to autonomy and independence**

**Affirmation**

1. Older persons have the right to personal autonomy and legal capacity to make decisions, to determine their life plans and to lead autonomous and independent lives in line with their will and preferences and on an equal basis with others. This includes the right to have those decisions respected.

**Scope**

1.1 The right shall apply to autonomy, independence, self-determination, and choice and control in all aspects of life.

**State obligations**

2. States Parties shall take appropriate and effective measures:

2.1 To ensure older persons have access to services, including support to exercise legal capacity, which enable them to exercise their right to autonomy and independence including support necessary for them to make, communicate and participate in decisions.

2.2 To ensure mechanisms designed to enable the exercise of older persons’ right to autonomy and independence recognize older persons’ right to legal capacity on an equal basis with others in all aspects of life.

2.3 To ensure older persons have access to a range of support services in order to support independent living and inclusion in the community, and to prevent isolation or segregation from the community. Such support should be available on an equal basis in home, community and residential settings to ensure older persons’ enjoyment of their right to choose where and with whom they live.

2.4 To ensure older persons living in shared residential settings are provided with specific and tailored support services to exercise their right to autonomy and independence in order to accommodate any cultural, spiritual, professional and environmental challenges of these facilities.

2.5 To ensure the full, effective and meaningful participation of older persons in family, social, cultural, economic, public and political life and educational and training activities.

**Normative elements of the right to equal recognition before the law**

**Affirmation**

1. Older persons everywhere and at all times have legal capacity and the right to equal recognition before the law on an equal basis with others.

**Scope of the right**

1.1 Older persons have legal capacity on an equal basis with others in all aspects of life.

1.2 Older persons have the right to designate one or more trusted persons to assist them to make decisions based on their instructions, will and preferences.

1.3 Older persons have the right to make legally binding documents advance directives to express their will and preferences in advance.

1.4 Older persons have the right to participate in, and challenge, any decisions that interfere with the exercise of their legal capacity, including decisions that seek to substitute, or offers or requests to support, their decision-making.

**State obligations**

2. State Parties shall take appropriate and effective measures:

2.1 To ensure older persons have access to the mechanisms and support they may require to exercise their legal capacity in accordance with their will and preferences, and on an equal basis with others.

2.2 To ensure older persons have access to appropriate and effective safeguards to prevent abuse in the exercise of their legal capacity, and to respect their will and preferences in accordance with international human rights law, including the right to legal counsel; and which are free of conflict of interest and undue influence and are tailored to the older person’s circumstances.

2.3 To ensure effective access to justice and redress for older persons including through provision of procedural accommodations and special measures to prevent unnecessary delay in the legal process.

2.4 To ensure appropriate training in this area for support and trusted persons, support and other service providers, including but not limited to notaries and medical personnel, and those working in the administration of justice, including police and prison staff.

1. \* For further information contact Bridget Sleap bsleap@helpage.org [↑](#footnote-ref-1)