

## EU contribution to questions on Access to Justice

Information on the situation at European Union level, provided by the European Commission<sup>1</sup>.

### European Union Legal framework

#### **1. How is the process to justice by older persons guaranteed under the national legal and policy framework? What judicial and non-judicial mechanisms are in place for all older persons to complain and seek redress for denial of their rights?**

Under EU law, several legal instruments apply to guarantee the process of justice and non-discrimination.

The European Charter of Fundamental Rights (the 'Charter') applies to all EU Member States within the limitation of EU law. Article 20 stipulates that everyone is equal before the law. Article 21 prohibits age discrimination. According to Article 52, any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

With regards to the Treaty of the European Union (the 'Treaty'), Article 13 states that:

"Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on [...], disability, age [...]"

The Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (the 'Directive') is the main EU legal instrument which prohibits direct or indirect discrimination, including harassment, on the grounds of religion or belief, disability, age or sexual orientation as regards employment, occupation and vocational training.

The Directive underlines that discrimination based on age may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.

Direct or indirect discrimination based on age is prohibited. This prohibition of discrimination should also apply to nationals of third countries but does not cover differences of treatment based on nationality.

Finally, the Commission proposed a horizontal non-discrimination directive the scope of which is not limited to employment. The proposed Directive has been blocked by the Council ever since. On the 24 October 2019 there will be a policy debate in the Council.

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<sup>1</sup> The European Union shares responsibilities and competences with its Member States concerning the Access to Justice. Many of the policies and related implementation instruments are in the direct remit of the Member States. In a number of areas, the EU has its own responsibilities and actions, often to support the action of its Member States. Individual EU Member States give in their own contributions information on the situation and legislation at the level of their country.

Persons who have been subject to discrimination-based age should have adequate means of legal protection, *as per* article 47 of the Charter as follows:

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.'

At EU level, the Court of Justice of the European Union is the judicial body responsible for interpreting and ensuring the correct implementation of EU law and the Charter within the limit of its scope by Member States. Therefore, it reviews the legality of the acts of the institutions of the European Union, ensures that the Member States comply with obligations under the Treaties (including the Charter), and interprets European Union law at the request of the national courts and tribunals.

In addition, the European Ombudsman investigates complaints about maladministration by EU Institutions. People or organizations who have encountered problems with the EU administration, bodies and agencies, and have unsuccessfully tried to resolve the problem with the institution or body in question, can submit a complaint to the European Ombudsman. At the national level, EU member States provide a similar Ombudsman service concerning maladministration by national public bodies.

At EU Member States level, the latter shall ensure that judicial and/or administrative procedures, including conciliation procedures, for the enforcement of obligations are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them. To provide a more effective level of protection, associations or legal entities should also be empowered to engage in proceedings, either on behalf or in support of any victim.

## **Availability**

### **2. What steps have been taken to ensure the availability of judicial and non-judicial mechanisms for older persons in urban, rural and remote areas in your country? Are there alternative dispute settlement mechanisms available?**

Please see above.

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages.

Member States shall, in accordance with their national traditions and practice, take adequate measures to promote dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct and through research or exchange of experiences and good practices.

## **Accessibility**

### **3. What steps have been taken to ensure that all justice systems (judicial and non-judicial) are secure, affordable and physically accessible for older persons and adapted to their needs?**

Article 20 and 21 of the Charter ensures that everyone is equal before the law and that all sorts of discrimination, including age and disability, are prohibited. Article 47 of the Charter ensures the right to an effective remedy and a fair trial to *everyone*. Therefore, EU judicial bodies are obliged to ensure that those provisions are respected as regards access to EU judicial system.

#### **4. What are the existing provisions to guarantee legal assistance for older persons?**

Article 47 of the Charter mentions the right to anyone to availability of legal aid: 'Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.' As above explained, the Charter applies to all EU Member states within the limit of EU law.

#### **5. What are the specific challenges encountered by older persons in accessing justice and remedy in your country?**

This is specific from a Member State to another. Judicial procedures may sometimes be very lengthy, which may affect people at the end of their lives. As above explained, the area of Justice is a shared competence and not an exclusive one from the EU. This means that, unless there is an unanimous decision on a given Justice topic, it is up to each Member State, according to their national tradition and practice, to legislate on a given problem, as the case may be.

#### **6. What good practices are available in terms of ensuring equal and effective access to justice and remedy for older persons?**

Please see reply under 5 above.

#### **Equality and non-discrimination**

#### **7. What are the provisions adopted to ensure effective access to justice for older persons on an equal basis with other, including age-appropriate procedures in all administrative and legal proceedings?**

Please see relevant articles 20, 47 and 52 of the Charter, which guarantee an equal access to justice to all, without distinction.

#### **8. Please specify existing public policies and awareness-raising and capacity building programmes established for all justice system personnel to address the negative impacts of ageism and age discrimination in justice system?**

Equality bodies serve many important purposes. They provide individual assistance, effective monitoring and enforcement of equality law, contribute to the prevention of discrimination and to the developing of national and European jurisprudence, promote good equality practices and awareness raising. They also add to research and knowledge creation, and policy advice.

The European Union Fundamental Rights Agency (FRA) and the European Network of Equality Bodies (Equinet) are both active in the aging front.

FRA issued, in June 2018, a Fundamental Rights Report 2018 Focus - Shifting perceptions: towards a rights-based approach to ageing. The focus explores the shift from thinking about old age in terms of 'deficits' that create 'needs' to a more comprehensive one encompassing a 'rights-based' approach towards ageing. This gradually evolving paradigm shift strives to respect the fundamental right to equal treatment of all individuals, regardless of age – without neglecting protecting and providing support to those who need it.

Equinet, for example, in its discussion paper of 2018, draws attention to the need of having a comprehensive/horizontal age-non-discrimination policy combined with an intersectional approach (e.g. to avoid abuse of algorithms and automated decision-making).

Finally, the Court of Justice of the European Union through its case law shapes the age policy.

## **Accountability**

- 9. How do you ensure justice systems function in accordance with the principles of independence and impartiality? Please specify if there is any oversight mechanism in place to address any discrimination against older persons committed by justice system professionals.**

At the EU level, please see article 47 of the Charter above quoted on ensuring impartiality and independence of the EU judicial system. The European Court of Justice ensures the review of the legality of acts of the institutions of the European Union and make that the Member States comply with obligations under the Treaties (including the Charter).

At the EU Member States level, it is up to the legal judicial system of each Member States to foresee any review mechanism.