

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

Focus Area 2: Economic Security

Definition

1. How are the key human rights relating to older persons' economic security 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?

Scope of the rights

2. Please provide references to existing national legal standards relating to older persons' economic security on normative elements such as:
 - a) right to social security; including regular adjustment of benefits with changes in living costs;
 - b) right to adequate standard of living, including housing, clothing, food and water, among others;
 - c) right to work; and whether a national minimum wage or any alternative mechanism is in place to ensure an adequate standard of living, and whether a system of indexation and regular adjustment exists;
 - d) 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 economic security;
 - e) the connections between relevant economic, social and cultural rights with the right to freedom of expression, including freedom to seek, receive and impart information; and rights to peaceful assembly and freedom of association;
 - f) active, free and meaningful participation of older persons and their representative organizations in all matters related to ensuring their economic security, including in political processes;
 - g) access to prompt remedies and redress when older persons' above mentioned rights are violated.

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' economic security?

First of all, it should be pointed out that the Constitution of the Grand Duchy of Luxembourg of 17 October 1868 takes precedence over other national norms and must therefore be respected by the latter, namely the laws and regulations of the Grand Duchy (rule of the hierarchy of norms). It is therefore of paramount importance in the domestic legal order. The principle of equality is enshrined first of all in its Article *10bis* paragraph 1^{er} : "Luxembourgers are equal before the law".

In addition, there is a constitutional principle of equality between men and women, proclaimed in Article 11 paragraph 2 of the Constitution as follows: "Women and men are equal in rights and duties. The State shall actively promote the elimination of any obstacles that may exist in the area of equality between women and men ».

These provisions, because of their cross-cutting and general nature, therefore also cover non-discrimination on grounds of age.

It should be noted that Luxembourg is also a member of the European Union, with all the repercussions that this entails in terms of the legal system (such as the recognition of the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000). Thus, the Grand Duchy ardently supports the objectives of this international organisation, which are the defense of human rights, the guarantee and preservation of parliamentary democracy and the rule of law, the promotion of the development of European cultural identity and the fight against the problems facing European society. Furthermore, since October 1945, Luxembourg has been one of the 51 founding members of the United Nations. Peace and security, development and human rights are the three pillars on which the United Nations rests.

Secondly, mention should be made of the law of 28 November 2006¹ on:

1. transposition of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
2. Transposition of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;
3. Amending the Labour Code and introducing into Book II a new Title V on equal treatment in employment and occupation;
4. Amendment of Articles 454 and 455 of the Criminal Code;
5. Amendment of the law of 12 September 2003 on the disabled.

The Centre for Equal Treatment (CET) was established by the same law. It carries out its tasks independently. Its purpose is to promote, analyse and monitor equal treatment of all persons without discrimination on grounds of race or ethnic origin, gender, sexual orientation, religion or belief, disability and **age**.

In carrying out its mission, the CET can, in particular,² :

- publish reports, issue opinions and recommendations and conduct studies on all issues related to discrimination;
- produce and provide any information and documentation within the framework of its mission
- provide assistance to people who feel they have been discriminated against by providing a counselling and referral service aimed at informing victims of their individual rights, legislation, case law and the means of enforcing their rights;
- conduct or commission independent surveys and analyses of unjustified restrictions and obstacles to the right of free movement or discrimination on grounds of nationality against EU workers and their family members within the meaning of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.

The same law made changes to the Criminal Code and the Labour Code. Article L.251-1 of the latter stipulates, "any direct or indirect discrimination based on religion or belief, disability, age, sexual orientation, membership or non-membership, real or assumed, of a race or ethnic group is prohibited".

¹ <https://legilux.public.lu/eli/etat/leg/loi/2006/11/28/n1/jo>

² <https://cet.lu/missions/>

As for the Penal Code, it should be noted that it also provides for the repression of discrimination, particularly in Articles 454 et seq. Thus, according to Article 454 of the Penal Code: "any distinction made between natural persons on the basis of their origin, skin colour, sex, sexual orientation, family status, age, state of health, disability, morals, political or philosophical opinions, trade union activities, or their actual or supposed membership or non-membership of a particular ethnic group, nation, race or religion constitutes discrimination".

Implementation

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

The amended Law of 23 December 1998 authorizing the National Solidarity Fund to contribute to the cost of services provided in the context of gerontological care for users of integrated centers, care homes, socio-gerontological centers and psycho-geriatric day centers³ is currently being reformed.

³ <https://legilux.public.lu/eli/etat/leg/loi/1998/12/23/n6/jo>