

Input by BAGSO, the German National Association of Senior Citizens' Organisations
Twelfth session of the General Assembly Open-ended Working Group for the purpose of
strengthening the protection of the human rights of older persons (11-14th April 2022)

Focus area 2: Economic security

National legal and policy framework

- 1. What are the legal provisions and policy frameworks in your country that guarantees the minimum essential level of the enjoyment of economic, social and cultural rights, in particular the right to an adequate standard of living?*

The right to **work** and the right to **social security** were already covered in inputs to previous sessions of the OEWG-A. There is no right to paid work in Germany. The legislator only provides support in case of unemployment. Social security is covered by the Basic Law, Article 20. The legal basis for social security is the Social Code (*Sozialgesetzbuch, SGB*), which regulates health care, accident, pension, unemployment and long-term care insurances.

The right to access to **housing** is not explicitly regulated by the Basic Law. For more details, see a state of affairs of the German Bundestag of 2019.¹ The right to housing was also not included in the EU Charter of Fundamental Rights.

Article 1 (1) of the Basic Law provides for the right to a **minimum subsistence level** in human dignity, which includes a right to housing. The Social Code regulates state welfare benefits, such as housing benefit, for this purpose.

The right to **adequate food/nutrition** is not explicitly enshrined in law, but only secured through the ratification of international treaties.² The right to (drinking) **water** is also not explicitly enshrined in law. The Federal Government in office until 2021 (19th legislative period) had no plans to enshrine the right to drinking water in the Basic Law, but referred to the basic right to guarantee a minimum subsistence level in human dignity, which is regulated in Article 20 (1) of the Basic Law.³

¹ <https://www.bundestag.de/resource/blob/651544/50f6cb8ef28a8b472f0fa00add53d78a/WD-3-120-19-pdf-data.pdf>

² <https://www.fao.org/right-to-food-around-the-globe/countries/deu/en/#:~:text=Germany,1973%20by%20way%20of%20ratification.>

³ <https://dserver.bundestag.de/btd/19/142/1914261.pdf>

Via the Basic Law (Article 2), everyone in Germany is guaranteed the **right to life and physical integrity**, but not the right to **health** as such. The right to health care is not explicitly protected by the Basic Law. The welfare state principle (Article 20 (1) of the Basic Law) protects the individual in the event of illness. By introducing statutory health insurance, the legislature has fulfilled this obligation. Through social legislation (in addition to statutory health insurance, also through statutory accident insurance and Land laws), the right to health is protected.⁴

The right to **education** is also not explicitly laid down in the Basic Law, but emerges from the Basic Law through the principles of human dignity and equality. The right to freely choose one's profession, workplace and educational institution is enshrined in the Basic Law.⁵ Since education is a matter for the *Länder*, the right to education is regulated in the *Länder* constitutions.

The right to participate in **cultural life** as such is not enshrined in the German constitution. Rather, the Basic Law deals with the right to free development of the personality (Art. 2), equality (Art. 3), freedom of belief (Art. 4), freedom of assembly (Art. 8) and freedom of association (Art. 9). Art. 5 also stipulates freedom of expression and freedom of the press, as well as the prohibition of censorship and freedom of art, science, research and teaching.

To ensure an adequate **standard of living**, there are state assistance benefits in Germany for persons who are unable to support themselves either through their own means/efforts or the help of a third party. These are entitled to benefits to secure their livelihood, either based on Social Code II (basic security in old age) or XII (e.g. reduction in earning capacity).

2. How is poverty defined in the national policy framework?

In principle, the EU definition of poverty applies, according to which a person is at risk of poverty if he/she has less than 60% of the average income of the population (poverty risk rate).⁶

However, this figure does not give an accurate picture of poverty among older people. The proportion of older people who claim or are entitled to basic old-age security seems to be a more appropriate indicator (basic old-age security rate).

When looking at poverty other aspects of a person's well-being, like health, education and social participation also have to be taken into account.

3. What are challenges faced by older persons living in poverty, including the impact of intersectional discrimination and inequality based on age, gender and other grounds?

People with low educational background, with disabilities, with a migration background, single women as well as people who have been affected by long-term unemployment are at particular risk. Risk factors include diverse employment biographies combined with contribution gaps (due

⁴ [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/698770/EPRS_STU\(2021\)698770_DE.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/698770/EPRS_STU(2021)698770_DE.pdf)

⁵ <https://community.beck.de/2019/05/23/70-jahre-grundgesetz-aber-enthaelt-es-etwa-kein-recht-auf-bildung>

⁶ <https://www.destatis.de/Europa/EN/Topic/Population-Labour-Social-Issues/Social-issues-living-conditions/working-poor.html#:~:text=A%20person%20is%20considered%20to,national%20population%20at%20their%20disposal>.

to childcare and care activities), precarious employment and low wages, unemployment and increasingly fixed-term employment contracts - all this in combination with related health disadvantages. People in need of care and their relatives are additionally vulnerable due to the burden of care (also due to increasing out-of-pocket contributions for health and care expenses).

In accessing state benefits the following challenges arise: a complex benefits system, making it difficult for non-experts to understand what benefits they are entitled to, under what circumstances, and how to claim them. In addition, people are reluctant to claim benefits (also due to fear or shame of having their assets checked, of being stigmatised, of relatives being held jointly liable or of the state gaining insight into and control over finances). In many cases, access to and acquisition of information is only possible via the Internet, so that older people who do not have access are excluded from it.

Poverty in old age leads to fewer opportunities for social participation and many ways of shaping one's life (cultural offerings, social participation, mobility, clothing, etc.) remain out of reach. Stigmatisation is also to be expected. Digital participation opportunities, including educational opportunities, are limited by a lack of or difficult access to the Internet. This can lead to an increase in poverty, as information on welfare state benefits and counselling services remain inaccessible.

4. *What data, statistics and research are available regarding older persons living in poverty?*

- Calculations on the number of recipients of basic old-age security benefits: The proportion of recipients of basic old-age security benefits rose from 1.8 to 3.1 percent for men and from 2.6 to 3.3 percent for women between 2006 and 2018.⁷
- The German Ageing Survey collects data on issues of old-age security and old-age poverty.⁸
- The study on the very old, D80+, collects data on the material situation of the population aged 80 and over.⁹
- Based on the micro census: in 2019, the at-risk-of-poverty rate of older people (65+) was 15.7%.¹⁰

⁷ <https://www.bpb.de/nachschlagen/zahlen-und-fakten/soziale-situation-in-deutschland/158603/altersarmut>

⁸ <https://www.dza.de/forschung/deutscher-alterssurvey/befragungsschwerpunkte>

⁹ <https://www.dza.de/forschung/aktuelle-projekte/hohes-alter-in-deutschland-d80>

¹⁰ <https://de.statista.com/statistik/daten/studie/785537/umfrage/armutsgefaehrungsquote-von-senioren-in-deutschland/#:~:text=den%20Anteil%20der%20von%20relativer,waren%20von%20relativer%20Einkommensarmut%20betroffen.>

- The aim of the Federal Government's Poverty and Wealth Report¹¹ is to provide a fact-based assessment of the social situation in Germany, to review existing measures and to suggest new areas for action.

Progressive realization and the use of maximum available resources

5. *What steps have been taken to address economic insecurity and poverty in older age and to ensure the right to an adequate standard of living for older persons?*

- Statutory pension insurance and other pillars of old-age provision (private pension provision and occupational pension provision).
- Basic old-age security - However, there are considerable hurdles in accessing this. A projection assumes that 60% of those entitled to basic old-age pension will not have claimed it in 2019.¹²
- Maternity pension II since 2019 (recognition of child-raising periods in the insurance history of the pension insurance).
- Basic pension since 2021 for pensioners who have paid into the scheme for at least 33 years, raised children or cared for relatives.
- Recognition of childcare periods and care periods - but there is still a great need for action here.
- Other social benefits, such as housing benefit (incl. flat-rate heating allowance) and social allowance.
- SGB XII §71 regulates the benefits of assistance for older people, including benefits for the procurement and maintenance of a dwelling that meets the needs of the older person, counselling/support in all aspects of care and counselling/support in all matters relating to the use of services suitable for older people. However, the practical implementation of these services provided for in the law is patchy and testifies to great disparities.

Despite this multitude of supportive services, there are many people who live below an adequate standard of living. This is also explained by the fact that many people do not take advantage of the benefits despite being entitled to them. Studies on the non-claiming of social assistance and unemployment benefit II show that between 40-60% of those entitled do not make a claim.¹³

¹¹ https://www.armuts-und-reichtumsbericht.de/SharedDocs/Downloads/Berichte/sixth-report-on-poverty-and-wealth.pdf?__blob=publicationFile&v=2

¹²

https://www.diw.de/de/diw_01.c.699957.de/publikationen/wochenberichte/2019_49_1/starke_nichtinanspruchnahme_von_grundsicherung_deutet_auf_hohe_verdeckte_altersarmut.html

¹³

https://www.diw.de/de/diw_01.c.699957.de/publikationen/wochenberichte/2019_49_1/starke_nichtinanspruchnahme_von_grundsicherung_deutet_auf_hohe_verdeckte_altersarmut.html

To reduce the risk of poverty increased efforts are needed to maintain employability (especially through rehabilitation measures, further education and retraining). In addition, the stability and security of the statutory pension insurance system is becoming increasingly important for future generations. More flexible working life models must be paired with measures that counteract the social imbalance in old-age provision at an early stage.

6. *What is the impact of macroeconomic policies on economic insecurity and poverty among older persons and vice versa? What policy options are available and/or implemented in order to expand fiscal space and maximize available resources to ensure economic security and the right to an adequate standard of living for older persons?*

A study by the Bertelsmann Foundation examines the effects of different interest rates and pension policy reforms on the poverty risk of older people.¹⁴

7. *What good practices are available in terms of ensuring older persons' economic security, including through a life-course approach?*

- Access: Counselling offers e.g. from senior citizens' offices and senior citizens' counselling of welfare associations, which help with the application for social benefits (see 5).
- Counselling services such as debt counselling, energy counselling to manage with the available financial budget.
- Reduction cards from cities and municipalities for people who are socially disadvantaged, e.g. HannoverAktivPass¹⁵
- Housing adaptation measures
- Most initiatives to prepare for retirement focus on civic engagement (e.g. from the civil society side the ZWAR networks in North Rhine-Westphalia). Additional measures to prepare for the transition to retirement are needed. Furthermore, there is a need for contemporary educational offers for older people nationwide, incl. state-supported further education and retraining offers.

Equality and non-discrimination

8. *What measures are being taken to eliminate ageism and discrimination based on age that prevent older persons to access economic and other productive resources, including financial services, land, adequate housing and the right to inheritance?*

¹⁴ https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/Entwicklung_der_Altersarmut_bis_2036.pdf

¹⁵ <https://www.hannover.de/en/Government-Service/State-Capital-Hannover/Directorate-of-Social-Affairs-and-Sports/HannoverAktivPass>

The Federal Anti-Discrimination Office (ADS) provides advice on age discrimination by telephone, online contact form, e-mail or via SQAT (Signing Question and Answer Tool) for contact in German sign language.¹⁶ There is also a privately run website called Office against Age Discrimination that has been publishing examples of unequal treatment on the grounds of age since 2000.¹⁷

BAGSO advocates the inclusion of the characteristic "age" in Art. 3 para. 3 sentence 1 of the Basic Law and the extension of protection against age discrimination in the General Equal Treatment Act (AGG) for the area of private transactions (e.g. car insurance and granting of loans). These legislative changes could be followed by further measures to help give older people non-discriminatory access to economic and other resources.

Remedies and redress

9. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their economic security and enjoyment of the right to an adequate standard of living?

- To complain about a decision or procedure of a pension insurance institution, one can turn to the Federal Social Security Office. The complaint (submission) triggers a supervisory review of the conduct of the insurance provider concerned.
- Social welfare associations, such as the *Sozialverband VdK*, the *SoVD* and the *Volkssolidarität*, support their members in claiming their rights and enforcing their claims against authorities or insurers. Church welfare associations also offer advice on social law, some of which is specifically aimed at older people.
- Consumer associations and centres offer advice and information on consumer protection issues and help with legal problems¹⁸, but these are not specifically aimed at older people.
- There is no central contact point for lodging complaints.
- The Universal Arbitration Board of the Federation¹⁹, a neutral arbitration board, helps consumers and companies to settle disputes out of court.

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¹⁶ <https://www.antidiskriminierungsstelle.de/DE/ueber-diskriminierung/diskriminierungsmerkmale/alter/alter-node.html>

¹⁷ <https://www.altersdiskriminierung.de/>

¹⁸ <https://www.verbraucherzentrale.de/beratung>

¹⁹ <https://www.verbraucher-schlichter.de/english/english-version>