12 March 2013

**Public consultation on the human rights of older persons**

Contribution by the Council of Europe Secretariat

In order to prepare the consultation provided by Human Rights Council Resolution [21/23](http://daccess-ods.un.org/TMP/7405328.1545639.html), the OHCHR announced that it would be grateful to receive views and information from, *inter alia*, other international organisations in relation to the three main aspects listed below. Even though those aspects mainly focus on specific national situations and therefore appear to be in the first place addressed to states, the Council of Europe Secretariat is very grateful for having the opportunity to submit the following comments:

**1. Information on the main challenges related to promotion and protection of the human rights of older persons at the country level.**

In 2012, the Council of Europe’s Steering Committee for Human Rights (CDDH) established a Drafting Group on the Human Rights of Older Persons (CDDH-AGE) composed of national experts from twelve Council of Europe member states. In order to draft a new non-binding instrument on the human rights of older persons, the CDDH-AGE identified certain areas which appeared to pose particular challenges on the human rights of older persons in Europe.

Those main challenges are notably: age discrimination; abuse and ill-treatment both at home and in residential care; questions related to the autonomy of older persons; involuntary placement in institutions; involuntary medical treatment; privacy-related problems in care; social protection; health issues; palliative care and end of life situations; and older persons and the justice system.

**2. Information on constitutions or legislation explicitly forbidding discrimination on the basis of old age, and on the existence of specific bodies which protect against age discrimination or are mandated to protect and promote the rights of older persons.**

As the OHCHR itself noted in its analytical outcome paper in August 2012 entitled “Normative standards in international human rights law in relation to older persons” (page 4), “age” has not been recognised in many human rights treaties explicitly as a ground on which discrimination would be a violation. This includes anti-discrimination provisions in Council of Europe treaties, notably Article 14 ECHR as well as Article 1 of Protocol No. 12 ECHR as well as Article E of the Revised European Social Charter (even though the latter is usually seen together with Article 23 which recognises explicitly older persons’ entitlement to social protection). Under these provisions, “age” is however considered as “other status” which ensures that unjustified age discrimination would be in violation of those treaties. A similar situation arises in the constitutions of several of the most populous Council of Europe member states (e.g. France, Germany, Spain, Italy and the Russian Federation). Unfortunately, the Council of Europe Secretariat does not have statistics about whether or not “age” is explicitly recognised in the domestic anti-discrimination provisions of all 47 Council of Europe member states.

**3. Information on specific national legislation, national policies, strategies and plans of action adopted to ensure the equal enjoyment of rights by older persons, particularly in the areas of prevention and protection against violence and abuse, social protection, food and housing, employment, legal capacity, access to justice, health support, long-term and palliative care.**

The European Charter of Rights and Responsibilities of Older People in Need of Long-Term Care and Assistance (which has been developed in 2010 by the EUSTaCEA Project “A European Strategy to fight elder abuse” and thus does not have the status of an international treaty despite its name) is an excellent document which lists specific national legislation, national policies and good practices in 27 EU member states (which are likewise all member states of the Council of Europe) concerning rights of older persons in long-term care. This includes national practices on privacy, abuse, self-determination, access to justice or palliative care. The document may be found online at: <http://www.age-platform.eu/en/age-policy-work/quality-care-standards-and-elder-abuse/1018-a-european-strategy-for-older-people-in-need-of-long-term-care-and-assistance>.

To a certain extent, the conclusions of 2009 by the European Committee of Social Rights on Article 23 of the Revised European Social Charter (rights of older persons to social protection) likewise mention numerous national practices with regard to age discrimination, health care or housing which might be worth considering. They can be found online at:

<http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Year/2009Vol1_en.pdf>

Finally, the Secretariat is currently revising the draft instrument on the human rights of older persons to be elaborated by the CDDH-AGE. By doing so, it will also incorporate certain good practices on the topics addressed in that instrument which were submitted by Council of Europe member states. This document should be available from May 2013 online at:

http://www.coe.int/t/dghl/standardsetting/hrpolicy/other\_committees/cddh-age/default\_EN.asp