

Germany

14th session of the Open-ended Working Group on Ageing

Guiding questions for the focus area on “accessibility, infrastructure and habitat (transport, housing and access)”

National legal and policy framework

1. What are the national legal provisions and policy frameworks that recognize older persons’ rights to accessibility, infrastructure and habitat (transport, housing and access)? This could include, but is not limited to:

a) the right of older persons to adequate housing, including land, property and inheritance.

In Germany there are legal regulations that are intended to ensure non-discriminatory access to freely financed housing and housing within the framework of social housing support.

Landlords are generally free to choose their contractual partners within certain limits (principles of general freedom of contract, article 2 (1) Basic Law for the Federal Republic of Germany (Grundgesetz)). Freedom of contract is limited, for example, by the simple legal requirements for non-discrimination according to the General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz - AGG).

The aim of the AGG is to prevent or eliminate discrimination based on race or ethnic origin, gender, religion or belief, disability, age or sexual identity. Discrimination on any of the above grounds is therefore not permitted in relation to access to and provision of goods and services available to the public, including housing.

Therefore, according to section 19 (1) AGG, discrimination on grounds of race, ethnic origin or gender, religion, disability, age or sexual identity in the establishment, implementation and termination of so-called mass transactions, which in principle also include rental contracts about living space is not permitted. Mass transactions are obligations that typically come about under comparable conditions in a variety of cases regardless of the person. For the discrimination characteristic of race/ethnic origin, section 19 (2) AGG contains a further prohibition of discrimination, which covers all civil law obligations regarding goods and services that are available to the public, including housing. With these regulations, requirements from the Anti-Racism Directive 2000/43/EC and the so-called Unisex Directive 2004/113/EC were implemented into German law. However, the prohibition of discrimination in section 19 AGG does not cover the entire area of civil law. It only applies to civil law obligations outside the area of family and inheritance law (section 19 (4) AGG), which do not have a particularly close connection to privacy (section 19 (5) AGG). Here the legislature also assumes that such a special relationship of closeness and trust can exist in rental relationships, especially if the parties or their relatives use living space on the same property; If a landlord does not rent more than 50 apartments, it can be assumed that the scope of the prohibition of discrimination pursuant to section 19 (1) no. 1 AGG is not open; This restriction therefore does not apply to discrimination based on race or ethnic origin. Section 19 (3) AGG provides a further exception to the prohibition of discrimination and is intended to enable the housing industry in particular to take into account the principles of a social urban and housing policy that have been tried and tested in Germany when renting out living space. The background is that greater social cohesion contributes to a reduction in discrimination based on ethnic origin or other reasons. The regulation allows targeted measures to promote previously disadvantaged groups in the housing market and is therefore linked to article 5 of Directive 2000/43/EC and article 6 of Directive 2004/113/EC (implemented in section 5 AGG), according to which unequal treatment is permitted if the aim is to prevent or compensate for existing disadvantages of an actual or structural nature.

However, the regulation can neither justify the underrepresentation of certain groups (BT-Drs. 16/1780 p. 42) nor racial discrimination on the housing market. The Federal Government is currently examining whether there is a need to adjust the AGG.

In Germany property is protected by the Constitution, the Basic Law, Article 14

(1) Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.

(2) Property entails obligations. Its use shall also serve the public good.

(3) Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts.

Article 3 para 1 of the Basic Law guarantees: "All persons shall be equal before the law."

b) the right of older persons to access and enjoy, on an equal basis with others, the physical environment, transportation, information and communications (including ICTs), and other facilities and services open or provided to the public, both in urban and in rural areas (e.g. buildings, roads, transportation and other indoor and outdoor facilities, schools, housing, green spaces, medical facilities and workplaces; information, communications and other services, including electronic services and emergency services).

The barrier-free accessibility of buildings is a necessary prerequisite for equal use of building facilities, especially for older people.

New federal buildings are on principle constructed barrier-free (section 8 (1) Disability Equality Act (Behindertengleichstellungsgesetz - BGG)).

In the case of existing properties, the existing barriers are dismantled in accordance with section 8 (2) BGG as required, as part of the BImA (Bundesanstalt für Immobilienaufgaben - Federal Agency for Real Estates Tasks) integrated strategy.

With the further development of the Disability Equality Right Law (BGG) in 2016, the federal Government has committed itself to gradually improving its existing buildings within the scope of its financial capacities to be made barrier-free. In accordance with section 8 (3) BGG was to present the status of barrier-free accessibility of federal Government owned buildings by June 30, 2021.

In 2020 the BImA started within the scope of fulfilling this statutory duty of care to record the attributes of structural barrier-free accessibility and categorized the existing conditions of Civil Servant properties.

Furthermore, the BImA has developed the BImA Standard for barrier-free accessibility for the existing Civil Service Property Portfolio. This supports primarily the operational construction activities and systemizes the implementation of barrier-free accessibility in existing buildings.

BImA will actively use its tools (BImA Maintenance strategy, Monitoring of Status Categories, BImA Standard barrier-free accessibility) to promote barrier reduction, strategically, holistically and in an integrated manner.

The national legislation for the structural implementation of barrier-free accessibility are particularly anchored in the Federal States of Germany Building Regulations (especially section 50 Model Building Regulation (Musterbauordnung - MBO)) and in the German Institute for Standardization DIN-Regulation 18040-1: 2010-10 (publicly accessible buildings) 18040-2:2011-09 (apartments) as well as 18040-3:2014-12 (traffic and public open spaces).

There is no overarching regulation for the barrier-free accessibility of urban green spaces and how they should be designed for different needs (e.g. needs and requirements of older people). Nevertheless, local authorities generally endeavor to make green spaces accessible to all population groups. As older people are a vulnerable group when it comes to heat, the accessibility of green spaces for recreation and cooling off is particularly important for them. This is also discussed in the framework conditions for national climate adaptation.

c) policies/programs that enable older persons to live independently and to be included in their communities as they age.

The Federal Program Multi-generational centers (2021 – 2028) supports financially ca.530 of such centers as meeting places and access points for persons of all ages. More than 30000 volunteers offer more than 31000 activities annually, 18000 of those are multigenerational. All centers offer activities for and with older persons. While activities for older persons foster independent living, digital skills development, counter loneliness and in general aim at more participation, activities with older persons increase intergenerational dialogues as well as appreciation and acknowledgement of achievements over the life course. Many older persons themselves volunteer in the centers and offer their knowledge and skills for younger generations in supporting them in daily life, e.g. Teaching languages (often German for non-German speakers), helping school children with additional classes and homework, teaching crafts, organizing so-called “repair cafés” and take over sponsorships’. These centers support participation, communication and interaction of different generations, foster appreciation and acknowledgement of the skills of older persons and thus supports better life circumstances.

The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth supports living at home as long as possible in old age, including if support and care is needed by financing innovative models. A special focus is on community and intergenerational form of habitation. These models for setting up support and care structures independently from family structures and thus enable independence and self-determination as well as participation also for very old persons.

The program “Living as one is used to”, which ran from 2020 – 2023 11 projects in urban and rural settings were financially supported to show examples for a life of self-determination in old age in the surroundings where people have lived all their life. One aspect, besides increasing inclusive and community housing as well as mobility and participation, was to increase living with the aid of digital and technical tools. A follow-up program is under preparation.

The federal government's demographic strategy was adopted in 2012 and further developed in 2015. One of the strategic goals of the demographic strategy is to promote social and societal cohesion. A central aspect of this objective is ensuring a self-determined life in old age. The demographic strategy aims to create framework conditions throughout the life course that promote self-determination and participation into old age: Education, prevention, changing images of old age that are guided above all by the ability to shape one's own life, even in old age. The responsibility of the state (federal, state and local level) for a self-determined life in old age corresponds with people's personal responsibility: opportunities and conditions must be available; it is up to older people themselves to make use of them. Under such conditions that promote development, caring communities can develop in which older people play an active role and are committed to the common good. Access to transportation services that are as barrier-free as possible and a wide range of affordable housing suitable for the elderly and disabled are particularly important in order to enable older people or people with limited mobility to remain in their familiar surroundings in the long term.

2. What are the challenges and barriers faced by older persons for the realization of their right to accessibility, infrastructure use and habitat (transport, housing and access) at the national and international levels?

The Federal Agency for Anti-Discrimination (FADA), the German equality body, counsels citizens regarding anti-discrimination. The lack of structural, communicative and digital accessibility continues to

be the focus of many enquiries with FADA, for example with regard to passenger transport in buses, trains and air travel as well as access to restaurants, hotels and shops. (Antidiskriminierungsstelle des Bundes (2021): Diskriminierung in Deutschland – Erfahrungen, Risiken und Fallkonstellationen. Vierter Gemeinsamer Bericht der Antidiskriminierungsstelle des Bundes und der in ihrem Zuständigkeitsbereich betroffenen Beauftragten der Bundesregierung und des Deutschen Bundestages, p. 71.)

Furthermore, as a result of the nationwide increase in the shipping of goods, the lack of accessibility of packing stations has become a concern for those affected.

Another issue that comes up in many enquiries is a lack of accessible living space. (Ibid. p. 127.)

Moreover, many enquiries show difficulties with individual arrangements that can reduce barriers in everyday living, such as the installation of a door handle, the use of a key that extends the lift or conversions in the stairwell and living space.

Finally, whereas hospitals and bigger health care facilities are often times accessible, many enquiries discussed problems with accessibility regarding the offices of private medical practitioners. (Ibid., p. 141.)

We refer to the elaborations to question 3 “Data and Research”, which points out further challenges.

Data and research

3. What data, statistics and research are available at the national level regarding older persons’ rights to accessibility, infrastructure and habitat (public transport, housing and access)?

Official statistics include information on housing size, quality, costs, and barrier free access to buildings and flats. Information on older peoples’ accessibility, infrastructure and habitat (public transport, housing and access) is also regularly collected in the **German Ageing Survey (DEAS)**, the **Survey of Health, Ageing and Retirement in Europe (SHARE)** and the **Socio-Economic Panel (SOEP)**. Recent data on people aged eighty years and above is also available from the **study Old Age in Germany (D80+)** collected in 2021. Available indicators on housing include type of household (e.g., private household, assisted living, nursing home), household composition, ownership and inheritance, size, costs, equipment of the accommodation, barrier-free living, and residential environment quality. Indicators for access to infrastructure include access to medical care, public transportation, shopping opportunities, community centers, advice centers, and the Internet.

According to **official statistics** (Federal Statistical Office 2019), about half of the population lives in their own property, the other half in rented accommodation. Housing quality generally is good. Only a small minority of households have barrier-free access. Housing cost burden was disproportionately high among people aged above 65 years at 40 % of available net income (compared to 14 % in the average population). SOEP data show that housing cost burden is particularly high among older people with low household incomes in rented accommodations (Romeu-Gordo et al 2019). The vast majority of people aged 60 and above regard access to medical care, public transportation, shopping opportunities, community centers, advice centers as sufficient. Access to medical care and shopping opportunities is disproportionately low in rural areas in eastern Germany. Access to public transport is better in urban than rural areas. Access to community centers does not differ between east and west Germany as well as urban and rural areas, but access to advice centers for senior citizen affairs and elder care is better in east than west Germany (Wünsche & Nowossadeck 2023). **Internet access in Germany is almost universal for people aged up to 60 years, whereas Internet access is less frequent among older adults.** Internet access is also more frequent among people with higher levels of education, and in the oldest age groups it is more frequent among men than women (Kortmann et al. 2023, Reissmann et al. 2023)

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Equality and non-discrimination

4. What measures are being taken to eliminate ageism, ageist stereotypes, prejudices and behaviors that hinder older persons' rights to accessibility, infrastructure and habitat (transport, housing and access)?

For many years now, the BMWSB (Federal Ministry for Housing, City Planning and Building) has been running a funding program for private individuals that subsidizes measures to reduce barriers. 150 million euros are available for the year 2024.

Additionally, the Urban Development Support program of the federal government and the federal states supports cities and municipalities in overcoming urban development deficits in order to sustainably strengthen them as residential locations. Among other things, urban development measures to improve accessibility for all people are included as eligible measures in all programs. This applies to neighborhoods, parks, streetscapes as well as central service areas and city centers. The accessibility and usability of public social infrastructure facilities in neighborhoods are particularly important in order to enable participation and interaction for everyone.

Remedies and Redress

Article 3 of the German Basic law states:

“(1) All persons shall be equal before the law.

(2) Men and women shall have equal rights. The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist.

(3) No person shall be favored or disfavored because of sex, parentage, race, language, homeland and origin, faith or religious or political opinions. No person shall be disfavored because of disability.”
Especially older persons who fall within the scope of the CRPD can directly complain to courts on violation of para 3, sentence 2 of this article.

Within its scope of application, the lack of accessibility can constitute age discrimination under the General Equal Treatment Act (German abbreviation: AGG). In cases where age discrimination coincides with a case of disabilities, the refusal to grant reasonable accommodation can also constitute discrimination. In case of discrimination, the AGG grants a right to damages and compensation.

In addition, depending on the rights concerned, there may be other mechanisms such as mediation, specific ombuds institutions (such as commissioner on patients' rights, mediation services of the medical profession etc.).