

SPAIN

Inputs from the Government of the Kingdom of Spain

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1- EQUALITY AND NON-DISCRIMINATION

*Guiding questions:*

1) Does your country's constitution and /or legislation

a) guarantee equality explicitly for older persons or people of all ages

b) forbid discrimination explicitly on the basis of age? If so, how is the right to equality and non-discrimination defined?

The Spanish Constitution states in its Preamble that it protects **all** Spaniards in their exercise of the human rights and devotes a whole Title, Title I, to the fundamental rights and duties. In this title, Article 14 establishes that "Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social conditions or circumstance", being age included in the concept of "social condition or circumstance" even though not specifically mentioned.

Furthermore, article 50 specifically **protects** older people: "The public authorities shall guarantee, through adequate and periodically updated pensions, sufficient financial means for senior citizens. Likewise, and independently of the obligations of their families towards them, they shall promote their welfare through a system of social services, which shall provide for their specific problems of health, housing, culture and leisure".

Finally, other articles of the Constitution establish provisions for the establishment of a social security system (Article 43), the right to health protection including preventive measures as well as the necessary benefits and services, and access to culture (Article 44) and a worthy and adequate home (Article 47).

On the other hand the approval and implementation of Act 39/2006, of 14<sup>th</sup> December, on the Promotion of Personal Autonomy and Care for Dependent Persons, has become the pillar of the effective protection of the elderly in Spain as it has created a system which provides care services and benefits for all dependents.

2) Does your country produce information about discrimination against older persons in the following or other areas? If so, what are the main findings?

There are no indications of existing discrimination situations in the terms of access to goods and services (the pension system provides older persons with purchasing power), social protection (social services are available at the municipal level), health care (provided by the Social Security Health System and the System for the Promotion of Personal Autonomy and Care for Dependent Persons), or justice and inheritance (guaranteed through free legal assistance for persons in need).

- **Employment:** According to the AAI (Active Ageing Index), in 2015 the percentage of employment of older persons over 55 gradually decreases as a result of the age group they belong to: from 56,7% of employees in the 55-59 age group, to 35,3% in the 60-64 age group, 4,9% in the 65-69 age group, and 1,2% in the 70-74 group.

With the approval of Royal Decree-Law 5/2013, of March 15<sup>th</sup>, of measures to encourage the continued employment of older workers and promote active ageing, the Spanish government promotes the continuity of the older workers' working lives and promotes active ageing providing incentives to stay at work beyond the age of retirement through flexibility and gradualism in retirement. It also provides for additional pension increases based on more years of contribution, grants persons over 55 years who have exhausted unemployment the status of priority group in plans of active employment policies, and provides measures to prevent discrimination against older workers in collective redundancies.

- **Access to goods and services:** The AAI also shows that the percentage of use of information and Communication Technologies by the elderly population (aged 55 to 74 years) has increased from 9,2% in 2005 to 23% in 2010 and 44% in 2015.
- **Autonomy-Living environment:** Potential discrimination caused by dependency situations are being addressed by the Rehabilitation in Buildings and Urban Regeneration and Renewal Plans, 2013-2016, which provides for economic aids for the installation of elevators, stair lifts, ramps, and other devices as well as accessibility aids.  
They can reach 11.000€ for rehabilitation and 3000€ for replacement.

### 3) Is there information available about inequality of opportunities or outcomes experienced by older persons in the following areas?

- **Availability of access to and quality of health care services.** The Public Social Security Health System guarantees equality and non-discrimination of older persons in the access to and quality of health care services.
- **Financial services-**No information is available.

### 4) Are there any areas where differential treatment based on old age is explicitly justified?

**Examples:**

- **Access to goods**
- **Mandatory age of retirement**
- **Age limits in financial services and products**
- **Age-based benefits**

Differential treatment based on age is, not only justified, but also necessary, and older people must have subsidized access to products of technology and services of all types to maintain their autonomy and dignity. As for mandatory age of retirement, there is not a mandatory age of retirement in Spain, only a minimum age of retirement.

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## 2- NEGLECT, VIOLENCE AND ABUSE

### **Guiding questions:**

**1).-In your country, are there specific studies of surveys (from governmental, non-governmental or academic sources) on violence, abuse and neglect experienced by older persons?**

- The Imserso (Institute for Older Persons and Social Services), in collaboration with the Geriatrics and Gerontology Society, published two important studies:

“Old age, neglect, abuse and mistreatment, the perspective of the older Persons and the professionals” (2004), and

“Mistreatment of the older persons: a guideline” (2005). This work was also developed in collaboration with WHO in the project “Global response to older persons’ abuse, including neglect: training of primary care services for the global approach.”

- In the Imserso’s collection “Perfiles”: “Violence towards the Older Persons”, nº 21; “Types of abuse and / or neglect of the Older Persons”, nº 15; “Difficulties in defining mistreatment”, nº 16; “The mistreatment of older people and its legislation in Spain”, nº 40.
- Abuse of Older Persons in Families in Spain”, Centro Reina Sofía, 2008
- “Older people in vulnerable condition, mistreatment and abuse.” Pio Aguirre, member of the General Council of the Judiciary and President of the Justice and Disability Forum.

**2).- (a) What forms of violence, abuse and neglect (e.g. physical, psychological, sexual, financial or other) are registered? What is the setting in which they occur (i.e. residential and non-residential)? Is there information about the type of perpetrators?**

**(b) Does violence, abuse and neglect particularly affect specific groups of older persons? If so, which groups and how?**

According to a recent study by the Union of Pensions, 7% of the older persons suffer abuse in Spain although only 10% denounce them, due to affective, cultural issues and sometimes ignorance and/or fear. Researchers highlight the difficulty of obtaining reliable data. Abuse increases with age and disability.

In another study conducted at the Reina Sofía Center, in a sample of 2401 older persons, the incidence of maltreatment is 0.8%. This percentage increases in older people in a situation of dependence to 1.5% being psychological abuse and negligence slightly higher. Perpetrators are usually relatives, especially children, sometimes dependent on the victim (for accommodation, support) and often with problems of social relation and drug addiction. On the other hand, women cause mistreatment through negligence and men through physical and/or sexual abuse.

**3).-Does your country’s legislation explicitly address issues of violence, abuse and neglect against older persons? If not, what legislation applies to such issues in the context of older persons? Does this legislation sufficiently address the full range of violence against older persons?**

In Spain, legislation protects people with specific peculiarities in general, rather than addressing specific groups such as the older persons. Spaniards and non-Spaniards as well are protected in their exercise of the human rights according to the Preamble of the Spanish Constitution, which devotes a whole Title, Title I, to the fundamental rights and duties.

The Penal Code also establishes that abuse, whether physical, psychological, sexual or economic, constitutes punishable crime in Art. 147, 148 and 152; art. 153, which addresses actions against life and physical integrity, Art. 163, 169, and 172, referring to crimes against freedom including threats and coercion; and Art. 173, addressing denigrating treatment and torture.

Its Title XII includes crimes against privacy, the right to the own image and inviolability of domicile and communications, letters, messages, or telephone conversations, crimes against honor, actions affecting the self-esteem of the person, and related to the right to dignity, as set forth in Article 10.1 of the Constitution.

Organic Law 11/2003 of 29 September typifies the crime of domestic violence, which is set out in Article 153 of the Criminal Code. It includes, among others, “psychic impairment or an undefined injury” as a crime.

Organic Law 1/2004, of December 28, on Measures of Integral Protection against Gender Violence.

Additionally, protocols for the detection and action against the mistreatment of older persons have been elaborated and put in practice by the police, primary health services, social services, and residences at the national and regional levels.

In the framework of Action of the Older Persons (2015) approved by the Government the issue of mistreatment is dealt with in different sections, also dedicating a specific chapter “Decent treatment for the elderly”.

In addition to legal mechanisms of protection, there are other protection mechanism at the state and regional levels, among others: specific legal services for seniors, telephones for the older persons, associations of older persons, inspection of social services, and community social services.

#### **4).-What legislation exists to protect older persons specifically against financial abuse, including inheritance abuse?**

In February 2008 a new institution was created in Spain, the Delegated Attorney for the Defense of the Protection and Defense of the Rights of the Elderly, with the task of prosecuting any kind of abuse committed against older persons, including financial and inheritance abuse.

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