

National Older Persons Policy and Human Rights

The table topics in the NOPP workshop registration form are taken verbatim from the UNOHCHR (UN Office of the High Commission for Human Rights) recommendations on principles which should be incorporated into all national programmes for older persons – the statement explicating the principles and their sub-points can be found here (it's short): <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx> .

Below are these points for ease of reference:

Independence

1. Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.
2. Older persons should have the opportunity to work or to have access to other income-generating opportunities.
3. Older persons should be able to participate in determining when and at what pace withdrawal from the labour force takes place.
4. Older persons should have access to appropriate educational and training programmes.
5. Older persons should be able to live in environments that are safe and adaptable to personal preferences and changing capacities.
6. Older persons should be able to reside at home for as long as possible.

Participation

7. Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.
8. Older persons should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities.
9. Older persons should be able to form movements or associations of older persons.

Care

10. Older persons should benefit from family and community care and protection in accordance with each society's system of cultural values.
11. Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness.
12. Older persons should have access to social and legal services to enhance their autonomy, protection and care.

13. Older persons should be able to utilize appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment.
14. Older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives.

Self-fulfilment

15. Older persons should be able to pursue opportunities for the full development of their potential.
16. Older persons should have access to the educational, cultural, spiritual and recreational resources of society.

Dignity

17. Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse.
18. Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.

We also found this very helpful factsheet from the ECHR which summarises the ECHR cases (up until Feb 2016) that the ECtHR has published concerning elderly people: http://www.echr.coe.int/Documents/FS_Elderly_ENG.pdf. I have saved this on the L drive under HRC-RES-OLDER PERSONS.

Below is a summary of the cases addressed in the factsheet and how they fit under the table topic categories above. The ECHR rights engaged include:

- Right to Life (Article 2),
- Prohibition of torture and inhuman or degrading punishment or treatment (Article 3),
- Prohibition of slavery and forced labour (Article 4),
- Right to liberty and security (Article 5),
- Right to a fair trial (Article 6),
- Right to respect for private and family life (Article 8),
- Freedom of expression (Article 10),
- Right to marry (Article 12),
- Prohibition of discrimination (Article 14),
- Just satisfaction (Article 41), and
- Protection of property (Article 1 of Protocol No. 1).

Independence

Example: *Georgel & Georgeta Stoicescu v Romania* (2011) finds multiple violations including, inter alia, violation of private and family life (article 8) where the second applicant (71 yrs at the time) was attacked, bitten and knocked to the ground by a pack of stray dogs. Subsequently she began to suffer from amnesia, pain in various limbs and difficulty walking (later becoming totally immobile), along with anxiety and agoraphobia – she passed away 7 years later and her husband/heir continued her case. The Court found that failing to take sufficient measure to address the issue of stray dogs and to provide appropriate redress for the applicant’s injuries, the authorities had failed to discharge their positive obligation to secure respect for her private life.

Participation

Example: *Heinisch v Germany* (2011) finds a violation of freedom of expression (article 10) where a geriatric nurse was dismissed from her job without notice after having brought a criminal complaint against her employer alleging various deficiencies in the care provided, including staff shortages preventing employees from carrying out their duties, inadequate standards and documentation, and insufficient patient hygienic care. The Court further found that the state-level court’s refusal to reinstate Heinisch to her job did not strike a fair balance between the protection of the employer’s reputation and the complainant’s right to freedom of expression, especially considering that the information disclosed had been in the public interest due to the vulnerability of elderly patients and the need to prevent abuse.

Care

Example: *Dodov v Bulgaria* (2008) finds a violation of the right to life (article 2) in the case of a complainant whose mother had Alzheimer’s and disappeared from a state-run nursing home, where the state’s negligence in its responsibility of constant supervision of the mother was directly linked to her disappearance (the mother was never found and the court deemed it reasonable to assume she had died).

Self-fulfilment

Example: *Tešić v. Serbia* (2014) finds a violation of the applicant’s right to freedom of expression (article 10) in a case where a pensioner, suffering numerous illnesses, had been found guilty of defaming her lawyer and was fined a total of €4,900, with an enforcement order requiring two-thirds of the applicant’s pension to be withheld monthly to be transferred to her lawyer. This left the applicant with only €60 per month to live on and purchase her medications. The Court found that the statement made by the applicant deemed as libellous in the original case could not in fact be seen as anything more than a gratuitous personal attack. Furthermore, the Court determined that the enforcement order requiring the transfer of two-thirds of Tešić’s pension each month was excessive, as the law applied in this case required the withheld amount to be a maximum of two-thirds – leaving room for a more nuanced approach. The fact that the applicant was suffering numerous illnesses also led the court to find that municipal court’s interference with the applicant’s freedom of expression, although it pursued a legitimate aim, was not “necessary in a democratic society”.

Dignity

Example: McDonald v the United Kingdom (2014) found a violation of the complainant's right to private and family life (article 8) during a period of the time when the complainant, who had been awarded state-funded care specifically for assistance with night-time toileting due to a medical condition, had her financial support reduced by the state, requiring her to use incontinence pads during the night in place of the assistance of a carer to use the commode. She complained that this decision was disproportionate and exposed her to considerable indignity. The Court further awarded her damages in the amount of 9,500 GBP + 1,000 EUR as just satisfaction for her