

**Federal Republic of Germany;
Federal Ministry for Family Affairs, Senior Citizens, Women and Youth**

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

Answer:

- a) Article 3 of the Basic Law (GG) 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.
- b) The General Equal Treatment Act (AGG) has applied in Germany since 2006. It was introduced in order to ensure greater equity in society and to help disadvantaged groups to participate to a greater extent. Under Sect. 7 in conjunction with Sect. 1 of the Equal Treatment Act, unjustified unequal treatment on the basis of age is prohibited.
- 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)

Answer:

The study "Experiences of discrimination in Germany" carried out on behalf of the Federal Anti-Discrimination Agency¹ (ADS) provides information on, for example, the distribution and forms of expression of perceived discrimination experiences on the basis of "being too old" (handout giving initial results available on the ADS website / full report on the study appearing in June 2017).

The representative survey of people aged 14 and over in Germany which was carried out within the study 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

¹ The Federal Anti-Discrimination Agency (FADA) is an independent focal point to which persons affected by discrimination may turn. It was established in 2006, after the General Equal Treatment Act (German abbreviation: AGG) had entered into force. The FADA and its tasks have been stipulated in this Act and comply with the EU directives on equal treatment.

24 months before the survey. Naturally, the risk of discrimination increases with age. Amongst respondents aged over 60, for example, the proportion, 15.3 percent, is well above the average. It was also discovered that women (in comparison with men) and people with disability, impairment or chronic illnesses (in comparison with people without impairment) were at a significantly higher risk of experiencing discrimination because of being "too old".

Alongside this representative survey, a broadly based non-representative survey of people affected was also carried out within the remit of the study. The information given below concerning the various areas of life (Questions 2 and 3 of this questionnaire) is based on the results of this survey of people affected and the evaluation of the requests for advice received by the ADS on the subject of "age discrimination".

Employment:

The Federal Government does not have any detailed information about discrimination against older people. To date, it is only aware of isolated cases.

As an 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 half (47 percent) of the situations described in which the respondents felt that discrimination was associated with age can be assigned to this area of life. With regard to experiences of discrimination in the area of employment and career because of the classification of "too old", a distinction can be made between two types of case which occur particularly frequently.

Firstly, there is an above-average number of reports of disadvantage due to being "too old" in the search for employment and/or the application process. These are often cases where, due to prevailing stereotypes, older people are no longer thought to possess particular skills because of their age. It is reported that it is especially difficult for older people to find work again after a break in employment. 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).

Secondly people in existing employment relationships report with above-average frequency cases of age discrimination in connection with forms of material disadvantage, such as the comparatively poorer evaluation of performance or discriminatory wage differences. Here, people who are classified as "too old" are perceived as being less competent (especially as regards efficiency, ability to adapt to innovations and dealing with modern technologies), which can in turn affect performance evaluation and salary classification.

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.

However, in these cases, it is generally extremely difficult to prove that discrimination has occurred. The allegation of discrimination can only be made if there are other indications, such as discriminatory job descriptions or documented statements, for example, which means then that the employer has to prove that this is not the case (Sect. 22 AGG).

Access to goods and services:

See answer to Question 3 (financial services)

Health care:

(see also Question 3)

Statutory health insurance guarantees comprehensive social protection in the event of illness. Insured persons receive all the necessary medical services, irrespective of gender, age or ability to pay. Contributions are based on financial capability. Payment limits, according to which individual additional payments per calendar year are limited to 2 percent, or 1 percent for people with chronic illnesses, of the annual gross income for subsistence, ensure that no-one is financially overstretched and maintain a social balance.

"Other areas" – voluntary activities

In the area of clubs and voluntary activities, the ADS regularly receives requests for advice from people who feel that they have suffered age discrimination. These generally concern age limits for voluntary activities which might be contained, for example, in the club's rules. Examples of this include maximum age limits for participation as competition judges, jury members and members of the representative assembly of a cooperative bank, but also higher contributions for older members of an allotment association.

- 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
 - Financial services

Answer:

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

Statutory health insurance guarantees comprehensive social protection in the event of illness (see also answer concerning health care, Question 2)

- Financial services

Older people are sometimes prevented from buying particular goods that are offered on the market by express or implicit reference being made to age limits, or the prices for these services are increased. However, it is extremely difficult to gain an overview of the products in question and the reasons for justifying this.

Within an ADS survey of those affected, age discrimination was reported at an above-average rate in the area of financial services. People affected reported in particular that, because they had reached a certain age limit, they could no longer obtain credit or they complained about age being taken into account when calculating insurance tariffs.

These situations are also reflected in the requests to the ADS for advice on the subject of age discrimination. The ADS receives a particularly high level of requests, for example, from people who feel that they are discriminated against by age-related increases in their car insurance premiums. In addition, there are cases in which a property purchase cannot be financed because a loan application is turned down. The reason for this is the implementation of the Mortgage Credit Directive, which is very broadly interpreted by the banks and financial services institutions. The ADS is now receiving more requests because 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.

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

Examples:

- Access to goods
- Mandatory age of retirement
- Age limits in financial services and products
- Age-based benefits

Answer

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 various age-related benefits, e.g. reductions for seniors for mountain railways, but it must be asked whether some of these really (still) make sense in the face of current concepts of old age.