

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

Focus Area 2 - Economic Security

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?

Article 72 of the Portuguese Constitution, under the heading “Third Age” contains a specific reference to the elderly.

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».

This article has already undergone two changes, the most important being the one made in 1982, “in which became the state obligation towards the elderly in the recognition of rights of the elderly as Fundamental Rights, explained in paragraph 1 of this article.

Under paragraph 2 of Article 72, of the Constitution, the State must create a suitable third age policy, of an economic, social and cultural nature. There is a real constitutional obligation to protect and assist a politically disadvantaged social group, in line with Article 9/d of the constitutional law, which recognizes, as a fundamental task of the State, the promotion of *«the well-being and quality of life of the people and real equality among the Portuguese, as well as the realization of economic, social, cultural and environmental rights, through the transformation and modernization of economic and social structures»*.

Part I of the Constitution deals with “Fundamental rights and duties”. Still such part does not exhaust the matter or even the enumeration of fundamental rights. In the Constitution, we can find a systematic division between rights, freedoms and guarantees and economic, social and cultural rights. The economic, social and cultural activities aimed at promoting social well-being and defending those in need.

Within the scope of the legal regime of economic, social and cultural rights (as is the case of the right to social security), the non-reversibility principle, also known as the principle of prohibition of social retrogression, determines that, once social benefits have been legally enshrined, the legislator cannot later eliminate them without alternatives or compensations.

Please provide references to existing national legal standards relating to older persons' economic security on normative elements such as:

- **right to social security; including regular adjustment of benefits with changes in living costs**

The Portuguese Social Security System, predicted in Article 63 of the Constitution, is regulated by Law N.º 4/2007, of January 16 (which approved the general bases of the social security system). This law has materialized the so-called right to social security, tending of universal attribution, to be carried out by the System and to be exercised under the terms of the Constitution, in accordance with applicable international instruments and the general law of the Social Security System.

There are several eventualities covered by the social security system, namely old age. In terms of social coverage in old age, it is customary to refer to old-age pensions and survivors' pensions. But the following benefits can also be identified: Old Age Pension (Decree Law No. 187/2007, of May 10); Old Age Social Pension (Decree Law No. 464/80, of October 13); Solidarity supplement for seniors (Decree Law No. 232/2005, of December 29).

Regarding regular adjustment of benefits, Social Support Index is a reference value for the calculation and determination of various social supports granted by the Portuguese State.

Social Support Index emerged through Law No. 53-B/2006, of December 29. Before the creation of Social Support Index, the monthly minimum wage was the source for calculating numerous social benefits. On January 1, 2007, the Social Support Index entered into force for the first time, in the amount of 397,86 euros.

Although it is stipulated by law that the Social Support Index value must be updated annually, depending on the value of GDP and inflation, the truth is that it was frozen between 2009 and 2016.

In 2023, Social Support Index reference is 480,83 euros (Ordinance No. 298/22, of December 16).

- **right to adequate standard of living, including housing, clothing, food and water, among others**

Paragraph 1 of Article 72 of the Constitution establishes that *«Elderly people have the right to economic security and housing and family and community living conditions that respect their personal autonomy and avoid and overcome isolation or social marginalization»*.

The new Basic Housing Law in Portugal, approved in 2019 (Law No. 83/2019, of September 3), is a milestone in the implementation of the right to housing in the country. The new legislation establishes that the State must guarantee housing as a human right. Under the new law, the right to housing implies access to essential public services (e.g. domestic water supply and electricity), and to an adequate network of transport and social equipment, within the framework of land use planning and urbanism.

Article 8 (3) (c) of the Basic Housing Law establishes that housing policy includes special protection measures aimed at elderly people, to ensure adequate housing adapted to their health conditions and mobility, with respect for their personal autonomy, preventing isolation or social marginalization

The State, autonomous regions and local authorities cannot promote the eviction vulnerable individuals or families without previously guaranteeing relocation solutions, under the terms defined by law (Paragraph 4 of Article 13).

Law No. 30/2018, of July 16, approved an extraordinary and transitional regime for the protection of elderly or disabled people who were tenants and had resided in the same lease for more than 15 years, proceeding in these cases to the temporary suspension of the deadlines for opposition to renewal and termination by landlords of lease contracts. This regime lasted between June 2018 and March 2019.

Under Urban Lease Regime (Law No. 6/2006, of February 27), if the tenant proves that he is 65 years or older, the proposed rent increase only applies if the tenant agrees. If the lessee does not accept the amount, he can suggest another amount and, if the landlord does not accept, the contract remains in force and the rent is fixed according to legal criteria, but cannot exceed 1/15 of the taxable amount. Tenants cannot be evicted, for that purpose.

Article 2009(1)(b) of Civil Code establishes the duty to provide adequate food and clothing from descendants to parents, especially the elderly.

In the sentence handed down by the Court of Appeal of Lisbon, of May 5, 2016¹ it is said that *«Improving care for a dependent elderly person by a descendant requires a collaborative network within the community capable of generating a service within the scope of elderly care, bringing a systemic look to the elderly-caregiver relationship, which the other non-caregiver cannot place out.*

Old age is related to losses and poverty. Physical losses in terms of wear and tear, affective and emotional losses, material losses, loss of space, social losses, in short, total losses. The elderly need their own space, they live in search of the realization of this dream while life pulsates. His inclusion in the bosom of the family of one of his descendants is a testament to his respect for a dignified life in old age and dignity in death.

The elderly inserted in the community/domicile have a better perception of their Subjective Well-Being, presenting a superior quality of life than the institutionalized elderly, insofar as care is provided according to their needs, translating into an improvement significant change in their living conditions and stability, while institutionalization can mean a rupture with their physical and relational space, accompanied by depressive feelings».

National definitions have been reinforced under the framework of the National Strategy for the Integration of Homeless People, 2017-2023, and concern those who are in the following situations: Rooflessness - without a shelter of any kind, sleeping rough. Houselessness - with a place to sleep but temporarily in institutions or shelters (Resolution of the Council of Ministers No. 107/2017, of July 25).

- **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;**

Portuguese Labor Law protects more paternity and maternity than assistance to ancestors. This legislative option seems to reveal a normative preference of descendants over ascendants, in which assistance to the family, when provided in favor of descendants enjoys a condescension that has no correspondence when such care is required by an elderly person. The National Strategy for the Protection of the Elderly, (Resolution of the Council of Ministers No. 63/2015, of August 25), makes reference to Recommendation CM/Rec (2014) of the Council of Europe, on the promotion of rights of the elderly, where some of the lines

¹ <http://www.dgsi.pt/jtrl.nsf/-/9185E6E47672215F80257FD2002F10FD>

of action concerning the elderly, including social protection and employment. However, in terms of achieving and setting objectives, nothing was advanced for that purpose.

The guaranteed minimum monthly wage is defined in Article 273 of the Labor Code, approved by Law no. 99/2003, of August 27. This remuneration, which was previously known as the national minimum wage or minimum monthly remuneration, was created by Decree-Law No. 217/74, of May 27.

The Guaranteed Minimum Monthly Remuneration is a benchmark in the labor market, both from the perspective of work and social cohesion, as well as the competitiveness and sustainability of companies.

This remuneration is updated every year. The amounts are determined according to a calculation of the cost of living in Portugal and cover expenses with basic needs by workers, also considering the growth of productivity in the country.

The reference value for 2023 is 760,00 euros (Ordinance No. 85-A/2022, of December 22).

- **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;**

Portuguese legal system does not contain specific provisions on the rights of older persons and to discrimination on the basis of age in all matters related to economic security. The existing legal framework is limited to labor law. At EU level, the development of the anti-discrimination principle in employment, and with regard to age, is recognized in Directive 2000/78/EC49, of the Council of 27 November 2000. According to the 25th recital of the Directive *«the prohibition of discrimination related to age constitutes an essential element in achieving the objectives established by the employment guidelines and encourage diversity in employments»*. This Directive was transposed into Portuguese legal system through the Labor Code. The general rule present in our legal regime is qualification as discriminatory, and consequently forbidden, all conduct by the employer that *«privileges, benefits, harms, deprives of any right or exempts from any duty a worker or candidate for employment, on grounds, namely, of [...] age»* (Article 24 (1) of the Labor Code – Law No. 7/2009, of February 12).

Nevertheless, Article 6 (1), of the Directive authorizes Member States to establish age-related differences in treatment without constitute discrimination, if justified under national law. So,

the Portuguese Labor Code predicts differences in treatment based on age which are necessary and appropriate for achieving a legitimate objective, namely employment policy, the labor market work or vocational training (Article 25 (3)).

- **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; 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.**

The National Strategy for the Protection of the Elderly establishes that the access to relevant and adequate information is a condition for the exercise of elderly rights. Regarding participation, National Strategy establishes that the right to develop activities in the within the community and to join associations or movements of the elderly it should be ensured to elderly people (V. Chapter II, recital 2a). Nevertheless, there are no specific normative framework in order protect the specific right of older persons in accessing information, in the context of economic security. Also, there are no specific considerations regarding meaningful participation of older persons and their representative organizations in all matters related to ensuring their economic security, including in political processes.

- **to prompt remedies and redress when older persons' above-mentioned rights are violated.**

The system of access to the law and to the courts is intended to ensure that no one is hindered or prevented from knowing, exercising or defending their rights, by reason of their social or cultural condition, or insufficient economic means. Legal protection covers the arrangements for legal consultation and legal aid. In case of rights' violation, elderly can make use of the regime of access to the law and the courts, provided for by Law 34/2004, of 29 July.

In the latter case, once the economic insufficiency of the applicant has been proven, a lawyer may be appointed to represent the applicant in court. The objective conditions for assessing

economic insufficiency are measured by reference to the social support index, mentioned above.

One of the objectives of the national strategy for the protection of the elderly was to introduce standards into Penal Code for the sanctioning behavior of possible violations of fundamental rights of the elderly, namely, to *prevent or make it difficult for an elderly person to access the purchase of goods or provision of services from any nature, due to age* (V. Chapter II, 4). This objective was not achieved yet, as parliamentary initiatives launched for this purpose have not been completed.

The Portuguese Ombudsperson is empowered to deal with complaints against public entities and relating to events protected by the older persons' above-mentioned rights. The Ombudsperson 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 Ombudsperson Statute (Article 4(1) of Law no. 9/91, of April 9, 1991²). Since 1999, the Ombudsperson 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 Ombudsperson 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.

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?

The human rights Portuguese legal framework is not specific enough to protect and fulfil some of the above-mentioned rights to ensure older persons' economic security. It seems not to clearly recognize age as cause of forbidden discrimination for that purpose regarding all dimensions.

On the other hand, the catalogue of enunciated rights to ensure older persons' economic security should be expanded and consolidated in the normative framework, especially the rights to participation, freedom of expression and access to information. It should be noted

² As last amended by Law no. 17/2013, of February 18, 2013.

that the preamble of the national strategy for the protection of the elderly clearly pointed to the objective of the *«future implementation and development of all aspects in which the protection of the elderly unfolds, through the framework of fundamental rights of the elderly that now traces itself»*. This objective, in particular, has not yet been achieved.

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 National Strategy for the Protection of the Elderly was an important step towards expressly enunciating the fundamental rights of the elderly, in line with the relevant international documents.

However, there is still a gap between the proclamation of this rights and their effective protection, namely through legislation.

The absence of specific norms on the protection of the human rights of older persons contributes to the inefficacy of its protection mechanisms. Elderly is subject to a rate of exposure to the risk of poverty³: the population aged 65 years or older (24%) and in particular the population aged 75 years or more (26.7%), just as social exclusion of this group persists. Indeed, the absence of legislation in this matter is likely to stigmatize the elderly condition, excluding them from the enjoyment of many consumptions, for example, cinema, theater, musical shows, almost inaccessible to those with reduced mobility or more vulnerable to the insecurity of city life.

It should be stressed that until March 2009 there was no official definition of homelessness in Portugal and the adoption and later reinforcement of a national definition is a positive development in this field, under the National Strategy for the Integration of Homeless People. Also, the use of a single concept of «homeless person» at national level, is a good practice: one of the guiding principles of the strategy is the social protection of homeless people over the age of 65.

³ <https://www.eapn.pt/wp-content/uploads/2022/10/Pobreza-e-Exclusao-Social-em-Portugal-2022-REAPN05.pdf>

Loneliness and social isolation are serious public health risks affecting a significant number of older adults. In September 2019, a formal status for informal carers was approved by law. The recognition of caregiver status allows the informal caregiver to benefit from various support measures, such as access to training, psychosocial support and counseling, support allowance, among others. Without informal carers, significant part of elderly people would need to be institutionalized⁴, when the lack of subsidized residential homes for the elderly is a problem itself.

⁴ A new formal status for informal carers in Portugal, <https://ec.europa.eu>