

# Accessibility, infrastructure and habitat (transport, housing and access)

14<sup>th</sup> Session of the UN Open-ended Working Group on Ageing

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

**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.

Germany ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1973, which guarantees everyone the right to adequate housing as part of an adequate standard of living (Art. 11). Furthermore, Germany is obliged by the CRPD to establish social housing programs that provide housing that is accessible to older persons with disabilities (Art. 28 CRPD).

The German Basic law (*Grundgesetz*, GG) constitutes the right on the inviolability of the home (Art. 13 GG) and on the protection of property and inheritance (Art. 14 GG). However, these rights are linked to the renting, possession or ownership of a home, but do not themselves include a right to housing.

The right to adequate housing is derived from the Social State principle ("Sozialstaatsprinzip"; Art. 20 sect. 1 GG).<sup>1</sup> Some Länder constitutions provide for an explicit right to adequate housing or living space (for example Art. 106 Constitution of Bavaria, Art. 28 Constitution of Berlin, Art. 14 Constitution of Bremen).

Through the "Mietpreisbremse" (rent cap) (§ 556 (d)–(g) of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB)), the Government plans to ensure that in areas with tight housing markets rents for

<sup>1</sup> Contribution by the Federal Republic of Germany to the report of the Special Rapporteur on the Right to Adequate Housing, p. 3, <https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/sub-nationalgovernments/Germany.pdf>.

new tenancies do not continue to rise indefinitely. The rent for new tenancies may only be based on the previous rent and may only be increased under certain conditions. The Housing Assistance Act (*Wohnraumförderungsgesetz, WoFG*) is intended to help older persons, among others, to find accommodation.

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).

As a contracting party to the CRPD, Germany has undertaken to provide equal access to the physical environment and therefore remove all barriers to access roads, transportation and all public facilities in accordance with Art. 9. According to Art. 20 CRPD, the government also obliges to take effective measures to ensure personal mobility with the greatest possible self-determination for persons with disabilities.

The Act on Equality for Persons with Disabilities (*Behindertengleichstellungsgesetz, BGG*) obligates the government on national level to ensure accessibility of construction and transportation. According to this, new civilian buildings, conversions, and extensions owned by the federal government must be accessible. The model building regulations, which serve as the basis for the drafting of the Länder building regulations, stipulate that publicly accessible buildings, such as restaurants, stores, health facilities or leisure facilities must be accessible (section 50 (2) MBO (*Musterbauordnung*)).

The Passenger Transport Act (*Personenbeförderungsgesetz, PBefG*) contains the goal of achieving complete accessibility for the use of public transport by 01.01.2022. Moreover, from the end of June 2025, the requirements of the *Barrierefreiheitsgesetz*, the implementation of the European Accessibility Act, will oblige providers of certain goods and services to provide accessibility. This includes certain areas of passenger transport services, like ticket machines.<sup>2</sup> Moreover, the Länder have their own laws on the Equality of Persons with Disabilities (*Landesgleichstellungsgesetze*) which apply to local administrations.

Furthermore, the Barrier-free Information Technology Ordinance 2.0 (BITV 2.0) offers comprehensive standards for accessible websites, complementing the BGG. It primarily applies to federal authorities.

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

Several projects and strategies related to housing that are funded by the government are presented in an online database (“Serviceportal Zuhause im Alter”), such as the Programm “Anlaufstelle für ältere Menschen” which supported about 300 projects throughout Germany aiming at assisting older persons to live independently in their own house.<sup>3</sup> The federal government is moreover supporting private

<sup>2</sup> Article “Barrierefreiheit – wichtiges Qualitätsmerkmal im öffentlichen Personennahverkehr (Accessibility – an important quality feature in public transport)”, published by the Ministry of Digital and Transport, <https://www.bmdv.bund.de/SharedDocs/DE/Artikel/G/barrierefreiheit-im-oeffentlichen-personenverkehr.html>.

<sup>3</sup> All programs are available at: [www.serviceportal-zuhause-im-alter.de](http://www.serviceportal-zuhause-im-alter.de)

owners and tenants who – regardless of income and age – can apply for grants or loans to remove barriers in residential buildings as part of the "Age-appropriate renovating" program (KfW).<sup>4</sup>

Furthermore, the Government introduced the "InitiativeSozialraumInklusiv" which develops recommendations for actions to ensure a more inclusive social space. It also contributes to the creation of greater accessibility in Germany and supports the implementation of the obligation under Article 19 CRPD.<sup>5</sup>

The "DigitalPakt Alter" is an initiative that is led by the BAGSO (German National Association of Senior Citizens' Organisations) and the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and aims to empower older persons in the digital world. Its objectives include enhancing accessibility to digital technologies for older persons, showcasing the advantages of digital devices in various domains such as housing, health and mobility and acknowledging municipalities that offer age-appropriate digital services.<sup>6</sup>

Additionally, a few German cities have joined the WHO's "Age-friendly city" program, which provides ideas and guidelines to create an accessible and inclusive urban environment for all ages.<sup>7</sup>

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 range of available infrastructure varies between rural areas and large cities. There is therefore a foreseeable threat that an increasing number of older persons will be excluded from infrastructure facilities, especially if they are unable to compensate for this lack of infrastructure with their own financial resources. The route from the front door to the first public transport stop poses particular difficulties. Another challenge is the accessibility of public transport. Barriers arise often from non-accessible vehicles, unreasonable waiting and transfer times, machines that are difficult to operate and unmanned service counters.

Barriers can also be found in public spaces. High edges, steps, unclear traffic routing, short green phases at pedestrian lights or too few seating areas are examples of public spaces that are not designed with ageing in mind. Only 10 per cent of medical practices are accessible to persons of limited mobility and equipped with accessible sanitary facilities, and only 7 per cent have orientation aids for visually impaired persons.<sup>8</sup> Although there is progress regarding the physical access to museums and historical sites, there are still many barriers to participation in the cultural institutions.<sup>9</sup>

The eighth report on ageing by the federal government also highlighted the existence of a "digital divide" among older persons, indicating unequal access to digital technologies. Many older persons, especially older women or older persons with lower levels of formal education and minimal prior exposure to technology, lack or have limited access to digital technologies. Older persons with a high level of

<sup>4</sup> National report on the implementation of the Madrid Plan on Ageing, 2020, pp. 6, 16, <https://www.bmfsfj.de/resource/blob/191664/42143860dccc2c1950290b5296b3c45b/nationaler-bericht-20-jahre-zweiter-unweltaltenplan-deutsch-data.pdf>.

<sup>5</sup> Website of the initiative, [https://www.bundesfachstelle-barrierefreiheit.de/DE/Initiative-Sozialraum-Inklusiv/Regionalkonferenzen/regionalkonferenzen\\_node.html](https://www.bundesfachstelle-barrierefreiheit.de/DE/Initiative-Sozialraum-Inklusiv/Regionalkonferenzen/regionalkonferenzen_node.html).

<sup>6</sup> Website of the initiative, <https://www.digitalpakt-alter.de/>.

<sup>7</sup> WHO Network: Members from Germany are Münster, Stuttgart and Radevormwald: <https://extranet.who.int/agefriendlyworld/network/>.

<sup>8</sup> German Institute for Human Rights, National CRPD Monitoring Mechanism (2023): Parallel report to the UN Committee on the Rights of Persons with Disabilities for Germany's 2<sup>nd</sup>/3<sup>rd</sup> State Party review procedure, para. 83, <https://www.institut-fuer-menschenrechte.de/publikationen/detail/parallel-report-to-the-un-committee-on-the-rights-of-persons-with-disabilities-for-germanys-2nd3rd-state-party-review-procedure>.

<sup>9</sup> Report of the Special Rapporteur in the field of cultural rights. Visit to Germany, UN Doc. A/HRC/55/44/Add.1, paras. 43-47, <https://undocs.org/A/HRC/55/44/Add.1>.

education and a sufficient income use digital technologies much more frequently and can also derive greater benefit from them. In addition to inequalities due to differences in income and education at an older age, infrastructural differences between urban and rural regions and between federal states make the spread and use of digital technologies more difficult.<sup>10</sup>

One of the main challenges faced by older persons for the realization of their right to housing at national level is affordability. Housing costs (rents, the cost of maintaining residential property and ancillary housing costs) are currently rising significantly in some regions and residential areas, which prevents older persons from moving into more adequate housing facilities. The houses inhabited by older persons are often older and therefore full of barriers as well as expensive to maintain or renovate. The most serious barriers are related to access to the home (no ground-level access) and the use of sanitary facilities. In the worst case, this can lead to older persons only being able to leave their homes with considerable effort, if at all. The great demand for suitable forms of housing for older persons is currently matches by far too little supply.<sup>11</sup>

### *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)?

The German Ageing Survey (*Deutscher Alterssurvey*, DEAS) carried out by the German Center of Gerontology (*Deutsches Zentrum für Altersfragen*, DZA) is a nationwide representative cross-sectional and longitudinal survey of the German population aged over 40 and functions as the basis for many further scientific studies. One study, using the data of the Survey, examines the extent to which persons aged 65 and over have accessible housing and which characteristics influence the likelihood of this. Among other things, the study found that older persons on low incomes, East Germans and older persons in urban regions were less likely to live in low-barrier housing. Moving into their current home after the age of 65 increased the likelihood of living in accessible housing.<sup>12</sup>

Also, the federal government reports on ageing provide research on the rights of older persons to accessibility, in particular the 7<sup>th</sup> report on building and securing sustainable communities and the 8<sup>th</sup> report on digitalization.<sup>13</sup>

### *Equality and non-discrimination*

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

The General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*, AGG) prohibits all discrimination in the access to housing on grounds of age in the establishment, implementation and

<sup>10</sup> Eighth report on ageing by the federal government, 2020, p.133: [https://www.achter-altersbericht.de/fileadmin/altersbericht/pdf/aktive\\_PDF\\_Altersbericht\\_DT-Drucksache.pdf](https://www.achter-altersbericht.de/fileadmin/altersbericht/pdf/aktive_PDF_Altersbericht_DT-Drucksache.pdf).

<sup>11</sup> Seventh report on ageing by the Ministry for Families, Senior Citizens, Women and Youth, p. 231 f.,

<https://www.bmfsfj.de/resource/blob/120144/2a5de459ec4984cb2f83739785c908d6/7-altenbericht-bundestagsdrucksache-data.pdf>.

<sup>12</sup> Nowossadeck, S., Romeu Gordo, L., & Lozano Alcántara, A. (2023): Mobility restriction and barrier-reduced housing among people aged 65 or older in Germany: Do those who need it live in barrier-reduced residences?, <https://www.frontiersin.org/journals/public-health/articles/10.3389/fpubh.2023.1098005/full>.

<sup>13</sup> Overview of the different reports: <https://www.bmfsfj.de/bmfsfj/ministerium/berichte-der-bundesregierung/achter-altersbericht/altersberichte-der-bundesregierung>.

termination of civil contracts (section 19 (1) AGG). This includes access to housing and the duration and termination of an existing tenancy. However, this does not apply if the lessor has less than 50 housing units for rent or if there is an objective ground to justify the difference in treatment (section 20 (1) AGG).

The Federal Participation Prize, which has been awarded annually since 2019, is supposed to raise awareness and sensitization. It honors exemplary model projects and good practice examples of inclusive and barrier-free social space design that promote inclusion and social participation. The topics so far have been "Inclusive mobility" (2019), "Perspective even in corona times: Barrier-free travel in Germany" (2020) and "Support, assistance, care – social participation even in Corona times" (2021).<sup>14</sup>

### *Remedies and Redress*

5. What mechanisms are necessary, or already in place, for older persons to submit complaints and seek redress for denial of their rights to accessibility, infrastructure and habitat (transport, housing and access)?

If the provisions of the Act on Equality for Persons with Disabilities (BGG) are not observed by federal authorities, persons with disabilities can contact the arbitration board of the Federal Government Commissioner for Matters relating to Persons with Disabilities free of charge (§16 BGG). Moreover, they can take legal action to ensure that their rights are observed.

For the new EU law, it is planned that affected parties can apply to the market surveillance authority for the implementation of market surveillance measures. If the application is rejected, legal action can be taken against this decision before the administrative courts. Finally, they are entitled to civil law claims under the German Civil Code (BGB) if, for example, they have purchased a product or used a service, and this was deficient due to a lack of accessibility (see e.g. Section 281 BGB).<sup>15</sup>

Persons affected by discrimination on the housing market can turn to the Federal Anti-Discrimination Agency. The Agency provides information about claims under the AGG and approaches to securing protection from discrimination on the strength of statutory provisions. Housing-related breaches of the discrimination ban can entail claims for compensation and damage (section 21 (2) AGG). However, a claim to enforce the conclusion of a rental contract is not possible.<sup>16</sup>

<sup>14</sup> Report of the Federal Government on the interim review of the implementation of the measures of the policy for equal living conditions in the 19th legislative period, p. 63, <https://www.bmfsfj.de/resource/blob/178222/7d7b9f258c195b5731d90b726bac7883/politik-fuer-gleichwertige-lebensverhaeltnisse-zwischenbilanz-data.pdf>.

<sup>15</sup> Article "Barrierefreiheit in Deutschland (Accessibility in Germany)" published by Lebenshilfe, <https://www.lebenshilfe.de/informieren/wohnen/barrierefreiheit-fuer-menschen-mit-behinderung#barrierefreie-bundesverwaltung>.

<sup>16</sup> Call for input, IE on the enjoyment of all human rights by older persons, the right to adequate housing, submission by Germany, p. 4, [https://www.ohchr.org/sites/default/files/documents/issues/olderpersons/2022-report-right-housing/states/2022-08-03/submissions-older-persons-right-to-adequate-housing-GERMANY-en\\_0.docx](https://www.ohchr.org/sites/default/files/documents/issues/olderpersons/2022-report-right-housing/states/2022-08-03/submissions-older-persons-right-to-adequate-housing-GERMANY-en_0.docx).