

HUMAN RIGHTS AS A VEHICLE FOR (BETTER) INTERNATIONAL PROTECTION OF THE ELDERLY

Ines Medić, PhD, Full Professor

University in Split, Faculty of Law
Domovinskog rata 8, 21000 Split
ines.medic@pravst.hr

ABSTRACT

Despite the fact that 21st century's society has been defined as an „ageing society“, law has not yet responded adequately to the needs of the „aging“ part of that same society. National legislators are often waiting for the „push“ from international community and national laws are still quite short with provisions aimed at the specific protection of the elderly. On the international level, apart from general human rights treaties and some soft law provisions on the right of older people, there is still no international convention which recognizes the specific rights of all older persons. There are different public and private international law instruments though, but they are diverse and either too general or too limited.

The Convention on International Protection of Adults (CIPA) and the Convention on the Rights of Persons with Disabilities (CRPD) as the most prominent ones both have their limitations. First and foremost, their personal scope of application is limited in a way that covers only the most vulnerable among the elderly. EU's Proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of the adults complements the CIPA, thus it is also limited in its scope.

Having in mind that according to the World Social Report 2023 the shift towards older population is largely irreversible and by 2050 the number of persons aged 65 years or older is expected to be surpassing 1,6 billion, a question arises „is the existing legal framework the best we can offer for the protection of the elderly?“. Based on the protection offered to other underprivileged groups, it is obvious that the time has come that not only the vulnerable but all the elderly should be granted internationally recognized charter of rights instead of just general standards scattered throughout different international instruments.

Such charter of rights should establish specific standards related to the rights of elderly, complementary with the existing general standards. It should also include an effective mechanism of enforcement of those rights. This will create a new legal dimension and a new obligation for national and international legislators, leading towards better protection of elderly on national and international level.

Thus, the aim of this article is to establish and explore the current state of play with regard to, particularly, international protection of the elderly, as well as to articulate arguments in favour of the proposed convention on the rights of the elderly.

Keywords: *human rights, international protection, older persons, proposed convention*

1. INTRODUCTION

It is indisputable that the world is facing big demographic shift. According to the World Social Report 2023 the shift towards older population is largely irreversible and by 2050 the number of persons aged 65 years or older is expected to be surpassing 1,6 billion,¹ Although, due to better health and wealth of societies, traditional notions of dependence of the elderly are loosing its significance, effective systems of old-age support are necessary. This is due to the demographic transition to longer lives and smaller families and, consequently, changed composition of kinship structures.² According to these projections, by the age of 2095 „the number of living grandparents and great-grandparents will markedly increase and the number of cousins, nieces and nephews, and grandchildren will decline“.³ The largest decline in family size is expected in Latin America and Caribbean, more modest in Europe and North America since in those regions family structures are already small. With respect to kin configuration, more „horizontal“ families which are dominated by lateral kin (siblings and cousins) will be replaced by more „vertical“ families which are dominated by a higher proportion of ascendants and descendants (children and grandparents).⁴ Due to increased cross-border mobility there is also a question of availability of kinship support.

All this advocates in favor of the development of robust system of old-age support. Even more so, since older people are often stereotyped as being dependent on others. They are seen as „recipients of charity“, rather than as rights holders who can make their own choices.⁵ In combination with lack of family ties which could provide support and informal care those individuals are on their own, which is exactly why it is necessary to put the rights and well-being of older persons at the centre of the future legislative efforts.

However, despite the fact that the 21st century's society has been defined as an „ageing society“, law has not yet responded adequately to the needs of the „aging“

¹ World Social report 2023: Leaving No One Behind In An Ageing World, UN, 2023, p. IV.

² Alburez-Gutierrez, D.; Williams, I.; Caswell, H., *Projections of human kinship for all countries*, Academia Sinica (Taiwan), 2023, [<https://doi.org/10.1073/pnas.2315722120>]. Accessed 23 March 2024.

³ *Ibid.*

⁴ *Ibid.*

⁵ Shahriar Rahman, R., *Older People's Rights*. [<https://www.amnesty.org>]. Accessed 1 December 2023.

part of that same society. National legislators are often waiting for the „push“ from international community and national laws are still quite short with provisions aimed at the specific protection of the elderly. On international level, apart from general human rights treaties and some soft law provisions on the right of older people, there is still no international convention which recognizes the specific rights of all older persons. There are different public and private international law instruments though, but they are diverse and either too general or too limited.

Based on the protection offered to other underprivileged groups, it is obvious that the time has come that not only the vulnerable but all the elderly should be granted internationally recognized charter of rights instead of just general standards scattered throughout different international instruments.

Such charter of rights should establish specific standards related to the rights of elderly, complementary with the existing general standards. It should also include an effective mechanism of enforcement of those rights. This will create a new legal dimension and a new obligation for national and international legislators, leading towards better protection of elderly on national and international level.

In order to set the ground for articulating arguments in favour of the proposed Convention for the protection of older persons, the first part of this article will include an attempt to demarcate the elderly as a target group and to analyze the existing framework for the protection of the elderly and the second part of this article will present an analysis of the proposed Convention's content.

2. DEFINING THE SUBJECT MATTER

2.1. Defining the „Older Age“

Every attempt to define the personal scope of application of any instrument should begin with the definition of the target group. While it goes rather easy with regard to some groups (e.g. children, women, disabled, etc.), when it comes to elderly it becomes a challenging task. It is a direct consequence of the fact that proces of getting old is unique in each individual case, depending on living conditions, genetic predisposition and care for one's own health.⁶ Thus, it might be said that everyone becomes old at a different time, which makes it difficult to grasp who should be considered to be elderly.

⁶ Roksandić, S., *Zdravstvena prava za starije osobe u Republici Hrvatskoj*, Medicus, Vol. 14, No. 2, 2005, p. 313.

Apart from being a biological phenomenon, „older age“ is also a social construct which changes in a given contexts and situations. This is particularly true given that people are living longer and healthier lives, changing perceptions and stereotypes about older people in many societies. However, „even the idea of elderly as a socially constructed category may create some difficulties given some individuals' self-perception that they do not belong to that category“.⁷

Consequently, there is sometimes a tendency to define „old age“ exclusively in non-biological terms (like „young at heart“, etc.) but it should be avoided. Although the „context-specific approach“ to older age might work in certain cases,⁸ it does not help at all in establishing the target group for the protection of the human rights of older persons.

Obviously, people age differently and „the term „elderly“ is only a generalization that draws together people of vastly different characteristics“.⁹ With that in mind, most of the existing legislation favours more neutral term „older people“ rather than „elderly“, which can stigmatize older people by associating them with frailty and dependence.

Based on that premise, it is not a surprise that there is no universally accepted definition of an „older person“. However, it does not mean that there is no definition at all. On the contrary, there are number of definitions – based on the change in the social role of the individual (e.g. retirement) or changed abilities of the individual (e.g. psychological or physiological conditions) or the age of the individual (65 in most of the developed countries and 50 to 55 in underdeveloped countries).^{10 11} Despite the fact that „any chronological demarcation of age boundaries may be considered arbitrary and open to dispute on grounds that it poorly represents the biological, physiological, or even psychological dimensions of human experience“,¹² most of the countries associate older age with the certain

⁷ Mégret, F., *The Human Rights of Older Persons: A Growing Challenge*, Human Rights Law Review, Vol. 11, No. 1., 2011, p. 43.

⁸ Hughes, M. L.; Touron, D. R., *Aging in Context: Incorporating Everyday Experiences Into the Study of Subjective Age*, Front Psychiatry, Vol. 12, 2021, pp. 1-12.

⁹ Frolik, L. A.; McChristal Barnes, A., *Elder Law: Cases and Materials*, LexisNexis Mathew Bender, 2007, p. 3.

¹⁰ See: Kowal, P.; Dowd, J. E., *Definition of an older person, Proposed working definition of an older person in Africa for the MDS Project*, Geneva: World Health Organization, 2001, [<https://www.who.int/healthinfo/survey/ageingdefnolder/en>], Accessed 3 December 2015.

¹¹ Although, even in most developed countries it may vary also. For example, in Slovakia person may be considered „old“ even at about 57 years while in the Netherlands it may take more that 70 years of age. See more in: Charness, N; Czaja, S., *Age and Technology for Work*, in [Schultz, K.; Adams, G. [eds.], *Aging and Work in the 21st century*, Routledge, 2018.

¹² National research Council (US) Panel on a Research Agenda and New Data for an Aging World, *Preparing for an Aging World: The Case for Cross-National Research*, Washington [DC]: National Academies Press, 2001, [<https://www.ncbi.nlm.nih.gov>], Accessed 23 March 2024.

age limit, mainly the same one which correlates with the age at which a person becomes eligible for statutory and occupational retirement.¹³ Likewise, the United Nations treats anyone above 60 years old as an older person.¹⁴

It is obvious, that in order to accommodate the objective (age, functional capacity, social involvement and physical and mental health)¹⁵ and subjective (self-defining) factors, the definition of the elderly or „older persons“ should include an age threshold and some flexibility „to take into account national and local, as well as functional, variations“.¹⁶ In other words, in order to demarcate the target group of the proposed Convention from the rest of the population it is necessary to introduce at least minimal framework for the determination of an „older person“.

2.2. Defining the Concerns Associated with „Older Age“

One of the main concerns when it comes to an „older age“ is „ageism“.¹⁷ Ageism can be explained as systematic stereotyping of people because they are old. Or, as process which „allows the younger generations to see older people as different from themselves, thus they subtly cease to identify with their elders as human beings.“¹⁸ In other words, „people cease to be people, cease to be the same people or became people of an instinct and inferior kind, by virtue of having lived a specified number of years“.¹⁹

According to the World Health Organization (WHO), „Ageism refers to the stereotypes (how we think), prejudice (how we feel) and discrimination (how we act) directed towards people on the basis of their age. It can be institutional, interpersonal and self-directed. Also, according to the WHO, „institutional ageism refers to the laws, rules, social norms, policies and practices of institutions that unfairly restrict opportunities and systematically disadvantaged individuals because of their age. Interpersonal ageism arises in interactions between two or more individuals, while self-directed ageism occurs when ageism is internalised

¹³ *Ibid.*

¹⁴ Mégret, *op. cit.*, note 7, p. 43.

¹⁵ World Health Organisation, Our Ageing World, [<https://www-who.int/ageing/en>], Accessed 12 January 2010.

¹⁶ Mégret, *op. cit.*, note 7, p. 43.

¹⁷ In details about ageism: Gutterman, A.S., *Ageism: Where It Comes From and What it Does*, 2022, [<https://ssrn.com/abstract=3849022>], Accessed 6 July 2023.

¹⁸ Bytheway, B., *Ageism*, in: Johnson, M. L. (ed.). *The Cambridge Handbook of Age and Ageing*, Cambridge Books Online: Cambridge University Press, 2009, p. 338.

¹⁹ Johnson, J.; Bytheway, B., *Ageism: Concept and definitions*, in: Johnson, J.; Slater, R. (eds.), *Ageing and Later Life*, Thousand Oaks: Sage Publications, London, 1993, p. 200.

and turned against oneself.²⁰ Ageism often intersects and interacts with other forms of stereotypes, prejudice and discrimination, including ableism, sexism and racism. Multiple intersecting forms of bias compound disadvantage and make the effects of ageism on individuals' health and well being even worse.²¹

According to the United Nations Economic Commission for Europe (UNECE) ageism includes „stereotyping, prejudice about and discrimination against people on the basis of their age; which is largely implicit, subconscious and unchallenged in our societies, cuts across the life course and stems from the perception that a person might be too old or too young to be or do something. While ageism can affect people of any chronological age, more attention is usually paid to the higher ages, as older people suffer a great share of ageism and once encountering it, face more serious consequences than younger persons.“²²

Unfortunately, ageism translates in almost all areas of life. To start with, there are economic concerns. Very often, older people face discrimination in employment, whether direct (e.g. mandatory retirement ages or maximum age limits on hiring) or indirect (e.g. when employers make ageist assumptions about an older person's ability to work or learn new skills). Even if they manage to overcome economic concerns, they often face workplace discrimination. According to the data of the Amnesty International Belgium, nearly one in four older people who remained in work felt that they been treated differently after turning 55 years old.²³ When it comes to access to pensions, which are a lifeline to older persons, only 68% of older people globally receive a pension. The numbers drop significantly with regard to Africa, Asia and Middle East, where less than 30% of older people receive a pension. In both scenarios, if a pensioner is a women there is also intersection with gender discrimination. Since women are more likely to take breaks from formal work to care for their family or to work in the informal economy, they often receive lower pensions than men. Further on, in times of crises, economic vulnerabilities of „older persons“ are heightened since age discrimination is often embedded in humanitarian response, and older people often struggle to access adequate healthcare, food, financial assistance and housing.²⁴ Last but not least, ageism also has negative health outcomes.²⁵

²⁰ Global report on ageism, Geneva: World Health Organization, 2021, p. XV.

²¹ *Ibid.*

²² United Nations Economic Commission for Europe, Combating ageism in the world of work (UNECE Policy Brief on Ageing No 21, February 2019), p. 3. Meisner, B., *A Meta-Analysis of Positive and Negative Age Stereotype Priming Effects on Behaviour Among Older Adults*, Journals of Gerontology Series B Psychological Sciences and Social Sciences, Vol. 67, No. 1, 2012, p. 13.

²³ Shahriar, *op. cit.*, note 5, p. 11-12.

²⁴ *Ibid.*

²⁵ Pascoe, E.A.; Smart Richman, L., *Perceived Discrimination and Health: A Meta-Analytic Review*, Psychological Bulletin, Vol. 135, No. 4, 2009, p. 531-534.

As it is obvious, ageism, irrespective of its ground, has numerous negative outcomes. Combined with vulnerability of „older age“ often leads to violation of human rights of older persons. Since discriminatory grounds tend to overlap, „collective, concerted and coordinated global action is required to tackle ageism.“²⁶ On personal level, it will take changing of people’s understanding and social behaviours. On the institutional level it will take changing of political determination around age and ageing. Unfortunately, so far ageism has received little attention, as well in research as in policy making.²⁷

3. EXISTING AND EXPECTED INTERNATIONAL REGULATION

Despite numerous efforts to frame the elderly issues in terms of human rights, trajectory of the domestic and international protection of the elderly has so far been moving in different direction. National legislators are waiting for the „push“ from international community, while international human rights law referring to elderly has so far been based mainly on some scattered provisions of existing international instruments dealing with human rights in general and some private international law instruments dealing with international protection of certain groups of adults. There are also some new legislative initiatives but mainly to complement the Hague Convention on the International Protection of Adults, thus also just indirectly touching upon certain human rights.

3.1. Current State of Play in International Human Rights Arena

3.1.1. From Global

Up to this day, there is no comprehensive international instrument on global level „dealing with the specific needs of and required protections of the elderly“.²⁸ There are legal instruments protecting the rights of all people, thus including the elderly, but the treaty tailored specifically to the needs of elderly is still lacking.

The Universal Declaration of Human Rights (UDHR)²⁹ makes explicit reference to the rights of the elderly – „Everyone has the right to a standard of living ad-

²⁶ Officer, A.; de la Fuente-Núñez, V., *A global campaign to combat ageism*, Bulletin of the World Health Organization, No 96, 2018, pp. 295.

²⁷ *Ibid.*

²⁸ Miller, J.M., *International Human Rights and the Elderly*, Marquette Edler’s Advisor, Vol. 11, No. 2, p. 347. Rodríguez-Pinzón; Martin, C., *The International Human Rights Status of Elderly Persons*, American University International Law Review, Vol. 18, No. 4, pp. 915, 917.

²⁹ The Universal Declaration of Human Rights, 10 December 1948, General Assembly resolution 217A.

equate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.“.³⁰ Despite its existence, (mainly) due to lack of recognition of ageism and despite numerous subsequent soft law instruments,³¹ older persons still remain largely invisible in international human rights law.

In the wake of UDHR, some other international instruments have been enacted that recognize the specific rights of all persons, and equality and non-discrimination. International Covenant on Civil and Political Rights (ICCPR)³² and International Covenant on Economic, Social and Cultural Rights (ICESCR)³³ both prohibit the discrimination and establish the duty to eradicate it. They ensure that the rights contained within it apply to all people „without distinction of any kind, such as race, colour, seks language, religion, political or other opinion, national or social origin, property, birth or other status“. Despite the lack of any explicit mention of the elderly, the ICCPR and the ICESCR have been accepted by the respective Committees³⁴ to protect the rights of the elderly.³⁵

In order to clarify the extent to which the ICESCR applies to elderly, the Committee on Economic, Social and Cultural Rights even adopted General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons.³⁶ General Comment No. 6 discusses general obligation od States parties towards older people as well as specific provisions of the Covenant that adress the rights of the elderly related to: equal rights of man and women, work, social security, protection of the family, adequate standard of living, physical and mental health and education and culture. It

³⁰ See Art. 25(1) of the UDHR.

³¹ Which address the respective issues in a more direct and express manner and include sets of principles, declarations, plans of action, etc. See: Ramachandran, M., *Older Presons and the International Human Rights Framework: Argument for a Specific International Convention*, Journal of the Indian Law Institute, Vol. 56, No. 4, 2014, pp. 536-543. Tang, K.-L.; Lee, J.-J., *Global Social Justice for Older People: The Case for and International Convention on the Rights of Older People*, The British Journal of Social Work, Vol. 36, No. 7, 2006, pp. 1139-1142. Doron I., *From National to International Elder Law*, The Journal of International Aging, Law & Policy, Vol I, 2005, pp. 52-61.

³² International Covenant on Civil and Political Rights, 16 December 1966, General Assembly resolution 2220A (XXI).

³³ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, A/RES/21/2200.

³⁴ ICCPR by the Human Rights Committee and the IESCR by the Committee on Economic, Social and Cultural Rights. See: Miller, *op. cit.*, note 28, p. 350, 352.

³⁵ Miller, *op. cit.*, note 28, p. 350.

³⁶ Committee on Economic, Social and Cultural Rights even adopted General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons, [1996], U.N. Doc. E/1996/22 at 20.

provides a legal interpretation of how ICESCR ought to apply to older persons.³⁷ According to the General comment No. 6, age as a separate discriminatory ground was not included in either of the Covenants since at the time of their enactment „the problem of demographic ageing was not as evident as it is now“. Although the Covenants are enforceable legal instruments, „the elderly whose rights are being violated may not have the ability to voice those violations.“³⁸

The first UN human rights convention that explicitly affirmed the age as prohibited basis of discrimination was the Convention on the Elimination of All Forms of Discrimination against Women,³⁹ with regard to their access to old age subsidies. Due to changes in population structures and its implications for human rights, some years later the Committee on the Elimination of Discrimination against Women adopted General recommendation No. 27 on older women and protection of their human rights,⁴⁰ „in order to provide guidance concerning State parties' obligations under the Convention with regard to women' rights and the need to ensure that people are able to age with dignity“.⁴¹

Scope of prohibited discrimination bases associated with an (older) age was subsequently widened by the Convention on the Protection of the Rights of Migrant workers and their Families⁴² and further on by the Convention on the Rights of Persons with Disabilities (CRPD).⁴³

UN Convention on the Rights of Persons with Disabilities (CRPD) „promotes, protects and ensures the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and promotes respect for their inherent dignity“.⁴⁴ The Convention represents a paradigm shift from a medical

³⁷ Tonolo, S., *International Human Rights Law and the Protection of the Elderly in Europe*, Medicine, Law & Society, Vol. 11, No. 2, 2018, p. 109.

³⁸ Miller, *op. cit.*, note 28, p. 352.

³⁹ Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, Treaty Series 1249 [1979]:13.

⁴⁰ Committee on the Elimination of Discrimination against Women, General recommendation No. 27 on older women and protection of their human rights, 16 December 2010, CEDAW/C/GC/27.

⁴¹ Huenchuan, S.; Rodríguez-Piñero, L., *Ageing and the protection of human rights: current situation and outlook*, ECLAC – Project Document Collection, United Nations, 2011, pp. 27-29.

⁴² Convention on the Protection of the Rights of Migrant workers and their Families, 18 December 1990, Treaty Series 2220 [1990]:3.

⁴³ The United Nations Convention on the Rights of Persons with Disabilities, Treaty Series 2515 [2006]:3. Hendriks, A., *UN Convention on the Rights of Persons with Disabilities*, European Journal of Health Law, Vol. 14, No. 3, 2007, pp. 273-298.

⁴⁴ Art. 1(1) of the CRPD.

model of disability to a human rights model.⁴⁵ CRPD, within its personal scope of application, has much to offer to elderly „both in terms of its substantive provisions as well as an example of what can be accomplished through advocacy efforts to codify human rights protections under international law“.⁴⁶

Areas covered by the CRPD are: accessibility, personal mobility, health, education, employment, habilitation and rehabilitation, participation in political, social and cultural life, and equality and non-discrimination. Although the CRPD does not single out elderly as a separate category, several of its provisions are of particular relevance to elderly, such as: art. 1 (purpose), art. 3 (general principles), art. 6 (women with disabilities), art. 9 (accessibility) and in particular provision of Art. 12 (equal recognition before the law), which challenges paternalistic policies relating to people who lack „capacity“. The CRPD proposes the abolition of guardianship in favour of decision-autonomy and „supportive decision making“. There is also art. 19 (living independently and being included in community) which limits the scope of a State’s use of institutionalization,⁴⁷ as well as arts. 25 and 26 dealing with accessibility of mainstream health services and art. 28, focusing on adequate standard of living and social protection.⁴⁸ However, personal scope of application of the CRPD is limited to only certain category of elderly.

3.1.2. ... to Regional Level

At the regional level, legislation dealing with human rights is produced by by the Council of Europe and the EU. There are number of more or less binding documents,⁴⁹ of which we will mention only the most important ones.

3.1.2.1. Council of Europe

European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)⁵⁰ together with its Protocols is considered regional codifica-

⁴⁵ Kanter, A.S., *The United Nations Convention on the Rights of persons with Disabilities and Its Implications for the Rights of Elderly People Under International Law*, Georgia State University Law Review, 2009, Vol. 25, No. 3, p. 549.

⁴⁶ *Ibidem*, p. 530.

⁴⁷ Morrison-Dayana, R., *Protecting the Right to Social Participation of Older persons in Long-term Care under Article 19 of the United Nations Convention on the Rights of Persons with Disabilities*, Human Rights Law Review, Vol. 23, No. 2, 2023, pp. 1-21.

⁴⁸ Tonolo, *op. cit.*, note 37, p. 112.

⁴⁹ For more see: Rešetar Čulo, I., *Zaštita prava starijih osoba u Evropi: trenutno stanje, nedostatci i izazovi*, Pravni vjesnik, Vol. 30, No. 2, 2014., pp. 127-130.

⁵⁰ Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 005.

tion of universal rights, meant to protect ordinary people from abuse by the state by placing on states explicit duty to protect all individuals.⁵¹

Obviously its wording is not explicitly directed to the human rights of elderly. The text of the ECHR does not contain any reference to the notion of „older persons“. However, case law of the European Court of Human Rights (ECtHR) proves that it can and it has been used in cases related to elderly as well.⁵² According to the ECtHR case law, there have been cases dealing with the right to life,⁵³ prohibition of torture and inhuman or degrading punishment or treatment,⁵⁴ prohibition of slavery and forced labour,⁵⁵ right to liberty and security,⁵⁶ right to a fair trial,⁵⁷ right to no punishment without law,⁵⁸ right to respect for private and family life,⁵⁹ right to freedom of thought, conscience and religion,⁶⁰ right to freedom of expression,⁶¹ right

⁵¹ Art. 1 of the ECHR: „The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.“.

⁵² Tymofeyeva, A., *Human Rights of Older Persons in the Case Law of the European Court of Human Rights*, Czech Yearbook of Public & Private International Law (CYIL), Vol. 10, 2019, pp. 266-282.

⁵³ Art. 2 of the ECHR: *Volintiru v. Italy*, application no. 8530/08; *Dodov v. Bulgaria*, application no. 59548/00; *Verein Klimasenioren Schweiz and Others v. Switzerland*, application no. 53600/20; *Watts v. the United Kingdom*, application no. 15341/89.

⁵⁴ Art. 3 of the ECHR: *Lariosbina v. Russia*, application no. 56869/00; *Budina v. Russia*, application no. 45603/05; *Chyzhevska v. Sweden*, application no. 60794/11; *Frolova v. Finland*, application no. 47772/11; *Senichishak v. Finland*, application no. 5049/12; *Sawoniuk v. the United Kingdom*, application no. 63716/00; *Papon v. France*, application no. 64666/01; *Farbtuhs v. Latvia*, application no. 4672/02; *Haidn v. Germany*, application no. 6587/04; *Contrada (no. 2) v. Italy*, application no. 7509/08; *Taştan v. Turkey*, application no. 41824/05.

⁵⁵ Art. 4 of the ECHR: *Floirou v. Romania*, application no. 15303/10; *Meier v. Switzerland*, application no. 10109/14.

⁵⁶ Art. 5 of the ECHR: *H.M. v. Switzerland*, application no. 39187/98; *Vasileva v. Denmark*, application no. 52792/99.

⁵⁷ Art. 6 of the ECHR: *Süssmann v. Germany*, application no. 20024/92; *Jablonská v. Poland*, application no. 60225/00; *Farcaş and Others v. Romania*, application no. 30502/02; *X and Y v. Croatia*, application no. 5193/09; *Zavodnik v. Slovenia*, application no. 53723/13.

⁵⁸ Art. 7. of the ECHR: *Van Anrat v. the Netherlands*, application no. 65389/09; *Glien V. Germany*, application no. 7345/12.

⁵⁹ Art. 8 of the ECHR: *Gross v. Switzerland*, application no. 67810/10; *McDonald v. the United Kingdom*, application no. 4241/12; *Jivan v. Romania*, application no. 62250/19; *Grant v. the United Kingdom*, application no. 32570/03; *Schlumpf v. Switzerland*, application no. 20002/06; *Verein Klimasenioren Schweiz and Others v. Switzerland*, application no. 53600/20; *M.K. v. Luxembourg*, application no. 51746/18; *Calvi and C.G. v. Italy*, application no. 46412/21.

⁶⁰ Art. 9 of the ECHR: *Pretty v. the United Kingdom*, application no. 2346/02; *Georgini v. Italy*, application no. 20034/11.

⁶¹ Art. 10 of the ECHR: *Heinisch v. Germany*, application no. 28274/08; *Tešić v. Serbia*, applications no. 4678/07 and 50591/12.

to marry,⁶² right to an effective remedy,⁶³ right to prohibition of discrimination,⁶⁴ right to just satisfaction.⁶⁵

Some of the human rights relevant also for elderly are enshrined in the Protocols to the ECHR (e.g. right to protection of property,⁶⁶ voting rights,⁶⁷ the right to continuous education of the elderly⁶⁸), but unlike the rights enshrined in the Convention itself, rights contained in Protocols might not be protected in all 46 states since Protocols are not ratified by all 46 states.

In any of the existing ECtHR cases there is no explicit articulation of the term „elderly“ or „older person“. However, careful reading of ECtHR’s case law clearly shows that what is seen at first sight is not always true. Age in itself does not justify any special status of older persons in the proceedings before the ECtHR. But, in cases which involve older persons⁶⁹ ECtHR does take into account their „limited physical mobility, decreased information processing and problem-solving skills that are often related to declining memory capacity and weakened evaluation skills“⁷⁰ or, in other words, their vulnerability. Only cummulation of age and vulnerability (assessed through deteriorated personal faculties) may lead to finding a breach of the ECHR.⁷¹ Thus, the lack of explicit definition should not be seen as the absence of one.

⁶² Art. 12 of the ECHR: *Delecalle v. France*, application no. 37646/13.

⁶³ Art. 13 of the ECHR: *Şimşek and Others v. Turkey*, applications no. 35072/97 and 37194/97; *Popov (no. 1) v. Moldova*, application no. 74153/01; *Zavodnik v. Slovenia*, application no. 53723/13

⁶⁴ Art. 14 of the ECHR and Art 1 of Protocol No 12 to the Convention: *Burden v. the United Kingdom*, application no. 13378/05; *Carson and Others v. the United Kingdom*, application no. 42184/05; *Taipale v. Finland*, application no. 5855/18; *Tulokas v. Finland*, application no. 5854/18.

⁶⁵ Art. 41 of the ECHR: *Georgel and Georgeta Stoicescu v. Romania*, application no. 9718/03.

⁶⁶ Art. 1 of Protocol No. 1. to the ECHR: *Klaus and Youri Kiladze v. Georgia*, application no. 7975/06; *Da Conceição Mateus v. Portugal and Santos Januário v. Portugal*, applications no. 62235/12 and 57725/12; *Mauriello v. Italy*, application no. 14862/07; *Aielli and Others and Arboit and Others v. Italy*, applications no. 27166/18 and 27167/18; *P.C. v. Ireland*, application no. 26922/19; *Žegarac and Others v. Serbia*, application no. 54805/15.

⁶⁷ Art. 3 of Protocol No. 1 to the ECHR: *Paksas v. Lithuania (GC)*, application no. 34932/04.

⁶⁸ Mikołajczyk, B., *Is the ECHR ready for global ageing?*, *The International Journal of Human Rights*, Vol. 17, No. 4, 2013., p. 518.

⁶⁹ ECtHR: *Valentin Câmpeanu v. Romania (GC)*, application no. 47848/08 (mentally disabled person), *Khlaifia and Others v. Italy [GC]*, application no. 16483/12 (in the context of the expulsion of the aliens), *Mahamed Jama v. Malta*, application no. 10290/13 (in the context of asylum proceedings), etc.

⁷⁰ Tymofeyeva, A., *op. cit.*, note 52, p. 279. Seatzu, F., *Reshaping EU old age law in light of the normative standards in international human rights in relation to older persons*, in: Ippolito, F.; Iglesias Sánchez, S. (eds.), *Protecting vulnerable groups: the European human rights framework*, Hart Publishing, 2017, p. 49.

⁷¹ ECtHR: *Farcaș and Others v. Romania*, application no. 30502/05, *Chmil v. Ukraine*, application no. 20806/10, *Tarakhel v. Switzerland (GC)*, application no. 29217/12.

Considering that the ECHR, despite its evolutive interpretation is not the best fit for the overall protection of human rights of older persons, some have suggested creation and adoption of additional protocol to the Convention.⁷² Such protocol should contain a catalog of positive obligations of states which would help eliminate obstacles to the realization of human rights of older persons.⁷³

Unlike ECHR, European Social Charter (ESC) (as revised in 1996)⁷⁴ explicitly mentions the elderly, in art. 23 -„Every elderly person has the right to social protection.“. This right is further articulated in art. 4 of the 1998 Additional Protocol to the European Social Charter.⁷⁵ One of the main goals of these provision is for the elderly to remain full members of society or, in other words, not to be discriminated because of their age.⁷⁶ In order to achieve this goal, State parties are expected to undertake appropriate measures, e.g. „secure adequate resources enabling the elderly to lead a decent life and play an active part in public, social and cultural life; secure provision of information about services and facilities available for elderly persons and their opportunities to make use of them“, etc.⁷⁷

Problem is, in many States art. 23 of the ESC and art. 4 of the Additional Protocol to the ESC are not accepted, and the possibility of submitting collective complaint exist in only 16 States parties to the ESC.⁷⁸

3.1.2.2. European Union

The Charter of Fundamental Rights of the EU⁷⁹ in its art. 25 explicitly states age as the one of prohibited grounds of discrimination – „The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to

⁷² Mikołajczyk, *op. cit.*, note 68, pp. 523-524.

⁷³ Roksanđić Vidlička, S; Šikoronja, S., *Pravna zaštita starijih osoba, osobito s duševnim smetnjama, iz hrvatske perspektive: Zašto nam je potrebna Konvencija UN-a o pravima starijih osoba*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 38, No. 3., 2017. p. 1112.

⁷⁴ Council of Europe, European Social Charter (revised), 3 May 1996, ETS No. 163.

⁷⁵ The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, 9 November 1995, ETS No. 158.

⁷⁶ Digest of the case law of the European Committee of Social Rights, European Committee of Social Rights, Council of Europe, 2008, p. 147.

⁷⁷ Art. 4. of the The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, 9 November 1995, ETS No. 158.

⁷⁸ Rešetar Čulo, I., *Zaštita prava starijih osoba u Europi: trenutno stanje, nedostatci i izazovi*, Pravni vjesnik, Vol. 30, No. 2, 2014, p. 127.

⁷⁹ The Charter of Fundamental Rights of the EU, OJ C 326/391, 26. 10. 2012.

participate in social and cultural life.“. According to the Explanations,⁸⁰ art. 25 of the Charter is based on art. 23 of the revised ESC as well as on arts. 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers,⁸¹ so it has to be read in line with these provisions. It implies advocating „an inclusive society, the availability of social rights and high quality of life, intergenerational solidarity, prevention of adverse environmental impacts, interdisciplinary and intersectoral cooperation and financial sustainability“.⁸² Age is explicitly mentioned also in art. 21 (non-discrimination), among other prohibited discriminatory bases.

3.2. Current State of Play in Private International Law Arena

3.2.1. Hague Convention on the International Protection of Adults

As all private international law conventions, Hague Convention on the International Protection of Adults (CIPA)⁸³ primarily deals with international jurisdiction, applicable law and recognition and enforcement.⁸⁴ In this case, in relation to protection of vulnerable adults in cross-border cases. Convention applies to „persons who have reached the age of 18 years“⁸⁵ and to „measures in respect of an adult who had not reached the age of 18 years at the time the measures were taken“.⁸⁶ This is to ensure that measures taken with respect to the minor will, if needed, continue to remain effective even after his majority.⁸⁷

⁸⁰ Explanations relating to the Charter of Fundamental Rights, OJ C 303/17, 14. 12. 2007. The Charter of Fundamental Rights of the European Union - reading guide, In the light of the European Convention for the Protection of Human Rights and Fundamental Freedoms and of the European Social Charter (revised), [<https://rm.coe.int/16802f5eb7>]. Accessed 13 January 2024, pp. 43-44.

⁸¹ The Community Charter of the Fundamental Social Rights of Workers, 9 December 1989, COM(89) 471 final.

⁸² Rešetar Čulo, *op. cit.*, note 78, p. 129. Žganec, N.; Rusac, S.; Laklija, M., *Trendovi u skrbi za osobe starije životne dobi u Republici Hrvatskoj i u zemljama Europske unije*, Revija za socijalnu politiku, Vol. 15, No. 2, 2008, p. 181.

⁸³ HCCH, Convention of 13 January 2000 on the International Protection of Adults [<https://www.hcch.net/en/instruments/conventions/full-text/?cid=71>]. Accessed 21 February 2024.

⁸⁴ For more see: Drventić, M., *The Protection of Adults in the European Union*, EU and Comparative Law Issues and Challenges Series (ECLIC), Vol. 3, 2019., pp. 803-829. Frimston, R., *The 2000 Adult Protection Convention – sleeping beauty or too complex to implement?*, in: John, T.; Gulati, R.; Köhler, B. (eds.), *The Elgar Companion to The Hague Conference on Private International Law*, Edward Elgar Publishing, 2020, pp. 226-235. Frimston, R.; Ruck Keene, A.; van Overdijk, C.; Ward, A.D., *The International Protection of Adults*, Oxford University Press, 2015. Bumbaca, V., *The Hague Convention on the Protection of Adults – Plea for Practice of an „Adult“ Approach*, Yearbook of Private International Law, Vol. XXIII, 2021/2022 (Frimston *et al.*), pp. 365-392.

⁸⁵ CIPA, *op. cit.*, note 6, Art. 2(1).

⁸⁶ *Ibid.*, Art. 2(2).

⁸⁷ Lagarde, P., Explanatory Report on the 2000 Hague Protection of Adults Convention [<https://www.hcch.net/en/publications-and-studies/details4/?pid=2951&dtid=3>]. Accessed 3 January 2024, para 15.

With respect to the personal scope of application, CIPA consciously avoids the use of legal terms, like „adults with incapacity“ or „incapacitated adults“, since „the legal mechanisms by which interventions are justified in the lives of adults differ widely between jurisdictions“.⁸⁸ While modern legal systems have moved beyond status-based approach, there are still jurisdictions in which adult can be declared an „inacapax“ and reduced to less than a full legal person.⁸⁹ Declaration of incapacity is by no means required in order to qualify for CIPA’s protection. On the contrary, as explicitly expressed in Explanatory Report „fundamental rights of adults in need of protection were at all times a central concern“.⁹⁰

Thus, according to Art. 1(1), CIPA applies to the protection of „adults who, by reason of an impairment or insufficiency of their personal faculties, are not in the position to protect their interests“. In other words, „the adults whom the Convention is meant to protect are the physically or mentally incapacitated, who are suffering from an „insufficiency“ of their personal faculties, as well as persons usually elderly, suffering from an impairment of the same faculties, in particular persons suffering from Alzheimer’s disease“.⁹¹ To trigger the application of the Convention, „insufficiency or an impairment of personal faculties“ must be of such extent that the adult is not in a position to protect his or her interests. Required cumulation of this two factual elements excludes from the scope of application any external cause of vulnerability, like adult victims of external violence, or cases of prodigality, only physical disabilities, etc. Some argue that such approach can be considered restrictive since some of these conditions (e.g. physical disability itself) may justify the adoption of a protection measure, especially if the adult agrees.⁹²

Obviously, personal scope of application of the Convention is rather narrow. Especially when it comes to elderly, it is focused only on the most vulnerable among the vulnerable, since all elderly should be considered vulnerable due to (more or less visible) inevitable deterioration of their personal capabilities as they grow older. In combination with limited geographical scope as a result of small number of ratifications, and the absence of a supranational court which leads to differing results in interpretation of CIPA’s provisions across the contracting states, it can hardly be called too helpfull from the human rights perspective.

⁸⁸ Frimston, *op. cit.*, note 84, p. 227.

⁸⁹ Frimston, *op. cit.*, note 84, p. 227.

⁹⁰ Lagarde, *op. cit.*, note 87, para 7.

⁹¹ *Ibidem*, para. 9.

⁹² Von Hein, J., Chapter A.4: Adults, protection of, in: Basedow, J; Rühl, G.; Ferrari, F.; de Miguel Asensio, P (eds.), *Encyclopedia of Private International Law*, Cheltenham: Edward Elgar Publishing, 2017, 298-300.

Although, during negotiations some delegations advocated for the inclusion into CIPA of reference to other international instruments, in particular UN's ICCPR and on ICECSR, the Commission refused based on explanation that the fundamental rights of adults in need of protection were at all times a central concern of the CIPA.⁹³ However, after the enactment of the CRPD, CIPA has been facing heavy criticism for inclusion of guardianship (as a protective measure) in its provisions. In recent years there has been a complete rethink on autonomy, decision-making and legal capacity of both persons with disabilities and older persons.⁹⁴ Thus, critics of the CIPA advocate the interpretation of the CIPA in line with this new trends, i. e. distancing from guardianship in favour of „supported decision making“. According to art. 12. of the CRPD, aim is to restore full voice, choice and control to persons with disabilities (and elderly) over their own lives and with support as needed and requested.⁹⁵

3.2.2. A Proposal for Regulation on Jurisdiction, Applicable Law, Recognition and Enforcement of Measures and Cooperation in Matters Relating to the Protection of Adults

In May 2023, as a response to significant demographic and social changes, European Commission presented A proposal for Regulation on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults.⁹⁶ The aim was to complement and improve CIPA's provisions on adult's protection and „to ensure dignity, social inclusion and self-determination of the adults concerned, while avoiding the risk of discrimination“. ⁹⁷ However, despite the CRPD being mentioned in the recitals of the Proposal, several binding provisions are not in line with the obligation set by the CRPD – art. 2 (referring to guardianship), art. 3 (no concept of will and preferences of the per-

⁹³ Lagarde, *op. cit.*, note 87, para 7.

⁹⁴ Rolland, S.E.; Ruck Keene, A., Study - Interpreting the 2000 Hague Convention on the International Protection of Adults Consistently with the 2007 UN Convention on the Rights of Persons with Disabilities, 3 June 2021, [https://www.google.com/url?sa=t&source=web&rcct=j&copi=89978449&url=https://www.ohchr.org/Documents/Issues/Disability/Hague-CRPD_Study.docx&ved=2ahUKewiRx4qJrMaFAxUcgf0HHaguAbsQFnoECA8QAQ&usg=AOvVaw3hQLPA-J5XJAmlfT0zcN3z4], Accessed 13 May 2023.

⁹⁵ Hagrass, H., *Rights of persons with disabilities*, Report of the Special Rapporteur on the rights of persons with disabilities, Human Rights Council, A/HRC/55/56.

⁹⁶ Proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the portection of adults, COM(2023) 280 final, 2 June 2023.

⁹⁷ The European Association of Private International Law (EAPIL) – Position paper on an EU-wide protection for vulnerable adults, 22 March 2022, [<https://eapil.org/wp-content/uploads/2022/04/Position-Paper-29.03.22.pdf>]. Accessed 13 May 2023.

son), art. 13 (no review as to the substance) and art. 21 (placement of the adult).⁹⁸ According to the UN experts, private international law has a profoundly important role in giving effect to fundamental human rights. Therefore, it is essential to interpret the CIPA and proposed Regulation in line with current trends, which give absolute priority to human rights of disabled end elderly.

4. PROPOSAL FOR NEW CONVENTION FOR THE ELDERLY

4.1. Why do We Need New Convention?

Ever since it became obvious that the elderly are not adequately protected by the current legislation, there is an ongoing discussion whether there is a need for a new piece of legislation or it could be cured by better application of the existing legislation. Although the latter claim has some substantive value, it is rather difficult to support it unconditionally.⁹⁹ Namely, closer look into existing legislation shows that it treats elderly rather as the passive recipients of charity than holders of rights. It is obviously wrong approach since all human beings are, first and foremost, holders of rights. According to Article I of the UN's Universal Declaration of Human Rights (1948) „all human beings are born free and equal in dignity and rights“.

Therefore, almost fifteen years ago the UN established Open-Ended Working Group on Ageing (OEWGA) with the aim to explore the need for a new Convention. Since its formation, OEWGA has held ten working sessions with „worldwide anecdotal evidence documenting the need for increased protection of the rights of older persons“¹⁰⁰ but there hasn't been much momentum afterwards.

Conclusions of the Study published in the Proceedings of the National Academy of Sciences (Taiwan)¹⁰¹ also support the need for the proposed Convention. Namely, not only the length of life but also the composition of family networks is changing, in a way that by year 2100 the number of living kin for individuals will decline dramatically worldwide (approximately 38% decline). On top of that, „one-child policy“ (whether by choice or by law) changes the kin configuration from more „horizontal“ to „vertical“, meaning that by the time they get descendants (e.g. grandchildren) the ascendants (e.g. grandparents) might be too old and

⁹⁸ Uldry, M., *UN experts criticise draft EU law on protection of adults*, [<https://www.edf-feph.org/un-experts-criticise-draft-eu-law-on-protection-of-adults/>]. Accessed 3 December 2023.

⁹⁹ Rolland, *op. cit.*, note 94.

¹⁰⁰ Mock, W.B.T., *Human Rights and Aging*, *Generations: Journal of the American Society on Aging*, Vol. 43, No. 4, 2019-20, p. 81.

¹⁰¹ Alburez-Gutierrez, *op. cit.*, note 1.

too frail to provide support and instead become net consumers of informal care. Fewer kinship resources to rely on means that family solidarity – a crucial source of informal care for millions of people around the world – will also decline dramatically over time.

As has already been pointed out, older persons face specific human rights challenges including poverty, age-related discrimination and elder abuse. References to the older persons in current legal regime are sporadic, fragmented and often indirect. Older persons as a distinct group¹⁰² have specific needs and experiences, and their human rights should be reflected and articulated in a focused/holistic international treaty. There is an undeniable need for stronger legal framework at international level, to protect the human rights of older people – both in everyday settings and in emergency settings.

4.2. And the Content ... ?

First and foremost, proposed Convention has to be founded on the paradigm shift „from a predominant economic and development perspective to ageing to the imperative of human rights-based approach“.¹⁰³ Thus, no more treating of older people as simply beneficiaries of specific rights which must be guaranteed. They have to be viewed as subjects of law whose human rights have to be respected and strengthened.

Based on OEWSGA's areas of focus, its key areas of focus should include equality and non-discrimination, violence, neglect and abuse, autonomy and independence, long term and palliative care, education and capacity building, and social security.

Apart from OEWSGA, standards of protection for older persons can also be found in other regional initiatives, e.g. African (Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons in Africa (2016))¹⁰⁴ and Inter-American (Inter-American Convention on Protecting the Human Rights of Older Persons (2015)).¹⁰⁵

¹⁰² Diverse but, nevertheless, minimally definable.

¹⁰³ Report of the Independent Expert on the enjoyment of all human rights by older persons, 8 July 2016, A/HRC/33/44.

¹⁰⁴ [<https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-older-persons>], Accessed 13 May 2023.

¹⁰⁵ [http://www.oas.org/en/sla/dil/docs/inter_american_treaties_A-70_human_rights_older_persons.pdf], Accessed 13 May 2023.

Putting it all together, Convention should address: older persons as active rights holders instead of passive beneficiaries; equality and non-discrimination on the basis of age, including intersectional protection against ageism (older women, older persons deprived of liberty, LGBTI seniors, elderly in a situation of human mobility); independence and autonomy of elderly; health and informed consent of elderly; community participation and integration accessibility; freedom of expression, opinion and access to information; access to food, water, sanitation and housing; social security, safety and access to justice.¹⁰⁶ In short, create age-neutral societies and environments where older adults can actively contribute and thrive¹⁰⁷

Last but not least, Convention should certainly envisage establishment of a supervisory authority that would be empowered to carry out systematic supervision over respect for protected rights of the elderly in the State's parties.

5. CONCLUSION

More than 75 years after the adoption of the UHDR, older persons still remain subject to different human rights violations. Although there are improvements in health and survival of older population the benefits are not equally shared. While certain older persons are in excellent health, others suffer multiple ailments or severe disability.¹⁰⁸ Also, some of them are economically active and able to support themselves while others live in poverty. This inequality is further reinforced in extreme situations, such like wars or pandemic, which underlines the need for further strengthening of the rights of the elderly. According to the World Social Report 2023, „all Governments need to adapt their policies to enable older persons to remain productive and empowered members of society“.¹⁰⁹

As we review the international and regional instruments that have been enacted to enhance (among other things) the rights of elderly people (even as a group),¹¹⁰ the majority seem to perpetuate the view of older people as in need of protection, not as right-holders. Consequently, older people face discrimination that is not explicitly prohibited by existing laws. There is a need for a legally binding treaty which will promote and protect human rights of older persons worldwide.

¹⁰⁶ See: Human Rights of the elderly and national protection systems in the Americas, Inter-American Commission on Human Rights, 31 December 2022.

¹⁰⁷ Ramsey, A., Protecting the Rights of Older Adults: The Time to Act is Now, 2022. [<https://www.ncoa.org/article/protecting-the-rights-of-older-adults-the-time-to-act-is-now>]. Accessed 13 December 2023.

¹⁰⁸ World Social report 2023: Leaving No One Behind In An Ageing World, UN, 2023, p. 6.

¹⁰⁹ World Social report 2023: Leaving No One Behind In An Ageing World, UN, 2023, p. 13.

¹¹⁰ E. g. Hague Convention on the International Protection of Adults (2000).

A convention should lay out areas in which older people are most in need of legal protection and the mechanisms. It should also force state parties to take proactive steps to prevent age discrimination and the abuse of older people, and empower older people around the world to better advocate for their rights.

Proposed Convention should not be considered to be a panacea for every problem but the useful tool which will, in most of the cases, decrease structural and systemic inequity and prevent the need for more sectoral acts.

REFERENCES

BOOKS AND ARTICLES

1. Alburez-Gutierrez, D.; Williams, I., Caswell, H., *Projections of human kinship for all countries*, Academia Sinica (Taiwan), 2023. [<https://doi.org/10.1073/pnas.2315722120>]. Accessed 23 March 2024
2. Bumbaca, V., *The Hague Convention on the Protection of Adults – Plea for Practice of an „Adult“ Approach*, Yearbook of Private International Law, Vol. XXIII, 2021/2022, pp. 365-392
3. Bytheway, B., *Ageism*, in: Johnson, M. L.; Bengtson, V.L.; Coleman, P.G.; Kirkwood, T.B.L. (eds.). *The Cambridge Handbook of Age and Ageing*, Cambridge Books Online: Cambridge University Press, 2009, pp. 338-345
4. Charness, N; Czaja, S., *Age and Technology for Work*, in: Schultz, K.; Adams, G. (eds.), *Aging and Work in the 21st century*, Routledge, 2018
5. Doron I., *From National to International Elder Law*, *The Journal of International Aging, Law & Policy*, Vol I, 2005, pp. 43-67
6. Drventić, M., *The Protection of Adults in the European Union*, EU and Comparative Law Issues and Challenges Series (ECLIC), Vol. 3, 2019, pp. 803-829
7. Frimston, R. *et al.*, *The International Protection of Adults*, Oxford University Press, 2015.
8. Frimston, R., *The 2000 Adult Protection Convention – sleeping beauty or too complex to implement?*, in: John, T.; Gulati, R.; Köhler, B. (eds.), *The Elgar Companion to The Hague Conference on Private International Law*, Edward Elgar Publishing, 2020, pp. 226-235
9. Frolik, L. A.; McChrystal Barnes, A., *Elder Law: Cases and Materials*, LexisNexis Mathew Bender, 2007
10. Gutterman, A.S., *Ageism: Where It Comes From and What it Does*, 2022 [<https://ssrn.com/abstract=3849022>], Accessed 6 July 2023
11. Hagrass, H., *Rights of persons with disabilities*, Report of the Special Rapporteur on the rights of persons with disabilities, Human Rights Council, A/HRC/55/56
12. Hendriks, A., *UN Convention on the Rights of Persons with Disabilities*, *European Journal of Health Law*, Vol. 14, No. 3, 2007, pp. 273-298
13. Huenchuan, S.; Rodríguez-Piñero, L., *Ageing and the protection of human rights: current situation and outlook*, ECLAC – Project Document Collection, United Nations, 2011
14. Hughes, M. L.; Touron, D. R., *Aging in Context: Incorporating Everyday Experiences Into the Study of Subjective Age*, *Front Psychiatry*, Vol. 12, 2021, pp. 1-12

15. Johnson, J.; Bytheway, B., *Ageism: Concept and definitions*, in: Johnson, J.; Slater, R. (eds.), *Ageing and Later Life*, Thousand Oaks: Sage Publications, London, 1993, pp. 200-206
16. Kanter, A.S., *The United Nations Convention on the Rights of Persons with Disabilities and Its Implications for the Rights of Elderly People Under International Law*, Georgia State University Law Review, 2009, Vol. 25, No. 3, pp. 527-573
17. Kowal, P.; Dowd, J. E., *Definition of an older person, Proposed working definition of an older person in Africa for the MDS Project*, Geneva: World Health Organization, 2001 [<https://www.who.int/healthinfo/survey/ageingdefnolder/en>]. Accessed 3 December 2015
18. Lagarde, P., *Explanatory Report on the 2000 Hague Protection of Adults Convention* [<https://www.hcch.net/en/publications-and-studies/details4/?pid=2951&ctid=3>]. Accessed 3 January 2024
19. Mégret, F., *The Human Rights of Older Persons: A Growing Challenge*, Human Rights Law Review, Vol. 11, No. 1., 2011., pp. 37-66
20. Meisner, B., *A Meta-Analysis of Positive and Negative Age Stereotype Priming Effects on Behaviour Among Older Adults*, Journals of Gerontology Series B Psychological Sciences and Social Sciences, Vol. 67, No. 1, 2012, pp. 13-17
21. Mikołajczyk, B., *Is the ECHR ready for global ageing?*, The International Journal of Human Rights, Vol. 17, No. 4., 2013, pp. 511-529
22. Miller, J.M., *International Human Rights and the Elderly*, Marquette Edler's Advisor, Vol. 11, No. 2, 2010, pp. 343-365
23. Mock, W.B.T., *Human Rights and Aging*, Generations: Journal of the American Society on Aging, Vol. 43, No. 4, 2019-20, pp. 80-86
24. Morrison-Dayan, R., *Protecting the Right to Social Participation of Older persons in Long-term Care under Article 19 of the United Nations Convention on the Rights of Persons with Disabilities*, Human Rights Law Review, Vol. 23, No. 2, 2023, pp. 1-21
25. Officer, A.; de la Fuente-Núñez, V., *A global campaign to combat ageism*, Bulletin of the World Health Organization, No 96, 2018, pp. 295-296
26. Pascoe, E.A.; Smart Richman, L., *Perceived Discrimination and Health: A Meta-Analytic Review*, Psychology Bulletin, Vol. 135, No. 4, 2009, pp. 531-534
27. Ramachandran, M., *Older Persons and the International Human Rights Framework: Argument for a Specific International Convention*, Journal of the Indian Law Institute, Vol. 56, No. 4, 2014, pp. 523-549
28. Ramsey, A., *Protecting the Rights of Older Adults: The Time to Act is Now*, 2022 [<https://www.ncoa.org/article/protecting-the-rights-of-older-adults-the-time-to-act-is-now>]. Accessed 13 December 2023
29. Rešetar Čulo, I., *Zaštita prava starijih osoba u Europi: trenutno stanje, nedostaci i izazovi*, Pravni vjesnik, Vol. 30, No. 2, 2014., pp. 117-136.
30. Rodríguez-Pinzón; Martín, C., *The International Human Rights Status of Elderly Persons*, American University International Law Review, Vol. 18, No. 4, pp. 915-1008
31. Roksandić, S., *Zdravstvena prava za starije osobe u Republici Hrvatskoj*, Medicus, Vol. 14, No. 2., 2005, pp. 313-322

32. Roksandić Vidlička, S; Šikoronja, S., *Pravna zaštita starijih osoba, osobito s duševnim smetnjama, iz hrvatske perspektive: Zašto nam je potrebna Konvencija UN-a o pravima starijih osoba*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 38, No. 3., 2017, pp. 1101-1132
33. Rolland, S.E.; Ruck Keene, A., *Study - Interpreting the 2000 Hague Convention on the International Protection of Adults Consistently with the 2007 UN Convention on the Rights of Persons with Disabilities*, 3 June 2021 [https://www.google.com/url?sa=t&source=web&rcct=j&opi=89978449&url=https://www.ohchr.org/Documents/Issues/Disability/Hague-CRPD_Study.docx&ved=2ahUKEwjHsdf8uMaFAxW7_rsIHdv-A1cQFnoECBcQAQ&usg=AOvVaw3hQLPAJ5XJAmlfT0zcN3z4]. Accessed 13 May 2023
34. Seatzu, F., *Reshaping EU old age law in light of the normative standards in international human rights in relation to older persons*, in: Ippolito, F; Iglesias Sánchez, S. (eds.), *Protecting vulnerable groups: the European human rights framework*, Hart Publishing, 2017, pp. 49-70
35. Shahriar Rahman, R., *Older People's Rights*, [https://www.amnesty.org]. Accessed 1 December 2023
36. Tang, K.-L.; Lee, J.-J., *Global Social Justice for Older People: The Case for and International Convention on the Rights of Older People*, *The British Journal of Social Work*, Vol. 36, No. 7, 2006, pp. 1135-1150
37. Tonolo, S., *International Human Rights Law and the Protection of the Elderly in Europe*, *Medicine, Law & Society*, Vol. 11, No. 2, 2018, pp. 107-120
38. Tymofeyeva, A., *Human Rights of Older Persons in the Case Law of the European Court of Human Rights*, *Czech Yearbook of Public & Private International Law (CYIL)*, Vol. 10, 2019, pp. 266-282
39. Uldry, M., *UN experts criticise draft EU law on protection of adults*, [https://www.edf-feph.org/un-experts-criticise-draft-eu-law-on-protection-of-adults/]. Accessed 3 December 2023
40. Von Hein, J., Chapter A.4: *Adults, protection of*, in: Basedow, J; Rühl, G.; Ferrari, F; de Miguel Asensio, P (eds.), *Encyclopedia of Private International Law*, Cheltenham: Edward Elgar Publishing, 2017, pp. 21-28
41. Žganec, N.; Rusac, S.; Laklija, M., *Trendovi u skrbi za osobe starije životne dobi u Republici Hrvatskoj i u zemljama Europske unije*, *Revija za socijalnu politiku*, Vol. 15, No. 2, 2008, p. 171-188

ECtHR CASE LAW

1. *Watts v. the United Kingdom*, application no. 15341/89
2. *Süssmann v. Germany*, application no. 20024/92
3. *Şimşek and Others v. Turkey*, applications no. 35072/97 and 37194/97
4. *H.M. v. Switzerland*, application no. 39187/98
5. *Vasileva v. Denmark*, application no. 52792/99
6. *Larioshina v. Russia*, application no. 56869/00
7. *Dodov v. Bulgaria*, application no. 59548/00
8. *Jablonská v. Poland*, application no. 60225/00
9. *Sawoniuk v. the United Kingdom*, application no. 63716/00

10. *Papon v. France*, application no. 64666/01
11. *Popov (no. 1) v. Moldova*, application no. 74153/01
12. *Pretty v. the United Kingdom*, application no. 2346/02
13. *Farbtuhs v. Latvia*, application no. 4672/02
14. *Farcaş and Others v. Romania*, application no. 30502/02
15. *Georgel and Georgeta Stoicescu v. Romania*, application no. 9718/03
16. *Grant v. the United Kingdom*, application no. 32570/03
17. *Haidn v. Germany*, application no. 6587/04
18. *Paksas v. Lithuania (GC)*, application no. 34932/04
19. *Taştan v. Turkey*, application no. 41824/05
20. *Budina v. Russia*, application no. 45603/05
21. *Burden v. the United Kingdom*, application no. 13378/05
22. *Carson and Others v. the United Kingdom*, application no. 42184/05
23. *Klaus and Yuri Kiladze v. Georgia*, application no. 7975/06
24. *Schlumpf v. Switzerland*, application no. 20002/06
25. *Mauriello v. Italy*, application no. 14862/07
26. *Contrada (no. 2) v. Italy*, application no. 7509/08
27. *Volintiru v. Italy*, application no. 8530/08
28. *Heinisch v. Germany*, application no. 28274/08
29. *Valentin Câmpeanu v. Romania (GC)*, application no. 47848/08
30. *X and Y v. Croatia*, application no. 5193/09
31. *Van Anrat v. the Netherlands*, application no. 65389/09
32. *Floirou v. Romania*, application no. 15303/10
33. *Gross v. Switzerland*, application no. 67810/10
34. *Georgini v. Italy*, application no. 20034/11
35. *Frolova v. Finland*, application no. 47772/11
36. *Chyzhevska v. Sweden*, application no. 60794/11
37. *McDonald v. the United Kingdom*, application no. 4241/12
38. *Senichishak v. Finland*, application no. 5049/12
39. *Glien V. Germany*, application no. 7345/12
40. *Khlaifa and Others v. Italy (GC)*, application no. 16483/12
41. *Tešić v. Serbia*, applications no. 4678/07 and 50591/12
42. *Da Conceição Mateus v. Portugal and Santos Januário v. Portugal*, applications no. 62235/12 and 57725/12
43. *Delecolle v. France*, application no. 37646/13
44. *Zavodnik v. Slovenia*, application no. 53723/13
45. *Mahamed Jama v. Malta*, application no. 10290/13

46. *Meier v. Switzerland*, application no. 10109/14
47. *Žegarac and Others v. Serbia*, application no. 54805/15
48. *Aielli and Others and Arboit and Others v. Italy*, applications no. 27166/18 and 27167/18
49. *M.K. v. Luxembourg*, application no. 51746/18
50. *Taipale v. Finland*, application no. 5855/18; *Tulokas v. Finland*, application no. 5854/18
51. *P.C. v. Ireland*, application no. 26922/19
52. *Jivan v. Romania*, application no. 62250/19
53. *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, application no. 53600/20
54. *Calvi and C.G. v. Italy*, application no. 46412/21

CONVENTIONS

1. The Universal Declaration of Human Rights, 10 December 1948, General Assembly resolution 217A
2. Convention on the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS No. 005.
3. International Covenant on Civil and Political Rights, 16 December 1966, General Assembly resolution 2220A (XXI)
4. International Covenant on Economic, Social and Cultural Rights, 16 December 1966, A/RES/21/2200
5. The UN Convention on the Elimination of All Forms of Discrimination against Women, Treaty Series 1249 (1979):13
6. The Community Charter of the Fundamental Social Rights of Workers, 9 December 1989, COM(89) 471 final
7. The UN Convention on the Protection of the Rights of All Migrant workers and their Families, Treaty Series 2220 (1990):3
8. The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, 9 November 1995, ETS No. 158
9. The Council of Europe, European Social Charter (revised), 3 May 1996, ETS No. 163
10. Committee on Economic, Social and Cultural Rights, General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons, 5 December 1995, U.N. Doc. E/1996/22 et 20 (1996)
11. The UN Convention on the Rights of Persons with Disabilities, Treaty Series 2515 (2006):3
12. Committee on the Elimination of Discrimination against Women, General recommendation No. 27 on older women and protection of their human rights, 16 December 2010, CEDAW/C/GC/27
13. Explanations relating to the Charter of Fundamental Rights, OJ C 303/17, 14. 12. 2007
14. The Charter of Fundamental Rights of the EU, OJ C 326/391, 26. 10. 2012
15. Inter-American (Inter-American Convention on Protecting the Human Rights of Older Persons (2015), [http://www.oas.org/en/sla/dil/docs/inter_american_treaties_A-70_human_rights_older_persons.pdf], Accessed 13 May 2023

16. Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons in Africa (2016), [<https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-older-persons>], Accessed 13 May 2023
17. Proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults, COM(2023) 280 final, 2 June 2023

OTHER DOCUMENTS

1. National research Council (US) Panel on a Research Agenda and New Data for an Aging World, *Preparing for an Aging World: The Case for Cross-National Research*, Washington (DC): National Academies Press, 2001, [<https://www.ncbi.nlm.nih.gov>]. Accessed 23 March 2024
2. Digest of the case law of the European Committee of Social Rights, European Committee of Social Rights, Council of Europe, 2008
3. Report of the Independent Expert on the enjoyment of all human rights by older persons, 8 July 2016, A/HRC/33/44
4. United Nations Economic Commission for Europe, *Combating ageism in the world of work* (UNECE Policy Brief on Ageing No 21, February 2019)
5. *Global report on ageism*, Geneva: World Health Organization, 2021
6. The European Association of Private International Law (EAPIL) – Position paper on an EU-wide protection for vulnerable adults, 22 March 2022, [<https://epil.org/wp-content/uploads/2022/04/Position-Paper-29.03.22.pdf>]. Accessed 5 May 2023.
7. *Human Rights of the elderly and national protection systems in the Americas*, Inter-American Commission on Human Rights, 31 December 2022
8. *World Social report 2023: Leaving No One Behind In An Ageing World*, UN, 2023
9. *The Charter of Fundamental Rights of the European Union - reading guide*, In the light of the European Convention for the Protection of Human Rights and Fundamental Freedoms and of the European Social Charter (revised), [<https://rm.coe.int/16802f5eb7>]. Accessed 13 January 2024