

## Guiding questions for defining the normative content of the issues examined at the eleventh session of the General Assembly open-ended working group for the purpose of strengthening the protection of the human rights of older persons

### Right to work and access to the labor market

#### Definition

1. How is the right to work and access to the labor market for older persons defined in the national legislation in your country? If such a definition is not available, how should it be defined considering relevant existing national, regional and international legal frameworks?

There is no legal norm in the field of labour law that would regulate the right to work and access to the labour market only for older people.

The right of access to employment (including the right of access to employment of the elderly) is enshrined in Act no. 5/2004 Coll. on Employment Services and on the Amendment of Certain Acts, as amended (hereinafter referred to as the “Employment Services Act”) as the right of a citizen who wants to work, who can work and seeks employment, to services under this Act aimed at helping and supporting the facilitation of his/her employment, entry into the labour market, including assistance and support for the entry and retention of a disadvantaged job seeker for at least six consecutive calendar months.

#### Scope of the right

2. What are the key normative elements of the right to work and access to the labour market for older persons? Please provide references to existing standards on elements such as:

- a) Prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in all matters related to employment.

The right to work, as well as the right to fair and satisfactory working conditions, are among the social rights guaranteed by the Constitution of Slovak Republic. According to Art. 12, par. 1 and 2 of the Constitution of Slovak Republic, people are free and equal in dignity and rights. Fundamental rights and freedoms are inalienable, inexplicable and irrevocable. Fundamental rights and freedoms are guaranteed in the territory of Slovak Republic to everyone, regardless of gender, race, color, language, religion and belief, political or other opinion, national or social origin, nationality or ethnic group, property, gender or other position. No one may be harmed, favored or disadvantaged for these reasons. Age in this context can be understood as a different position.

According to Art. 36 of the Constitution of Slovak Republic:

(1) Employees have the right to fair and satisfactory working conditions. The law provides them in particular:

- a) the right to remuneration for the work done, sufficient to enable them a decent standard of living,
- b) protection against arbitrary dismissal and discrimination in employment,
- c) protection of safety and health at work,

- d) the maximum permissible working time,
- e) adequate rest after work,
- f) the shortest permissible length of paid recovery leave,
- (g) the right to bargain collectively.

(2) Every employee has the right not to have his remuneration for the work performed lower than the minimum wage. Details on the adjustment of the minimum wage shall be laid down by law.

**The prohibition of discrimination** therefore follows directly from the **Constitution of Slovak Republic**, as well as from the **Anti-Discrimination Act** (Act No. 365/2004 Coll. On Equal Treatment in Certain Areas and on Protection against Discrimination and Amendments to Certain Acts) and the **European Convention on Human Rights and fundamental freedoms**.

- b) Elimination of all forms of ageism and age discrimination from the workplace and organizational cultures.

Individual employment relations in connection with the employment of natural persons by legal entities or natural persons and collective employment relations are regulated by Act no. 311/2001 Coll. Labour Code as amended (hereinafter referred to as the "Code")

The employer's obligation to treat employees in accordance with the principle of equal treatment established in the area of employment relations by the Anti-Discrimination Act is one of the many obligations imposed on the employer by the applicable labour legislation (Labour Code).

The Labour Code enshrined the prohibition of discrimination as one of its basic principles in Article 1 as well as in Article 6. According to the provisions of § 13 par. 2 of the Labour Code in employment relations prohibits discrimination against employees on the grounds of sex, marital or family status, sexual orientation, race, color, language, age, adverse health condition or disability, genetic characteristics, religion, belief, religion, political or other opinion , trade union activity, national or social origin, nationality or ethnic group, property, gender or other status, or as a result of reporting crime or other anti - social activity.

Exceptions to the prohibition of discrimination are linked to the nature of certain work activities or the circumstances in which they are carried out, provided that this characteristic constitutes a genuine and decisive occupational requirement, provided that the objective is justified and the requirement is proportionate. Exceptions to the prohibition of discrimination, which apply only to age, are possible only on the basis of the general interest. These are specific prerequisites for work in an individual employment relationship. Exceptions must comply with the principle of proportionality, must be justified by a legitimate aim and the means to achieve that aim must be proportionate and necessary (anti-discrimination law).

To increase the employment and employability of older people, there is also the possibility of working part-time (Section 49 of the Labour Code), creating a split job (Section 49a of the Labour Code), domestic work and teleworking (Section 52 of the Labour Code) and supporting atypical forms of employment which increase labour market flexibility.

The Labour Code does not discriminate against employees on the grounds of age.

Act no. 663/2007 Coll. on the minimum wage, as amended, regulates the determination and provision of the minimum wage to an employee in an employment relationship or similar employment relationship to ensure a minimum level of income of the employee for the work performed.

- c) Provision of reasonable accommodation to older persons in the workplace.
- d) Affirmative action programs to promote the hiring of older persons.
- e) Access to career development, technical and vocational guidance programs, placements services and vocational and skills development.
- f) Access to flexible or gradual retirement schemes and flexible working practices for older workers.
- g) Promotion of older persons' self-employment and entrepreneurship.
- h) Favorable, fair, and safe working conditions when undertaking formal, informal or unenumerated work.
- i) Access to prompt remedies and redress when older persons' right to work and access to the labor market is denied.

According to Section 14 of the **Employment Services Act**, a citizen has the right to access employment without any restrictions in accordance with the principle of equal treatment in employment relations and similar legal relations established by a special law (Anti-Discrimination Act).

The application of the rights and obligations arising from the right of access to employment must be in accordance with good morals. No one may abuse these rights and obligations to the detriment of another citizen. No one shall be persecuted or otherwise penalized in connection with the application of the right of access to employment for making a complaint, action or motion to prosecute against another citizen at the office or against the employer.

The Office of Labour must not penalize or disadvantage a citizen because the citizen exercises his or her rights under the right of access to employment. The citizen has the right to file a complaint to the Office in connection with the violation of the rights and obligations set out above. The Office is obliged to respond to the citizen's complaint without undue delay, to make a correction, to refrain from such action and to eliminate its consequences.

Positive action programs to support the employment of older people who are kept in the register of job seekers, including support for self-employment, and programs to support the increase of employability are provided in accordance with the Employment Services Act.

### **State obligations**

3. What are the measures that should be undertaken by the State to respect, protect and fulfil the right to work and access to the labour market for older persons, regarding the normative elements as provided above?

Measures that protect and fulfill the rights of citizens, including the right of older people to work and access to the labour market, are regulated by the Employment Services Act within the framework of:

### **(a) job placement**

Job placement is an activity aimed at finding a job and offering a suitable job to a job seeker, job seeker and citizen in the territory of the Slovak Republic and in the EU Member States and finding and offering suitable employees to the employer.

Part of job placement is also

- a) registration activity,
- b) information and advisory services,
- c) drawing up lists of vacancies,
- d) publication of lists of vacancies and their publication on the internet, in the press and other media,
- e) ensuring the monitoring and evaluation of employers' demand for employees according to the qualification structure and professional structure,
- f) evaluation of the qualification and professional structure of job seekers and the qualification structure and professional structure of job seekers with regard to the demand of employers,
- g) monitoring the length of the employee's retention period for at least six months from the time he is recruited from the register of jobseekers through one of the active labor market measures.

The Central Office of Labour and the Offices of Labour provide job placement (including job placement for the elderly) free of charge.

### **(b) the employer's obligations**

An employer may not publish job offers that contain any restrictions and discrimination based on race, color, gender, age, language, religion and belief, disability, political or other opinion, trade union activity, national or social origin, nationality or ethnic group, property, gender, marital status and family status.

The employer may also not request information regarding nationality, racial or ethnic origin, political attitudes, trade union membership, religion, sexual orientation, anti-moral information and personal data that is not necessary for the performance of the employee obligations of the employer established by a special law (Personal Data Protection Act).

At the request of the citizen, the employer is obliged to prove the necessity of the required personal data. The staff selection criteria must guarantee equal opportunities for all citizens.

### **Special considerations**

4. What special measures and specific considerations should be considered in developing the normative content of the right of older persons to work and access to labour market, such as protection and regularization of older workers in informal sector, equal remuneration for work of equal value particularly for older women as well as recognition of unpaid work often carried out by older women?

5. How should the responsibilities of non-State parties such as private sector be defined in the context of the right to work and access the labour market for older persons?

Please see point 6

### **Implementation**

6. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on the right to work and access to the labor market for older persons?

In 2020, the implementation period of the National Program on Active Aging for 2014-2020 ended, through which the Government of Slovak Republic and individual social entities implemented their commitments in the area of support for active aging of people as a public interest and systematic political priority.

In order to maintain the continuity of this political and professional effort and to create better opportunities for all and for the sustainable development of Slovakia in the future, a **new National Program for Active Ageing was prepared for 2021-2030** (approved by Government Resolution No. 657 of 24.09. 2021) for the implementation of measures aimed at promoting a policy of active aging as a public interest in national conditions. Among other things, current forecasts in the area of demographic development in Slovakia and its possible impact on the sustainability of social conditions of prosperity in an intergenerational perspective became the impetus for the elaboration of the new National Program.

From the beginning of the work on the document, a participatory approach was applied to its preparation in accordance with the conceptual principles of supporting the development of civil society, open governance and public policy-making. Representatives of various sectors of society (state administration and self-government, public organizations, experts or the civic sector) were involved in the individual phases of the preparation of the new National Program. In the strategic part of the new National Program, the individual domains of active aging are developed in the form of strategic and operational goals, measures and their corresponding measurable indicators. The deduction of the fulfillment of the measures resulting from the National Program of Active Aging for the years 2021 - 2030 with a proposal for updating will be realized every two years.

## Access to justice

### Definition

1. What is the definition of the right of older persons to access justice in the national legislation in your country? Or how should such a right be defined, considering existing national, regional and international legal framework?

The right of older persons to access justice is guaranteed by the Constitution of the Slovak republic and the relevant international treaties ratified by the Slovak republic.\* It encompasses the right to judicial and other legal protection, including the right to a fair trial, equal access to and equality before the courts, and seeking and obtaining just and timely remedies for rights violations.

*\*According to Article 7 (5) of the Constitution of the Slovak republic: “International treaties on human rights and fundamental freedoms and international treaties for whose exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified and promulgated in the way laid down by a law shall have precedence over laws.”*

## Scope of the right

2. What are the key normative elements of the right of older persons to access justice on an equal basis with others? Please provide references to existing standards on such elements as below, as well as any additional elements:

- (a) The guarantee of older persons' legal capacity (legal standing and legal agency) on an equal basis with others and not denied on the basis of age;

The Article 14 of the Constitution of the Slovak republic guarantees that *“every person shall be entitled to his or her rights”*. In the Slovak republic discrimination on the basis of age is prohibited by the law based on an open list of grounds.

Pursuant to the provision of CRPD, since 2016 it is no longer possible to deprive a person of legal capacity. According to Art. 231 of the Act n. 161/2015 Coll. (Civil non-dispute order) in the decision-making on legal capacity the court decides on restriction, change and return of legal capacity of a natural person.

*According to Article 12 (1) “All human beings are free and equal in dignity and in rights. Their fundamental rights and freedoms are sanctioned, inalienable, imprescriptible and irreversible.*

*(2) Fundamental rights shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds”.*

Pursuant to the provision of Article 2, par. 1 of the Act 365/2004 Coll. - the Antidiscrimination Act, the observance of the principle of equal treatment is based around the ban on discrimination on grounds of age.

- (b) Elimination of the influence of ageist stereotypes at any stage of judicial or non-judicial proceedings, including the award of damages or compensation;

Ageist stereotypes are not specifically prohibited, parties are equal in the judicial proceedings and age is not legally a factor that may influence the award of damages or compensation.

Damages or compensation awarded by the state (for instance in cases of violent crime) are based on technical formulas that do not take age into account.

- (c) Access to timely legal proceedings, especially in situations of immediacy;

According to Article 48 (2) of the Constitution of the Slovak Republic *“everyone has the right to have his or her case tried publicly without undue delay”*.

Access to timely legal proceedings is also guaranteed by the Article 6 (1) of the European Convention on Human rights according to which “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

- (d) Accessibility of courtrooms, legal tribunals and other justice-related facilities to all older persons;

The Ministry of Justice has prepared a reform of the judicial map that aims to reform and improve public trust in the judiciary, efficiency and quality. The greater specialization of judges at each court should allow better accessibility to justice.

The courtrooms, legal tribunals and other justice-related facilities have a barrier-free access.

- (e) Access to legal services, including legal assistance, legal aid, counselling and hotlines, on an equal basis with others;

- The adoption of Law No. 327/2005 Coll. on providing legal aid for people in material need, amending Law No. 586/2003 Coll. on Advocacy and amending Law No. 455/1991 Coll. on Trades (Trade Act) as amended by Law No. 8/2005 Coll. (Law on Legal Aid) constituted an institutional system designed to create access to legal aid for people in material need through the Centre for Legal Aid. The Centre for Legal Aid provides comprehensive legal aid to persons who, due to lack of means, are unable to use paid legal services.
- Under the Crime Victims Act (274/2017 Coll.), the older persons over the age of 75 are considered as particularly vulnerable victims.
  - The act grants victims the right to be provided professional assistance according to their specific needs and to the extent appropriate to the harm caused by the crime, especially by being provided an adequate explanation of information, legal assistance to exercise their rights, psychological support to lessen the effects of the crime, counselling regarding the risk and prevention of repeated victimisation, intimidation and retaliation.
  - A particularly vulnerable victim has, under the conditions set out in the Act, the right to be provided free assistance, professional psychological emergency intervention, emergency accommodation in a crisis care home, if a particularly vulnerable person faces a direct risk to life or health.
  - The rights granted by this Act are exercised without any discrimination based on age.
  - Entities which, by virtue of their authority or activities, influence or may influence the status or the situation of a victim shall treat victims considerately, professionally, with respect and, as far as possible, charitably, while taking into account their age, sex, health status, including mental health, and mental maturity.

- the Slovak National Centre for Human Rights provides legal assistance to victims of discrimination upon requests from natural or legal persons or on its own initiative, issues expert opinions on matters of the observance of the equal treatment principle under a special regulation and performs independent inquiries related to discrimination.
  - It may also support victims of discrimination by providing legal aid, including pursuing litigation on their behalf. Legal aid provided by the Centre in cases of discrimination is free of charge, there is no commission for filing a complaint or other legal aid services provided.

(f) Access to alternative, non-judicial pathways to justice, including, but not limited to, one-stop community justice centres, paralegal support, ombuds procedures or specialist commissioners;

Based on the merits of human rights violation, the older person' may turn to the various state institutions, among others the Ombudsperson' office (the Public Defender of the Rights in Slovakia), the Centre for Legal Aid, the Labour Inspectorate, the Office of the Commissioner for Persons with Disabilities.

(g) Access to reasonable accommodation in all legal and administrative proceedings at any stage to facilitate older persons' effective role as direct or indirect participants in justice proceedings;

The Slovak republic ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). According to Art. 13 States Parties:

*“(1) Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.*

*(2) In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.”*

(h) Adequate and appropriate training to all those working in the administration of justice and law enforcement, including the judiciary, police and prison staff, on the rights of older persons;

The Judicial Academy, an independent, nationwide educational institution, organizes and conducts professional training for judges, prosecutors and court clerks on human rights and the related topics.



(i) Accommodation of the needs of older prisoners, including necessary physical adaptations, protection against violence and extortion, appropriate educational and vocational opportunities, and support with reintegration into the community;

Taking into account older persons' state of health, prisoners are allowed to develop and expand their range of interests, participate in educational, cultural, educational and sports activities, and they can also be assigned to work in a suitable workplace. However, if the prisoner is a recipient of an invalidity, old-age and early retirement pension, he is not obliged to work.

Acts n. 475/2005 Coll., n. 221/2006 Coll., n. 368/2008 Coll., n. 437/2006 Coll.

(j) Equal access of older prisoners to services, including physical, mental and cognitive health, dental, hygiene and hospice services, and social and other support services available to the general population; and

Healthcare, general and specialized, is provided depending on the needs of patients in an institution, prison hospital or civilian facility. If needed, the institute will provide a financial contribution to a prisoner to purchase medicine or medical devices prescribed by a doctor.

At the discretion of the doctor, men over the age of 65 and women over the age of 60 may be placed in a disability section, where the regime, the organization of activities and the treatment of prisoners are adapted, if the medical condition so requires. their state of health and the resulting restrictions.

Acts n. 576/2004 Coll., n. 580/2004 Coll., n. 577/2004 Coll.

(k) Access to prompt remedies and redress when older persons' right to access justice is denied.

In case of violation of older persons' rights and freedoms guaranteed by the Constitution of the Slovak Republic or a ratified international treaty, the older persons are entitled to file a complaint at the Constitutional Court of the Slovak Republic, unless another court decides on the protection of such rights and freedoms.

#### State obligations

3. What mechanisms or measures are necessary to ensure the enjoyment and to monitor implementation of the right of older persons to access justice, including State obligations to respect, promote, protect, and fulfill the right?

To ensure the enjoyment and to monitor implementation of the right of older persons to access the justice it is important to improve data collection, ensure effective cooperation between authorities, secure sufficient financial resources and training.

#### Special considerations

4. What special considerations or specific issues should be included in the right of older persons to access justice, including procedural and age-appropriate accommodations as well as responsibilities of non-State actors?

#### Implementation

5. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on the right to access justice for older persons?

COVID-19 pandemic has shown how vulnerable the older persons are, especially with the increase of the reports of domestic violence, neglect and abuse. Lack of awareness of their legal rights might constitute a challenge for older persons when it comes to the access to justice. Fragmented data, gender bias, prejudices and cultural norms that prevent victims to report the abuse are among the main challenges that we face.

Recently, the Crime Victims Act (274/2017 Coll.) has been amended in order to strengthen victims' rights and protect them from further victimization, simplifying access to compensation and creating a network of victims' intervention centers providing comprehensive assistance and protection.

Furthermore, the Ministry of Justice of the Slovak Republic established an Analytical Center with the aim to improve collection and analysis of data gathered from the judiciary.

Further improvement of the treatment of older prisoners is also the subject of the currently drafted Concept of the Prison of the Slovak Republic for the years 2022 to 2030 which aims inter alia to reconstruct rooms, ensure barrier-free access, improve material and technical equipment for immobile patients and expand the specialized section of convicts with disabilities.