

ENNHRI Submission to the OEWG-Ageing

5th May 2017

Introduction

The European Network of National Human Rights Institutions (ENNHRI) brings together over 40 NHRIs¹ across the wider European region. ENNHRI's goal is to enhance the protection and promotion of human rights throughout Europe by assisting in the establishment and accreditation of NHRIs; co-ordinating exchange of information and best practice between members; facilitating capacity building; engaging with regional mechanisms; and intervening on legal and policy developments in Europe. ENNHRI is one of four regional networks of NHRIs, which together make up the Global Alliance of NHRIs (GANHRI).

The Human Rights of Older Persons & Long-term Care

Between 2015-2017, ENNHRI carried out a European Commission-funded project, *The Human Rights of Older Persons and Long-term Care* to improve the human rights of older persons in LTC, with particular emphasis on residential care. The outcomes of the Project were widely disseminated at the OEWG's 8th Session last year, including at a joint EU-ENNHRI Side Event (on Friday 7th July).² These findings included an overview of the human rights concerns identified through pilot monitoring work carried out as part of the Project in Belgium, Croatia, Germany, Hungary, Lithuania and Romania, particularly in upholding dignity, the right to privacy, autonomy, participation, and access to justice. Textual analysis carried out by ENNHRI also highlighted recent advancements in how legal capacity has been clarified and understood in the human rights context, particularly within the CRPD, which reaffirms the right of persons with disabilities to be recognised as persons before the law (Article 12). This provides that people with disabilities³ must be recognised as having equal legal capacity (the law's recognition of the decisions that a person takes)⁴ in all aspects of life, must be provided with access to support that the individual may need in exercising her or his legal capacity and are assured of protection against any abuse of their right to have and exercise legal capacity.

¹ National Human Rights Institutions (NHRIs) are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights at the national level. A list of the A-status members is available on request.

² More information on the Project can be found at its dedicated website: <http://ennhri.org/rights4elders>

³ The Convention suggests that Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. It is important to note that this definition may be important for older persons with long-term care needs but does not cover all contexts in which an older person's right to legal capacity arises.

⁴ FRA, 2013, Legal capacity of persons with intellectual disabilities and persons with mental health problems, <http://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems.pdf>

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ENNHRI's analysis suggested that this "paradigm shift in policies towards persons with disabilities (which) signals a deeper understanding of equality"⁵ is gradually being taken into account by the European Court of Human Rights' interpretation of Article 5 of the European Convention on Human Rights. However, some recent judgements, and other Council of Europe guidance documents continue to allow for restrictions on individuals' rights for protection purposes.⁶

Members' Current Work on Ageing

In February-March 2018, ENNHRI members were invited to participate in a survey on the work they do to protect and promote the human rights of older persons. A total of 20 of ENNHRI's 42 members (45%) completed the survey. The findings showed that members were highly engaged in activities related to the rights of older persons, most notably related to monitoring rights protection, advising government and various activities to raise the awareness of various local, national and international stakeholders of the rights of older persons, and are key stakeholders for the OEWG.

Much of the work carried out by ENNHRI members seeks to promote and better protect the autonomy and independence of older persons, including through awareness raising initiatives to help older persons understand and claim their rights, as well as to facilitate duty bearers to understand and implement their human rights obligations to older persons. Several members reported issues that can impinge on the autonomy for older persons within their jurisdictions, including degrading treatment of older persons in care, structural inequality in pension provision and discrimination against older migrants.

Implications for the Human Rights Legislative Framework

International and regional human rights standards on autonomy and independence are not adequately focused on age-related issues and are inconsistent in their interpretation and implementation. The findings therefore suggest that older persons' right to autonomy and independence is inadequately protected.

Recommendations

ENNHRI underlines that all actors must work towards the effective implementation of existing human rights standards to protect the human rights of older persons. At the same time, given the normative and implementation gaps in existing international and regional human rights legislation outlined in this statement, ENNHRI recommends a new Convention on the Rights of Older Persons,⁷ which includes for the right to autonomy, independence and clarity on older persons'.

⁵ Council of Europe Commissioner for Human Rights, 2012, Who Gets to Decide? Right to legal capacity for persons with intellectual and psychosocial disabilities, https://www.coe.int/t/commissioner/source/prems/IP_LegalCapacity_GBR.pdf

⁶ c.f. Council of Europe, Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of the human rights of older persons; *Lashin v Russia* (no. 33117/02).

⁷ ENNHRI is aware of the challenges faced in drafting a Convention for the Rights of Older Persons, not least in defining the term 'older person'. From NHRIs' experience of working on older persons' human rights, ENNHRI stands ready to input to this process.