

HelpAge España, February 2022

HelpAge España Submission on the Normative Content of Access to justice

12th Working Session of the Open-ended Working Group on Ageing, 2022

Definition

In Spanish legislation there is no specific definition of the right of older persons to access to justice. There is a constitutional recognition (of a general nature) of the right to effective judicial protection (art. 24 CE) and art. 9.2 CE refers to the obligation of the public authorities to promote conditions of equality and freedom.

Some possible definitions of this right could be:

- *"Older persons have the right of access to justice and to the effective judicial protection of judges and courts under the same conditions as the rest of the citizens.*

The public authorities shall adopt the necessary measures, for physical accessibility, for information and understanding of judicial proceedings, for intervention in the procedure, among others, aimed at ensuring the effectiveness of this right".

- *1. Public authorities shall ensure that older persons have access to justice on an equal basis with others, including through procedural and age-appropriate adjustments, to facilitate the performance of the effective roles of older persons as direct and indirect participants, including testimony as witnesses, in all legal proceedings, including the investigative and other preliminary stages.*

2. In order to ensure that older persons have effective access to justice, the public authorities shall promote appropriate training for those working in the administration of justice, including police and prison personnel.

Scope of the right

1. The key normative elements of the right of older persons to access to justice without discrimination are found in **the legislation that regulates legal capacity and support for persons with disabilities.**

At this point, is important the recent [Law 8/2021, of 2 June](#), which reforms civil and procedural legislation to support persons with disabilities in the exercise of their legal capacity.

This law establishes a system (not a paternalistic one, like the legal norm it replaces) based on respect for the will and preferences of the person who, as a general rule, will be in charge of making his or her own decisions. If the measures of substitution/representation of the will are necessary, they will have to be proportional and adapted to the circumstances of each person, and subject to periodic reviews by a competent authority or judicial body.

2. Always in the normative sphere, the [Spanish Constitution](#) (art. 14 CE) and the [Constitutional Court](#) generally prohibit discrimination based on age in relation to other rights, such as access to justice.

3. In particular, the [judgment of the European Court of Human Rights, Case of Maria Ivone Carvalho v. Portugal](#), addresses the issue of social prejudices and stereotypes in relation to sex and age, and understands that there is discrimination by the courts when, based on these prejudices, lower compensation is awarded to women than to men for the same damages.

4. In Spain there is no State Law on the rights of older persons, but there are two important Autonomous Laws:

a) In the Autonomous Law of [Castilla y León, Law 5/2003](#), of 3 April, on Care and Protection of older persons (art. 13.1, 5 and 6) we find provisions related to:

- information: "*Public Administrations will develop the necessary dissemination actions to inform older persons about the rights recognized by the legal system and the measures to be taken in case of violation of these rights*";
- social support and accompaniment: "*Any person who detects a situation of violation of the rights of older persons, including abuse, and especially those who have knowledge of it due to their profession, function or responsibility, without prejudice to immediately providing the assistance they need, shall report it as soon as possible to the competent authorities or their closest agents, in order to proceed to the adoption of appropriate measures and actions in accordance with the provisions of this Law*";
- the vigilance and initiative of the public authorities: "*When the Public Administrations become aware that the patrimony of an older person is being plundered, either by his own relatives or by third parties, they shall proceed to expressly inform him of the legal actions that he may initiate, providing him with legal assistance if necessary, without prejudice to the transfer of such facts to the Public Prosecutor's Office*".

b) In a similar sense, we find provisions in [Law 6/1999, of 7 July](#), on Care and Protection of older people, of Andalucía.

5. There is also a Charter of Citizens' Right to Justice (approved as a non-legislative proposal of the Congress of Deputies on 16 April, 2002), which would contain the rights to be protected in a specific and special way for older people:

- Transparency and information for access to justice.
- Legal practitioners (judges, prosecutors, lawyers, judicial police...) with specific training about older persons.
- An understandable justice for older persons.
- A justice attentive to the reality of each older person (appearance when necessary, preference and celerity, accessibility conditions and services of the judicial dependencies...).
- A technological justice in favor of older persons.
- A justice that is especially attentive to older persons victims of crimes (Victim Assistance Offices with training in attention to older persons).
- Free justice in the case of lack of economic resources.

State Obligations

The modernization processes in which many countries are immersed should incorporate the 'age perspective' in the implementation of their reforms, both those related to physical accessibility and informational accessibility, as well as those related to the defense and technical assistance (for decision making), and those of a normative-procedural nature (adaptation and flexibility of the processes to the specific situations of older persons, from notifications to interventions in the courts).