

HelpAge International España, April 2024

HelpAge International España Submission on participation in public life and in decision-making processes.

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National legal and policy framework

What are the national and local legal provisions and policy frameworks in your country that guarantee:

- a) right to equality and prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in the context of participation in public life and in decision-making processes;

There is currently an article in the Constitution on equality, but it is true that this article does not clearly mention age discrimination. Article 14 states the following: "Spaniards are equal before the law, and no discrimination may prevail on the grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance".

The interpretation that the courts have made in relation to age, especially the Constitutional Court as seen in the "Ageism towards the elderly in the judgments of the Constitutional Court" a report of the Ageism Observatory of HelpAge International shows how it is still understood as a weak category and depends on the context.

- b) elimination of all forms of ageism and age discrimination from laws, frameworks, programs, policies, strategies and practices regarding participation in public life and in decision-making processes;

Regarding the elimination of ageism and age discrimination, it is found in certain specific legislations, but in few, such as the explicit mention in Law 33/2011, of October 4, 2011, General Law on Public Health.

In 2022 the legislature had passed new legislation, Law 15/2022, of July 12, comprehensive for equal treatment and non-discrimination, it is the first to mention age as a form of discrimination, although it is true that this legislation is not clear and there is still no jurisprudence in relation to it, nor have the mechanisms that the law itself establishes been implemented. Undoubtedly, it is a step forward but unfortunately it does not seem to be enough.

c) right to freedom of expression, including freedom to seek, receive and impart information;

The right to freedom of expression, although it is included in Article 20 of the Spanish Constitution, it is true that despite the existence of this recognition, there are generally a series of other barriers that mean that the right to receive information is violated.

The issue of truthful information is especially complex due to the fact that access to it is being difficult for the population.

d) right of peaceful assembly;

The right to peaceful assembly is recognized in Article 21 of the Spanish Constitution, but there is nothing specific for the older persons.

e) right to freedom of association;

Article 22 of the Spanish Constitution recognizes the right to form associations, but there is no specific one for the senior citizens.

f) right to take part in the government of one's country, directly or through freely chosen representatives;

The right to vote is recognized by Article 23 of the Spanish Constitution, but there are no specific provisions for the elderly, except for the Article 26 of Organic Law 5/1985, of June 19, 1985, on the General Electoral System, which establishes that:

"The President and the members of each Table shall be appointed by public lot from among all the persons included in the list of voters of the corresponding Table, who can read and write and are under seventy years of age, although those over sixty-five years of age may express their resignation within a period of seven days. The President shall have the title of Baccalaureate or Second Grade Vocational Training, or subsidiarily the School Graduate or equivalent."

This clearly constitutes a limit to participation in the electoral system, given that certain persons, due to their age, cannot be part of the electoral tables.

g) active, free and meaningful participation of older persons and their representative organizations in all matters related to participation in public life and in decision-making processes;

In Spain there is a Council of Older Persons under the Ministry of Social Rights, Consumption and Agenda 2030, and then some autonomous communities, provinces and cities have replicated this initiative.

h) access to prompt remedies and redress when older persons' above mentioned rights are violated.

The resources are specified below and there are actually few fast tracks in this area, so it generally takes a process that is more complex than the average.

What steps have been taken ensure participation in public life and in decision-making processes without discrimination?

Thanks to the law 15/2022 steps have been taken to fight against ageism although we have not yet seen the fruits derived from this legislation.

Likewise the modification on the legal capacity of people thanks to the Convention on persons with disabilities and its impact on the Spanish legislation and thanks to that modified the capacity of participation as in the Organic Law 2/2018, of December 5, for the modification of the Organic Law 5/1985, of June 19, of the General Electoral Regime to guarantee the right of suffrage of all persons with disabilities and Law 8/2021, of June 2, reforming civil and procedural legislation to support persons with disabilities in the exercise of their legal capacity.

Equality and non-discrimination

What are the challenges and barriers that older persons face regarding participation in public life and in decision-making processes, including the impact of intersectional discrimination and inequality based on age, gender, disability, race, ethnicity, migratory status and other grounds?

Older persons face various challenges and barriers when it comes to participating in public life and decision-making processes in Spain. These challenges can be compounded by intersectional discrimination and inequality based on age, gender, disability, race, ethnicity, migratory status, and other grounds. Some of the key challenges and barriers include:

- **Ageism:** Older persons often face discrimination and stereotypes based on their age, which can lead to marginalization and exclusion from decision-making processes.
- **Access to Information:** Older individuals may face difficulties accessing information about public initiatives, policies, and programs, particularly if they are not digitally literate or have limited access to technology.
- **Physical Barriers:** Age-related disabilities or health conditions can create physical barriers that limit older persons' ability to participate in public life, such as accessing public buildings or transportation.

- **Language and Cultural Barriers:** Older persons from linguistic or cultural minority groups may encounter language and cultural barriers that hinder their participation in decision-making processes.
- **Gender Inequality:** Older women may face additional challenges due to gender discrimination, including lower socioeconomic status, limited access to education and resources, and unequal representation in decision-making bodies.
- **Economic Inequality:** Older persons, especially those from disadvantaged socioeconomic backgrounds, may lack the financial resources necessary to actively participate in public life or decision-making processes.
- **Digital Divide:** The increasing reliance on technology for civic engagement can exclude older persons who are not familiar with or do not have access to digital platforms.
- **Healthcare Access:** Limited access to healthcare services or inadequate healthcare infrastructure can impact older persons' ability to participate in public life, particularly if they are dealing with chronic health conditions or disabilities.
- **Social Isolation:** Older individuals may experience social isolation, which can result from factors such as living alone, loss of social networks, or age-related mobility restrictions, limiting their opportunities for civic engagement.
- **Policy Exclusion:** Policies and decision-making processes may not adequately address the needs and concerns of older persons, further marginalizing this demographic group and hindering their participation in public life.

Addressing these challenges requires comprehensive strategies that promote inclusion, combat ageism and discrimination, enhance accessibility, and ensure that the voices and perspectives of older persons are represented and valued in decision-making processes. This can involve implementing targeted policies, providing education, and training programs, improving healthcare and social support services, and fostering intergenerational collaboration and dialogue.

Remedies and Redress.

What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress when their right to participate in public life and in decision-making processes is violated?

Within the judicial mechanisms it is true that it is important that in the electoral case there is a series of specific mechanisms in relation to this right that are

regulated in the specific legislation. And in the rest of the cases, it would be the ordinary jurisdiction the one in charge of attending these questions, depending on the area in which we are, it would be the civil, labor or administrative jurisdiction the one in charge. The criminal jurisdiction, unless we are talking about a hate crime, it would be more complex to find a case of this type within this jurisdiction.

In relation to extrajudicial mechanisms, mediation and arbitration are available. But it is important to talk about the Ombudsman and the independent authority, which was the mechanism that the law 15/2022 had planned to implement but has not been implemented so far.