

Federal Republic of Germany

Essential topics relating to the protection of the rights of older people to equality and non-discrimination and the right to a life without violence, neglect and abuse

With regard to the results of the Eighth Session of the OEWGA from 6-7 July 2017, the elements intended to strengthen the rights of older people presented by Germany as part of the session are forwarded as follows.

With these, Germany would like to make a further constructive contribution to moving the substantive public debate on the strengthening of the rights of older people in the above general areas further forward. Germany does not wish to give the impression of striving for a binding, normative ruling at UN level. **On the contrary, the elements listed below describe the parameters within which the substantive debate should be held, in Germany's view.**¹

A. The right to equality without discrimination²

The right to equality without discrimination is already derived at international level from standards laid down in human rights treaties which are internationally binding for the contracting states. These include in particular Article 26 of the International Covenant on Civil and Political Rights (ICCPR), Article 2 of the International Covenant on economic, social and cultural Rights (ICESC)³ and Article 3 of the Convention on the Rights of Persons with Disabilities (CRPD). In addition, at European level, Art. 14 ECHR in conjunction with the rights and freedoms under the ECHR⁴ and Art. 20, 21 EU Fundamental Rights Charter (FRC)⁵ also apply.

On the basis of this legal position, the following specific points are addressed for older people:

Older people have the right to be treated equally before the law and the right to be protected against discrimination.⁶

Older people have the right to be able to exercise their rights and freedoms without discrimination on any grounds, including age.⁷

Older people have the right to a life of dignity and independence and the right to participate in social and cultural life.⁸

¹ Some of the elements listed in the following are taken from the existing human rights treaties which are binding in international law for the contracting states;

² The following paragraphs in particular describe substantive elements which are already current international law;

³ General Comments no. 6 (1995) and no. 20 (2009) of the UN Committee on Economic, Social and Cultural Rights explicitly state that the rights in the ICESC also apply for older people. The rights of older people are also anchored, for example, in GC 19 (2007) on Art. 9 ICESC - Social Security;

⁴ In conjunction with the relevant case law of the European Court of Human Rights (ECtHR);

⁵ In conjunction with the relevant case law of the European Court of Justice (ECJ);

⁶ Cf. also: The Madrid International Plan of Action on Ageing (MIPAA) Art 5

⁷ Cf. also: Formulation of the recommendation of the Committee of Ministers of the Council of Europe – COE Recommendation CM/Rec (2014)2 Fig. II no. 6 and also MIPAA Art 5;

⁸ Art. 9, Art. 11 and Art. 15 ICESC, cf. also: EU Fundamental Rights Charter, Art 25;

In order to fully exercise the right to participate in social and cultural life, older people must be supported by assistance services.⁹

On the basis of this legal position, the *Madrid International Plan of Action on Ageing (MIPAA)*, for example, contains further points:

Older people can only exercise their right to a life without discrimination if the stereotypical images of ageing are replaced in the minds of everyone by realistic, differentiated images of ageing and if structural discrimination is prevented. Unrealistic stereotypical images of ageing lead to isolation and exclusion. Realistic images of ageing should reflect the current and future life situations of older people in the best possible way, so that older people can participate actively, inclusively and on an integrated basis in the society in which they live, just as they wish;¹⁰

B. The right to a life without violence, neglect and abuse

The right to a life without violence, neglect and abuse is already derived at international level from standards laid down in human rights treaties which are internationally binding for the contracting states. These include in particular Art. 7 ICCPR, Art. 12 ICESCR, Art. 15 CRPD. In addition, at European level, Art. 1, 3 ECHR¹¹ and Art. 1, 3 EU Fundamental Rights Charter¹² also apply.

On the basis of this legal position, the following points are addressed in the recommendation of the Council of Europe (CoE CM/Rec (2014)2 Fig. 16-20), which is not binding in international law.

- The above-mentioned right of all people – and thus also of older people – to physical and mental integrity¹³ and to protection against violence, abuse and intentional or unintentional neglect should be upheld irrespective of whether this happens at home, in a care institution or in any other place.
- Older people have a right to the implementation of a range of appropriate awareness and other measures to protect them from financial exploitation, including deception or fraud.
- Older people have a right to the implementation by member states of appropriate measures to increase awareness amongst healthcare professionals, nursing staff, domestic carers or other people offering services for older people in recognising violence or abuse in the relevant environment, to provide them with advice in taking measures if violence or abuse are suspected and, in particular, to encourage them to report cases of abuse to the competent authorities¹⁴. Member states should take measures to protect people who report abuse from any form of retaliation. To ensure structural improvements, member states should take measures to destigmatise the topic of violence against older people.
- Older people have a right to thorough investigations being initiated if credible reports about violence against or abuse of older people are received or if the authorities have sufficient reason to suspect that such abuse has taken place. This also applies, in particular, for abuse in the domestic environment.

⁹ *General Comment No. 21 of the UN Committee on Economic, Social and Cultural Rights, Fig. 28 in this.*

¹⁰ *Cf. MIPAA Fig. 112 on Topic 4, "Images of Ageing".*

¹¹ *In conjunction with the relevant case law of the European Court of Human Rights (ECtHR);*

¹² *In conjunction with the relevant case law of the European Court of Justice (ECJ);*

¹³ *Cf. Art. 3 EU Fundamental Rights Charter, Art. 3 ECHR, Art. 7 ICCPR, Art. 12 ICESCR, Art. 15 CRPD;*

¹⁴ *For example, the establishment of an independent complaints body, especially for older people living in isolation, could be considered.*

- Older people who have become the victims of abuse have a right to receive corresponding help and support. If member states do not fulfil their positive obligation to protect older people, older people have the right to demand effective redress from a national authority and if applicable to receive an appropriate compensation for the suffering caused to them within an acceptable period of time.¹⁵

The right to safety from neglect also includes the right to die with dignity:

This is derived, with various part-aspects, for example from Art. 7 ICCPR, Art. 12 ICESCR¹⁶, Art. 15 CRPD. In addition, at European level, Art. 1, 3, 8 ECHR¹⁷ and Art. 1, 3 EU Fundamental Rights Charter¹⁸ also apply in particular.

On the basis of this legal position, the "*Charter on the care of terminally ill and dying people in Germany*" covers this area. The sponsors of this Charter, which has the status of a recommendation, are the German Society for Palliative Medicine, the German Hospice and Palliative Care Federation and the German Medical Association.

- Under the Charter, the following aspects form part of the right to die with dignity:
 - Respect for the perceptions, wishes and values of older people even in the last phase of their life
 - Respect for their wishes when decisions are to be made.
 - Access to dignified support and care at the end of life including appropriate, qualified palliative care and support.¹⁹

¹⁵ Para. 1-5: Cf. *Formulation of the recommendation of the Committee of Ministers of the Council of Europe – COE Recommendation CM/Rec (2014)2 Fig. 16-20*

¹⁶ See *General Comment No. 14 (2000) des UN Committee on Economic, Social and Cultural Rights, Fig. 25"(...) and enabling them to die with dignity."*

¹⁷ *In conjunction with the relevant case law of the European Court of Human Rights (ECtHR)*

¹⁸ *In conjunction with the relevant case law of the European Court of Justice (ECJ)*

¹⁹ *In line with the Charter on the care of terminally ill and dying people in Germany, land", the sponsors are the German Society for Palliative Medicine, the German Hospice and Palliative Care Federation and the German Medical Association (the Federal Ministry for Education and Research, the Federal Health Ministry, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the competent ministries in each of the Bundesländer have signed the Charter), principles 1 and 2.*