

# International Human Rights of the Elder People from European and South east Asian Perspectives

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## Abstract

The aim of this study is to identify the best available legal solutions to protect the rights of the elderly. It utilizes a documentary method of research. From the analysis of the current literature, it appears that some academic writers argue for a separate international mechanism to protect the rights of the elderly. In this paper, the author maintains that this step is unnecessary and may mislead away from the solutions available within a particular country. Further, on the international level, the rights of the elderly can be effectively protected by the existing mechanism of human rights. What is necessary is not an additional body of rules but a better application of the existing rules to protect the rights of older people considering the specific characteristics of each country. The rejection of a separate mechanism for protecting the rights of the elderly does not mean their denial. A satisfactory protection of those rights can be better achieved by administrative and judicial policies directed to strengthen traditional cultural frameworks such as exists in the South-East Asia.

**Keywords:** Human rights, the rights of elder people, international law, European law, South-East Asian perspective.

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## Introduction:

Thailand as well as other countries experiences the problem of the aging population. “As of 2016, 11% of the Thai population (about 7.5 million people) are 65 years or older, compared to 5% in 1995. By 2040, it is projected that 17 million Thais will be 65 years or older – more than a quarter of the population. Together with China, Thailand has the highest share of elderly people of any developing country in East Asia and Pacific” (World Bank, 2016). The problem of aging is a global one. It is estimated that by 2025, more than 1.2 billion people will be aged sixty or above, and more than seventy percent of them will be in developing countries such as Thailand (Cotter, 2016, Chapter 2). The fundamental question raised in this paper is whether there is a need for greater international cooperation to ensure the observance of human rights of the elderly.

In the recent book: *The International Human Rights Status of Elderly Persons*, Diego Claudia Martin, Diego Rodriguez-Pinzon, and Bethany Brown (Martin, Rodríguez-Pinzón, & Brown, 2015) have presented a comprehensive survey of the state of international law in relation to the rights of the elderly. The authors of the book argue for the special “vulnerable group” approach in enhancing the protection of the elderly rights (Martin, Rodríguez-Pinzón, & Brown, 2015, 81). They insist on adopting a global legal instrument with the specific legal obligations enforceable all around the world in relation to protection of the rights of the elderly: “international human rights conventions do not adequately protect older people, and they remain on the margins of development work around the world. Without an international convention, states do not have a comprehensive guide to articulate enforceable obligation in order to better protect this often-vulnerable group. This not only creates a gap in protection, but also a lack of accountability and, very

importantly, clear focus of the international community on rights of older persons” (Ibid. 122-123). In another paper, the authors also refer to a precedent. There is already an international instrument which is developed for the protection of the rights of children: the *Convention on the Rights of the Child* (Rodriguez-Pinzon, Martin, 2003). This convention focuses on a group that is defined on the basis of age and that is considered to be especially vulnerable. The authors believe that there is a similar rationale for protecting the elderly population.

Thus, Rodriguez-Pinzon, Claudia Martin, and Bethany Brown call not only for crafting a specific instrument, but also for establishing the system of supervision necessary for its enforcement. The writers’ argument is not persuasive, because the rights of the elderly can be effectively protected by the existing mechanism of human rights. What is necessary is not an additional body of rules but a more efficient mechanism to apply the existing rules to protect the rights of older people. The contemporary law and its efficiency suffer from the existence of too many bodies and instruments and from their often inadequate performance, particularly in the developing countries. This paper does not attempt to defend a minimal state’s point of view (Nozick, 1974), which views the proliferating legislation as a malignant tumor generating the web of rules and bureaucrats. Rather, it is based on the realistic analysis of the state of legal enforcement in countries like Thailand. The cautions have been already given in relation to increasing governmental regulation that in many cases poorly reflect the existing cultural and social realities (Klausner, 1993). The argument against increased regulation does not deny the rights of the elderly per se. On the contrary, a satisfactory protection of those rights can be better achieved by using different legal frameworks.

Human rights present a complex legal system. At the moment there is not a single instrument which specifically deals with the rights of elderly persons. Moreover, there is not a single international system of protecting human rights. Several international systems recognize and protect human rights: the United Nations system, the European system, the Inter-American system, and the African system. There is not, however, the Far Eastern system of protection of human rights put in place. Therefore, the UN system of protection is the only one directly applicable to the rights of the old people in Thailand.

This paper presents a documentary qualitative research in analyzing the existing international law agreements, legal cases, and academic literature to find out the state of protection of the rights of elder people as well as a discussion of the available alternatives to improve the overall protection of the older population in the South-East Asian context, particularly in Thailand.

## The UN System of Protection

The UN binding agreements do not address protection of the elderly specifically, although there are some treaties that can be applied to protect the rights of the elderly. Those treaties do not contain the word “elderly person”. It does not mean, however, that the rights of the elderly people are not mentioned at all in international documents. The 1948 *Universal Declaration of Human Rights* (UDHR) does refer to elderly people’s rights. Article 25(1) states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his

control.” The UDHR, however, does not have a binding power on the states (Morley, Turner, and Taylor, eds., 2017, 290).

There are other UN non-binding documents that address the problem of aging. The *International Plan of Action on Aging* (“Vienna Plan”) was adopted in 1982 by 124 countries, including Thailand (UN, 1982). The International Labour Organization (“ILO”) issued non-binding international standards for preventing the discrimination of older workers in employment, social security, and retirement (ILO, 1980). Recommendations to protect elderly health were also issued by the World Health Organization (WHO, 2011). All these standards and recommendations, however, lack a binding legal power on the national states. Perhaps, the most significant binding agreement within the UN legal system is *International Covenant on Economic, Social, and Cultural Rights*.

The *International Covenant on Economic, Social and Cultural Rights* (“ICESCR”) was adopted by UN General Assembly in 1966. Thailand and most countries in the Far-East region have ratified the covenant except Singapore and Malaysia.<sup>2</sup> All rights listed in the Covenant have direct relationship to elderly people. However, the word elderly or old person is never mentioned in the text itself. For example, Article 3: Equal Rights of Men and Women, states: “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.” This article can be interpreted to affirm the rights of the elderly women “who, having stayed at home to raise a family, have made no contributions to a social security

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<sup>2</sup> See the list of ratifications at: <http://www.unhchr.ch/pdf/report.pdf>

plan, and therefore do not have any source of income in their elder years.” (Rodriguez-Pinzon, Martin, 2003, 955).

Articles 6 through 8 cover rights relating to work. These have been generally interpreted not only in terms of freedom to choose employment, but also as the right to earn a livelihood in decent work conditions (Ibid. 956). It is doubtful, however, whether an old person, particularly when reaching the retirement age, can claim these rights. On the contrary, Article 9, by affirming the right to social security, directly relates to elderly persons. Article 11 affirms the right to an adequate standard of living. Article 12 contains the right to physical and mental health. All those rights can be used to protect old people. Article 10 protects the family. It is surprising to see that in describing the protection of family, this article does not mention the care for old people, while it emphasizes the care for children. This unbalanced view of family relationships is particularly alien to the Far East whose culture has traditionally emphasized the duty of children towards parents. An academic attention to this duty is also lacking in the works of Diego Claudia Martin, Diego Rodriguez-Pinzon, and Bethany Brown referred above.

The ICESCR is not the only binding agreement within the UN system which can be used to protect the rights of the elderly. Another important agreement is the *International Covenant on Civil and Political Rights* (“ICCPR”). This covenant was also adopted in 1966. Thailand, as well as the other countries of the Far East except Myanmar, Singapore and Malaysia, ratified the covenant. There is a big difference in international law between civil and political rights on the one hand, and social, economic and cultural rights on the other. From the time of its conception, civil and political rights (“CPR”) required an international mechanism of supervision and enforcement (Roosevelt, 1948). In contrast, the economic, social, and cultural rights (“ESCR”)

were perceived as desirable social policy goals without effective mechanism of enforcement.

According to Article 28 of the ICCPR, a special Human Rights Committee with the supervisory powers has been established. Under the *Optional Protocol to the International Covenant on Civil and Political Rights*, an individual in the countries, which ratified the protocol, can complain to the Committee concerning violations of his or her rights. South-East Asian countries, for the exception of Philippines, are not parties to the Optional Protocol.<sup>3</sup> The Committee resorted to civil and political rights as a means of extending their protection to the elderly, particularly in the field of social security benefits (Martin, Rodríguez-Pinzón, & Brown, 2015, 32-35). For example, it has applied the right to equal protection before the law and the prohibition of discrimination under Article 26 of the ICCPR to afford social security rights.

In the analysis of a number of cases of before the Human Rights Committee, particularly *Brooks v. Netherlands (1987)*, Martin et al. illustrated well that the prohibition against discrimination (ICCPR Article 26) can be potentially used to protect the rights of the elderly (Martin, Rodríguez-Pinzón, & Brown, 2015, 34). It is noteworthy that the age of the petitioner in this case was not revealed, and the ground of complaint was not based on the different treatment of people with an old age, but on the different treatment of sexes. The dispute was about the right of a divorced woman to receive a social benefit on the basis of disability from the state. At that time, the applicable Dutch law ensured disability benefits only to married women who were earning money or separated from their husbands. The petitioner claimed

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<sup>3</sup> See the list of ratifications at: <http://www.unhchr.ch/pdf/report.pdf>

that her right to equality before the law was violated on the ground of sex, because she could receive the benefits if she were a man. The Committee had to consider the issue whether discrimination in relation to social security falls within the scope of civil and political rights. In the end, the Committee held that “Although article 26 requires that legislation should prohibit discrimination, it does not of itself contain any obligation with respect to the matters that may be provided for by legislation. Thus it does not, for example, require any State to enact legislation to provide for social security. However, when such legislation is adopted in the exercise of a State’s sovereign power, then such legislation must comply with article 26 of the Covenant” (*Brooks v. Netherlands*. Para.12.4). In other words, the ICCPR does not require a state to enact laws to provide for social security, but if it chooses to enact them it should provide social security without discrimination.

This case can serve as an example how general political and civil rights can be interpreted to protect the rights of the elderly. Even though the vast majority of the South-East Asian countries have not ratified or even signed the Protocol allowing its citizens to bring a complaint, the rights under this international agreement are recognized in their constitutions, and therefore can be enforced in a similar way to the one adopted in *Brooks v. Netherlands*. The question is whether the South-Asian countries are prepared to adopt a judicial activist position to use abstract principles, such as the prohibition of discrimination, to protect the rights of the elderly.



## The right of the elderly to be treated differently

Judicial activism is an inevitable consequence of the expansion of human rights law. The abstract principle prohibiting discrimination, for example, was used in Europe in the cases affecting the rights of the elderly people when applying the *European Convention on Human Rights*, Article 14. In the case, *Wessels-Bergervoet v. the Netherlands* (2002) before the European Court of Human Rights, petitioner complained that the reduction of her pension was the result of discriminatory treatment. The facts of the case were very complex. An elderly woman was not given a full pension because her husband was working abroad, and that made both him and her wife not illegible for the full pension, even though the wife stayed in her own country. There was a provision in Dutch law which made the social insurance of married women dependent on their husbands being insured. However, the social insurance of men was not dependent on the existence of social insurance of their wives. The European Court found that this was unfair, and decided for the elderly petitioner.

It is very difficult to provide a clear legal guidance in the cases of discrimination against the elderly. In fact, it is possible to argue that the nature of the protection of the elderly does require some sort of discrimination. The basic meaning of the Latin word *discriminatio* does not necessarily involve an unjust or prejudicial treatment of different categories of people or things, especially on the grounds of race, age, or sex. It may involve a favourable treatment of a particular group based on a recognition and understanding of the special needs or rights of that group. The elderly in many cases need a greater assistance of the state to protect their rights, sometimes at the expense of the rights of other age groups. In other words, we may speak of a “positive discrimination”.

This positive discrimination (in the favour of the elderly) can be seen for example in the case of *Spadea & Scalabrino v. Italy* (1995) also decided by the European Court of Human Rights. The applicants demanded their property rights to evict two elderly women who were renting out two apartments belonging to the applicants. The latter claimed the Italian government had violated their right to property by suspending evictions and allowing the elderly women to remain in the property for years after the end of their lease. The elderly women claimed that they had no place to go and were awaiting housing assignment from the government. The Court took into consideration the fact that the tenants were elderly and had low income. Although the European Court denied that there was discrimination in favour of the elderly, it highlights the problem that it is very difficult to create clear rules in relation to the elderly that will take into account the particular circumstances of the case.

The discrimination in the end is a moral concept treating a person differently without a moral justification. The European Court, however, preferred the words *objective and reasonable*, to the word *moral*: “The Court points out in the first place that, according to its case-law, Article 14 (art. 14) will be breached where, without objective and reasonable justification, persons in “relevantly” similar situations are treated differently. For a claim of violation of this Article (art. 14) to succeed, it has therefore to be established, inter alia, that the situation of the alleged victim can be considered similar to that of persons who have been better treated” (*Spadea & Scalabrino v. Italy*, Para. 45). In the words of the European Court of Human Rights, “a difference in treatment is discriminatory if it has no objective and reasonable justification, which means that it does not pursue a “legitimate aim” or that there is no “reasonable proportionality between the means employed and the aim sought to be realized” (*SH And Others v. Austria—57813/00*, 2011).

It is obvious that a different and a more favourable treatment of the elderly in many situations of life pursue a legitimate aim. At the same time, there are many situations when giving younger generations a preference (particularly in the area of employment, educational opportunities, and even health services) will also be reasonable. It is apparent that the discrimination cases in favour or against the elderly cannot be decided without looking carefully at the merits of each case in a particular social, economic, and cultural context. Consequently, it is doubtful whether it would be possible to create an international mechanism which could offer clear rules applicable to the rights of the elderly in all diverse situations.

The problem with the Martin, Rodriguez-Pinzon, and Brown's account of the elderly rights is that they do not clearly identify and analyze the inherent conflict between the duty to treat the elderly differently on the one hand and the idea that there must be no discrimination in the cases of elderly on the other (Martin, Rodriguez-Pinzón & Brown, 2015). It is easy to claim that there must an international mechanism which protects the elderly from discrimination in every part of our diverse world. However, in the real life situations, there may be no clear line between treating differently and discriminating. In fact, an apparent discrimination in the cases of the elderly is not always against their interests but often in their favour. An elder person may think that he is fit and has been discriminated against when he is not given an employment contract for a demanding job while the employer may withhold the contract acting according to his or her sense of care for the elderly. Writing down a general anti-discrimination clause in relation to the elderly may achieve very little without examining the merits of each particular case, and this examining is unlikely suited for international bodies residing far away from the context of a particular case. We must not forget, that human right law, as an international law, was

developed as a response to the atrocities of the Second World War that shocked the conscience of the mankind. In other words, the international mechanism is necessary in the cases in which violation of human rights will be evident to all mankind. The disputes concerning age discrimination do not possess the same degree of wrongfulness.

It is important to emphasize that non-discrimination clauses in international human rights covenants considered above do not mention age as one of the grounds for which illegitimate distinctions are prohibited. In fact, certain provisions expressly allow for distinctions on the basis of age. However, in the most recent developments in the context of the European Union, age is included as one of the grounds on which discrimination is not permitted (Article 13 of the *Treaty establishing the European Community* and Article 21 of the *Charter of Fundamental Rights of the European Union*). The wisdom of this inclusion is questionable. A famous Pinochet case is a good example (Bianchi, 1999, 237-277). Not long before his death, Chilean courts stripped the aged Gen Pinochet (over 90 years old) of his immunity from prosecution several times. Pinochet was accused in many crimes such as involvement in killing political opponents, tax evasion and etc. However, every time judges refused to proceed with the trial considering his frailty and old age. Did Chilean courts “discriminate” in favour of the elderly dictator? The argument here is not that an old person must or must not receive different treatment in e.g. criminal justice process. The point is that the existence of a comprehensive international agreement on the human rights of the elderly as a distinct age group will not be able to answer such questions in a satisfactory way. Those issues must be left to the discretion of the national courts.

It is beyond doubt that the elderly need a special care and protection as well as children. In order to protect their rights one does not need to wait for the governments to agree on the content of an international convention, on subsequent ratification by the legislative bodies and the required incorporation of the convention into domestic law. All those steps take time, money and efforts. Instead, the existing laws give sufficient means for the enforcement officers, including those who supervise the observance of human rights on the international level, to provide a sufficient protection to the rights of the elderly. In fact, *Martin et al.* showed well that, at least on the international level, the existing laws are being used in this way.

It is not surprising that legal instruments concerning social, economic and cultural rights do not have an efficient mechanism of monitoring and enforcing international obligations. Considering the variety and multiplicity of the social, economic and cultural environments it may be a good thing not to have such a mechanism. It is difficult to imagine that social, economic, and cultural rights can be legally *enforceable* rights by means of an international enforcement agency all around the world. Rather, the agreements on social, economic, and cultural rights are *educative* means for the governments to remind them constantly of the ultimate goal and the deepest underlying rational for the existence of every government.

### **European framework: a model for ASEAN?**

The educative potential of international agreements can be well illustrated at the example of the European system of protecting human rights. It is of a particular interest because first, it contains the most developed expression of the economic and social rights of the elderly, and second, the South-East Asian countries often look at the European Union as a model for

their own regional agreements (Jetschke and Murray, 2012, 174-191). The *European Social Charter* is an important agreement among European countries which directly relates to the rights of the elderly. Not all countries, however, have ratified it. Article 23 of the *Revised European Social Charter* covers the right of elderly persons to social protection in the following way:

“With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

to enable elderly persons to remain full members of society for as long as possible, by means of:

a.adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;

b. provision of information about services and facilities available for elderly persons and their opportunities to make use of them;

to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:

c. provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

d. the health care and the services necessitated by their state;

to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

The provision of medical services is specified in Article 13 of the Social Charter on the right to social and medical assistance is also important even though it does not cover the rights of the elderly specifically:

“With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;

3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;

4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.”

These provisions express the idea of a welfare state. Even though the Charter allows people to submit collective complaints, it represents a statement of desirable goals and policies, rather than setting up an enforcement mechanism. The right to complain is optional for the states and only few states in Europe adopted a special protocol covering the complaint procedure. The wellbeing of old people is the goal achieved by the various policies in providing resources, information, housing, and medical care. The same approach to the rights of the elderly has also been adopted in Article 25 of the *Charter of Fundamental Rights of the European Union*. It states: “The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.”

The elderly rights in this important document are identified as economic, social and cultural rights which have a less stringent mechanism of protection compared to the political and civil rights, and often appear as social aims or goals.

To accomplish those goals, a country must have not only a sufficient material strength and prosperity, but also a significant infrastructure. It is obvious that many countries of the South-East Asia world not able to pursue a similar policy. Any attempt to set up an international mechanism to monitor the compliance of the states with the welfare demands of the increasing population of elder people is unrealistic, as it would be also unrealistic to expect that the developed countries should financially assist the poorer countries in their moral and legal duty to look after the elder people.

South-East Asian countries lack, however, an overarching system of protecting human rights which can be used to protect human rights of the elderly in a similar way as it has been accomplished under the *European Convention of Human Rights* (1950). The strength of this convention is that it puts in place a complex and efficient mechanism of protection, particularly through the powers of the European Court of Human Rights. In a number of cases, the Court decided to protect the rights of the elderly. In the *Deumeland case* (*Deumeland v. Germany*, 100 Eur. Ct. H.R. (ser. B) (1986)), there was a dispute about the right of a widow to receive supplementary pension in Germany, on the grounds that an industrial accident caused her husband's death. The dispute lasted 11 years during which the widow died. Her son brought the petition to the European Court of Human Rights claiming the unfairness of German court's proceedings in taking unreasonable time to decide the case. The Court found a violation of the right to a hearing within a reasonable time. Even though the Court noted that social



security cases required “particular diligence,” the same decision can and is reached in other cases of the long proceedings where the petitioner is not an elder person.

The same conclusion applies to other cases of the elderly. The European Court of Human Rights, for example, used the right to life (Article 2) to adjudicate a number of cases involving elderly people (*Dodov v. Bulgaria*, 2008; *Watts v. the United Kingdom*, 2010). The right to life is interpreted as empowering both international and national human rights protection bodies to protect actively the rights of the elderly, because their life is particularly vulnerable. This category of people lives in the constant expectation of death. The realization of the fragile nature of their lives makes the elderly people more sensitive to the perception of the right to life. This perception demands respect and acknowledgement of the human rights enforcement bodies. The importance of the doctrine of particular vulnerability is acknowledged in Europe, perhaps, as nowhere else in the world (Martin, Rodríguez-Pinzón & Brown, 187). To properly assess the degree of vulnerability, it is not sufficient to look at the age alone. There are other factors consider.

From the European experience, one can learn that there must be a flexible approach to protect the rights of the elderly. The European Court of Human Rights has to take a balanced approach in defining the special needs of the elderly on the one hand and the sensitivity to the particular needs of the various diverse states of the region. The ASEAN countries possess even a greater diversity of social, economic, and cultural conditions. In other words, what is needed is not so much an international organ that prescribes the rules to protect the elderly, but the able judiciary which can utilize the existing law in defending the rights of any person who stands in a special need.

### **Protecting the rights of the Elderly in Thai context:**

Rodriguez-Pinzon and Martin acknowledged that “developed and developing countries address the issues of the aging population in different ways. In developed countries, a social security apparatus bears the strain of caring for the elderly. In developing countries, on the other hand, families traditionally care for the elderly. In these developing countries, the lack of a social security apparatus and the weakening of the family unit present obstacles to the provision of care for elderly family members” (Rodriguez-Pinzon, Martin, 2003, 916).

This conclusion applies well to Thailand which lacks an efficient governmental mechanism of social welfare for the elderly even though there are significant efforts to address the issue (Supromin, & Choonhakhlai, 2017). From a number of academic writings (Punpuing, Phantachat & Katekum, 2017, 30; Phijaisanit, 2016), one can conclude that Thailand is moving towards creating a complex bureaucratic system which is supposed to undertake a range of measures to promote the wellbeing of the elderly people (Thai Government. *The Act on Older Persons*. B.E. 2546 (2003)).

When examining the normative expression of the human rights of the elderly in Thailand, one can conclude that it is not different from the European legislation. New Thai Constitution (2017) addresses the rights of the elderly in Section 27 (3) (4):

“Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or political view that does not violate the provisions of this constitution, or any other ground shall be prohibited.

Measures determined by the State for the purpose of eliminating an obstacle or promoting ability of a person to exercise his or her rights or liberties as other persons, or for the purpose of protecting or facilitating children, women, elderly persons, persons with disabilities, or disadvantaged persons shall not be deemed as unjust discrimination under Paragraph Three.”

**Another important provision is contained in Section 71 (3):**

“The State shall provide assistance to children, youth, women, the elderly, persons with disabilities, the impoverished and the underprivileged to enable them to live in good quality conditions, and shall protect them from violence or unfair treatment, as well as providing the injured therefrom with treatment, rehabilitation, and remedy.”

Thai Constitution does not emphasize traditional mechanisms of protecting the elderly. It does not perceive family as a social institution which must remain the main form of the protection of the elderly, although Section 71 calls on the state in very general forms to “empower the family institution which is an essentially fundamental element of the society.” Section 32 of the Constitution guarantees the rights of family in a negative sense as preventing the state from unjustifiable interference. This section does not affirm the positive duty of the state to protect the traditional family structures. Section 38 implies that family is a useful institution in terms of controlling the residence of Thai people through registration. Section 54 (4) emphasizes the importance of education to make people responsible for family, but there are no constitutional provisions which call on the state to implement specific programs addressed to strengthen the traditional family bonds.

It is apparent that the traditional Thai family structures are being significantly weakened. Since Thailand became influenced by the Western concepts of family and law, there has been a policy to promote family as a stable monogamous and heterosexual union (Loos, 2006, 154). Whether this policy can be considered to be successful or not in a longer term, can be a subject of a sociological research. It is, however, evident that despite the increasing rate of divorce and changes in family structures (Jones, 2010, 23), “intergenerational exchanges of support and services remain pervasive in Thai society. Thai people report that family relationships are the most important aspect of their well-being, regardless of age, gender, area of residence, and religion. Being respectful to one’s parents and attentive to one’s children is considered a norm in Thai society that should be followed” (Gray et al., 2013, 708).

The main problem, however, is not that there is not an appropriate legislation to protect families. There must be political will to undertake specific political measures to protect the family values across the Thai society which can be achieved only through a significant change in educational and media communication policies. The Thai courts can also take part in it, by applying law in cases of the elderly in a balanced way to protect the rights of the latter, but what is more important, to communicate to the public, by means of judicial decisions, the importance of the duty to take care of the vulnerable people.

## Conclusion

This brief analysis of international law in relation to the protection of the elder people illustrates the fact that the existing rules on protection of human rights are sufficient to protect the rights of the elderly, and that there

is no need to develop a special mechanism devised specifically for elderly people on international level. The existing case law shows that international adjudicatory bodies have creatively used civil and political rights to afford protection to the rights of elderly person, particularly in Europe. In the context of civil and political rights, there is a tendency in the existing UN and European case law to require states to afford more protections to older persons, given their status as a vulnerable group.

The comparison of the European and South East Asian perspectives on the rights of the elderly can be presented in a following table.

#### REGIONAL MECHANISMS OF PROTECTING THE RIGHTS OF THE ELDERLY IN EUROPE AND SOUTH-EAST ASIA

	The European Perspective	The South-East Asian Perspective
1. The acceptance of international agreements by the most countries of the regions	Yes	Yes
2. The existence of a special mechanism on a regional level devised for the protection of the elderly people	No	No
3. The existence of a special mechanism on a regional level devised for the protection of human rights available for all age groups	Yes	No
4. The possibility for the elderly people to file a case to an international organization if their rights are violated	Yes	No

	The European Perspective	The South-East Asian Perspective
5. The situations when the elderly people succeeded in bringing up their complaints to an international human rights protection organization	Yes	No
6. The existence of the highly developed social welfare system to care for the elderly in the most countries of the regions	Yes	No
7. The existence of traditional mechanisms, such as family and religion, that can be used to care for the elderly in the most countries of the regions	No	Yes

In this context, one may conclude that it is not necessary to have an additional international mechanism for protecting the rights of the elderly, although it will help to have a South-East Asian court of human rights which can protect all age groups in the same way the European court does. A separate mechanism devised specifically for the elderly people may certainly bring more legal regulation, but it is doubtful that it will bring a better protection. Instead of creating an additional international mechanism, what is more urgent is protecting family which in the South-East Asian countries, such as Thailand, was traditionally the main social and cultural institution to safeguard the rights of both children and the elderly. The way how to achieve that will hopefully become one of the central points of academic discussions on the better ways of insuring human rights of the elderly in Thailand.

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