



OFFICE OF THE COMMISSIONER
FOR HUMAN RIGHTS

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Deputy Commissioner for Human Rights
on Equal Treatment
Sylvia Spurek

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Ms. Rosemary Lane
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Dear Madam

In reply to the letter from the Chair-Designate of the Open-Ended Working Group on Ageing, dated 30 March 2017 and containing a questionnaire on the focus areas for discussion during the eighth session of the Open-Ended Working Group, i.e. *equality and non-discrimination*, and *neglect, violence and abuse*, I am hereby forwarding - on behalf of the Polish Commissioner for Human Rights who is also the country's independent body for equal treatment and the national human rights institution - my observations relating to the system of protection of the human rights of older persons in these two areas in Poland.

Equality and non-discrimination

- 1) Does your country's constitution and/or legislation (a) guarantee equality explicitly for older persons or people of all ages and (b) forbid discrimination explicitly on the basis of age? If so, how is the right to equality and non-discrimination defined?**

According to Article 32 of the Constitution of the Republic of Poland, all persons are equal before the law, all persons have the right to equal treatment by public authorities, and no one may be discriminated against in political, social or economic life for any reason whatsoever. The prohibition of discrimination, as expressed in the Constitution, covers therefore also older persons although they are not mentioned explicitly. Discrimination based on age in the field of employment is directly prohibited under the Act of 26 June 1974 - the Labour Code and the Act of 3 December 2010 implementing certain European Union provisions on equal treatment. The two acts of the parliament use the definition of

discrimination as included in the implemented European Union directive, i.e. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

The provisions of the Act of 3 December 2010 implementing certain European Union provisions on equal treatment prohibit discrimination also in other areas: general education, university education, access to services (including housing services), and health care, however, only on the grounds of race, nationality and ethnicity, which this means that other victims of discrimination, including older persons, are not covered by the legal remedies provided for thereunder.

2) Does your country produce information about discrimination against older persons in the following or other areas? If so, what are the main findings?

- **Employment, access to goods and services, social protection, health care, social care, justice, inheritance, decision-making and autonomy, living environment, other areas.**

Pursuant to the Act of 11 September 2015 on elderly persons, the government is required to draw up annual *reports on the situation of elderly persons in Poland*. The first such *Report* for 2015 was published in autumn 2016. It described the situation of elderly persons in the areas of employment, social protection, health care as well as other areas (social and cultural activity, education, sports activity, health condition, access to preventive health care). The situation of elderly persons in the areas covered by the *Report* is not, however, analysed specifically from the perspective of discrimination against them. The *Report* contains references to discrimination only in the context of complaints filed with the Government Plenipotentiary for Equal Treatment. In 2015, there were 15 such complaints not all of which, in fact, related to discrimination issues. Moreover, the *Report* does not cover aspects such as access to justice, inheritance issues, decision-making and autonomy, and residential environment.

Moreover, the Government Plenipotentiary for Equal Treatment is required to draw up a *National Action Plan for Equal Treatment* setting out, inter alia, objectives and priorities of activities towards ensuring equal treatment irrespective of age. The first *Plan* was developed for the period 2013-2016. In 2014, a *Synthetic report* on its implementation was published, containing information from individual ministries and governmental agencies. The *Synthetic report's* content relating to the individual areas allows to conclude that the planned activities against discrimination based on age were not implemented.

- Employment: the Ministry of Labour and Social Policy did not implement/did not report on any programmes regarding the promotion of equal treatment in employment, irrespective of age.

- Counteracting violence: the implemented education and prevention programmes do not include references to violence against older persons. Likewise, there are no references to age in training programmes for the services involved in counteracting domestic violence.

- Supporting older persons as social leaders: no adequate activities are taken by the Ministry of Labour and Social Policy.

- Access to health care: the *National Action Plan* did not provide for an increase in the number of medical procedures responding to specific health needs of elderly persons (e.g. cataract surgery procedures). In view of the increase in the number of elderly persons, their access to health care is becoming increasingly difficult. Moreover, in response to the question regarding age limits for preventive medical examinations, the Ministry of Health explained that the limits were only indicative and decisions on referral to such examinations were made by doctors on individual basis. However, the Polish National Health Fund which reimburses the costs of the examinations considered the age limits medically justified.

By 5 May 2017, no new edition of the *National Action Plan for Equal Treatment* for the subsequent has been published.

3) Is there information available about inequality of opportunities or outcomes experienced by older persons in the following areas?

- **Availability of, access to and quality of health care services.**

The Supreme Audit Chamber publishes thematic reports which point at older persons' limited access to geriatricians and at limited support provided by local governments in the form of long-term community care.

- **Financial services.**

Information in this area is very fragmentary. In 2013, the Polish Commissioner for Human Rights published a report on elderly persons' situation in the financial services market. The main conclusion of the report is that elderly persons are particularly sensitive to manipulation by financial service providers and therefore large-scale educational activities in this area are required. Such activities are only occasionally conducted in the form of campaigns addressed to the whole society and organized e.g. by the Office for Competition and Consumer Protection.

4) Are there any areas where differential treatment based on old age is explicitly justified?

- **Access to goods, mandatory age of retirement, age limits in financial services and products, age-based benefits.**

[Employment] The Act implementing certain European Union provisions on equal treatment explicitly indicates that it does not apply in the context of different treatment of

individuals on the grounds of age: (1) when objectively and reasonably justified by legitimate objectives, in particular relating to professional training, provided that the means for achieving such objectives are appropriate and necessary; (2) while developing, for social security purposes, different rules regarding the entitlement to social benefits, including different age criteria for calculating the size of such benefits; with regard to retirement pension schemes, differences in the treatment are permissible provided that they do not consist in discrimination on grounds of gender.

Also, generally applicable regulations determine the following age limits for pursuing legal professions: bailiffs - 70, notaries - 70, judges - 70. Moreover, persons over 32 may not be students of the National School of Public Administration. There are also age limits applicable to uniformed services, e.g. the Government Protection Bureau officers are required to retire upon reaching the age of 55-60 (depending on military rank).

Neglect, violence and abuse

1) In your country, are there specific studies or surveys (from governmental, non-governmental or academic sources) on violence, abuse and neglect experienced by older persons?

In 2009 and 2015, the Ministry of Family, Labour and Social Policy carried out representative studies on the perception of violence against the elderly and persons with disabilities. An important conclusion of the studies was that 59.7% of the respondents were aware of at least one form of violence (physical, economic, psychological or sex violence) against such persons outside their families, and 30.1% of the respondents were aware of at least one form of violence against such persons within their families. The results of the studies confirmed the hypothesis that the use of violence against elderly persons is a statistically significant phenomenon affecting this group of people. Three of four respondents aware of any cases of violence against the elderly and persons with disabilities did not react to that violence in any way. 63.5% of the respondents did not react in any way to violence against the elderly within their own families. Only 1.8% of the respondents who were aware of acts of violence against elderly persons outside their families reported the cases to relevant services (the Police, health services, social welfare services and others). This means that in 2015, only 11 persons reported violence against the elderly to competent services.

In 2010, a multidisciplinary study entitled PolSenior was conducted on medical, psychological, sociological and economic aspects of aging in Poland. It was carried out by a consortium of six academic institutions on a representative sample of Polish persons aged 65+. The part regarding violence covered very detailed aspects and results, relating to various forms of violence: from insulting through

intimidation, restriction of liberty, limited access to medical services, moving out of the apartment, to property taking, forced sexual acts, poking, beating and injuries. Another edition of the study is planned.

Certain academic institutions (Białystok and Kraków) deal with the subject in their research work, but related knowledge is currently very dispersed and fragmentary.

- 2) (a) What forms of violence, abuse and neglect (e.g. physical, psychological, sexual, financial or other) are registered? What is the setting in which they occur (i.e. residential and non-residential)? Is there information about the type of perpetrators?**

The results of the above-mentioned study indicate that most frequently, the perpetrators of violence are male relatives of the victims: sons, sons-in-law or husbands/partners; less frequently the perpetrators are the victims' daughters or daughters-in-law. Most of the study respondents saw no justification for violence against older persons but were more likely to accept its existence when it happened in their own environment.

- (b) Does violence, abuse and neglect particularly affect specific groups of older persons? If so, which groups and how?**

Pursuant to the Blue Card procedure which permits the provision of institutional support to victims of violence and the monitoring of domestic violence situations, it was found that in 2015, among persons up to 65 years of age, suspected of being affected by family violence, 63 243 were women and 9 271 were men. As regards victims above 66 years of age, in the same year 6 133 were women and 1 462 were men.

- 3) Does your country's legislation explicitly address issues of violence, abuse and neglect against older persons? If not, what legislation applies to such issues in the context of older persons? Does this legislation sufficiently address the full range of violence against older persons?**

Polish law does not explicitly address the problem of violence against older persons. Domestic violence cases are covered by the provisions of the Domestic Violence Prevention Act of 29 July 2005, which ensure comprehensive support to victims of such violence. However, the provisions do not apply to situations of violence against older persons outside their family homes, for example persons who stay in elderly care homes.

According to studies conducted by the Commissioner for Human Rights, older persons are sometimes victims of prejudice-based violence. However, such offences are not covered by the Criminal Code in the same way as prejudice-based offences against racial, ethnic or religious minorities.

Long-term senior policy guidelines for the period 2016-2020 include a section on the safety of older persons. However, by May 2017 the guidelines have not been supplemented by an appropriate strategy and action plan regarding the aging population.

4) What legislation exist to protect older persons specifically against financial abuse, including inheritance abuse?

Older persons often become victims of specific types of fraud as well as crimes related to the operation of financial institutions. There are no provisions that would specifically protect older persons in this area. However, due to the scale of such offences and the need for a special approach to them, in 2016 the Public Prosecutor General issued the *Guidelines for the investigation of financial offences committed against numerous injured parties with the use of financial instruments and banking activities*. Also, older persons are often victims of fraudulent loans as well as fraud which leads to the loss of property ownership by the injured parties. In 2016, the Public Prosecutor General issued guidelines on criminal proceedings in such cases, paying special attention to the specific exposure of older persons to such types of fraudulent activities.

Yours sincerely

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