

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?

Scope of the right

2. What are the key normative elements of the right to work and access to the labor 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.

Pursuant to Article 18 of the Labour Law, direct and indirect discrimination of persons seeking employment, as well as the employees, for reasons of sex, birth, language, race, colour of skin, age, pregnancy, health condition, i.e. disability, ethnic origin, religion, marital status, family obligations, sexual orientation, political or other belief, social background, financial status, membership in political organizations, trade unions, or any other personal characteristic - is prohibited.

Discrimination specified in Article 18 of this Law is prohibited in relation to: 1) employment conditions and choice of candidates for performing a specific job; 2) conditions of work and all the rights deriving from employment; 3) education, vocational training and specialization; 4) job promotion; 5) termination of the employment contract. Persons facing discrimination in the labour market are protected by the Law on Prohibition of Discrimination and have also the option to address the Commissioner for Protection of Equality or Ombudsman in order to have their rights protected.

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

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- c) Provision of reasonable accommodation to older persons in the workplace.
For persons with disability, this is guaranteed through ratification of the UN Convention on the Rights of Persons with Disabilities. The Convention does extend to older persons with disabilities but not to other older persons.

- d) Affirmative action programs to promote the hiring of older persons.

Persons older than 50 as well as other unemployed persons on the records of the National Employment Service have the opportunity to be included in active labour market policy measures: job matching; professional orientation and career planning counselling; employment subsidies; support for self-employment; additional education and training; incentives for cash benefit recipients; public works; etc. Unemployed people over the age of 50 have priority for inclusion in the measures, as one of the categories of hard-to-employ persons. One of the measures in which this category has priority is the allocation of employment subsidies for unemployed persons from the category of hard-to-employ persons.

Pursuant to Article 37 of the Labour Law, a contract may be concluded for a definite period of time may be concluded, inter alia, with an unemployed person which lacks up to five years to fulfil one of the preconditions for retirement, no longer than such requirement is fulfilled, in accordance with the regulations on retirement and disability insurance.

- e) Access to career development, technical and vocational guidance programs, placements services and vocational and skills development.

The National Employment Service conducts professional orientation and counselling on career planning through information and counselling. Active job search measures are implemented in order to encourage employability, strengthen motivation, self-confidence and self-efficacy through the development of active job search skills. Trainings for the labour market are realized in order to acquire additional theoretical and practical professional knowledge and skills in accordance with the needs of the labour market and employers, and in order to improve the employability of unemployed persons, primarily those who are hard-to-employ or with low qualifications. Training at the request of the employer for the unemployed implies the acquisition of additional knowledge and skills needed to perform work in a specific job, at the request of the employer who belongs to the private sector.

- f) Access to flexible or gradual retirement schemes and flexible working practices for older workers.

- g) Promotion of older persons' self-employment and entrepreneurship.

The support measure for self-employment includes professional assistance and funds in the form of a self-employment subsidy. Professional assistance that can be obtained by the unemployed looking to become self-employed consists of information and counselling services, training for entrepreneurship development, as well as support in the first year of business which is realized through a mentoring program and specialist training in the National Employment Service, regional development agencies, etc. Priority for granting subsidies is given to certain categories of the hard-to-employ, which include the unemployed who have been made redundant, who are mostly over 50 years old.

- 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.

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 labor market for older persons, regarding the normative elements as provided above?

More flexible policies related to retirement should be explored and adopted in order to ensure that older persons fulfilling the conditions for retirement can continue to be employed under conditions that will reflect both their capacity to work and transfer their expertise to younger workers, by for example providing gradual retirement, flexible hours etc.

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?

Article 104 of the Labour Law stipulates that an employee is entitled to appropriate salary which is determined in conformity with the law, bylaw and employment contract. Employees are guaranteed equal salary for the same work or the work of the equal value performed with the employer. The work of the same value is considered to be work which requires the same level of qualification, i.e. education, knowledge and skill, wherein equal work contribution with equal responsibility were accomplished.

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?

The Law on Prohibition of Discrimination is equally valid in the private and public sector and it needs to be applied in cases where older persons face discrimination in the labor market. The courts, as well as the independent bodies protecting equality and human rights (Commissioner for protection of Equality, Ombudsman) are equipped to protect the right to work of older persons in this context.

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?

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 Constitution of the republic of Serbia prohibits all forms of discrimination, explicitly mentioning age as one of the potential bases of discrimination. The same document guarantees the right to a fair trial: “Everyone has the right to an independent, impartial and legally established court, in a fair and reasonable time, to publicly discuss and decide on his/ her rights and obligations, the grounds for suspicion which was the reason for initiating proceedings, as well as the charges against him/ her.”

The Law on the Protector of Citizens stipulates: “The Protector of Citizens is authorized to control the legality and regularity of the work of administrative bodies, in order to determine whether their acts, actions or omissions violated the rights of citizens guaranteed by the Constitution, ratified international treaties, generally accepted rules of international law, laws, other regulations and general acts.” (...) “Any natural or legal person, domestic or foreign, who considers that his or her human or minority rights and freedoms have been violated by an act, action or omission of an administrative body, may file a complaint with the Protector of Citizens. A complaint on behalf of a natural person, with her or his consent, may be filed by an association dealing with the protection of human rights.”

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 law stipulates the obligatory review of the decision imposing the measure of deprivation of legal capacity. According to the law the material validity of the issued decision is limited in time because the court is obliged to set a deadline in its decision within which it will be checked whether there are reasons for the further duration of the imposed measure. After the expiration of this deadline, the court shall review whether there are conditions for a possible change or for further extension of the imposed measure. In the procedure of reviewing the imposed measure, the court is obliged to schedule a hearing and present evidence by an expert witness of the person against whom the procedure is conducted and decide on the scope of his business capacity.

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

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

National strategy for the development of the judiciary for the period 2019-2024 which is in development is among other things aiming to ensure court processes are more efficient, and time-sensitive in order for the citizens to exercise their right to processes being done in the reasonable timeframe. Introduction of public notaries in 2014 has improved access to certain elements of the legal system and is a part of the effort to ensure citizens' access to timely legal proceedings.

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

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

The Constitution of the republic of Serbia establishes that “Defendants who are unable to bear the costs of counsel are entitled to free counsel, if the interest of justice so requires, in accordance with the law.”

The Law on Free Legal Aid has been in force since 2019. It stipulates who and under which conditions is eligible for legal assistance provided free of charge and this assistance includes different types: legal advice, assistance in writing official documents, representation in court and defense in court. The request for approval of free legal aid is submitted to the body of the municipal administration or city administration, competent for the place of residence or stay of the applicant or place of free legal aid. The request may also be submitted through a legal representative, proxy or a person designated by the applicant, provided that the request is accompanied by proof of the exercise of the right of legal representation, i.e. power of attorney. The law stipulates eligible parties as those who are either receiving financial social welfare assistance or who do not qualify for it but may qualify for it if having to pay for the legal assistance. The Law additionally stipulates several more categories of eligible parties and therein explicitly mentions older persons admitted into residential care without their consent as eligible by default. There is no fee for requesting free legal aid.

The law on civil procedure stipulates that the court will exempt from payment of the costs of the procedure in whole or in part a party who, due to his general financial situation, is not able to bear these costs. The law on general administrative procedure also prescribes full or partial exemption from the costs of a party who, by paying the costs, would jeopardize his or her subsistence or that of his or her family. In addition, defining the principle of providing assistance to a party, the Law stipulates that the body conducting the procedure will ensure that the ignorance and ignorance of the party and other participants in the procedure are not to the detriment of their rights under the law.

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

The Ombudsman and Commissioner for the Protection of Equality have considerable focus on the rights of older citizens, both acting on reports made to them and on own initiative, with considerable results from projects and studies implemented by these bodies. The Ombudsman has been functional since 2007, when this independent body was established with the adoption of the Law on Ombudsman and appointment of the Ombudsperson. The Ombudsman works in response to citizens' complaints, but also on own initiative, and part of the duties of this regulatory body relate to the protection of rights of older citizens of the Republic of Serbia, including recommendations related to the respect of the rights of older persons during the COVID-19 emergency.

The Commissioner for the Protection of Equality was established as an independent body with the adoption of the Anti-Discrimination Law in 2009. In its work, the Commissioner for the Protection of Equality responds to complaints, and gathering information published in the Special Report on Discrimination against Older Citizens, largely recognises the forms of discrimination affecting older persons and their prevalence.

(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;

(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;

(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;

(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

Increasing the quality of health care within the penal system is one of the main tasks and preconditions within Chapter 23 of the pre-accession negotiations for membership of the Republic of Serbia in the European Union. The penal system institutions are responsible for health care provided to prisoners, as stipulated by the Law on Implementation of Criminal Sanctions. According to the Law, the Health Care Service in the penal institutions performs health prevention, treats convicts and detainees, monitors hygiene and the quality of food and water, and participates in determining and implementing the program of treatment of convicts. Each institution must have at least one doctor and two medical technicians, and must provide the services of one psychiatrist. When hospital treatment is organized in an institution, the institution must have a doctor and hospital staff with appropriate qualifications and have the necessary hospital facilities and medical materials, accessories, devices and medicines. The institution must have a special room for the separation of sick convicts, depending on the nature of the disease. A penal institution for women must have special equipment for care to be provided to pregnant women, mothers and women in general. Full professional independence is guaranteed and ensured to the health worker who examines and treats the convict, in accordance with the law and the code of ethics.

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

The Constitution of the Republic of Serbia guarantees equal protection of rights before courts and other state bodies, holders of public authority and bodies of the autonomous province and local self-government units. Therefore, everyone has the right to appeal or to seek redress against any decision which may be made in respect of his right, obligation or interest. Law on Civil Procedure likewise states: "If damage has been caused to one of the parties due to the abuse of procedural powers, the court will award compensation to the injured party at their request."

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?

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?