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INSTITUCIÓN NACIONAL DE DERECHOS HUMANOS

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ACCESS TO JUSTICE

National legal framework

Argentina, by virtue of the 27,360, acceded to Inter-American Convention on Protecting the Human Rights of Older Persons. Additionally, the new national Civil and Commercial Code (CCCN, in Spanish) included a certain number of rules aimed at seeking de facto equality, taking into account international human rights treaties with constitutional rank.

This protection covered all areas, among which the Adult Population (PAM, in Spanish) has been considered an issue of special interest.

Judicial services have included a growing spectrum of formal and informal judicial and non-judicial proceedings and procedures, alternative dispute resolution mechanisms, as well as mediation, online dispute resolution; promoters of legal literacy; collaborative services provided by legally trained practitioners and other professionals before and after resolution.

Policy makers took into consideration three essential premises for achieving this goal: legal problems considered as a process, collaborative logic model and the concept of interdependent systems, as well as the preventive approach to processes.

The constitutional block and the principles stated in the new Code, as well as the fact of regulating PAM rights and freedoms as one more citizen among all other individuals protected, call for due protection measures which have been included also in international rules adopted by our country.

Availability

The CCCN regulates access to justice for vulnerable people, stressing the right of older people with restricted capacity to be heard in all processes that directly affect them, to have their opinions taken into account and valued - according to their degree of discernment and the issue in conflict.

As part of the 2020 National Justice Programme¹, judicial systems have consolidated alternative methods of conflict resolution as fundamental instances of judicial proceedings.



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Aimed at achieving this goal, a pre-judicial mediation system has been implemented in the Autonomous City of Buenos Aires (CABA, in Spanish) and in 12 of the major urban areas of the country during the 2019-2023 period. Seeking the progressive implementation of prior mediation as a mandatory condition previous to any trial, it is expected that the whole country be covered in the period 2023-2031.

The institutions specialized in mediation guarantee a free service of pre-judicial and judicial mediation for people in vulnerable situations.

¹ <https://www.justicia2020.gob.ar/wp-content/uploads/2019/07/Politiclas-J2030-Acceso-q-1.pdf>

Accessibility

The Code provides that ageing can be a cause of vulnerability and seeks to ensure effective protection of pertaining rights and de facto equality.

Additionally, the national Supreme Court of Justice joined the 100 Rules of Brasilia on Access to Justice for people in vulnerable situations.

As socially vulnerable people, PAM faces different obstacles within the judicial system that undermine the effective exercise of their rights: judicial delays; discrimination, prejudices and stereotypes that make the particular needs of the PAM invisible; costly legal proceedings; architectural barriers; excessive formalisms; intelligible and exclusive technical language.

Linked to good practices, at the end of 2007 the national Supreme Court of Justice created the national Commission on Access to Justice and published a map intended to be used by members of the national Judicial Branch identifying 35 areas of high social vulnerability where interdisciplinary professional teams provide free guidance, legal assistance, mediation and advisory services.

Moreover, Bar Associations throughout the country provide legal assistance or representation to vulnerable people in compliance with legal and ethical regulations of their profession.

By virtue of 27,206 Act: "Historical Reparation Programme for Retirees and Pensioners", the Public Defender's Office (Defensoría General de la Nación, DGN, in Spanish) entered into an agreement with the National Social Security Administration (ANSES, in Spanish) aimed at coordinating measures for the provision of counselling and legal aid to retirees and pensioners belonging to the "Argentine Integrated Social Security System" in order to guarantee them the access to justice.

In 2018, the Undersecretary of Access to Justice pertaining to the national Ministry of Justice and Human Rights (2020 National Justice Programme, axis "Access to the Dissemination of Rights. Older Adults"), the State Prosecutor's Office (Defensoría General



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de la Nación) together with the Navarro Viola Foundation turned the Inter-American Convention on Protecting the Human Rights of Older Persons into an easy-to-read document.

Equality and non-discrimination

By virtue of the 2636/15 Prosecutor's Office Resolution (Procuración General de la Nación), the Territorial Agencies for Access to Justice (ATAJO, in Spanish) were created, composed of multidisciplinary work teams, whose main task consists of facilitating the access to justice to vulnerable people and their participation in the Court administration system. This includes, inter alia: receiving and processing complaints, holding consultations, providing access to judicial information, facilitating alternative dispute resolution, generating crime prevention mechanisms and developing actions to promote rights in order to strengthen community ties and consolidate lines of communication between the Public Prosecutor's Office and the community.

The Thematic Programme on issues related to Health, Disability and Older Adults developed by DGN gives counselling and support to official public defenders on matters falling within its purview. In turn, the approval of the Convention on the Rights of Persons with Disabilities and the Inter-American Convention on Protecting the Human Rights of Older Persons raised the need to outline strategies for action in all jurisdictions.

The Social Integration for Older Adults Secretariat, within the orbit of the Ministry of Human Development and Habitat pertaining to the Government of the City of Buenos Aires is responsible for promoting the social inclusion of older people, guaranteeing them full assistance and the realisation of their rights.

Education, training, life-long learning and capacity-building

Definition

In Argentina, concepts such as "adult education", "education of older people" and/or "education for older persons" are found in the field of education, training and capacity-building which generally refer to all those courses or workshops intended to include people over 60.

According to the report "The ability to learn of older people" given by the Observatory of Argentina Social Debt (*Observatorio de la Deuda Social*) pertaining to the Argentine Pontifical Catholic University (UCA, in Spanish), 29.9% of older persons in Argentina showed interest in continuing their education.

Scope of the right

International human rights treaties and agreements were introduced into our national Constitution in 1994, so as to give them constitutional status (section 75, paragraph 22). Further, section 75, paragraph 23, of the Constitution also prescribes: *"To legislate and promote positive measures guaranteeing true equal opportunities and treatment, the full benefit and exercise of the rights recognized by this Constitution and by the international*



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treaties on human rights in force, particularly referring to children, women, the aged, and disabled persons.”

Likewise, by virtue of 27,360 Act passed in 2017 Argentina acceded to the Inter-American Convention on Protecting the Human Rights of Older Persons, whereby the State is committed to guarantee older people the effective exercise of the right to education..

Moreover, 26,206 Act on national Education, section 8 states: *"Education shall provide the necessary opportunities to develop and strengthen the comprehensive development of every individual throughout their life and to promote in learners the ability to identify his or her life plan based on values of freedom, peace, solidarity, equality, respect for diversity, justice, responsibility and the common good"*. Additionally, section 11 (k) prescribes *"To develop capacities and provide opportunities for studying and learning necessary for a life-long education"*. It is proposed there that education programmes and related actions be coordinated with other bodies: Ministry of Labor, Employment and Social Security, Ministry of Social Development, Ministry of Justice and Human Rights, and Ministry of Health specially. Further, mechanisms for the engagement of other sectors involved at national, regional and local levels will be agreed upon to this goal, within the context of the Federal Education Council.

Most of the offer on education and training devoted to older adults at national level, other than schools, are being promoted by the Ministry of Health and Social Development, the National Institute of Social Services for Retirees and Pensioners (INSSJP, in Spanish), or different universities. At present, there is no specific proposals of the Ministry of Education intended to this population.

State responsibility

The greatest challenges are related to the exercise and effective enjoyment of this right.

As for the *availability* of educational proposals, they are varied depending on the jurisdiction they are made: sometimes shortage of places in schools; or being delivered at a certain months of the year; or located at a far distant or not properly reported/ promoted.

As for *accessibility*, it is usually restricted for economic reasons: please note here that in Argentina the majority of adult citizens are located at the base of the income pyramid. Therefore, it is important to consider if education is given for free or subject to a fee, the cost of learning materials, the existence or otherwise of subsidies to cover travel costs, etc. *Physical accessibility* is another restriction: long distance, lack of proper transport services, safe and passable roads, adequate timetables, architectural barriers, among others.

Implementation

In recent years, public universities serve as integrating areas of thousands of older adults. The first University Programme for Older Adults dates from 1984, within the scope of the national University of Entre Ríos, organized by the Middle and Third Age Department, an office under the School of Educational Sciences.



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A recent study on University Programmes for Older Adults in Argentina (PUAM, in Spanish) points out the diversity among different proposals. Included therein both educational initiatives undertaken by the university itself as well as those coordinated with other institutions.

The Universities of Buenos Aires, Mar del Plata, La Pampa, Quilmes, Rosario, Córdoba and Arturo Jauretche, among others, developed also similar programmes for older adults. Today there exists a broad diversification: computer courses are offered, new technologies, languages, communication sciences, psychology, philosophy, history, cultures and traditions, theatre, music, dance, fine arts, photography, micro-enterprises, multimedia, health, law and environment, among others.

Right to work and access to the labour market

An old person, despite having the same rights as other people, including not being discriminated against on the basis of age, is subject to a number of obstacles that hinder their full inclusion, integration and participation in society. The human rights perspective provides a positive vision of aging and promotes the establishment of a conceptual framework in line with the new social reality of old age that serves as a guarantee for the full exercise of their rights and freedoms.

On January 11th, 2017, the General Assembly of the Organization of American States (OAS) approved the Inter-American Convention on Protecting of Human Rights of Older Persons (hereinafter, the Convention). Argentina was one of the most active countries in the Convention's making process and it was also one of the first countries to approve it domestically, by virtue of 27,360 Act. Finally, on October 23rd, 2017, the national government deposited the instrument of ratification of the Convention at the OAS headquarters in Washington, DC.

Since the adoption of the Convention by 27,360 Act, several national courts considered it as an interpretive guide to analyze cases in which rights of older persons are at stake. For old persons, the Convention enshrines, among others, the right to a decent work and equal opportunities and not be treated differently from other workers, whatever their age.

The 27,426 Act, in accordance with the aforementioned rule, modifies the Employment Contracts Act (Ley de Contrato de Trabajo), section 252, related to methods of terminating an employment relationship, as follows: "Summons. Term of maintenance of the relationship: After the worker reaches seventy (70) years of age and meets the necessary requirements to access the Universal Basic Benefit (Prestación Básica Universal-PBU, in Spanish) as per 24.241 Act, section 17, (a) and its amendments, the employer is entitled to summon the worker seeking him/her to initiate the relevant procedure, extending the service certificates and other necessary documents for these purposes. From that moment, the employer must maintain the employment relationship until the worker obtains the benefit



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and for a maximum period of one (1) year. The provisions of the preceding paragraph do not affect the worker's right to request the pension benefit prior to the fulfillment of seventy (70) years of age."

Once the benefit has been granted or said period has expired, the employment contract shall be terminated without the employer's obligation to pay any compensation for seniority provided by other laws or working statutes. The summons referred to in the first paragraph of this section will imply the notification of the advance notice prescribed in this Act or similar provisions contained in other statutes, the duration of which will be considered within the term in which the employer must maintain the employment relationship. According to the new version, older adults working in private sectors are allowed to continue working until 70 years old.

At a national level, no plans or programmes are currently being developed to promote the employment of older adults. Although the National Active and Health Ageing Programme (Programa Nacional de Envejecimiento Activo y de Salud) is in force, it is focused on health plans and training and recreational activities. Linked to work and, perhaps more focused on education, one can mention here the programme "EXPERIENCE COUNTS" (La experiencia cuenta) which consists of promoting meetings with old and young people where old adults conduct workshops and courses to teach trades. They are carried out together with organizations, federations of retirees and state bodies and allow: 1) To revalue the experience, effort and skills of those who possess the knowledge of a lifetime; 2) To promote their active role in society; and 3) to recover and strengthen traditional trades.

Although a NATIONAL PLAN FOR OLD PERSONS was in force during 2012-2016 period, the first time that appears an specific reference to the right to work for older adults was in the Inter-American Convention on Protecting the Human Rights of Older Persons, adopted by the OAS in its the 45th Assembly on June 15th, 2015, approved by 27,360 Act.

Thus, this Argentine Ombudsman Office considers it proper the creation of a National Action Plan of Ageing intended to monitor and follow-up the promotion of labor policies directed to evaluate that work conditions, environment, schedules and organization of tasks are appropriate to the needs and characteristics of older adults.

Also it is encouraged the design of programmes for capacity-building and certification of knowledge and training which allow the access of older persons to more inclusive labor markets.

Additionally, our Office encourages the National Statistical and Census Institute (INDEC, in Spanish) to report the number of active old persons, disaggregated by sex, within its current Permanent Household Survey (Encuesta Permanente de Hogares), a non-existent category at present.

Social protection and the social security system

Both the preamble and section 14bis of our Constitution prescribe the guiding principles of this right. The first one establishes the "promotion of general welfare" for all inhabitants, and the second one determines the social security system to be adopted, detailing also the



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necessary arrangements on how the system should be administered, its financial architecture, and finally includes, but not limited to, all benefits of the social security system a) retirement and pension plans -regularly updated-, b) comprehensive family protection, c) protection of family property, and d) family economic compensation.

That does not mean, however, that some contingencies might be excluded, because the same national Constitution has given a "comprehensive" character for our social security system, and the detection of whatever a person needs to safeguard welfare and security will continue to rest on Parliament.

Those in formal employment, being independent or dependent workers, and those who do enter the formal job market directly, are both entitled to social security benefits based on the State's duty to ensure the general welfare of society; as well as, because the social security system in Argentina is an assisted distribution system.

The non-contributory universe could be seen as a social protection floor, together with the Convention 102-Minimum Social Security Standard- prescribed by the ILO, which establishes percentages of population (i.e. 50%) that acceding countries must cover through various benefits. Argentina widely exceeded this percentage having a social security coverage rate higher than 90%, mainly due to the existence of social security moratoria. Closing consideration at this point could be added that the Argentine pension system guarantees a minimum income level for the benefits granted by the Public Pension System (24,241 Act, section 125) and for those who entered into the former Capitalization System but now receive a public component (without being any beneficiary be excluded from such guarantee because all those who receive some income from the public system are included in this benefit, as opposed to the disability or death pensions).

Finally, as regard the way in which the right to social security is defined (for older persons), considering the current national, regional and international legal framework, there is a tendency to call "survival benefits" rather than "old-age benefits" linked to a certain age, since this situation varies with some frequency depending on the improvement of the circumstances and life quality of the population in different countries of the world.

Scope of the right

The 27,360 Act, passed in 2017, by which the Inter-American Convention on Protecting the Human Rights of Older Persons (OAS) has been approved, as well as the specific Convention on the Rights of Older People, included the right to social security for those individuals under their protection.

In Argentina, older persons can access contributory or non-contributory protection benefits. As regards to contributory benefits, the ordinary retirement provided by 24,241 Act is a benefit for those individuals who meet two concurrent requirements, namely 60 years old (women) and 65 years old (men), and the provision of services and contributions to the system for a 30 years period.

Additionally to that, the 26,970 Act established an scheme for the Regularization of Contribution Debts aimed at self-employed workers, allowing this group to access the



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benefits granted by 24,241 Act. This increased the coverage of the older persons, including 6,938,014 beneficiaries into the contributory system, according to data furnished by ANSES.¹

The non-contributory protection system for old adults is given by the Universal Pension for Older Persons (PUAM, in Spanish) provided for in 27,260 Act, which is intended for persons aged 65 or over who do not have contributions and for who, in case they meet the requirements, are granted 80 per cent of the minimum income guaranteed by law. This scheme replaced the non-contributory old-age pension established by 3,478 Act and Decree No. 432/1997, exclusively designed for older persons who are living in a vulnerable situation, having no assets, income or resources to support themselves.

Regarding the adequacy of benefits to guarantee access to a proper standard of living for older persons, it should be noted that those who are already enjoy a contributory or non-contributory benefit are covered by 27,426 Act, the Retirement Mobility Act (Ley de Movilidad Jubilatoria), which provides for the rebalancing of the income. All of this regulatory structure is complemented by provincial pension systems, which have their own regulations, generally designed to cover public workers.

¹ <https://www.anses.gob.ar/informacion/datos-abiertos-pasivos>