

**BAGSO Responses to the Guiding Questions on the Focus Areas of the
11th Session of the Open-Ended Working Group on Ageing:
Access to Justice**

National Legal Framework

1. How is the access to justice by older persons guaranteed under the national legal and policy framework? What judicial and non-judicial mechanisms are in place for all older persons to complain and seek redress for denial of their rights?

The general legal framework that governs all age groups also includes older persons. This legal framework is based on the fundamental rights laid down in the German Basic Law, which also guarantees legal redress (Article 19 (4) of the Basic Law). Legally and procedurally, older persons have the same access to legal redress as younger ones.

The right to effective legal protection also includes the right to be heard, according to which the administrative and the legal system are obliged to fully investigate matters both in fact and in law and to base their decisions on applicable laws and regulations.

In the realm of administrative, civil and criminal law, rights to damages and reparations are legally standardised and enforceable.

In the non-judicial area, there are complaints bodies for the different subject areas, especially in the field of healthcare and long-term care. Consumer protection associations focusing on different areas advise and represent those affected in the enforcement of their rights. Older persons with cognitive impairments, e.g. due to dementia, usually have an authorised person (proxy) or a legal guardian appointed by a court to support and represent the person concerned. In practice, there are numerous problems that are currently the subject of a legal reform project. BAGSO has commented on these in detail.

Older persons are structurally disadvantaged due to the often long duration of proceedings before authorities and courts. Especially for persons in need of care and their relatives, the long duration of proceedings is an obstacle to asserting legitimate claims. For residents of care facilities, this is compounded by the fact that a legal dispute with the operator of such a care facility burdens the care relationship.

Availability

**2. What steps have been taken to ensure the availability of judicial and non-judicial mechanisms for older persons in urban, rural and remote areas in your country?
Are there alternative dispute settlement mechanisms available?**

To the best of our knowledge, there are no specific dispute settlement mechanisms in place, in particular any arbitration or mediation procedures; certainly they do not exist nationwide. A central general arbitration board was created a few years ago (in Kehl am Rhein), but is hardly called upon.

Mediation seems to be a suitable procedure especially for the relationship between service providers and service recipients in long-term care. A wide-ranging expansion and promotion of such offerings would therefore make sense.

Accessibility

3. What steps have been taken to ensure that all justice systems (judicial and non-judicial) are secure, affordable and physically accessible for older persons and adapted to their needs?

The justice system in Germany knows no special barriers or structural obstacles for older people. Rather, barriers result from the age-related lack of strength and courage to face a legal dispute, which is always associated with emotional and mental stress.

4. What are the existing provisions to guarantee legal assistance for older persons?

In Germany, individuals who do not have sufficient means to finance the costs of legal assistance – irrespective of their age – are entitled to legal advice and legal aid from lawyers of their choice, in particular social law specialists. They provide support during the application process.

Consumer advisory boards and independent complaint offices usually provide free advice.

5. What are specific challenges encountered by older persons in accessing justice and remedy in your country?

Lengthy proceedings in many areas of law in Germany have a deterrent effect. A further obstacle is the legal lingo used by the authorities and courts, which is usually incomprehensible to older people and not citizen-friendly. In addition, the codes of procedure are very formal and usually not adapted to the “speed” of older persons (e.g. deadlines for the presentation of facts or periods for filing appeals).

In the area of inpatient care for the elderly, a legal dispute also puts a strain on the relationship over a long period of time (see above).

6. What good practices are available in terms of ensuring equal and effective access to justice and remedy for older persons?

An internationally transferable good practices model is provided by numerous non-governmental organisations, which support (younger and older) people in the enforcement of their rights. These include, in particular, social associations, tenants’ associations and consumer advice centres, each with advisory structures down to the local level. Some of these advice services are free of charge, while others are subject to fees.

Equality and non-discrimination

7. What are the provisions adopted to ensure effective access to justice for older persons on an equal basis with others, including age-appropriate procedures in all administrative and legal proceedings?

See answer to question 1). There is no evidence that older people do not have equal access to justice in practice.

8. Please specify existing public policies and awareness-raising and capacity building programmes established for all justice system personnel to address the negative impacts of ageism and age discrimination in justice system.

Complaints can be lodged with the Federal Anti-Discrimination Agency.

Accountability

9. How do you ensure justice systems function in accordance with the principles of independence and impartiality? Please specify if there is any oversight mechanism in place to address any discrimination against older persons committed by justice system professionals.

There is no evidence of discrimination against older persons by the German justice system. In the scope of the legal provisions (in particular the Constitution and the General Equal Treatment Act), this is indeed implemented by the administration and the courts.

Older persons – like all other age groups – have the possibility to submit bias petitions against judges. In addition, they enjoy the opportunity to have their rights reviewed by all instances of the judiciary.

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