

NHRI – ARGENTINA
DEFENSOR DEL PUEBLO DE LA NACIÓN
NORMATIVE FRAMEWORK OF THE ISSUES EXAMINED AT THE IX SESSION OF
THE OPEN-ENDED WORKING GROUP OF AGEING
Autonomy and Independence

National legal framework

1. What are the legal provisions in your country that recognizes the right to autonomy and independence? Do they have a constitutional legislative or executive foundation?

ARGENTINA¹ The national Argentine Constitution has adopted the federal, republican, representative form of government. The country is divided into 23 provinces and the autonomous Buenos Aires City. Its population grew around 32.7% between 1990 and 2015, reaching close to 42.7 million inhabitants in 2014. The population structure is getting older and shows a stationary tendency. In 2015 life expectancy at birth was 76.6 years (80.4 for females and 72.8 for males). 91% of the total population lives in urban areas and 2.4% is indigenous: there exist 31 indigenous communities spread throughout the country.

Normative elements

2. What are the key normative elements of the rights to autonomy and independence? Please provide references to existing laws and standards where applicable.

As regards domestic legislation, it should be stressed that international treaties were included by the national Argentine Constitution in section 75, paragraph 22², through the 1994 amendment. In accordance with section 75 of the Constitution, the Congress shall have the power to "legislate and promote proactive measures that guarantee true equality of opportunity and treatment, and the full enjoyment and exercise of the rights recognized by this Constitution and by current international treaties on human rights, in particular with respect to children, women, the elderly and people with disabilities." All the inhabitants of the Nation, according to section 14, are entitled to work and perform any lawful industry; the social security subject is addressed in section 14 *bis* that declare: "The State shall grant the benefits of social security, which shall be of an integral nature and may not be waived". In particular, compulsory social insurance shall be established by the law, which shall be in charge of national or provincial entities with financial and economic autonomy, administered by interested parties with State participation, without the possibility of any overlapping of contributions; retirement and pensions determined on a sliding scale, the integral protection of the family, the defense of family property; familiar economic compensation and access to decent housing. The 27,360 Act passed on 05/09/17 (published in the Official Gazette on May 31st, 2017), ratified the Inter-American Convention on Protecting the Human Rights of Older Persons (hereinafter the Convention) previously adopted by the Organization of American States during the 45th OAS General Assembly held on June 15, 2015. Our Civil and Commercial Code, sections 646, 668 y 671, include several provisions regulating and protecting several rights for older people. As for national context, substantive rules, such as the National Procedural Code, and special rules such as the *Amparo Law*, No. 16.986, contain the existing mechanisms for the protection of rights recognized to older people in judicial litigations

Implementation

4. What are the policies and programmes adopted by your country to guarantee older person's enjoyment of their rights to autonomy and independence?

Our national Ministry of Social Development, through the national Office responsible for older adults policies, promotes protection, care and participating programmes for older people, by providing them opportunities to receive comprehensive care and also to share their knowledge and experience with younger generations. Among other initiatives autonomy and independence are encouraged by

¹ According to PAHO, Country Report. Adapted by the national Ombudsman Office of Argentina.

² Paragraph 22: "To approve or reject treaties concluded with other nations and international organizations, and concordats with the Holy See. Treaties and concordats have a higher hierarchy than laws."

enhancing society's awareness, organizing campaigns and information to search for a kind treatment in order to prevent further situations of abuse and mistreatment, promoting cultural and recreational activities to allow them to be involved in the community, facilitating their access to new technologies through digital literacy courses and inviting them to take part of a radio show: "*AM Radio Abierta*" in order to foster a positive image of old age. Other ongoing programmes are the following: "WHEN EXPERIENCE COUNTS" which promotes meetings between old and young in order to exchange information and knowledge; and "PROTEGER" (PROTECT) that offers counselling and psycho-social and legal assistance to adults aged over 60 under circumstances of violence, loneliness or abandonment.

5. What are the best practices and main challenges in adopting and implementing a normative framework to implement these rights?

The sustainability of both systems, cash and healthcare benefits are strongly linked to the possibility of obtaining funding for the payment of pensions, non-contributory pensions and certain subsidies, as well as for ensuring the access to medical-care and support services related to health issues³. The quality of services provided constitutes a particular concern when referring to the elderly: the quality is dissimilar depending on the region involved, given the existing disparities among provinces and the lack of access to basic sanitary services in some of them, such as: water, electricity, sewers and other types of infrastructure. Services provided by healthcare institutions are regulated by 26,529 Act: "Rights concerning the patient-healthcare providers and institutions relationship"

Equality and non-discrimination

6. Which are the measures adopted to ensure equitable access by older persons to the enjoyment of the right to autonomy and independence, paying special attention to vulnerable groups or those in vulnerable situation?

In our current National Constitution there are still no specific provisions for the recognition of older people's rights in their capacity as such. The 26,529 Act: "Rights concerning the patient-healthcare providers and institutions relationship", contains certain precepts already recognized by previous Acts⁴, and proclaimed others which, although considered essential for any patient, the lawmaker deemed that they should be expressly acknowledged by the law. According to section 2 of the aforementioned Act, some of the rights necessary for the effective enjoyment of long-term care by old adults are the following: assistance, respect and dignity, privacy, confidentiality, autonomy will, health information and second opinions.

Participation

7. The design and implementation of normative and political framework related to autonomy and independence included an effective and meaningful participation of older persons?

The provisions set forth in the our national Constitution, the International Treaties and those contained in the national Civil and Commercial Code, govern the capacity, autonomy and independence of all individuals in general.

Accountability

8. What judicial and non judicial mechanisms are in place for older persons to complain and seek redress for denial of their right to autonomy and independence?

As stated previously, all individuals enjoy the rights enshrined in our national Constitution, Treaties and other applicable laws, without age-related limitations in both, at administrative or judicial level, being able to seek redress, beyond its viability.

³ The National Institute for Retirees and Pensioners (INSSJP -Instituto Nacional de Servicios Sociales para Jubilados y Pensionados) has been created by 19,032 Act and the Comprehensive Retirement and Pension System has been created by 24,242 Act.

⁴ such as the federal Act 17,132 passed in 1967 "Rules for the practice of Medicine, Dentistry and their Collaborative Activities", Section 19, paragraph 3 requires that all healthcare providers are bound to respect the "autonomy of the patients' will".