

Guiding Questions for Focus Area: Access to Justice

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Answers of the German Institute for Human Rights

National Legal Framework

- 1. How is the access to justice by older persons guaranteed under the national legal and policy framework? What judicial and non-judicial mechanisms are in place for all older persons to complain and seek redress for denial of their rights?**

Art. 19 IV of the German Constitution (basic law, GG) provides for a guarantee of legal remedies. This is universal and does not refer to specific groups.

The access to justice to civil courts is open to everyone which includes older person and there is also the possibility to apply for legal aid (§§ 114 ff. ZPO and § 166 VwGO).

Availability

- 2. What steps have been taken to ensure the availability of judicial and non-judicial mechanisms for older persons in urban, rural and remote areas in your country? Are there alternative dispute settlement mechanisms available?**

One of the non-judicial mechanisms which might have an impact on older persons access to justice is the conciliation office in Kehl am Rhein, which deals with questions arising from the home contract.

Many older persons in care are facing difficulties if they want to complain because of their living conditions or violation of their right to movement or their right to live without violence. Because of their dependence either because they live in a care home or if they are living in their own home and have only very limited contact to other persons, it is not easy for them to know who they need to talk to complain. Therefore it seems to need a low threshold mechanism to complain in this regard.

Accessibility

- 3. What steps have been taken to ensure that all justice systems (judicial and non-judicial) are secure, affordable and physically accessible for older persons and adapted to their needs?**

New built court buildings are barrier free according to law, but older court buildings might have barriers. It is not known how many lawyers' offices offer easy physical access.

There exists a grant of legal assistance under the Advisory Aid Act (BerHG) for the exercise of rights outside of court proceedings as well as for obligatory quality assurance procedures pursuant to § 15a EGZPO.

- 4. What are the existing provisions to guarantee legal assistance for older persons?**

See answer to question 3

- 5. What are specific challenges encountered by older persons in accessing justice and remedy in your country?**

The length of the judicial procedures can be a barrier for older persons, especially if they are in the period of the end of their lives. The Federal Government has introduced a new complaints procedure against lengthy judicial proceedings to make the proceedings more acceptable and age friendly.

One challenge might be the cost risk when taking legal action, even though older persons also have access to legal assistance under the Advisory Aid Act (BerHG).

Older persons especially, if they are dependent on their family or living in an institution might face the barrier to get access to information how to complain and where to go.

Especially persons under guardianship or persons who get support might have problems to get access to justice, if their will and preferences are not taken into account.

- 6. What good practices are available in terms of ensuring equal and effective access to justice and remedy for older persons?**

Equality and non-discrimination

- 7. What are the provisions adopted to ensure effective access to justice for older persons on an equal basis with others, including age-appropriate procedure in all administrative and legal proceedings?**

General provisions on equality for older people:

Germany is a member state to the Covenant on Economic, Social and Cultural Rights, and to the Covenant on Civil and Political Rights also Protection of the UN Convention on the Rights of Persons with Disabilities as well as CEDAW is granted; at the national Level Basic Law Art. 3 I GG, Art. 19 IV GG, and the Equal Treatment Act are applicable; also Art. 21 of the EU Charter of Fundamental Rights should be mentioned.

Equal opportunities with regard to access to justice:

Older persons with disabilities can rely on the protection of the UN Convention on the Rights of Persons with Disabilities. Article 13 (1) of the UN Convention on the Rights of Persons with Disabilities requires States parties to ensure effective access to justice for persons with disabilities on an equal footing with others. Specifically, Article 13 (1) provides for procedural and age-taking provisions to facilitate effective direct and indirect participation in all pre-litigation and judicial proceedings. Furthermore, Article 13 (2) of the UN Convention on the Rights of Persons with Disabilities requires that the Convention States should promote appropriate training for persons working in the judiciary.

Corresponding regulations can be found in German law in relation to blind or partially sighted persons in § 191a Judicature Act (Gerichtsverfassungsgesetz, GVG) and for persons with hearing or speech impairment in § 186 GVG, which ensure a situation-appropriate understanding.

- 8. Please specify existing public policies and awareness-raising and capacity building programmes established for all justice system personnel to address the negative impacts of ageism and age discrimination in justice system.**

Accountability

- 9. How do you ensure justice systems function in accordance with the principles of independence and impartiality? Please specify if there is any oversight mechanism in place to address any discrimination against older persons committed by justice system professionals.**

Basically you can appeal at the next instance: judgments can be reviewed by appeal. The independence and impartiality of judges is guaranteed in the German Constitution (Article 97, Basic Law). When it comes to the violation of fundamental rights, the complaint before the Federal Constitutional Court comes into consideration. In addition, there are provisions for special excesses (Art. 98 GG). Already in advance, a judge can be rejected for bias.

Finally, procedural law prescribes the principle of the public..