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**Ms**  
**Elżbieta RAFALSKA**  
**Minister of Family, Labour**  
**and Social Policy**  
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00-513 Warszawa

Dear Ms Minister,

As the Commissioner for Human Rights, I perform the tasks, in accordance with Article 18 of the Act dated 3 December 2010 on implementation of certain EU provisions regarding equal treatment (Journal of Laws, 2010 No 254, item 1700, as amended), concerning introduction of equal treatment principles and I would like to draw attention of Ms Minister to **specific problems in respect of obeying basic rights of elderly persons and equal treatment regardless of the age.**

The problem of the ageing population can be observed both in global and in national scale. According to demographic forecasts of Central Statistical Office and Eurostat regarding Poland, number of elderly people is growing systematically: in 2014 the number of persons at the age of 60 and more amounted to 8.5 m., which equaled 22% of 38.5 m. of the Polish people. In 2020 the elderly will constitute 25% of our society, and in 2050 the number will increase to 40%. These changes result from the increase of the life expectancy and decrease of the number of births. Diversification in the group of elderly people can also be observed. The number of persons at the age of 60-64 (the most numerous in the group of the elderly) within the last 25 years almost doubled and in 2014 reached 6.9% of all the citizens. Similarly, the number of persons at the age of 80 and more doubled and in 2014 equaled to 1 529 thousands of persons, which constitutes 4% of the Polish population. It needs to be emphasized that this increasing group of persons has different needs and requires different conditions to the persons at the threshold of the old age.

The data concerning the positive factors, extending the life in good health (e.g. increasing number of persons who have completed secondary education, which affects positively dissemination health-conscious habits, eating habits improvements etc.) provides the grounds for conscious optimism, however, the number of factors that can impair the condition of elderly persons, their social exclusion as well as premature death is much longer. Statistical data concerning the health condition and health problems of elderly persons is also available. According to Eurostat's data, every second person in Poland at the age of 60 and more experiences less or more serious limitation in everyday activities. The scale of problem may be reflected by the fact that almost 45% of persons at the age of 65 and more who find the easiest everyday activities problematic (it equals to 1/3 of persons of that age) need to deal with them on their own, since they do not have any external help. The frequency of using health care services is also increasing with age. The question of dignified ageing, resulting from,

among the others, the data provided above, requires from the government the efforts to develop strategy and reforms adequate to current civilization challenges.

As Commissioner for Human Rights, I appreciate efforts taken by your department to address the problem. However, since these challenges are subjects to international discussion and activities I would like to draw the attention of Ms Minister to essential issues for systematic approach to the matter discusses **i.e. the position of Poland in respect of development and adoption of the UN Convention on the Rights of Older Persons and the plans related to implementation of the comprehensive senior policy at national and regional level.**

The issues are related to each other due to the common aim, which is the protection of the basic human rights towards the elderly persons. Failure to implement the comprehensive senior policy at the national level leaves the part of elderly persons at the margin of the social life. Assertion of their rights by elderly persons, who often depend on other persons or are lonely, is much more difficult. The situation encourages to use additional support, which could be provided by the international convention related to the needs and specific situation of elderly persons. In my opinion, in the face of the challenges related to the ageing population we cannot react only to current needs and limit our activity to selected issues. Available statistical data and their analysis, as well as the acts of the international law indicate explicitly the directions of the overall development of the social policy to secure the situation of the elderly persons.

One of the most significant documents in respect of the above is the International Plan of Action on Ageing, adopted during the First World Assembly on Ageing by UN in Vienna in 1982. In 1991 the United Nations General Assembly adopted the resolution no 46/9 regarding Principles for Older Persons, indicating the need **to include into the national plans concerning the senior citizens the following rules: independence, participation, care, self-fulfillment and dignity.** Subsequently, in 2002 the International Action Plan on Ageing and the Political Declaration (so called Madrid Plan – MIPAA/RIS) was adopted during the Second World Assembly in Madrid.

At the European level the issues regarding the rights of the elderly persons are reflected in the documents adopted. The Council of Europe emphasized in the European Social Charter, revised in 1996, (Art. 23) the right of the senior citizens to social protection, aimed at making them able to stay the full member of the society as long as it is possible, by providing the adequate resources, information on services and facilitations, making them able to choose the style of life, providing the flats adjusted to their needs, healthcare and to the persons staying in the nursing home – adequate support with respect of their privacy. In 2014, the comprehensive document was adopted by the Council of Europe, devoted to the rights of elderly persons i.e. Recommendation of the Committee of Ministers for the Member States in regards to the promotion of the rights of the senior citizens (CM/Rec(2014)2).

Currently, the United Nations work on the new international legal frameworks regarding *stricte* the rights of the elderly persons. General Assembly of UN established in 2010 the *Open-Ended Working Group on Ageing* (further: OEWG), and since 2012 it has a task to prepare the project of elements of international legal act regarding the rights of elderly persons (based on the resolution 67/139). In the global context, according to the existing analysis of UN, some of the specific issues have not been encompassed by the international law, such as long-term care and the issues regarding the final phase of life. Works of OEWG contributed also to the shift of focus from the discussion regarding the social and medical issues to the approach based on the human rights. During the last, sixth session (June 2015) the President of OEWG made the statement indicating that regardless lack of consensus among the Member States in respect of the new convention, OEWG will prepare its elements and will send them to the Member States till the end of June 2016.

It should be also noted that in 2013 an Independent Expert on the enjoyment of all the human rights by older people was appointed. His main task and the aim of his activity planned for 2014-2016 is review of the implementation of the binding regulations of the international law, concerning the rights of elderly persons, including the price of implementation of Madrid Plan at the national level. The Independent Expert collects the current information of the countries and the national human rights institutions, in a way that will allow to present its report to the UN Human Rights Council this autumn.

The documents mentioned above as well as the UN's activities reflect the long process of searching effective solutions to the problems of elderly people in ageing societies. Convention on the Rights of Older Persons would serve not only as an instrument to support the activities at national level. Support of this initiative by Poland would be an act of solidarity with developing countries, where the situation of older people is much more difficult. East Asia where only 26% of persons in economically productive age is covered by the pension scheme can serve as example. In South Asia the percentage is even lower. To compare, in Western Europe the percentage equals 89,2%. In my opinion, Poland should take the opportunity to participate actively in the global discussion regarding the human rights and contribute to the experiences exchange at international level. It can be beneficial not only to the Polish senior citizens, but also to the national interest by enhancing our position at international stage.

I would like to also emphasize the importance of the so-called affirmative actions (positive actions), namely equal opportunities to participate in social life through the introduction of appropriate facilities for groups of people with a weaker position because of conditions defined for this group. Such a situation happens to part of older people who due to the age gradually lose their current mobility and perception, as well as they have a poorer health condition. According to the Article 11 of the Act of 3 December 2010 on the implementation of certain provisions of the European Union in the field of equal treatment, taking measures to prevent unfair treatment or aligning the inconveniences related to unequal treatment, the reason of which is, among the others the age, does not constitute a breach of the principle of equal treatment. These activities are therefore reasonable and comply with applicable regulations. Both support for the draft Convention on the Rights of the Older People, as well as the senior policy implementation are in line with this course of activities.

The Commissioner for Human Rights, as a body that monitors the implementation of the Convention on the Rights of Persons with Disabilities of 13 December 2006, ratified by Poland (Journal of Laws 2012 item 1169), sees its positive impact on the increase of public awareness in respect of the need to remove the barriers that hinder people with disabilities to participate in social life. It should be stressed that the Convention on the Rights of Persons with Disabilities does not create a new catalog of human rights, but merely adapts the existing commitments to the needs of a particular social group. Although the full implementation of standards under the Convention remains a major challenge, the Convention itself is a necessary legal instrument for protection of the rights of persons with disabilities. Thanks to its ratification, the various groups, both belonging to the public and non-governmental sector, received the necessary impetus to act.

The Convention on the Rights of Persons with Disabilities resigns from the medical approach to people with disabilities, recognizing the social definition of disability and pointing instruments necessary for its implementation. Similarly, the Convention on the Rights of Older People could contribute to the subjective treatment of these persons and make them the co-creators of social policies, of which they are also the recipients. This shift of emphasis from the implementation of social rights only to the implementation of human rights is an essential element of the desired approach to protection of the rights of the elderly. Therefore, the legal framework which would oblige all institutions at central and local government level to create well-thought-out conditions for the

implementation of this type of approach is necessary. **Making the activities for the observance of human rights dependant on the activity of the governments of individual communes and regions cannot guarantee the security of the right to a dignified life to growing number of older people.**

Unfortunately, from the perspective of the Commissioner for Human Rights, this is the current state of implementation of the Long-Term Senior Policy Priorities in Poland in 2014-2020, adopted by a resolution of the Council of Ministers of 24 December 2013 (M.P. of 2014. item 238; further: the Guidelines). The flagship government programmes: Social Activity of Older People and Senior-Vigor concern very important, but only partial problems associated with the implementation of the senior policy. It seems that the funds from these programmes are used mainly by active environment and the communes. The other perform only basic tasks required under provisions of law, with the use of limited financial resources. This does not prevent the marginalization of a large part of the elderly, who do not have knowledge about the possibilities of the support from the local governments or reached such a level of dependence that they are not able to successfully apply for such support.

Seniors councils arising at local governments provide some hopes. However, their competence and activity are very diverse in the country. This model of cooperation with older people still requires careful monitoring and prudent development. In addition, statutory tasks of communes in the field of social assistance are not directly dedicated to the elderly, therefore, they do not include specific conditions related to age. Statistics conducted in communes do not apply to the age of the beneficiaries of environmental services, hence it is difficult to estimate the number of elderly people who use them. Since local governments rarely conduct formalized consultations on the needs of older people, it is also difficult to estimate the number of people who would be interested in specific services in practice. However, it should be assumed that people with very limited independence and their informal carers are in the most difficult situation. This is connected to the certain restrictions in the access to geriatricians and geriatric beds and limitations in the access to other healthcare benefits in respect of the diseases related to age. Systemic, comprehensive approach, diagnosis of needs, coordination of different public entities can contribute to the desired social inclusion of the elderly people. This objective will be extremely difficult to achieve without defining and understanding values and principles related to human rights, included in the abovementioned documents of UN and of the Council of Europe. The above description presents only the general background situation of older people in Poland, indicating the need for systemic implementation of the Guidelines. It should be noted that **in the introduction to the Guidelines a need to develop the future strategy on the senior policy, which has not been prepared until now is indicated.** There is also lack of a specific action plan with a focus on the tasks and entities responsible for its implementation.

As the Commissioner for Human Rights I also expect with great interest the first information from the Council of Ministers about the situation of the elderly, which is obligatory under Act of 11 September 2015 on the elderly (Journal of Laws item. 1705), in particular in the section on Article 5 section 2 point 11 - equal treatment and prevention of discrimination based on age. From the perspective of the Commissioner for Human Rights increased social awareness in terms of the nature of phenomena relating to the discrimination of senior citizens is extremely important. The previous analysis of the issues received by the Commissioner and the conducted research indicate the presence of the direct and indirect discrimination, hidden among the others in inadequate support system of the elderly. Such discrimination occurs for example in access to medical services specific for old age - when due to the increasing number of older people and a number of doctors with certain specialties (eg. geriatricians, ophthalmologists performing treatments to remove glaucoma) growing too slowly, the waiting time for medical care increases compared to the waiting time for medical treatments less correlated with age. Another detailed example of discrimination against the elderly are instances of the use by electricity suppliers reprehensible marketing techniques, recorded by the Energy Regulatory Office. Abuses are manifested not only in the absence of full information about the effects of the

potential transaction, but also in use of small font in contracts, which is an additional barrier for older people with poor eyesight. Older people have access to the Internet less frequently than others and have lower ability to efficiently search for necessary information, which could help them to verify the commercial offer. Similar abuses were identified by the Office for Competition and Consumer Protection, which drew attention to the abusive clauses in draft contracts concluded by traders organizing sale outside the registered offices of their businesses. In numerous reports of OCCP it was emphasized that abuses made by retailers usually affect elderly people and they are the main target group of marketing events organized for sale purposes, due to statistically bigger susceptibility to the used sale techniques. The financial consequences of such ill-considered purchases may be difficult to bear to the elderly with constant but limited income. These examples, referring to the most basic needs of the elderly, illustrate the need for a broad and systemic approach to countering discrimination based on age.

Accordingly, under Article 13 section 1 point 2 and Article 17b, point 1 of the Act of 15 July 1987 on the Commissioner for Human Rights (Journal of Laws, 2014 item 1648, as amended), I kindly ask Ms. Minister to address the raised issues. In particular, I would be obliged for providing information on the assumptions about the Guidelines implementation plans and development of comprehensive state strategy in the field of the senior policy. With regard to the activities in the international scene, I kindly ask to present the current Polish position on the development and implementation of the Convention on the Rights of the Older People. Moreover, given the fact that the UN Independent Expert for the observance of the human rights of older people is still waiting for the information from Poland on the state of implementation of the Madrid Plan, I will be grateful for information whether the Ministry is working on an appropriate response to the received questionnaire. If such a reply has already been developed, I will be grateful for making it available.

Kindest regards,

[*Adam Bodnar*]

For the attention of:

**Mr Witold Waszczykowski**, Minister of Foreign Affairs

**Ms Małgorzata Zwiercan**, President of the Commission on the Senior Policy

**Mr Wojciech Kaczmarczyk**, Government Spokesperson on Civic Society and Equal Treatment