

# International legal standards regarding the monitoring of residential and care institutions

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# 1. International standards

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# Context of HR for older persons

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- World demographic transformation
- The past thirty years have witnessed notable development in the policy on ageing:
  - ❖ 1982 First World Assembly on Ageing (Vienna)
  - ❖ 1991 UN Principles for Older Persons
  - ❖ 2002 Second World Assembly on Ageing (Madrid)

# Mandate for NPM monitoring

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- ❑ Whether, within its competences, the NPM has a mandate to visit the homes for the elderly ?
  
- ❑ Legal basis for this type of monitoring?
  - ❖ Domestic legislation
  
  - ❖ International law

# Normative gap

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- ❑ A specific convention aimed at the protection of the rights of elderly persons does not exist
- ❑ Do we need specific standards (convention) for elderly?
  - ❖ Specific characteristics of this particular age group
  - ❖ Monitoring mechanism needed for efficient protection

# Sources of law: HR of elderly - UN

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- ❑ UN Conventions
- ❑ UN Declarations, resolutions and policy documents
- ❑ UN Treaty bodies
- ❑ UN Special Rapporteurs, Independent Experts and specialized groups

# UN Conventions

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- ❑ International Covenant on Economic, Social and Cultural Rights, 1966
- ❑ International Covenant on Civil and Political Rights, 1966
- ❑ The Convention on the Rights of Persons with Disabilities, 2006
- ❑ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- ❑ The Convention on Elimination of All Forms of Discrimination against Women, 1979

# UN guidelines for development of policies

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These documents are not legally binding but do represent guidelines for the development of policies in this area:

- ❑ Vienna International Plan of Action on Ageing (VIPAA, 1982),
- ❑ United Nations Principles for Older Persons of 1991 and
- ❑ Political Declaration and the Madrid International Plan of Action on Ageing (MIPAA, 2002).



# Regional sources of law: HR of elderly law - Europe

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- European conventions
- Council of Europe Resolutions
  
- European Court of Human Rights (EcHR)
- European Committee of Social Rights (CSR)
- European Committee Against Torture (CPT)

# European conventions and agreements

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- ❑ European Convention on Human Rights
- ❑ European Social Charter
- ❑ Charter of Fundamental Rights of the European Union

# EcHR

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- ❑ Dodov v. Bulgaria(2008): disappearance of Alzheimer patient from nursing home; violation of Article 2 (right to life);
- ❑ Heinisch v. Germany (2011): first time that the Court explicitly recognizes the particular vulnerability of certain elderly people – in this case elderly people living in nursing homes;
- ❑ Stanev v. Bulgaria (2012): long term institutionalization constituted a form of deprivation of liberty violating the right to liberty

# CPT

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- CPT general standards (police custody, imprisonment, training of law enforcement personnel, health care services in prisons, foreign nationals detained under aliens legislation, involuntary placement in psychiatric establishments and juveniles and women deprived of their liberty).
  - ❖ No CPT general standards regulating specifically the monitoring the elderly institutional care.
  - ❖ Instead, CPT general standards for other institutions are applied.
  
- CPT specific country reports
  - ❖ CPT visits of homes for elderly (and other social care institutions)
  - ❖ There are certain specific elements that need to be taken into account when evaluating accommodation conditions of elderly persons and persons with disabilities (e.g. sanitary facilities need to be adapted so that toilet seats on which a person cannot sit are not being used).
  
- CPT Checklist for visits to social care institutions where persons may be deprived of their liberty

# Principles relevant for NPM

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1. Anti-discrimination
2. Vulnerability
3. Autonomy, consent and participation
4. Institutional social care:
  - A. living care
  - B. health care
  - C. palliative care
5. Monitoring of social care services
6. Prevention of elder abuse

# 2. Human Rights Monitoring in Care homes

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# Which rights do we monitor within our NPM mandate?

THE RIGHTS	ECHR	UN
The right to life	Art. 2	ICCPR Art. 6
Prohibition of torture Prohibition of inhuman or degrading treatment	Art. 3	CAT Art. 2 ICCPR Art. 7
The right to liberty and security	Art. 5	ICCPR Art. 19
The right to respect for private and family life	Art. 8	ICCPR Art. 17
The freedom of thought, conscience and religion	Art. 9	ICCPR Art. 18
The prohibition of discrimination	Art. 14	ICESCR Art. 2
The protection of property	Protocol no. 3, Art. 1	
The freedom of movement	Protocol no. 4, Art. 2	
The right of everyone to the enjoyment of the highest attainable standard of physical and mental health		ICESCR Art. 12

# Human Rights Monitoring

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THE RIGHT	EXAMPLE
The right to life ECHR Art. 2 ICCPR Art. 6	E.g. in case of health difficulties a physician is called immediately; appropriate health care is provided
Prohibition of torture Prohibition of inhuman or degrading treatment ECHR Art. 3 CAT Art. 2	E.g. only the persons suffering from incontinence are put into diapers; the bedding is changed on a regular basis; an adequate standard of living, health care and palliative care.
The right to liberty and security ECHR Art. 5 ICCPR Art. 19	E.g. the person has decided freely to live in a home for the elderly; the elderly person personally signed the application and the contract for accommodation in a home for the elderly
The right to respect for private and family life ECHR Art. 8 ICCPR Art 17	E.g. the person's received mail is not being monitored



# Human Rights Monitoring

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The freedom of thought, conscience and religion ECHR Art. 9 ICCPR Art. 18	E.g. the individual is able to practice their religion (a diet in line with religious rules, visits by a priest ...)
The prohibition of discrimination ECHR Art. 14 ICESCR Art. 2	E.g. the elderly person with full legal capacity enters into legal transactions on their own, nobody else decides in their name
The protection of property Protocol no. 3, Art. 1	E.g. the person can dispose of their pension without limitations; one does not have to receive their pension via the home's banking account
The freedom of movement Protocol no. 4, Art. 2	E.g. if a person residing in the continental part of the country wishes to apply for accommodation in a home for the elderly located on the coast they can do so; the proximity of one's place of residence to the institution's location is not one of the determining accommodation criteria (the person can decide freely where they wish to live)
The right of everyone to the enjoyment of the highest attainable standard of physical and mental health ICESCR Art. 12	E.g. in case of need, hospital treatment is available to the elderly person in the same scope and quality as it is to the members of all other age group

# 3. Fields to be monitored

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# Fields to be monitored

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- 1. Organization of the system for provision of social care**
- 2. Placement and legal status of residents**
- 3. Ill-treatment**
  - ❖ Ill-treatment by staff
  - ❖ Inter-resident violence
- 4. Living conditions**
  - ❖ Accommodation (room)
  - ❖ Food
  - ❖ Toilets and washing facilities
  - ❖ Treatment and care

# Fields to be monitored

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## 5. **Treatment and care**

- 5. Activities, rehabilitation, and outdoor exercise
- 6. Contacts with external world
- 7. Medicalisation

## 6. **Staff resources and care of residents**

- ❖ General practice (GP) staff
- ❖ Nursing cover

## 7. **Means of restraint**

## 8. **Safeguards**

# NPM Monitoring in practice

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# Example: NPM Croatia monitoring social care institutions

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- ❑ Mandate and beginning: NPM began monitoring the levels of the human rights protection of the elderly persons in long-term institutional care in mid-2015.
- ❑ Number of visits (2015- April 2016): **7** social care homes providing long-term residential care for the elderly persons.
- ❑ Closed type accommodation:
  - ❖ In the Republic of Croatia only the wards of the social care homes for the elderly which provide accommodation for the persons suffering from Alzheimer's dementia and other types of dementia can be of the closed type. All of the other wards need to be of the open.

Focus group, April 2016: residents of homes for the elderly from three small towns in the eastern part of Croatia



# Problems which residents pointed out:

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- ❑ Unprepared for living in a home for the elderly, which is why leaving their own home represents a big shock for them;
- ❑ All of the participants became residents of a social care home because:
  - ❖ they could no longer continue living on their own in their own homes and they had no choice,
  - ❖ no organized assistance was available to them in their own local communities that would enable them to stay in their own homes.
- ❑ Lack of staff in the homes as a significant problem.
- ❑ Complaints are being taken into account as much as possible.



# Conclusion (two questions for NPM)

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1. Although in most cases the elderly persons consented to the accommodation in an elderly home, one needs to question to what degree this decision was motivated by their own free will and how much it was influenced by the impossibility of staying in one's own home since the local communities did not provide the services that would enable the elderly persons to do that.
2. A question arises then whether this means that their „right to autonomy” or/and „right to liberty” was being restricted.