

Access to justice

Definition

1. *What is the definition of the right of older persons to access to justice in the national legislation in your country? Or how should such a right be defined, considering existing national, regional and international legal framework?*

In the Spanish Constitution article 24, which enshrines the right to access to justice uses the language “**Everybody** have the right to obtain judicial protection....”. That means older persons are included, as part of the whole society, in the definition of the right, according to the law.

Moreover, article 14 -which precedes the fundamental rights and public freedoms included in the articles 15 to 29- establishes that “The Spaniards are equal before the law, without any discrimination prevailing by mean of birth, race, sex, religion, opinion or **any other condition** or circumstance **personal** or social”

Therefore, older persons have the same rights as all Spaniards; age discrimination is prohibited by the equality that article 14 proclaims.

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 standars 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 an not denied on the basis of age;*
 - (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;*

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

The following normative elements in the Spanish legislation that allowing older persons their access to justice in an equal basis with others are:

- a) Concerning dependency situations or mental illness, advanced directives, continues power of attorney and other figures are at disposal of older persons to preserve their self-determination in hypothetical dependency situations which could impair their access to justice.
- b) Regarding access to timely legal proceedings, especially in situations of immediacy, article 17 of Spanish Constitution establishes the right to “**habeas corpus**” proceeding which it is regulated in the Organic Law 6/84 which guarantees immediate access to judge in case of doubts about the legality of a detention. Moreover, aforementioned article 24 configures the right to access justice, with, among others elements, “...a public process **without undue delay**..”

- c) In relation with accomodation in legal and administrative proceedings, Spanish legislation provides services for counselling older persons about their access to justice, provided by regional governments and local authorities.
- d) And for the access of older persons to justice in a non-judicial pathways, in Spanish law there are alternative dispute settlement mechanisms in the different domains of public actions as: urbanism, health, education, labour, environment, finance, etc,.. Law 60/2003, on Arbitration and Law 15/2015 on Voluntary Jurisdiction allow older persons their access to justice in alternative pathways.
- e) The Organic Law on Judicial Power establishes free access to the justice in case of economic insufficiency. Also physical and psychological adaptations, and many other measures guarantee legal assistance for older persons. Finally, in case of poverty, not only the aforementioned free of judiciary proceeding taxes but also free law attorney is offered to older persons.
- f) Ombudsman (article 54 of Spanish Constitution) shall defend the rights of older persons through supervisión of the judicial Administration activity. Finally, older persons have the right to special judicial protection process before the Court and a subsidiary appeal before Constitutional Court in case of one of their fundamental rights (articles 14 to 29) are violated (article 53).
- g) Legislation foresee training to justice system personnel in awareness-raising activities which allow them to address the negative impact of ageism and age discrimination attitudes: these programmes are part of the comprehensive capacity building actions dealt with the attendance not only older persons buta ll frail and vulnerable groups: women, children, disabled people....
- h) Older prisoners, as all the prisoners according to the article 25 of Spanish Constitution have the rights consacred in the Chapter I "Fundamental Rights and Duties", except those affected by their conviction, and, explicitly to "..... the right to paid work and Social Security benefits, as well as access to culture, and comprhensive development of their personality".

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 justices, including State obligations to respect, promote, protect, and fulfill the right?*

According to previous paragraphs, all the public powers (State, regions and municipalities), have to ensure the real implementation of the existing legal framework.

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 accomodation as well as responsibilities of non-State actors?*

The right of older persons to access justice should be reinforced by the collaboration between public powers and civil society through a comprehensive age-friendly justice with specific accomodation measures in all aspects of the right: proceedings, judicial administration personnel, prison staff, judges, etc...

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?*

The best practices were those detailed in paragraph 2.

Concerning the challenges in the adoption and implementation digital gap and dependency situations by physical or dementia are the main challenges encountered by older persons in accessing justice.

