

Economic Security

13th Session of the UN Open-ended Working Group on Ageing

Submission February 2023

Answers of the German Institute for Human Rights to the guiding questions for the normative framework of the 13th session of the Open-ended Working Group on Ageing:

Economic Security

Definition

1. How are the key human rights relating to older persons' economic security defined in the national legislation in your country? If definitions are not available, how should such rights be defined considering relevant existing national, regional and international legal framework?

Germany is a member state to the Covenant on Economic, Social and Cultural Rights (ICESCR). The Covenant has the rank of a federal law in Germany and the right to adequate standard of living which entails the right to economic security (article 11 ICESCR) covers also older persons (as stated by the Committee on Economic, Social and Cultural Rights in its General Comment No. 6¹).

Germany is obliged to provide a framework for the right to an adequate standard of living for older persons. This includes that older persons have sufficient resources to participate in society. Similarly, a framework for non-discriminatory access to housing, food, water and sanitation must be in place.

Scope of the right

2. Please provide references to existing national legal standards relating to older persons' economic security on normative elements such as:

a) right to social security; including regular adjustment of benefits with changes in living costs;

The right to social security is enshrined in §§ 1,2 of the Social Security Code I (*Sozialgesetzbuch, SGB*). The SGB VI furthermore defines the statutory basic pension which is adjusted yearly according to i.e. rising living costs due to inflation.

¹ Paras. 32-35, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FGEC%2F6429&Lang=en

b) right to adequate standard of living, including housing, clothing, food and water, among others;

The German basic law (*Grundgesetz*, GG) does not cover an explicit right to housing, the GG only includes §§ 13 Inviolability of the home. Social support can be provided for older persons with low income, for example housing benefits (*Wohngeld*). Due to the increased energy crisis, persons in Germany, regardless of age, have received subsidies for energy costs.

c) right to work; and whether a national minimum wage or any alternative mechanism is in place to ensure an adequate standard of living, and whether a system of indexation and regular adjustment exists;

Art. 109 II GG in connection with Art. 12 I GG include an objective-legal obligation of the Federal Republic of Germany to ensure an as high as possible standard of employment through an active labor market policy. According to the Minimum Wage Act (*Mindestlohngesetz*, MiLoG), a general statutory minimum wage of 12€ per hour applies. The Act requires a minimum wage commission to decide every two years on adjustments to the level of the minimum wage.

d) prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in all matters related to economic security;

Art. 3 German Basic Law provides equality before the law, however age is not mentioned as a basis of discrimination. However, the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*, AGG), which has applied in Germany since 2006, was introduced in order to ensure greater equity in society and to help persons in vulnerable situations or in situations of risk to participate to a greater extent. §§ 1, 2 AGG regulate the inadmissibility of discrimination on the ground of age.

e) the connections between relevant economic, social and cultural rights with the right to freedom of expression, including freedom to seek, receive and impart information; and rights to peaceful assembly and freedom of association;

The freedom of expression is enshrined in Art 5 German Basic Law.
The freedom of peaceful assembly is enshrined in Art 8 German Basic Law.
The freedom of association is secured in Art 9 German Basic Law.

f) active, free and meaningful participation of older persons and their representative organizations in all matters related to ensuring their economic security, including in political processes;

Political participation of older persons is not explicitly mentioned in German basic law. However, several Bundesländer (Berlin², Hamburg³, Mecklenburg-Western Pomerania⁴, and Thuringia⁵) regulate senior citizens' representation through senior citizens' participation laws. This participation consists of being informed, giving advice and making proposals.

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

A person who is discriminated against because of his or her age may assert claims for removal, injunctive relief, damages and compensation for pain and suffering. Legal remedies are mentioned

² <https://www.berlin.de/sen/soziales/service/berliner-sozialrecht/kategorie/rechtsvorschriften/berlseng-573405.php>

³ <https://www.landesrecht-hamburg.de/bsha/document/jlr-SenMitwGHArahmen>

⁴ <https://www.landesrecht-mv.de/bsmv/document/jlr-SenMitwGMVpP3>

⁵ <https://landesrecht.thueringen.de/bsth/document/jlr-SenMitwGTHrahmen>

under Art 19 German Basic Law. The access to justice to civil courts is open to everyone which includes older person and there is also the possibility to apply for legal aid (§§ 114 ff. ZPO and § 166 VwGO). But it must be mentioned that specific save guards for older persons are missing.

State obligations

2. What measures and special considerations should be undertaken by the State to respect, protect and fulfil the above-mentioned rights to ensure older persons' economic security?

- States should advocate for a binding international convention on the rights of older persons, in which the right to an adequate standard of living of older persons is defined.
- States must guarantee the right of older persons to an adequate standard of living (Article 11 CESCR).
- States must ensure non-discriminatory access to food, clothing and housing services.
- States must enact discrimination laws that list age as a ground of discrimination.
- States must create the necessary framework conditions so that older persons can exercise their right to adequate living conditions.
- States are required to provide a legal framework as well as complaints bodies judicial opportunities to ensure that older persons can fully enjoy their right to an adequate standard of living and that they can fully exercise their rights.
- States must ensure access to care and housing facilities for older persons.
- States must prevent old-age poverty by establishing a sufficient pension and social system.
- States must ensure that older persons gain sufficient information on the economic benefits they are entitled to.

Implementation

4. What are the best practices and main challenges faced by your country in the adoption and implementation of the above-mentioned normative framework to ensure older persons' economic security?

A challenge in Germany is old-age poverty which highlights needs for action on the national level. The micro census of poverty in old age in Germany shows that poverty in old age is generally increasing. There is also a gender pension gap of 46 percent in old age. Also, due to increased temporary employment as well as unemployment during a person's life, pensions in old age are often too low to financially maintain an adequate standard of living. The main contributors to poverty in old age are higher costs in older age. In particular, the cost of housing is a major financial burden for older people, as rents continue to rise. Limited mobility is also associated with increased costs. In addition, health care is significantly more expensive in old age, as it has to be used more often.