

Germany

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

Guiding questions for the focus area on participation in public life and in decision-making processes

National and local 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;

Age discrimination is prohibited with regards to employment (§§ 7 para. 1, 8 para. 1 General Equal Treatment Act (AGG)). The Federal-Agency for Anti-Discrimination (FADA) points out that, due to its unpaid nature, the prohibition does not include voluntary work. (cf Answer to Question 2 a of the review area "social inclusion").

Additionally, age discrimination is also prohibited with regards to civil law obligations, but limited to "bulk business" (§ 19 para. 1 no. 1 General Equal Treatment Act (AGG)). Contracts are considered "bulk business" if they are conducted without regard to the individual contracting party, in a large number of cases and under comparable conditions.

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;

- **General Equal Treatment Act** (German abbreviation: **AGG**):
 - Discrimination based on age is essentially prohibited in working life and everyday transactions. However, particularly in the working world, but also with regard to credit agreements and insurance transactions, there are also far-reaching exceptions that apply to unequal treatment based on age.
 - Yet, above all where loans and financing is concerned, neither the Act nor court decisions clarify which exact credit transactions fall within the scope of the AGG. Therefore, the Federal Anti-Discrimination Agency demands that the proportionality of and requirements for such exceptions to the equal treatment principle be clarified.
- **Programme "Images of aging"** (German: "**Programm Altersbilder**"):
 - With the programme 'Images of Aging' the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has created a platform in order to inspire a broad public debate on the issue. It not only serves to demonstrate the effects of specific images of aging in different areas of life but also to raise all social stakeholders' awareness of the potentially negative impact of certain images of aging.
 - Senior citizens today are generally healthier, better educated and more vibrant and energetic than earlier generations. They also want to continue their involvement in the working world, in industry and in society as a whole. However, prevailing images of old age are still based on those of previous generations. These usually relate to illness and decay rather than available skills, experience and potential. Perceptions of age can strongly influence what young people expect from their own old age and what older people think they are (still) capable of.

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

This right is enshrined in **Article 5 of the German constitution**, (Basic Law)

“(1) Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship.

(2) These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons and in the right to personal honor.

(3) Arts and sciences, research and teaching shall be free. The freedom of teaching shall not release any person from allegiance to the constitution.

d) right of peaceful assembly;

This right is enshrined in **Article 8 of the German Constitution** (Basic Law)

(1) All Germans shall have the right to assemble peacefully and unarmed without prior notification or permission.

(2) In the case of outdoor assemblies, this right may be restricted by or pursuant to a law.

e) right to freedom of association;

this right is enshrined in **Article 9 of the German Constitution** (Basic Law)

(1) All Germans shall have the right to form societies and other associations.

(2) Associations whose aims or activities contravene the criminal laws or that are directed against the constitutional order or the concept of international understanding shall be prohibited.

(3) The right to form associations to safeguard and improve working and economic conditions shall be guaranteed to every individual and to every occupation or profession. Agreements that restrict or seek to impair this right shall be null and void; measures directed to this end shall be unlawful.

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

these rights are enshrined in **Section III of the German Constitution, Articles 38 – 48**, which govern the rules for the election and membership of the Bundestag.

Of especial importance is Article 38

(1) Members of the German Bundestag shall be elected in general, direct, free, equal and secret elections. They shall be representatives of the whole people, not bound by orders or instructions and responsible only to their conscience.

(2) Any person who has attained the age of eighteen shall be entitled to vote; any person who has attained the age of majority may be elected.

(3) Details shall be regulated by a federal law.

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;

- **Old Age Assistance in § 71 SGB XII** (German: „Altenhilfe“):
 - Cities and districts are obliged to guarantee a minimum level of advice and open support services for older people.
 - The provision is primarily aimed at providing advice and support rather than cash benefits. The cities and districts do not necessarily have to provide the services themselves, but can provide them in cooperation with other public or private actors.
- **German Federal Strategy to Counter Loneliness** (German: “Strategie der Bundesregierung gegen Einsamkeit”)
 - Strategy pursues 111 measures within the five objectives (Raising awareness, enhancing knowledge, strengthening practitioners, acting cross-sectorally, supporting people – improving services) to strengthen social connectedness and social interaction in order to prevent and alleviate loneliness.
 - Currently more than 180 projects to support older people are funded by BMFSFJ
 - For instance, since 2020, the project "Miteinander - Füreinander: Kontakt und Gemeinschaft im Alter" ("Together for each other: contact and community in old age"), by Malteser Hilfsdienst e.V. addressing especially very old persons at more than 100 locations.
 - And the European Social Fund - ESF Plus programme "Stärkung der Teilhabe älterer Menschen - gegen Einsamkeit und soziale Isolation" ("Strengthening the participation of older people - countering loneliness and social isolation") started in October 2022 with more than 70 projects until 2027.

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

The **General Equal Treatment Act in Section 21** elaborates on the remedies and redress:

“Enforcement

(1) Where a breach of the prohibition of discrimination occurs, the disadvantaged person may, regardless of further claims being asserted, demand that the discriminatory conduct be stopped.

Where other discrimination is to be feared, he or she may sue for an injunction.

(2) Where a violation of the prohibition of discrimination occurs, the person responsible for committing the discrimination is required to compensate for any damage arising therefrom. This does not apply where the person committing the discrimination is not responsible for the breach of duty. The person suffering discrimination may demand appropriate compensation in money for damage which does not constitute economic loss.

(3) Claims in tort remain unaffected.

(4) The person responsible for committing the discrimination is not permitted to refer to an agreement which derogates from the prohibition of discrimination.

(5) Any claims arising from subsections (1) and (2) must be asserted within a period of two months. After the expiry of that period the claim may only be asserted if the disadvantaged person was prevented from meeting the deadline through no fault of their own.”

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

According to estimates, about 1.8 million people are living with dementia in Germany today. Those affected account for a significant proportion of the elderly people in Germany as the risk of developing dementia is directly correlated with age. The number of people living with dementia is bound to grow even more in the future due to the demographic change of the German population, and might rise to up to almost 2.8 million people by 2050. People with dementia often withdraw from societal life due to the limitations associated with the condition or the perceived stigma attached to it. Therefore, the National Dementia Strategy, which was introduced involving an alliance of stakeholders from different fields such as politics, science and civil society, was launched by the German federal government in 2020. Its aim is to improve the living conditions of people with dementia and their relatives. One of the four major fields of action laid out in the strategy is developing and establishing dementia-inclusive communities to enable people with dementia to participate in society. To achieve this aim, various measures are being implemented by the stakeholders involved, such as raising awareness among the general population, establishing local network structures to offer support and guidance, or opening up cultural, sporting and educational facilities for people with dementia. In doing so, participation in public life of the target group is improved.

Germany abolished the system of legal guardianship for adults that involved deprivation of legal capacity in 1992, and replaced it with a system of “supporting legal representation”. Supported decision-making is part of the concept of the German system of supporting legal representation. The central provision, section 1821 BGB, explicitly states that the supporting legal representative should help the person in question to make their own decisions by providing the support that is needed in each specific case. The representative will make a substitute decision if the adult is not capable of making a decision by himself or herself even with assistance and the matter cannot be dealt with otherwise.

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.

Voluntary activities to influence political decision making are considered forms of participation in public life and decision-making processes (political participation hereafter). Political participation refers to institutionalised practices such as participation in parliamentary elections, membership of political parties and organisations, and the scope of associated voluntary and honorary activities. **Official data on voter turnout** is available from the **national statistics office**, which can be broken down by region, age and gender. There are also **official membership figures of the major political parties available**; for a systematic overview of the development and socio-structural composition of party memberships summarised by age, region and gender based on these figures, see Niedermeyer (2022). Another important data source is a series of **population-representative surveys that collect information that go beyond institutionalised and formalised forms of political participation and also look at non-institutionalised forms of political participation**. These forms include, for example, participation in demonstrations or petitions or the boycott of certain products. Such studies are available with a focus on older respondents (e.g., the **German Ageing Survey (DEAS)**, or the **Survey of Health, Ageing and Retirement in Europe (SHARE)**) or the general population as a whole, which, with sufficient sample size, also allows older respondents to be analysed separately (e.g., the **Socio-Economic Panel (SOEP)**, or the **German Survey on Volunteering (FWS)**).

For Germany, such data shows that the continuous decline in the number of members in organisations, such as political parties and trade unions, and the decreasing willingness to volunteer in formalised contexts is accompanied by an increase in non-institutionalised forms of participation

(Weßels 2021). Group differences in participation are particularly evident with regard to age, education and gender, as well as by region and employment status; **higher education, male gender and employment are associated with higher participation rates and greater political interest** (Weßels, 2021; Kroh & Könnecke, 2013; Heger et al., 2022). Higher education, in particular, is associated with higher participation rates (Arriagada & Tesch-Römer, 2022). When comparing participation rates by region, people from the former eastern German federal states reported slightly higher participation rates in various non-institutionalised forms of participation than people from the former western German federal states (Weßels, 2021). In terms of age, **people of retirement age generally have lower participation rates than people of middle and younger adulthood** (Arriagada & Tesch-Römer, 2022); while this applies to both institutionalised and non-institutionalised forms of participation, the gap is greater for non-institutionalised forms of participation (Arriagada & Tesch-Römer, 2022, Schnaudt et al., 2014).

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?

The Federal of Antidiscrimination Agency points out: Persons beyond a certain age are excluded from some types of employment or voluntary work. For example, according to the Courts Constitution Act, only persons who are at least 25 years of age and younger than 70 at the beginning of their term of office can be appointed as lay judges. (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. 223f.)

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

As elaborated above, the German constitution guarantees the rights to:

- freedom of expression, including freedom to seek, receive and impart information;
- right of peaceful assembly;
- right to freedom of association;
- right to take part in the government of one's country, directly or through freely chosen representatives

Article 19 of the Basic law protects those rights.

“(1) Insofar as, under this Basic Law, a basic right may be restricted by or pursuant to a law, such law must apply generally and not merely to a single case. In addition, the law must specify the basic right affected and the Article in which it appears.

(2) In no case may the essence of a basic right be affected.

(3) The basic rights shall also apply to domestic legal persons to the extent that the nature of such rights permits.

(4) Should any person's rights be violated by public authority, he may have recourse to the courts. If no other jurisdiction has been established, recourse shall be to the ordinary courts."

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.)."

Furthermore, we refer to the answer to question 2 h) of this questionnaire.