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Guiding questions on the normative content related to right to health and access to health services, answers of the Human Rights Centre / Finnish National Human Rights Institution.

The Finnish Human Rights Center (HRC) is an autonomous and independent expert institution whose task is to promote and monitor the implementation of fundamental and human rights in Finland as well as to increase cooperation and exchange of information between various actors in the field. According to its founding legislation, one of the tasks of the HRC is to participate in European and international cooperation related to the promotion and protection of fundamental and human rights.

The HRC represents the Finnish NHRI in international NHRI cooperation. The HRC forms the National Human Rights Institution (NHRI), alongside with its pluralistic 39-member Human Rights Delegation and the Parliamentary Ombudsman.

The National Human Rights Institution in Finland was established by law in 2012 and received **A-status in 2014. The status was renewed in 2019.**

Definition

1. How is the human right of older persons to the highest attainable standard of physical and mental health defined in the national and local legislation in your country? If definitions are not available, how should such rights be defined considering relevant existing national, regional and international legal frameworks?

The Finnish Constitution stipulates that the public authorities shall, as provided by law, ensure for everyone sufficient social and health services and promote the health of the population. In addition, the Law on Supporting the Functional Capacity of the Older Population and Social and Health Services for Older Persons states

welfare counties must provide elderly individuals with high-quality social and health services that are timely and sufficient according to their needs. The services must be implemented in a way that supports the well-being, health, functional ability, independent living, and participation of the elderly individual. To prevent other service needs, particular attention must be paid to services that promote rehabilitation and those provided at home.

2. The human right to health encompasses both access to health care and attention to the material and other conditions which are necessary for its full enjoyment. What provisions have been made to ensure that older persons enjoy access, on an equal basis with others, to social protection, adequate water and sanitation, adequate housing and to health education?

See answer to question 3 a.

Scope of the right

3. What are the key normative elements of the human right of older persons to the enjoyment of the highest attainable standard of physical and mental health?

Please provide references to existing standards on elements including but not limited to:

a) Prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in all matters related to health.

According to the Non-discrimination Act, no one shall be discriminated against on grounds of age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family ties, state of health, disability, sexual orientation, or any other personal characteristic. Discrimination is prohibited regardless of whether it is based on a fact or assumption concerning the person themselves or someone else. The Act applies to both public and private health care.

b) Provision of promotive, preventive, curative, rehabilitative and palliative health facilities, goods and services, as well as health care and support, including on aspects such as quality of care, long-term and palliative care and support.

According to the Law on Supporting the Functional Capacity of the older population and Social and Health Services for older persons, the Welfare County must provide older persons with high-quality social and healthcare services that are timely and sufficient according to their needs.

Services should be implemented to support the well-being, health, functional capacity, independent living, and participation of older persons. To prevent other service needs, particular attention should be paid to rehabilitation-promoting and home-based services.

Outside the Law on Supporting the Functional Capacity of the older population and Social and Health Services for older persons, there aren't specific provisions

regarding the right to health care of older persons. Quite the opposite, since for example the right to demanding medical rehabilitation organized by the Social Insurance Institution (Kela) is only available for those under 65 years of age.

c) Availability, accessibility, acceptability and quality of health facilities, goods and services as well as health care and support, including aspects such as quality of care, long-term and palliative care and support.

Welfare counties are responsible for ensuring the realization of residents' rights as provided for by law and the equal accessibility of services and other measures to be arranged.

The content of equal accessibility has been elaborated in the legislative preparatory works: Equal accessibility means that all those in need of services should have the opportunity to receive them on the same objective grounds. People must not be discriminated against on the grounds of age, gender, ethnic origin, language, or any other reason.

Several fundamental rights related to social and healthcare, such as equality and prohibition of discrimination, the right to life as well as personal integrity and security, the right to privacy, freedom of religion and conscience, the right to access information from public documents, participation rights, the right to one's own language and culture, the right to social security, and the duty of public authorities to secure the realization of fundamental and human rights.

People are equal before the law. People must be treated in legislation, courts, and administrative activities under similar circumstances in the same manner. The principle of equality also includes a prohibition of arbitrariness. However, the realization of actual equality may require deviations from formal equality within the limits of an acceptable purpose and the principle of proportionality.

d) Exercise of older persons' legal capacity on an equal basis with others, including the ability to make an informed consent, decisions and choices about their treatment and care.

According to the Finnish legislation, it is not possible to deprive anybody from their legal capacity. However, a legal guardian may be appointed in accordance with the provisions of the Guardianship Act if they need support in managing their affairs. If appointing a legal guardian is not sufficient to safeguard their interests, their legal competence may be restricted.

The Act on Patients' rights stipulates that a patient must be treated in agreement with them. If the patient refuses a certain treatment or medical procedure, they should, if possible, be treated in agreement with them in another medically acceptable manner.

If an adult patient is unable to decide on their treatment due to a mental disorder, intellectual disability, or other reason, their legal representative, close relative, or

other close person must be consulted before making an important treatment decision to determine the type of treatment that best corresponds to the patient's wishes. If this cannot be clarified, the patient must be treated in a manner that can be considered in their best interests.

There is a provision about information that should be given the patient regarding their care. A healthcare professional must provide an explanation in a manner that the patient sufficiently understands its content. If the healthcare professional does not speak the language used by the patient or if the patient, due to sensory impairment or speech impediment, cannot be understood, interpretation should, if possible, be arranged.

However, there is no legislation on supported decision making and there are thus no legal safeguards to guarantee that a person has access to support in questions regarding their care.

e) Access to prompt and effective remedies and redress when older persons' right to health is violated.

All patients can make a complaint or remark about their case. If needed, the patient ombudsman assists in making the remark. However, there is a problem here as well: if the patient themselves cannot advocate for their rights and, for example, contact the patient ombudsman, matters rarely progress.

In addition, complaints and remarks don't constitute an appeal and they can not change decisions made in health care. Their purpose is to intervene in procedures within the context of healthcare as needed.

State obligations

4. What are the measures that should be undertaken by the State to respect, protect and fulfil the human right of older persons to the highest attainable standard of physical and mental health, regarding the normative elements as provided above?

The Finnish government is currently implementing laws that result in a significant decrease in the level of Finnish social security. However, these measures are not specifically targeted at the livelihood of older persons, although they do impact it as well. A larger problem for older people at this point is that social and health services are under strict austerity measures, leading to a deterioration in the availability and accessibility of services. Wellbeing counties and municipalities need better resources to be able to provide people with adequate social and health services.

Special considerations

5. What special measures and specific considerations should be considered in developing the normative content on older persons' right to health?

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6. How should the responsibilities of non-State parties such as private sector be defined in the context of the human right to health of older persons?

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Implementation

7. What are good or promising practices and main challenges faced by your country in the adoption and implementation of the normative framework on the human right to health of older persons?

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