

Is There a Need for a New International Convention on the Rights of Older Persons: Empirical Evidence

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Historical Context

- Preliminary thanks
- Historically, gerontology was not interested in law (or in human rights);
- Historically, law (and human rights) was not interested in older persons;
- Historically, older persons did not develop the sense of “political identity” within the context of social-group struggles for social justice and human rights;



The Changing Winds and the Call for a New Human Rights Convention

- Since the early 2000s, an ongoing and continuing call for a new binding international human rights convention for the rights of older persons;
- A growing understanding of an International HR “gap”. E.G.: The “Report of the Expert Group Meeting on the Rights of Older Persons” (Bonn, 2009):
 - “A convention on the rights of older persons could create new principles that would empower older persons, provide older persons with greater visibility and recognition, both nationally and internationally and provide the foundational basis for advocacy, public awareness and education on the rights of older persons.”
- The OEWG + The IE as a historical development;



Doron, I. (2005). From National to International Elder Law. *International Journal on Ageing, Law and Policy*, 1, 45-72.

The Opposition to a New Convention

- The “non-surprising” opposition
- General/non-specific opposition to HR convention:
 - Too many HR conventions/HR instruments
 - Not effective
 - Too costly
 - Does not make a difference
- Specific opposition to Older Persons’ Rights Convention:
 - No need – addressed within existing instruments;
 - No need – wealth of “soft law”, i.e. MIPAA
 - No need – no supportive evidence of real gap or need.



Doron, I. & Apter, I. (2010). The Debate Around the Need for an International Convention on the Rights of Older Persons. *The Gerontologist*, 50(5), 586-593.

The Need for Theory, Research and Evidence

- The historical need for a **theoretical** framework for the “rights of older persons”;
 - Israel Doron 4th OEWG meeting 2013
- The historical need for **research, data and evidence**;
 - Fact: There is a growing evidence-based need for a new convention;
- This presentation:
 - The gap between political rhetoric and evidence-based policy



The ECtHR Study – 1: Quantitative

- The legal framework:
 - The European Convention on Human Rights (1950; 1953).
 - Fact: No specific reference to elder rights.
- Methodology: 1503 “total cases”; 226 randomly chosen cases; 2000-2010; Quantitatively analyzed;
- Key finding (quantitative):
 - While (on average) 12% of ECtHR cases include “elderly”, only 3% of cases directly dealt with elder rights issues;
 - In the majority of cases, the ECtHR found a violation of at least one human right concerning older persons



The ECoHR Study – 2: Qualitative

- Methodology:
 - Same sample, but qualitative analysis of cases.
- Key findings:
 - No specific legal framework for the rights of older persons, hence the usage of “general rights” (.e.g. the right to a fair trial; the right to property; the right to life; the right to respect for private and family life;)
 - No reference to “ageism” or the “special” condition of older persons as a unique social group.
 - No socio-legal awareness to the unique field of “rights of older persons” = “invisibility” of elder-rights discourse.



The ECoHR Study – 3: Soft Law

- Same sample; Additional search = “soft law instruments”
- Key findings:
 - No reference to “elder soft law” in any of the judgements;
 - Some reference to “non-elder” soft law
- *Recent Developments:*
 - *The recent recommendation of the European Committee of Ministers of the Council of Europe regarding the promotion of the human rights of older persons (Recommendation CM/Rec(2014)2).*

The ECJ Study

- The framework:
 - Historically, part of the EU institutions (est. 1952, Luxemburg, as part of Treaty of Paris, 1951). Fact: no direct reference to “elder rights”;
 - After the Treaty of Lisbon (signed 12/2007; into force 12/2009) - The European Charter of Fundamental Rights. Fact: specific reference to elder rights (Art. 25).
- Methodology: 1,325 “total cases”; 123 “direct” cases; 1994-2010 (prior to Lisbon).
- Results:
 - Only 1-2% of the annual case-load addresses rights of older persons;
 - No clear trend in increased number of “elder-rights” cases;
 - In the majority of elder rights cases, the ECJ decision was in support of older persons’ rights = finding that indeed the rights of older persons were infringed;

The AU African Union Study

- Framework: The African Charter on Human & Peoples' Rights + Art. 18(4) [protection of the aged] + Art. 29(1) [respect parents]
- Methodology:
 - All AU Human & Peoples' Rights Court decision (since 2004)
 - All AU HPR Commission Reports + Complaints
- No Court decision (relatively young and limited court)
- No Commission complaints (some informal references)
- Country's Reports:
 - Minority = direct (yet limited) reference
 - Majority = no reference at all or limited indirect reference
- *Recent developments: Draft of a new specific protocol*

Concluding Points

- 1. Research is limited and legal reality is dynamic; Findings should be interpreted with caution;
 - 2. Evidence supports the argument that:
 - There is little/no use of existing “elder soft law” in European/African HR tribunals;
 - There is a lack of “elder specific” reference in existing HR instruments, which can explain the low number of “elder rights” cases;
 - In reality however, in the relative small number of “direct” elder rights cases – human rights violation are actually found;
 - 3. The findings do not support that:
 - Existing soft law is appropriate or sufficient;
 - Existing HR instruments are appropriate or sufficient;
 - There is no “gap” between existing HR instruments and actual HR needs of older persons;
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A Final Empirical Insight on Time....

- The EChHR study found as following:
 - The average time for the ECoHR legal process was about 5 years;
 - Around 8% of older applicants died along the legal process....
- So, while here in the UN OEWG we can continue to meet and discuss – in the real world, older persons are dying while their human rights are infringed.
- So, my personal insight – non empirical insight – that it is time to move forward: from “talking” to “doing”, and start drafting the actual future convention for the rights of older persons.
- Thank you very much.

