

Germany

14th session of the Open-ended Working Group on Ageing
Guiding questions on the normative content related to social inclusion

Definition

1. How are the key human rights related to older persons' social inclusion defined in the national and local legislation in your country? If definitions are not available, how should such rights be defined considering relevant existing national, regional and international legal frameworks?

The United Nations human rights treaties particularly relevant in the area of social inclusion are the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the United Nations Convention on the Rights of Persons with Disabilities. Also relevant are, on the one hand, the conventions of the International Labor Organization, for example ILO Convention No. 102, and on the other, the European Convention on Human Rights and also the Charter of Fundamental Rights of the European Union. Through acts enacting international agreements, these are implemented into national law and enjoy the status of federal law, or they apply with the status of European primary law. Their provisions must therefore be transposed into applicable law or, in the case of the Charter of Fundamental Rights of the European Union, they apply directly in their area of application. Both the relevant national legal standards and the secondary EU legal standards affected by the European Charter of Fundamental Rights extend across different areas of law. It is therefore impossible to establish a uniform legal definition for the rights of older persons in the various legal texts. However, all the provisions referred to, are applicable to older persons.

In addition, the human rights related to the social inclusion of persons with long-term care needs (who are, at the same time, very often persons of older age) are enshrined in the German Social Code. The eleventh book of Germany's Social Code regulates Germany's long-term care insurance. Long-term care insurance was introduced as a compulsory insurance in 1995 to mitigate the financial and social impact of the risk of needing long-term care and to sustainably improve the situation of people in need of care and their relatives. The principle of self-determination is a central tenet of the long-term care insurance law. The long-term care insurance benefits are intended to help care-dependent persons live a life as dignified, independent and self-determined as possible. The care, assistance and support services provided through long-term care insurance benefits should be geared towards regaining or maintaining the physical, mental and emotional resilience of those in need of care, including in the form of activating care. To ensure that those in need of care can continue to live at home and stay in their familiar surroundings for as long as possible, there is a fundamental priority for care at home. Therefore, long-term care insurance benefits are primarily intended to support the provision of home care and the willingness of family members, friends and neighbors to provide care.

Other important legal sources that are intended to protect the rights of people in need of care in Germany can be found in the laws and sublegal regulations of the 16 federal states (Laender). In addition, there exists a so-called „Care Charter“(Pflege-Charta) which summarizes how the human rights should be reflected and respected in the everyday lives of people with long-term care needs. The Charter was first published in 2006 and has been reissued several times since then. It was drawn up jointly by representatives from all areas of care and self-help. The aim of this charter is to strengthen the position as well as the legal status of people with long-term care needs. To this end, eight articles summarize and explain the basic rights of people in need of assistance and care, directly addressing the affected persons throughout the charter. The right to interact with other people and to participate in social life is expressly mentioned in the charter.

Scope of the right

2. Please provide references to existing national legal standards relating to older persons social inclusion on normative elements such as:

a) the right of older persons to take part in cultural life;

The right of every person to take part in cultural life is guaranteed in Article 15 of the ICESCR, which is part of the German legal order as a Federal Law. Art. 2 para 2 ICESCR guarantees this right “without discrimination of any kind as to race” etc. Although age is not specifically mentioned in Art. 2 para 2 ICESCR, it is covered by the term “other status”.

The General Equal Treatment Act (German abbreviation: AGG) prohibits age discrimination in civil law obligations whenever contractual relations constitute “bulk business” (§ 19 para. 1 no. 1 and 2 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. Therefore, age discrimination is prohibited with regards to many areas relevant to cultural life (e.g. tickets to concerts and theatre, restaurant visits, museums and exhibitions).

The Federal Antidiscrimination Agency points out, that, due to its unpaid nature, the AGG does not prohibit age discrimination in voluntary work, whether in the cultural sector or beyond.

b) older persons’ inclusion in the digital sphere;

Across many areas of life, participation in society is dependent on having access to the internet and the associated digital technologies, as well as the skills to effectively use such technologies. Thus, the right to be included in the digital sphere is part of the rights enshrined in the ICESCR and the ICCPR which Germany is a member to and has fully implemented.

c) ensuring that older persons can live independently and be included in the community;

In Germany, there is a differentiated system of social and support services that are available to everybody, regardless of their age.

Persons with disabilities, for example, can make use of social participation assistance, regardless of their age. Social participation assistance pursues the goal of enabling people with disabilities to participate in society on an equal footing or to facilitate their participation. This includes enabling persons with disabilities to live self-determined lives and to assume responsibility for all areas of their lives in the sphere of housing and society and to support them in these efforts.

In addition, a special legal provision is included into Social Code Book XII:

- 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.

d) ensuring the social inclusion of older persons living in institutions;

In addition to the above-mentioned (cf Answer to question 1) long-term care insurance law, the long-term care and nursing home laws of the sixteen federal states set norms and standards regarding the social inclusion of older persons living in institutions.

With the reform of the Federal Participation Act, integration assistance was realigned in order to strengthen people with significant disabilities in leading a self-determined life. Integration assistance is now set down as a separate benefit and participation law in Part 2 of the Ninth Book of the German Social Code. According to the person-centered approach integration assistance services are consistently geared towards the individual needs of people with disabilities and no longer towards a specific form of housing.

The planning procedure (Gesamtplanverfahren) is one of the most important elements for ensuring full participation in life in society. It provides the basis for achieving a needs-based provision of services and is an essential prerequisite for structuring the services in such a way that full, effective and equal participation in life in the community is possible in individual cases. Recipients of support must be involved in all steps of the process and can express their wishes, which should be taken into account.

e) older persons' inclusion in intergenerational policies and programmes;

The Federal Program Multi-generational centers (2021 – 2028) supports financially ca 530 of such centers as meeting places and access points for persons of all ages. More than 30000 volunteers offer more than 31000 activities annually, 18000 of those are multigenerational. All centers offer activities for and with older persons. While activities for older persons foster independent living, digital skills development, counter loneliness and in general aim at more participation, activities with older persons increase intergenerational dialogues as well as appreciation and acknowledgement of achievements over the life course. Many older persons themselves volunteer in the centers and offer their knowledge and skills for younger generations in supporting them in daily life, eg. Teaching languages (often German for non-German speakers), helping school children with additional classes and homework, teaching crafts, organizing so-called “repair cafés” and take over sponsorships. These centers support participation, communication and interaction of different generations, foster appreciation and acknowledgement of the skills of older persons and thus supports better life circumstances.

f) Access to prompt remedies and redress when older persons' rights related to social inclusion are violated.

The General Act on Equal Treatment (AGG) makes clear in section 21 that judicial remedies for any discriminatory treatment with regard to civil-law obligations as described in section 19 are available.

State obligations

3. What are the measures that should be undertaken by the State to respect, protect and fulfil relevant human rights to ensure the social inclusion of older persons?

The provision of an adequate social protection system, including social protection floors, that is equipped with legal rights forms the basis for socio-cultural participation.

In addition, the provision of needs-based basic income provisions

If pensions and other income do not suffice to secure the subsistence level, state benefits are required to cover the needs of older persons. In Germany, it is the minimum income scheme in old-age, which is a social assistance benefit.

Special considerations

4. What special measures and specific considerations should be considered to respect, protect and fulfil relevant human rights to ensure the social inclusion of older persons?

Implementation

5. What are the best practices and main challenges faced by your country in the adoption and implementation of relevant human rights to ensure the social inclusion of older persons?

Best practices

In regard to measures to respect, protect and fulfil the above-mentioned human rights to ensure the social inclusion of persons with long-term care needs, **the German Social Code (Eleventh Book)** determines the legal framework for maintaining and improving the quality of the long-term care services to be provided by inpatient long-term care facilities and outpatient long-term care providers, strengthening quality knowledge and internal quality management and creating greater transparency of results for all those involved. It is a legal requirement that all long-term care service providers act along professional standards and are subject to an external quality inspection which needs to be conducted once a year. In addition to the regular audits, additional audits can be carried out on an ad hoc basis - for example, if there are valid indications of quality deficiencies or other irregularities. The quality inspections are carried out on the basis of the guidelines of the National Association of Statutory Long-term care Funds for quality inspections in care facilities. Support with mobility and self-care, support in coping with illness- and therapy-related requirements and stress, but also support in organizing everyday life and maintaining social contacts are central aspects of these audits. In addition, there are also audits by the authorities responsible under the respective state laws in relation to care and nursing homes.

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.

Challenges:

The provision of old age social insurance schemes aims to maintain the standard of living of working age as far as possible also in old age. Insofar, an uninterrupted job history with sufficient provision for old age is key to provide financial security for older persons. In order to further recognize lifetime achievements, in 2021, a new basic pension supplement has been introduced for those who contributed for at least 33 years to the statutory pension insurance from below-average income.

An important principle of the statutory pension insurance is that the development of pensions reflects the wages and salaries of the economically active population and thereby allows for participation in society's increasing incomes, which may reflect also the increases in the cost of living. However, the ageing of society is placing increasing demands on social security systems. An ageing society requires

appropriate protection against the basic risks in life and must also guarantee financial sustainability of the social security systems. The Federal Government's pension policy aims to accommodate not only the conflicting interests between contributors on the one hand and pensioners on the other hand, but also between generations. This should not lead to an overburdening of contributors or an unacceptable reduction in the level of pensions.

Challenge in the implementation of the Strategy to Counter Loneliness:

- Coordination of the different approaches in the federal state to ensure a common standard of implementation of measures.
- Reaching those who are in need most: People who are completely socially isolated often do not take part in projects or programmes (data protection laws make it hard to proactively reach out).
- Not enough research on loneliness and the measures that help most to prevent and alleviate loneliness → data needed to develop effective measures