

Access to justice

12th Session Open-ended Working Group on Ageing

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Answers of the German Institute for Human Rights to the guiding questions for the normative framework of the issues examined at the 12th session of the Open-ended Working Group on Ageing:

Access to justice

Definition

1. What is the definition of the right of older persons to access justice in the national legislation in your country? Or how should such a right be defined, considering existing national, regional and international legal framework?

Art. 19 IV of the German Constitution (basic law, GG) provides for a guarantee of legal remedies. This is universal and does not refer to specific groups.

The access to justice to civil courts is open to everyone which includes older person and there is also the possibility to apply for legal aid (§§ 114 ff. ZPO and § 166 VwGO).

Scope of the right

2. What are the key normative elements of the right of older persons to access justice on an equal basis with others? Please provide references to existing standards on such elements as below, as well as any additional elements:

- (a) The guarantee of older persons' legal capacity (legal standing and legal agency) on an equal basis with others and not denied on the basis of age;
- (b) Elimination of the influence of ageist stereotypes at any stage of judicial or non-judicial proceedings, including the award of damages or compensation;
- (c) Access to timely legal proceedings, especially in situations of immediacy;
- (d) Accessibility of courtrooms, legal tribunals and other justice-related facilities to all older persons;
- (e) Access to legal services, including legal assistance, legal aid, counselling and hotlines, on an equal basis with others;

The German Institute for Human Rights carried out a project “Complaint mechanisms in the care of older persons”. The project was funded by the Kraft-Foundation (Josef und Luise Kraft-Stiftung). The aim of the project was to draw up recommendations for the development, design and implementation of effective complaints mechanisms in geriatric care.¹

(f) Access to alternative, non-judicial pathways to justice, including, but not limited to, one-stop community justice centres, paralegal support, ombuds procedures or specialist commissioners;

Persons in residential and care facilities can contact the federal universal arbitration board (Universalschlichtungsstelle des Bundes)^{2,3} However, this option is rarely used.

(g) Access to reasonable accommodation in all legal and administrative proceedings at any stage to facilitate older persons’ effective role as direct or indirect participants in justice proceedings;

Legal support is facilitated but without any reasonable accommodation – older age is not seen as something which needs to be taken into account, except in the length of the procedures.

(h) Adequate and appropriate training to all those working in the administration of justice and law enforcement, including the judiciary, police and prison staff, on the rights of older persons;

The German Institute for Human Rights carried out two projects on guardianship, which have been funded by the Federal Ministry of Labour and Social Affairs. The aim was to provide practical information about essential requirements of the UN Convention on the Rights of Persons with Disabilities and to discuss the implementation of supported decision-making in the practice of guardianship courts. One project was aimed at persons working in the social justice system, the other at persons working in guardianship law.⁴

In general it must be said that ageism and negative stereotypes seem to be widespread in all parts of society.

(i) Accommodation of the needs of older prisoners, including necessary physical adaptations, protection against violence and extortion, appropriate educational and vocational opportunities, and support with reintegration into the community;

(j) Equal access of older prisoners to services, including physical, mental and cognitive health, dental, hygiene and hospice services, and social and other support services available to the general population; and

(k) Access to prompt remedies and redress when older persons’ right to access justice is denied.

State obligations

3. What mechanisms or measures are necessary to ensure the enjoyment and to monitor implementation of the right of older persons to access justice, including State obligations to respect, promote, protect, and fulfill the right?

¹ <https://www.institut-fuer-menschenrechte.de/das-institut/geoerderte-projekte/beschwerdemechanismen-in-der-altenpflege>.

² <https://www.verbraucher-schlichter.de/start>.

³ <https://www.biva.de/verbraucherschutz/streitschlichtung-im-heim/wie-laeuft-ein-schlichtungsverfahren-ab/>.

⁴ <https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/die-un-brk-in-der-gerichtlichen-praxis>.

- Court buildings have to be accessible: among others, they must be barrier free for older wheelchair users, provide tactile guidance systems for older persons with visual impairments, provide information in easy to read for older persons with intellectual impairments, sign language for older persons with hearing impairments and braille for older persons with visual impairments.
- Information regarding the case and during the trial must be accessible in easy to read, sign language or screen reader format.
- The length of the judicial procedures can be a barrier for older persons, especially if they are in oldest age. States must introduce complaints procedure against lengthy judicial proceedings to make the proceedings more acceptable and age friendly.
- Older persons living in poverty must be supported with legal aid.
- Government needs to take into account that digital services might be a barrier for older persons.
- The system in itself seems not to take old age as a ground for discrimination into account.
- Legal support does not have specific measures for older persons.

Special considerations

4. What special considerations or specific issues should be included in the right of older persons to access justice, including procedural and age-appropriate accommodations as well as responsibilities of non-State actors?

- Lawyers must be required to ensure that their offices are accessible for older wheelchair users. The costs for sign language interpreters or translations into easy to read must be covered.
- Older persons, especially if they are dependent on their family or living in an institution, might face the barrier to get access to information how to complain and where to go.
- Especially persons with guardianship or persons who get support might have problems to get access to justice, if their will and preferences are not taken into account. It is essential that they are provided with supported decision-making instead of substituted decision-making.
- Statements made by persons with dementia or Alzheimer's, for example as affected persons or witnesses, must be taken seriously. There must be awareness-raising measures for the rights and needs of persons with dementia and Alzheimer's.
- Many older persons in different care settings are facing difficulties if they want to complain because of their living conditions or violation of their right to movement or their right to live without violence. Because of their dependence either because they live in a care home or if they are living in their own home and have only very limited contact to other persons, it is not easy for them to know who they need to complain to or where to get support. Therefore, it seems to need a low threshold mechanism to complain in this regard.

Implementation

5. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on the right to access justice for older persons?

The system and the ministry in charge does not see any necessity to adjust the system on the right to access to justice for older persons. Specific circumstances for older persons are not seen as something specific which hinders older persons to have access to justice – to date it is seen as a social problem, not as a problem of law.