

Subject: Commissioner's responses to questions from the Coordinators of the work of the UN Intersessional Working Group on Ageing concerning the identification of potential gaps in the protection of the rights of older persons and how best to address these gaps (XI.503.1.2023)

**Identification of possible gaps in the protection of the human rights of older persons
and how best to address them**

Reply of the Commissioner for Human Rights of the Republic of Poland to the

QUESTIONNAIRE

Background

The Open-ended Working Group on Ageing, in its [decision 13/1](#) adopted at the thirteenth session, requested the co-facilitators to submit proposed intergovernmental negotiated recommendations to be considered at the fourteenth session of the Working Group and to be presented for consideration by the General Assembly, in accordance with resolution [77/190](#), regarding the existing international framework of the human rights of older persons and possible gaps, and options on how best to address them.

The purpose of this questionnaire is meant to facilitate the consideration of the existing international framework of the human rights of older persons and the identification of possible gaps in the protection of the human rights of older persons and how best to address them.

The questionnaire will be sent to all States Members of the United Nations, observers in the General Assembly, A-status National Human Rights Institutions, non-governmental organizations with ECOSOC Status and previously accredited organizations to the Working Group, as well as United Nations Funds, Programmes, Specialized Agencies and other UN Entities.

The Questions

Identification of gaps

1. For each of the topics that have been considered by the Open-ended Working Group since its eighth session, please state possible gaps your Government/organization has identified in the normative framework and practical implementation for the protection of the human rights of older persons. *(500 words each)*
 - a) Equality and non-discrimination
 - b) Violence, neglect and abuse

- c) Long-term care and palliative care
- d) Autonomy and independence
- e) Protection et securite sociales (y compris protection sociale minimale)
- f) Education, training, lifelong learning and capacity-building
- g) Right to Work and Access to the Labour Market
- h) Access to justice
- i) Contribution of Older Persons to Sustainable Development
- j) Economic security
- k) Right to Health and Access to Health Services
- l) Social Inclusion
- m) Accessibility, infrastructure and habitat (transport, housing and access)¹
- n) Participation in the public life and in decision-making processes²

The deadline

Deadline to send responses to the questionnaire is 24 November 2023.

All inputs will be posted online.

Submissions to be sent to Stefano Guerra stefano.guerra@mne.pt and Pedro Paranhos pedro.paranhos@itamaraty.gov.br with copy to ageing@un.org

Re. a) Equality and non-discrimination

The Commissioner for Human Rights, who also plays the role of an equality body, takes notice of unequal treatment of older persons on the grounds of age in a number of various areas. In particular, the Commissioner pays attention to the **manifestations of institutional ageism** that is reflected in existing legislation³. It can be found primarily in the legislation relating to equal treatment in Poland (the Act of 3 December 2010 implementing certain EU regulations concerning equal treatment, Journal of Laws of 2023, item 970, consolidated text), which prohibits discrimination on the grounds of age only in the area of labour, leaving older persons without legal protection in other areas such as access to health care, education or protection against violence, including crimes motivated by prejudice and hate speech of which the Commissioner has found examples when conducting a related survey⁴. Despite the general anti-discrimination

¹ To be discussed at the 14th Open-Ended Working Group on Ageing.

² To be discussed at the 14th Open-Ended Working Group on Ageing.

³ See: Commissioner for Human Rights' letter to the Ministry of Family and Social Affairs of 27.06.2022 (XI.503.2.2016), accessed 22.12.2023], <https://bip.brpo.gov.pl/pl/content/rpo-seniorzy-konwencja-onz-polityki-mrips-odpowiedz>.

⁴ Crimes motivated by prejudice. Analysis and recommendations; CHR Bulletin, 2017, p. 70, accessed 25.10.2023,

clause contained in Article 32(2) of the Polish Constitution, there are no specific regulations protecting older persons against discrimination⁵, which makes it difficult for the Commissioner for Human Rights to effectively pursue equal treatment of older persons. Another type of ageism is **internalised ageism where an individual directs against himself or herself**. Counteracting this phenomenon requires additional programmes and measures at the state level. A specific challenge in this area is **equal treatment in the era of digitalisation**⁶. The percentage of older persons who use the Internet on a daily basis in Poland remains relatively low. According to Statistics Poland, in 2021 internet users aged 60-74 made up 57.6% of the age group. Internet was used every day or almost every day by 38.8% of people from this age group, 15.2% used it at least once a week but not every day, and 3.6% less than once a week.⁷ There are no data for older groups of older persons. Nevertheless, taking into account that there's 10 million people 60+ in Poland, an estimated number of older people who do not use the Internet at all remains significant and, in the case of public services offered only via the Internet, these people remain excluded. The Commissioner receives complaints regarding the impossibility to process certain official matters other than online, e.g. the purchase of public transport tickets for seniors in one of the Polish cities, the carrying out by sole business owners of their financial settlements with the ZUS Social Insurance Institution⁸, etc. The objections regarding these matters, submitted by the Commissioner to the competent authorities, are sometimes met with a lack of understanding. The obstacles limit the possibility of older persons to exercise their rights such as the right to social inclusion, the right of access to information and the right to social, cultural and economic life.

Re. b) Violence, neglect and abuse

Issues related to counteracting violence against older persons in Poland still require the introduction of specific systemic measures that should be included in the general policy on seniors and in programmes against domestic violence. In the opinion of the Commissioner for Human Rights, in this respect the "Social policy on older persons till 2030" adopted by the Government insufficiently responds to the challenges arising from the ageing of the Polish society. The policy **lacks e.g. a partnership approach towards Polish seniors**, in particular those in need of greater support due to their age and associated diseases⁹. In practice, **the opinions of senior citizens on**

<https://bip.brpo.gov.pl/pl/content/raport-przestepstwa-motywowane-uprzedzeniami-analiza-i-zalecenia>.

⁵ See: Commissioner for Human Rights' letter to the Ministry of Family and Social Affairs of 29.12.2021 (XI.503.2.2016), accessed 22.12.2023, https://bip.brpo.gov.pl/sites/default/files/2022-01/Do_MRPiPS_29.12.2021.pdf.

⁶ See: Commissioner for Human Rights' letter to the Ministry of Family and Social Affairs of 24.5.2023 (VII.801.2.2022), accessed 22.12.2023, <https://bip.brpo.gov.pl/pl/content/rpo-seniorzy-wykluczenie-cyfrowe-mrips>

⁷ See: Situation of Older Persons in Poland in 2021, Ministry of Family and Social Policy, p. 54, accessed 25.10.2023, <https://www.gov.pl/web/rodzina/informacja-o-sytuacji-osob-starszych-w-polsce-za-rok-2021>.

⁸ See: <https://bip.brpo.gov.pl/pl/content/rpo-seniorzy-elektroniczne-rozliczenia-zus-odpowiedz>, accessed 15.11.2023.

⁹ See: Commissioner for Human Rights' letter to the Ministry of Family and Social Affairs of 16.05.2019

matters that affect them and on which they can and want to speak and take decisions are disregarded, which violates their right to autonomy and dignity. This concerns basic issues such as what older persons want to wear; what they would like to eat; whether they prefer to receive support in their home or elsewhere (a care institution), or informed consent to a given medical treatment. Such disregard can lead to abusive practices such as, for example, consulting the method of acting with regard to an older person only with his or her family members, leaving an older person in a care facility wearing pyjamas all day, using tranquilizing drugs without a doctor's prescription, or tying a person to a chair in view of other people. Such practices were noted during the visits to social care homes, carried out by employees of the National Mechanism for the Prevention of Torture¹⁰.

One of the lacking remedies is an effective mechanism of reporting abuse and violence, available to older-age people at the level of specific care institutions such as social care homes as well as at local level. It is advisable to ensure the provision of information to people living alone or in social isolation about the possibility to report abuse or neglect. Such a mechanism would provide older persons with a sense of security and a guarantee that they will not be left without support if they report abuse by their care providers¹¹. The new convention, if drawn up and adopted, should result in mandatory implementation of such a mechanism at local level and the consequent adoption of an instrument for people to refer to in due expectation of effective response to injustice.

Re. c) Long-term care and palliative care

One of the key challenges in the field of long-term care and palliative care in Poland is to ensure that older persons have a choice as to where they would like to receive support, i.e. at their home or in a residential facility. In a survey conducted by the Commissioner in 2015, some of the local level decision-makers who took part in the survey did not understand the complexity of the situation of older persons who, when signing a consent to be placed in a social care home, sign it in the feeling of being forced e.g. by the financial dependence on their relatives or dependence on support in daily living activities. There is, therefore, a need to raise awareness of the right to take decisions regarding one's life and the right to independent living in older age¹². Further

(XI.503.2.2016), accessed 22.11.2023, <https://bip.brpo.gov.pl/pl/content/jak-polepszyc-polityke-senioralna-rpo-pisze-do-min-Rafalskiej>.

¹⁰ See: CHR Reports on the Activities of the National Mechanism for the Prevention of Torture <https://bip.brpo.gov.pl/pl/kategoria-prawna-i-organizacyjna/krajowy-mechanizm-prewencji-raporty-rpo>, accessed 15.11.2023

¹¹ See: Commissioner for Human Rights' letter to the Ministry of Family and Social Affairs of 15.06.2021 (XI.503.2.2016), accessed 22.11.2023, <https://bip.brpo.gov.pl/pl/content/15-czerwca-dzie%20C5%84-swiadomosci-znecania-si%20C4%99-nad-osobami-starszymi>.

¹² Availability of community support for older persons as viewed by representatives of municipalities from Dolnośląskie Voivodeship; CHR Bulletin, Warsaw, 2016, accessed 10.11.2023,

programmes are required to move away from institutional care towards community-based care. A step in the right direction has been the Act on social services (Act of 19 July 2019 on the provision of social services by social service centres, Journal of Laws of 2019, item 1818) but data on the effectiveness of its implementation is not yet known.

Another gap identified by the Commissioner (apart from the need, emphasized by the CHR at the national level, to abandon the system of legal incapacitation and replace it with a system of supported decision-making) is the lack of legal regulations on admission to residential care facilities of older persons who are not legally incapacitated but, due to their health condition, are unable to sign the application for admission themselves but at the same time have no appointed legal representative to do this for them. This is a systemic problem. It consists in the lack of procedural legitimacy, of family members of a patient who is not legally incapacitated but is incapable of expressing his or her will, to apply to a court for placement of their relative in a residential care facility¹³.

As regards palliative care in Poland, it is available to persons with certain medical conditions set out in a relevant regulation of the Minister of Health of 2013 (Journal of Laws of 2021, item 1285, as amended). As a result, people in need of palliative support and care, whose disease is not included in the list of the Minister of Health, have no legal basis to receive such care. Moreover, the availability of palliative care is limited and not all those who require it live until the time when there is free place for them. These limitations result in reduced quality of life, living with pain and sometimes sooner deaths of older patients. The situation constitutes a violation of the right to health care, including palliative care, as well as the right to live and die with dignity¹⁴.

Re. d) Autonomy and independence

In the case of social care homes and private long-term care facilities, challenges are posed also by other problems that have been identified in Poland by the Commissioner, such as:

a) the problem of social care homes' staff members acting as legal guardians of incapacitated persons – such situations may lead to the lack of impartiality in looking after the resident's

<https://bip.brpo.gov.pl/sites/default/files/Dost%C4%99pno%C5%9B%C4%87%20wsparcia%20%C5%9Brodowiskowego%20dla%20os%C3%B3b%20starszych%20w%20perspektywie%20przedstawicieli%20gmin%20wojew%C3%B3dztwa%20dolno%C5%9Bl%C4%85skiego.pdf>.

¹³ See: Responses of Commissioner for Human Rights to the Questionnaire of the Chair of OEWSGA, 18.05. 2018 (XI.503.2.2016).

¹⁴ See: Commissioner for Human Rights' letter to the Ministry of Health of 02. 07.2022 (V.7010.140.2019.ET) accessed 22.11.2023, <https://bip.brpo.gov.pl/pl/content/rpo-opieka-paliatywna-hispicja-obszary-wiejskie-postulaty-odpowiedz-mrips-mz>.

interests, caused by professional answerability to the facility director;

b) the problem of video surveillance – the conflict between security and the right to privacy;

c) the problem concerning the rules of residents' contact with the outside world - only a psychological or physical reason found by a doctor may constitute a basis for not permitting a resident to leave the care home by himself or herself;

d) residential care facilities' cooperation with psychologists - at present, such facilities are not required to employ a psychologist although psychological support may be necessary for maintaining residents' autonomy and independence;

e) the use of coercion in private long-term care facilities - there are no legal regulations on the subject. If coercion is used, it constitutes illegal action that can be considered a criminal act (violation of bodily integrity or unlawful deprivation of liberty).

In most of the residential care facilities visited by the National Mechanism for the Prevention of Torture, there was no contact data or incomplete contact data of human rights protection authorities, although such data should be made available to the residents in a place generally accessible to them. In many cases, there was no information either on the possibilities of filing a complaint. Theoretically, complaints could be reported verbally to the facility manager but they were not documented by any means.

Another shortcoming noted by the visiting delegations in the above-mentioned facilities was the fact that information on the rights of residents was not provided to them but to their families. The list of persons to whom information on a resident's health may be provided is not, in fact, defined anywhere. Such a practice may violate the resident's right to decide to whom information about his or her health may be provided.

Furthermore, for many years the Commissioner has raised the need to abolish the system of legal incapacitation in Poland. He has also called for strengthening the availability of community-based social services and for providing to older persons the possibility to choose where the support services will be provided to them. The provision of social services required in rural areas remains a challenge.

The right of older persons to autonomy and independent living is related to a number of aspects that should be regulated and related to international standards which are lacking in this area¹⁵.

Re. e) Social security

¹⁵ See: Responses of Commissioner for Human Rights to the Questionnaire of the Chair of OEWGA, 06.03 2019 (XI.503.2.2016).

It is necessary for the state to take appropriate measures to increase the availability of social security in view of the changing demographic situation. The current pension system is based on contributions paid to the ZUS Social Insurance Institution by persons who are active in the labour market. There exist regulations on retirement pensions. However, the ageing of the population and the resulting change in the proportion of people active in the labour market to those living on a pension, as well as the re-introduced low retirement age (60 for women and 65 for men) have resulted in an increase in the number of people whose retirement pensions are very low. The instruments aimed at preventing poverty and ensuring social security in older age have thus become ineffective¹⁶.

A report “Information on the situation of older persons” is formally required to be presented by the government on annual basis and to cover also financial aspects¹⁷. However, additional questions appear as regards the manner in which the data is prepared by Statistics Poland, also with regard to the financial situation of older persons and the share of older persons living in extreme poverty as compared to other age groups. In particular, the data on the state measures aimed at counteracting poverty in some cases disregards the age criterion and relates e.g. to the measures addressed to all people with disabilities. Undoubtedly, this reflects a gap in the requirement to provide data for assessing the effectiveness of government actions¹⁸. The situation affects older persons’ possibility to exercise various rights, including the right to live in dignity, the right to social inclusion, the right to health care (the problem of having to choose between buying food and buying medications) and others. Notice should also be taken of the existence of a retirement pension gap between men and women, resulting from their different situations in the labour market during the working life cycle, including vertical segregation (“glass ceiling”) and horizontal segregation (feminisation of some low-paid occupations).

Re. f) Education, training, lifelong learning and capacity-building

The analysis of existing legislation and public policies on education in older age revealed to the Commissioner apparent systemic-level shortcomings in safeguarding older persons’ right to education¹⁹. According to available data, only a small percentage of older people in Poland take

¹⁶ On the basis of conclusions after a workshop of the Advisory body of experts on the Older Persons’ affairs to the Commissioner of Human Rights of Older Persons on 12.10.2018 r., accessed 25.11.2023, <https://bip.brpo.gov.pl/pl/content/obnizenie-wieku-emerytalnego-sytuacja-seniorow-w-polsce-komisja-ekspertow-ds-osob-starszych>.

¹⁷ Situation of Older Persons in Poland in 2021, Ministry of Family and Social Policy, p. 13, accessed 25.10.2023, <https://www.gov.pl/web/rodzina/informacja-o-sytuacji-osob-starszych-w-polsce-za-rok-2021>.

¹⁸ See: Commissioner for Human Rights’ letter to the Ministry of Family and Social Affairs of 16.05.2019 (XI.503.2.2016), accessed 22.11.2023, <https://bip.brpo.gov.pl/pl/content/jak-polepszyc-polityke-senioralna-rpo-pisze-do-min-Rafalskiej>.

¹⁹ General intervention letter of the Commissioner for Human Rights to the Prime Minister regarding the improvement of access to education for older persons in Poland, 21.03.2021. The data quoted in the response to this question is set out in detail in the intervention letter: <https://bip.brpo.gov.pl/pl/content/prawo-do-edukacji-w-starszym-wieku-rpo-do-premiera-oewga>, accessed 14.11.2023.

part in any form of education (from 1 to 5% of persons aged 60+, depending on the rules of individual studies). The situation is exacerbated by the perception of older persons' education not as an opportunity to exercise their fundamental right but as a way of counteracting poverty and social marginalisation. This is confirmed e.g. by the fact that measures concerning older persons' education (Active+ Programme) are presented by the Polish government in the report on the implementation of Sustainable Development Goals under Objective 1: End poverty, and not under Objective 4: Ensuring quality education for all²⁰. Apart from older persons' invisibility in the legislation on access to education in Poland (the policy on lifelong skills acquisition contains only few actions for older persons' education, which are presented in the context of social policy), the public documents reflect a disagreement between the Ministry of Family and Social Policy and the Ministry of Education and Science as to the responsibility for access to education in older age.

The analyses of public documents have brought e.g. the following conclusions:

- the right to education of older persons is not considered equal with that of other age groups;
- there is no generally accessible education offer for this age group, which contributes to the exclusion, discrimination and self-discrimination of seniors;
- activities of the state government and of local governments are not systemic in nature, are usually project-based and are limited in time;
- the presented indicators and measures refer only to quantitative data, without referring to qualitative data on the satisfaction of participants, the effectiveness of learning, etc.

Older persons also complain to the Commissioner about having to fill in forms regarding their financial situation as a condition of participation in activities offered by senior citizens' clubs. This situation also arises from perceiving activities addressed to older persons as activities counteracting poverty. This stigmatising model discourages older people from participating in such activities.

The lack of systemic solutions aimed at ensuring the possibility for older persons to exercise their right to education not only limits this right but also, indirectly, hinders the possibility to exercise other rights, including the right to work, to information, to health and to participation in social, political and economic life because the acquisition of knowledge and skills, including digital ones, is a condition for exercising these rights.

Re. g) Right to work and access to the labour market

²⁰ The Ministry of Development and Technology, Achieving the Sustainable Development Goals in Poland. Report 2023, accessed 20.11.2023, <https://www.gov.pl/web/rozwoj-technologie/monitoring-realizacji-agendy-2030>.

In the labour market, older persons face challenges related to the necessity to improve their qualifications, to digitalisation, automation, regionalisation and the need to use new technologies. Poland is a country with one of the lowest rates of employment of people aged 55-64 in Europe. Although, according to SHARE surveys, employment of persons aged 50-64 is gradually increasing, the percentage of 65-74 year-olds in the labour market remains at a stable level of around 13% for men and 6% for women. Surveys carried out by the State Central Institute for Labour Protection show the scale of experience of stereotyping in this group (one-fifth of 50+ surveyed employees) and its negative impact on older employees (reduced work capacity, intensified symptoms of stress and depression, etc.). There is no legislation and specific measures to counteract ageism also by combating negative stereotypes in the labour market, and the awareness of discrimination in labour still needs to be increased (nearly 40% of people living in Poland do not see discrimination in the fact that an employee is dismissed only because of reaching the retirement age)²¹. A remaining challenge is the fact that a large group of people aged 50+ are dissatisfied with their jobs, see limited prospects for promotion, perform physically demanding work, have little freedom to organise their work and report insufficient pay. For these reasons, 58% of 50+ men and 44% of 50+ women state that they would like to retire as soon as possible.²² The right to work in older age should entail a commitment by the state to adopt adequate labour market instruments to effectively respond to the outlined challenges.

Older people are not covered by specific mechanisms for filing complaints and seeking redress in the event their right to work is restricted. They have to resort to commonly binding regulations. However, proceedings conducted by the State Labour Inspectorate may result solely in imposing a penalty on the employer. Compensation can be received only in court proceedings. In discrimination cases, the burden of proof is reversed. However, given the difficulties faced by people aged 50+ in remaining on the labour market, the state structures should be required to effectively provide older employees with information on their rights and methods of their enforcement²³.

The gaps concern, therefore, not only to the right to work but also to the right to information and the right to compensation and access to justice.

Re. h) Access to justice

The right to a court is guaranteed to everyone in Poland under Article 45 of the Constitution. There is no separate legislation applicable to older persons. The rights and safeguards under the

²¹ Commissioner for Human Rights Bulletin No. 3, 2020, Protection against discrimination in Poland: legal status and public awareness, p. 67 [accessed 20.11.2023] https://bip.brpo.gov.pl/sites/default/files/Ochrona_przed_dyskryminacja_w_Polsce.pdf.

²² See: Work Congress. Jobs for seniors? The situation of older people on the labour market in Poland: determinants and consequences. Report on the conference held in the CHR Office, accessed 20.11.2023, <https://bip.brpo.gov.pl/pl/content/konferencja-kongres-praca-relacja>.

²³ See: Responses of Commissioner for Human Rights to the Questionnaire of the Chair of OEWGA, 05.11.2019 (XI.402.1.2017).

individual procedures (criminal, civil and administrative ones) apply to all people on equal basis. However, there exist examples demonstrating that the lengthiness of court proceedings particularly severely affects older people as they may not live until the judgment. Furthermore, the Polish legislation still provides for legal incapacitation that may be adjudicated on the grounds of disorders caused by old age. A legally incapacitated person may only submit an application for discontinuation of the incapacitation and has no other rights before courts. The system of guardianship of a disabled person, as a possible alternative to legal incapacitation, is not widely used and remains unknown to most potential users.

A remaining challenge is also low legal awareness the effects of which can be compounded by the lack of access to the internet as well as poor digital skills. These factors constitute significant barriers for many seniors in accessing information and professional advice, also about legal instruments or free legal aid available to them. Another problem is the high costs of legal proceedings and legal assistance.

In addition, some administrative procedures of significance for older people (e.g. granting or refusing medical treatment at a health resort) do not provide for any appeal mechanism, which limits the exercise of rights by older people.

Small towns and rural areas have no good public transport systems enabling older people to get to a point where free legal aid is provided or to a court that is sometimes located many kilometres away. As a result, older people are forced to send letters by post or make long journeys²⁴.

The right to justice is therefore coupled with the effective exercise of the right to information and education and the right to mobility.

Re. i) Contribution of older persons to sustainable development

The SARS-CoV-2 epidemic has clearly exposed problems faced on a daily basis by older people in Poland in accessing the opportunities to contribute to sustainable development. First of all, it increased the isolation of older people who could leave home only in the most necessary situations. Moreover, older people are, in practice, invisible in public policies as partners in the implementation of the sustainable development policy. A paternalistic approach is taken with regard to older persons. This is visible at the level of language of public policies and public discourse, in which government representatives use phrases such as “our seniors”. A social approach focused on combating poverty and social exclusion is also taken.

An identified gap in the legislation is therefore the lack of a human rights-based approach in the development of public policies and the failure to include older people in decision-making and

²⁴ As above.

creative processes in the development of policies in different areas (mainstreaming ageing)²⁵.

Re. j) Economic security

This year's report of EAPN Poland shows that despite little change in the overall poverty level compared to 2021, the level of extreme poverty among children and seniors in the country has increased. According to estimates, in 2022 nearly 300,000 seniors lived in extreme poverty. The number of extremely poor seniors increased by about 14,000 - from 272,000 in 2021 to 287,000 in 2022 (from 3.8 percent to 3.9 percent). Relative poverty decreased slightly from 12.2 percent to 11.8 percent. There were about 4.5 million people in this situation, and the figures do not include people living in homelessness and those living in residential care institutions. The number constitutes a large share of the total number of older people in the country, which is 10 million. EAPN Poland is of the opinion that the forecasts for 2023 are bad and that overall extreme poverty as well as extreme poverty among children, seniors and people with disabilities will increase mainly due to the difficult economic situation, high inflation and lack of protection benefits.²⁶

“Information on the situation of older persons in Poland”, a document required to be presented by the Polish government on annual basis, covers also financial issues and economic situation of older people in Poland. The related data contained in the Information, provided by Statistics Poland, raise additional questions, in particular with regard to the effectiveness of the state's efforts to prevent poverty, including extreme poverty. Some of the presented data do not take account of the age criterion but relate to the state's measures addressed to people with disabilities. This example shows the effectiveness of the standards gradually introduced within the implementation of the Convention on the Rights of Persons with Disabilities. A similar approach to data presentation is needed with regard to older people. The lack of effective measures to counteract poverty calls into question the possibility to exercise the right to a dignified life, the right to participation in society, the right to health and, consequently, the right to life.

Re. k) Right to health and access to health services

A survey conducted in 2021 by the Commissioner for Human Rights, which was representative of people 60+ and concerned the situation of older people in Poland during the pandemic, included a question about access to various services. The respondents pointed out that the greatest difficulties experienced by them were those in access to healthcare. Nearly 40% of the

²⁵ See: Responses of Commissioner for Human Rights to the Questionnaire of the Chair of OEWGA, 18.02.2022 r. (XI.0720.1.2021).

²⁶ EAPN, Monitoring poverty and anti-poverty policy in Poland, 2023, <https://www.eapn.org.pl/aktualnosci/poverty-watch-2023-w-2022-r-ok-18-mln-polakow-zylo-w-skrajnym-ubostwie-w-tym-396-tys-dzieci-i-287-tys-seniorow/>, accessed 14.11.2023.

respondents reported problems with arranging a visit to a doctor and 7% did not arrange any visit to a doctor. Different data on health services is provided by Statistics Poland, also with regard to the number of older people who used these services. Yet, no data on the effectiveness and sufficiency of these services is available. Moreover, there is only marginal access to geriatricians in Poland. During the pandemic, the access to their services dropped by additional 35%. The lack of funds for outpatient geriatric care is alarming²⁷. The funding level does not enable the implementation of geriatric procedures in practice.

The limited scope of the prohibition of discrimination on the grounds of age, including no prohibition of discrimination in access to health care, restricts older people's possibility to seek equal treatment in this area. Furthermore, limited access to information (such as information on possible forms of support in daily life activities) in practice limits access to health care.

These examples show that the exercise by older people of their various rights is interconnected. Thus, the impossibility to exercise some of them may result not only in limited possibilities to exercise the right to health but also, in most difficult cases, to exercise the right to life, as was seen during the pandemic.

Re. l) Social inclusion

In Poland, there is no adequate data split by age of respondents and reflecting the possibility of older people to exercise their right to social inclusion. This is evident from the government document published annually and concerning the situation of older people in Poland.²⁸ There is also a lack of data on the manifestations of ageism, which prevent older people from participating in social life. It should be emphasised, in addition, that the possibility to participate in social life is dependent on the possibility to exercise the right to health, to economic security, to access to information and education, to participation in decision-making processes as well as other rights.

Re. m) Accessibility, infrastructure and habitat²⁹

A study is currently conducted on the accessibility of social services for older people living in rural municipalities. The conclusions of the study will be included in the contribution to the discussion at the 14th session of OEWGA.

²⁷ Jarosław Derejczyk, the presentation given at the meeting of the CHR Expert Committee on Health [accessed 20.11. 2023], [Polityka senioralna w okresie 2010-2018 a pozycja geriatry dr Derejczyk.pdf](#)

²⁸ The data by Statistics Poland shows active participation of people aged 60 or more in activities organized by various thematic groups, clubs and units operating within cultural institutions. Older people accounted for one third of participants of such regular forms of activity but there is no precise data on the subject. The data presented by the Ministry refers to the participation of the society as a whole in activities organised by municipal governments. See: Situation of older people in Poland in 2022, p.27, https://senior.gov.pl/materialy_i_badania/pokaz/650, accessed 15.11.2023.

²⁹ To be discussed at the 14th Open-Ended Working Group on Ageing.

Re. n) Participation in the public life and in decision-making processes³⁰

In recent years, restrictions have been observed with regard to conducting public consultations on key documents (public policies and legal acts) proceeded at the national level. As an example it can be pointed out that the public consultations on the governmental programme “Social policy on older persons till 2030. Security. Participation. Solidarity” in 2018 were scheduled to last three weeks. After the publication of the draft version of the document, there were three weeks for submitting comments on it. Consultations designed in this way do not enable full inclusion of older people. A gap is seen in the exercise of the right to self-determination and the right to participation in social and cultural life.

Options on how best to address the gaps

1. Please state how your Government/organization has engaged with international and regional human rights mechanisms (for example: universal periodic review (UPR) treaty bodies, special procedures, regional mechanisms), specifically with regard to older persons. *(500 words)*

The Commissioner for Human Rights submitted his comments in response to the call for inputs of the UN Special Rapporteur on violence against women and girls, its causes and consequences. In the response, the Commissioner highlighted additional problems faced by older women who experience violence. As a result, the situation of older women was taken into account in the Special Rapporteur's report on her visit to Poland³¹.

2. Have those engagement resulted in positive impact in strengthening the protection of the human rights of older persons? Please elaborate. *(500 words)*
3. What other options can be considered to strengthen the protection of older persons? Please elaborate. *(500 words)*

To address the complexity and interdependence of the exercise of individual rights (for example, the exercise of the right to health care is a prerequisite to the full exercise of the right to participation in social, cultural and economic life; the right to information and education may be a prerequisite to undertaking adequate medical treatment, etc.), the most effective method of addressing the identified gaps in practical safeguarding of the exercise of human rights in old age is a comprehensive and binding international law instrument incorporating the standards of effective protection of human rights in old age. The instrument should be complemented by

³⁰ To be discussed at the 14th Open-Ended Working Group on Ageing.

³¹ United Nations Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, Official visit to Poland, 27 February – 9 March 2023, PRELIMINARY FINDINGS AND RECOMMENDATIONS, 9 March 2023.

a mechanism for reporting on the effects of its implementation. Among the entities monitoring the implementation of the instrument there should be National Human Rights Institutions. The said instrument should contain guidelines on the challenges faced by humanity, such as ageing societies, climate change and new technologies. In addition, the complex nature of ageism (institutional ageism, interpersonal ageism and self-ageism), which was not taken into account in drawing up the existing legal solutions, requires the development of clear standards in order to eliminate this phenomenon and ensure equal treatment of older people. Efforts towards the development and adoption of such an instrument should be strengthened by seeking to ensure the visibility of older persons in activities carried out within the existing framework of international law and by more effective implementation of the existing standards³².

4. *If applicable, what is your assessment on the protection of the human rights of older persons according to regional and international instruments? (500 words)*

The above-mentioned examples of gaps in the implementation of selected human rights of older persons clearly demonstrate the inadequacy of the existing solutions to the needs of older people and the lack of recognition of their fundamental rights. The fragmentation of legal solutions, the lack of visibility of older persons in numerous public policies (e.g. in the field of education or countering violence, abuse and intimidation) and the extension of measures targeted at persons with disabilities to the population of older persons demonstrates the lack of understanding of their needs and the lack of a systemic response thereto. Addressing these needs would enable full realisation of human rights of older people, as well as treatment of older people as a diverse group with multiple needs not necessarily arising from their difficult financial situation or the need for support in daily living activities. This approach requires considering old age as a natural stage of life, equally important to the previous stages.

³² Commissioner for Human Rights of Poland expressed his support for a drafting a new convention on the Rights of older persons i.a. in several statements presented during OEWGA sessions i.a. in the letter signed by 51 signatories from NHRIs and NGOs, accessed on 22.11.2023, https://bip.brpo.gov.pl/sites/default/files/OEWG_Aging_29-Mar_2021_%20Office%20of%20the%20Commissioner%20for%20Human%20Rights%20of%20Poland.doc.pdf.