



*HELLENIC REPUBLIC*

**GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS**

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*Protection of the rights of older persons*

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## Protection of the rights of older persons<sup>1</sup>

*“The rights of the elderly.*

*The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life”.*

Article 25, Charter of Fundamental Rights of the European Union

### I. Introduction – conceptual framework

All people regardless of sex, age or need for support have the right to enjoy the inalienable and fundamental human rights and freedoms. In this context, age cannot and must not constitute a reason for imposing restrictions regarding the enjoyment of their right to lead a life of independence and dignity and to participate in the social and cultural life.

Nevertheless, the discussion about guaranteeing older persons' rights has been regional in recent years, given the demographic changes in Europe and the rise in the number of older persons in modern societies, combined with the considerable rise in life expectancy during the last century. More specifically, it is estimated that by the end of 2030 the elderly will constitute 20% of world population, while there will be more people aged over 60 than under 10. Such an evolution constitutes the most radical change in age structures to ever happen in the developing world. The population over 60 years old is expected to reach 1.4 billion people by 2030<sup>2</sup>. In fact, according to Eurostat's statistical data, the percentage of the elderly population in Greece which considerably rose, from 16.7% to 19.4%, is higher than the respective EU average (17.5% in 2011)<sup>3</sup>.

“The aged”, “the elderly”, “older persons”, “third age”. These are the main terms used to describe elder persons. The variety of the terminology does not constitute a Greek particularity. In English documents, the terms “older persons”, “the aged”, “the elderly”, “the third age”, “the ageing” are also interchangeable. Besides, the term “fourth age” is also employed to denote persons more than 80 years of age. Choosing the most suitable term constitutes a first challenge. It is the term "older persons" (in French, personnes âgées; in Spanish, personas mayores) which is employed in UN General Assembly resolutions 47/5 and 48/98. GNCHR deems that the most faithful Greek translation of this term is the equivalent of “older persons”<sup>4</sup>.

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<sup>1</sup> These observations were adopted unanimously by the GNCHR Plenum on 20.11.2014. Rapporteurs: E. Varhalama, 2nd Vice President GNCHR, A. Tsampi, Legal Officer GNCHR and R. Fragkou, Legal Officer GNCHR.

<sup>2</sup> See United Nations Social Development Network, *First ever index to measure wellbeing of older people launched*, 10.1.2014, available at: <http://unsdn.org/first-ever-index-to-measure-wellbeing-of-older-people-launched/>.

<sup>3</sup> See Eurostat, *Population structure and ageing*, May 2014, available at: [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Population\\_structure\\_an\\_ageing](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Population_structure_an_ageing).

<sup>4</sup> UN, ICESCR Committee, General Comment No. 6, *The economic, social and cultural rights of older persons*, Annex IV, (11.24.1995), par. 9

In order to define a person as “older”, age is the main criterion. Regarding this issue, the problem concerning the definition of an older person presents the same difficulties as defining the notion of the child. However, there is no common approach towards setting an age limit after which a person is considered older. Generally, international texts concerning the protection of older persons' human rights avoid to set a strict definition and, thus, do not define the age limit beyond which a person is considered older<sup>5</sup>. The UN Population Fund considers older persons to mean those over 60 years old. According to the data from a relevant discussion within the World Health Organisation, in western world the age limit of 60-65 years may occasionally coincide with the pension age limit. Eurostat, for instance, considers “older persons” to mean those over 65 years old, since 65 is the most common age of retirement while the trend towards later retirement is evident.

Nevertheless, it is noted that age is not the sole criterion for defining a person as older. In certain regions of the planet, the persons' ability to actively participate in society is of crucial importance<sup>6</sup>. Moreover, persons' vulnerability could also constitute a criterion for defining them as “older”. It must be noted, however, that older persons are a heterogeneous population group. This is frequently associated with the “paradox of powerful-vulnerable people”, since older persons may be well-off and powerful on the one hand but isolated and weak on the other<sup>7</sup>.

In light of the aforementioned introductory observations and in the context of its institutional role as an advisory body to the State for human rights protection, the Greek National Commission for Human Rights (GNCHR), taking into consideration the lack of a universally binding legal text which protects and promotes older persons' rights, deems necessary to address proposals and recommendations regarding the need for effective institutional protection of this particularly vulnerable social group<sup>8</sup>.

To this end, GNCHR makes a first attempt towards a more focused approach on the protection of older persons' rights on international and European level, as well as on national level (II). This approach highlights the most important challenges the State and the society have to face regarding the protection of older persons' rights, rendering their guarantee crucial, particularly at a time when the wider society is undergoing a most deep social, political and financial crisis and social protection programmes are more and more afflicted (III). Finally, the GNCHR inaugurates the

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<sup>5</sup> *Ibidem*.

<sup>6</sup> See WHO, *Definition of an older or elderly person, Proposed Working Definition of an Older Person in Africa for the MDS Project*, available at: <http://www.who.int/healthinfo/survey/ageingdefnolder/en/> and especially the thereto referred Gorman M., «Development and the rights of older people», in Randel J, *et al.* (ed.), *The ageing and development report: poverty, independence and the world's older people*, London, Earthscan Publications Ltd.,1999, pp. 3-21.

<sup>7</sup> Fr. Mégret, «Human Rights of Older persons: a growing challenge», *Human Rights Law review*, Vol. 11/ 2011, pp. 45-47.

<sup>8</sup> Indeed, for this purpose GNCHR organised a consultation on 30 June 2014 in a joint session of its 2nd Sub-Commission (Social, Economic and Cultural Rights) and its 4th Sub-Commission (Promotion of Human Rights), with the participation of the Greek Ombudsman (Cycle of Social Protection) as well as a representative of the organisation 50+ Hellas. GNCHR is grateful to all actors and their representatives for the really interesting exchange of opinions which has allowed for a clearer view on the issues concerning third age.

examination of this subject, addressing recommendations to the State, while examining the necessity of adopting an international binding text on the protection of older persons' rights (IV).

## **II. Recognition of older persons' rights**

### **A. On an international level**

**On an international level**, an abundance of texts recognise the universality of human rights, prohibiting any kind of discrimination on the grounds of age, sex, disability, religion, sexual orientation or ethnic origin. In many of these texts, explicit reference is made to the need to respect and protect older persons' rights.

**Article 25 (1) of the Universal Declaration of Human Rights** (hereafter UDHR), the provisions of which recognise every person's right *“to a standard of living adequate for the health and well-being of himself and 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 its control”*.

Although, **the International Covenant on Economic, Social and Cultural Rights** (hereafter ICESCR) does not include an explicit reference to older persons' rights, article 9 dealing with *“the right of everyone to social security, including social insurance”* implicitly recognises the right to old-age benefits<sup>9</sup>. Nevertheless, taking into account that ICESCR provisions fully apply to every member of human society, it is accepted that older persons have the right to fully enjoy the rights established by the Covenant. More specifically, it is worth mentioning the recognition *inter alia* of everyone's right to work (Articles 6-7), of social security (Article 9), an adequate standard of living for himself and his family (Article 11), the enjoyment of the highest attainable standard of physical and mental health (Article 12) or, even, education (Article 13)<sup>10</sup>.

In response to the need to strengthen the protective framework regarding third age, the UN Committee on Economic, Social and Cultural Rights adopted in 1995, **General Comment No. 6 on the economic, social and cultural rights of older persons**. The Comment in question expresses the original interpretation of the obligations assumed by States Parties towards older persons, particularly emphasizing that the omission of age as one of the prohibited grounds of discrimination set by the Covenant should not be seen as an intentional exclusion. It is noted that when the ICSECR and the UDHR were adopted *“the problem of demographic ageing was not as evident or as pressing as it is now”*<sup>11</sup>.

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<sup>9</sup> UN, ICESCR Committee, General Comment No. 6, *The economic, social and cultural rights of older persons*, Annex IV, (11.24.1995), par. 10.

<sup>10</sup> The ICESCR was sanctioned by Law 1535/1985 (OJ 25/2.27.1985/A).

<sup>11</sup> UN, ICESCR Committee, General Comment No. 6, *The economic, social and cultural rights of older persons*, *op.cit.*, par. 11.

In any case and in order to remove any doubt regarding the prohibition of discrimination on the grounds of age, the same UN Committee further strengthened the rights of third age by adopting in 2009, **General Comment No. 20 on non-discrimination in economic, social and cultural rights**. In Paragraph 29 it is stated that “*age is a prohibited ground of discrimination in several contexts*”. The Committee places particular emphasis on the “*need to address discrimination against unemployed older persons in finding work or accessing professional training or re-training*”, as well as the need to protect older persons living in poverty with unequal access to universal old-age pensions<sup>12</sup>.

UN's activity on economic, social and cultural rights is greatly linked to the activity undertaken by the **International Labour Organisation (hereafter ILO)**<sup>13</sup>. The most important International Labour Convention (hereafter ILC) on guaranteeing social security and combatting poverty is **ILC 102 On Social Security (Minimum Standards) 1952**<sup>14</sup>, since it sets the social security minimum standards for every sector, in terms of every country's economic reality and depending on current salaries. Besides, a specific section of the Convention is dedicated to *Old-Age Benefit*<sup>15</sup>, while later conventions aim at improving the ILC 102 minimum standards per social risk, such as ILC 128 on Invalidity, Old-Age and Survivors' Benefits (1967)<sup>16</sup> or ILC 130 on Medical Care and Sickness Benefits (1969)<sup>17</sup>.

In the **International Covenant on Civil and Political Rights** (hereafter ICCPR), there is once again no explicit reference to older persons. Still, the universal character of the protection provided to all members of human society entails its immediate application on older persons as well. Article 26 of the ICCPR is of particular interest recognising “*equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*”. Even though “age” is not explicitly mentioned among the prohibited grounds of discrimination, it is suggested that it is included in the broader scope of the term “*other status*”.

Despite the universal character of human rights, many are the UN instruments adopted in order to provide protection to particular social groups. Although none of them focuses on older persons, certain texts explicitly mention the prohibition of discrimination on the grounds of age. More

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<sup>12</sup> UN, ICESCR Committee, General Comment No. 20, *Non-discrimination in Economic, Social and Cultural Rights*, E/C.12/GC/20, (7.2.2009), par. 29.

<sup>13</sup> It is estimated that about 70 ILO Conventions are directly related to putting into effect the ICESCR rights.

<sup>14</sup> ILO, C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102), available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C102](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C102). It was sanctioned by Law 3251/1955 (OJ 140/6.2.1955/A).

<sup>15</sup> Part V. Old-age benefit (Articles 25-30).

<sup>16</sup> ILO, C128 - Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::55:P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NO:CON,en,C128,/Document](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::55:P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NO:CON,en,C128,/Document).

<sup>17</sup> ILO, C130 - Medical Care and Sickness Benefits Convention, 1969 (No. 130), available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C130](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C130).

specifically, the **Convention on the Elimination of all Forms of Discrimination against Women** recognises, in Article 11(1)(e) regarding the States Parties' obligation to eliminate discrimination against women in the field of employment, “*the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age, and other incapacity to work*”<sup>18</sup>. In the same direction, the **International Convention on the Protection of the Right of All Migrant Workers and the Members of their Families**, which prohibits in Article 7 the discrimination in the exercise of rights, explicitly includes “age” among the prohibited grounds of discrimination.

Among the most important international instruments in the field of human rights protection, the **International Convention on the Rights of Persons with Disabilities** (hereafter ICRPD)<sup>19</sup> possibly offers the most effective protection to older persons. Indeed, the fact that the text of the Convention does not include a definition for “disability” marks a turn from the medical model of disability to a model which is more human rights oriented<sup>20</sup>. More specifically, **Article 25(b)**, regarding the right of persons with disabilities to the enjoyment the highest attainable standard of health, particularly mentions older persons and the States Parties' obligation to provide those health services needed. In the same context, **Article 28(2)(b)** provides the contracting parties' obligation to secure an adequate standard of living for the persons with disabilities and their families, noting to this end that it is necessary to ensure access by these persons, and particularly by persons with disabilities, to social protection programmes and poverty reduction programmes. Finally, older persons are also explicitly mentioned in **Articles 13** (Access to justice) and **16** (Freedom from exploitation, violence and abuse).

Several non-binding policy texts regarding older persons also contribute a great part to the creation of a framework protecting older persons' rights. These texts essentially aim at delimitating older persons' needs and designing policies for problems which emerge in modern society due to demographic ageing. We indicatively mention the **Vienna International Plan of Action for Ageing** (1983) adopted in the First World Assembly on Aging<sup>21</sup>, the **Proclamation of Ageing by**

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<sup>18</sup> The Convention on the elimination of all forms of discrimination against women entered into force on 3 September 1981. Greece sanctioned it by Law 1342/1983 (OJ 39/4.1.1983/A).

<sup>19</sup> The International Convention on the Rights of Persons with Disabilities and the Optional Protocol were adopted with the UN General Assembly's Decision 61/611 in New York on 13 December 2006 and came into force on 4 May 2008. Greece signed the Convention on 3.30.2007 and the Protocol on 9.27.2010, while they were both sanctioned by Law 4074/2012 “Sanctioning of the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities” (OJ 88/4.11.2012/A) and came into force on 6.30.2012. See at: <http://treaties.un.org/>. The International Convention on the Rights of Persons with Disabilities is the first human rights convention to be open for signature by regional integration organisations (Article 44 of the ICRPD). European Union (hereafter EU) signed it on the first day it was opened for signature (30 March 2007) and it has since been signed by the 28 EU member States.

<sup>20</sup> See Arlene S. Kanter, «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*, Vol. 25, Issue 3, Spring 2009, p. 549.

<sup>21</sup> United Nations, World Assembly on Ageing, *Vienna International Plan of Action on Ageing*, 26 July-6 August 1982, available at: <http://www.un.org/es/globalissues/ageing/docs/vipaa.pdf>. The Vienna International Plan of Action on Ageing was adopted by the United Nations General Assembly and its includes 62 Recommendations which encourage

the UN General Assembly (1992)<sup>22</sup> and, even more, the **Madrid International Plan of Action on Ageing** (2002)<sup>23</sup>.

## **B. On European level**

On European level, apart from **Article 14 of the European Convention on Human Rights**, which provides for the enjoyment of the rights and freedoms set forth in the Convention without discrimination, special attention to the social protection of older persons is also given by the Council of Europe instrument which specifically protects social rights: the **European Social Charter (ESC)**<sup>24</sup>. The importance given to older persons' rights is clear and is expressed in Article 23 of the Revised ESC, as well as in **Article 4 of the Additional Protocol to the ESC** which share the same content:

*“With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:*

*1. to enable elderly persons to remain full members of society for as long as possible, by means of:*  
*a. adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life; b. provision of information about services and facilities available for elderly persons and their opportunities to make use of them;*

*2. to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing; b. the health care and the services necessitated by their state;*

*3. to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution”.*

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to develop and apply policies on an international, regional and national level aiming at improving the life of older persons.

<sup>22</sup> United Nations, General Assembly, *Proclamation on Ageing*, A/RES/47/5, 42nd plenary meeting, 16 October 1992, available at: <http://www.un.org/documents/ga/res/47/a47r005.htm>. The text of the Proclamation on Ageing was adopted by the UN General Assembly on 16 October 1992 and includes 18 Recommendations that follow 5 moral principles: dignity, independence, participation, care and self-fulfilment. The Proclamation aims at safeguarding *inter alia* the appropriate national policies and programmes for the elderly, which shall respond to their particular characteristics, the needs and abilities of older women and shall encourage older men to develop their social, cultural and emotional abilities. Its major pillar is raising society's awareness and the collaboration between all generations in order to achieve a balance regarding the economic, social and cultural development.

<sup>23</sup> United Nations, Second World Assembly on Ageing, *Political Declaration and Madrid International Plan of Action on Ageing*, Madrid, 8-12 April 2002, available at: <http://undesadspd.org/Portals/0/ageing/documents/Fulltext-E.pdf>. The Madrid International Plan of Action on Ageing was adopted by the UN General Assembly with the purpose of promoting the incorporation of the issue of elderly societies in national policies by means of distributing a series of recommendations and the establishment of five regional UN committees on ageing.

<sup>24</sup> Greece signed the European Social Charter on 18 October 1961 and sanctioned it on 6 June 1984 by Law 1426/1984 of 21 March 1984 “Sanctioning of the European Social Charter” (OJ 32/3.21.1984/A). On the contrary, Greece has yet to ratify the Revised European Social Charter, which it has signed since 3 May 1996.

Another important, legally binding, text on social protection is the **European Code of Social Security**, whose provisions require for a minimum satisfactory standard of living to be secured for every person so as to essentially enjoy the right to social security. Besides, the Committee of Ministers of the Council of Europe has specified that States would be seen as failing to fulfill their responsibilities under the European Code of Social Security, in the event that social security benefits were so low as to push the workers below the poverty line<sup>25</sup>.

The promotion of older persons' rights is also pursued by another body of the **Council of Europe: The Committee of Ministers**. Its *Recommendation on the promotion of human rights of older persons* stresses the need to promote, protect and guarantee full and equal enjoyment of human rights and fundamental freedoms for all older persons, and to promote respect for their inherent dignity<sup>26</sup>. Previous Recommendations of the Committee of Ministers move along the same lines, as, for instance, the *Recommendation on the imperative need of reducing the risk of vulnerability of elderly migrants and improving their welfare*<sup>27</sup>, the *Recommendation on ageing and disability in the 21st century: sustainable frameworks to enable greater quality of life in an inclusive society*<sup>28</sup>, or the *Recommendation concerning elderly people*<sup>29</sup>.

The **Parliamentary Assembly of the Council of Europe** has also been extensively concerned with the social protection of older persons due to the rise in demographic ageing and non-discrimination on the grounds of age by issuing a number of relevant recommendations and resolutions. We indicatively mention the Committee's Resolution 1958 (2013) on *Combating discrimination against older persons on the labour market*<sup>30</sup>, Resolution 1793 (2011) on *Promoting active ageing – Capitalising on older people's working potential*<sup>31</sup>, Recommendation 1796 (2007) on *The situation*

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<sup>25</sup> Council of Europe, Committee of Ministers, *Resolution CM/ResCSS(2012)8 on the application of the European Code of Social Security and its Protocol by Greece*, 9.12.2012 and Committee of Ministers of the Council of Europe, *CM/ResCSS(2013)21 on the application of the European Code of Social Security and its Protocol by Greece*, 10.16.2013, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1970639&Site=CM>.

<sup>26</sup> Council of Europe, Committee of Ministers, *Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons*, 19 February 2014, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2162283&>.

<sup>27</sup> Council of Europe, Committee of Ministers, *Recommendation CM/REC (2011)5 to member States on reducing the risk of vulnerability of elderly migrants and improving their welfare*, 25 May 2011, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2011\)5&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2011)5&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

<sup>28</sup> Council of Europe, Committee of Ministers, *Recommendation CM/REC (2009) 6 to member-States on ageing and disability in the 21st century: sustainable frameworks to enable greater quality of life in an inclusive society*, 8 July 2009, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2009\)6&Language=lanEnglish&Site=COE&BackColorInterageingnet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2009)6&Language=lanEnglish&Site=COE&BackColorInterageingnet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

<sup>29</sup> Council of Europe, Committee of Ministers, *Recommendation REC (94) 9 to member States concerning elderly people*, 10 October 1994, available at: <https://wcd.coe.int/com.intranet.InstraServlet?command=com.intranet.CmdBlobGet&IntranetImage=534538&SecMode=1&DocId=514346&Usage=2>.

<sup>30</sup> Council of Europe, Parliamentary Assembly, *Resolution 1958 (2013) on Combating discrimination against older persons on the labour market*, 4 October 2013, available at: <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=20231&Language=EN>.

<sup>31</sup> Council of Europe, Parliamentary Assembly, *Resolution 1793 (2011) on Promoting active ageing – capitalising on older people's working potential*, available at:

of elderly persons in Europe<sup>32</sup>, Recommendation 1749 (2006) and Resolution 1502 (2006) on *Demographic challenges for social cohesion*<sup>33</sup>, Recommendation 1591 (2003) on *Challenges of social policy in Europe's ageing societies*<sup>34</sup> or Recommendation 1619 (2003) on *The rights of elderly migrants*<sup>35</sup>.

Within the European Union, age as a basis for discrimination is found in the **Amsterdam Treaty** (1997) which introduced Article 13 in the **Treaty of the European Union** (hereafter TEU) as an enabling provision for the Council to “take action” towards combating discrimination on the grounds of age in EU policies and actions<sup>36</sup>. The provision for a special legislative process in order to take measures regarding combating discrimination is repeated in **Article 19 of the Treaty on the Functioning of the European Union** (hereafter TFEU), while **Article 10 of the same Treaty** explicitly provides that the EU should aim to combat discrimination “based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”. Still in the context of EU law, age is included among the prohibited grounds for discrimination, which are set in **Article 21 of the EU Charter of Fundamental Rights** (hereafter CFR), while **Article 25 of the CFR explicitly mentions the** “rights of the elderly to live a life of dignity and independence and to participate in social and cultural life”. The purpose of the aforementioned provision is to guarantee full access to work, education and health services for every person, as well as their participation in their country's political, social and cultural life<sup>37</sup>. In fact, even though Article 25 of the EU Charter of Fundamental Rights is included in Title III on *Equality*, its importance for society can only be understood in conjunction with the very next Title on *Solidarity* and the fundamental social rights set out under the latter.

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<http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=17961&Language=en>.

<sup>32</sup> Council of Europe, Parliamentary Assembly, Recommendation 1796 (2007) on *The situation of elderly persons in Europe*, available at: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta07/erec1796.htm>.

<sup>33</sup> Council of Europe, Parliamentary Assembly, Recommendation 1749 (2006) on *Demographic challenges for social cohesion*, available at: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta06/EREC1749.htm> και Resolution 1502 (2006) on *Demographic challenges for social cohesion*, available at: <http://www.assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/ERES1502.htm>.

<sup>34</sup> Council of Europe, Parliamentary Assembly, Recommendation 1591 (2003) on *Challenges of social policy in Europe's ageing societies*, available at: <http://assembly.coe.int/Documents/AdoptedText/ta03/EREC1591.htm>.

<sup>35</sup> Council of Europe, Parliamentary Assembly, Recommendation 1619 (2003) on *The rights of elderly migrants*, available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta03/EREC1619.htm>.

<sup>36</sup> In fact, it is worth mentioning that in Articles 13 TEU or 19(1) TFEU, from the two provisions of the European law on human rights which have been used as their source of inspiration – Article 14 of the ECHR and Article E of the Revised European Social Charter – “age” has been chosen as a ground of discrimination in the provision introduced in the EU law. Language, colour, political beliefs and social origins are prohibited grounds of discrimination provided in Articles 14 and E, respectively, of the ECHR and the Revised ESC. See in this respect P. Stangos, “Discrimination on the grounds of age and the challenge of intergenerational solidarity in the Greek and European law”, *Review of Labour Law*, Vol. 73, Iss. 15, p. 979.

<sup>37</sup> The Charter of Fundamental Rights (CFR) was “proclaimed” by the Parliament, the Council and the Committee, at the European Council of Nice, on 7 December 2000 (2000/C 364/01), but it did not acquire binding force. Since 1st December 2009, with the Lisbon Treaty entering into force, it has acquired the same legal force as the Treaties (new Article 6(1) TFEU). The text was separately published in the EU Official Journal (EU C 303/02, 12.14.2007, EU C 83/02, 3.30.2010).

In 2000, the **EU Council issued Directive 2000/78/EC on equal treatment in employment and occupation**<sup>38</sup>, the first EU Directive to aim at combating age discrimination. It constitutes, in fact, a decisive step towards the establishment of a general framework against discrimination on the grounds of religion, beliefs, age or sexual orientation, underlying the need for taking appropriate measures for the social and economic inclusion of older persons. Recognising that discrimination on the grounds of age can undermine the achievement of EU goals, especially the achievement of a high employment rate and social protection, the rise of the standard of living and quality of life, the economic and financial cohesion and solidarity, the Directive coincides with the guidelines of 2000 on employment and occupation, which were adopted by the Helsinki European Council on 10-11 December 1999 and underline the need to place greater emphasis on supporting old-age workers in order to increase their participation in professional life.

In order to prohibit any discrimination on the exclusive grounds of age, the judgment of the Court of Justice of the European Communities in the case *Werner Mangold v. Rudiger Helm*<sup>39</sup> is of decisive importance. Indeed, **the Court took a step further with *Mangold*, recognising autonomously the principle of non-discrimination on the grounds of age as a general principle of Community law**. More specifically, observing that the principle of non-discrimination on the grounds of religion or beliefs, special needs, age and sexual orientation is founded, as appears from the first and fourth explanatory recital of Directive 2000/78, in various international instruments and in the constitutional traditions common to the Member States (Paragraph 74 of the judgment), the Court concluded that “the principle of non-discrimination on the grounds of age must [...] be regarded as a general principle of Community law”<sup>40</sup>.

The Court insists on prohibiting age discrimination with the same severity applied in every other ground of discrimination and the relevant case law is extensive<sup>41</sup>.

More specifically, the Court moved along the same lines in the cases *Bartsch v. Bosch and Siemens Hausgeräte (BSH) Altersfürsorge GmbH*<sup>42</sup> and *Seda Küçükdeveci v. Swedex GmbH and Co. KG*<sup>43</sup>,

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<sup>38</sup> Council Directive 2000/78/EC of 27 November 2000, on establishing a general framework for equal treatment in employment and occupation, Official Journal No. L 303 of 12/2/2000, pp. 16-22, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>.

<sup>39</sup> ECJ, Grand Chamber, Case C-144/04, *Werner Mangold v. Rudiger Helm*, 22 November 2005, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62004CJ0144:EN:HTML>.

<sup>40</sup> *Idem*, par. 75.

<sup>41</sup> We indicatively mention: ECJ, Case C-411/05, *Palacios de la Villa v. Cortefiel Servicios SA*, 23 October 2007, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005CJ0411:EN:HTML>; Case C-388/07, *The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform*, 5 March 2009, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007CJ0388:EN:HTML>; Case C-88/08, *David Hütter v. Technische Universität Graz*, 18 June 2009, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008CJ0088:EN:HTML>.

<sup>42</sup> ECJ, Grand Chamber, Case C-427/06, *Birgit Bartsch v. Bosch und Siemens Hausgeräte (BSH) Altersfürsorge GmbH*, 23 September 2008, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006CJ0427:EN:HTML>.

<sup>43</sup> CJEU, Grand Chamber, Case C-555/07, *Seda Küçükdeveci v. Swedex GmbH & Co. KG*, 19 January 2010, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007CJ0555:EN:HTML>.

where by confirming the existence of a “general principle of Community law” prohibiting age discrimination, invested the national judge with a central role in securing the precedence of EU law, rendering him/her responsible for safeguarding the legal protection provided by the EU law to individuals and the guarantee of the full effectiveness thereof, by not applying any provision of the national legislation which is contrary to the principle in question<sup>44</sup>.

At the same time, **AGE Platform Europe** has already been established as early as January 2001; a European Network of Organisations for people aged 50+ representing more than 30 million older persons in Europe. The purpose of AGE is to express and promote the interests of EU citizens aged 50+ and to raise public awareness for the issues they are most concerned with<sup>45</sup>. Furthermore, thanks to the support of the DAPHNE III Programme of the European Commission, AGE prepared in collaboration with a network of 11 organisations from all over Europe<sup>46</sup> the **European Charter of the Rights and Responsibilities of older persons in need of long-term care and assistance**<sup>47</sup> as well as an **Accompanying Guide**<sup>48</sup>, which mentions every single right included in the European Charter, explaining its meaning and application. In short, the Charter aspires to become a useful text of reference which shall define the fundamental principles and rights necessary for the well-being of every person depending on others for support and care due to their age, illness or disability. Its basic priority is the respective public awareness and the promotion of exchanging good practices among both Member States and other countries<sup>49</sup>.

Recognising that population ageing constitutes one of the greatest social and economic challenges of the 21st century for European societies and estimating that in 2015 more than 20% of Europeans will be over 65 years old, the **European Commission** adopted the **European Partnership of Innovation on Active and Health Ageing**<sup>50</sup>, which sets a target of increasing the health lifespan by 2 years by 2020. It is mentioned that this partnership aims at improving the life of older persons, assisting them in participating in society and reducing the pressure health and care systems receive, contributing, thus, to the ultimate purpose of a sustainable development.

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<sup>44</sup> See Case *Bartsch*, par. 25 and Case *Küçükdeveci*, par. 51.

<sup>45</sup> For more information see the webpage of the Platform: <http://www.age-platform.eu/about-age>.

<sup>46</sup> European Partners: AGE Platform Europe, coordinator of the programme and EDE – European Association for Directors and Providers of Long-Term Care Services for the Elderly. National Partners: 50+ Hellas (Greece), ANBO (the Netherlands), BIVA (Germany), Commune de St Josse (Belgium), Fondation nationale de Gérontologie (France), FIPAC (Italy), Mestna Zveza Upokojencev (MZU, Slovenia), NIACE (UK), Swedish Association of Senior Citizens (SPF, Sweden) και ZIVOT 90 (Czech Republic).

<sup>47</sup> *European Charter of the Rights and Responsibilities of older people in need of long-term care and assistance*, EUSTaCEA project, Daphne III programme, June 2010, available at: [http://www.age-platform.eu/images/stories/22204\\_AGE\\_charte\\_europeenne\\_EN\\_v4.pdf](http://www.age-platform.eu/images/stories/22204_AGE_charte_europeenne_EN_v4.pdf).

<sup>48</sup> *Accompanying Guide to the European Charter of the Rights and Responsibilities of older people in need of long-term care and assistance*, EUSTaCEA project, Daphne III programme, November 2010, available at: [http://www.age-platform.eu/images/stories/22495\\_EN\\_06.pdf](http://www.age-platform.eu/images/stories/22495_EN_06.pdf).

<sup>49</sup> *European Charter of the Rights and Responsibilities of older people in need of long-term care and assistance*, *op.cit.*, pp. 3-5.

<sup>50</sup> European Commission, *Communication from the Commission to the European Parliament and the Council, Taking forward the Strategic Implementation Plan of the European Innovation. Partnership on Active and Healthy Ageing*, Brussels, 29.2.2012, COM(2012) 83 final, available at: [http://ec.europa.eu/health/ageing/docs/com\\_2012\\_83\\_en.pdf](http://ec.europa.eu/health/ageing/docs/com_2012_83_en.pdf).

### C. On national level

In Greece, “*respect and protection of the value of the human being constitute the primary obligations of the State*” and they are constitutionally guaranteed (Article 2(1) of the Constitution). The same applies to non-discrimination which is guaranteed by means of an explicit constitutional provision on equality before the law (Article 4(1) of the Constitution), the total protection of life, honour and freedom for all persons living within the Greek territory irrespective of nationality, race or language and of religious or political beliefs (Article 5(2) of the Constitution) or even the right to receive legal protection by the courts (Article 20(1) of the Constitution). It is also important to note that most of the abovementioned provisions belong to the non-revisable provisions.

More specifically, the protection and respect of older persons' rights are guaranteed by Article 21(3) of the Greek Constitution, which specifies that “*the State shall care for the health of citizens and shall adopt special measures for the protection of [...] old age [...]*”, while, at the same time, securing the unimpeded and effective exercise of the “*rights of the human being as an individual and as a member of society*” and the “*principle of the welfare state rule of law*” is defined in Article 25(1) as obligatory.

With regard to the legislative recognition of the obligation to promote and respect older persons' rights in Greece, Law 3304/2005 on the *Application of the principle of equal treatment regardless of racial or ethnic origins, religious or other beliefs, disability, age or sexual orientation*<sup>51</sup>, by means of which Directives 2000/43/EC (on implementing the principle of equal treatment among persons irrespective of racial or ethnic origin) and 2000/78/EC (on establishing a general framework for equal treatment in employment and occupation) were introduced into the Greek legal order, constituted a turning point for the promotion of the principle of equality and the protection of human rights in Greece. With this Recommendation, in fact, by the bodies for the promotion of the principle of equal treatment (Article 19), “vulnerable population groups” which tend to present higher rates of poverty and unemployment than the rest of the population, are given the chance to seek another path beyond justice, which due to slowness and costs, is not always the most effective one<sup>52</sup>.

Apart from Law 3304/2005, which constitutes the basic legislative tool for combatting discrimination, special reference should be made to Law 2345/1995 on *Organized care services provided by social welfare agencies and other provisions*<sup>53</sup>, which provides a special regulatory framework for the institutional care offered to older persons in retirement homes.

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<sup>51</sup> OJ 16 1.27.2005/A.

<sup>52</sup> National Centre for Social Research – Institute of Social Policy (NCSR-ISP), Research Programme “Establishment of an Observatory on Combating Discrimination”, *The Institutional framework for combating discrimination*, N. Sarris (ed.).

<sup>53</sup> OJ 213/10.12.1995/A.

Finally, Law 3500/2006 *On combatting domestic violence*<sup>54</sup> provides a more specialised legislative framework of protection to every family member who may suffer violence, older persons included. It is worth mentioning, in fact, Article 22, which provides for the granting of legal aid to victims of domestic violence seeking urgent protective measures in order to deal temporarily with the situation due to the particular incident and cannot afford to pay the necessary legal costs.

### III. Challenges in the protection of older persons in Greece

In the light of the abovementioned aspects, the concern raised is justified. In circumstances of deep and prolonged financial crisis in conjunction with a fiscal and financial policy unilaterally oriented to strict fiscal austerity, reduction or suppression of social expenditure and the dismantling of the institutional framework of labour relations, the question which arises is whether the care provided to older persons corresponds to the aforementioned principles of international and European law.

There is no doubt that the financial crisis afflicting Greece is unprecedented in both intensity and duration<sup>55</sup>. According to a recent Opinion by **OKE (Economic and Social Council of Greece)** regarding *The social safety net for maintaining social cohesion*, poverty rate in our country is significantly increasing with 34.6% of the Greek population being threatened by poverty or social exclusion<sup>56</sup>. According to **Eurostat**'s official estimations on national income, in 2013 the Greek Gross Domestic Product (GDP) has shrunk by 20.6% in comparison with 2009 (or, even, 23.2% in comparison with 2007)<sup>57</sup>, while the **Policy Analysis Research Unit of the Athens University of Economics and Business** stresses that poverty rate on the basis of a standard limit has soared to 39% in 2012 and 44% in 2013<sup>58</sup>. As a result, we note intense phenomena of marginalisation, particularly for vulnerable social population groups, such as older persons.

Besides, as pointed out in a research conducted by the Athens University of Economics and Business, *“the crisis did not create coverage gaps, it just highlighted their tragic consequences”*<sup>59</sup>. Poverty in Greece is mainly due to the social protection system's failure to activate support

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<sup>54</sup> OJ 232/10.24.2006/A.

<sup>55</sup> See in this respect Athens University of Economics and Business, Policy Analysis Research Unit, *Poverty amidst the crisis in Greece*, Newsletter 1/2012, M., Matsaganis, C., Leventi, E., Kanavitsa (ed.), available at: [http://www.paru.gr/index.php?lang=en&page=newsletters/2012\\_1](http://www.paru.gr/index.php?lang=en&page=newsletters/2012_1) as well as *Poverty in Greece: trends in 2013*, Newsletter 5/2013, M., Matsaganis, C., Leventi (ed.), pp. 3-4, available at: [http://www.paru.gr/index.php?lang=en&page=newsletters/2013\\_5](http://www.paru.gr/index.php?lang=en&page=newsletters/2013_5).

<sup>56</sup> Economic and Social Council of Greece (OKE), *The Social Safety Net as an Instrument of Social Cohesion: Proposals and Policy Measures Own-Initiative Opinion*, March 2014, p. 2, available at: <http://www.eesc.europa.eu/ceslink/resources/docs/opinion-of-the-greek-national-council-on-social-security-nets-en.pdf>.

<sup>57</sup> Eurostat, Real GDP growth rate – volume, available at: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&language=en&pcode=tec00115>.

<sup>58</sup> See Athens University of Economics and Business, Policy Analysis Research Unit, as *Poverty in Greece: trends in 2013*, Newsletter 5/2013, M., Matsaganis, C., Leventi (ed.), pp. 6-7, available at: [http://www.paru.gr/index.php?lang=en&page=newsletters/2013\\_5](http://www.paru.gr/index.php?lang=en&page=newsletters/2013_5).

<sup>59</sup> See Athens University of Economics and Business, Policy Analysis Research Unit, *Poverty and social policy in (a) crisis: the case of Greece*, Newsletter 6/2013, M., Matsaganis, (ed.), p. 2, available at: [http://www.paru.gr/index.php?lang=en&page=newsletters/2013\\_6](http://www.paru.gr/index.php?lang=en&page=newsletters/2013_6).

mechanisms for the income in society. Taking thus into account that guaranteeing a decent standard of living for older persons largely depends on access to social benefits, such as health services or social care, it is easy to understand the degradation that their standard of living has suffered<sup>60</sup>.

In its Report on Social Welfare Programmes in Greece, the **Organisation for Economic Co-operation and Development (OECD)** reaches the same conclusions, recognizing that “*the social context also remains highly challenging, with implications for both social stability and growth*”, drawing attention to the fact that “*the social pressures generated by the deep recession and strong fiscal retrenchment are already significant, and it is likely that they will intensify in the short to medium term*”<sup>61</sup>.

More specifically, regarding older persons’ social protection, the **European Committee of Social Rights (ECSR) of the Council of Europe**, in its Conclusions about the application of Article 4 of the Additional Protocol of 1998 of the ESC by Greece, published in January 2014, concludes that “*the situation in Greece is not in conformity with Article 4 of the Additional Protocol to the 1961 Charter on the grounds that there is no legislation protecting elderly persons against discrimination on grounds of age outside the employment field*”<sup>62</sup>. As far as Article 13 of the ESC on the right to social and medical assistance is concerned, ECSR notes that access to social services may be free of charge for the most vulnerable social groups, among which are older persons, but its effectiveness, as well as the sufficiency of the resources, have been frequently challenged in the past.<sup>63</sup>

Besides, as the ECSR never fails to mention, its role of is to evaluate not only in law but also in practice whether the obligations that derive from the Charter are met<sup>64</sup>. This occasionally proves to be impossible because Greek authorities do not provide more specific information regarding the prevention of abuse for older persons, the services and facilities offered to older persons or the families which take care of them, the health services provided or, even the institutional care provided by retirement homes<sup>65</sup>.

Although, as mentioned, a general regulatory framework for combating discrimination has been established since 2005 in the Greek legal order, according to research conducted by the **European Commission**, citizens in Greece consider (to a greater extent in comparison with the EU majority)

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<sup>60</sup> See Athens University of Economics and Business, Policy Analysis Research Unit, Poverty in Greece: trends in 2013, *op. cit.*, p. 4.

<sup>61</sup> OECD Public Governance Reviews, *Greece: Reform of Social Welfare Programmes*, 2013, p. 17, available at : [http://www.oecd-ilibrary.org/governance/greece-social-welfare-programmes\\_9789264196490-en](http://www.oecd-ilibrary.org/governance/greece-social-welfare-programmes_9789264196490-en).

<sup>62</sup> European Committee of Social Rights, *Conclusions XX-2 (2013), Greece, Articles 3, 11, 12, 13 and 14 of the 1961 Charter and Article 4 of the 1988 Additional Protocol, January 2014*, pp. 48, available at: <http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GreeceXX2en.pdf>.

<sup>63</sup> European Committee of Social Rights, *Conclusions XIX-2 (2009), Greece, Articles 3,11,12, 13, 14 and Article 4 of the Additional Protocol of the Charter, January 2010*, available at: [http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/GreeceXIX2\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/GreeceXIX2_en.pdf).

<sup>64</sup> More specific ECSR observations are laid down in the following chapters on particular issues.

<sup>65</sup> ECSR, *Conclusions XX-2 (2013), Greece, op. cit.*, pp. 40-43.

that all forms of discrimination for which they were asked are common in their country. The ground of “age” is among the aforementioned forms of discrimination with quite a high rate, reaching 43%. Furthermore, according to the same research, as far as employment is concerned, if the candidate is aged over 55, this constitutes an important factor – disadvantage for his/her hiring for 54% of the persons asked, while on the same subject, 82% of the persons asked answered that the age over 55, as a ground of discrimination in the labour market is highlighted due to the financial crisis<sup>66</sup>.

GNCHR stresses that the choice to examine in depth the following subjects does neither undermines the importance of the remaining older persons' rights, nor undervalues the still pending issues in our country regarding other crucial rights. Given, however, the imperative need to analyse the most important and urgent challenges for the protection of older persons' rights in Greece, GNCHR shall focus on:

## **A. Civil and political rights**

### ***Autonomy and participation***

The population increase for 50+ persons, the insecurity regarding work and social security as well as the failure to fruitfully use their knowledge and experience results in the marginalisation and the exclusion of a large workforce and its contribution to society. This is a great challenge with respect to the protection of older persons: what they are mostly being denied nowadays is their equal participation in public life. They are thus condemned in gradual isolation and degradation.

As a direct consequence of their marginalisation comes the violation of their autonomy and the deprivation of the possibility to participate in public life. Their accessibility to public spaces is limited, if not non-existent, while older persons usually face a hostile environment, not adapted to the third age's particular needs.

Furthermore, another aspect of the social exclusion of older persons is connected to the shift of public and private services towards digital technology (e-banking, e-commerce, e-learning, e-health). The applications of digital technology have in principle influenced the State's operation positively, but they have been introduced without consideration for the particular needs of population groups who are not objectively able to access them. As far as older persons are concerned, this results in the creation of a new kind of “digital exclusion” (or “digital gap”), which includes important social implications, since older groups are more vulnerable to this danger due to non-access to digital means and even more so, to the applications of new technologies. The digital gap can potentially accumulate new inequalities, which shall reinforce and aggravate the currently existing ones, as, for instance, the marginalisation and the sociodigital exclusion. These inequalities have serious impact on education, health, social welfare, access to labour market and the use of

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<sup>66</sup> European Commission, Special Eurobarometer, *Discrimination in the EU in 2012*, June 2012, QC1, QC4, QC5, QC6, QC10, available at: [http://ec.europa.eu/justice/discrimination/files/eurobarometer393summary\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/eurobarometer393summary_en.pdf).

public administration services while they are frequently linked to very important implications of administrative nature, such as the imposition of administrative penalties<sup>67</sup>.

These observations are further corroborated by the research of the Special Eurobarometer, according to which the rate of Greek citizens considering their country “non-friendly towards third age” is high (67%)<sup>68</sup>.

The insufficiency of the provisions addressed to older persons seems to be absolute, especially towards persons of the so-called “fourth age”<sup>69</sup> who find themselves by definition in a worse position than the rest of older persons, since a person in this vulnerable period of his/her life finds it impossible to perform self-care due to biological deterioration, illnesses and the increase in accidents. In order for an older person to continue living in decency and self-respect, he/she is in need of support when his/her social, emotional and financial self-sufficiency is being restricted. At this point, since in the current circumstances the family is not able to satisfyingly meet the needs of older persons in Greece, the State and the local authorities owe to assume responsibility for their decent protection and living.

Strengthening independence and encouraging older persons' social participation are of fundamental importance, given that it has been proven that there is a connection between the reduction of their physical abilities and their subjective sense of isolation.

In Greece, an interesting good practice is implemented on safeguarding older persons' autonomy at home, since programmes such as “Help at home” and “Teleassistance at Home” enables the direct communication of older persons, living alone and unable to perform self-care, with their friends and relatives as well as with services of immediate intervention in order for them to feel less vulnerable and insecure and to reside in their place of choice<sup>70</sup>. GNCHR, at this point, seizes the opportunity to express its concern about the fact that the operation of such an important work of social policy essentially depends on European programmes for its funding. These services ought to be integrated in a framework of public, free-of-charge health and welfare services which shall be steadily provided and funded by the State budget.

Moreover, since 2009, “Parents' Schools” operate in Greece under the auspices of the General Secretariat for Lifelong Learning of Ministry of Education. More than 5000 trainees have attended 295 seminars on the status of older persons in society, their particular needs and the difficulties they face as well as on the ways in which society can respond<sup>71</sup>.

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<sup>67</sup> See in the respect 50+ Hellas, *Positions and Suggestions for an Active and Health Ageing in Greece*, April 2013.

<sup>68</sup> European Commission, Special Eurobarometer 378, *Active Ageing*, January 2012, p. 107, available at: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_378\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_378_en.pdf).

<sup>69</sup> The “fourth age” includes, according to the suggested definition, older persons, usually more than 80 years of age that have restricted ability to self-care. The age limit is always a relevant factor. See in the respect *supra*, p. 4.

<sup>70</sup> Ministry of Justice, General Secretariat of Transparency and Human Rights, *National Plan of Action for Human Rights*, March 2014, pp. 207-209.

<sup>71</sup> Council of Europe, Committee of Ministers, *Recommendation CM/REC (2014)2 to member States on the promotion*

The GNCHR, recognising the need to respect older persons' dignity and their inalienable right to lead their life in an independent and autonomous way, associates itself at this point with the Council of Europe Recommendations on *The promotion of human rights of older persons*<sup>72</sup>. Furthermore, the GNCHR estimates that in order to support active ageing and older persons' social participation, the institutionalisation of the above social protection systems is very important even though not sufficient in itself.

### ***Informed consent in healthcare***

The decrease in the mobility and autonomy of older persons combined with their increased needs for long-term health provision and the traditionally “paternalistic” model of doctor-patient relations, which up until recently was dominant in our country, frequently creates problems in the application of the principle of patient's consent to the medical act. Balancing the protection of older persons and their autonomy does not always seem to be feasible.

The respect of the principle of autonomy of older persons, however, should not be in constant conflict with the need to safeguard their protection. The Oviedo Convention for Human Rights and Biomedicine constitutes the first binding instrument of international law to integrate “consent upon information” for any medical act. Apart from the Convention, in Greek law exist explicit provisions including both the Code of Medical Ethics (CME – Law 3418/2005)<sup>73</sup> and more specific legislative texts<sup>74</sup>. The pre-condition of the patient's consent (Articles 11-12 of Law 3418/2005)<sup>75</sup> does not simply constitute a patient's right, as provided for by Law 2071/1992<sup>76</sup>, but it is an essential obligation of the doctor towards the patient before attempting any medical act. Moreover, Article 12(1) of Law 3418/2005 explicitly introduces a prohibiting provision according to which *verbatim* “the doctor is not allowed to carry out any medical act without the patient's previous consent”. This implies that informing and subsequently receiving the patient's consent is a necessary pre-condition of the legality of a medical act.<sup>77</sup>

Nevertheless, as it is characteristically outlined in a relevant Opinion by the Greek National Bioethics Commission, the aforementioned example on the Code of Medical Ethics provisions itself proves that the traditional model of doctor-patient relations has not been completely abandoned in Greece. According to another provision “the doctor, when exercising medicine, acts in total freedom, in the context of the generally accepted rules and practices of medical science”,

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*of human rights of oldr persons, op. cit.*, p. 4

<sup>72</sup> *Idem*; Council of Europe, Committee of Ministers, Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons, *op. cit.*, pp. 3-4.

<sup>73</sup> OJ 287/11.28.2005/A.

<sup>74</sup> On assisted reproduction, transplantation etc.

<sup>75</sup> OJ 287/11.28.2005/A.

<sup>76</sup> OJ 123/7.15.1992/A.

<sup>77</sup> Greek National Bioethics Commission, *Consent in the Patient-Physician Relationship*, Opinion and Report, April 2010, p. 13, available at: <http://www.bioethics.gr/index.php/en/gnomes/88-consent-in-the-patient-physician-relationship>.

maintaining the “right to choose the treatment method which is deemed to considerably prevail over another one, for a specific patient based on the modern rules of medical science” (Article 3(3) of Law 3418/2005).

The restriction in the doctor-patient communication time, the vagueness regarding the appropriate extent of the information, the insufficient doctor training regarding the relations they ought to develop with their patients and the lack of the general public's familiarisation with the rights and options of everyone addressing health services are factors that, combined with the reduced autonomy of older persons, impede and in many cases render practically impossible the full enjoyment of every older person's right to individualised information, advice and consent upon information.

Furthermore, the tendency not to provide information to older patients, but to inform instead their families has been fiercely criticised. Such a tendency implies that older persons in need of care remain passive receptors without being involved in the decision making process regarding issues which affect them. However, if the patient is able to consent<sup>78</sup> and has not refused to be informed, exercising thus the right of ignorance<sup>79</sup>, this practice, even when due to the fear of undermining the patient's psychological stability, breaks the fundamental connection between information and consent, risking to cause the patient distress<sup>80</sup>.

### ***Protection from violence and abuse***

Older persons abuse is being more and more recognised as a major social problem not only on an international or a European level<sup>81</sup>, but also in our country, despite the serious lack of data regarding the size of the problem. As stressed by the Greek Ombudsman's representative in the relevant deliberation which took place with the participation of different stakeholders, unfortunately, in Greece, data about cases of older persons abuse are exceptionally limited. This is due to the fear of older persons to testify their experience, as well as to the absence of national policy for systematically recording these cases of violence and abuse at the expense of older persons. The types of older persons' abuse are many and more than one usually take place simultaneously: physical abuse, psychological abuse – which includes emotional, mental and verbal abuse – financial abuse, sexual abuse, social abuse, as well as neglect<sup>82</sup>.

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<sup>78</sup> According to the prevailing opinion in our country, patients' consent is independent from their legal capacity. A strong consent pre-conditions the patients' ability to fully understand the current situation the moment they give their consent as well as when the medical act is carried out.

<sup>79</sup> According to the provisions of Article 11(2), Medical Code of Conduct, patients have the right to not get informed (right to ignorance) and to ask the doctor to only inform another or other persons that they shall indicate.

<sup>80</sup> *Idem*, p. 15.

<sup>81</sup> See in this respect World Health Organization, Regional Office for Europe, *European report on preventing elder maltreatment*, 2011, pp. 1-9, available at: [http://www.inpea.net/images/WHO\\_EU\\_Report\\_Elder\\_Mistreatment\\_2011.pdf](http://www.inpea.net/images/WHO_EU_Report_Elder_Mistreatment_2011.pdf).

<sup>82</sup> See in this respect J.J.F. Soares, H. Barros, Fr. Torres-Gonzales, El. Ioannidi-Kapolou, G. Lamura, J. Lindert, J. de Dios Luna, G. Macassa, M.G. Melchiorre, M. Stank, ABUEL. Abuse and Health Among Elderly People, 2010, p. 22, available at: <http://www.hig.se/download/18.3984f2ed12e6a7b4c3580003555/ABUEL.pdf>.

Regarding physical abuse, the cases annually recorded demonstrate the problem of insufficient or non-existent monitoring not only in retirement homes, but, even more so, in home care. Statistical data show that approximately 70% of those exercising violence to older persons are either family members or persons very close to them and most of them are either their partners or their children<sup>83</sup>. It is worth mentioning that during the first 36 months of its operation (4.12.11 – 4.31.14) the Greek National Hotline SOS 10-65 received 595 calls regarding complaints of older persons abuse<sup>84</sup>.

## **B. Social and Economic Rights**

### ***Right to social insurance and security***

In its recent Recommendation on the rights of older persons, the Committee of Ministers of the Council of Europe mentions that older persons should receive appropriate resources enabling them to have an adequate standard of living and participate in public, economic, social and cultural life<sup>85</sup>. The enjoyment of the right to social insurance and security is of fundamental importance towards ensuring an adequate standard of living.

On the other hand, the International Covenant on Economic, Social and Cultural Rights guarantees in a general way the right to social security (Article 9)<sup>86</sup>. The Committee of Economic, Social and Cultural Rights in General Comment No 6 on the economic, social and cultural rights of older persons, taking into account the ILO Conventions on social security as well (C102 – Social Security (Minimum Standards) Convention, 1952 and C128 - Invalidity, Old-age and Survivors' Benefits Convention, 1967)<sup>87</sup>, stresses that States parties must take appropriate measures to establish general regimes of compulsory old-age insurance, starting at a particular age, to be prescribed by national law<sup>88</sup>. In fact, the Committee highlights that in order fully to implement the provisions of Article 9 of the Covenant, States parties should, within the limits of available resources, provide non-contributory old-age benefits and other assistance for all older persons, who, when reaching the age prescribed in national legislation, have not completed a qualifying period of contribution and are

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<sup>83</sup> N. Georgantzi, *Elder abuse and neglect in the European Union UN Open-ended Working Group on Ageing*, 21-24 August 2012, available at : <http://social.un.org/ageing-working-group/documents/ElderAbuseNGOEWG2012.pdf>.

<sup>84</sup> According to a research conducted by partners of the Press Office of NGO LifelineHellas, from the published cases of abuse of older persons, it appears that for the time period 2010-2014 (to date) the following data arises, which are not absolute of course, but paints a picture of the size of the problem: 27 older persons were murdered, 390 older persons were victims of violence, 7 older women were victims of sexual abuse and 192 older persons were victims of financial abuse. See LifelineHellas, Press Release, "World Elder Abuse Awareness Day. Help exists! And it's available to all! 1065: National SOS Hotline for old persons".

<sup>85</sup> Council of Europe, Committee of Ministers, *Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons*, 19 February 2014, par. 21.

<sup>86</sup> According to Article 9 "The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance".

<sup>87</sup> ILO, R202 - Social Protection Floors Recommendation, 2012 (No. 202), *Recommendation concerning National Floors of Social Protection*, available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_INSTRUMENT\\_ID,P12100\\_LANG\\_CODE:3065524,en:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:3065524,en:NO) and ILO, R162 - Older Workers Recommendation, 1980 (No. 162), *Recommendation concerning Older Workers*, available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:R162](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R162)

<sup>88</sup> UN, ICESCR, General Comment No. 6, *The economic, social and cultural rights of older persons*, par.27

not entitled to an old-age pension or other social security benefit or assistance and have no other source of income<sup>89</sup>.

At this point, the GNCHR stresses that, according to a survey conducted by the Small Enterprises' Institute of the Hellenic Confederation of Professionals, Craftsmen and Merchants (IME GSEVEE), income coming from pensions is the main, and perhaps the only, support for a great number of households (48.6%)<sup>90</sup>. In one out of two households in Greece, old pensioners support the unemployed members of their families rendering the protection of the social security system more imperative than ever.

Furthermore, according to a recent study by INE-GSEE (Trade Union Labour Institute), the changes in population which have been taking place in recent years have a direct and powerful impact on the labour market and the social security system. Nowadays, older persons live longer and more healthily with respect to previous generations. In 2010, the life expectancy (Greece) at the age of 65 years old was 17 years for men and 21 years for women. Moreover, a newborn boy's chance of reaching the age of 65 is over 80%, while the corresponding chance for a girl is over 90%. This development means that the rise in life expectancy denotes the payment of pension benefits for even longer periods. The ageing of the population and the consequent decrease of working age have an impact, either direct or indirect, on the structure of the workforce, the circumstances of offer and effectiveness in the labour market along with the long-term viability of the Social Security System<sup>91</sup>.

Besides, a recent analysis published by ILO points out in the most vivid terms the need of meeting population challenges by means of promoting employment and social protection, setting as priorities the expansion of pension coverage and the securing of effective access to health and care for older persons<sup>92</sup>.

The GNCHR notes, however, that, in Greece, interventions on social security, in the context of the consecutive austerity measures, attempt to address the impact of the demographic deficit by means of drastically reducing pension benefits instead of structuring a long-term dynamic fiscal policy, which will protect the Social Security System with new resources coming from economic development.

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<sup>89</sup> UN, ICESCR, General Comment No. 6, *The economic, social and cultural rights of older persons*, op. cit., par. 30. See also UN, ICESCR Committee, General Comment No. 19 *on the right to social security*, par. 15.

<sup>90</sup> IME GSEVEE Survey, *Household's Income – Expenditure*, 01.23.2014, available at: <http://www.imegsevee.gr/imesurveys/796-households-income-expediture>.

<sup>91</sup> INE-GSEE, *Social Insurance and the Impact of Population Ageing on Greece's social insurance system in 2013-2050*, Athens, 12.9.2013.

<sup>92</sup> ILO, *Social protection for older person: key policy trends and statistics* / International Labour Office, Social Protection Department. - Geneva: ILO, 2014, available at : [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_310211.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_310211.pdf).

The GNCHR notes that the Social Security System has been seriously afflicted due to extensive fiscal interventions and austerity measures, resulting in seriously jeopardizing the social security rights of older persons<sup>93</sup>.

In this context, the GNCHR observes that the social state in Greece is addressed as the “subject of the crisis” which is “responsible” for the fiscal derailment<sup>94</sup>, while it is actually the “object” of the crisis, being constantly weakened and dismantled by regulations which cut down benefits and social rights, thus violently raising retirement age and rendering the pre-conditions for social security benefits stricter, especially for groups in need of particular and constant social protection.

Austerity measures adopted in the context of Greece’s fiscal adaptation programme contribute, apart from the drastic and constant cuts in social security benefits caused, to the radical restructuring of the Country’s Social Security System. This restructuring occurs, on the one hand, by means of the State’s gradual withdrawal from the obligation of co-funding the Social Security System regarding the main and supplementary pensions (restricted since 1.1.2015 to funding “main” pensions only<sup>95</sup>) and, on the other hand, by means of drastic parametric changes<sup>96</sup> at the expense of insurance rights and expectations of the insured. When actors of social insurance do not receive a satisfying funding, the future of pension rights is not secured.

The GNCHR highlights that the issue of social insurance is an open social issue, which must be constantly addressed in the context of the constant social dialogue and with respect to certain fundamental principles. In the context of the respective OKE Opinion<sup>97</sup> as well, the GNCHR stresses the greatness of these principles, which are articulated as follows:

- a. Social security is public, universal and obligatory for all workers, either Greek or legally residing aliens.
- b. The State guarantees the viability, operation, stable funding and the social character of our country’s health, welfare and pension system.

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<sup>93</sup> A representative example, which has also been highlighted in the consultation of 6.30.2014 by the Greek Ombudsman, concerns the issue of the pre-conditions for granting pension to expatriate uninsured very old persons. The modifications brought upon by Law 4093/2012 lead to full pension forfeiture for uninsured very old persons who belong to a particularly vulnerable population group. As mentioned in a Decision by the Greek Ombudsman, a great number of uninsured very old persons, already pensioners, who receive a small pension from their countries or have not completed a 20-year stay in Greece, have been deprived of the provision of pension since 3.1.2013. The Greek Ombudsman also highlights that in view of the particularly low pension that repatriated expatriates receive, pension forfeiture for uninsured very old persons shall raise issues of decent living. See about the Greek Ombudsman’s recommendations on the issue: *The Greek Ombudsman’s intervention on the pre-conditions for granting pension to expatriate uninsured very old persons*, June 2013.

<sup>94</sup> See M. Matsaganis, *Social policy in hard times*, Kritiki Publications, Chapter 1.

<sup>95</sup> Article 37 Law 3863/2010 (OJHR 115/7.15.2010/A), Article 3 Law 3865/2010 (OJ 120/7.21/2010/A).

<sup>96</sup> For example, direct cuts in pensions which have triggered successive cumulative cuts up to 50%, the rise of retirement age from 60 to 67 years of age, the extension of the contribution period from 35 to 40 years.

<sup>97</sup> Economic and Social Council of Greece (OKE), Opinion No. 241/7.5.2010 on the Draft Law of subsequent Law 3863/2010.

- c. The social insurance system must be socially fair, financially viable, it must promote intergenerational solidarity and should be governed by the principle of equal treatment of the country's citizens.
- d. The reform of the social security system must be connected to the restructuring of the tax system towards a more fair distribution of the tax burden.
- e. The reform of the social security system must be connected to an active and effective policy for increasing employment.
- f. Policies in the field of social security must also evaluate the developing parameters of the measures taken. This is because the reform of the social security system has an impact on crucial sizes of the economy, such as development, employment and competitiveness, which shall define in their own turn the potential of the social security system itself.
- g. The administration of social security organizations of main insurance must be based on an equal three-way representation of the State, employers and workers.
- h. The reasons of effectiveness, as well as the aforementioned principle of equality impose the intensification of efforts towards limiting social security contribution evasion and the control of undeclared employment. They are both negative phenomena which characterize the Greek social security system.
- i. The viability of our social security system is also connected to our country's demographic problem which constitutes an issue of major influence. Addressing this issue would entail the immediate formation of effective policies. So far, nothing has been done towards this direction.
- j. The various changes in the Social Security System must not overturn mature expectations<sup>98</sup>, but upgrade the system and strengthen the relations of trust between the State and the citizens so as to develop and strengthen social security conscience.

Regarding the adoption of a basic social security system for non-beneficiaries of social benefits, the GNCHR highlights that social assistance and support is of supplementary/assisting character and it is unthinkable to replace social security which must preserve its universal character<sup>99</sup>. In the context of the above issues, the GNCHR falls back on the relevant observations of international bodies. As noted by the ECSR, "the cumulative effect of the restrictions (...) is bound to bring about a

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<sup>98</sup> See also European Court of Human Rights case-law on the protection of "legitimate expectation" in the context of protecting the right to property. The Court, broadening the scope of Article 1 of the First Additional Protocol, includes "legitimate expectation" in the notion of "good" for the effective enjoyment of the right to property: ECHR, *Pine Valley Developments Ltd and Others v. Ireland*, 11.29.1991, Series A no. 222, p.23 & 51, *Prince Hans-Adam II de Liechtenstein v. Germany* [GC], No 42527/98 par. 82-83, CEDH 2001-VIII, *Kopecný v. Slovakia* [GC], No 44912/98 par. 35, CEDH 2004 IX.

<sup>99</sup> ILO, R202 - *Social Protection Floors Recommendation*, 2012 (No. 202), Recommendation concerning National Floors of Social Protection Adoption: Geneva, 101st ILC session (14 Jun 2012), available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:3065524:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3065524:NO).

significant degradation of the standard of living and the living conditions of many of the pensioners concerned”<sup>100</sup>. The ECSR also stresses that the income of older persons should not be lower than the poverty threshold. However, an important percentage of pensions granted falls below this limit. The increasing level of unemployment is presenting a challenge for social security and social assistance systems as the number of beneficiaries increases while tax and social contributions revenues decline.

The ECSR highlights that Greece has not yet established that efforts have been made to maintain a sufficient level of protection for the benefit of the most vulnerable members of society, even though the effects of the adopted measures risk bringing about a large scale of pauperisation of a significant segment of the population<sup>101</sup>. The ECSR *concludes* that the restricting measures in question, which appear to deprive a segment of the population of an essential part of its living resources, have been applied without taking into account the legitimate expectation of the pensioners. This legitimate expectation secures for the beneficiaries the taking of amending measures in the field of social security, which shall take into account their vulnerability, their permanent financial expectations and finally their right to enjoy an effective access to social protection and social security<sup>102</sup>.

In the same direction, the ILO observes that existing pension thresholds are insufficient to prevent poverty in old age. In fact, it indicates that the rates of relative poverty and material deprivation have more worsened for people over 65 than for the population on average, stressing Greece’s need to monitor this phenomenon<sup>103</sup>. According to Eurostat, between 2010 and 2011, the percentage of older persons over 65 who fell below the poverty threshold has increased by 2.2 %<sup>104</sup>.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its 2013 Report towards the International Labour Conference (ILC) refers to the positions of GNCHR – as expressed in its Recommendation on the impact of the financial crisis on human rights (2011) – and observes violations on behalf of Greece regarding International Labour Conventions of Article 95 (on the protection of wages) and Article 102 (on the social security minimum standards)<sup>105</sup>. The CEACR condemns Greece in particular for not taking into account the

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<sup>100</sup> ECSR, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, Complaint No. 76/2012, 12.7.2012, par. 78.

<sup>101</sup> *Idem*, par. 81.

<sup>102</sup> ECSR, decisions on the complaints No. 76-80/2012, 12.7.2012, available at: [http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp).

<sup>103</sup> ILO, Application of International Labour Standards 2014 (I), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 103rd Session, 2014, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_235054.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235054.pdf).

<sup>104</sup> ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 102nd Session, 2013, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_205472.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_205472.pdf).

<sup>105</sup> CEACR, *Protection of Wages Convention, 1949 (No. 95) - Greece*, adopted 2012, published 102nd ILC session (2013), available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3085303:NO%20CE%BA%CE%B1%CE%B9%20CEACR,%20Social%20Security%20\(Minimum%20Standards\)%20Convention,%201952%20\(No.%20102\) and CEACR, Social Security \(Minimum Standards\) Convention, 1952 \(No. 102\) - Greece](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3085303:NO%20CE%BA%CE%B1%CE%B9%20CEACR,%20Social%20Security%20(Minimum%20Standards)%20Convention,%201952%20(No.%20102) and CEACR, Social Security (Minimum Standards) Convention, 1952 (No. 102) - Greece), adopted 2012,

GNCHR Recommendations on the impact of austerity measures. These recommendations are taken into account by the Committee of Ministers in the Council of Europe finding violations of the European Code of Social Security by Greece<sup>106</sup>.

The CEACR, in its 2014 Report on International Labour Convention No 102, recalls the observations made in previous reports and deems that they have not been taken into account by the Greek Government resulting in serious worsening the current state of affairs. In particular, the CEACR condemns the fact that, due to austerity measures, the country has been led to an unprecedented economic and humanitarian crisis and observes that the financial results of the economic adjustment programme threatens the viability of the national social security system resulting in the undermining of the social protection goals, as provided by Convention 102 and the Code of Social Security of the Council of Europe<sup>107</sup>.

Based on the CEACR Report and with an explicit reference to the respective observations by ECSR and the Committee of Ministers of the Council of Europe, Greece was directly (double footnote case) referred for inspection by the Committee on the Application of Standards – CAS – of the 2014 International Labour Conference. CAS in its Report<sup>108</sup> observed that “*the continuous contraction of the social security system in terms of coverage and benefits has affected all branches of social security and in some instances resulted in reducing the overall level of protection below the levels laid down in Articles 65-67 of the 102 Convention*”.

Finally, the GNCHR also highlights the quite recent judgment of the First Chamber of the Greek Council of the State regarding the cuts in pensions in Greece<sup>109</sup>. The judgment deems that cuts in main pensions by the organizations of social security do not collide with the constitutional mandates and due to the issue’s great importance, the case was referred to the Plenary for final judgment. Nonetheless, the opinions of the minority of the judgment which highlight that “State funding of the social security system is not allowed to be constitutionally reduced to a point where it does not provide a satisfactory standard of social security” are also noted. In fact, the minority of the Greek Council of the State also highlights the need for the interventions to the country’s social security

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published 102nd ILC session (2013), available at:  
[http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3088061](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3088061).

<sup>106</sup> Committee of Ministers, Council of Europe, Resolution *CM/ResCSS(2012)8 on the application of the European Code of Social Security and its Protocol by Greece*, 9.12.2012 and Committee of Ministers, Council of Europe, Resolution *CM/ResCSS (2013)21 on the application of the European Code of Social Security and its Protocol by Greece*, 10.16.2013.

<sup>107</sup> CEACR, *Social Security (Minimum Standards) Convention, 1952 (No. 102) - Greece*, adopted 2013, published 103rd ILC session (2014), available at:  
[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:3150771](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3150771) and CEACR, *Social Security (Minimum Standards) Convention, 1952 (No. 102) - Greece*, adopted 2012, published 102nd ILC session (2013), *op.cit.*

<sup>108</sup> ILO, Committee on the Application of Standards Report (2014), [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_246782.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_246782.pdf).

<sup>109</sup> Council of State 3410/2014.

system to be attempted upon estimation and evaluation of their impact on the pensioners' standard of living<sup>110</sup>. This has also been repeatedly stressed by the GNCHR in its texts<sup>111</sup>.

### **Right to work**

The GNCHR deems crucial to mention older persons' right to work. Article 6 of the ICESCR establishes the right to work, a right on which the Committee on economic, social and cultural rights has focused in General Comment No 6 on economic, social and cultural rights of older persons. Both this Committee<sup>112</sup> and the Committee of Ministers of the Council of Europe<sup>113</sup> along with ILO<sup>114</sup> highlight the need to eliminate discrimination in employment in both the private and the public sector. States owe to guarantee *inter alia* the right of older persons to access work, to maintain their current employment, to work in conditions of safety up to their retirement and to participate in trade unions.

In fact, the GNCHR stresses the great importance of protecting every older person's individual right to work. It is noted, however, that in the State's overall choices on a social policy level, this right must be balanced against the obligation to respect intergenerational solidarity. The protection of the

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<sup>110</sup> “ Even when the Country faces very adverse financial circumstances, for addressing which extended structural changes to the State are required along with the simultaneous imposing of strict fiscal and other measures in order to cover the Country's fiscal deficit, which entail particularly heavy burdens for the governed, so as for the legislator's interventions to the Country's security system to be characterised constitutionally tolerable for securing its viability (inherently structural changes in the organisations of social security, redefining the conditions for granting any kind of provisions etc.), whose self-evident consequence is the limitation of the extent and amount of any insurance provisions whatsoever, the interventions must be attempted upon planning, respecting the particular provisions of the Constitution and upon planning, to be attempted, that is, in a rational manner, which is reflected in a previous, overall study which has been compiled on the basis of specific data and upon calculating the overall consequences brought upon these interventions to the provisions of the insured.” Furthermore, “ it is required that the legislator's interventions to the Country's security system be justified, in the sense that it must be clear that they are attempted upon the previous evaluation of all financial or other, either direct or indirect, burden which has been imposed to the insured and after constant evaluation, especially of successive interventions, of the consequences entailed, cumulatively, on their standards of living, on the basis of a previous, overall study and calling upon particular data, which are drawn from economic, actuarial, statistical studies, which must be compiled by independent authorities, such as the National Actuarial Authority, the Hellenic Statistical Authority etc.”.

<sup>111</sup> See the recent GNCHR, “GNCHR Observations on the 24th Greek Report on the application of the European Social Charter and on the 9th Greek Report on the application of the Additional Protocol to the European Social Charter which was sent to the European Committee of Social Rights of the Council of Europe”, 10.9.2014, *op.cit.* and GNCHR, “Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards”, 27.6.2013, *op.cit.*, “Recommendation: On the imperative need to reverse the sharp decline in civil liberties and social rights”, 8.12.2011, *op.cit.* and “The need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis”, 7.6.2010, *op.cit.* In fact, the minority of the Council of State in its 3410/2014 judgement explicitly refers to the GNCHR decisions on the impact of austerity measures on human rights protection: “Regarding the impact of the adverse situation Greek economy has come to, due to the constant austerity measures which have been imposed by means of the laws of the memorandum and their impact on the Country's security system, see *inter alia*, the Recommendations of 2.8.2011 and 7.26.2013 of the Greek National Commission for Human Rights (GNCHR) [...]”. The same applies to the 3663/2014 decision of the Council of State (Chamber A).

<sup>112</sup> UN, ICESCR Committee, General Comment No.6, *The economic, social and cultural rights of older persons*, *op.cit.*, par.22-25.

<sup>113</sup> Council of Europe, Committee of Ministers, *Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons*, *op. cit.*, par. 26-28.

<sup>114</sup> See [ILO, Older Workers Recommendation No. 162](#).

right of older persons to work must not exclude the protection of youth's right to work, while provisions towards facilitating youth's work must not lead to jeopardizing older persons' work.

The European Committee of Social Rights also stresses this exact balance on the merits of the complaint of organisations of pensioners against Greece, which was submitted before it on the grounds of violation of Article 12(3) of the ESC. The Committee noted *obiter dictum* how inconsistent are, for a national economy plagued by youth unemployment, the decisions on the restriction of pension rights in cases where the level of pension benefits is a sufficiently high one and on the restriction in respect of holiday bonuses for all pensioners without exception. Workers who are aware that their pensions have been drastically cut are thus motivated to hold on to their jobs and deprive younger generations of these positions<sup>115</sup>.

The GNCHR stresses that respect towards older persons' right to work must not be exhausted in the proposal for adopting policies of "active ageing" of the population, which are also promoted by the European Union. This policy is summarized in the prolonging of senior pensioners in the workforce or in their return to the labour market. However, they receive reduced pensions and salaries, so as to become an attractive mass of people for the labour market, contributing to the renunciation of every shade of intergenerational justice<sup>116</sup>.

Besides, sterile adoption of "good practices"<sup>117</sup>, based on the experience of other countries, does not guarantee their effectiveness in Greece. For the assessment of how "good" a practice actually is for the protection of older persons' rights in Greece, it is the Greek legal framework and the Greek reality which must be taken into consideration.

### ***Right to health and care***

In a recent report, the ILO<sup>118</sup> stresses that fiscal consolidation measures taken in response to the financial crisis reversed progress towards universal health coverage by sharpening inequalities in access to health care and increasing exclusion from it. In Greece, according to OECD, *per capita* health spending fell significantly by 11.1% between 2009 and 2011<sup>119</sup>. This has had a direct negative impact on the accessibility and affordability of health services.

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<sup>115</sup> ECSR, *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, *op.cit.*, par. 77.

<sup>116</sup> P. Stagos, "Discrimination on the grounds of age and the challenge of intergenerational solidarity in the Greek and European law", *Review of Labour Law*, Vol. 73, Year 2014, p. 995.

<sup>117</sup> J. E. Stiglitz, *Joseph Stiglitz and the World Bank: The Rebel Within*, Anthem Press, 2001, p. 203.

<sup>118</sup> ILO, *World Social Protection Report 2014/15: Building economic recovery, inclusive development and social justice*, International Labour Office – Geneva: ILO, 2014, p. 113, available at: [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_245201.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_245201.pdf).

<sup>119</sup> *Ibidem*.

Combined with the drastic reduction in pension benefits, the right to health of a significant segment of older persons in Greece is not secured in practice<sup>120</sup>. The GNCHR notes that the same goes for older persons care as well.

Due to lack of proper resources or/and due to the intense phenomenon of families being supported by the pensioners' resources in Greece, older persons' care in our Country is mainly provided at home. This, even though governed by the principle of care within the community<sup>121</sup>, generates a series of problems the State is called upon to resolve. Among these problems, the GNCHR particularly highlights the lack of quality control of the care provided along with the provision of care services by untrained individuals. In the same context, it is important for the State to examine the issue of sociopolitical support to the families taking care of older persons.

The GNCHR stresses the need to secure services and structures of respite care of older persons. The abolishment of institutions, however, such as the Workers' Housing Organisation, which provided certain services to insured older persons, social services and entertainment activities, calls for concern regarding the protection of these benefits.

Moreover, the ECSR recalls that health care for older persons in Greece is part of the primary health care system rendered to the population in general, while the specially provided health services to older persons are also important<sup>122</sup>. In this direction, the GNCHR stresses the need to implement programmes of mental health for older persons who are in need of psychological support, to guarantee sufficient palliative care as well as educational programmes for people taking care of older persons. It is also important to improve the accessibility and quality of long-term geriatric care along with the coordination of social health and care services for older persons.

Regarding the institutional care of older persons provided in retirement homes<sup>123</sup>, the GNCHR reminds the importance of the independence not only of the retirement homes inspection system, but also of the body which controls the observation of basic care and services standards of the institutions and homes vis-à-vis the administration every institution/home under inspection<sup>124</sup>.

### **C. Prohibition of Discrimination**

Prohibition of discrimination on the grounds of age is not provided *expressis verbis* in most human rights protection international texts. As mentioned in General Comment No 6 on economic, social

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<sup>120</sup> UN, ICESCR Committee, *General Comment No. 14 On the right to the highest attainable standard of health*, par. 25.

<sup>121</sup> See for the definition of care networks, P. Hert και M. Eugenio, "Specific Human Rights for Older Persons", *EHRLR*, 2011, p. 415.

<sup>122</sup> ECSR, *Conclusions XX-2 (2013), Articles 3, 11, 12, 13 and 14 of the 1961 Charter and Article 4 of the 1988 Additional Protocol (Greece)*.

<sup>123</sup> Regarding the legal framework on the operation and the conditions of operation of these institutions see indicatively N 2345/1995 (OJHR 213/10.12.1995/A), Ministerial Decision 81551/2007 (OJHR 1136/7.6.2007/B), Law 3852/2010 (OJHR 87/6.7.2010/A).

<sup>124</sup> See Council of Europe, Committee of Ministers, *Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons, op.cit.*, par. 42.

and cultural rights of older persons, the omission of an explicit provision is not an intentional choice, but on the contrary is best explained by the fact that, when these instruments were adopted, the problem of demographic ageing was not as evident or as pressing as it is now<sup>125</sup>.

Of course, both Article 19 of the TFEU and Article 21 of the CFR explicitly prohibit discrimination on the grounds of age.

The GNCHR stresses that the presence of a coherent legislative framework protecting from discrimination on the grounds of age has a fundamental importance, particularly when it is nowadays observed in Europe that discrimination on the grounds of age is the most common ground of discrimination<sup>126</sup>.

In Greece, Law 3304/2005 establishes the general framework for combatting discrimination in the field of employment, according to Directives 2000/43/EC of the Council of 29 June 2000 and 2000/78/EC of the Council of 27 November 2000 implementing the principle of equal treatment. Age discrimination is explicitly mentioned in Law 3304/2005.

However, the GNCHR highlights that the abovementioned legislative framework is not considered sufficient for combating discrimination on the grounds of age<sup>127</sup>. The GNCHR notes, besides, that Law 3304/2005 concerns exclusively the field of employment. This is also highlighted by the Committee of Social Rights of the Council of Europe<sup>128</sup>. Even though a great number of cases of discrimination against older persons concern their right to work for a fact, this discrimination concerns most of their rights.

The GNCHR has already stressed the need to amend a series of articles of this law concerning the field of implementation of equal treatment, positive action, professional requirements and different treatment on the grounds of age, so that these provisions comply with the letter of Directives 2000/43 and 2000/78. Moreover, it is necessary to amend a series of articles of this law towards facilitating the legalisation of NGOs before judicial authorities, recognising the favourable (only) *res judicata* and legalising NGOs regarding submitting an appeal before an administrative authority. It is within this wider context that the State should address the issue of discrimination against older persons.

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<sup>125</sup> UN, ICESCR Committee, General Comment No. 6, *The economic, social and cultural rights of older persons*, *op.cit.*, par. 11. See also UN, ICESCR Committee, *Non-discrimination in Economic, Social and Cultural Rights*, *op.cit.*

<sup>126</sup>P. Stagos, "Discrimination on the grounds of age and the challenge of intergenerational solidarity in the Greek and European law", *Review of Labour Law*, Vol. 73, Year 2014, p. 978.

<sup>127</sup> GNCHR, "Comments regarding Law 3304/2005 'Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation' and recommendations for its amendment", 2010 Annual Report, pp. 39-48 and GNCHR, "Comments on the Bill 'Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation-Harmonisation of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006'", 2008 Annual Report.

<sup>128</sup> ECSR, *Conclusions XX-2 (2013), Articles 3, 11, 12, 13 and 14 of the 1961 Charter and Article 4 of the 1988 Additional Protocol* (Greece), available at: <http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/GreeceXX2en.pdf>

The GNCHR also expresses its concern regarding the implementation of the principle of equal treatment in Greece, especially in times of financial crisis. And this because many of the austerity measures adopted in Greece (especially related to employment and social security) are connected to age and entail unfavourable treatment solely based on age, introducing, thus, an unjustifiable direct discrimination in violation of Directive 2000/78<sup>129</sup>. In fact, in some cases indirect discrimination on the grounds of sex and multiple indirect discrimination on the grounds of sex and age are highly likely, since, for instance, most pensioners below 55 years of age are women who have retired with fewer years of service on the grounds that they were mothers of underage children<sup>130</sup>. This has been also highlighted by ILO<sup>131</sup>.

In fact, Law 3304/2005 does not provide for the prohibition of multiple discrimination which has been repeatedly stressed by the GNCHR, underlining the need for its amendment<sup>132</sup>. Regarding older persons' rights in particular, the GNCHR stresses that prohibition of multiple discrimination is particularly important. Older persons are often victims of discrimination not only on the grounds of age, but also (indicatively) on grounds of gender, ethnic origins, sexual orientation, nationality, religion or disability. Actually, Article 8 of the ICRPD provides for the States' obligation to take measures so as to “*to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life*”.

Finally, the GNCHR notes that attention must also be paid to combatting stereotypes and prejudices against older persons which lead to discrimination against them (ageism)<sup>133</sup>. This phenomenon is linked to the fact that older persons are regarded as persons who have ceased to be persons or the same persons they were or as persons belonging to a separate and inferior group, merely because they have passed certain phases in their life<sup>134</sup>. The negative effect of these stereotypes on the enjoyment of older persons' fundamental rights must not be underestimated.

#### **IV. Review of Recommendations**

Recognising the important human, social and financial contribution of older persons to society and taking into account the need to secure and promote the principle of respect and intergenerational

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<sup>129</sup> S. Spiliotopoulou – Koukouli, “*Austerity measures and human rights: judgements of international bodies, EU law and examples of Greek case-law*”, Review of the Social Security Network, Iss. 2/644, par. 173,181,182,189.

<sup>130</sup> *Idem*, par. 83, 176, 190.

<sup>131</sup> ILO, *Report on the High Level Mission to Greece* (Athens, 19-23 September 2011), par. 1-8, available at: [http://www.ilo.org/global/standards/WCMS\\_170433/lang--en/index.htm](http://www.ilo.org/global/standards/WCMS_170433/lang--en/index.htm)

<sup>132</sup> GNCHR, “Comments regarding Law 3304/2005 «Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation» and recommendations for its amendment”, 2010 Annual Report and GNCHR “Comments on the Bill “Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation- Harmonisation of Legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006”, 2008 Annual Report.

<sup>133</sup> *Working Paper prepared by Ms. Chingsung Chung*, Human Rights Advisory Committee, A/HRC/AC/4/CRP.1, 4.12.2009, par. 8.

<sup>134</sup> R. Butler, “Age-ism: Another form of bigotry”, *The Gerontologist*, 1969, p. 243.

solidarity, both on individual and family as well as on institutional level, either private or public, the GNCHR calls for the State to take more specific measures in order to protect this particularly vulnerable social group and to see to their effectiveness. Besides, it has previously expressed its deep concern about the serious impact of the financial crisis and the subsequent austerity measures taken on guarantying older persons' right to a sufficient income allowing them a decent living<sup>135</sup>.

Taking into account the discussion concerning the issue of the protection of older persons' rights is in process on a national level, the GNCHR develops a first series of Recommendations towards the State in the light of the due care, in practice, for the equal enjoyment of human rights and for raising society's awareness towards this direction.

## **A. Civil and political rights**

### ***Autonomy and participation***

The GNCHR, recognising every person's right to self-determination, deems necessary to highlight the absolute need:

- To ensure the full implementation of older persons' right to the respect of human dignity, physical and mental well-being and their private and family life.
- To ensure the full enjoyment of the legal capacity on an equal basis with every other member of society and the unimpeded access to justice.
- To strengthen older persons' ability to interact with their environment and their full participation in the social, cultural and educational scene, as well as in the political life. Occupation with new technologies as a systematic lifelong learning activity at an older age widens opportunity for employment, offer and participation of older persons in the social scene. Moreover, it is necessary to ensure every citizen's equal participation in the information society without exclusion. Digital inclusion contributes to the creation of this society and is necessary for reasons of social justice.

### ***Informed consent in healthcare***

The GNCHR, in line with a previous Opinion issued by the Greek National Bioethics Commission<sup>136</sup>, highlights that in order to safeguard the protection of older persons the following are deemed necessary:

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<sup>135</sup> GNCHR, "The NCHR Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards", 5.27.2013, available at: [http://www.nchr.gr/images/English\\_Site/AusterityMeasuresHR/gnchr.austeritymeasures.2013.pdf](http://www.nchr.gr/images/English_Site/AusterityMeasuresHR/gnchr.austeritymeasures.2013.pdf). Furthermore, in a recent text on the right to water, GNCHR highlights the need to ensure the older persons' access to water in the context of respecting their right to health. See GNCHR "The Right to Water. GNCHR Recommendations for its effective protection", 3.20.2014, available at: [http://www.nchr.gr/images/English\\_Site/PERIVALLON/GNCHR\\_Right\\_to\\_water.pdf](http://www.nchr.gr/images/English_Site/PERIVALLON/GNCHR_Right_to_water.pdf)

<sup>136</sup> Greek National Bioethics Commission, *Consent in the Patient-Physician Relationship*, op.cit.

- To ensure the respect to the right of every older person or every person of his/her choice, once the right to ignorance has not been exercised, to the provision of individualised, appropriate and gradual, on the basis of the patient's particular mental state, information in order to have a complete and comprehensible image of his/her state of health and the existing options of treatment and care, simultaneously safeguarding respect to the older person's right to deny information.
- To ensure the respect of the older person or every person of his/her choice to provide consent to every decision regarding care and medical treatment.
- To establish older persons' right to receive proper support during decision making and exercising their legal capacity.
- To enrich both the proper education of doctors and other health professionals and the education and awareness of citizens with regard to older person's autonomy.

### ***Protection from violence and abuse***

The GNCHR, in line with the conclusions reached by the World Health Organisation, stresses that older persons' abuse is a major issue both socially and medically and its prevention is an issue related to human rights and social solidarity<sup>137</sup>. To this end, it considers that insisting particularly on the following points is of crucial importance:

- To safeguard all humans' inalienable right to security, without living in fear of abuse or neglect and to strengthen older persons' protection from any kind of physical abuse, maltreatment or neglect along with any kind of sexual abuse and maltreatment. This protection is deemed necessary to refer to care provision not only in the context of care facilities and institutions, but also at home.
- To raise awareness of the medical, hospital and paramedical staff, as well as anybody providing care and treatment to older persons, in order to facilitate the detection and timely addressing of cases of violence, abuse or neglect involving older persons.
- To enhance protection measures for those reporting cases of violence, abuse or neglect so as to encourage both older persons and any other care provider to file a complaint regarding such issues.
- To intensify support and help to older persons who have fallen victims of violence, abuse or neglect and take appropriate measures for their unimpeded access to justice.

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<sup>137</sup> See World Health Organization, Regional Office for Europe, *European report on preventing elder maltreatment*, *op.cit.*, p.9

- To raise public awareness towards problems encountered by older persons and their protection, especially regarding a form of abuse which particularly afflicts our country: financial material abuse<sup>138</sup>.

## **B. Social and economic rights**

### ***Right to social security and safety and right to work***

In light of the State's general responsibility to sustainably fund and manage the social security system and safeguard a decent standard of living according to what is prescribed by the 102 ILC, the GNCHR calls for the State's attention to the following points:

- To safeguard a financially and institutionally healthy structure for the social security system and take all the necessary measures to this effect. In the context of the respective ILO recommendations, this could involve maintaining financial balance, safeguarding the effective collection of contributions and taxes, taking into account the financial situation not only of the country, but also of the persons under protection, preparing actual and economic studies so as to assess the impact of the reforms on provisions, contributions or taxation, safeguarding the provisions prescribed by 102 ILC and avoiding further burdening persons of limited resources<sup>139</sup>.
- To adopt programmes of fiscal adaptation and evaluation of their social impact in a way that the most appropriate reforming paths are selected and certain income and age groups, such as old-age pensioners, are not disproportionately afflicted<sup>140</sup>.
- To ratify the 128 ILC on *Invalidity, Old-age and Survivor's Benefits*.
- To respect older persons' right to decent work in light of intergenerational solidarity as well.

### ***Right to health and care***

Recognising that health and long-term care, including prevention and early intervention, must not be considered an expense but an investment benefitting all age groups, the GNCHR recommends:

- To protect the right to health so as to ensure access to health services without discrimination, even when they are provided by third parties to all older persons. The health protection of older persons shall combine prevention, cure and rehabilitation<sup>141</sup>.

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<sup>138</sup>Greece is amongst the five EU countries which have emphasized the financial/material abuse. See "The European Reference Framework Online for the Prevention of Elder Abuse and Neglect (EuROPEAN)", The European Reference Framework Online for the Prevention of Elder Abuse and Neglect. Background, Good Practices and Recommendations, 2009-2011, p.7, available at: <http://www.forumseniorov.sk/European%20Reference%20Framework.pdf>

<sup>139</sup> ILO, *Third item on the agenda: Information and reports on the application of Conventions and Recommendations*, Report of the Committee on the Application of Standards, Provisional Record, 103rd Session, Geneva, May-June 2014, p. 86

<sup>140</sup> ILO, *Application of International Labour Standards 2014 (I)*, Report of the Committee of Experts *on the Application of Conventions and Recommendations*, International Labour Conference, 103rd Session, 2014, *op. cit.*

<sup>141</sup> UN, ICESCR Committee, General Comment No. 14 *On the right to the highest attainable standard of health*, par. 25 and UN, ICESCR Committee, General Comment No. 6, *The economic, social and cultural rights of older persons*, par. 34-35.

- To establish the cohesive horizontal networking of health and welfare services in order to achieve their effective cooperation<sup>142</sup>.
- To ensure appropriate training for both health and welfare professionals, as well as unofficial care providers to older persons.
- To adopt new programmes for older persons' care and strengthen the ones already in place within the community (e.g. "Help at Home" Programme) in order to allow them to reside at their own home for as long as they wish. The development of actions towards older persons care must be characterized by stability and secure continuity and coherence both in the context of the services provided and in safeguarding the workforce. Assisting families in care of older persons must also be taken into account.
- To ensure access to institutional care for older persons who do not wish to reside at home or receive care services there. The GNCHR also recommends to ensure the independence of the monitoring of retirement homes so as to achieve respect for all human rights of older persons residing there, as well as to encourage the development of institutional care in small units according to the standards of care within the community.
- To ensure the effective operation of a palliative care provision system as prescribed by the Council of Europe in its respective Recommendation<sup>143</sup>.
- To appoint an independent monitoring mechanism regarding older persons with disabilities in order to promote, ensure and monitor the implementation of the UN Convention on the rights of older persons with Disabilities as prescribed by Article 33(2) of this Convention.

### **C. Equality and non-discrimination**

Having observed the need to combat exclusion and social discrimination and taking into account the need to promote social justice and protection, equality and solidarity, the GNCHR deems necessary to insist on the following:

- To strengthen the legislative framework and take measures for combatting discrimination on grounds of age. Combatting discrimination on grounds of age must become intersectoral and concern both direct or indirect, as well as multiple types of discrimination.
- To enhance the collection of sufficient statistical data by the competent authorities in order to evaluate discrimination on grounds of age. Especially when it comes to indirect discrimination, statistical data constitutes a main pillar for its expression.

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<sup>142</sup> GNCHR has highlighted this point in its recent decision on the protection of childhood: GNCHR, "Recommendations of the Greek National Commission for Human Rights (GNCHR) on the Protection of Childhood, Health and Welfare", 5.8.2014 and Council of Europe, Committee of Ministers, *Recommendation CM/REC (2014)2 to member States on the promotion of human rights of older persons*, *op.cit.*, par. 31.

<sup>143</sup> Council of Europe, *Recommendation Rec(2003)24 of the Committee of Ministers to member states on the organisation of palliative care*.

- To combat stereotypes and prejudice against older persons leading to discrimination against them (ageism).

#### **D. Necessity for an International Convention on Older Persons' Rights**

Both on academic<sup>144</sup> as well as on UN<sup>145</sup> level, there is extensive debate on the necessity of adopting an international Convention on older persons' rights. Despite the objections on the aforementioned perspective<sup>146</sup>, the GNCHR encourages Greece's contribution to adopting a binding international text on older persons' rights on the basis of the following thoughts:

- a) Despite the existence of a rich soft law framework, it is necessary to institutionalise a binding legal framework for States, which shall create positive obligations as well.
- b) Adopting an International Convention shall contribute to the visibility of problems regarding older persons' rights, often underestimated when it comes to applying human rights international law.
- c) Adopting the Convention shall encourage the effective and systematic monitoring of the implementation of older persons' rights by international and national bodies, as well as by NGOs.
- d) On a symbolic level, adopting such a Convention sends a message of concern for older persons' rights, fighting against stereotypes accompanying older persons (ageism).
- e) The Convention's contribution in raising public awareness globally concerning protection of older persons' rights and education on relevant issues shall be important.

In this context, the GNCHR recommends to the Greek State:

- To support the adoption of an International Convention on Older Persons' Rights on a diplomatic level, along with the establishment of a mechanism for both monitoring its

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<sup>144</sup> I. Doron, I. Apter, "The Debate Around the Need for an International Convention on the Rights of Older Persons", *The Gerontologist*, 2010, pp. 586-593, Fr. Mégret, "Human Rights of Older persons: a growing challenge", *op.cit.*, p. 37 ff., P. Hert, M. Eugenio, "Specific Human Rights for Older Persons", *EHRLR*, 2011, pp. 400-404, D. Rodriguez-Pinzon, C. Martin, "The international human rights status of elderly persons", *American University International Law Review*, 2003, pp. 915-1008, K. Tang, J. Lee, "Global social justice for older people: The case for an international convention on the rights of older people", *British Journal of Social Work*, 2006, pp. 1135-1150.

<sup>145</sup> See especially Human Rights Council, Advisory Committee, *The Necessity of a Human Rights Approach and Effective United Nations Mechanism for the Human Rights of the Older Person*, A/HRC/AC/4/CRP.1, 2010 and UN Expert Group, *The report of the Expert Group Meeting Rights of older persons*. Bonn, Germany: UN, 2009, available at: <http://www.un.org/esa/socdev/ageing/documents/egm/bonn09/report.pdf>

<sup>146</sup> Opponents of the perspective to adopt an international convention on older persons' rights pose a number of arguments, focusing both on the lack of necessity for such an international text and on the negative impact it might have on older persons' rights. Some of these arguments regard the following points: a) Given the universality of every group's human rights, there is no reason for special protection for older persons' rights, b) The creation of such a convention entails political compromise, resulting in steps backwards in certain areas, c) A new convention does not answer the problem of insufficient respect towards older persons' rights, especially taking into consideration the already existent weaknesses of the mechanisms monitoring the application of other international conventions, d) The current soft law on older persons' rights is comprehensive and cohesive enough to protect older persons' rights and to strengthen current international law on human rights protection. Global community's efforts and resources need to focus on applying this soft law (ex. the Madrid Plan of Action).

implementation and examining individual complaints. This international text shall revolve around the human rights rhetoric and not older persons' needs, so as to avoid perpetuating stereotypes according to which older persons are weak and dependent.

- To safeguard the participation of older persons themselves, via their representative organisations as well, in the process of preparing a binding international text.

Furthermore, before adopting an International Convention on Older Persons' Rights, the GNCHR recommends to the State:

- To include information regarding the protection of older persons' rights in Greece in the reports it sends to international bodies monitoring the implementation of UN Conventions on human rights and to the UN Human Rights Council in the context of the UPR. The same is recommended on a European level.
- To secure the effective protection of older persons' rights through the European and international human rights protection mechanisms (*mainstreaming the rights of older persons*).
- To support the work of the UN Independent Expert on the rights of Older Persons.