



Guiding Questions for Focus Area: **Right to Work and Access to the Labour Market**

National Legal and Policy Framework

1. What are the legal provisions and policy frameworks in your country that recognise the right to work and access to the labour market by older persons?

In the Kyrgyz Republic the public debate tends to lead to the necessity to respect older persons. This respect is traditionally considered as characteristic of Kyrgyz culture. Even if the respect for older persons is enshrined in the Constitution (art. 37, para. 2) as well as the prohibition of discrimination on the basis of age (art. 16) and the right to dispose of one's abilities to work, to choose a profession and occupation, and to occupational safety (art. 42, para. 3), age-based discrimination against older people, including in the field of labor, exists at all levels (when hiring, working and dismissing from work).

In the Kyrgyz Republic, almost half of the elderly population 41.3% work. Only 11.7% of elderly citizens have never worked and receive social benefits, the amount of which is very small. 6.7% are not able to work. 59% of the older persons do not look for a job, and do not want to work, because they receive pensions. Only about 2% of older persons are actively looking for a job or considering to start their own business.¹ The survey of the Ombudsman of the Kyrgyz Republic (2017) showed that 58% of participants of the survey aged over 50 years have personally faced discrimination in the process of employment.² Even if ageism cannot be considered as a new topic in the Kyrgyz Republic, the discrimination of older persons in the field of labour is recent in public debate (the Ombudsman of the Kyrgyz Republic has spoken up about the problems of labor rights of elderly people in 2017. This is not the priority due to the fact that the public debate in labour issues is oriented mostly to migration issues). In 2018, the issue of labor rights of the older persons was discussed at the meeting of the Committee of Ministers of the Kyrgyz Republic. The Ministry of Labor and Social Development of the Kyrgyz Republic has developed a project "On approval of the National Comprehensive Program to improve the quality of life of older citizens in the Kyrgyz Republic for 2018-2027". " including the right to work.

Besides the constitutional law, the right to work and access to the labour market for older persons are included in following codes:

- The Labour Code (Article 9) enshrines the right of all citizens to equal opportunities to exercise their labour rights and freedoms regardless of their age.
- The Criminal Code of the Kyrgyz Republic (Art. 185 par.1) on Violation of Human Rights and Fundamental Freedoms defines the violation of rights by age.

Paradoxically, the position to the right to work and access to the labor market for older people is not clearly defined by the Constitutional Chamber. In fact, the Law on Public Service sets age limits for public officers to 65 years. In 2008, the Constitutional Court ruled out the possibility of dismissing civil servants on the grounds of old age, which was found to be discriminatory. But in

¹ Adilet: Analyses of labour legislation and court practice on the principle of non-discrimination in employment

² Ombudsman of the Kyrgyz Republic: Stereotypes and discrimination against older people in the Kyrgyz Republic, <https://ombudsman.kg/images/files/news/2018/specdokladi/pogilie.pdf>

2014, the Constitutional Chamber, which replaced the Constitutional Court, returned this provision.

2. What are the challenges faced by older persons for the realization of their right to work and access to the labour market in your country?

In the Kyrgyz Republic, older people face discrimination in the exercise of their right to work and access to the labour market at the following levels:

- A) Discrimination in hiring
 - o difficulty in finding a job/being employed
- B) discrimination in the workplace:
 - o difficulties in retraining, especially when it comes to technical skills or the use of information technology. This denial of training may be linked to: anticipated or desired retirement of an employer, or the stereotype that older persons lose the ability to learn.
 - o facing psychological pressure when they are repeatedly reminded of their retirement age
 - o Age discrimination due to stereotypes
 - o Problem with advanced training
- C) discrimination during the process of dismissing from employment
 - o Unjustified dismissal (dismissal on the basis of the "age" argument in order to "clear the way for young people")

3. What data, statistics and research are available regarding older persons engaged in informal work, particularly older women, including conditions of their work and economic value?

There are no specific statistics, but the Kyrgyz Republic is considered as a country with a high proportion of the informal sector. Total employment in the informal sector is around 70%.³

Availability, Accessibility, Acceptability and Quality

4. What steps have been taken to ensure the access of older persons to the labour market including through physical accessibility, access to information about employment opportunities, training and the provision of appropriate workplace accommodations?
 - The Ministry of Labor and Social Development of the Kyrgyz Republic has developed a project "On approval of the National Comprehensive Program to improve the quality of life of older citizens in the Kyrgyz Republic for 2018-2027". ». This document contains recommendations on labor rights of older people.
 - In Article 185, paragraph 1 of the Criminal Code of the Kyrgyz Republic (in the old version Article 134) *Violation of human rights*; age discrimination was recognized
5. What steps have been taken to ensure the availability of specialised services to assist and support older persons to identify and find employment?

Priority N° 3 of the document "On Approval of the National Comprehensive Program to Improve the Quality of Life of Older Citizens in the Kyrgyz Republic for 2018-2027" anticipates the creation of a special vacancy bank for the older persons, which guarantees the implementation of measures to prevent age discrimination in the labor market, as well

³ СТРАТЕГИЯ УСТОЙЧИВОГО РАЗВИТИЯ КЫРГЫЗСКОЙ РЕСПУБЛИКИ на 2018-2040 гг

as an active interaction between employment agencies and employers, raising awareness of citizens of pre-retirement and retirement age about employment opportunities.

6. What good practices are available in terms of ensuring the older persons' enjoyment of their right to work and their access to the labour market?

There are no specific practices on the right to work and access to the labour market for older persons in the Kyrgyz Republic. Older persons can simply contact employment services. According to the statistics, since January 1, 2017, 256 elderly citizens applied to the employment services, of whom 206 were employed (80.4% of the number of applicants).

7. What protections are available to ensure older persons enjoy just and favourable conditions of work, including fair wages and equal remuneration for work of equal value, safe working conditions, both in the formal and informal sector?

There are no special measures.

Equality and non-discrimination

8. In your country, is age one of the prohibited grounds for discrimination in relation to work and access to the labour market, including in older age?

The Article 9 of the Labor Code of the Kyrgyz Republic prohibits discrimination in relation to work and access to the labor market, including in old age. However, there is a conflict with the decision of the Constitutional Chamber from 2014 concerning the limit age for civil servants, which the Chamber considered as a non-discriminatory measure on the constitutional rights of citizens. Therefore the prohibition cannot be considered absolute.

Remedies and Redress

9. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to work and access to the labour market?

There are no special mechanisms concerning the rights of older persons. Article 185 par.1 of the Criminal Code of Kyrgyzstan, Violation of human rights, which prohibits discrimination on the base of age, is ineffective. From 2013 to 2017, only 6 cases were judged under this article.

The Labour Code (Articles 398 and 412) sets out the means of protection and mechanisms for all employees. It defines the bodies dealing with individual labour disputes: labour dispute commissions, authorized state bodies in the field of labour inspection and the courts.

Necessary mechanisms:

- Introduce a legal prohibition on specifying the age limit in job advertisements;
- Review the decision of the Constitutional Chamber on the establishment of an age limit for civil servants as a discriminatory restriction on the constitutional rights of citizens;
- anti-discrimination legislation, which would define direct and indirect discrimination and cover all grounds of discrimination, including age discrimination; should be adopted,
- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights