

# Older Persons' use of the European Court of Human Rights

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Published online: 20 October 2013

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**Abstract** One of the most significant human rights tribunals in Europe is the European Court of Human Rights (ECtHR). Up to day, no study has attempted to explore the cases brought before the ECtHR that discuss and rule on issues concerning the rights of older persons. To descriptively analyze the ECtHR cases that deal with older persons and elder rights issues. Quantitative and descriptive analysis of 226 randomly selected publicly-open ECtHR cases dealing with elder-rights between the years 2000–2010. On average, 11.9 % of the ECtHR case load included rulings that concern older persons' rights. In the majority of the cases (91 %, 205 judgments), the ECtHR found a violation of at least one human right concerning older persons. Despite the fact that rights of older persons do not appear as such in the European Convention on Human Rights, older persons do find their way to the ECtHR.

**Keywords** Human rights · European court of human rights · Elder law · Elder rights · Jurisprudential gerontology

## Introduction

The aging population is one of the most pressing issues phenomena on the agenda of Europe today (Doron 2007; Schroods et al. 1999). As a result, there is a growing academic and public interest in the interaction between law, society and ageing (Doron 2008; Herring 2009; Kapp 2003). Moreover, the increasingly growing population of older persons raises new questions about the protection and advancement of their human rights, both on national and international tribunals (Doron 2005). Nevertheless, almost no empirical investigation has been performed regarding their rights in the international arena — in general, or the European arena — in specific. One possible explanation for the relative paucity of research is the absence of older persons' rights from some of the relevant international conventions (Rodriguez-Pinzon and Martin 2003). Another explanation might be the previous lack of

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interest of the European legal system and social gerontology in the connection between aging and the law (Doron and Meenan 2012; Evrard, and Lacour 2012). In light of the growing scholarly and public interest in the international discourse regarding human rights of older persons (Doron and Apter 2010; Doron and Spanier 2012; Tang 2008), the time is ripe for examining the role of International Courts in this field.

The aim of this article is to present and discuss the quantitative and descriptive findings from a study that examined the scope and content of cases in which older persons appeared before the European Court of Human Rights (henceforth: the Court or ECtHR) (Spanier 2013). It should be noted that alongside the ECtHR, the European Court of Justice (ECJ) is also a key legal tribunal for the protection of human rights in Europe (Doron 2013). However, these two courts operate under totally different legal frameworks: while the ECtHR operates under the framework of the European Convention on Human Rights (which is not part of the EU institutions), the ECJ operates under the EU Charter of Fundamental Rights. The legal and political power-relationships between these two important tribunals are quite complex and are beyond the scope of this study (e.g. Defeis 2000; Lock 2009).

## Literature Review

The atrocities of the Second World War led to the foundation of the Council of Europe in London on May 5th 1949 (Gomien et al. 1996; Merrills and Robertson 2001), with the goal of turning the issue of human rights into binding international and European norms. The founders of the European Council hoped to create a political system of interstate collaboration in order to prevent another war (O'Boyle and Darcy 2009). As part of this process, in early 1949, legal experts had already begun to draw up an enforceable binding convention for the protection of human rights (Buergenthal 2006), which became the European Convention on Human Rights (2010) (henceforth: the Convention). The Convention was signed on November 4th 1950 in Rome and entered into force after its ratification by 10 states on September 3rd 1953 (Merrills and Robertson 2001). It became the first regional Convention for the protection of human rights (Smith 2009). The Convention focused mainly on political and civil rights, and disregarded economic and social rights (Koch 2009).

The Convention made no explicit reference to the rights or the prevention of the violations of the rights of older persons as such (Harris et al. 2009). The two international instruments that do address the rights of older persons in Europe, namely, the Charter of Fundamental Rights of the European Union (which today, is part of the Treaty of the European Union) as well as in the European Social Charter (Revised), are not applicable in the Court.

A unique and significant innovation of the Convention was its success in creating the most effective supervision and control system known to date for the implementation of this type of human rights Convention (Egli 2008; Harris et al. 2009). The crowning achievement of this control system was the establishment, in 1959, of the European Court of Human Rights (Hioureas 2006). The Court was authorized to interpret the Convention (Harris et al. 2009), and actually became a quasi-constitutional court (O'Boyle and Darcy 2009). Among other things, the Court was authorized to draw attention to structural problems in the legal regime of European states, which lead to the breach of human rights, and to recommend appropriate methods for their modification. However, the Court does not have the power to change or amend the Convention itself; this authorization is reserved exclusively for the 47 European Council member states (Harris et al. 2009; Hioureas 2006).

One way to amend the Convention was the addition of Protocols by the States —legal documents which, following their ratification, became binding and inseparable parts of the

Convention. Over the years, several additional Protocols were created. Protocol No. 11, which was entered into force in November 1998, is especially important for this study (Hioureas 2006). The Protocol determined that applications of states, organizations and individuals that had to be submitted to the Human Rights Commission prior to the Protocol's ratification, could now be submitted directly to the Court. At the same time, the Court, which previously operated on a part-time basis (two sessions per year), began to operate on a full time basis (Ovey and White 2002). The most significant change was extending the Court's authority to discuss individual applications lodged with the Court (subject to the binding procedures). Establishing the rights of individuals to apply to the Court (Egli 2008), was a ground-breaking legal innovation, both in Europe and globally, in promoting human and civil rights (Egli 2008; Hioureas 2006).

In light of the centrality of the European Court of Human Rights, the aim of the present study was to perform a general, descriptive investigation of the extent to which the rights of older persons were discussed in this Court. In more concrete terms, an attempt was made to typify the European older persons who apply to the Court, the essential issues brought for discussion and the Court's decision patterns.

## Research Design

The overall research method used in the present study was quantitative and descriptive. The study was based on empirical analysis of public texts from the European Court of Human Rights, by retrieving varied background data from judgments available on the Court's website (HUDOC). The complete, official versions of all judgments delivered to date, since the first one in 1960, are uploaded to the website by the Court, which offers free access to the texts along with a web-based open-access, text search engine.

To create the sample for the study, it was necessary to decide on several preliminary questions. The first preliminary question was: Who is an older person? From what age will a person be considered old? It is well-known that varied norms exist for defining a person as old, which touch on different content spheres. As this study dealt with a public international court, we chose a norm taken from the field of international law and old age i.e. General Comment NO.6, a United Nations document that implemented rights of older persons in the context of the International Covenant on Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights 1976). This document defines an older person as any person above the age of 60. Yet, it should be noted that this is a non-consensual definition, as even within Europe there are different definitions and norms regarding this issue (e.g. Eurobarometer 2012), and there is a rich body of Gerontological discussions on this matter (e.g. Vincent 1999).

The second preliminary question concerned the range of years in which to examine the judgments delivered by the Court. In this context, and in light of the history of the Court's development, we decided to focus on the years following the acceptance of Protocol No. 11 into the European Convention on Human Rights (2010). The choice of this date enabled the compilation of data pertaining to a complete decade, namely, the period between January 1st 2000 and January 1st 2011 (11 years in total).

The two points in time mentioned above (the applicant's date of birth and the application date) served as the basic data used when searching the computerized information system of the European Court for Human Rights to create the sample. We entered the year of birth of the older person (1920, 1921, etc.) into the search system, one at a time, and on the same search page, entered the relevant year for the delivery of judgments (from the beginning of

2000 to the end of 2010). The search results produced all applicants born in the relevant years and about whose issues judgments were delivered during the 11 years that we had selected. A total of 1,503 judgments were delivered to older persons. These 1,503 judgments constituted the “study population” and the database for this study. Basic descriptive analysis was performed on this population. Due to limited time and resources, we used stratified random sampling, (each decade of date of birth, between the years 1900 and 1950 was considered a single stratum), that resulted in a representative probability sample consisting of 226 judgments, which were fully analyzed for this study (Orr 1999; Hansen et al. 1960).

The study population judgments were divided into three levels: Level A: discussion of the issue in question—judgments with an essential, direct and unique focus on old age, older persons and their rights; Level B: judgments that related to older persons and their rights, but that did not include a separate discussion about them (for example: pension rights); Level C: judgments in which the applicants were older persons (Age over 60). An analysis of the 226 judgments of the sample produced the following picture.

In Level A, seven judgments were found, which made up approximately 3 % of all the judgments in the sample. In Level B, 15 judgments were found, which made up 7 % of all the 226 judgments. At this stage of the analysis, it was already apparent that the large majority of judgments did not deal with the issue of older persons’ rights as such. In 90 % of the judgments, older persons were present, but the legal discussion revolved around different legislative issues. The applicant’s chronological age was the only relevant factor here. Social and legal issues concerning older persons were not specifically discussed. We will examine these findings in the following section.

## Results

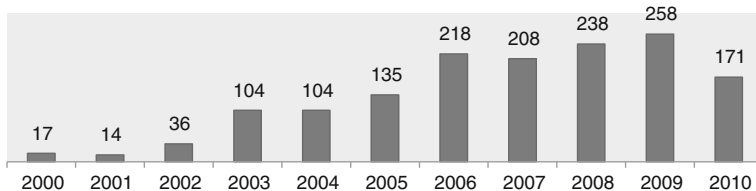
### General picture

#### *Percentage of older applicants in the overall sample*

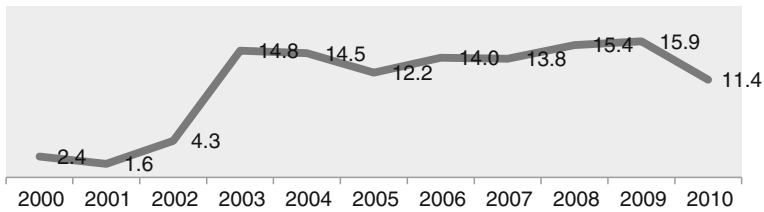
A quantitative examination of all 1,503 judgments delivered to older persons during the years relevant to the study produced the following picture (Fig. 1):

An examination of the number of judgments delivered to older persons compared to all judgments made by the Court in the same year produces the following picture, in percentages (Fig. 2):

The data shows a clear increase in older persons’ applications to the Court soon after it became legally possible to submit individual applications. Following this initial steep increase and alongside the numerical increase in applications during the first years after individual submission became possible, the relative rate of older persons’ applications appears to have stabilized; an average of 11.9 % of judgments were delivered to older



**Fig. 1** No. of judgments delivered to older persons 2000–2010



**Fig. 2** Percentage of judgments given to older persons in relation to all the judgments given in each year

persons throughout this entire period (1,503 out of 12,683). Looking into the age stratification within the “older” cases segment reveals that the majority of cases (52 %, 780 out of 1,503) were brought before the court by persons born between the years 1931–1940, following those born between the years 1921–1930 (27 %). The “young-old” (born 1941–1950) and the “very old” (born before 1920) consisted only a small minority of the cases (14 % and 7 % accordingly).

These findings can be interpreted in different ways. On the one hand, considering the fact that older persons are relatively poor and are potentially more disabled, it can be assumed that accessibility to the Court is more complex for them than for other age groups. Hence, this data can be interpreted as relatively positive in the sense that despite their difficulties, older persons do reach the ECtHR. On the other hand, it should be remembered that Europe has the largest older population in the world (160 million), which is about 20 % of the entire population of Europe (approximately 800 million) (Follow-up 2010). Hence, the percentage of judgments dealing with older persons in Europe is still lower than their relative percentage in the population.

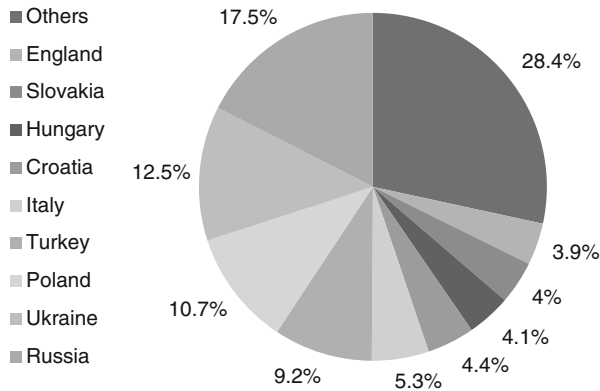
### *States of origin*

In the Annual Report of 2010, the Court reported that out of 1,499 judgments delivered in that year, four (out of 47) states were “responsible” for approximately 50 % of the judgments. With the addition of two states, all six together received 63 % (two thirds) of all the judgments. These states were Turkey, Russia, Ukraine and Romania, with the addition of Poland and Italy, and were identified by the Court as the main source of applications (Annual Report 2011; Annual Report 2010). The question to be asked is whether the distribution is similar regarding the delivery of judgments to older persons.

A look at the following figure shows the distribution regarding the 1,503 judgments pertaining to older persons’ issues, according to states.

A similar trend to the aforementioned data regarding the Court in general can be seen in relation to older persons. Throughout all the years of the study, older persons from Russia, Ukraine, Poland and Turkey received approximately 50 % of the judgments. Romania received only 3 % of all older persons’ judgments, and Italy (5.3 %) and the United Kingdom (UK) (3.9 %) were the two Western states with the highest percentage of judgments delivered to older persons.

The findings show that the size of a state’s population or the share of older population within the general population is not necessarily connected to the number of judgments in which it was involved. For example, older persons make up 20 % of the population in the UK, but English older persons received approximately 4 % of the judgments in the Court. In Turkey, however, where older persons constitute approximately 7 % of the population, approximately 9 % of the Court’s judgments were delivered to older persons (see Fig. 3). The presence of older persons in the Court is not, therefore, dependent upon



**Fig. 3** Percentage of judgments dealing with older persons' issues according to the states against which applications were made

their percentage of the population, but is the result of the legal system's attitude toward them in their state of residence.

#### Who applies to the court? Older persons' personal background variables

Deriving the older persons' background variables from the judgments was no easy task. The texts sometimes included very little or no personal information about the applicants. These limitations considered, in the following paragraphs, we attempt to present the background variables that we were able to retrieve from the sample.

*Gender:* The applicant's gender appears in all the judgments, providing a good source of information for this aspect. On many of the aging measures, women have unique characteristics (Kinsella 2009). They live longer than men, and generally have lower income, and a much higher percentage of women than men live alone. Therefore, in a Court that deals with older persons' issues, it might be expected that the number of female applicants will be greater than the number of male applicants. On the other hand, within the world population, older women are considered to be a weaker group and are therefore likely to have less access to the Court (General Recommendation No. 27).

The findings show that the majority (68 %) of older applicants were men, despite being the minority in the older population as a whole. In an attempt to interpret the findings, and using appropriate caution, this could be attributed to part of the general trend of discrimination against or exclusion of women, or to the fact that women are a poorer group within the older population and therefore have less access to judicial systems. A thorough exploration of this point is beyond the scope of this study, but it certainly draws attention to the need of thinking about shaping policies to improve accessibility to the European Court and to human rights for women in general and older women in particular. It also draws attention to the need of examining the importance of women's rights organizations in Europe regarding the range of issues with which they are involved.

*Place of Residence:* The applicant's place of residence appears in all the judgments, providing a good source of information for this aspect. Just over half of the older persons in the world live in urban areas. Whereas in developed states, only 10 % of the residents in rural areas are older persons, in developing states, 40 % of the rural population is made up of older persons (Follow-up 2010). The decisive majority of

older persons who received judgments in the Court were urban (190 older persons, 84 %). The other 36 (16 %) lived in rural areas. This being the case, the older persons’ place of residence continues to reinforce the picture that the older persons who applied to the Court had financial means and knowledge. It can be cautiously suggested that living in urban areas was tantamount to accessibility to the Court and to the capability to manage the required financial means.

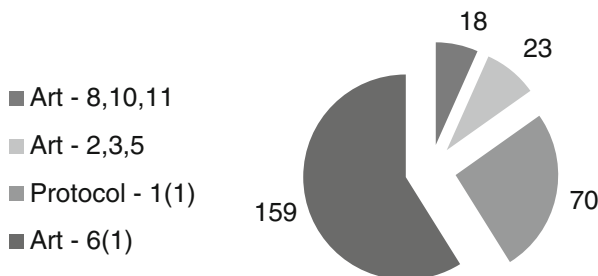
*Age:* The older persons’ age arouses interest because the study deals with older persons and leaves room to investigate the age of the older persons who appear in the judgments of the Court (beyond their being above 60 years of age). The findings indicate that the applicants’ mean age was 71. Pertaining to gender, the mean age of the women who applied to the Court was 73 and the mean age of the men was 71. That is to say, the mean age of the women in Court was older than that of men. In the “younger” age groups of the older persons, no difference was found in the mean age between the genders. This can apparently be explained by the fact that the longevity of women is not yet manifested at this age, but is clearly manifested at more advanced ages. In the group born between 1921 and 1930, the women’s mean age was 78 and the men’s was 76, and in the group born between 1911 and 1920, the women’s mean age was 87 and the men’s was 81.

Why do older persons apply to the court? The articles of the convention discussed in the judgments

For an application to be accepted to the Court, the applicant must prove that the act in question violates one (or more) of the sections in the Convention. In this study, we examined the main Articles discussed in the Court in older persons’ applications.

The main subjects of the older persons’ applications were as follows (Fig. 4):

*First Type of Cause: Article 6(1), Right to a fair Trial:* This Article deals with the right to a fair trial, i.e., within the procedural rights of the state court system, and serves as the cause for the delivery of judgments to older persons in the largest number of cases. A total of 159 out of 226 judgments in the sample included Article 6(1), which constituted approximately 70 % of the judgments.



**Fig. 4** Distribution of main sections that appeared in the older persons’ applications (quantitative) (In many cases, Section 6(1) is only part of the application. The applications join it onto other sections, which, they believe, were violated according to the Convention. It should be noted that, because some cases overlap, the number of judgments described in the table is larger than the sample number of 226, and the percentages were calculated accordingly. That is to say, all of the sections were counted, even if more than one section was included in a judgment)

Within the framework of Article 6(1), Right to a Fair Trial, judgments were delivered to older persons under three categories. The first and main category was Reasonable Time, which included 77 out of the 159 judgments (48 %) delivered regarding Article 6(1). This category discusses cases such as the example in the judgment referring to Romaniak's claim against Poland (*Romaniak v. Poland* 2006). In the domestic court, the applicant claimed dissolution of co-ownership of land. The applicant (whose age put her in the category of older persons) sued the state in the European Court for legal proceedings that lasted no less than 13 years. The other two categories were Access to a Court, for which the Court delivered 14 judgments (9 %) and Failure to Enforce the Judgment, for which the Court delivered 19 judgments (12 %). Especially conspicuous in these cases was the cessation of or failure to execute payments

*Second Type of Cause: Protocol 1, Article 1, Protection of Property:* 70 out of the 226 judgments (approximately 31 %) dealt with claims of older persons regarding the protection of property and the right to the enjoyment of possessions. According to the Court's judgment, this is a comprehensive right, including not only property rights, but also the rights to a salary, welfare payments, pension rights etc. (Harris et al. 2009).

*Third Type of Cause: Articles 2, Right to Life; 3, Prohibition of Torture; 5, Right to Liberty and Security:* The Articles in this type of cause usually deal with loss of life (Frederic 2007). These can refer to actions by the state, as in several judgments relating to Chechnya (*Gandaloyeva v. Russia* 2008), but also to criminal acts or "routine" actions by the police (*Ramsahai v. The Netherlands* 2007). In total, 23 judgments were delivered under the categories of the Right to Life, the Prohibition of Torture and the Right to Liberty and Security. In other words, they constituted approximately 10 % of the 226 judgments in the sample. Approximately 13 % of the sample (29 judgments) involved criminal activity. Hence, in the overall area of criminal activity, the older persons' central claims related to Articles 2, 3 and 5, which constituted approximately 80 % of the criminal activity.

What emerges from the findings is that when older persons made claims related to criminal activity, the vast majority of cases referred to some kind of damage to life; in most cases, a situation in which older persons were not directly harmed, but were powerless to help a family member who suffered directly. The damage to or loss of life in the aforementioned Articles was usually significant for the older persons' family members' livelihood as well as regarding their protection (shelter) and security.

*Fourth Cause: Articles 8, Right to Respect for Private and Family Life; 10, Freedom of Expression; 11, Freedom of Assembly and Association:* Out of the 226 sample judgments, 18 (8 %) dealt with Articles 8, 10 and 11. Approximately one third of the judgments dealt with freedom of expression, and three dealt with freedom of political association. Half of the judgments in this category (nine judgments) discussed Article 8 of the Convention (the right to respect for privacy and family life). Article 8 constituted approximately 4 % of all 226 judgments.

These Articles indicate the possibility of incorporating economic and social rights into the Convention (Koch 2009). As mentioned above, these rights are not included in the Convention, but the Court sometimes allows an extension of the meaning of the Convention rights. For example, in the Article dealing with the right to respect for private and family life, grandparents' right to play a role in the raising of their grandchildren has been discussed (*Bronda v. Italy* 1998).

Beyond this general quantitative statistical, it would be of interest to focus on the some actual legal examples from Level A cases, because of its direct focus on older people and their rights. For example, in the case of *Otto v. Austria* (2009), the plaintiff was a woman born in 1928. Her husband left her in 1985 and died in 1992. She claimed survivorship benefits, but was denied. Only after a



lengthy legal process (more than 7 years) her right was recognized. The Court found that Austria's handling of the plaintiff's case violated her right to fair trial due to the unreasonable time of handling her case (and see also *Romaniak v. Poland 2006*; and *Smirnitckaya and Ers v. Russia 2007*, regarding the rights of older persons for a fair trial).

Another example from this group can be found in the case of *Carson and Others v. The UK (2010)*. In this case, a group of British pensioners who lived outside the UK, claimed that their rights under Article 1 of Protocol no. 1 (Right to Property) and Article 14 (Prohibition of Discrimination) were violated. The basis for the argument was the fact that while the pension for UK residents was index-linked, hence preserved its relative financial value, while non-residents' pension was not index-linked. The Court, while rejecting the case, concluded that place of residence was not a legal ground falling within the scope of Article 14. Moreover, differentiating between residents and non-residents within a national pension scheme is reasonably justifiable. This case is of specific importance, as the court chose not to consider whether "age" would fall into the category of "other status" within the construction of Article 14.

To sum up, older applicants are present in many and varied contexts in the different Articles of the Convention. Especially conspicuous are the applications under Article 6(1) regarding the right to a fair trial, particularly concerning the length of court proceedings. The diversity in the application Articles and types of application might be a positive and encouraging sign that older persons are present in the Court and find ways to bring their applications for discussion, even though older persons' rights are not specifically prescribed in the Convention.

Procedural characteristics: what happens at the court?

### *Legal representation*

Legal representation is a parameter that can reflect the older persons' economic situation as well as their social strength. Representation is not compulsory at the initial stage, i.e. when submitting an application to the Court. However if and when the application goes beyond the admissibility stage and is transferred to the attention of the respondent state, representation becomes mandatory. Representation is mandatory also in all hearings before the Court. It should be noted that obligatory representation can be waived by the president of the department before which the application is being presented (Rules of Court 2011) — a practice that in the past was more common than today, and is important to understand the finding at this point. The Court is able to assist applicants who cannot afford representation. Some applicants in the study sample received assistance from various organizations, including those that help older persons. In the following section, we will examine the representation of older persons before the Court.

The older persons' legal assistance was divided into four groups: representation by independent means (Represented), aid organizations (Organization), assistance of the Court (Legal aid), and not represented at all (Unrepresented). The findings reveal that on the one hand, most of the older persons were represented using independent means (54 %). This indicates that older persons who applied to the Court were in a position to finance the procedure. Considering the length of the proceedings, this could mean substantial expenses. If rights were found to have been violated, the Court will reimburse part of these expenses if it is decided to cover the cost of the trial.

On the other hand, attention should be turned to the findings which indicate that 68 judgments (30 %) were delivered without representation. This is a considerable number and its significance must be understood; although older persons receive judgments, the procedure is carried out based on pleadings alone (which may or may not have been written by an expert), and the older person's voice is not heard in the Court. This can be interpreted as an expression of weakness in the legal procedure as well as in the older persons themselves. This could also be a result of the dearth of NGOs that specialize in the provision of legal representation to older persons in the international arena.

The outcome: what is the court's decision

In a very large majority of the judgments in the sample (91 %, 205 judgments), the Court found a violation of at least one article of the Convention in the older persons' applications. In 12 of the judgments (approximately 5 %), the Court did not find a violation by the respondent state. In nine judgments (4 %), a "friendly settlement" (out-of-court settlement under Article 39) was achieved.

For the purpose of comparison, a general examination of the overall activity in the Court over the last 50 years (1959–2009) reveals that a violation of at least one section in 83 % of the judgments was found (Facts and Figures 2011). Only in 6 % of the judgments was no violation found; 9 % of the judgments either ended in a friendly settlement or were striking out cases.

It was found that, over the years, in a very high percentage of cases, the Court found that states had violated the Convention. The percentage relating to older persons is similar to the general percentage, and even a little higher. In the vast majority of applications, the older persons won their case. These results can be explained partly by the Court's stringent selection system (admissibility tests), which prevents completely unfounded applications from being brought to discussion. In this sense, the older persons' situation is essentially no different than that of the rest of the applicants to the Court, and, in fact, their likelihood of success is a little better. However, the important point is on the interpretive level. Considering the percentage of judgments delivered in the older persons' favor, it can be claimed that older persons' rights are indeed violated in the various European states.

## Discussion and Conclusion

In this study, we attempted to investigate the social group of older persons in the European Court of Human Rights. The study was the first of its kind in general and of the European Court of Human Rights, in particular. The study is brought as a response to the issue and to the growing need for information and research regarding older persons as a social group and their struggle for legal rights. The data presented above can assist in the thinking, planning and striving to formulate and establish the rights of older persons in the field of international law. The descriptive data presented above provide several angles from which to observe the status of older persons in the European Court of Human Rights.

The court as a proper arena for the struggle of older persons

Approximately 12 % of all judgments between 2000 and 2011 were delivered to older persons. Only approximately 3 % of the judgments in the study sample discussed older

persons specifically (Level A). Nevertheless, conclusions should not be drawn from this regarding the Court's attitude to old age, although it can be said that applications regarding old age and the rights of older persons are not an essential part of the Court's agenda.

However, the data can be seen to be encouraging in the face of the (almost) total absence of similar data from supreme courts of states and from other international courts. Attention should be drawn to the fact that the Court directly addressed issues of older persons' rights and related topics in general (Level A or B) in no less than 10 % of the judgments in the sample. This is a significant percentage when considering the wide scope of human rights topics dealt with by the Court. Therefore, at least at face value, and from the quantitative point of view, the European Court of Human Rights appears to allow entry to older persons and discussions of issues pertaining to them, even without having specific and direct reference to their rights — as a unique and distinct social group — in the European Convention on Human Rights.

Is there a need for older persons to claim their rights in an international tribunal?

The quantitative findings regarding the status and presence of older persons in the European Court of Human Rights are varied. On the procedural level, this population does not appear to be of more concern to the Court than other populations, and are not quantitatively outstanding or conspicuous as a group.

In a reality in which the Court is overloaded with claims to the extent that threatens its ability to function (Hioureas 2006), there are those who maintain that the Court should become a quasi-constitutional court, which does not discuss individual applications, but fundamental issues only (O'Boyle and Darcy 2009). Even if this does not mean closing the doors of the Court, it still means significant toughening of the admissibility criteria. If this is to be realized, it will mean shutting out a multitude of applicants. There are others who believe, however, that the Court's power and influence lie specifically in the fact that its doors are open to everyone (Mahoney 2005) and that this is the basis for its existence and high credibility.

From the older persons' point of view, as emerges from this study, it is important to leave the Court's doors open to older persons for three main reasons. The first is the importance of not disregarding the voice of a frequently excluded population. The knowledge that any older person who wishes to bring a claim for public discussion can do so serves to remedy some of the distresses caused by the infringement of their human rights.

Second, sounding the voices of all older persons in the international arena is important also for promoting awareness of older persons' issues in international law. The doors must be kept open to enable follow-up of the group of older persons (as was done in the present study) and to paint a true picture of this social group. It will thus be possible to identify and struggle for fundamental issues. The significance of the open doors approach is international exposure and influence for older persons.

Third, the applications that reach the European Court of Human Rights have the power to advance their position on the domestic level. These applications support the claim that, in reality, older persons (similar to other weak groups) suffer from infringement of their legal rights in the international arena. This violation can be committed by government systems and sometimes even by the local courts (chiefly regarding the length of proceedings). There is a need, therefore, for an accessible international court of jurisdiction that has authority and the power of enforcement over the national authorities. Such enforcement can also be an instrument of social change for social-legislative norms and criteria in the states themselves.

Is there a need for an international norm committed to older persons as such?

The study findings indicate that indeed states violate their older persons' human rights. Older persons are present in the Court, and although this is an appropriate arena, it lacks an effective legal norm to protect and uphold the rights of older persons as such. The reason for this is the fact the European Convention on Human Rights does not include the rights of older persons as such. As we have shown here, older persons claim their rights in the Court through the "translation" or "construction" of their rights into the language of the European Convention, which does not relate to them directly. This is done while at the background, an international political-legal struggle is underway to create a convention for older persons' rights on the global level (Doron and Apter 2010). The findings of this study support the claim that an international legal norm specifically aimed at the human rights of older persons is of importance. It can serve as a reference point for older persons, states, organizations and courts of law in light of the absence of such norm at the current UN conventions. It can provide an explicit standard of rights for states, and the Court will be able to enforce these prescribed rights for the benefit of the older persons as a social group.

The discussion on the nature of the required legal norm (an international or regional convention, soft law, hard law, etc.) is beyond the scope of this article. This notwithstanding, it can be seen that the picture that emerges of the Court reinforces the need for a binding international convention. Such a convention should serve as a normative umbrella that is appropriate for older persons' battles in Europe and around the world. A clear definition of older persons' rights will enable the regional systems to adopt these norms (whether as a protocol for the European Convention or as a soft law). The Court could, at least, view such a convention as a normative point of reference. In conclusion, an international convention will enhance the status of older persons throughout the world, including within the European Court on Human Rights.

The need for more research and evidence

Finally, it should be stressed that the descriptive data presented in this study raises various new questions that can only be answered by this study alone. More in-depth studies are needed to be conducted in the future, using data-bases and methodologies which go beyond the ones used in this study. For example, national legal data-bases should be studied with regard to older persons' use of local courts, and the findings of these studies should be compared with the ECtHR data. Or, for example, qualitative studies should be conducted to better understand the motives, incentives and barriers, that older Europeans experience once attempting to exercise their human rights within the different EU legal systems.

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