



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

The Finnish Human Rights Center (HRC) is an autonomous and independent expert institution whose task is to promote and monitor the implementation of fundamental and human rights in Finland as well as to increase cooperation and exchange of information between various actors in the field. According to its founding legislation, one of the tasks of the HRC is to participate in European and international cooperation related to the promotion and protection of fundamental and human rights.

The HRC represents the Finnish NHRI in international NHRI cooperation. The HRC forms the National Human Rights Institution (NHRI), alongside with its pluralistic 39-member Human Rights Delegation and the Parliamentary Ombudsman.

The National Human Rights Institution in Finland was established by law in 2012 and received **A-status in 2014. The status was renewed in 2019.**

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?

The Constitution of Finland states in its section 6: *Everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability, or other reason that concerns his or her person. (...) Equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and the other terms of employment, as provided in more detail by an Act.*

The section 18 of the Constitution guarantees the right to work and the freedom to engage in commercial activity: *Everyone has the right (...) to earn his or her livelihood by the employment, occupation or commercial activity of his or her choice. The public authorities shall take responsibility for the protection of the labor force. The public authorities shall promote employment and work towards guaranteeing for everyone the right to work. Provisions on the right to receive training that promotes employability are laid down by an Act. No one shall be dismissed from employment without a lawful reason.*

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.

The Criminal Code, Chapter 47, Section 3, Work discrimination:

An employer, or a representative thereof, who when advertising for a vacancy or selecting an employee, or during employment without an important and justifiable reason put an applicant for a job or an employee in an inferior position

*(1) because of race, national or ethnic origin, nationality, colour, language, sex, **age**, family status, sexual preference, inheritance, disability or state of health, or*

(2) because of religion, political opinion, political or industrial activity or a comparable circumstance shall be sentenced for work discrimination to a fine or to imprisonment for at most six months.

The Non-discrimination Act, Section 8, Prohibition of discrimination:

*(1) No one may be discriminated against on the basis of **age**, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics. Discrimination is prohibited, regardless of whether it is based on a fact or assumption concerning the person him/herself or another.*

(2) In addition to direct and indirect discrimination, harassment, denial of reasonable accommodation as well as an instruction or order to discriminate constitute discrimination as referred to in this Act.

- b) Elimination of all forms of ageism and age discrimination from the workplace and organizational cultures.
- c) Provision of reasonable accommodation to older persons in the workplace.

The provision of reasonable accommodation in the Non-discrimination Act is targeted to persons with disabilities. The Non-discrimination Act doesn't offer a definition of disability. However, the government proposal for the Non-discrimination Act refers to the definition of the CRPD. This would suggest that in the scope of the Non-discrimination Act an older person can also be seen as a person with a disability, if they have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

- d) Affirmative action programs to promote the hiring of older persons.
- e) Access to career development, technical and vocational guidance programs, placements services and vocational and skills development.

Prime Minister Sanna Marin's government programme:

- *The Government's employment rate target requires an increase in the labour market participation of people with partial work capacity, those with poor employment prospects, the young and older people and those with an immigrant background. Effective measures are needed to promote the employment of these people.*
- *Career and guidance services will be improved not only for unemployed persons, but also particularly for those returning from extended family leave and for older employees. Working career guidance will also be increased for employees, entrepreneurs and the self-employed.*

- *Access to employment-promoting and individual services will be enhanced for those in need of special support (including people with partial work capacity, immigrants, people with disabilities, young people and older members of the workforce). The availability of work coaches in employment and social services will be improved. The availability of mental health services will be ensured.*
- f) Access to flexible or gradual retirement schemes and flexible working practices for older workers.

There is the possibility for flexible partial old-age pension starting from the age of 61. Working is allowed without restrictions while drawing the partial old-age pension. The flexible partial old-age pension is 25% or 50% of the pension accrued up to that time. Retiring on an old-age pension will permanently reduce the future pension.

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

Non-discrimination Act, Chapter 5, Section 23 Compensation

(1) A person who has been discriminated against or victimised is entitled to receive compensation from the authority, employer or education provider or supplier of goods or services who has discriminated against or victimised the person contrary to this Act.

(2) Receipt of compensation does not preclude receipt of compensation by virtue of the Tort Liability Act (412/1974) or other legislation.

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?

Reasonable accommodations should be explicitly applicable also to older persons in the labor market. Career and employment services are not enough to promote the employment of older persons. There should also be measures targeted against age discrimination and ageism.

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?
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?

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 basis of the right to access to justice is set out in the section 21 of the Constitution of Finland:

Protection under the law

Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

There is no reference to any specific group, the right is universal in nature. The section 21 of the Constitution is to be read at the same time with the section 6 (*Equality: Everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability, or other reason that concerns his or her person.*)

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;

Legal capacity can never be denied solely based on age in Finland. However, the legal standing and legal agency of an older person aren't necessarily respected de facto for example in situations where a person has a memory-related illness.

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

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

Backlogs and lengthy proceedings are a problem in Finland.

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

The accessibility of public buildings is regulated by the Government Decree on Accessibility of Buildings.

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

Digitalization of services and/or a difficult financial situation may complicate older persons' possibilities to access legal services.

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

In spring 2019, work began at the Human Rights Centre to promote the rights of older persons as its own priority area. The aim is to strengthen the rights based perspective in activities and decision making related to older persons as well as more extensively with regard to attitudes.

The Human Rights Centre works in close cooperation with the Parliamentary Ombudsman in promoting the rights of older persons. The Ombudsman's tasks includes oversight of legality related to the rights of older persons. The Parliamentary Ombudsman has implemented the more effective monitoring of the realisation of older people's rights, for example, in round-the-clock housing service units and institutions.

- (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;

The concept of reasonable accommodation in Finnish legislation is limited to persons with disabilities.

- (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;

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- (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;

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According to the equality promotion plan of the Finnish Criminal Sanctions Agency, older prisoners tend to isolate themselves and are at risk of suffering from loneliness, poor nutrition, and lack of exercise. Therefore, their physical, psychological, and social needs should be taken into account when deciding about the enforcement of their imprisonment. Their possible impairments and the assistance they may need must be considered.

(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

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

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State obligations

2. 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?

There should be structured and continuous gathering of information on the implementation of the right of older persons to access justice carried out by national data collection authorities.

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?