

The Federal Republic of Germany
- Answer to the GUIDING QUESTIONS FOR THE FOCUS AREAS OF THE XI SESSION
OF THE OPEN-ENDED WORKING GROUP ON AGEING: Access to Justice

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?**

Answer:

In Germany, access to justice is guaranteed, *inter alia*, by the German Constitution and several international and supranational agreements to which Germany is a party. These stipulate that everyone has the right to have their case heard in fair and equitable proceedings, in public and within a reasonable period of time by an independent, impartial court previously established by law. Everyone has the right to legal counsel, defence and representation; persons who do not have sufficient resources are granted legal aid where this aid is necessary to ensure effective access to justice.

Older persons – just like everybody else – can turn to the courts should their rights be denied. Here judicial power is exercised by the federal courts and the courts in the 16 Federal Laender. In Germany, jurisdiction is split up into five **independent, specialised branches of law**:

- Ordinary jurisdiction
- Labour jurisdiction
- General administrative jurisdiction
- Fiscal jurisdiction
- Social jurisdiction

In addition to these, we have the constitutional jurisdiction which includes the **Federal Constitutional Court** and the **constitutional courts of the Federal Laender**.

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?**

Answer:

Easy availability of the courts for everyone, including older persons, is ensured by the number of courts, in particular. On 15 May 2017, for instance, the ordinary jurisdiction comprised 638 local courts (*Amtsgerichte*), 115 regional courts (*Landgerichte*) and 24 higher regional courts (*Oberlandesgerichte*) as well as the Federal Court of Justice (*Bundesgerichtshof*).

Mediation enables the parties themselves to develop conflict settlement approaches that accommodate their own interests and are more favourable to them than litigation would be.

When doing so, they are assisted by a mediator who acts as an impartial moderator. In addition, the options available under the Act on Alternative Dispute Resolution in Consumer Matters (*Verbraucherstreitbeilegungsgesetz*) and online settlement in consumer matters broaden the basis for a comprehensive non-judicial dispute settlement mechanism in Germany. Specifically, the Act on Alternative Dispute Resolution in Consumer Matters enables the consumers to have a dispute with a company settled non-judicially free of charge. This option is available throughout Germany and, implicitly, is also open to older consumers.

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?

Answer:

Generally, the German Constitution implies the right to access State courts, in other words, to a generally comprehensive factual and legal examination of the subject-matter of the litigation under the applicable procedural law and to a binding court decision. Here, regulations on court organisation, such as those on ensuring judicial impartiality, the right to a fair trial and the guaranteed subjective right to access legal aid ensure that effective legal protection is guaranteed thanks to impartial and accessible courts of law.

The Act on Alternative Dispute Resolution in Consumer Matters also enables older consumers to have a dispute with a company settled non-judicially free of charge. In this context, the companies are obliged to inform the consumers in a “readily accessible, clear and comprehensible manner” whether or not they are willing to take part in a dispute resolution procedure. This information requirement especially benefits older consumers.

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

Answer:

Legal application offices have been set up at the courts. A legal application office (*Rechtsantragstelle*) is a court office that registers complaints, applications or other statements that, according to the rules of procedure, can be taken on record by the Registry of the court. An official is on hand to help the litigant file the application.

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

Answer:

Judicial procedures can sometimes be very lengthy. This can especially affect people at the end of their lives. To counter this problem, the Federal Government has introduced in 2012 a new complaints procedure against lengthy judicial proceedings, which has proved very effective. The age of the parties to the proceedings is one of the factors to be taken into account in this procedure.

For more information, please refer to the answer to Question 4.

6. What good practices are available in terms of ensuring equal and

effective access to justice and remedy for older persons?

Answer:

The Federal Government refers to Recommendation CM/Rec(2014)2 and explanatory memorandum of the Council of Europe that deals with the "Promotion of Human Rights of Older Persons" and also includes best practices.

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 procedures in all administrative and legal proceedings?

Answer:

Where older persons' actual access to justice might be impaired due to a disability, Article 13 of the UNCRPD, among others, ensures that they are treated on an equal basis with others. Germany refers to its National Report on the UNCRPD, especially the relevant section on Article 13.

Moreover, the German Constitution stipulates that all persons are equal before the law and no person may be disfavoured because of disability.

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

Answer:

In Germany, the training incl. ongoing training of the judges and public prosecutors in the individual Federal Laender is a particular priority. Owing to the federal system, responsibility lies with the Federal Laender they work in. The German Judicial Academy - a supraregional institution that trains judges and is funded jointly by the Federation and the Laender - offers regular events that address a wide variety of interdisciplinary approaches, including interpersonal communication in the courtroom. This also includes interaction with groups of persons who have specific needs, such as older persons. In addition, the Laender offer further training events of their own for the members of their jurisdiction. The high level of participation in these offers attests to the huge interest and commitment of justice practitioners in this field.

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.

Answer:

The impartiality of judges is constitutionally guaranteed (Article 97, Basic Law). Those affected can lodge a complaint for alleged infringement of judicial independence themselves, where appropriate by means of a constitutional appeal before the Federal Constitutional Court, because they have a constitutional right to a court that complies with the requirements of Article 97 of the Basic Law.