

German Institute for Human Rights

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Guiding Questions: Equality and non-discrimination

1) Does your country's constitution and/or legislation

(a) guarantee equality explicitly for older persons or people of all ages and

There is no explicit clause in the German Basic Law (GG) that guarantees equality explicitly for older persons. Article 3 of the Basic Law requires all people to be treated equally. This means that discrimination of any type is prohibited generally. Article 3 of the Basic Law does not contain an explicit ban on discrimination on the basis of age; cases of unequal treatment on the basis of age are assessed according to the principle of general equality contained in Article 3 Para. 1 of the Basic Law. Since 2006 Germany's General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, AGG) is in force. The Act protects every person from discrimination on grounds of race, ethnic origin, gender, disability, religion or belief, age, or sexual orientation.

(b) forbid discrimination explicitly on the basis of age? If so, how is the right to equality and non-discrimination defined?

This protection is based on Germany's General Equal Treatment Act since 2006. Every person is protected from discrimination on grounds of race, ethnic origin, gender, disability, religion or belief, age, or sexual orientation.

Discrimination forbids direct and indirect discrimination and harassment. The denial of reasonable accommodation is considered to be discriminatory. The scope of the AGG includes employment and access to goods and services. Discrimination in the public sector is not included.

2) Does your country produce information about discrimination against older persons in the following or other areas? If so, what are the main findings?

- Employment
- Access to goods and services
- Social protection
- Health care
- Social care
- Justice, Inheritance
- Decision-making and autonomy, Living environment
- Other areas (please specify)

The ADS representative survey of people aged 14 and over in Germany comes to the conclusion that 9.9 percent of those questioned had experienced discrimination on the basis of being classified as "too old" within the last 24 months before the survey. It also showed that respondents aged over 60 had an increased experience of 15.3 percent in age discrimination. In addition it was discovered that women and people with disability or chronic illnesses were at a significantly higher risk of experiencing discrimination because of being "too old".

Employment:

As a non-representative ADS survey of people affected showed, however, discrimination on the basis of age is experienced with above-average frequency in the area of employment. Almost 59 percent of the respondents felt that discrimination associated with age can be assigned to the area of employment.

Highest number of reported discrimination in employment is the disadvantage of being too old when applying for employment. The bias against older persons not having the needed skills (e.g. in new technologies) or that they are more frequently ill than younger applicants is still common.

Cases of age discrimination relating to failed job applications are often cases where the discrimination relates to the gender of the person affected as well as the age (in 46 percent of such cases of age discrimination). These findings are also consistent with the requests for advice received by the ADS on the subject of age discrimination. The ADS is constantly being contacted by people who have the feeling that they have been disadvantaged in job application processes because of their age.

In all these cases it is generally extremely difficult to prove that discrimination has occurred. The persecution of discrimination can only be made if there are other indicators or evidence, e.g. a discriminatory job description. (Sect. 22 AGG).

Age discrimination also occurs in existing employment relationships where persons who are classified as too old are described as less competent. Consequences include material disadvantage, such as the comparatively poorer evaluation of performance or discriminatory wage differences.

3) Is there information available about inequality of opportunities or outcomes experienced by older persons in the following areas?

• Availability of, access to and quality of health care services

There is no difference in law, but there are reports on unequal treatment in practice e.g. less prescription of more expensive medication, some new medications are not tested on their effects on older person or access to health care can be difficult if older persons live in rural areas, where there are not enough doctor's practices.

• Financial services

Age discrimination is reported at an above-average rate in the area of financial services, such as when the person reaches a certain age limit and can no longer obtain credit or people have to pay much higher tariffs for their insurance than the equivalent group of younger persons.

The ADS reported that they receive more complaints because people feel discriminated against when they have to pay much higher tariffs for their care insurance. The reason why people have difficulty to obtain a mortgage for a property purchase is the German way of the implementation of the Mortgage Credit Directive. The EU Directive is very broadly interpreted by the banks and financial services institutions. It is reported that loan applications from solvent customers who have already passed pension age are being turned down with the justification that granting a loan to them is not allowed on the basis of a Federal Government guideline because of their age.

"Other areas" – voluntary activities

In the area of voluntary activities, there still exist age limits that can be found in the rules of societies and clubs.

4) Are there any areas where differential treatment based on old age is explicitly justified?

Access to goods

The General Equal Treatment Act (AGG) forbids discrimination on the basis of age within employment situations and mass activities. The AGG includes possible justifications for unequal treatment being allowed, for example, in the case of rules for contributions to social security systems under employment legislation.

Mandatory age of retirement

Under employment law, maximum or minimum age limits may be laid down for ending (or starting) an employment relationship. In civil law, associated cases of unequal treatment can also be justified by a "substantive reason" (Sect. 20 AGG).

Age limits in financial services and products

In insurance contracts, differentiation according to age is permitted if this is based on recognised principles of risk-related calculation. Different price structures for different age groups may therefore be allowed as a business model.

Age-based benefits

There are can be still found various age-related benefits in different areas e.g. lower prices for pensioners for public transport, swimming pools, theaters, opera, concert performances, musicals, museums, galleries, exhibitions, sports clubs and sporting events or zoological gardens.