

Participation in public life and in decision-making processes

14th Session of the UN Open-ended Working Group on Ageing

Submission April 2024

Answers of the German Institute for Human Rights to the guiding questions for the focus areas of the 14th session of the Open-ended Working Group on Ageing:

Participation in public life and in decision-making processes

National legal and policy framework

1. What are the national and local legal provisions and policy frameworks in your country that guarantee

a) right to equality and prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in the context of participation in public life and in decision-making processes;

The equality of all human beings before the law is anchored in Article 3 of the Basic Law (*Grundgesetz*, GG). Although the Basic Law does not list age as an explicit ground for discrimination, Article 3 of the Basic Law guarantees the principle of equality and prohibits discrimination on various grounds.¹

The prohibition of age discrimination is laid down in the General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz – AGG*), which came into force on 18 August 2006.² According to the AGG, discrimination based on age is generally prohibited in working life and in everyday transactions. However, there are far-reaching exceptions to age-related unequal treatment.³ The AGG governs the claims and legal consequences in the case of discrimination, both in the field of work and for the sphere of civil law.⁴

¹ Wissenschaftliche Dienste des Deutschen Bundestages (2022): Die Menschenrechte älterer Menschen, Berlin: Deutscher Bundestag, p. 12, <https://www.bundestag.de/resource/blob/909526/d6f5164e84293d031ba24c3d234657b0/WD-2-047-22-pdf-data.pdf>.

² Antidiskriminierungsstelle des Bundes (2022): Allgemeines Gleichbehandlungsgesetz, Berlin: ADS, pp. 8-10, https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/AGG/agg_gleichbehandlungsgesetz.pdf?__blob=publicationFile.

³ <https://www.antidiskriminierungsstelle.de/DE/ueber-diskriminierung/diskriminierungsmerkmale/alter/alter-node.html>.

⁴ <https://www.antidiskriminierungsstelle.de/EN/about-discrimination/order-and-law/general-equal-treatment-act/general-equal-treatment-act-node.html>.

General Act on Equal Treatment

Section 1: Purpose

The purpose of this Act is to prevent or to stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation.

Section 19: Prohibition of discrimination under civil law

(1) Discrimination on the grounds of race or ethnic origin, gender, religion, disability, age or sexual orientation is inadmissible when founding, executing or terminating those civil-law obligations which

- 1. typically arise without regard of person in a large number of cases under comparable conditions (bulk business) or where the regard of person is of subordinate significance on account of the obligation and the comparable conditions arise in a large number of cases or*
- 2. have as their object a private-law insurance.*

The Twelfth Book of the German Social Code (*Sozialgesetzbuch – SGB*) regulates social welfare benefits that aim to enable persons to live in dignity. This section is particularly relevant for older persons who do not have sufficient financial resources to cover their living expenses or the costs of care themselves. This includes, for example, basic income support in old age. It comes into effect when persons have reached the standard retirement age and their income, including any pension entitlements, is not sufficient to cover their needs under social welfare law.⁵ It is also aimed at social assistance, including care and support in everyday life, which indirectly requires participation in public life.

With the National Dementia Strategy, the Federal Government is working with partners to improve the living conditions of persons with dementia and their relatives. One area of action is to develop and establish structures for the social participation of persons with dementia in their place of residence. The National Dementia Strategy builds on the work of the Alliance for People with Dementia at a national level and the Local Alliances for People with Dementia at local level and brings the activities together in one strategy.⁶

Furthermore, the Federal Government publishes reports on older persons' policy topics in every legislative period. The upcoming ninth report, which should be available by the end of June 2024, aims to highlight the diversity of life situations of older persons. In describing the heterogeneity of old age and the opportunities for older persons to participate, the aim is to highlight significant recent changes and expected developments in the near future. The changes caused by the corona pandemic and the associated effects on the living situations and opportunities for participation of different groups of older persons will be addressed.⁷

Germany has also committed itself to implementing human rights by ratifying various human rights treaties, for example ICCPR, ICESCR, or UN CRPD which applies to older persons with disabilities.

⁵ Bundesministerium für Arbeit und Soziales (2023): <https://www.bmas.de/DE/Soziales/Rente-und-Altersvorsorge/Fakten-zur-Rente/Grundsicherung-im-Alter/grundsicherung-im-alter.html>.

⁶ <https://www.bmfsfj.de/bmfsfj/themen/aeltere-menschen/demenz/nationale-demenzstrategie>.

⁷ <https://www.bmfsfj.de/bmfsfj/themen/aeltere-menschen/aktiv-im-alter/altersberichte-der-bundesregierung>.

b) elimination of all forms of ageism and age discrimination from laws, frameworks, programs, policies, strategies and practices regarding participation in public life and in decision-making processes;

In addition to the above-mentioned national legal provisions which are partly applicable to this issue, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth commissioned a research and evaluation of the case law of the European Court of Justice and the European Court of Human Rights with regard to the rights of older persons and age discrimination in old age. Against this background, the written elaboration of the desktop study aims to shed light on the European standard on the rights of older persons and on questions of age discrimination in European case law in a comprehensive and structured manner.⁸

c) right to freedom of expression, including freedom to seek, receive and impart information;

The central provisions can be found in the Basic Law. Article 5 of the Basic Law protects freedom of opinion.⁹ It guarantees everyone the right to freely express and disseminate their opinions in speech, writing and images, freedom of the press and freedom of reporting through radio and film. At the same time, it grants freedom of information, i.e. the right to obtain information from generally accessible sources without hindrance.

At federal level, the Freedom of Information Act (*Informationsfreiheitsgesetz – IFG*) enables access to official information from the public administration. Similar regulations exist in many federal states in the form of state information laws.

The Telemedia Act and the Interstate Broadcasting Treaty relate specifically to electronic media and supplement freedoms on the Internet and in digital communication. They contain provisions on freedom of expression and information in the digital space.

d) right of peaceful assembly;

Article 8 of the Basic Law stipulates that all Germans have the right to assemble peacefully and unarmed without prior notification or permission.¹⁰ However, restrictions may be imposed by law or based on a law on assemblies in the open air. This fundamental right enables citizens to actively participate in the political opinion-forming and decision-making process.¹¹ In addition, the Federal Assembly Act regulates specific provisions relating to the holding of assemblies. Some federal states have enacted their own state assembly laws, which may contain additional or deviating regulations.

e) right to freedom of association;

In Germany, the right to freedom of association is mainly protected by Article 9 of the Basic Law.¹² This article guarantees all citizens the right to form associations and societies. This freedom is particularly important for the formation of employee and employer associations, political parties and other organized groups.

⁸ <https://www.bmfsfj.de/bmfsfj/service/publikationen/recherche-und-auswertung-der-rechtsprechung-des-eugh-und-des-egmr-196042>.

⁹ https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0031.

¹⁰ https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0048.

¹¹ <https://www.bmi.bund.de/DE/themen/verfassung/staatliche-ordnung/versammlungsrecht/versammlungsrecht-node.html>.

¹² https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0051.

f) right to take part in the government of one's country, directly or through freely chosen representatives;

The right to vote in Germany is enshrined in Article 38 of the Basic Law.¹³ It states that members of the German Bundestag are elected by universal, direct, free, equal and secret suffrage. These five principles apply to all parliamentary elections in Germany, including state and local elections.

The Federal Election Code (*Bundeswahlgesetz* – BWG) and the Federal Election Act (*Bundeswahlordnung* – BWO) contain regulations on accessibility in elections.

Article 21 of the Basic Law assigns parties a special role in political decision-making.¹⁴ Citizens can actively participate in parties, stand as candidates themselves and thus have a direct influence on political decisions. It is also possible to found one's own parties, provided they respect the free democratic basic order.

Every citizen has the right to submit petitions to the competent authorities or the Bundestag. This right is enshrined in the Basic Law and enables citizens to draw attention to grievances and demand change.

g) active, free and meaningful participation of older persons and their representative organizations in all matters related to participation in public life and in decision-making processes;

Article 8 of the Basic Law grants the right to assemble peacefully and without weapons. This fundamental right enables citizens to express their opinions and demands through public demonstrations.

Means of direct democracy, such as referendums and plebiscites, enable citizens to vote directly on specific political issues. While referendums generally take place at municipal level, referendums at federal level are only provided for in the case of reorganizations of the federal territory. Citizens' initiatives as non-partisan interest groups usually address specific political problems at municipal level and aim to generate attention for their concerns and mobilize support.

This includes legal regulations in the German Social Code on social security and support, enabling voluntary work and taking older persons into account in urban and transport planning. In addition, there are specific offers and programs for political education and participation that are supported by the Federal Agency for Civic Education. Local senior citizens' councils and representative bodies also play an important role in representing the interests of older persons at local level.

h) access to prompt remedies and redress when older persons' above mentioned rights are violated.

There are several contact points and legal bases for the protection and enforcement of the rights of older persons in Germany. For example, the AGG offers protection against age discrimination. In the event of violations of this law, those affected can contact the Federal Anti-Discrimination Agency.¹⁵ The Social Court also offers an opportunity to lodge an appeal in the event of disputes in the area of social law, such as pension or long-term care insurance matters. In addition, the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) enables legal claims to be clarified under civil law, for example in contractual matters.

¹³ https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0185.

¹⁴ https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0115.

¹⁵ https://www.antidiskriminierungsstelle.de/SharedDocs/forschungsprojekte/DE/Expertise_BeschwStelle_u_BeschwVerfahren.html.

2. What steps have been taken to ensure participation in public life and in decision-making processes without discrimination?

On June 24, 1994, the German Bundestag decided that a report on a key topic of senior citizens' policy should be drawn up for each legislative period.¹⁶ This should give policymakers a realistic picture of the heterogeneity of ageing and provide them with recommendations for action.

The Madrid International Plan of Action on Ageing (MIPAA) is supported at the German national level through the National Action Plan for the Implementation of the Second World Ageing Plan of 2002.¹⁷ The plan sets out ten commitments to support and promote older persons, on each of which the federal government, the federal states and representatives of civil society take a stand. Measures already taken by the federal government are also listed. These largely consist of the provision of information, initiatives and campaigns, but only in relation to the AGG in legally binding laws.¹⁸

The federal government has launched measures in this legislative period with the Federal Accessibility Initiative (*Bundesinitiative Barrierefreiheit*), which is intended to facilitate better accessibility and participation in the areas of healthcare and transport. This overlaps with the UN Convention on the Rights of Persons with Disabilities, in which participation is one of the central rights.

The program “Strengthening the participation of older persons – ways out of loneliness and social isolation in old age (Stärkung der Teilhabe Älterer – Wege aus der Einsamkeit und sozialen Isolation im Alter)”, funded by the European Social Fund (ESF), supported a total of 29 pilot projects until the end of September 2022, which counteracted unwanted loneliness and poverty in old age. The *Institut für Sozialarbeit und Sozialpädagogik e. V. (ISS)* accompanied the projects in a practical research project and developed a work aid entitled “Access to the target groups”, which provides practical tips to support providers.

Since October 2022, the previous program has been followed by a new, similar ESF Plus program for older persons. By September 2027, more than 70 projects with socially innovative offers will be funded. The program is primarily aimed at older employees aged 60 and over who are retiring from working life. The establishment and expansion of regional cooperation and networking structures for more opportunities for participation is central to this.¹⁹

The federal government also recognizes that older persons wish to live independently and participate in society even in old age. Supporting them in this is a central goal of senior citizens' policy.²⁰

In its Eighth Ageing Report on Older Persons and Digitalization (“Achter Altersbericht: Ältere Menschen und Digitalisierung”) the German government states that digital and demographic change must be considered together. Due to demographic trends, the proportion of older persons in the total population will increase significantly in the coming decades. For this group of persons, (better) access to digital services and the skills to use them offer opportunities for greater participation, quality of life and security. Digitalization thus supports a self-determined life in old age – an important field of action in the Federal Government's demographic strategy. For a policy for and with older persons, this means that their

¹⁶ Ausschuss für Familie und Senioren (13. Ausschuss) (1994): Beschlussempfehlung und Bericht (Drucksache 12/7992), Berlin: Deutscher Bundestag, p. 1, <https://dserver.bundestag.de/btd/12/079/1207992.pdf>.

¹⁷ Bundesministerium für Familie, Senioren, Frauen und Jugend (2007): Nationaler Aktionsplan zur Umsetzung des Zweiten Weltaltentplans und der UNECE-Regionalen Implementierungsstrategie, Berlin: BMFSFJ, p. 5, <https://www.bmfsfj.de/resource/blob/77520/576fb21ee93c9aa20ab6367540da9d01/nationaler-aktionsplan-data.pdf>.

¹⁸ Wissenschaftliche Dienste des Deutschen Bundestages (2022): Die Menschenrechte älterer Menschen, Berlin: Deutscher Bundestag, p. 13, <https://www.bundestag.de/resource/blob/909526/d6f5164e84293d031ba24c3d234657b0/WD-2-047-22-pdf-data.pdf>.

¹⁹ <https://www.bmfsfj.de/bmfsfj/themen/engagement-und-gesellschaft/strategie-gegen-einsamkeit/modellprojekte-gegen-einsamkeit-228616>.

²⁰ <https://www.bmfsfj.de/bmfsfj/themen/aeltere-menschen>.

needs, but also their abilities, must be included in all considerations regarding the design of the digital world. Only in this way can the ever-increasing digitalization contribute to a good life in old age.²¹

Data and research

3. What data and research are available regarding older persons' participation in public life and in decision-making processes? Please indicate how national or sub-national data is disaggregated by sex, age and inequality dimensions, and what indicators are used to monitor older persons' participation in public life and in decision-making processes.

Generally, the participation of older persons is lower than that of younger age groups in most areas of political participation. Exceptions can be found regarding contact with politicians and participation in political organizations. Voter participation increases until the beginning of the "third age" but decreases again from the age of 70. The representation of older persons (60+) in the German Bundestag is significantly lower than their share in the population as a whole. This is particularly true for the 80+ age group. High education, high income and good health do not protect against "age effects". Even among the groups with a high level of education, higher income and good health, there is an almost linear decline with age in the proportion of persons who are members of civic associations, trade unions, business associations or political parties. Interest in politics increases in the second half of life, up to the 'third age' (around 60 to 80 years) – and declines slightly after the age of 80 but remains high. Overall, there is little evidence on persons in old age (80+). It can be said that political participation decreases with age, which is not due to the preferences/resources of older persons, but to the social climate that does not encourage older persons to participate politically.²²

The German Centre for Gerontology (*Deutsches Zentrum für Altersfragen – DAZ*) states that despite the rapid increase in the proportion of the population aged 80 and older, knowledge about this group is still limited. Although there are thematic, methodological, and regional studies, there is no representative survey of the living situation and quality of life of this age group for Germany as a whole.²³

In general, an ageing report on a senior citizens' policy topic has been published every legislative period since 1993. The report is compiled by an independent commission of experts and is an important basis for decisions on federal senior citizens' policy.²⁴

Equality and non-discrimination

4. What are the challenges and barriers that older persons face regarding participation in public life and in decision-making processes, including the impact of intersectional discrimination and inequality based on age, gender, disability, race, ethnicity, migratory status and other grounds?

Participation can be hindered when persons lack material resources. Equally access to participation remains difficult if persons cannot raise their voices or interact with each other and their rights and dignity are not equally protected.²⁵ This must be counteracted with regard to older persons by eliminating discriminatory structures that perpetuate social exclusion, scarcity of resources and lack of opportunities. At the same time, the actual implementation of measures that actively promote

²¹ Bundesministerium für Familie, Senioren, Frauen und Jugend (2020): Achter Altersbericht: Ältere Menschen und Digitalisierung, Berlin: BMFSFJ, pp. 23-24, https://www.achter-altersbericht.de/fileadmin/altersbericht/pdf/aktive_PDF_Altersbericht_DT-Drucksache.pdf.

²² Tesch-Römer, Clemens: Politische Partizipation älterer Menschen. Teilhabe am öffentlichen Leben und an Entscheidungsprozessen. Input für die Sitzung der nationalen Vorbereitungsgruppe für die OEWG-A am 25. Januar 2024 im BMFSFJ, Berlin; https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/Rechte_Aelterer/Tesch-Roemer_Vortrag_Politische_Partizipation_2024-01-24_Fachgespraech.pdf.

²³ <https://www.dza.de/detailansicht/hohes-alter-in-deutschland>.

²⁴ <https://www.bmfsfj.de/bmfsfj/themen/aelttere-menschen/aktiv-im-alter/altersberichte-der-bundesregierung>.

²⁵ UN DESA (2016) Report of the World Social Situation 2016, S. 18, <https://www.un.org/esa/socdev/rwss/2016/chapter1.pdf>.

participation is needed. The 1991 United Nations Principles for Older Persons already affirm that older persons should be involved in the development and implementation of measures and political concepts that affect them.²⁶

Experts have identified age-related problems, e.g. with participation benefits for 18/19-year-olds and then again in retirement. There are problems in the implementation of assistance services that are supposed to facilitate social participation (SGB 9 and 11) and gaps in the implementation of the UN CRPD in the system partly due to self-identification of being an older person. The interface between social law and care law is said to not work in practice. Discussions about the use of different budgets further complicate the situation.²⁷

Regarding the reasons for political participation of older persons, one of the most important reasons for (non-)participation of older persons is the link between gender and age. The idea that politics is a man's business is still ingrained in the minds of the oldest women and they behave accordingly. In older age groups, the proportion of women increases as they get older than men, which is a compositional effect regarding the participation of older persons in elections. At the same time, there is an educational effect: the oldest women are often the least educated.²⁸

This intersectional discrimination is also addressed by the United Nations Independent Expert on the Enjoyment of all Human Rights by Older Persons. In her fundamental 2021 report on ageism and age discrimination, she emphasises the complex intertwining of age with other grounds of discrimination such as gender, disability, sexual orientation and gender identity. Ageism therefore also contributes to reinforcing other forms of discrimination such as sexism and racism.²⁹ It is also emphasized that ageism is one of the main reasons for the lack of social inclusion and participation of older persons.

Participation requires open structures and continuous support. Local senior citizens' councils are only enshrined in law in Berlin and Hamburg, but not in other parts of Germany, for example. The problem of negative images of age must be countered. It is important that there are few associations between older persons with disabilities and older persons without disabilities. There is an alliance for more cross-generational participation structures in municipalities in North Rhine Westphalia (NRW). It is being funded to create a good basis.³⁰

To effectively engage older persons in public life and decision-making processes, it's crucial to address self-ageism, learn from the UN CRPD's limitations by establishing unified standards for participation, and specifically tackle age discrimination not covered by the UN CRPD. The proposal for a Convention on the Rights of Older Persons is vital to combat structural ageism. Germany faces legal gaps affecting older persons, especially in social codes and age-based discrimination in care. The changing climate at the United Nations towards civil society participation underscores the need for states to advocate for human rights more vigorously, including the self-representation of older persons through civil society efforts like GAROP. Successful political involvement of older individuals hinges on open structures, legal frameworks, and public support, overcoming barriers such as age discrimination and stereotypes, and addressing factors that reduce participation, like the educational and care responsibilities of older women.³¹

²⁶ <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-principles-older-persons>.

²⁷ Expert discussion with national representatives of ministries, civil society, the German Institute for Human Rights and academia on older persons' right to participation in preparation of the 14th session of OEWG-A. For more information on the expert discussions in general, see <https://www.institut-fuer-menschenrechte.de/themen/rechte-aelterer/nationale-aktivitaeten>.

²⁸ See footnote 27.

²⁹ A/HRC/48/53, paras. 51-58, <https://undocs.org/A/HRC/48/53>.

³⁰ See footnote 27.

³¹ See footnote 27.

Accountability

5. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress when their right to participate in public life and in decision-making processes is violated?

In Germany, older persons have several options for addressing rights violations. They can file complaints with the Federal Anti-Discrimination Agency if they face discrimination. For violations against the General Equal Treatment Act, they have the right to take legal action in civil courts. Additionally, they can submit petitions to the Petitions Committee of the German Bundestag to highlight grievances. Finally, they have the option to engage in conciliation proceedings to achieve out-of-court settlements.