

Office of the Commissioner for Human Rights of Poland

Input for the 13th Session of UN OEWGA 3-6 April 2023

Guiding questions for the thirteenth session. Focus area

1: Right to health and access to health services National legal and policy framework

1. What are the legal provisions and policy frameworks in your country that guarantee the right of older persons to the enjoyment of the highest attainable standard of physical and mental health, including access to promotive, preventive, curative, rehabilitative and palliative health facilities, goods and services?

The Constitution (1997) provides that equal access to health care services, financed from public funds, shall be ensured by public authorities to citizens, irrespective of their material situation (Art. 68.2). Additionally, the following provision indicates state's obligation to ensure special healthcare to persons of advanced age (Art. 68.3).¹

The programme adopted by the government "Social policy on older persons till 2030. Security. Participation. Solidarity" (2018) contains a task for public administration regarding ensuring optimal access to health care and parallelly a task referring to access to health care for persons who need support in everyday activities. Those tasks do not refer to equal treatment in access to health care services. This document only collects some aspects of ongoing tasks and activities of different public institutions, including Ministry of Health. There are no additional funds allocated to fulfil indicated goals².

The "National Action Programme for Equal Treatment for the years 2022-2030" (2022) encloses some tasks referring to equality based on age – but in regard of the right to health and equal access to health services older persons are not indicated in this document. Only a very general group of persons in risk of social exclusion are mentioned in this regard which is comprehensive with an Act on public health (2015).

2. What steps have been taken to ensure that every older person has access to affordable and good quality health care and services in older age without discrimination?

The anti-discrimination legislation (the Act on the implementation of some European Union legislation regarding equal treatment, 2010) provides protection against age discrimination only in the area of employment and professional activity, i.e. there is no explicit provision on protection against discrimination based on age in access to health care and services, including all aspects enlisted in question 1. There is only general anti-discriminatory clause in the Constitution that shall be applicable (Art. 32: 1. All persons shall be equal before the law. All persons shall have the right to

¹ See the [Constitution](#).

² More on state's ageing policy in English, also in regard of health services, is to be found in: Ageing policies – access to services in different Member States. Annex VII Study on Poland - this document was provided by the Policy Department for Economic, Scientific and Quality of Life Policies at the request of the committee on Employment and Social Affairs (EMPL), [access on 17 February], [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662940/IPOL_STU\(2021\)662940\(ANN07\)_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662940/IPOL_STU(2021)662940(ANN07)_EN.pdf)

equal treatment by public authorities. 2. No one shall be discriminated against in (...) social life for any reason).

Some positive measures have been implemented to ensure access to the basic health care services – especially free medicine for people aged 75+ (accessible upon prescription) and more funds are allocated to the Primary Health Service for doctors treating patients aged 75+. Since 2012 specific geriatric procedures are incrementally implemented in hospitals.

3. What data and research are available regarding older persons' right to health and access to health care and services? Please indicate how national or sub-national data is disaggregated by sex, age and inequality dimensions, and what indicators are used to monitor the full realization of the right to health of older persons.

According to the representative for people aged 60+ survey, conducted by the Commissioner for Human Rights on situation of older persons during pandemic, older persons in reply to a question on access to different services reported the biggest obstacle in access to health services. Almost 40% reported problems with visiting a doctor, 7% did not see a doctor at all³.

National Statistical Office (GUS) provides data on general number of health services provided and used by older persons⁴. However there would be need for additional analysis on the sufficiency and effectiveness of those services.

The biggest research project on health of older persons in Poland is "PolSenior". First wave was conducted in 2010, second wave in 2021⁵. In this report one can find in depth analysis of health issues of older persons aged 60-106 – some of them are disaggregated by sex. Socioeconomic situation of older persons was also examined in this project. Report includes recommendations for government and public policy.

4. What steps have been taken to provide appropriate training for legislators, policymakers, health and care personnel on the right to health of older persons?

There is no public debate on the rights of older persons, including the right to health. This discussion remains rather as a discussion on ageing of population within a demographic change and as a part of broader social policy. In the "Social policy on older persons till 2030. Security. Participation. Solidarity" (2018) – which does not refer to human rights but remains in paradigm of social policy – one of the tasks enlisted relates to the trainings of health personnel in scope of health of older persons.

A document „Healthy Future. Strategic frames for development of healthcare system 2021-2027 with a perspective to 2030" (2021) includes appendix 1: "Strategy of deinstitutionalization of healthcare:

³ Biuletyn Rzecznika Praw Obywatelskich 2022, nr 3, Wsparcie osób starszych w czasie pandemii. Raport z badania na temat sytuacji osób w wieku 60+ w czasie pandemii COVID-19 w Polsce, p. 30; <https://bip.brpo.gov.pl/pl/content/rpo-raport-wsparcie-osob-starszych-w-czasie-pandemii> [access: 17 February 2023].

⁴ Available in English: Statistics Poland, The situation of older people in Poland in 2021, p.42, <https://stat.gov.pl/en/topics/older-people/older-people/the-situation-of-older-people-in-poland-in-2021,1,4.html#> [access: 17 February 2023].

⁵ Projekt PolSenior2, "Badanie poszczególnych obszarów stanu zdrowia osób starszych, w tym jakości życia związanej ze zdrowiem" <https://polsenior2.gumed.edu.pl/> and https://depot.ceon.pl/bitstream/handle/123456789/21118/PolSenior_2_wersja_testowa_ost.pdf?sequence=1&isAllowed=y [access: 17 February 2023].

older persons”. In this policy some additional trainings for care personnel are foreseen⁶, however there is no information whenever these trainings enclose the aspect of human rights and right to health care for older persons.

Progressive realization and the use of maximum available resources

5. What steps have been taken to align macroeconomic policies and measures with international human rights law, to use maximum available resources for the realization of older persons’ right to health, such as through expanding fiscal space, adopting targeted measures and international cooperation?

We are not aware of any of such steps to have been undertaken.

Equality and non-discrimination

6. What are the challenges faced by older persons in their enjoyment of the right to health, including the impact of intersectional discrimination and inequality based on age, gender, disability and other grounds?

The Constitutional standard of protection against discrimination, as mentioned above (Art. 32, Art. 68), is not sufficiently developed in statutory provisions. The anti-discrimination Act provides measures of protection in the scope of medical care only on the basis of race, ethnic origin or nationality (Art. 6). Therefore age-discrimination or intersectional unequal treatment lack effective remedies, including the shift of burden of proof in court proceedings⁷.

According to Art. 4 of the Act on patient rights and Patient’s Ombudsman (2008), in the event of a culpable violation of patient rights, the court may award the injured party an appropriate sum as monetary compensation for the harm suffered pursuant to Art. 448 of the Civil Code. Art. 4 of the Act, therefore, indicates those violations of the patient's rights that determine the violation of personal rights – the aggrieved party does not need to prove that a legally protected interest has been violated, it is enough for him to demonstrate a specific violation of the patient's right. If the court finds a violation of other personal rights that are not reflected in the catalogue of patients' rights, may award appropriate compensation under the provisions of the Civil Code. These measures have limited practical impact as they also exclude some important patients rights like “information on the type and scope of health services provided by entities providing health services”.

In practice limited access to information (like information on possible support for older persons) limits also access to health services.

Geriatric support is still accessible in a margin scope. During COVID-19 pandemic access of those rare services dropped additionally about 35%. Lack of funds for ambulatory geriatric services are alarming (on average about 2 Euro on a patient aged 60+ in 2020). It does not allow to implement the geriatric procedures in practice.

⁶ More about specific tasks conducted by Ministry of Health are to be found in a yearly document published by government: Informacja o sytuacji osób starszych w Polsce w 2021 r., p 186, [access: 17 February 2023]. <https://www.gov.pl/web/rodzina/informacja-o-sytuacji-osob-starszych-w-polsce-za-2021-r>

⁷ In the case the violation of the principle of equal treatment has been made probable, the person who is accused of the violation of this principle, is obliged to prove, that they have not violated this principle (as defined in art. 14 of the Act on equal treatment).

7. What measures have been taken to eliminate ageism and discrimination based on age, including discriminatory laws, policies, practices, social norms and stereotypes that perpetuate health inequalities among older persons and prevent older persons from enjoying their right to health?

The National Action Programme for Equal Treatment for the years 2022-2030 (2022) encloses some tasks designed to counteract ageism in form of strengthening a positive image of older people. However it is not in context of equal access to health services.

8. What measures have been taken to ensure that older persons are able to exercise their legal capacity on an equal basis with others, including making an informed consent, decisions and choices about their treatment and care?

General protective measures are enlisted in the Act on patient rights and Patient's Ombudsman (2008), but in this Act older persons are not indicated explicitly as rights holders.

Accountability

9. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for the denial of their right to health?

There are no specific mechanism in place for older persons to seek redress for the denial of their right to health. They may only use general protective measures, including complaint to Commissioner for Human Rights as well as Patients' Ombudsman. General protective measures are also enlisted in the Act on patient rights and Patient's Ombudsman (2008), but in this act older persons are not indicated explicitly as rights holders.

10. What mechanisms are in place to ensure the effective and meaningful participation of older persons living in different geographic areas of the country in the planning, design, implementation and evaluation of health laws, policies, programmes and services that affect them?

We are not aware of any type of consultations with older persons regarding these issues. The public consultations for "Social policy on older persons till 2030. Security. Participation. Solidarity" were scheduled for three weeks (call for inputs and comments with a deadline in three weeks), which we cannot call an effective way of conducting broad consultation.

Guiding questions for the thirteenth session

Focus area 2: Social Inclusion

The Scope:

Social inclusion is a precondition for the ability of older persons to exercise multiple human rights.

Social inclusion is the process of improving the terms of participation in society for people who are disadvantaged on the basis of age, sex, disability, race, ethnicity, origin, religion, or economic or other status through (1) enhanced opportunities, (2) access to resources (3) voice and (4) respect for rights.

1 From a human rights perspective, achieving social inclusion requires addressing the

discriminatory structures that have led to exclusion, deprivation of resources and lack of opportunities identified in multiple international human rights instruments.

On one hand, the full social inclusion of older persons lays upon removing existing barriers and, on the other hand, on the adoption of measures that actively promote their inclusion. As such, the achievement of social inclusion is realized through the exercise of human rights that have already been or will be analyzed by the Working Group. These guiding questions are therefore geared towards addressing exclusively those areas that have not been, nor will be, addressed in other sessions of the Working Work.

The following focus areas and their impact on the social inclusion and/or exclusion of older persons have already been covered by the Working Group:

- Equality and non-discrimination
- Neglect, violence and abuse
- Autonomy and independence
- Long-term care and palliative care
- Social protection and social security
- Education, training, lifelong learning and capacity building
- Access to justice
- Right to work and access to the labour market
- Economic security
- Contribution of older persons to sustainable development

The following focus areas and their impact on the social inclusion and/or exclusion of older persons may be covered by the Working Group in a forthcoming session:

- Participation in the public life and in decision-making processes
- Accessibility, infrastructure and habitat (transport, housing and access)

The guiding questions:

- What are the legal provisions, policy frameworks and/or measures in your country that explicitly focus on older persons who are marginalized on the grounds of their sex, disability, race, ethnicity, origin, religion, economic or other status? (This may include addressing older populations on frameworks dedicated to other marginalized groups such as women, persons with disabilities, migrants, minorities, homeless people etc.; or addressing marginalized groups within frameworks

devoted to older persons).

The only document which specifically focuses on addressing needs of older persons is the “Social policy on older persons till 2030. Security. Participation. Solidarity” (2018). It covers explicitly tasks aiming at meeting the needs of older persons who require support in everyday activities. It doesn’t refer to inequalities in older age based on ground of gender, race, ethnicity, particular types of disability, migrants, and homeless people.

The following policy frameworks might be considered relevant as well:

- 1) National Programme for Counteracting Poverty and Social Exclusion 2021-2027 (2021) – a public policy with perspective towards 2030 includes tasks on development of social services for persons with disabilities, older persons and other persons with a need of support in daily activities.
- 2) The National Action Programme for Equal Treatment for the years 2022-2030 (2022) includes a task regarding supporting leadership of older persons in their communities.

There is no such specific legal provisions in Poland. The Act on equal treatment (2010) or Labour Code (1974) has limited scope of applicability (as explained above).

• What legal age limits exist in your country that prevent the full and equal participation of older persons in societies in areas such as employment, education, healthcare, financial goods and services, or others?

There are some age limits in access to particular professions, like jurors (limit of age of 70), moreover a candidate to an University board may not be older than 67.

Despite existing incentives for older persons who continue their work when receiving pension there are also some age limits for some provisions: the Act of employment and counteracting unemployment (1994) defines the unemployed person as a person under retirement age (Art. 2.2 b) therefore provisions introduced by this act will not support older persons in age of retirement (60 for women, 65 for men).

There are some age limit also in access to financial services offered by banking sector – particularly with respect to access to loans.

• What measures are in place, if any, to ensure that older persons in institutions segregated from their communities -such as institutional care systems or prisons- can continue participating in their society?

There are changes to Electoral Code being proceeded by the Polish Sejm that are designed to facilitate persons aged 60+ exercising right to vote by assuring them free transport to polling stations.

Act on ensuring accessibility for people with special needs (2019) might be also relevant in this respect, as it obliges public entities to assure architectural accessibility of public buildings, digital accessibility as well as accessible information and communication. However, in this act older persons are not mentioned explicitly as rights holders.

• States have an obligation to use maximum available resources to progressively achieve the full realization of economic, social and cultural rights. What is the share of national public expenditure

budget targeted to older persons as a distinct group?