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AGE input to Draft CoE Disability Strategy 2017-2023

AGE Platform Europe (AGE) welcomes the consultation on the Council of Europe (CoE) Disability Strategy 2017-2023. Highlighting the relevance of this work for the growing older population, we wish to draw attention to older persons with disabilities, who are likely to require assistance and care until the end of their lives, yet they often fall in between the cracks of disability and ageing policies.

The Council of Europe (CoE) has undertaken pioneer work on the rights of older people by adopting the first European instrument that specifically targets this group, the **CM/Rec(2014)2 to member states on the promotion of human rights of older persons**. It has moreover adopted Recommendation **CM/Rec(2009)6 on ageing and disability in the 21st century**, which highlights the specific challenges for ageing and older people with disabilities¹. Hence, it is uniquely placed to address the intersection between ageing and disability within the frame of its Disability Strategy 2017-2023 and in particular under its action on non-discrimination and awareness-raising.

Summary of contribution

In this paper AGE, as the largest representative organisation of older people at European level, submits its views on the revision of the CoE Disability Strategy, highlighting the main barriers faced by older people with disabilities. These mainly arise from the fact that older people with age-related functional limitations are rarely recognised and supported as people with disabilities. As a result, there are huge discrepancies among laws and policies that target older people with support needs/limitations in their daily activities and younger people with disabilities. In addition, representatives of older people are rarely consulted by related instances and bodies, which leaves the specific situation of older people with disabilities unknown and unaddressed. Taking stock of its well-developed body of law, the CoE should address the age discrimination faced by older persons with disabilities and raise awareness of the intersection of ageing and disability in its future Disability Strategy.

Issues

- The majority of people with disabilities are in fact older persons² ;
- Only limited attention was given to the overt and covert barriers faced by this group in national, CoE and EU disability strategies as well as in UN CRPD Committee conclusions³;
- Organisations of older people have limited understanding of disability rights and are rarely consulted in the development and implementation of disability policies⁴.

¹ According to CoE terminology (see Angela Garabagiu (2009) *Council of Europe actions to promote the rights and full inclusion of ageing people with disabilities*, Int J Integr Care. 2009 Apr-Jun; 9(Suppl): e24) the term *older people with disabilities* refers to adults who are faced with impairments and functional limitations for the first time when they reach old age, whereas *ageing people with disabilities* are individuals who age with a disability they acquired at a younger age.

² United Nations Committee on the Rights of Persons with Disabilities (2013) Position statement concerning the CDDH-AGE

³ AGE Platform Europe (2015) *Response to UN Special Rapporteur on Disability call for submissions on the right of persons with disabilities to social protection*.

⁴ AGE Platform Europe (2016) Position on article 19 of the UNCRPD. See also Priestley (2001) *Building bridges: disability and old age* arguing that 'While the majority of disabled people in Europe are also older people, older people's interests have been under-represented within both the academic literature of disability studies and in disability policy making'.



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Introduction

The UN Convention on the Rights of Persons with Disabilities (UNCRPD) has enshrined protection for two forms of intersectional discrimination affecting women and children with disabilities. Although the link between older persons and persons with disabilities has been underlined by the Council of Europe⁵, the UN CRPD Committee⁶, the OHCHR⁷, the Independent Expert on the Enjoyment of all Human Rights by Older Persons⁸, and the UN Secretary General⁹ among others, no substantive provision acknowledges the situation of older people with disabilities as a type of intersectional discrimination.

The Council of Europe should seize the opportunity of the revision of its Disability Strategy to shed a light on how ageism/age discrimination poses specific barriers for people with disabilities in light of the recent *Recommendation on the promotion of human rights of older persons*. It should moreover raise awareness of the intersection between old age and disability and ensure that issues of disability in old age are framed as human rights.

Ageism as a cause for different standards for old age and disability

Lack of attention to the specific situation of older people with disabilities is the result of fragmentation of policies for people with disabilities of working age and older people or the elderly¹⁰. Well established age norms view old age disability as distinct to disability in adulthood, with the former seen as a predictable or even inevitable situation¹¹. Under this spectrum older people are less deserving of support to live independently or remain included in the community. At an institutional level in many countries, old age and disability are treated by completely separate administrations, without any coordination between the two¹². In some cases it is the law that establishes differential treatment for older people, for example imposing age limits in access to disability benefits¹³, mobility allowances¹⁴ or personal assistance¹⁵. Limited resources compound the situation and may be used as

⁵ CM/Rec(2014)2 to member states on the promotion of human rights of older persons and Explanatory Memorandum, as well as CM/Rec(2009)6 on ageing and disability in the 21st century

⁶ United Nations Committee on the Rights of Persons with Disabilities (2013) Position statement concerning the CDDH-AGE

⁷ Report of the United Nations High Commissioner for Human Rights (2012) E/2012/51, 20 April 2012. See also OHCHR (2012) Normative standards in international human rights law in relation to older persons – Analytical Outcome Paper

⁸ Independent Expert on the enjoyment of all human rights by older persons (2015) *Autonomy and care of Older Persons*, A/HRC/30/43

⁹ UN Secretary General (2011) Follow-up to the Second World Assembly on Ageing, A/66/173, 22 July 2011, §47

¹⁰ For example several policy reports deal separately with long-term care in old age, see for example European Commission/Social Protection Committee (2014) *Adequate Social Protection for Long-term care needs in an ageing society* and OECD/European Commission (2013), *A Good Life in Old Age? Monitoring and Improving Quality in Long-term Care*.

¹¹ Priestley (2003) *Disability – A Lifecourse approach* and also OHCHR (2012).

¹² See *Barcelona declaration on bridging knowledge in long-term care and support*. Barcelona (Spain), March 7, 2009, stating that: ‘bridges across the fields of disabilities and ageing have been limited, and they coexist with significant barriers to communication and information sharing’. This may also explain the limited attention to older people in state reporting.

¹³ About such age limits in France see analysis by French Alzheimer society:

<http://www.francealzheimer.org/sites/default/files/TRIBUNE%20VF.pdf> and

FNAPAEF: http://media.wix.com/ugd/df9fe0_94af80bd3a1142428e50839ea896fa13.pdf. In Belgium:

<http://www.andrecontrelasla.be/Atteinte-de-S-L-A-a-71-ans-elle.html> In Greece, the ombudsman dealt with a relevant case: http://www.synigoros.gr/resources/perilipsi_epidoma_anapirias.pdf

¹⁴ See for example case dealt by Irish Ombudsman: <https://www.ombudsman.gov.ie/en/Publications/Investigation-Reports/governmentdepartments-other-public-bodies/Too-Old-to-be-Equal/Too-Old-to-be-Equal.pdf>

¹⁵ See, ENIL report on personal assistance. Also according to MISSOC, for Slovakia the threshold is set at 65 whereas in Finland “Personal assistant by the Services and Assistance for the Disabled Act is meant for persons whose need of assistance is not mainly caused by illnesses or injuries that have begun, increased or worsened with high age or due to degeneration related to high age”.

an excuse not to extend the same level of protection to older people with disabilities¹⁶.

Moreover, ageist attitudes lead to lower quality or less options of services, different levels of support and abusive practices, such as delayed, refused, inadequate or undignified treatment¹⁷. Many older persons lack access to preventive healthcare and affordable rehabilitation services, which take into account their specific needs. This is often linked to the fact that disability policies focus on preventing disabilities in working life¹⁸. In addition, senior workers may lack a right to reasonable accommodation and be required to retire on the basis of assumptions of their ability to work beyond retirement age¹⁹.

All these cases merit to be seen under the spectrum of disability and age discrimination so that disability rights are equally effective for all persons with disabilities regardless of the age when disability occurs. The Council of Europe has been proactively promoting the rights of both older persons and persons with disabilities and it should make sure that it adequately addresses such social disadvantages in its future work. Explicitly referring to age discrimination and the rights of older people in the CoE Disability Strategy will avoid the parallel existence of competing paradigms for older people with disabilities, which focus on their needs drawing from a welfare/medical instead of human rights-based approach²⁰.

Improve awareness of relevance of disability for older people

A survey among AGE members revealed that across the EU there are still organisations of and for older persons who are not aware of the relevance of the UNCRPD and disability law and policy for older persons, while the majority has not been involved in monitoring or implementation of the UNCRPD in their country. A small number is not even aware of the existence of the Convention. Member States need to be encouraged to include older people's organisations in consultations and national monitoring mechanisms, as well as to address older people in their policies and to raise awareness of the UNCRPD and the CoE Disability Strategy among the older population.

¹⁶ Håkan Jönson and Annika Taghizadeh Larsson, 'The exclusion of older people in disability activism and policies — A case of inadvertent ageism?' (2009) 23 Journal of Aging Studies 69. In addition, according to French law the age barrier that distinguishes between disability and old age benefits should be removed by the 1st January 2011, however the new law on the adaptation of society to ageing retained it, most likely due to economic constraints.

¹⁷ See WHO (2011) *European report on preventing elder maltreatment*, Equality and Human Rights Commission (2011). Also ENNHRI (2015) Human Rights of Older Persons and Long-Term Care Project: The Application of International Human Rights Standards to Older Persons in Long-Term Care, arguing that there is no automatic right to receive long-term care services, nor to choose the provider or care setting. Recipients of long-term care are not automatically entitled to immediate treatment or healthcare if they require it - they only have the right to the same equal access to available services, which may mean being placed on a waiting list. See also, Equality and Human Rights Commission (2011) *Close to home-An inquiry into older people and human rights in home care*

¹⁸ For example, according to the EU Disability Strategy the EU aims to support policies that reduce the risk of developing disabilities during working life -to date- it has paid limited attention to preventing and tackling disability in old age. Moreover, according to the thematic study of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/18/37), older people are faced with 'several specific concerns, including the lack of adequate prevention and management of chronic illnesses and disability among older persons. Overall, age-based discrimination is cited as a significant barrier to accessing health care that compromises meaningful communication between patients and medical personnel, with consequences for the accuracy of diagnosis and quality of treatment'

¹⁹ The EU Employment Framework Directive gives a right to reasonable accommodation only on the basis of disability. In addition, see Joined Cases C-159/10 and C-160/10, Gerhard Fuchs and Peter Kohler v Land Hessen, where the ECJ suggested it is legitimate to retire older workers to encourage the promotion of a younger workforce and prevent disputes concerning employees' fitness to work beyond a certain age.

²⁰ See for example OHCHR (2012) and Independent Expert (2015)

Recommendation

Under these considerations AGE strongly suggests:

Making reference explicit to older people, age discrimination and the *Recommendation CM/Rec(2014)2 to member states on the promotion of human rights of older persons* in the draft Disability Strategy 2017-2023, in particular under multiple discrimination (2.4) priority areas 3.1 (Equality and Non-Discrimination) and 3.2 (Awareness-Raising).

About AGE Platform Europe

AGE Platform Europe (AGE), is the EU largest network of organisations of and for older persons. Funded by the European Commission DG Justice, we aim at voicing and promoting the rights and interests of the 190 million inhabitants aged 50+ in the European Union. Through our membership we represent directly more than 40 million older persons across the EU. AGE is a holder of ECOSOC status and also has a consultative status with the Council of Europe.

In the past we have been involved in the drafting of the Council of Europe recommendation on the promotion of human rights of older persons. AGE's positions are developed in close consultation with its member organisations, which are mainly older people (self-advocacy groups) and some services providers providing support to older persons. AGE governing bodies and task forces are open to all older persons nominated by AGE member organisations and our activities are organised to include older persons with disabilities. AGE submission is informed by the input of AGE task forces on Human Rights, Healthy Ageing, Dignified Ageing and Accessibility and former position papers adopted by AGE Council.

Resources:

- **AGE Platform Europe (2016) Position on article 19 of the UNCRPD:** http://age-platform.eu/images/stories/Publications/papers/AGE_input_CRPD_Art19.pdf
- **AGE Platform Europe (2016) Position on Structural Ageism:** http://age-platform.eu/images/stories/Publications/papers/AGE_IntergenerationalSolidarity_Position_on_Structural_Ageism.pdf
- **AGE Platform Europe (2015) response to UN Special Rapporteur on Disability call for submissions on the right of persons with disabilities to social protection:** http://age-platform.eu/images/AGE_response_Special_Rapporteur_Disability_social_protection_FIN_AL.pdf
- **European Charter on the rights and responsibilities of older people in need of long-term care and assistance (2010):** http://age-platform.eu/images/stories/22204_AGE_charte_europeenne_EN_v4.pdf
- **WeDo project (2012) European Quality Framework for long-term care services:** <http://wedo.ttp.eu/european-quality-framework-long-term-care-services>.

More information

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