

ANSWERS OF THE GERMAN INSTITUTE FOR HUMAN RIGHTS TO THE GUIDING QUESTIONS FOR THE FOCUS AREAS OF THE X SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING

Social protection and social security (including social protection floors)

NATIONAL LEGAL FRAMEWORK

What are the legal provisions in your country that recognizes the right to social security and social protection, including non-contributory and contributory old-age benefits? Do they have a constitutional, legislative or executive foundation?

The German retirement system can be categorized into three pillars:

I. The mandatory contribution based insurance system¹

Latest Development: Improved protection of people with small income:

- (Mini-)Jobs with an income up to 450€/month can chose not to pay the fee, however the employers share is obligatory. If the insured party does chose to contribute, the employer can voluntarily increase his share.
- New provision in 07/2019²: Incomings between 450,01€ and 1.300€ (former 850€) eventuate in a lower contribution fee for the insured party. The future retirement however does not decrease by the lowered rate and the employer still pays the full contribution.

II. The non-contributory basic provision system³

The provision corresponds to the unemployment allowance and covers the subsistence minimum, reasonable rental costs and social security contributions (health- and nursing care).

¹ The mandatory insurance system applies to employees, certain groups of self-employees and other likewise groups. Moreover a membership can be created voluntarily; otherwise a retirement provision has to be installed privately. The contribution fee is evenly allocated between the insured member and his employer and is based on the salary. The overtime payed contribution determines the future retirement. The retirement age is typically at age 67. The system is designed as a shared financing system; therefore the incoming contributions are spent directly on financing the retirement. If the income is insufficient, the gap will be compensated by tax-funded state subsidies, that amount-ed in 2016 86.6 billion euro.

The retirement provision for Officials, judges and soldiers runs in a separate system (pension). Comparable to in the standard insurance system, the retirement age is at 65 years and the minimum insurance period is 5 years. However, the pension rate is calculated differently. A factor calculated from the years of service is multiplied by the current salary. (<https://www.bmas.de/DE/Themen/Rente/Gesetzliche-Rentenversicherung/Finanzierung-GUV/finanzierung-der-gesetzlichen-rentenversicherung.html>).

² Retirement Insurance Improvement and Stabilization Act (RV-Leistungsverbesserungs- und -Stabilisierungsgesetz), BGBl. 2018 Nr. 40, S. 2016ff.

³ The non-contributory basic provision system acts a social protection floor and functions as a secondary system to prevent poverty in old age and only provides care, if the pension rate is inadequately low and the personal financial resources are not sufficient to cover life requirements. In this case the subsistence minimum is guaranteed by payments from a tax-financed fund.

III. Various kinds of private retirement provisions

To increase the retirement level, various kinds of private retirement provisions have been established.⁴ Most mentioned are the 'Riester-Rente'⁵ as well as the 'Betriebsrente'⁶ (company retirement).

New in 2019⁷: The employer's formerly voluntary contribution to the 'Betriebsrente' becomes mandatory for contracts concluded from 2019 onwards; for older contracts the contribution gets mandatory in 2022. Now the employer has to contribute 15% of the saved up salary.

Legal structure

The retirement provision systems are legally established by law and executed by the authorities.⁸

In addition, various protection regulations exist in different legal areas in order to provide social security for older persons, e.g. labour protection regulations.

AVAILABILITY

2. What steps have been taken to guarantee universal coverage, ensuring that every older person has access to social security and social protection schemes including non-contributory, contributory and survivor old-age pensions, to ensure an adequate, standard of living in older age?

Extensive retirement law provision mechanisms are in place to safeguard the social security of older persons.

The need to submit an application for each service acts as an obstacle for people trying to access.⁹

Although the application forms are available in most languages, they are highly complex and assistance is needed, which often is not fully provided by the local social welfare offices.

Access to retirement benefits of the statutory insurance system requires only one application and can be claimed at age 67. Support in the application process is provided by the insurance companies.

The support of private retirement provisions was established to counteract the graduate decrease of retirement levels. Private retirement provisions however are only available to those who have the means to afford it. Persons, who are not able to save up for their retirement provision, do not have access to the governmental benefits that come with such a supplementary insurance.

⁴ These voluntary based supplementary insurances are mainly financed by the insured party itself. However, the state provides tax-financed subsidies or grants tax benefits. Therefore the insurance funding is not organized as a shared financing system (like the statutory insurance system); the contributions to the private retirement provision are saved up and later distributed towards the insured party.

⁵ In this model the state provides tax-financed benefits to the privately saved old-age provision.

⁶ In this model a part of the income that is privately saved up as an old-age provision is free of income-tax and social insurance contributes.

⁷ Company Retirement Strengthening Act, (Betriebsrentenstärkungsgesetz /BRSG), BGBl. I 2017 S. 3214.

⁸ For the insurance system private and public retirement insurance companies are responsible for the practical implementation, such as the receipt and examination of applications and claims as well as the collection of contributions and the retirement payment. The pension of officials is executed by an own pension authority. The basic provision system is executed by the authorities (local social welfare offices).

⁹ This is particularly the case in regard to the basic provision system, where a new application must be submitted every 12 months, § 44 III Social Security Act XII (SGB XII). However, this already presents an improvement on the 6-month approval period before 2017.

3. What steps have been taken to ensure that every older person has access to social security and social protection schemes which guarantee them access to adequate and affordable health and care and support services for independent living in older age?

The old-age pension is linked to a mandatory membership in health- and nursing insurance, and those contributions are deducted directly from the pension. If a pensioner is unable to afford this, the state will cover the insurance fee.

ADEQUACY

4. What steps have been taken to ensure the levels of social security and social protection payments are adequate for older persons to have access to an adequate standard of living, including adequate access to health care and social assistance?

In a five year period the Federal Statistical Office carries out an income and consumption study among private households in Germany. Based on the results and orienting on low-income levels, the standard requirement is determined and enshrined in law. It is congruent with the unemployment benefit and does not provide for any special needs of older persons. In case of actual and financial need, further benefits are granted to older persons, e.g. to ensure the continuation of the household, activity and social commitment.¹⁰

However, this process is only relevant for determining the basic provision. The retirement level is dynamic and changed by a regularly adjusted factor that sets the average pension in relation to the average wage of a calendar year.

New in 2019: The goal to increase average pension level to 46% by 2020 has been increased to 48% by 2025.

ACCESSIBILITY

5. What steps have been taken to ensure older persons have adequate and accessible information on available social security and social protection schemes and how to claim their entitlements?

Information on entitlements can be obtained on the Internet and are as well provided to everyone by the insurance companies or local welfare offices.

EQUALITY AND NON-DISCRIMINATION

7. Which are the measures adopted to ensure equitable access by older persons to social security and social protection, paying special attention to groups in vulnerable situation?

The pensions in east and West-Germany are not yet fully equalized, which will be done by July 2024.¹¹

¹⁰ § 70, 71 Social Security Act XII (SGB XII).

¹¹ § 255a, 255c Social Security Act VI (SGB VI).

a) Women

Child-raising periods that would lead to a reduction of the pension rate due to a lack of contribution during this time are taken into account in the pension calculation ("mother's pension"). The child-raising period taken into account is 3 years per child born after 1992 and (new in 2019) 2,5 years per child born before 1992.

b) Surviving dependents

Surviving dependents are provided with a survivors pension¹², which is increased financially and paid indefinitely when the surviving dependents is 45 years or older or has raised a child.¹³ The income, as well as one's own pension, can lead to the reduction of the survivor's pension, which is limited to married couples and is discontinued in case of remarriage.

c) Employment abroad

People who have worked in different countries can receive a pension from different countries. The pensions are not aggregated as one.

Within the EU insurance periods are added together when it comes to fulfilling minimum insurance periods. The same applies between Germany and countries with which a corresponding agreement exists, whereby waiting periods from other European countries cannot be included here.

ACCOUNTABILITY

8. What mechanisms are in place to ensure social security and social protection schemes are effective and accountable?

Every administrative act has to contain instructions on how to file an appeal. In addition, legal actions do not have to be in writing, but can also be presented to an employee of the court, who writes down the action.¹⁴

9. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for denial of their right to social security and social protection?

Individual rights and entitlements concerning social security are legally enforceable. The jurisdiction lies with the Social Court, where legal acts are free of charge and the principle of official investigation applies, which is why the court investigates facts on its own initiative. In case of more complicated legal cases, the costs of a lawyer are borne by the state.

¹² https://www.deutsche-rentenversicherung.de/Allgemein/.de/Navigation/1_Lebenslagen/03_Familie_und_Kinder/01_Informationen_zur_Rente/07_H_Rente_sichert_Existenzen/H_Rente_sichert_Existenzen_node.html.

¹³ § 46, 242a Social Security Act XII (SGB XII).

¹⁴ § 90 Social Court Act (SGG).