



CDDH-AGE(2018)04

04/06/2018

**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

**[DRAFT] CDDH Report
on the implementation of the Committee of Ministers'
Recommendation CM/Rec(2014)2
on the promotion of human rights of older persons**

**for consideration and possible adoption by the CDDH
at its 89th meeting (19-22 June 2018)**

Reference documents

- Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of human rights of older persons;
- Explanatory Memorandum of Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of human rights of older persons;
- Request for information on the implementation of the Committee of Ministers' Recommendation CM/Rec(2014)2 on the promotion of human rights of older persons, CDDH-AGE(2018)02;
- Compilation of member states answers to the questionnaire, CDDH-AGE(2018)03.

Background

1. When adopting Recommendation CM/Rec(2014)2 to member states on the promotion of human rights of older persons ("the Recommendation") the Committee of Ministers agreed to examine the implementation of the recommendation five years after its adoption, that is, in 2019.
2. In view of this deadline, the CDDH has been invited by the Committee of Ministers, in its terms of reference for the biennium 2018-2019, to organise, if needed, a thematic debate on the follow-up given by states to the Recommendation (deadline: 31 December 2019).
3. In this context, the CDDH, at its 88th meeting (5-7 December 2017, CDDH(2017)R88, § 36), agreed to:
 - (i) organise during its next meeting (June 2018)¹ a half-day Workshop involving civil society and, in particular, social actors, National Human Rights Institutions, NGOs and other stakeholders;
 - (ii) ask the Secretariat to prepare this event in close contact with ENNHRI and several specialised NGOs, notably *Age Platform*, and taking into accounts the outcome of recent events such as the Ministerial Conference on ageing held in Lisbon in September 2017. Furthermore, the preparation of the Workshop should include: (i) a research of the Court's case law and relevant decisions of the European Committee of Social Rights; (ii) a collection, through a brief questionnaire, of national information concerning the existing good practices; (iii) if possible, a collection of statistics, where appropriate, through the FRA;
 - (iii) publish the proceedings of the Workshop;
 - (iv) exchange views on the outcome of the Workshop during its meeting in June 2018 in view of the adoption of a follow-up report during its meeting in November 2018 to be transmitted to the Committee of Ministers.
4. On the basis of this decision, the Secretariat elaborated the request for information on existing measures and examples of good practices related to the implementation of the Recommendation (CDDH-AGE(2018)02). The competent authorities were invited to reply to this questionnaire by 28 February 2018 at the latest.

¹ The Workshop will be held under the aegis of the Croatian Chairmanship of the Committee of Ministers (May-November 2018).

5. The present report is based on the answers provided by 19 Member States, compiled in a separate document (CDDH-AGE(2018)03), namely: Armenia, Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Georgia, Greece, Ireland, Lithuania, Netherlands, Poland, Portugal, Slovakia, Switzerland and Turkey. References to “all States” in the following text shall thus be meant to apply to the States which have submitted their replies. In addition, contributions were submitted by AGE Platform Europe, ENNHRI and ETUC, which appear among the reference documents of the thematic Workshop to be held in June 2018.

Item A – Impact assessment

6. This section deals with the general impact assessment of the Recommendation; member States were asked to inform as to whether there was an authority in charge of the implementation of the Recommendation, to make a self-assessment of its impact on the human rights of older persons in their countries and to indicate relevant new measures as well as any obstacles encountered.
7. As to the question whether an authority had been assigned as responsible for the implementation of the Recommendation, almost all States answered that they had not appointed any specific authority, some of them stating that a number of institutions and authorities are dealing with the issue within the boundaries of their own competence. In Slovakia, although there is no specific authority assigned as responsible for the implementation, one central authority - the Government Council of the Slovak Republic for the Rights of Seniors and Adaptation of Public Policies to the Ageing of the Population - covers all the policies related to the rights of the elderly; in Austria the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection includes a department for fundamental issues related to senior citizens. Only in Armenia and in the Czech Republic a particular authority (in both cases the Ministry of Labour and Social Affairs) was assigned namely for the implementation of the Recommendation.
8. Regarding specifically the impact assessment of the Recommendation, several member States considered it as being “adequate” and one (Netherlands) as “satisfactory”. Some member States stressed that important advances had been made before the adoption of the Recommendation. In most cases, States have also adopted general or specific measures to comply with the provisions of the Recommendation and additional measures continue to be implemented, which reflect also the work carried out by States at the international level. For some it is problematic to assess the impact, due to the lack of evaluation instruments. Two member States stated that the impact was “insufficient” (Portugal) or “to be improved” (Turkey).
9. In line with the Recommendation, member States were asked to indicate whether specific measures or actions have been adopted since the adoption of the Recommendation, including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectorial working groups for its implementation.
10. It follows from the contributions submitted that in several member States issues regarding human rights of older persons have been recently tackled in legislative reforms regarding pensions, social protection or services and family law; a possible loss of autonomy appears to be one of the main subjects addressed. Relevant national strategies, action plans and

working programmes, e.g. on active ageing, employment of older persons and their protection from violence and abuse, as well as diverse awareness-raising campaigns have also been mentioned.

11. Furthermore, most States declared not to have encountered any obstacles in the implementation of the Recommendation, except for Armenia and Poland. Armenia mentioned an insufficient level of resources and capacities, a low awareness of older persons regarding their rights and available services, a lack of community-based services and difficulties in ensuring a long working life for older persons. Poland underlined a lack of common knowledge of the human rights of older persons, the imbalance between the demand for care and the correspondent offer, as well as problems of access and consent to medical care.

Item B – Dissemination Assessment

12. Member States were asked to indicate whether there was a specific authority responsible for the dissemination of the Recommendation, whether the Recommendation has been translated into national languages and to which authorities (including regional and local) and stakeholders it has been distributed.
13. As for the authority assigned to disseminate the Recommendation, some member States pointed to various competent authorities, notably ministries (i.e. family, labour, solidarity, health, social policies or demography), while most of them reported that they had not appointed any authority to this end. In Switzerland the Unit of International Protection of Human Rights within the Federal Office of Justice has been appointed as responsible for the dissemination of the Recommendation.
14. For the purpose of the dissemination, member States were also invited to translate the Recommendation into their national languages. In this regard, apart for four member States where English or French are official languages, four others (Croatia, Lithuania, Netherlands, Poland) declared to have translated the Recommendation (officially or unofficially) into their national languages. In the Czech Republic, an official translation should be available shortly.
15. Concerning the distribution of the Recommendation, no specific figures were provided. Some member States provided links to official websites where the text could be found. In most member States the Recommendation was disseminated among the authorities at the national level. In certain member States, the Recommendation has been distributed to decentralised units of the ministries (France and Slovakia), to the federated entities (Belgium) or to regional police units (Poland).

Item C – Implementation of specific provisions

16. In its point 3 the Recommendation invites member States to consider providing “examples of good practices related to the implementation of this recommendation with a view to their inclusion in a shared information system accessible to the public”.
17. The Recommendation already contains in its Appendix a collection of good practices provided by member States at the time when it was being drafted. Hence member States were asked to provide new information on examples of national good practices pertaining to

the specific principles of the Recommendation, and to update the abovementioned collection where appropriate.

18. Regarding **non-discrimination**, six countries reported on new good practices in this field. These include action plans or strategies for the promotion of non-discrimination (Austria, Lithuania, Turkey), creation of the institution of the Gender Equality and Equal Treatment Commissioner (Estonia), or adoption of a charter aiming at safeguarding the rights of users of healthcare, medical and social institutions (France). In Cyprus, Estonia and Greece, discrimination on the grounds of age is now explicitly prohibited by the legislation, at least in certain areas such as employment.
19. In terms of **autonomy and participation**, a broad range of measures have been adopted, including educational or other activities aimed at increasing social inclusion of older persons (Austria, Croatia, Cyprus, Estonia, Poland) and their participation in the political life (through local advisory councils in Belgium or the programme "e-election" in Estonia), as well as legal measures aimed at protecting older persons in case of loss of autonomy (e.g. the new Family Act adopted in Croatia or amendments introduced to the Civil Code in Lithuania). Other measures intend to increase autonomy through mobility, as the "Social Card" implemented in Cyprus which aims also at encouraging participation in cultural activities, or the programme "Accessible culture" in Poland which aims at facilitating access of older persons to cultural life. Important measures were oriented to home care, enabling older persons to stay at their homes as long as possible (actions have been taken in France and in Switzerland through the "Franco-Swiss cross-border Autonomy project 2020"). Various analyses about autonomy and needs of older persons have been conducted in several countries (France, Poland).
20. In the field of **protection from violence and abuse**, several countries such as Austria, France or Belgium have put in place dedicated telephone numbers to prevent and report on abuse and violence towards older persons. It also appears critical to raise awareness about abuse, especially among professionals taking care of older persons; hence in Belgium, Croatia, France, Poland and Slovakia several projects have tackled this issue; in Switzerland the independent Old Age Complaint Authority, a national association specialised in old-age conflicts, has been set up. In order to prevent fraud and deceit committed on older persons, a prevention programme "the Secure Autumn of Life" in Slovakia focuses on showing seniors basic rules of a secure behavior and on helping them to enhance their own security. Other measures concerning abuse of older persons have been undertaken through campaigns (Poland), national programmes and strategies (Slovakia, Turkey) or law (e.g. the Croatian Act on the Protection from Domestic Violence).
21. Measures taken by member States to promote **social protection and employment** of older persons can be divided into two main categories: plans and actions to improve living conditions of older persons, and measures to improve access to and quality of employment.
22. In the area of social protection, the issues of allocating financial resources and ensuring sustainability of pension systems appear crucial to maintaining decent living conditions of older persons. Relevant measures taken by member States include a support scheme for pensioners' households with low income (Cyprus), housing allowance and social solidarity benefit (Greece), a supplementary support scheme (Estonia), a cash social assistance (Lithuania), or a solidarity supplement for the elderly (Portugal). Regarding employment, France and Turkey have implemented measures to promote and support active ageing and ensure appropriate working conditions for older persons; this may include also provisions

prohibiting setting up of an obligatory retirement age (e.g. in Denmark, new legal provision came into force in January 2016 making it illegal for collective or individual agreements to require employees to retire by the age of 70.). Projects have been undertaken in Cyprus, the Czech Republic, Denmark, Lithuania, Estonia, France (the “new chance” work contract), setting up incentive schemes to promote employment of older persons. In Belgium, a specific programme to transfer business ownership, targeting older entrepreneurs, has been implemented by the government of Flanders.

23. Considerable efforts were devoted by member States to the issue of **care**. A particular attention has been paid to home care, which is provided either through official resources or through informal civic and volunteer networks, focused on releasing families from the burden and costs of care. The measures implemented vary from the “hello help service” programme in Croatia, a new benefit to support informal care in the Czech Republic, to the “Welfare Development Plan” in Estonia. In Lithuania, new norms were adopted which set up the principles and characteristics of social care and establish obligatory requirements for the quality provided by social care institutions. As coordination is crucial for the provision of care, projects aimed at creating and supporting networks of day care centres are implemented in Greece, Poland and Portugal; in Switzerland the “coordinated care project” is a part of the “Health Strategy 2020”. Other actions are aimed at training professionals, e.g. the “Mobiquat” programme set up in France. Finally, several member States allocate important resources to tackle the increasing problem of dementia; in this regard, projects are being implemented in Denmark, Estonia and Ireland.
24. In terms of **consent to medical care** the Irish Assisted Decision-Making (Capacity) Act establishes a legislative framework for advance healthcare directives.
25. **Residential and institutional care** has an increasing importance in member States. Most of them have adopted regulations or documents defining the quality of care and standards which should ensure human rights of the residents; this is the case of Belgium, Cyprus, Estonia, Georgia, Greece and Switzerland. Moreover, initiatives such as the Irish “Nursing Homes Support Scheme”, the “Integrated Assistance Program” of Lithuania or the network of district and local offices implementing relevant programs of the Social Welfare Services in Cyprus were developed to improve access to and the quality of the care needed. In Cyprus, the Care Services Subsidy Scheme covers home, residential, day, respite and child care of persons whose income is not sufficient to cover the cost of their care needs.
26. Platforms and centres were created and studies conducted in Belgium, France, Ireland or Switzerland to raise awareness, provide support and training and contribute to a better understanding of **palliative care**.
27. Finally, five countries provided information about measures concerning **administration of justice**. In France and Greece, actions regarding human rights of senior prisoners were undertaken while in the Czech Republic and Slovakia, various measures have been adopted to protect older persons as victims of crime. In Poland, regulations enable older people to benefit from a free judicial and extrajudicial legal aid.

Item D – Follow-up

28. Finally member States were invited to indicate measures which they would recommend in view of ensuring implementation of the Recommendation at the national level, including

measures which should be taken by the Council of Europe. They were also asked whether there any issues on which the Recommendation and its Appendix should be revised or completed.

29. As for measures to be taken to ensure that the principles set out in the Recommendation and in its Appendix are complied with in national legislation and practice, several ideas were raised: some States considered it necessary to develop long-term care systems including financial support, to adopt specific measures targeting housing, participation of older persons in public, economic, social and cultural life, and to supporting if necessary community services to enable older persons to stay at their own homes as long as possible. Promotion of participation of older workers in the labour market, including specific measures to support active ageing, were suggested by two member States. Others suggested trainings, technical assistance and exchange of best practices, fostering the dissemination of the Recommendation, using its content as a reference in the law-making process, and increasing social consciousness of the issue. Two member States suggested defining specific measures tailored to national circumstances and setting up national action plans based on evidence such as statistics and prior assessments of needs.
30. Regarding the role that the Council of Europe should play to ensure that member States are guided in their national legislation and practice by the principles set out in the Recommendation and its Appendix, workshops or conferences were evoked as a very useful tool for dissemination, as well as production of info graphics easy to translate and distribute, with a view to raising awareness of older persons' rights. Several member States suggested quoting the Recommendation in the official documents and activities of the Council of Europe, including a specific mention to human rights of older persons in the annual report of the Secretary General. It was proposed to prepare an action plan of the Council of Europe about ageing and to ensure proper funding of the European platform for social cohesion to follow-up the Recommendation. The Netherlands suggested urging member States to ratify Article 23 of the European Social Charter.
31. As to the appropriateness of a further periodical examination of the implementation of the Recommendation by the Council of Europe, most member States considered a future and continuous assessment to be an essential task; some of them suggested to examine the Recommendation as a whole regularly, pursuing the exchange of good practices, while others would prefer to have this examination focused on specific issues such as residential and institutional care, autonomy and participation, protection from violence and abuse, the right to freedom of movement or the discrimination in employment. No suggestions were received as to issues on which the Recommendation and its Appendix should be revised or completed. Two member States rather underlined that the text of the Recommendation should not be revised or no new issues should be added.

Concluding Remarks

32. When submitting this report to the Committee of Ministers for information, the CDDH aims at:
 - i. highlighting the basic trends in the implementation of the Recommendation as shown by the replies of the 19 member States to the request for information;
 - ii. encouraging all member States of the Council of Europe to reflect on positive measures which other States have already taken in the course of the follow-up to the present Recommendation.

33. While some of the answers discussed throughout this report are self-explanatory, several aspects deserve some further reflection and are discussed in the following text, especially in view of enhancing the future implementation of the Recommendation.

a. Need for appointing a special authority to implement the Recommendation

34. First of all, member States frequently replied that they had not appointed any specific authority for the implementation of the Recommendation. However, the fact that specific bodies under relevant ministries are in charge of older persons' issues or that older persons are considered as a risk group in the decision-making and policy-implementation process is to be highlighted. It is suggested nevertheless that the overall implementation of the Recommendation is monitored by a single national body, in order to ensure a systematic approach to the rights of older persons and to achieve tangible results.

b. Need for more information for an appropriate assessment of the level of implementation

35. The level of implementation is described by a majority of member States as "adequate", which is an encouraging assessment, supported by the various initiatives and good practices highlighted in the replies. All replies naturally emphasise the positive achievements by member States, in some cases indeed remarkable, but the assessment by other actors of the overall implementation of the Recommendation may be different, and the impact of these measures cannot be easily evaluated at this early stage.

c. Need for more focus on older persons as a specific category

36. Furthermore, it can be derived from the replies that many legislative and policy measures are oriented to vulnerable groups in general, and not specifically to older persons, the general legal framework being the cornerstone of protection. It appears however desirable to adopt specific measures targeting older persons. In this regard, as stated *inter alia* by the World Health Organisation (WHO)², in many countries a challenge remains in terms of a clear definition of older persons, which also raises a question as to whether such definition should make reference to a specific chronological age³ or not.

d. Need for considering obstacles to implementation

37. A great majority of member States declared that they have not encountered any specific obstacles when implementing the Recommendation. Nevertheless, the difficulties mentioned by a few of them, in particular the insufficient level of resources and capacities and a lack of

² <http://www.who.int/healthinfo/survey/ageingdefnolder/en/>

³ See, e.g., Article 2 of the Inter-American Convention on Protecting the Human Rights of Older Persons, and Article 1 of the Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons in Africa (not yet in force). The Committee of Ministers asserted in its Recommendation R(94)9 concerning elderly people that it is "useless to attempt to define exactly when old age begins" and that "ageing is a process: being old depends on the individual's circumstances and the environment". The Parliamentary Assembly noted in its Recommendation 1796 (2007) on the situation of elderly persons in Europe that "a person's age is no longer an indicator of health, wealth or social status". The World Health Organisation defined ageing as the "process of progressive change in the biological, psychological and social structures of individuals".

common knowledge of the human rights of older persons, shall probably be given due consideration in all member States.

e. Need for a wide dissemination and translation

38. The questionnaire further revealed that most member States have ensured distribution of the Recommendation at the national/governmental level, while it appears that dissemination has rarely been carried out on lower levels. In addition, it derives from the replies that only in a minority of States the Recommendation has been translated into national language(s). Therefore, this report might also be an appropriate occasion to invite member States to reconsider the Committee of Ministers' Recommendation to "ensure, by appropriate means and action – including, where appropriate, translation - a wide dissemination of this recommendation among competent authorities and stakeholders, with a view to raising awareness of the human rights and fundamental freedoms of older persons". This appears all the more important that several States mentioned a persisting lack of awareness in this regard and also insufficient knowledge by older persons of their own rights.

f. Need for better consideration of specific principles

39. As to the specific principles of the Recommendation, fighting **discrimination** on grounds of age belongs to the most complex tasks. It can be deduced from the relevant replies that the Recommendation helped to improve the awareness of the risks of being discriminated against on the grounds of age, in a situation where there is no explicit normative basis in the international law to tackle age discrimination⁴. In most member States, general anti-discrimination strategies and legislation have been implemented; however, few member States appear to have made explicit reference to "age" in their anti-discrimination legislation, as provided by the Committee of Ministers' explicit recommendation⁵. Where such specific provisions exist, they are usually limited in the scope of application, such as in employment. No information was given on measures to prevent multiple (intersectional) discrimination, i.e. situation in which a person is being discriminated against for several reasons, as might often be the case of older persons⁶. More should therefore be done to tackle the discrimination on

⁴ It is to be noted that, according to the case-law of the European Court of Human Rights, only differences in treatment based on a personal characteristic (or "status") by which persons or groups of persons are distinguishable from each other are capable of amounting to discrimination within the meaning of Article 14. The list set out in Article 14 is illustrative and not exhaustive, as is shown by the words "any ground such as", and the words "other status" have been given a wide meaning (see *Carson and others v. the United Kingdom* [GC], no. 42184/05, § 70, 16 March 2010, ECHR 2010). The words « other status » should be interpreted as covering the criteria that are analogous or similar to those explicitly enumerated, which relate to a personal characteristic. It could be reasons linked to personal choices reflecting elements of someone's personality, such as religion, political opinions, sexual orientation and gender identity, or reasons linked to personal features in respect of which no choice at all can be made, such as sex, race, disability and **age**. In this way, Article 14 could cover the grounds provided in Article 21 § 1 of the EU Charter of Fundamental Rights, such as ethnic origin, genetic features, religion or belief, disability, age or sexual orientation (see *Peterka v. the Czech Republic* (dec.), no. 21990/08, 4 May 2010).

⁵ Likewise, in its Resolution 1793 (2011) on promoting active ageing: capitalising on older people's working potential, the Parliamentary Assembly considered that the phenomenon of age discrimination is "often unconscious, but it undermines older people's dignity, their human rights and self-esteem and is a huge waste of talent". The Assembly acknowledged that ageism "is a harmful prejudice that results in widespread lack of respect for older people [...] they are the victims of physical and financial abuse, in the workplace, where they are subject to unequal treatment, or in the health sector where they do not always receive appropriate medical care and services."

⁶ See also [The factsheet on FRA's multiple discrimination project 'Inequalities and multiple discrimination in healthcare'](#).

the basis of age and the subsequent difficulty of older persons in enjoying their human rights.

40. In terms of **autonomy and participation**, valuable efforts have been devoted by member States to enhancing the social inclusion of older persons and their participation in public and cultural life, as well as to improving services for persons suffering from dementia. However more attention should be paid to increasing information technology literacy of older persons, developing intergenerational activities, promoting self-determination of older persons and enabling them to make their own choices and lead independent lives in their familiar surroundings for as long as they wish and are able. In this regard, reference can be made to the recent draft report on the review of action taken by member States to follow up Recommendation CM/Rec(2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity, prepared by the European Committee on Legal Co-operation (CDCJ)⁷. Indeed, older persons may entail serious human rights violations stemming from the disregard of their dignity, and member States should thus continue reflecting on whether restrictions to older persons' autonomy and independence are necessary or justifiable and, if so, in which cases.
41. Important measures have been implemented by member States in order to avoid **abuse and violence** towards older persons⁸. However, in addition to those concerning prevention of abuse and protection of victims from violent or economic crimes through information and awareness-raising campaigns or dedicated telephone numbers, specific measures - as adopted by several member States - aimed at training professionals, at systematic and compulsory reporting and seeking accountability for cases of abuse and violence in residential homes, day-care or healthcare centres, etc., should be largely implemented⁹. Even if not all forms of elder abuse should be criminalized, all of them, in both public and private settings and perpetrated by both public and private actors, should be prevented and discouraged. Consideration should also be given to the proposal made by the Council of Europe Commissioner for Human Rights who suggested the setting up of independent complaints and inspection systems¹⁰. Furthermore, no new information has been given by member States as to the legislative or other measures to protect persons having reported maltreatment ("whistle-blower") from dismissal or other reprisals. Last but not least, attention should be paid to the most prevalent forms of elder abuse, which is financial abuse; in this regard, auto-regulatory measures or specific regulations regarding aggressive or unethical behaviour could be envisaged.
42. As regards **social protection**, member States are bound to ensure a minimum level of well-being for older persons. Many member States have indeed reported on new measures aimed at granting additional resources to older persons in risk of exclusion and at improving

⁷ The draft report on this review was presented to the CDCJ at its 92nd plenary meeting (22-24 November 2017). The report will be finalised and published in 2018.

⁸ It was noted by the UN Open-ended Working Group on Ageing at its 8th session that, according to estimates of the World Health Organization, 1 in 6 persons aged over 60 years is suffering from abuse... Violence, neglect and abuse against older persons can take many forms (physical, financial, psychological, social, sexual, etc.), can take place in different settings (within families, in homes, in the workplace, in care institutions, in public spaces, in media, in cyberspace, etc.) and can be perpetrated by a wide range of actors (family members, care givers, legal guardians, health professionals, government workers, financial representatives, etc.).

⁹ The European Court of Human Rights has considered that older persons often are not in a position to draw attention to shortcomings concerning the provision of care on their own initiative (see *Heinisch v. Germany* (no. 28274/08), judgment of 21 October 2011, § 71).

¹⁰ *Aged people are too often ignored and denied their full human rights*, Viewpoint of the Council of Europe Commissioner for Human Rights, 28 April 2008.

their living conditions. Those States which do not provide for such minimum social income should, in the light of the Recommendation, be encouraged to do so. More efforts should also be made in the field of social housing and adaptation of the housing to the needs and state of health of older persons.¹¹ Relevant rights are notably warranted by the European Social Charter (revised), notably its Article 23, which the States should widely accept.

43. Several member States have provided good practices regarding the participation of older persons in the labour market and age-appropriate working conditions. To enable people to continue to work according to their capacities is an important factor for active ageing;¹² measures encouraging and facilitating older persons to extend their active lives are hereby essential. In particular, withdrawing mandatory retirement age would be welcome in the area employment; hence, adoption of legal provisions making it illegal to require employees to retire by a certain age, as done in Denmark, should be envisaged by other member States.
44. It is essential that **care**¹³ is affordable for all older persons and that they are assisted with covering the necessary costs. It derives from the replies that there is now a better understanding of the importance to have affordable home and community care services available, which confirms the trend towards de-institutionalisation. In this regard, member States have implemented programmes enhancing day-care and home-care centres, to avoid, if possible, residential care; it would be advisable to continue efforts in this direction, as well as to develop prevention programmes such as those developed in several member States regarding the early diagnosis of dementia. Notwithstanding that the information provided by member States shows a rather positive picture of the situation in the field of care, very few information has been submitted on the practices pertaining to the consent to medical care and to the issue of palliative care¹⁴; it should be underlined in this context that older persons should, in principle, only be placed in residential or institutional care if they have consented¹⁵.
45. More attention should also be given to residential and institutional care in terms of funding, since economic and budgetary constraints may be a permanent threat and hinder access to such services. For these reasons, sustainable structures should be built. The Council of Europe Human Rights Commissioner has recently noted that, "Very worryingly, research and analyses of national policy reforms indicate that, despite the urgency of rethinking long-term care in the context of rapidly growing ageing population of Europe, many member States are not adequately planning for these future challenges, but are instead improvising, with short-term fixes... It is urgent for member States to thoroughly review, with the

¹¹ In its Recommendation R(94)9 concerning elderly people, the Committee of Ministers observed that adequate housing and social protection systems that take into consideration the needs of particularly vulnerable groups are an essential factor in preventing social exclusion. Moreover, the Council of Europe Commissioner for Human Rights recommended in this respect that States should ensure that their social protection systems, health care and housing policies are suited for older people (*Aged people are too often ignored and denied their full human rights*, Viewpoint of the Council of Europe Commissioner for Human Rights, 28 April 2008).

¹² The WHO recognised that "there is an increasing recognition of the need to support the active and productive contribution that older people can and do make in formal work, informal work, unpaid activities in the home and in voluntary".

¹³ The United Nations Independent Expert on the enjoyment of all human rights by older persons has noted that « Care ... has been referred to as part of the right to social security, including social insurance, and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

¹⁴ In this regard, member States are invited to follow the Council of Europe guidelines on the implementation of palliative care in Europe, detailed in the Committee of Ministers Recommendation Rec(2003)24 on the organisation of palliative care.

¹⁵ See *Stanev v. Bulgaria* (no. 36760/06), Grand Chamber judgment of 17 January 2012.

participation of older persons, their approach to long-term care in order to make it more human-rights-based".¹⁶ A recent project conducted by the European Network of National Human Rights Institutions (ENNHRI) showed that, in spite of good practices and the hard work and dedication of many care workers, human rights concerns were found in care homes in all six countries concerned. Measures indicated by member States in reply to the questionnaire, aimed at establishing the foundations necessary for a system of long-term care, at ensuring the quality of care and defining standards of care available to persons in long-term and palliative care, as well as at improving access to such care, should thus be continued and implemented in all member States.

46. Regarding the **administration of justice**, member States have adopted measures designed mainly to protect older persons as victims of crime, and also to improve their situation when in prison. Nevertheless more specific measures to ensure access to justice for older persons, such as provision of legal aid or the existence of dedicated bodies to provide assistance to older persons; the deferral, reduction or exemption of litigation fees; the creation of special courts and jury systems to handle disputes involving older persons; the provision of human rights counselling services for older persons in welfare facilities; and the granting of loans to cover the expenses of trials should be envisaged.
47. Overall, in the light of the answers provided, there are a number of issues emerging as areas which deserve attention in the implementation of the Recommendation and which appear to be a common challenge for member States facing ageing population. This, for example, may concern: failure to recognize age as a prohibited ground for discrimination, multiple discrimination and social exclusion of older persons, their right to self-determination, sustainability of pension systems, access to social protection for care and support and human-rights-based approach in long-term and palliative care.

g. Need for updating the collection of good practices, further follow-up and possible action plan

48. While the revision of the Recommendation and the adoption of new standards do not seem to be needed at this stage, it is envisaged to update the collection of good practices appearing in the Appendix as a tool to facilitate the implementation of the Recommendation in the future. In this regard it could be useful to keep a permanent platform of exchange of good practices available to relevant authorities in member States.
49. On the basis of the above, it is suggested to invite the Committee of Ministers to take note of this report and to encourage States to continue their efforts to implement the various provisions of the Recommendation, and to translate and disseminate it as widely as possible. Given the responses from several States encouraging a proactive role of the Council of Europe to continue assessing the implementation of the Recommendation, the Committee of Ministers should be invited to consider a further follow-up in a few years' time, or even periodically, through new questionnaires, conferences or workshops. Such a follow-up could either be general, so as to allow a full comparison with the present report, or focus on particular issues like those indicated above.

¹⁶ <https://www.coe.int/en/web/commissioner/-/the-right-of-older-persons-to-dignity-and-autonomy-in-care?inheritRedirect=true>

50. Finally, the Committee of Ministers could take action in order to mainstream older persons' issues in all the areas of activity of the Council of Europe, possibly by setting up an action plan on ageing (as suggested namely by France), and consider feasibility of cooperation programmes targeting the specific needs of certain States (or in more general context). Indeed, although existing human rights standards should apply equally to older persons as to any other age groups, if there is a lack of or insufficient understanding of their obligations among the different stakeholders involved, there is an important risk of undermining the rights of older persons.