



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

Access to justice

Slovenian legislation **fails to give a definition** of the right of older persons to access to justice. Moreover, as regards older persons or their age, there are no special arrangements foreseen concerning their legal capacity and/or legal standing in Slovenian legislation. Therefore, general rules apply. **Long Term Care Act (ZDOsk)**, adopted in December 2021, foresees in paras two to six of art. 35 (art. regulates the procedure and the manner of exercising of the long-term care rights. The procedure in question may be started by the submission of an application) the actions taken and rules for dealing with applications for long term care, in cases in which the selected personal physician or the treating physician or the outreach nurse in the process of medical treatment of an insured person establishes that justified reasons for which the insured person would require the long term care exist and assesses that the insured person is not capable of initiating the procedure to exercise the long term care rights on his/her own due to mental health issues or any other reason affecting his/her judgement.

Regarding the elimination of ageist stereotypes, equality before law principle arises from art. 14 of the **Constitution** of the Republic of Slovenia. According to para. one of art. 14 everyone must be guaranteed equal human rights and fundamental freedoms irrespective of any personal circumstance. Para. two stipulates, that all are equal before the law. We also take note of provisions of arts. 15 (Exercise and Limitation of Rights), 22 (Equal Protection of Rights) and 23 (Right to Judicial Protection)¹ of the Constitution. Furthermore, **Protection Against Discrimination Act (ZVarD)** determines the protection of every individual against discrimination in various areas of social life.

As the risk of disability tends to increase with old age, provisions of **Equalisation of Opportunities for Persons with Disabilities Act (ZIMI)** aim to prevent and eliminate discrimination against persons with disabilities on basis of disability.

Legal Aid Act (ZBPP) ensures individuals the exercise of the right to judicial protection based on the principle of equality. According to para. three of art. 1 of ZBPP, legal aid means the right of an eligible person to full or partial provision of funds necessary to cover the costs of legal assistance and exemption from the payment of costs for judicial proceedings. ZBPP sets out in art. 2 that legal aid may be granted also **exceptionally** – inter alia in cases in which major part of the personal income of the applicant or any of the applicant's family member is intended for the payment of institutional care services (e. g. payment for care in a home for the older persons).

Old persons can always obtain assistance from domestic NGOs such as Slovenian Federation of Pensioners Associations and “Srebrna nit” society. They provide counselling on various questions and issues to the older people.

¹ In accordance with art. 23, everyone has the right to have any decision regarding his rights, duties, and any charges brought against him made without undue delay by an independent, impartial court constituted by law.

We furthermore highlight arts. 18.a and 143.č of **Criminal Procedure Act (ZKP)**, introduced by the Act amending Criminal Procedure Act (ZKP-N) in 2019, which systematically regulated the status of victims of criminal offences. It was expressly laid down in art. 18.a of ZKP that police, and other state authorities in criminal and pre-trial proceedings, must treat the injured parties, suspects, accused persons and convicts with particular care and act considerately where necessary because of their vulnerability, such as age, health condition, disability, or other similar circumstances. According to art. 143.č ZKP, when preparing the assessment of special needs of injured parties, the competent authority must take special account to the, inter alia, age and potential disability of the injured person.

Provisions of **Civil Procedure Act (ZPP) regulating the testimony of witnesses and manners of service** also recognise the particular vulnerability of older people. Art. 140 of ZPP provides for an alternative manner of service to recipients staying in establishments designed for communal housing or for carrying out activities which involve 24-hour residence, such as hospitals, homes for the older persons, etc. If the recipient is not found in such establishment, documents may be left with the person authorised at this establishment to accept the resident's mail. Art. 237 of ZPP stipulates, that persons unable to respond to the invitation on grounds of age, illness, or serious bodily defects, are heard in their place of residence. Furthermore, art. 223 of **Court Rules** regulating invitations and other writings stipulates that the invitation must contain a notification stating that all participants who are persons with disabilities or persons with special needs have a right to equal participation in the procedure. Participants who are persons with disabilities or persons with special needs must notify the court prior to a hearing that they will be enforcing their right to equal participation in the procedure.

Enforcement of Criminal Sanctions Act (ZIKS-1) states in para. seven of art. 18, that when deciding on which prison the **convicted person** is to be sent, the court considers, inter alia, his/her age. Art. 239 of ZIKS-1 regulates the use of means of compulsion by Judiciary Police Officers (JPO) against convicted persons, if they are otherwise unable to prevent an escape, self-harm or serious material damage. According to para. four of art. 239, JPO must not use means of compulsion, inter alia, against apparently sick, older or person with disabilities, unless the JPO is unable to otherwise contain his/her resistance or attack or if he/she risks his/her life or lives of others, property or if his/her life or health is otherwise directly endangered. Finally, in accordance with para. two of art. 60 of ZIKS-1, convicted persons whose age, illness or disability necessitates additional assistance with the meeting of basic needs in the form of nursing or social care may reside in a modified area or department of one of the prisons.

It is important to emphasize that older inmates are not discriminated, and their treatment is no different from that of other inmates. Despite many architectural barriers, the prison facilities are trying to find suitable accommodation for every prisoner, and the prison system has been working for the past few years to arrange facilities adapted to older inmates at all locations. All prisoners, including the older persons, receive assistance from prison staff professionals such as psychologists, social workers and pedagogues. Prison facilities also encourage physical activity such as outdoor exercise and fitness.

The Judicial Training Centre provides training for judges, prosecutors, state attorneys and staff employed at judicial bodies. In 2020 in 2021 the Judicial Training Centre organized a lecture on the position and needs of persons with dementia at a number of its training events for all target groups. The objective of the lecture was to draw attention to the position and needs of persons with dementia and persons living with dementia and to increase general sensitivity towards the issue. The rights of older persons will also be dealt with at future training events organized by the Judicial Training Centre where appropriate.