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On the States' Obligation to Provide the Elderly a Decent Standard of Living. The Example of Iceland

I. INTRODUCTION

The population of the world is getting older. The elderly are an ever-increasing proportion of the so-called Western world age pyramid, and the pace of this change is increasing. This is certainly positive when we consider that this means that the citizens in this part of the world have a high standard of living and the services provided, such as social and health services, are of the highest standard. However this can also have considerable future implications for many nations, especially in connection with increased expenditure which in the end affects the individuals because of reduced services/assistance or cutbacks.

The United Nations has been aware of this «quiet revolution». ¹ Although it has not adopted a specific covenant dealing expressly with the rights of the elderly, it has taken certain measures in order to address the legal status of this group. In 1982 the World Assembly on Ageing adopted the Vienna International Plan of Action on Ageing; in 1991 the General Assembly adopted the United Nations Principles for Older Persons; and in 1992 the General Assembly adopted eight global targets on ageing for the year 2001 and a brief guide for setting national targets as well as the Proclamation on Ageing. ² Despite this, it can be claimed that national governments have not been prepared for this change and do not know how to react to it. Further questions arise in connection with the economic turmoil that has seriously impacted the World in the recent year, and which has led to substantial cuts in the national budgets.

In this context the most relevant question is whether governments can cut the budget for services for the elderly at its own will completely, or whether they are in any way restricted to do this. Several international agreements regard

¹ Cfr. Art. 2 in General Comment No. 6, 1995: The economic, social and cultural rights of older persons, E/C.12/1995/16/Rev.

² Cfr. Implementation of the International Plan of Action on Ageing and related activities, A/RES/46/91.

economic, social and cultural rights. Countries who have ratified them are bound by international law to provide the rights established by these agreements.

The purpose of this article is to take a brief look at the most significant international rules on the issue regarding the social rights of the elderly and problems relating to this issue. Iceland will be viewed as an example of the implementation of the international rules that apply to these rights and their effect on Icelandic legislation.

2. DEFINING THE ELDERLY

According to the UN the terms «older persons» or «the elderly» apply to persons aged 60 and above, while the European Union applies these terms to persons aged 65 or above, since that age is the most common age of retirement, although the current trend is toward a later retirement. According to this the states have the discretion to decide this in their own national legislation.³

When a person reaches the specified age he/she becomes entitled to certain rights according to law, such as pension and specific services. The elderly are however not a uniform group. A person that qualifies as an elderly individual can be healthy and still active on the job market. This can also be a person that is beginning to lose health, or even a person who has been ill for a longer period of time and has received disability pension accordingly. The same applies to the social situation of these individuals. Some of them have a high standard of living while other live in relative poverty. Certain individuals choose to stay at home while other live in nursing facilities or retirement homes. According to this, most people do not need aid as soon as they classify as elderly, but it is however very likely that most of them will require some type of aid later in life.⁴

The aid in question can be in many forms. This can include certain types of services, such as care facilities and financial aid.⁵ In return the elderly might have to meet obligations such as participating in payment of costs. According to the abovementioned it can be problematic to discuss the elderly as a single group. That does not however change the fact that as soon as the individual turns to certain age which defines him/or her as an old person/elderly according to national law, this person belongs to this group and according to the law acquires subsequently certain rights, while at the same time the state becomes obligated to provide or ensure these.

³ The Icelandic law defines elderly persons as individuals that have reached 67 years of age.

⁴ Cfr. Arts. 16 and 17 of General Comment No. 6, 1995: The economic, social and cultural rights of older people, E/1996/22.

⁵ According to Professor Ketscher, the term «maintenance» comprises both means and care services. According to this it could be stated that the aid in question regards maintenance. Cfr. Kristen Ketscher: *Principper, Rettigheder, Værdier* [*Principles, Rights, Values*], Forlaget Thomson, Copenhagen, 2008, p. 79 and onwards.

3. OBLIGATIONS OF THE STATE

3.1 The elderly's rights as human rights

Human rights are recognized for every human being without discrimination. It is clear that the elderly enjoy human rights. According to that they enjoy civil rights as the right to life, the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, and the right to respect to his privacy, family, home or correspondence in the Convention for the Protection of Human Rights and Fundamental Freedoms (Articles 2, 3, 5 and 8) and in the International Covenant on Civil and Political Rights (Articles 6, 7, 9 and 17). The elderly are also protected/secured by the social rights in the European Social Charter and the International Covenant on Economic, Social and Cultural Rights.

3.2 International agreements

The Convention on The UN Declaration of Human Rights of 1948, which provided the foundation for international treaties on human rights, both within the UN and in European co-operation, specifies the main economical, social, and cultural rights, and declares that active protection of these rights shall be sought with binding international agreements. Included in these rights are the right to social security (Art. 22) and the right to a adequate standard of living, e.g. food, clothing, housing, medical treatment and necessary social services (Art. 25). Two of the main international agreements on social, economical and cultural rights, wherein the rights of the UDHR are the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 and the European Social Charter (ESC) of 1961 which was revised in 1996.⁶ Included in the rights guaranteed by the ICESCR are some particularly relevant for older people, like the right to social security (Art. 9), the right to a adequate standard of living, including housing (Art. 11), and the right to enjoy physical and mental health (Art. 12). The same rights are more or less secured in the ESC, such as the right to protection of health (Art. 11), the right to social security (Art. 12), and the right to social and medical assistance (Art. 13).

In addition to the abovementioned agreements other agreements address these issues to some degree, whereas in these agreements all rights are protected for specific social groups. This is quite clear in The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) adopted in 1965, which in Article 5, para. e specifies that all the basic economical, social, and cultural rights should be awarded to all without distinction as to race, color or ethnic origin; and also in the Convention on the Elimination of All Forms of

⁶ The 1996 Revised ESC is gradually replacing the original 1961 Charter.

Discrimination against Women (CEDAW), adopted in 1979, which has as its objective to secure for women the same rights as for men, with special emphasis on economic and social rights, e.g. by eliminating discrimination in the workplace. In addition, some of the Conventions of the International Labor Organization (ILO), which Iceland is party to, play an important role in this field. First among these is Convention No. 102 from 1953 on minimum standards of social security, which is specifically referred to in Art. 12, para. 2, of the ESC. The Convention specifies the main fields where the party states are obligated to provide their citizens with minimum rights, such as medical aid, benefits for sickness, unemployment, old age, employment injury, family, and invalidity. It should also be mentioned that Part V of the Convention specifically deals with old-age benefits and the obligation to provide these benefits to all that are covered. Article 67 of the Convention specifies the rules that this minimum must meet and states that the benefits cannot be reduced except due to substantial amounts. In addition, the Charter on Fundamental Rights of the European Union prohibits discrimination on the grounds of age (Article 21) as well as it «recognizes and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life» (Article 25).

3.2.1 The International Covenant on Economic, Social and Cultural Rights

As mentioned above, Arts. 9, 11 and 12 of the ICESCR acknowledge the right of each individual to social security, an adequate standard of living, including the right to adequate food, clothing, housing, and to continuous improvement of living conditions, and the right to enjoy the highest attainable standard of physical and mental health.

It is right to keep in mind that the Committee on Economic, Social and Cultural Rights, one of its roles being the elucidation of the articles of the ICESCR, has defined the minimum requirements that the party states are subject to in its General Comments.⁷ According to the Committee, the party states have in effect a threefold obligation when implementing individual rights, that is to *respect, protect and fulfill* these rights. This last one entails the obligation to *facilitate and provide* these rights,⁸ which means that in order to fulfill their obligations according to the

⁷ Cfr. Art. 8 of General Comment No. 12, 1999: The right to adequate food, Art. 11 of the ICESCR, Art. 57 of General Comment No. 13, 1999: The right to education, Art. 13 of the ICESCR and Arts. 43-44 of General Comment No. 14, 2000: The right to the highest attainable standard of health, Art. 12 of the ICESCR, HRI/GEN/1/Rev. 8 of 8 May 2006.

⁸ Cfr. chapter III *The Outline for Drafting General Comments on Specific Rights of the International Covenant on Economic, Social and Cultural Rights*, E/2000/22, Annex IX; Cfr. also International Commission of Jurists: *Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative experiences of Justiciability*, ICJ, Geneva, 2008, pp. 42-52 (available online at www.humanrights.ch/home/upload/pdf/080819_justiziabilit_esc.pdf); Asbjørn Eide: «The Right to an Adequate Standard of Living Including the Right to Food», in Asbjørn Eide, Catarina

Covenant the states parties must guarantee that they meet the minimum requirements in each case. The Committee has, however, rejected that the states parties can define this at their own discretion. Here I am referring to the Limburg Principles, which address the obligations of the states parties and by which the Committee operates under.⁹ Failure to meet these obligations constitutes a *prima facie* violation of the Covenant.¹⁰ According to the Limburg Principles, which deals with violations of economical, social, and cultural rights, and by which the Committee operates, the burden to demonstrate that the Covenant is not being violated is always on the state party.¹¹ The state is always responsible for these violations, even when the service in question has been privatized.¹²

It should be noted that the ICESCR does not specify the groups that are generally considered as needing special protection. The Covenant only mentions women and children but does not mention the elderly and disabled. However, this should not be construed as these groups being unprotected by the Covenant since it does not make any distinction between individuals, Cfr. the reference in the introduction that everyone is entitled to the protection the rights covered by the Covenant as well as the wording of certain provision regarding right of each and every individual. Furthermore, it is clear that these groups fall under the non-discrimination provision in Article 2, paragraph 2.¹³ It should be added that the

Krause and Allan Rosas (eds.): *Economic Social and Cultural Rights –A Textbook*, Kluwer Law International, The Hague, 2001, p. 142; and Magdalena M. Sepúlveda: *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights*, Intersentia, Antwerp, 2003, pp. 196-201.

⁹ *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* were drafted and approved in a meeting of the International Commission of Jurists, the Faculty of Law of the University of Limburg, and the Urban Morgan Institute for Human Rights, celebrated in Maastricht in June 1986, where the topic was the nature of the obligations of the States parties in accordance with the ICESCR, E/CN.4/1987/17. Cfr. also Chisanga Puta-Chekwe and Nora Flood: «From Division to Integration», in Isfahan Merali and Valerie Oosterveld (ed.): *Giving Meaning to Economic Social and Cultural Rights*, University of Pennsylvania Press, Philadelphia, Pa., 2001, p. 48.

¹⁰ Cfr. Art. 10 of General Comment No. 3, 1990: The nature of States parties obligations, HRI/GEN/1/Rev.8, 8 May 2006.

¹¹ Cfr. Art 6 of *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*. The Guidelines were drafted and approved in a meeting of the International Commission of Jurists, the Faculty of Law of the University of Limburg, and the Urban Morgan Institute for Human Rights, in Maastricht in June 1997, where the topic was violations of the ICESCR. *Human Rights Quarterly* No. 20/3 (1998), pp. 691-701.

¹² Cfr. Art. 35 of General Comment No. 14, 2000: Cfr. also Concluding Observation regarding the Philippines, E/1996/22, Art. 120, concerning the privatization of health services and Concluding Observation regarding Australia, E/2001/22, Art. 395, concerning employees in privately operated prisons.

¹³ Cfr. Kristín Benediktsdóttir: «Mannréttindasamningar Sameinuðu Þjóðanna. Meginreglur, framkvæmd og áhrif á íslenskan rétt [The United Nations Human Rights Conventions. Principles, Implementation and effect on Icelandic Legislation]», in Björg Thorarensen (ed.): *Alþjóðasamningur efnahagsleg, félagsleg og menningarleg réttindi*, Bókaútgáfan Codex and Mannréttindastofnun Háskóla Íslands, Reykjavík, 2009, p. 136 and Arts. 28 and 29 in General

Committee has specifically addressed persons with disabilities in its General Comment No. 5 and the economical, social, and cultural rights of older persons according the Covenant in its General Comment No. 6.¹⁴ As stated in General Comment No. 6, it is clear that the Covenant applies fully to older persons.¹⁵

In General, Comment No. 6 the Committee refers to the above-mentioned instruments –i.e. the Vienna International Plan of Action on Ageing, Global Target and the United Nations Principles for Older Persons– in its discussion of criteria. It also states that in «times of recession and of restructuring of the economy, older persons are particularly at risk». The Committee stresses that «even in times of severe resource constraints, states parties have the duty to protect the vulnerable members of society». The states parties are expected to use the same methods to fulfill the obligations they have assumed under the Covenant in respect of older persons.¹⁶

3.2.2 The European Social Charter

As mentioned earlier the ESC acknowledges the right to protection of health (Art. 11), the right to social security (Art. 12), and the right to social and medical assistance (Art. 13). In addition to that, Article 23 of the Revised ESC, which is the same as Article 4 of the Additional Protocol to the ESC of 1988, covers the right of older persons to social protection. According to this provision, the elderly are to be enabled to remain full members of society for as long as possible by providing them with adequate resources and information about all available services. They are also to be enabled to choose their life-style freely and live independently for as long as they wish and are able, by means of the health care and the services necessitated by their state. This includes providing adequate housing and services. And lastly the elderly are guaranteed support for living in institutions, while respecting their privacy, and participating in decisions concerning living conditions in the institution.

The European Committee of Social Rights (ECSR), which interprets the provision of the ESC has stated that Article 23, in the context of a right to adequate health care in respect of the elderly, calls for the setting-up of health care programmes and services (in particular nursing and domiciliary care)

Comment No. 20, 2009: Non-Discrimination in Economic, Social and Cultural Rights, E/C.12/GC/20.

¹⁴ Cfr. General Comment No 5: Persons with disabilities, 1994, E/C.12/1994/13 and General Comment No. 6: The economic, social and cultural rights of older people, 1995, E/1996/22.

¹⁵ Cfr. Art 10 of General Comment No. 6: The economic, social and cultural rights of older people, 1995, E/1996/22.

¹⁶ Cfr. Arts. 17-18 of General Comment No. 6: The economic, social and cultural rights of older people, 1995, E/1996/22.

specifically aimed at the elderly, as well as mental health programmes for any psychological problems and adequate palliative care services.¹⁷

4. THE LEGAL STATUS OF THE ELDERLY IN ICELAND

4.1 Introduction

As in other countries of the western world, the population of Iceland is getting older. It could thus be claimed that this change in the nation's age structure has already had serious implications for the government as well as the Parliament (*Althingi*), which is the legislative as well as budgetary authority. Further questions arise in connection with the economic turmoil that has seriously impacted Iceland in the recent years, and which has led to substantial cuts in the national budget. In this context the most relevant question, as mentioned earlier, is whether the Icelandic government can cut the budget for services for the elderly at its own will or whether it is in any way restricted to do this.

Iceland has ratified international agreements on economic, social and cultural rights.¹⁸ The Icelandic government is thus bound by international law to provide the rights established by these agreements. There is furthermore a recent addition to the Constitution of Iceland that guarantees the elderly the right to aid. The purpose of this article is to ensure that elderly receive the assistance they need at all times, independent of their economic situation or that of the state. It is however difficult to assert whether this goals are met or not, despite the noble intentions of the government, in the form of legislation, especially when the country is going through an economic crisis. In short, the question is what minimum rights the elderly have, in accordance with law, to aid and services from the government, in order to have a decent standard of living. This subsequently raises the question of what remedies are available to those individuals that find their rights violated, such as when they do not receive adequate care.

As for these questions, the Parliamentary *Ombudsman* in Iceland sent in June 2008 a very interesting letter to the Ministers of Social Affairs and Health, following a number of complaints that he had received in the previous three years, where he stated his concerns regarding the legal status of the elderly in Iceland.¹⁹ His concern was mainly that this legal status was not sufficiently clear in the current acts and regulations concerning the elderly.

¹⁷ Conclusions 2003, France, p. 189.

¹⁸ The ICESCR was signed by Iceland in 1968 and ratified on 22 August 1979. The ESC was ratified by Iceland in 1976. Iceland is not party to the Additional Protocol of 1988, which extends the rights to the elderly. Iceland has signed the Revised ESC but has not ratified it. ILO Convention No. 102 was ratified by Iceland in 1961.

¹⁹ The letter states that in light of a proposed major revision of legislature, including acts on the affairs of the elderly, he has decided to notify the abovementioned authorities about the subject of his investigation and his subsequent decision of not taking action until the result of this revision is available.

It's worth mentioning here that in his letter from June 2008 the *Ombudsman* stated that the reason for his initiative were complaints regarding issues of the legal status of the elderly and the administration of their affairs. More specifically, this relates to the relevant authorities' decision to suspend pensions and instead pay a smaller personal allowance or spending money in accordance with the Social Security Act, the participation of the residents of institutions in paying the cost of residence in accordance with the same Act, the living conditions of elderly in these institutions and the authorities' supervision of these affairs, and family members' payment for additional services in nursing homes.

The remainder of this article will to a large extent address the issues raised in this letter. It should be pointed out that the role of the *Ombudsman* is to supervise the administration of the state and municipal governments and to secure the citizens' rights against the national authorities, Cfr. Act on the *Althing Ombudsman*. The mandate of the *Ombudsman* is for the supervision of state authorities as well as the operation of private parties when these parties have been given authorization by law to make decisions regarding rights and obligations in accordance with acts on the administration. The *Ombudsman* is in particular intended to supervise whether the principles of equality are observed by the administration and that it operates in accordance with acts on administration and good principles of administration.

4.2 The Constitution of the Republic of Iceland

Article 76 of the Icelandic constitution addresses the basic rights that fall under economical, social, and cultural rights. This article was added in 1995 to the Constitution, which originally dates from 1944. The first paragraph of Art. 76 states that every individual that so requires shall be provided with the lawful right to aid, due to sickness and old age. In the commentary to the bill for amendment of the constitution it is stated that the article assumes that a regulatory framework for social aid of this kind will be passed as laws, and that the Article enshrines the understanding that there must be legislation that guarantees this aid. It furthermore states that both ESC and ICESCR provide the same kind of rules that are suggested in the commentary. Special attention is drawn to Articles 12 and 13 of the ESC and Articles 11 and 12 of the ICESCR. When amending Art. 76 of the Constitution in 1995 the legislature was looking very closely at these international agreements of which Iceland was a party to. It is furthermore clear that Art. 76 applies to those individuals that have reached the age of 67.

It is worth noting in this context a ruling by the Supreme Court of Iceland from 19 December 2000, resolving the case of *the Organization of Disabled in Iceland v. the Icelandic state*, which states that the Constitution of Iceland and Icelandic law should be interpreted in accordance with the international agreements that Iceland is party to, which is in accordance with the generally accepted rule in Nordic law where national law is interpreted in accordance with

international agreements that the state has ratified. The ruling refers i.a. to both ICESCR and ESC, and to Art. 67 of ILO Convention No. 102 in its interpretation of Art. 76 of the Constitution as well as the Act on Social Security. The Ruling specifically states that Art. 76, Para. 1, of the Constitution constitutes minimum rights that apply on an individual basis. Even though the legislature has a certain leeway in determining how these minimum rights are defined, the court must take a position as to whether this definition is in agreement with the basic principles of the Constitution. The Supreme Court ruled that these rights, as they were defined in the Act, did not ensure minimum rights in accordance with Art. 76 of the Constitution.

It is clear that basic rights of the elderly towards the government become affected when their economic and social status changes due to age or faltering health. Services for the elderly, both economic and social services, are addressed in a number of acts and regulations, e.g. the Social Security Act, Social Assistance Act, the Act on Health Insurance, the Act on the Affairs of the Elderly, the Municipalities' Social Services Act, the Patients' Rights Act and the Health Services Act. A great number of regulations have been adopted on the basis of these Acts.

However, even though Art. 76, para. 1, is based on the idea that the right that each individual is being guaranteed only applies to those that cannot provide entirely for themselves, the legislature can nevertheless decide to provide a wider definition of the right to service, if it chooses to do so.²⁰ On the other hand, when the legislature implements these rights, the principle of equality might be tested for rights that are derived from Art. 65 of the Constitution and subsequent administrative rules.

4.3 The Icelandic legal system

The rules that have the biggest impact on the economic and social situation of the elderly are those concerning the amount of pensions and other compensatory payments, access to the service in question, such as housing, and participation in payment of costs, or more specifically costs for nursing facilities or retirement homes. These rules are in most respects quite complicated, in addition to raising questions regarding whether they fulfill the obligations of the government to guarantee minimum services, in accordance with the Constitution and international agreements. Further questions arise regarding the legal status of this group when private bodies are called to provide the services in question.

According to the Icelandic legal system there is a difference whether the legal acts and daily activities of the citizens are subject to private or administrative law. The first category contains the subject matters that individuals, associations and companies settle on the basis of their freedom to action and business provided by the general legal framework. It is a characteristic of these matters that

²⁰ Cfr. comments to the bill for amendment of the Constitution. *Alþingistiðindi 1994, A-deild*, p. 134.

the individual parties decide themselves whether they enter into transactions or purchase services, with whom they enter into agreements, and for what price. The private market is essentially based on the premise that competition and regulatory surveillance creates equality and normal business practices.

As for the second category it is clear that the laws passed by the legislature encompass both the exercising powers as well as factual rules, which the government, both national and municipal, must adhere to in its actions. The general public does not generally have the freedom to negotiate how their affairs are brought to conclusion by the government. The administration has a unilateral authority and must act within the law. Subsequently, in Iceland and other countries that have a similar legal system, there have formed special procedural rules for the administration and its decisions, i.e. Administrative Act, who have the purpose of increasing the legal security of the citizens in their dealings with the government. These laws have however a more narrow scope than the non-codified, general principles on which they are based.

4.4 Private or public bodies

A number of questions can be posed as to whether the issues of the elderly are to be handled by the government or by private parties. The government's operations are financed with taxes, duties and other levies, and a significant part of its tasks consists in the distribution of these funds among several activities, which it undertakes for the benefit of the citizens on one hand, and with the aid and other payments to individuals, private parties, and to other public bodies. The Parliament's power as a legislative and budgetary authority that distributes public funds is defined by the Constitution. The inherent nature of budgetary resources can entail limitations to the rules that apply to the provisions of the services. Even though the provision of the laws include evaluative rules it is not possible to let them be subject to the budgetary measures available at any given time. This however raises the question of whether legislation can prescribe a minimum level of service without any consideration to funds available.

The ownership and legal form of retirement homes and nursing homes available for the elderly in Iceland is quite varied. A substantial number of these facilities are operated as private non-profit institutions, which have been established by non-governmental organizations, and in some cases partly or wholly by municipal governments. Some of these homes are operated by private companies and there are also examples of the state owning and operating these facilities, in which case they are part of hospitals. Despite the different forms of ownership and, subsequently, operational responsibility of these facilities they are almost all included in the state budget under Ministry of Health and Ministry of Social Affairs and Social Security.

A common factor for these facilities, despite the various forms of ownership and operation, is that the cost of operation is mostly paid for with public funds.

These payments are in the form of day payments and remunerations according to the Act on the Affairs of the Elderly. This participation by the state in paying subsistence and nursing expenses can have the effect that pension payments to the person in question are cancelled, and even, if this person's income is above a certain limit, can result in the individual being made to pay his cost of care, to a certain amount. The payments in question are made by both the state and the individual without the individual having any legal right to take part in deciding the care that is provided by the facility, and for which these payments are intended.

The implementation or execution of the services by the retirement and nursing facilities is in most regards decided by the administrators of these facilities within the framework of the existing legal provisions, which are of a very general nature. The same applies to the access to these same services. This raises questions about the same issues that are the foundation for the basic principles that have developed for operation of the administration. These are questions such as equal access to these services and its extent, and whether private bodies running care facilities have any obligations to follow principles of proportionality towards its clients and whether they should base their decisions on objective considerations. This leads to the question of whether an individual that is dissatisfied with the decisions of the administrators of private facilities can address his complaints about decisions regarding the services that are offered, and which are paid for by the state or the elderly individual, as stipulated by acts on participation in costs.

It is quite clear that if a care facility is operated by the government then the general principles of good administration apply to the decisions and implementation of services for the care recipients, and in particular the provisions of the Administrative Act in those cases where these decisions fall under its field of application. Special issues can arise regarding the status of these principles in the cases of private non-profit institutions which have been established by a municipal government, with or without the participation of others. Private bodies are however not obligated to follow administrative rules unless a decision falls under the principles of law or when it is specifically negotiated, in which case there must be sufficient legal grounds for such agreements.

As for the legislature's obligation to take a position on what services should be made available to the citizens, in accordance with Art. 76 of the Constitution and the international agreements that Iceland is party to, and to what extent these services should be provided, it is difficult to see how the government can meet these obligations by deciding the extent of the services contracted with the providers if there are no direct instructions in the law on the minimum level of service.

4.5 Supervision and legal remedies

According to the basic principles of administrative law the government shall supervise the services provided by its subsidiary organs. The Administrative Act

provides rights of complaint regarding acts of administration. These rights are as well often provided in special legislation. If the government is obligated to provide certain aid or services, such as social services, social security, or health care, in the cases where an individual meets the specified conditions, it is by the principles of general administration law a necessary precondition that a competent party or entity makes the decision whether the individual in question meets the abovementioned conditions, and to what extent this service or aid shall be provided. These decisions might fall under the Administrative Act and in such cases certain procedural rules according to that Act must be observed. The main principle is that for these decisions, such as rejection of payment for aid, there must be the possibility for revision by administrative complaint. Even though decisions regarding the daily operations, such as in a nursing facility, a doctor's clinic, or other facility, might be outside the scope of acts on administration it should nevertheless be kept in mind that certain major decisions about the initiation and termination of a service, and any major changes to this service, might be subject to acts on administration.²¹

According to Government Financial Reporting Act the government can negotiate with private bodies for the operation of certain tasks. It should also be kept in mind that agreements that the government enters into with private parties or NGOs for the provision of certain services for the elderly might in some cases be misleading regarding the legal protection that the individuals might already have on the basis of applicable laws, when the decisions are made regarding whether the services should be provided or not. It must be legally unambiguous whether these agreements are made with private parties or another authority, such as a municipal government, for the provision of tasks or services that the government is obligated by law to provide. It is thus necessary for the legislature to set a policy on whether it is permissible to provide private parties with this authority.

It is on the other hand quite clear that it is not possible to surrender the official authority to make administrative decisions to a private party, unless this is specifically mandated by acts of law. The government's authority to supervise the provision of services in private facilities are somewhat vague, but it is clear that direct involvement in the operations of these facilities is not possible unless the authorization is clear and unambiguous. It seems that more often than not there is no provision for putting forward a complaint if the recipients of the services are unsatisfied with the decisions made by the private party, regarding access to the service or its implementation. There is thus a lack of provisions for supervision and complaints. It must also be unambiguous whether the government is only providing NGOs or private parties with aid so that these parties can maintain specific operations on their own, or whether there is an agreement in place for these parties to undertake and provide services that the government is obligated by law to provide.²²

²¹ Cfr. Páll Hreinsson: *Hæfisreglur stjórnarsýsluga [The Rules Against Bias in the Administrative Act]*, Bókaútgáfan Codex, Reykjavík, 2005, p. 163.

²² Cfr. the Ombudsman's letter from 10 June 2008.

5. CONCLUSION

In this article certain issues regarding the legal status of the elderly according to International law in context of Icelandic law has been briefed very shortly. It is quite clear that the rights of the elderly are protected not just by state's legislation, but also by several international instruments.

It is clear that the states parties to these agreements have an obligation to provide a minimum service to the elderly, in order for them to enjoy a decent standard of living. According to the Icelandic Constitution the legislature has the task of bringing into effect legislation required to implement this right. In this context it is important to keep in mind that these rights become highly relevant at the time when an elderly individual loses health. The situation of these individuals might however be very different, both economically and socially. More often than not these individual have difficulties with defending their rights even though they are provided by law. For the same reasons their issues are often handled to some extent by their relatives. It is thus very important that the provisions of the law are clear and unambiguous as regards their rights and the possibilities for comments, involvement or complaints about the services or the payments for them. In light of the obligation that the government has and its involvement in general in these issues it must be preferable that the elderly have some options for addressing these issues with the government, regardless of whether this service is provided by private bodies or by the government itself. The government could then make binding decisions in cases of disagreement, regardless of whether this applies to accommodation, service level, or implementation of service. This arrangements might further ensure that the elderly receive no less than a minimum service and thus have a better possibility of maintaining a decent standard of living, in addition to ensuring that the obligations of the Icelandic government are enforced.