



No.: Oi-57/17
Sarajevo, 03 May 2017

OPEN- ENDED WORKING GROUP ON AGEING
Ms Rosemary Lane

Subject: Replies to the Questionnaire

Dear Ms Lane,

Ombudspersons of Bosnia and Herzegovina received a letter from the Open-ended Working Group on Ageing with a request the formal input of "A" status institutions to the work of the forthcoming Eighth Session of the Working Group. Here are their replies to the questions from the attached Questionnaire:

Equality and non-discrimination

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?

Legislation of Bosnia and Herzegovina, according to its constitutional structure includes the following: the Constitution of Bosnia and Herzegovina, the Constitution of Republika Srpska, the Statute of Brčko District of Bosnia and Herzegovina, the constitutions of ten (10) cantons that make part of the Federation of Bosnia and Herzegovina and corresponding laws (acts) in this area at the entity and cantonal level.

Social protection area in the framework of which this issue can be treated falls within the mandate of two entities of the state of Bosnia and Herzegovina, these are Republika Srpska and the Federation of Bosnia and Herzegovina, In addition to Brčko District of Bosnia and Herzegovina. In the entity called the Federation of Bosnia and Herzegovina issues involving social protection and care fall within the joint mandate of the entity, that is, the Federation of Bosnia and Herzegovina and its ten cantons.

Bosnia and Herzegovina does not have neither powers nor the legal framework for harmonized social care on its whole territory.

The Constitution of the Federation of Bosnia and Herzegovina foresees puts the social policy within the joint mandate of the Federation of Bosnia and Herzegovina and its ten cantons. The issue of elderly persons in the Federation of Bosnia and Herzegovina and its cantons is governed by *the Law on the Foundations of Social Protection and the Law on Protection of Families with Children and the Law on Social Protection*.

Republika Srpska has a centralized social protection system and harmonized protection at the entity level. The issue of elderly persons in Republika Srpska is governed by the Law on Social Protection of Republika Srpska.

On the territory of Brčko District of Bosnia and Herzegovina the issue of elderly persons is governed by *the Law on Social Protection*.

The Law on Amendments of the Law on Prohibition of Discrimination (Official Gazette of BiH no. 66/16) introduced the age as a ground of discrimination. Provisions of this Law prohibits discrimination based on age, **but not explicitly in relation with old persons.**

*(1) Discrimination, in terms of this Law, shall be every different treatment including every exclusion, limitation or preference based on real or assumed features towards any person or group of persons on grounds of their race, skin colour, language, religion, ethnic affiliation, disability, **age**, national or social origin, connection to a national minority, political or any other persuasion, property, membership in trade union or any other association, education, social status and sex, sexual expression or sexual orientation, and every other circumstance with a purpose or a consequence to disable or endanger recognition, enjoyment or realization, of rights and freedoms in all areas of public life.*

(2) Prohibition of discrimination shall be applied to all public bodies, all natural and legal persons, in public and private sector, in all spheres, especially: employment, membership in professional organisations, education, training, housing, health, social protection, goods and services designated for public and public places together with performing economic activities and public services.

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

The issue of old persons falls within the mandate of the entity and the Brčko Distrikt of Bosnia and Herzegovina, while the Ministry of Civil Affairs of Bosnia and Herzegovina plays the co-ordination role. *The Law on Prohibition of Discrimination of Bosnia and Herzegovina¹* in its Article 8 provides the following: „*Competent institutions in BiH shall be obliged to regularly keep records of all reported cases of discrimination and to deliver collected data to the Ministry for Human Rights and Refugees. In accordance with its competences defined by the law, Ministry for Human Rights and Refugees shall be obliged to, based on collected data on manifestations and scope of discrimination, to produce a report for the Council of Ministers of BiH at least once a year, and special reports containing proposal of measures for prevention and suppression of manifestations of discrimination in Bosnia and Herzegovina...The Ministry for Human Rights and Refugees shall be obliged to report, through the Council of Ministers, to the BiH Parliamentary Assembly...“*

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina in November 2010 published its Special report on situation of elderly persons in Bosnia and Herzegovina. Pursuant to its powers granted under Article 32 *of the Law on Human Rights Ombudsman of Bosnia and Herzegovina²*, Ombudspersons issued relevant recommendations to the competent authorities including the Ministry of Civil Affairs of Bosnia and Herzegovina, the Federal Ministry of Labor and Social Policy, the Ministry of Health and Social Protection of Republika Srpska and the Government of Brčko District of Bosnia and Herzegovina (www.ombudsmen.ombudsmen).

Employment

In Bosnia and Herzegovina no institution is dealing solely with the issue of education or additional education for the elderly. Research shows that the situation regarding the recognition of resource capacities of elderly people in BiH is at a very poor level, while encouragement and lifelong learning practically almost does not exist. People in their third age have great knowledge and experience and can serve as invaluable source of information. Employment of elderly persons or persons of third age can be considered non-existent in Bosnia and Herzegovina.

Monthly income

The Federal Institute of Pension and Disability Insurance in its document no: FZ3/3/2-05-7-557-2/16 dated 17 March 2016 provided the information that the lowest pension in the Federation of Bosnia and Herzegovina amounted at 326.17 BAM.

¹ “Official Gazette of Bosnia and Herzegovina”, no. 59/09 and 66/16

² “Official Gazette of Bosnia and Herzegovina”, no. 32/00, 19/02, 35/04 and 32/06

On 19 April 2016 the Pension and Disability Fund of Republika Srpska published the information that the lowest pension in Republika Srpska amounted at 174.44 BAM.³

The most of elderly persons in Bosnia and Herzegovina older than 65 receive the old-age pension as opposed to full pension based on work experience. The amount of that pension equals or is even less than the lowest guaranteed pension. In addition to that, a certain number of these persons receive regular or occasional social welfare. A significant number of these persons are not covered by any form of welfare or assistance, they have no income, and are forced to use public kitchen services, search for food in containers, or to beg. Particularly highlighted are the cases where the children and the spouses of the pensioners are unemployed, which multiplies their monthly expenses and complicates their family life.

Social care

There is a disproportion in Bosnia and Herzegovina between the institutional care and aging prevention, and lower level of prevention is associated with the greater need for long-term care for elderly people. Women are in need for other person's care and support to a significantly higher degree than men. Persons older than 65 usually have someone in their family on whom they can rely and get some help if needed. As a rule, third-age persons do not receive assistance on a daily basis. Only some of them are able to engage in paid assistance or pay for their accommodation and stay in one of the geriatric institutions. Most of elderly people are believed to have poor general health and generally need assistance in order to go and see the doctor, to pay their bills, purchase medicines/supplies and transportation. Many of them need physical assistance with maintenance of their personal bodily and mental hygiene and maintenance of residential hygiene. Elderly also need help in food preparation and nutrition, or help in their homes (for going to bed and getting up, climbing the stairs or going down), or in making of social contacts. Older people in Bosnia and Herzegovina mostly point out that they want to live in their homes as much as possible, surrounded by their relatives and their own property. A smaller number of elderly people express the need for institutional placement. Old-age homes and gerontology centers are reluctant to receive old people who need palliative care and are they are therefore left to their families who do not or rarely receive some financial assistance for such nursing care if they even have sufficient professional knowledge or training to be able to assist them, especially those with progressive dementia symptoms who need a greater involvement of personal assistance that requires professional expertise and psychological and social sensibility and knowledge for the optimal provision of these services.

Health care

Although the system of compulsory health insurance for the elderly is in place, a significant number of cases have been registered involving elderly persons who do not have health insurance despite the fact that they are more exposed to diabetes mellitus, osteoporosis, myocardial infarction, cataract and chronic depression, to mention only some of illnesses, mostly linked to the poor quality of life. Particularly important is the issue of health care for the elderly in cases of dementia as well as the protection of older people with disabilities. Elderly persons in Bosnia and Herzegovina generally have a poor health condition requiring the use of lifelong drugs, and the health care system does not provide completely free medicines. Essential lists are different in different places of residence and depend primarily on the budget of a particular canton/entity, which often puts elderly citizens to an unequal position. Most medicines used by the elderly are not on the essential list, and these are medicines often recommended by a family doctor. Elderly persons are mostly unable to buy them (they need around 50 BAM a month in average for that purpose). Elderly people, for these reasons, do not use regular prescribed therapy, which again leads to an increase in the mortality of this population. Additionally, these persons often do not have access to free habilitation and rehabilitation services, in particular with a view to their revival after stroke, fracture, chemotherapy etc. Existing healthcare institutions are not well equipped and do not meet the needs of older citizens. This is particularly evident in rural areas where doctor's visits are limited, working hours of the infirmaries and pharmacies are reduced to a minimum, and for specialist examinations older people must go to the city center, requiring additional

³ Special Report on Court Fees in Bosnia and Herzegovina, 2016

expenses and supervision of a third person. For all above mentioned reasons, most elderly persons do not opt for further treatment. Elderly persons point out that they are not treated as a matter of priority in the infirmaries. They consider that they are discriminated against compared to younger patients because doctors do not pay them special attention. They say that they are waiting for specialist examinations for months, and that they are most affected citizens.

Is there information available about the inequality of opportunity or results encountered by the elderly in the following areas?

Availability and access to quality health care services - In response to "health care" will give the answer to this question.

Financial services - Ombudsman does not have the information.

Institutionalization is one of the most important questions - Institutions for the accommodation of the elderly persons should not be understood as a place of residence, but as a place in which services are provided. In this special issue is represented the difference between public and private institutions in the establishment of standards which help in determining violations of law when it comes to space, general living conditions in these institutions, socio-psychological and other professional treatment.⁴

Are there areas where different treatment based on age is explicitly justified?

Examples:

Mandatory old-age pension. Yes, when performing tasks where the law provides for an accelerated retirement.

The age limit for financial services and products. Yes, in case of obtaining loans from banks.

Accessories on the basis of age. Yes, in the area of employment in certain jobs.

Indicative questions: Neglect, violence and abuse

Is there in your country specific studies or research (the source of official institutions, NGOs or academic community) on violence, abuse and neglect faced by the elderly?

Yes, there are studies that in Bosnia and Herzegovina were carried out in relation to this issue, such as research studies N. Kepeš of 2012. Analysis of Caritas - Bishops' Conference of Bosnia and Herzegovina on the status of the elderly in need of 2010, research by the NGO Friedrich Ebert Stiftung, Banja Luka, 2009, on the topic of social marginalization in Bosnia and Herzegovina, NGOs Report on the implementation of the International Covenant on Economic, Social and Cultural rights ICVA Bosnia and Herzegovina of 2007.

Directorate for Economic Planning of Bosnia and Herzegovina has prepared the Strategic Framework for Bosnia and Herzegovina of 2015, in which, among other things, treated this issue.

Research study by N. Kepeš of 2012. - The study was prepared and printed in the regional project entitled "Dialogue of civil society on issues of elderly in the Western Balkans", which was funded by the European Union and implemented by the partner organization Age UK, OSMIJEH-GRACANICA, Association for psycho-social support and development of volunteer work, the Red Cross of Serbia and the Albanian Association of Gerontology and geriatrics.

Analysis of Caritas - Bishops' Conference of Bosnia and Herzegovina, the status of the elderly in need of 2010. In the analysis is *inter alia* stated: "... It is estimated that people over 65 in BiH constitute 17% of the population and are among the poorest in society. The costs of living and the level of pension is in great

⁴ Special Report by the Ombudsmen of Bosnia and Herzegovina on the human rights of older persons, 2010.

disproportion, for minimum paid pension received by the majority of pensioners in July 2011 was approximately 310.00 KM in the FBiH and 160.00 KM in the Republic of Srpska, and only the cost of food per month costs about 600.00 KM (for a family of four). A large number of elderly people, who in addition to the problems that accompany the third age, exhibited and economic poverty, which means they are not capable of their income to cover all costs to make their life easier, i.e. life worthy of man. Research of Caritas Bosnia and Herzegovina of 2010 showed that most of the elderly suffer from some kind of poverty and social exclusion. The research was conducted on a sample of 1200 respondents, users of Caritas program, of which 47.3% identified themselves as "older persons in need." Further, the analysis states that "... Bosnia and Herzegovina under the Madrid International Plan of Action on Aging, Regional Implementation Strategy of Berlin and the European Social Charter is to adopt the programs for the elderly (action plan, strategy, establish a responsible body/institution) but none of that was done. Neighboring countries have developed aging strategies and national action plans, and some have established the institution of the Ombudsman for the elderly. Elderly people of Bosnia and Herzegovina are not through laws recognized as socially vulnerable categories of society and there are no policies to respond to demographic changes and their consequences. Homes for the elderly are mainly in the competence of the county ministries and regional centers for social work, which partly participate in the cost of accommodation users, as they need to accommodate much more than the capacity allows. Instead of plans and programs to improve the situation, the government returns restrictive measures (reduction of pensions, delay the payment of pensions, the rise in prices of medicines and basic foods) which already difficult situation of the elderly even more worsens, a concern of society and state for them is even more reduced. The National Strategy for the fight against poverty has not yielded results identifiable for the population. The old and infirm are deprived of any kind of society welfare ensuring normal conditions for the life and health, and are left on their own, if they do not have family members to look after them. For the elderly there is a very low level of understanding and sensibility of the relevant authorities at all levels of government. Assistance to the elderly, mainly in the form of home care for the disabled, is provided by non-governmental organizations, primarily charitable organization Caritas and the Red Cross ..."

What forms of violence, abuse and neglect (eg. physical, psychological, sexual, financial, etc.) are recorded? In what kind of environment is this going on (eg. where they live or elsewhere)? Are there any data on the types of offenders?

This information is not held by Ombudsman Institution.

Does violence, abuse and neglect particularly affecting specific groups of older people? If yes, which groups and how?

We do not have data on violence, abuse and neglect particularly affecting specific groups of older persons.

Are the regulations of your country explicitly deals with the issue of violence, abuse and neglect of older people? If not, what rules apply in such cases in the context of the elderly? Are these regulations sufficiently engaged in the complete scope of violence against the elderly?

The issue of violence, abuse and neglect of older persons is regulated by the following normative legal framework: the Constitutions of Bosnia and Herzegovina and entities, relevant criminal legislation that makes the Criminal Code of the Republic of Srpska (Official Gazette of the Republic of Srpska, no. 49/03; 37/06; 70/06; 73/10, 1/12 and 67/13), Criminal Code of the Federation of Bosnia and Herzegovina (FBiH Official Gazette, no. 36/03; 37/03; 21/04; 69/04; 15/05; 42/10 and 42/11) and the Criminal code of Brčko District of Bosnia and Herzegovina (Official Gazette of Brčko District of BiH, No. 33/13 - revised text), as well as two *lex specialis*: Law on protection against domestic violence of the Republic of Srpska (Official Gazette of the Republic of Srpska, no. 102/12, 108/13 and 82/15) and the Law on protection against domestic violence of the Federation of Bosnia and Herzegovina (Official

Gazette of the Federation of BiH, number 20/13). A major step in providing protection for victims of domestic violence was made several years ago by adopting the Law on Protection from Domestic Violence of the Republic of Srpska, and the Federation of Bosnia and Herzegovina. These laws are filled with the key assumptions to provide protection and support to victims, provided that these laws provide for the so-called multidisciplinary approach to the development of the system of protection. Laws on protection against domestic violence have foreseen special assistance and protection for a victim of violence who is elderly person, and that the subjects of protection shall promptly provide and urgently resolve cases of domestic violence, all in the interest of the victim, especially if the victim is an older person. On the other hand, the criminal codes of the entities and Brčko District contain provisions in a special head of criminal offenses (offenses against marriage and family) predict a specific criminal offenses related to the elderly, as follows: 1. Leaving a helpless person alone, 2. abuse, torture and other inhuman and degrading treatment; 3. Violence in family or extended family, 4. Violation of family obligations and 5. Avoidance of support.

What are the rules for the protection of the elderly specifically against financial abuse, including through the abuse in relation to heritage?

The criminal laws of the entities and Brčko District provide for two offenses that may be related to the financial abuse of older people, as follows: 1. Avoiding giving serving and 2. Violation of family responsibilities. Also, the laws on protection against domestic violence provide for actions of violence that are misdemeanor and are related to financial abuse, including: denial of the right to economic independence by prohibiting the work and holding a family member in the relationship of dependency or subordination, threat or non-payment of livelihood or other forms of economic domination and damage, destruction or circulation of common property or property in the possession of, and damage to or destruction of property owned by or in the possession of another family member, or attempt to do so.



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