

Guiding questions for defining the normative content of the issues examined at the twelfth session

Focus Area 1: Contribution of older persons to sustainable development

Definition

How are the key human rights relating to older persons' participation and, therefore, their contribution to sustainable development defined in the national legislation in your country?

If definitions are not available, how should such rights be defined considering relevant existing national, regional, and international legal frameworks?

According to Article 72(1) of the Portuguese Constitution, «[o]lder persons have the right to economic security and to conditions in terms of housing and family and community life that respect their personal autonomy and avoid and overcome isolation or social marginalisation». Article 72(2), in turn, provides that «[t]he policy for older persons shall include measures of an economic, social and cultural nature that tend to provide older persons with opportunities for personal fulfilment by means of an active participation in community life».

Article 48(1) of the Portuguese Constitution recognises to every citizen, including older persons, «the right to take part in political life and the direction of the country's public affairs, either directly or via freely elected representatives». Accordingly, older persons have the right to representation and political participation.

The Strategy for Older Persons (adopted by Council of Ministers Resolution no. 63/2015, of August 25) regards the strengthening of the rights of older persons, with the purpose of stating expressly and clearly their rights, as well as setting out guiding principles in the interpretation and application of relevant legal norms. In this context and as for participation, the Strategy expressly states that «it must be ensured to older persons the right to develop activities within the community and to join associations or movements of older persons».

Scope of the rights

2. Please provide references to existing national legal standards relating to older persons' contribution to sustainable development on normative elements such as;

- **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 sustainable development;**

The Strategy for the Protection of the Elderly (adopted by Council of Ministers Resolution no. 63/2015, of August 25) regarding the strengthening of the rights of older persons, states that all forms of discrimination against older persons should be prevented and adequately repressed.

To the best of our knowledge there are no specific legal standards on right to equality and prohibition of all forms of discrimination against older persons, in the context of sustainable development.

- **elimination of all forms of ageism and age discrimination from sustainable development laws, frameworks, programs, policies, and practices;**

To the best of our knowledge there are no specific legal standards on the elimination of all forms of ageism and age discrimination from sustainable development laws, frameworks, programs, policies, and practices, in the context of sustainable development.

- **right to freedom of expression, including freedom to seek, receive and impart information;**

The right to freedom of expression and information is enshrined in Article 37 of the Portuguese Constitution for everyone, including older persons.

According to Article 37(1) of the Portuguese Constitution, «[e]veryone has the right to freely express and divulge his/her thoughts in words, images or by any other means, as well as the right to inform others, to seek information and to be informed without hindrance or discrimination». The exercise of these rights «may not be hindered or limited by any type or form of censorship» (Article 38(2) of the Portuguese Constitution).

- **right of peaceful assembly;**

The right of peaceful assembly is embedded in Article 45 of the Portuguese Constitution for everyone, including older persons. Enjoyment of the right of peaceful assembly gives persons a voice as individuals and the power to manifest their views collectively, which is also instrumental to the full

enjoyment and the advancement of implementation of other human rights (civil, political, economic, social and cultural rights).

According to Article 45(1) of the Portuguese Constitution «[c]itizens have the right to meet peacefully and without arms, even in places that are open to the public, without the need for any authorisation». Moreover, pursuant to Article 45(2) of the Constitution, «[a]ll citizens are accorded the right to demonstrate».

The right of peaceful assembly encompasses various freedoms, including: the freedom to promote, convene, organise and participate (but also meaning not to be compelled to participate) in a peaceful assembly, the freedom to assemble peacefully without the need for prior authorisation, and the freedom to choose the time, location, purpose and manner of conduct of the assembly.

As a positive right that requires State actions (obligations to protect and fulfil), there are both legal and other appropriate measures in place, in order to ensure the safe exercise of the right of peaceful assembly (such as traffic regulation and protection against interference by third parties/counter-demonstrators), as well as procedures aimed at facilitating such exercise by providing for the use of public places and roads for purposes of peaceful gatherings. For these purposes, the right of peaceful assembly is further guaranteed at legislative level by Decree-Law no. 406/74, of August 29, 1974¹.

- **right to freedom of association;**

The right to freedom of association is enshrined in Article 46 of the Portuguese Constitution for everyone, including older persons.

According to Article 46(1) of the Portuguese Constitution «[c]itizens have the right to form associations freely and without the requirement for any authorisation, on condition that such associations are not intended to promote violence and their purposes are not contrary to the criminal law». With regard to the latter, further constitutional limits are established in Article 46(4), as «[a]rmed associations, military, militarised or paramilitary-type associations and organisations that are racist or display a fascist ideology are not permitted»

Article 46(2) of the Portuguese Constitution ensures that «[a]ssociations shall pursue their purposes freely and without interference from the public authorities, and may not be dissolved by the state or

¹ As amended by Organic Law no. 1/2022, of November 30, 2011.

have their activities suspended other than in cases provided for by law and then only by judicial decision».

Both the positive (right to form and to join an association) and the negative (right not to «belong to an association, or be coerced to remain therein by any means», in accordance with Article 46(3) of the Portuguese Constitution) dimensions of the right to freedom of association are safeguarded.

- **right to take part in the government of his country, directly or through freely chosen representatives;**

Article 48(1) of the Portuguese Constitution recognises to every citizen, including older persons, «the right to take part in political life and the direction of the country's public affairs, either directly or via freely elected representatives». Accordingly, older persons have the right to representation and political participation. The law establishes no age limit for holding or running for political office.

- **active free and meaningful participation of older persons and their representative organizations in all matters related to sustainable development, including in political processes;**

In addition to entitlement to fundamental rights of participation, as already outlined above, Article 72 of the Portuguese Constitution embraces both a rights-based and a protection measures approaches relevant to older persons in matters which are related to sustainable development.

According to Article 72(1) of the Portuguese Constitution, «[o]lder persons have the right to economic security and to conditions in terms of housing and family and community life that respect their personal autonomy and avoid and overcome isolation or social marginalisation».

Article 72(2) in turn provides that «[t]he policy for older persons shall include measures of an economic, social and cultural nature that tend to provide older persons with opportunities for personal fulfilment by means of an active participation in community life».

At constitutional level, the combination of these two provisions builds up for the recognition of an autonomous and active status for older persons in line with the idea of active ageing.

From the angle of a European Union context, Portugal, while «well positioned with regard to older adults' labour market participation» is not «as strong in terms of their citizens' social participation in later life» (Source: UNECE, 2018 Active Ageing Index; Analytical Report).

Council of Ministers Resolution no. 63/2015, of August 25, adopted the Strategy for the Protection of the Elderly. One of the Strategy's measures regards the strengthening of the rights of older persons, with the purpose of stating expressly and clearly their rights, as well as setting out guiding principles in the interpretation and application of relevant legal norms. In this context and as for participation, the Strategy expressly stated that «it must be ensured to older persons the right to develop activities within the community and to join associations or movements of older persons».

In addition, Decree-Law no. 167-C/2013, of December 31, 2013 established the National Council for Solidarity, Volunteering, Families, Rehabilitation and Social Security Policies (known as the CNPSSS for short – *Conselho Nacional de Políticas de Solidariedade e Segurança Social*). Its composition, powers and functioning are governed by Decree-Law no. 48/2017, of May 22, 2017. CNPSSS is an advisory body to the Ministry of Labour, Solidarity and Social Security, whose mission is to promote and ensure the participation of the social partners, the associative movement and other civil sector relevant actors, along with the competent public entities, in defining and monitoring the implementation of policies in the fields of social security, solidarity, volunteering, family and inclusion of persons with disabilities. The CNPSSS incorporates a general council and five specific thematic commissions. Three major older persons and pensioners associations, acting at national level,² are represented in the Social Security Policies Commission.

Moreover, associations and organisations of retired persons, pensioners and older persons participate in the political decision processes, namely by means of consultations within legislative procedures, regarding matters related to sustainable development, particularly those concerning social and economic security, health, housing and public transport passes.

- **access to prompt remedies and redress when older persons' above-mentioned rights are violated.**
 - The Portuguese legal system encompasses both judicial and non-judicial mechanisms for the protection of above-mentioned rights, to which older persons may accede as everyone else.
 - In general, as for the right of access to the courts, the Portuguese Constitution enshrines the principle of an effective judicial protection (Article 20 and Article 268(3)-(4), the latter provisions

² MURPI - *Confederação Nacional de Pensionistas e Idosos* (National Confederation of Pensioners and Older Persons); Associação Nacional de Aposentados, Pensionistas e Reformados – MORDEP (National Association of Retired Persons and Pensioners); and APRe! - *Associação de Aposentados, Pensionistas e Reformados* (Association of Retired Persons and Pensioners).

relating to administrative justice). The law, by means of Articles 109 to 111 of the Administrative Courts Procedure Code, establishes «urgent proceedings, namely the writ for fundamental rights, freedoms and guarantees protection where an expedite ruling imposing a certain conduct on the public administration is indispensable so as to ensure the timely exercise of the right concerned. Non-judicial administrative guarantees also apply within relations between the public administration and citizens, encompassing administrative complaint as well as review procedures.

- With regard specifically to the right to freedom of expression and information, it is embedded in the Portuguese Constitution that infractions committed in their exercise «are subject to the general principles of the criminal law or the law governing administrative offences, and the competence to consider them shall pertain to the courts of law or an independent administrative entity respectively, as laid down by law» (Article 37(3) of the Portuguese Constitution). Moreover, «[e]very natural and legal person shall be equally and effectively ensured the right of reply and to make corrections, as well as the right to compensation for damages suffered» (Article 37(4) of the Portuguese Constitution).

Accordingly, besides judicial remedies (criminal as well as civil), there is an independent administrative body mandated to perform the tasks entrusted by the Portuguese Constitution on media regulation. We refer to the Regulatory Authority for the Media (ERC – *Entidade Reguladora para a Comunicação Social*), governed by Law no. 53/2005, of November 8, 2005). ERC has competence to guarantee the fundamental rights regarding the information provided by the mass media including the respect for pluralism, human dignity, and right of reply. In this context, ERC deals with complaints by any interested party – including older persons – against violation of rights, freedoms and guarantees or any legal norms or regulations applicable to social communication activities.

- As for rights of political participation is concerned, the National Election Commission (CNE – *Comissão Nacional de Eleições*, governed by Law no. 71/78, of December 27, 1978³) is the independent administrative body with competence to regulate and supervise all acts of voter registration and electoral operations for elective State bodies (Head of State and Parliament), autonomous regions (Azores and Madeira), local government and for the European Parliament, as well as within the scope of referenda.

³ As last amended by Law no. 72-A/2015, July 23, 2015.

Moreover, the Constitutional Court plays an important role regarding electoral matters and intervenes in national, regional and local referenda as well. In electoral matters the Constitutional Court intervenes either directly, or in appeals against the decisions of district courts, acting as last instance court in cases seeking to determine whether or not electoral procedural acts have been conducted properly and are valid, as laid down by law⁴.

- The Portuguese Ombudsman is empowered to deal with complaints against public entities and relating to events protected by the older persons' above-mentioned rights. The Ombudsman can also act *ex officio*, defending and promoting people's rights, particularly of those in the most vulnerable situations, including older persons, as provided for under the Portuguese Ombudsman Statute (Article 4(1) of Law no. 9/91, of April 9, 1991⁵). Since 1999, the Ombudsman provides a helpline for older persons, with a view to facilitating their access to it. As one of the few mechanisms specifically dealing with older persons issues, this helpline is nationwide and free of charge.

Within this framework, the Ombudsman can assess whether restrictions and other decisions or actions by public bodies are in conformity with the relevant international and national legal standards and, where applicable, to take necessary recommendatory action. As an example, during the COVID pandemic and the elections for State and local government bodies that took place during that period, the Ombudsman remained attentive to the solutions (and respective implementation) provided for by the law, which were aimed at guaranteeing the exercise of the right to vote by older persons, particularly of those living in residential and similar structures for older persons.

Finally, monitoring compliance with international human rights standards in in this context also goes along with the Portuguese Ombudsman's mandate as NHRI, plus raising awareness and contributing to the building of a human rights culture, where older persons' participation is key.

⁴ For more details, please refer to the Portuguese Constitutional Court website:

<https://www.tribunalconstitucional.pt/tc/en/jurisdiction.html>

⁵ As last amended by Law no. 17/2013, of February 18, 2013.

State obligations

3. What measures and special considerations should be undertaken by the State to respect, protect and fulfil the above-mentioned rights to ensure older persons' contribution to sustainable development?

State should develop and implement legislation explicitly human rights-based, age-sensitive and all-age-inclusive, with measurable indicators to track progress on the situation of older persons.

The Major Options Law for 2022-2026 (Law no. 24-C/2022, of December 30, 2022), while highlighting a decrease in mortality and an increase in average life expectancy, points out the this «requires the definition of a longevity policy, which involves improving social responses of support for ageing, but also for new responses and strategies that reinforce the civic and social participation» of older persons.

Implementation

4. What are the good practices and main challenges faced by your country in the adoption and implementation of the above-mentioned normative framework to ensure older persons' contribution to sustainable development?

An example of good practise are the «universities» for older persons (*universidades seniores*) established across the country and aimed at enhancing the knowledge, socialisation and active life of older persons. These «universities» are either autonomous organisations or result from articulation with other entities, such as private non-profit institutions or public entities (municipal councils, parish councils, educational establishments). They contribute for older persons to continue to have access to education and training programs and be able to participate in society, in economic, political, social and cultural life. Council of Ministers Resolution no. 76/2016, of November 29, 2016, recognised the importance of these universities for older persons and Order no. 132/2021, of January 6, 2021, establishes the regulations for the respective network. According to RUTIS (Association Network of Universities for Older Persons), there were, in 2020, 368 senior universities, with around 65,000 students and 7,500 professors working on a voluntary basis.

Another example of good practices is the implementation of the project «Friendly cities for elderly» in municipalities. It is an initiative of the World Health Organization⁶ that aims to respond to the rapid aging of populations and create urban environments that increase participation in the older people. It involves a diagnosis, an Action Plan and monitoring the progress.

b) Main challenges faced by your country in the adoption and implementation of the above-mentioned normative framework to ensure older persons' contribution to sustainable development:

- Population ageing is a major global trend that affects Portugal⁷ (In 1961, the ageing index was 27,5% and in 2021 is 182,7%). This change has important effects on several dimensions, from economic growth, to social security and income distribution.
- Insufficient legislation explicitly age-sensitive and all-age-inclusive, with measurable indicators to track progress on the situation of older persons.
- Territorial disparities, namely those that come across in the interior municipalities, which are located predominantly in rural areas characterised by severe depopulation and ageing.
- Digital illiteracy along with the increasing automation on society.
- Ageism, that affects older persons' status as rights holders, including their right to autonomy, participation, access to education and training and decent employment.
- Mobility challenges due to age-related limitations and problems linked to the transportation system.

⁶ <https://apps.who.int/iris/handle/10665/43755>

⁷ <https://www.pordata.pt/portugal/indice+de+envelhecimento+e+outros+indicadores+de+envelhecimento-526>