



**Paneldiscussions - contribution Prof. Dr. von
Schwanenflügel on**

Right of elder persons to Autonomy and Independence

Thank you , *Mrs Lidija Dracec, chairperson*

**The TOPIC: Autonomy and Independence especially
*Measures to enhance the promotion and protection of the
human rights and dignity of older persons: best practices
lessons learned and identification of areas and issues
where further protection and action is needed, is of highest
interest for Germany. We organised – in preparation for
today's meeting several workshops and experts
consultations – and with this we encouraged in Germany
as well a broader national debate on this point, not only
with our national Human Rights Institute but as well with
our umbrella organisation of Senior Citizens' Organisations
at various occasions.***



Therefore I thank you for the occasion to speak to you here on behalf of Germany today.

1. Autonomy and Independence

Do we all accept that elder persons have the right to determine their lives – independently – with no expire date?

If yes, we must also be aware of the fact that we have to provide concrete options. This means, inter alia, that they can make autonomous decisions on all matters that affect them, especially regarding their assets, property and possessions, income and finances, place of residence, health, medical or social care as well as end-of-life decisions and funeral arrangements. **How do we ensure that in Germany?**

2. We look at the Human Rights framework:

Internationally recognised human rights standards and principles such as those enshrined in the international legal instruments on human rights, cover older persons and protect them.



The protection of older persons with impairments is, for the most part, regulated in the UN Convention on the Rights of Persons with Disabilities that formulates new requirements for the removal of barriers and that promotes the philosophy of support and assistance in the context of autonomy. The requirements for actual autonomy and self-determination are increasingly the subject of discussions in an effort to ensure that a self-reliant life-style, for instance in the family, remains possible. As a result, supporting ways to achieve autonomy and self-reliance is becoming ever more important.

2014 saw the appointment of the first Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte of Chile, by the President of the Human Rights Council. In 2015, the Independent Expert dedicated her report to the topic of autonomy and long-term care and presented it to us in the OEWG-A in December 2016.

All of these developments of recent years have served to make the human rights framework benefiting older persons more concrete. They have disseminated and strengthened the



paradigm shift towards the legal subject-centered approach. Moreover, such developments send the signal that these topics must be awarded greater attention by the political decision-makers.

Let me describe some Cornerstones from Germany for the further discussion:

3. How do we define the substantive specifications/ major characteristics of autonomy and self determination?

Firstly – some words on the definition of Autonomy itself:

Autonomy is a Greek word and originally means "Not controlled by others or by outside forces"

Modern subject concept - the subject as the sovereign of their own person and individuality.

Autonomy cannot exist in the absence of decisions. Autonomy needs options and informed individuals.



Autonomy is not a human right, but a human rights principle- thus inseparably linked to human dignity and the principle of equality.

Having this in mind: I would like to underline, that in Germany the constitution guarantees fundamental rights of older persons, persons with dementia and for persons in need of assistance and long term care. In particular e.g. in the Long – term care Insurance Act benefits for an independent, self-determined and dignified way of living are stipulated. In this field persons in need of can chose between institutions and services offered by various providers. As far as appropriate their wishes and desires shall be met (ex. same sex caregivers).

- Beside the field of care , the well used instrument of adult guardianship is another tool that helps persons with need for support in legal affairs to maintain their autonomy and to lead their lives in line with their own wishes, at their homes



4. Legal provisions and measures

- The UN Convention on the Rights of Persons with Disabilities includes a legal definition of autonomy (Article 3, Art. 12 and 19).
- Autonomy is according to the UN-CRPD inseparably linked to human dignity and the principle of equality.
- All people have autonomy; nobody needs to earn it or needs to prove the ability to wield it.

Reforms to improve autonomy and self-determination

- In Germany Guardianship is actually with regard to Art 12 of the UN-CRPD under revision – in order of even better guarantee the will and autonomy of the person who is in need of support;
- In the fore field of guardianship/(often replacing it) the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth is supporting a three years pilot program called: Self&Determined in Old Age! Prevention-Support within a Team!“.



- Another field of action is - How to best fight „Ageism” – understood as the social and economic discrimination against individuals on the grounds of their age:

5. Further policies and measures

- We held at different levels discussions in various policy realms on older persons' autonomy and self-determination with two remarkable deductions/warnings:
 - Autonomy can even be forced on the individual, if society refuses to step up - this tends to be misrepresented as the older persons' own choice;
 - To be avoided: Abridgement of autonomy, if the individual is deprived of any decision-making possibilities due to a lack of options and support, since the level of responsibility borne by society no longer allows any assistance.



Raising Awareness

In Germany there has been a constant drive to raise public awareness of contemporary images of ageing (one example is our touring exhibition “Whats-old-anyway?”) support to encourage the participation of older persons by funding senior citizens’ organisations and pilot projects, construction and living programs owing to the increasing ageing of our society.

Implementation of policies to enhance older persons' autonomy and self-determination

Example come to the attention of the Anti-Discrimination

Agency: A man had his overdraft facility slashed by his bank with the reasoning that, at 65, he was nearing the end of his life and could not be trusted to pay it back.

Another example of ageism is the Rosenblatt case where the ECJH found that compulsory retirement under a collective agreement is justified from a certain age.



These examples also serve as food for serious thought on how to best further strengthen the rights of older persons.

Mechanisms actually available are:

The German penal law and the courts;

Or- in the field of care: Complaints and objections can be lodged with the Health Insurance Medical Service (MDK) or at supervisory bodies of residential institutions;

Where appropriate, contractual or tortious liability on the part of residential institution may be claimed under civil law at ordinary courts.

- However- we as well have to keep in mind:
 - Increasing normativation only promotes autonomous lifestyles - but it also weakens autonomy precisely because assistance and support options become more remote;
 - The deliberate handing over of autonomy to family members is supposed to remain in place - doing so is also an act of autonomy.



6. Actors

Non state actors, associations of older persons and their relatives, and self-help organisations, such as senior citizens' offices, represent the older persons' interest and support their autonomy and independence.

Thanks to events and publications at all levels, senior citizens 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.

- De-institutionalisation is expected to enable control and self-determination in life even in difficult situations.



7. Remarkables - raising from the Experience, challenges and good practice examples from Germany

20 per cent of the population are 60 years and older – how can we protect them sufficiently well?

- Long-term Care Charter lays down minimum standards in long-term care.
- Ageing is not merely biological - stereotyping and sociocultural labels are remarkably effective.
- To strengthen Autonomy and self-determination have in social spaces - are needed: accessibility, the individual's safety and mobility, an efficient infrastructure, especially in the fields of consultation, care and services, as well as cultural participation.
- The social exclusion of marginalised groups must be avoided.
- Dilemma of autonomy - even the voluntary and complete renunciation of autonomy should be protected.



- Strengthening awareness-raising processes - being informed is the very basis of autonomous decision-making.
- Catchword "soft paternalism" - from the subject to the object of care.
- Early life phase merits protection - analogy to the late life phase - contribution to the acknowledgment of vulnerability.
- Ensuring transparency on the topic is vital to resolve conflicts of interest.