



31st October 2019

Submission on access to justice

This short answer is submitted in reply to the call of the Chair of the Open-Ended Working Group on Ageing (OEWG) to NGOs. AGE Platform Europe (AGE) has ECOSOC status and is accredited to the OEWG since 2012.

As the largest European network of self-advocacy organisations of older people, our position aims to reflect the situation at EU level on behalf of the 40 million older citizens represented by our members. Our contribution is based on written answers received from organisations of older people in several EU Member States and oral debate in the frame of our Council of Administration where representatives from 24 countries¹ and 6 European organisations/federations² sit.

As AGE answer cannot provide information around specific issues and provisions on older people's access to justice across all EU member states, our submission is focusing on challenges that are commonly faced by older people in accessing justice and remedy (Question 5).

AGE members are aware of the particular challenges faced by older prisoners but bearing in mind the very limited direct experience they have with such situations, these are not reported here³. We wish however to direct the attention of the OEWG to the excellent work done by the International Committee of the Red Cross on this topic.⁴

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¹ All EU countries with the exception of Croatia, Latvia, Luxembourg and Slovakia

² FIAPA, ESU, NOPO, EURAG, EDE, OWN Europe

³ French AGE member Petits Freres des Pauvres organises visits to isolates older prisoners:

<https://www.petitsfreresdespauvres.fr/nos-actions/apporter-une-presence/en-milieu-carceral>

⁴ <https://www.icrc.org/en/download/file/66200/irrc-903-12.pdf>



Questions 1, 2, 3, 4, 6, 7, 8

AGE as a European platform cannot answer in detail regarding provisions under national law. Yet, information gathered from our members illustrates that overall older persons are covered by general laws and policies on access to justice; there is insufficient attention to older persons as a vulnerable group in accessing justice and remedy within national frameworks; support mechanisms, information and legal assistance are not equally available across the national territory and financial barriers to access justice persist. In a few countries national ageing strategies aim, among others, to raise awareness among older persons, civil servants and legal professionals about older people's rights and obstacles to their exercise.

Question 5

Challenges faced by older persons include issues related to the law, as well as personal, physical and institutional barriers. First, a key barrier to accessing justice and remedy is that the law itself can be ageist. For instance, at EU level, the lack of legal prohibition of age discrimination beyond the field of employment entails that in many countries it is impossible to challenge decisions denying older people insurance or a loan⁵. Additionally, sometimes there are discrepancies in law. For instance, whereas under the UNCRPD institutionalisation is prohibited⁶, international norms merely call for allowing older persons to live at home 'for as long as possible'⁷. Given this caveat, it is more difficult for older persons to access justice in cases of forced placement, coercion or breaches of autonomy. Judgements reproduce the biases embedded in law, inform and educate legal professionals and therefore it can be extremely hard to avoid ageist assumptions in caselaw, prosecution policies and investigation.

In terms of institutional barriers AGE members report that free legal aid is available only to those with very low incomes, whereas in reality others are also restricted from accessing courts due to prohibitively high lawyer and trial costs. Additionally, assistance may not be offered for mediation or only cover certain type of disputes. Legal advice is not always tailored to specialised areas of law, such as pensions or care contracts. Long court backlogs create a reluctance to take legal action and impede prompt resolution. This is particularly problematic for people who are seeking justice for denial of social protection benefits as long delays, put them at risk of poverty. Equality bodies and Ombudspersons, despite offering important opportunities for extra-judicial remedies, do not always cover age as a ground of discrimination and may have limited scope to address older people's rights.⁸ Ageism is also embedded in legal proceedings and care contexts restricting older people's abilities to exercise their rights. For instance, AGE members brought to our attention cases where older persons have been forcefully institutionalised, yet care professionals, the civil judge and family members do not allow them to complain or take legal action against decisions taken on their behalf.

⁵ The 2000 EU Employment Framework Directive only covers age discrimination in employment

⁶ See article 19 UNCRPD

⁷ See among others, UN principles, General Comment 6 of the Committee on Economic, Social and Cultural Rights and Madrid International Plan of Action on Ageing, para 95

⁸ See for example, Equinet members, most of which only cover age discrimination in access to employment, whereas a few do not cover age discrimination at all.

Physical barriers impact the ability to access courts due to lack of accessible buildings, transportation, waiting/seating areas and information, but also because court proceedings are not adapted to older people's needs and abilities and do not provide reasonable accommodation. For instance, they do not take into account the 'best time' for older persons to testify⁹ and they do not offer alternative care for people with caregiving duties so that they are free to take part in proceedings. The digitalisation of legal proceedings (ex. Submission of claims, follow case online, etc) coupled with the digital gap create unique disadvantages for older people. Access is particularly problematic for people living in remote or rural areas as most legal services are available in cities. Age-friendly practices such as the assignment of court assistants to explain court procedures and help older people reach the court and navigate in the buildings, a duty for reasonable accommodation, the possibility for remote testimony, the training of legal staff on communicating with people with declining cognitive capacities, etc are unfortunately largely missing.

The above mentioned physical, legal and institutional barriers lead to downplaying the severity of dispute, lack of confidence in enforcing rights and a perception that the law cannot solve their problems. As a result, a great majority of breaches in which older people are involved are tolerated or suppressed. In particular, in cases of elder abuse, fear of shame, loss of affection, implications and more abuse, lead to under-reporting, especially when the perpetrator is the caregiver or someone close to the victim. Advocacy services, i.e. independent legal advice for people in vulnerable situations, such as people living in institutions is not available in all EU countries. With some notable exceptions organised primarily by NGOs¹⁰, there is no right to seek support to take and communicate decisions, complain, seek judicial or alternative dispute resolution and deal with the emotional impact of conflict. Additionally, lack of legal literacy, information and awareness of rights also impedes access to justice. For example, older persons do not know their rights under the CRPD and enforcing them is problematic¹¹. There is an urgent need to improve information about the law and how to exercise rights.

Question 9

At EU level the EU justice scoreboard provides comparable data on the independence, quality, and efficiency of national justice systems¹². But this tool does not provide specific information with regard to older people's barriers and opportunities to access justice.

⁹ See Boaz Ben-David, 5 reasons why cognitive tests are ageist:

<https://www.youtube.com/watch?v=5SOKheU42kM&list=PLmyR50leW2NR7FERMdoTt0IAAzAHgSriZ&index=3>

¹⁰ See for example SAGE in Ireland: <https://www.sageadvocacy.ie/>

¹¹ https://www.age-platform.eu/sites/default/files/AGE_input_CRPD_Art19.pdf

¹² https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en