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Discrimination of older persons – a perspective of the National Human Rights Institution as the Independent Equality Body in Poland

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Madam Chairperson, Ladies and Gentlemen,

On behalf of the Polish Commissioner for Human Rights, who is also the Independent Equality Body in Poland, I would like to thank you for inviting National Human Rights Institutions to take the floor during the Open-ended Working Group sessions.

Speaking from the perspective of the Polish Ombudsman, I am aware that I am presenting only a small piece of the global system of protecting the rights of older persons. However, the values promoted in Poland may be similar in other countries, in particular in countries which follow traditional solutions and acknowledge the vital role of the family in supporting older persons. It is the values which underpin people's specific action, even if they are often performed without deep reflection.

According to analyses carried out by the Public Interest Research Centre in London, which of World Values Survey results, shows that individuals that value diversity, including age diversity, also value openness to change and self-expression, and openness to other humans and the surrounding world. Whereas the individuals that put the emphasis towards status quo and security tend to be less in favour of diversity.

The World Values Survey results show that since 1981 values promoted globally have been subject to more or less significant changes. In Poland, those changes were best visible following the accession to the European Union in 2004. At that time, we moved on the map of values towards fostering diversity. After 2008 which marked the onset of the financial crisis, our society turned towards security and tradition, but also – which was good news – towards values related to self-expression, which foster equality and the consequent partner-like treatment of people whose position in the society is vulnerable, instead of treating them in a paternalistic way.

Those **continuous changes of values shared in a given society call for the need to clearly determine and regularly remind people about how, in practice, the right to equal treatment regardless of age should be pursued.** Communicating those values also strengthens them in the society.

The challenges concerning non-discrimination of older persons must be considered in two dimensions: that of today's life, and the perspective of the next 30-40 years. Those two dimensions are interrelated. However, due to the rapid ageing in Polish society, the problems relating to systems and infrastructure need to be addressed appropriately, as they place older persons in an underprivileged position. If they are not addressed, they will soon impact a significantly larger number of older persons, particularly those living alone. In Poland, the number of older persons aged 65 and more, who encounter problems with every-day activities and have no one to turn to for help, is estimated at nearly 1 million, according to the European Health Interview Survey (EHIS) of 2014. This is a number which shall be visible to everyone in the 38-million population. The belief that families can always provide care of their elder relatives is becoming more and more illusory, given the population ageing perspective.

Let us take a closer look from the anti-discriminatory perspective. In particular, let's consider the challenges we face as the NHRI and the Equality Body. Based on the results of social surveys conducted for the Commissioner for Human Rights, I would like to present two examples: one of direct discrimination, and the other one of indirect, systemic discrimination.

Polish law prohibits discrimination on the grounds of age only in the sector of employment, in line with the relevant EU legislation. According to a representative survey on legislative awareness in the area of equality, conducted in Poland in December 2016, termination of employment for the sole reason of achieving retirement age is not regarded as discrimination by nearly 40 % of Poles. It is also important that only 33% of the country's population are aware of the legislation which prohibits discrimination on the labour market.

Therefore we need mechanisms to monitor the state's measures aimed at increasing awareness in this area.

The second survey was conducted in one of Poland's voivodeships (i.e. regions). Its objective was to verify how the principles arising from international documents, i.e. Resolution 46/91 and MIPAA, are understood and implemented by local decision-makers and heads of local Social Welfare Centres. According to the results of the survey, local decision-makers believe that discrimination occurs only when older persons are directly excluded from the local community, which, in their opinion, does not happen in their municipalities. The decision-makers do not notice, however, that a seemingly neutral local resolution or criterion makes it impossible for the elderly to use the schemes and programmes developed by local authorities. This phenomenon, in its broadest understanding, also refers to systemic constraints. Lack of appropriate infrastructure, but also lack of reaching older persons who live alone with appropriate information on available services, means that those persons are actually unable to fully enjoy their basic human rights, including the right to life in dignity, the right to make decisions regarding their own lives, etc. Moreover, the results of an audit carried out by the Supreme Audit Office show that decision-makers find it easier to refer

persons who are in need of support to residential care institutions, than to develop an offer of in-home care services for them. Between 2011 and 2014, the number of people referred to residential care institutions increased by 40%, whereas the number of people using in-home care services remained unchanged.

So why do we need a Convention on the Rights of Older Persons? The existing soft international law, although important and contributing to some extent to raising awareness of older persons' situation, and to taking account of demographic changes, is not treated in Poland as a key point of reference. The Madrid Plan, which in itself is not a human rights protection instrument, as pointed out by Ms. Kornfeld-Matte, was translated into Polish only ten years after its adoption in 2002, following interventions taken, in 2012 - the European Year of Active Ageing. It has to be noted that unfortunately the Polish Ministry of Family, Employment and Social Policy has not responded to the independent expert's questionnaire. Moreover the regular report on the progress in the implementation of the Madrid Plan under the last review has not yet been submitted. Apart from Poland, however, by the middle of June ten other countries from our region had not submitted their reports either. As we know, the submission deadline was autumn last year.

Given the above, there is a need for a regional and global trend towards making binding commitments to fulfil the rights of older persons, to make decision-makers see the political and social capital to be raised on joining the process. According to the Commissioner for Human Rights, the Convention would help national governments to actively address challenges relating to population ageing, by acting across the countries' system. Engagement in the drafting and implementation of the Convention would send a clear message to all citizens that ageing issues are treated seriously. It would also be a clear argument, in the sea of other issues and problems which constantly delay the changes necessary in that area. In line with the principle of equality, the adoption of the Convention would constitute a typical positive action towards equal opportunities of persons and whole social groups at risk of marginalization and ill-treatment.

The Commissioner for Human Rights is well aware and appreciates the government's measures for improving the situation of older persons in Poland, but they are insufficient in his opinion. Documents adopted in recent years are also of a soft nature. As a result, state support and reinforcement measures go to those regions and localities which are active in the field. In other regions older persons are left more or less to themselves, and decision makers often seem to be resistant to the statistics which illustrate the situation of older persons.

It should also be pointed out that soft law does not protect against discrimination. The new instrument could provide a basis for protecting the older persons against discrimination in areas which are not protected by the EU legislation, such as access to services, health-care, education, etc.

In addition the existing binding instruments largely fail to explicitly prohibit the discrimination on older persons.

Let me briefly mention that soft law fails to provide a legal basis for taking positive actions to eliminate inequalities. In Poland, due to the narrow understanding of discrimination and equal opportunities, the national and local governments' policies are not verified from the point of view of eliminating obstacles for older persons. One of the challenges to be addressed is the stereotypical perception of elderly persons in many areas.

Concluding, in view of the above, the Commissioner for Human Rights joins the debate at the global and national levels, by promoting an Campaign entitled *For our old age and yours – let's talk about the Convention on the Rights of Older Persons*. The rights of older persons need to be more visible in the public discourse. We need support in effectively seeking equality regardless of age, and thus in seeking the practical fulfilment of the human rights of older persons.