



Public consultation on the human rights of older persons:

Human Rights Council Resolution 21/23, “Human rights of older persons” requests OHCHR “to organize, in Geneva, an intersessional public consultation on the promotion and protection of the human rights of older persons, with the participation of States Members of the United Nations, relevant international organizations, United Nations agencies and stakeholders, in order to **receive information and share good practices** on the matter”.

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In order to prepare the consultation, OHCHR would be grateful to receive views and information from UN agencies, international organizations, non-governmental organizations, academic institutions and other stakeholders in relation to the following:

1. Information on the main challenges related to promotion and protection of the human rights of older persons at the country level.

Pension and retirement systems:

Future social security systems for retired persons are a very relevant issue in Germany. All political Parties of Germany have designed and presented their own concepts of future pension systems. The concepts differ very much there are schemes with contributory benefits, non- contributory pensions and private social security systems and combined approaches.

Age discrimination

Age discrimination is discussed in connection with age limits, at the labor market, in the case of volunteering and access to goods and services. A representative survey of the Federal Anti-Discrimination Agency (ADS) and BAGSO had revealed that one in five people in Germany has already experienced situations in which the person has been discriminated

against because of his age.¹ Gender inequalities are very visible in old age, - based discrimination against women in employment throughout their lives may lead to disproportionately lower incomes and pensions compared with men. This means that older women have a higher risk to poverty in old age.

Labor market -Age limits²

Older workers seem to be seen as less productive, more prone to ill health or disease, incapable of learning or adapting to technological environments. Direct and indirect discrimination in employment is reported.³ Right now enterprises try to keep their older employees, because of the demographic change and the future lack of young skilled workers. But it is also visible that unemployed persons aged 50plus have very big difficulties to get integrated in the labor-market because of biased assumptions as stated above.

In German law and society are numerous age limits that decide about certain advantages or disadvantages, e.g. the standard retirement age, the possibility to pursue a certain profession or even to hold an honorary post. The German jurisdiction classified most of these age limits as non-discriminatory, judging that they are justified for the given situation. A commission, appointed by the Federal Anti-Discrimination Agency, now demands a review of those age limits with a special focus on the age limits regarding honorary posts which should be completely abolished. The citizens should decide for themselves when and how they want to be actively engaged in society.⁴

Strict age limits for certain professions impose a disproportionate restriction of the fundamental right to pursue a profession, strict age limits are no adequate means to handle individual cases. This is a critique which is often heard in public debates in Germany.⁵

Care taking

Another main challenge related to promotion and protection of the human rights of older persons in Germany is the quality of the care services performed by nursing homes and other care service providers. Over the last years the Federal Government of Germany has been taking various measures to improve the quality of the care services. These changes were motivated by critical comments and reported cases about inhumane conditions in nursing homes. The efficiency of the improvements is discussed in public. In this connection the labor

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http://www.antidiskriminierungsstelle.de/DE/Projekte_ADS/themenjahr_alter/fachtagung/fachtagung.html

² Deutscher Bundestag (2010): Drucksache 17/3815 vom 17.11.2010 - Sechster Bericht zur Lage der älteren Generation in der Bundesrepublik Deutschland - Altersbilder in der Gesellschaft. Available at: <http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung3/Pdf-Anlagen/bt-drucksache-sechster-altenbericht,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf> [Last accessed 13 March 2013], p. 195 ff.

³ Wichtige Entwicklungen beim Diskriminierungsschutz im Jahr 2012, Ein Jahresrückblick http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Jahresueckblick_2012_20130313.pdf?blob=publicationFile [Last accessed 13 March 2013], p. 16ff.

⁴ <http://www.antidiskriminierungsstelle.de/SharedDocs/Pressemitteilungen/DE/2012/Handlungsempfehlungen-Themenjahr-Alter-Kommission-20121204.html?nn=1532912> [Last accessed 13 March 2013].

⁵ BAGSO Positionspapier: Potentiale des Alters nutzen: Altersgrenzen aufheben, Altersdiskriminierung überwinden, Dezember 2011.

conditions of nurses and the help for family members as care takers are also high priorities in public debates.

Participation and Social Inclusion:

Participation and social inclusion are much discussed in connection with volunteering in civil society and poverty in old age.

2. Information on constitutions or legislation explicitly forbidding discrimination on the basis of old age, and on the existence of specific bodies which protect against age discrimination or are mandated to protect and promote the rights of older persons.

Germanys Basic Law (GG)

The German Constitution has a non-discrimination clause in its Basic law. Art 3 Basic Law is the mentioned equal treatment clause but it has no explicit reference to age as an impermissible ground of discrimination. Furthermore the basic law guarantee has no reference to discrimination on the ground of "other status", therefore no catchall element is included and age discrimination is not covered in Germanys Basic Law.

General Equal Treatment Act

General Equal Treatment Act (German abbreviation: AGG) which entered into force in 2006
The General Act on Equal Treatment (German abbreviation: AGG) has been in force since 18 August 2006. It incorporates four Anti-Discrimination Directives of the EU into German law.

The purpose of this Act is to prevent or to stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, **age** or sexual orientation (Section 1 of this Act).

The General Act on Equal Treatment prohibits discrimination on grounds of age. The ban is related to every age, so that both the unequal treatment of older and of younger persons is prohibited. For example, pay regulations that are exclusively linked to age, and automatically take effect with increased age, represent a case of discrimination with regard to younger employees. That shows that the implementation of the AGG provisions with regard to age as a ground for discrimination is a challenge.

The General Act on Equal Treatment governs the claims and legal consequences in the case of discrimination, both in the field of work and also for the sphere of civil law:

Labour law:

Employers have to observe the ban on discrimination when publishing job advertisements and also during the application procedure. However, the employees - e.g. older women and men - are also entitled to be protected against discrimination in existing employment relationships. They may lodge a claim for compensation or damages and file a complaint about discrimination on the ground of age or multiple grounds with their employers. For this purpose, a complaints unit has to be established at all companies and the employees have to be duly notified about its existence.

Employers have to ensure that discrimination does not take place. In addition, they are obliged to take measures against employees who discriminate against other colleagues. The possible measures for this purpose range from a transfer to another post over a reprimand up to a dismissal.

Civil law:

In the field of civil law, the protection granted in the General Act on Equal Treatment comprises bulk business and insurances under private law. Bulk business is concluded irrespective of the person involved and in a large number of cases. These include everyday matters such as shopping or going to restaurants.

The protection by law also takes effect in the case of insurance under private law, which has been taken out later than 22 December 2007. However, where insurance contracts have been modified subsequent to the introduction of the General Act on Equal Treatment (18 August 2006), these modifications might - depending on the respective circumstances - infringe upon the provisions of the General Act on Equal Treatment.

In cases of infringements of the General Act on Equal Treatment, persons discriminated against may assert claims to compensation or damages.

Federal Antidiscrimination Agency (FADA)⁶

The Federal Antidiscrimination Agency is an independent focal point to which persons affected by discrimination may turn. It was established in 2006, after the General Equal Treatment Act (German abbreviation: AGG) had entered into force. The FADA and its tasks have been stipulated in this Act and comply with the EU directives on equal treatment.

The General Equal Treatment Act is still new, and many questions concerning discrimination in Germany have neither or hardly been scientifically examined nor settled by court decisions. For example, the FADA does not yet sufficiently know who has been affected by discrimination in Germany and lack the knowledge which are most frequent grounds on which people are discriminated against. Therefore, the Federal Anti-Discrimination Agency makes every effort to gain more findings on and to stimulate research into this topic. To this end, it has commissioned, *inter alia*, a representative survey on 'Discriminations in Everyday Life' from which it follows that every third citizen in Germany has already felt discriminated against on one of the grounds specified in the General Equal Treatment Act. Since 2006 every fifth consulting case at the FADA concerns discrimination against on the ground of age, more than 1,500 requests for advice on the subject have already been achieved.⁷

At the same time, the General Equal Treatment Act has not yet been made sufficiently known. Many people do not know anything about their right to protection against discrimination or where they can get help when they are affected. Therefore, the Federal Anti-Discrimination Agency constantly strives for the following to be made known: The state based on the rule of law does no longer accept unlawful deprivations. Discriminations are explicitly banned in Germany.

⁶ http://www.antidiskriminierungsstelle.de/EN/Home/home_node.html[Last accessed 13 March 2013.

⁷ http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/20120918_Fachkongress_Altersjahr.pdf?__blob=publicationFile[Last accessed 13 March 2013]

In this context, the Federal Anti-Discrimination Agency counts on the so-called horizontal approach. That means any discrimination is considered as equal - whether it occurs on the grounds of race or ethnic origin, gender, religion or belief, disability, **age** or sexual identity. This is also important because people are frequently not only discriminated against on one of these grounds, but on a number of grounds, as for example "elderly and disabled" or "foreign and elderly". The horizontal approach of the Federal Anti-Discrimination Agency therefore also provides a more efficient protection against so-called "multiple discriminations".

At the Länder Level:

Currently, governmental Anti-Discrimination Agencies exist only in Brandenburg, Berlin and Rhineland-Palatinate.

The Anti-Discrimination Body in Berlin was very active in the field of protection against age discrimination and legislative gaps on age-discrimination. In 2010 a brochure on age limits was published. The outcome of the study was that age limits have no positive effect in the changing society furthermore they are destructive to the demographically aging society.⁸

3. Information on specific national legislation, national policies, strategies and plans of action adopted to ensure the equal enjoyment of rights by older persons, particularly in the areas of prevention and protection against violence and abuse, social protection, food and housing, employment, legal capacity, access to justice, health support, long-term and palliative care.

Reports on old age - „Altenberichterstattung“

Since 1994, the Federal Government of Germany has to report once every legislative period on the situation of older persons in Germany. The reports are written by a commission of national experts. The Government adds its own observations and passes both the experts report and their addition to parliament and the public as the Report on "Old Age" (Altenbericht). These reports shall lead to insights in the current situation of older persons' lives, inform the public about this issue and make forward-looking guidance available to decision makers in policy. Until now, there are six of those reports, some covering the situation of older persons in general, some dealing with special topics like housing situation of older persons or dementia. The reports are quite substantial and provide valid information on the situation of older persons in Germany. But these reports do not have a human rights based approach.

The reports on "old age" of the Federal Government are today, in addition to current scientific studies, other reports on the federal level (eg, reports of the Study Commission "demographic change", pension reports, etc.) and the reports old age of the Länder, municipalities and organizations, one of the main sources for public debate on policy issues for age and older persons. The previously published reports of the Federal Government also contributed to the

⁸ <http://www.berlin.de/sen/ias/presse/archiv/20101222.1315.324006.html> [Last accessed 13 March 2013].

general dissemination of knowledge about aging, current challenges and the situation of older persons in Germany.

German Centre of Gerontology (Deutsches Zentrum für Altersfragen)

The German Centre of Gerontology is an institute for scientific research and documentation in the fields of social and behavioral ageing research. The bye-laws of the institute declare its purpose to „increase, collect, evaluate, process and disseminate knowledge about the living arrangements of ageing and old people in order to use this knowledge for scientifically independent consultation in respect to the challenges of an ageing population for society and social policy“.

Quality of care services

The quality of the care services performed by nursing homes and care service providers is of vital importance to the realization of older persons' human rights in Germany because most people in need of long term care and assistance are older persons. In 2011, 83 % of the people in need of long term care and assistance were 65 years old or older.⁹

In 2001 the Committee on Economic, Social and Cultural Rights released Concluding Observations on Germany¹⁰ which dealt with inhumane conditions in nursing homes; the recommendations were based on reports about malnutrition, water deficiency, giving of wrong medication or non-prescribed tranquilizers. The Federal Government of Germany has been taking various measures to improve the quality of the care services:

In 2003 the “Round Table for Long Term Care” was founded in order to improve the situation in life of persons requiring assistance and care. Experts from all areas of responsibility with regard to care in old age (including the Länder, local government, bodies responsible for care facilities, charitable associations, private associations of responsible bodies, nursing home supervisory bodies, long-term care insurance funds, advocacy groups for the elderly, scientists/scholars, foundations) were involved in it. This “Round Table” developed among other things the “Charter of Rights for People in Need of Long Term Care and Assistance”, which was designed to strengthen the role and the legal position of the people affected and their relatives, and to provide information and encouragement in shaping dignified care.

Apart from that, the Federal Government of Germany reformed the Book XI of the Social Code (SGB XI) - social long-term care insurance - with the Long-Term Care Enhancement Act, which entered into force on 1st July 2008. The reform focused on measures which would

⁹ *Statistisches Bundesamt* (2013): Pflegetatistik 2011: Pflege im Rahmen der Pflegeversicherung - Deutschlandergebnisse. Wiesbaden: Statistisches Bundesamt. Available at: https://www.destatis.de/DE/Publikationen/Thematisch/Gesundheit/Pflege/PflegeDeutschlandergebniss_e5224001119004.pdf;jsessionid=DBAF372E74AF209B84F408436AC3C51A.cae2?__blob=publicationFile [Last accessed 13 March 2013], S. 7.

¹⁰ *UN- Committee on Economic, Social and Cultural Rights* (2001): Concluding Observations of the Committee on Economic, Social and Cultural Rights - Germany, UN doc. E/C.12/1/Add. 68 from 31 August 2001. Available at: http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Pakte_Konventionen/ICESCR/icescr_state_report_germany_4_2000_cobs_2001_en.pdf [Last accessed 13 March 2013], paras 24, 42.

enhance the quality of the care services performed by nursing homes and care service providers. The provisions on monitoring out- and in-patient care facilities were further developed with a view to improving the quality of services and increasing the transparency of results. For example, since 2011, all licensed care facilities are monitored once a year. The new general rule is that all monitoring visits are without prior notice. The results of the evaluation reports are published in a comprehensible and consumer-friendly manner (both on the Internet and in other suitable places). The Medical Service of the national associations of health insurance providers (MDS) has to draw up a general report on developments every three years on the quality of care in Germany which is based on the prior mentioned reports.

The Long-Term Care Enhancement Act (2008) stated that expert standards in care services would be scientifically established upon a statutory basis. The partners to the agreement of care self-administration are responsible for the development of the standards. Expert standards make the generally accepted state of medical/care insights more concrete with regard to specific topics and offer professional caregivers support, security and practical expertise in day-to-day care.

The latest report by the MDS showed that the measures taken by the Federal Government of Germany led to some positive results regarding the quality of the care quality, especially in the areas of malnutrition and water deficiency. Even though there are some improvements in the care taking system, there are still many aspects which have not been part of the policy or improvements e.g. the number of avoidable fixations.¹¹

Pension and retirement systems

While financial poverty amongst older persons in Germany seems to be of minor importance at the moment, there are certain indicators that poverty amongst older persons will increase in the near future.

a. The German pension and retirement systems is based on three pillars comprising the statutory disability and retirement and pension scheme, company pension schemes and private retirement insurance.

In anticipation of the demographic change, a reform of the structure of disability and retirement pensions was launched in 2000. The key aim of the reform was to secure a high and adequate level of pensions without placing too much pressure on the contributors' generation. It was crucial to the reform to slow down the increasing contribution rate, with the aim to secure an adequate income from the statutory disability and retirement pension scheme and the supplementary old-age insurance.¹² The German legislature fought negative

¹¹ *Medizinischer Dienst des Spitzenverbandes Bund der Krankenkassen e.V. (MDS)* (2012): 3. Bericht des MDS nach § 114a Abs. 6 SGB XI - Qualität in der ambulanten und stationären Pflege. Essen: Medizinischer Dienst des Spitzenverbandes Bund der Krankenkassen e.V. (MDS). http://www.mds-ev.de/media/pdf/MDS_Dritter_Pflege_Qualitaetsbericht_Endfassung.pdf [Last accessed 13 March 2013], p. 5.

¹² *UN- Committee on Economic, Social and Cultural rights* (2010): Implementation of the Covenant on Economic, Social and Cultural Rights - Fifth periodic report submitted by States parties under articles 16 and 17 of the Covenant Germany, UN doc. E/C.12/DEU/5 from 27 July 2010. Available at: http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Pakete_Konventionen/ICESCR/icescr_state_report_germany_5_2008_en.pdf [Last accessed 7

incentives for early retirement and decided to rise the standard retirement age from 65 to 67 years until 2029.¹³

As part of the 2001 reform of disability and retirement pensions, the Federal Government is widely encouraging capital-funded supplementary retirement saving by individuals (encouraged under the Riester retirement proposals). Since 2002, approved retirement savings products have been promoted by way of subsidies and tax advantages. Retirement savings at company level have also been boosted on the basis of a wide range of measures. The aim of the reform is to expand retirement savings as far as possible at a company and an individual level. In addition to that, the Federal Republic of Germany encourages private basic retirement (Rürup retirement proposals). The Rürup retirement scheme consists of private life annuity modelled on the statutory retirement scheme. It guarantees the provision of a monthly pension. Beneficiaries may not draw their pension before the age of 60. That measure makes it possible to guarantee that these are old-age insurance products, in the same way as rights acquired under the statutory disability and old-age insurance scheme, and that contributions are actually used for old-age insurance. The three pillars of the system in general and especially the private basic retirement offer a variety of options.

b. In 2003, the basic minimum income guaranteed to older persons was introduced to offer a new way of combating poverty among older persons. Persons who have reached the retirement age and are not able to make a living, get subsistence minimum benefits.¹⁴

c. All three pillars of the German system of old-age security rely on the payment of contributions. Because of that, there are groups that don't have the chance to get satisfying pensions, such as women who raise their children or take care of their relatives or any persons with low income. That's why the Federal Government of Germany discussed the creation of a so called pension of life-time achievement ("Lebensleistungsrente"¹⁵), which shall be financed by taxes.

Elder abuse

On abuse of older persons in Germany are only few data available. That's why the Federal Government of Germany promoted a research study on this topic.¹⁶ This study revealed that the risk of getting a victim of a criminal act is generally lower in old age, but especially in home care situations there seems to be a huge number of unknown cases. It is assumed that

¹³ 13 March 2013], para 162.

¹⁴ ¹³ Bundesregierung (2013): Lebenslagen in Deutschland - Der Vierte Armuts- und Reichtumsbericht der Bundesregierung. Available at: http://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen-DinA4/a334-4-armuts-reichtumsbericht-2013.pdf?__blob=publicationFile [Last accessed 13 March 2013], p. 314.

¹⁵ ¹⁴ http://www.deutsche-rentenversicherung.de/cae/servlet/contentblob/232620/publicationFile/54129/grundsicherung_hilfe_fuer_rentner.pdf;jsessionid=851C9034D5E9DD89FE2F7412A66CDF68.cae04 [Last accessed 13 March 2013].

¹⁶ ¹⁵ I Bundesregierung (2013): Lebenslagen in Deutschland - Der Vierte Armuts- und Reichtumsbericht der Bundesregierung. Available at: http://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen-DinA4/a334-4-armuts-reichtumsbericht-2013.pdf?__blob=publicationFile [Last accessed 13 March 2013], bid., p. 315.

¹⁶ The study is called „Kriminalität und Gewalt im Leben älterer Menschen“.

elder abuse in home care situations is very often a consequence of the poor working conditions of the caregiver. Therefore the Federal Government of Germany supports a study on the strain of caregiving family members (LEANDER), which aims to develop guidelines and a handbook to support the caregivers.

Fixations are a very controversial method in dealing with dementia patient who are restless or in danger of falling. That's why the Federal Government of Germany started a model project on reduction of fixations called „ReDuFix“¹⁷ which led to decreased numbers and duration of fixations within the project. The results of the project were published in a handbook and showed that fixation very seldom necessary.

Furthermore, Germany takes part in the pilot project on elder abuse called MILCEA (Monitoring in Long-Term-Care).¹⁸ This project is designed to contribute to the monitoring of elder abuse in long-term care in the European Union. In this project elder abuse means physical, psychological/emotional, sexual and financial abuse. The goal of the project is to identify and describe organizations in Germany and in other participating states which tend to come in contact with potential victims of abuse in professional, voluntary or in family settings. The results will be refined at an international level by the project partners. The goal is to develop good practice and to generate concrete recommendations for the successful implementation to combat elder abuse by the Member States of European Union.

Drug addiction among older persons¹⁹

The demographic change, which will lead to a higher percentage of older persons among the German population, has drawn the attention of the Federal Government of Germany to the issue of drug addiction among older persons. The Federal Government of Germany started researches regarding this topic and promotes in addition private research. The National Strategy for the Drug Addiction Policy²⁰ deals with the topic and searches for measures to fight the drug addiction. Furthermore, prevention through information is a main issue of the Drug Addiction policy; the German Centre for the Control of Drug Abuse and the Federal Centre for Health Education raise awareness through publishing booklets and websites about drug addiction.

¹⁷ <http://www.redufix.de/cms/website.php> [Last accessed 13 March 2013].

¹⁸ http://www.milcea.eu/en/index_en.html [Last accessed 13 March 2013].

¹⁹ Deutscher Bundestag (2012): Bundestag-Drucksache 17/9814 vom 29.05.2012 - Sucht im Alter - Aufklärung fördern und Nationale Strategie mit Leben füllen. Available at: <http://dipbt.bundestag.de/dip21/btd/17/098/1709814.pdf> [Last accessed 13 March 2013].

²⁰ In German: „Nationale Strategie zur Drogen- und Suchtpolitik“.