

February 2023

Response by BAGSO to the call of the Independent Expert on the Enjoyment of all human rights by older persons on “Violence, abuse and neglect against older persons”

Legal, policy and institutional frameworks

Non-discrimination law: General Equal Treatment Act (AGG)

According to the General Equal Treatment Act (AGG), discrimination on the basis of age is generally prohibited in working life as well as in everyday transactions. However, there are far-reaching exceptions for age-related unequal treatment, especially in working life, but also, for example, in credit contracts and insurance transactions. The Federal Anti-Discrimination Agency (FADA) therefore demands that the proportionality and requirements for such exceptions to the equal treatment requirement be clarified in the AGG.¹

Currently, the governing parties are looking into an amendment of the AGG. In this context, BAGSO calls on politicians to close gaps in the protection against age discrimination and identifies necessary changes in the AGG. Central demand is the abolition of the limitation of the AGG to so-called mass transactions and the abolition of insurance tariffs according to age groups. BAGSO also identifies a high risk of age discrimination in automated decision-making procedures ("algorithms") and addresses structural disadvantages, e.g. for people without internet access.²

Legislation on violence against older persons

Under the AGG, unjustified unequal treatment based on age is prohibited. However, there is no law specifically protecting older people from violence, abuse and neglect.

¹ <https://www.antidiskriminierungsstelle.de/DE/ueber-diskriminierung/diskriminierungsmerkmale/alter/alter-node.html>

² <https://www.bagso.de/publikationen/stellungnahme/bagso-fordert-wirksamen-schutz-gegen-altersdiskriminierung/>

According to the Basic Law, every person in Germany has the right to "the free development of his or her personality" and "life and physical integrity" (Art. 2). Criminal law contains numerous paragraphs designed to protect individuals from attacks on life and limb. However, unlike child and youth protection, there is a lack of comparable regulations for preventive protection against violence, abuse or neglect for older adults. There is no law especially for protecting older people (as it exists for children and young people) – neither in the German Civil Code (BGB) nor Criminal Code (StGB). For older persons, the general law applies.

Even legal support (guardianship), which should be a protective tool, does not prevent abuse, including financial abuse, because there is no systematic supervision and monitoring of the persons in charge. The judiciary (judicial officers) as supervisor of legal guardianships (§§1896 ff of the German Civil Code) often presumes that the guardian is honest, and intervenes only in cases of concrete suspicion. In addition, the issue of violence is not expressly mentioned in the law on guardianship. A law for the protection of adults that might reduce such risks does not exist.

It is also unclear which authorities and courts are responsible in case of a suspicion of corresponding abuses. Especially in domestic dependency relationships, caused for example by physical, mental or psychological illness, there is a lack of control mechanisms. The investigating authorities (police and state prosecutor) do not dispose – at least not throughout the whole country – of specially trained staff. Moreover, those authorities do not take preventive action as a rule; at best, they step in when violence has already been committed.

The provisions of Social Code Book XI (specifically, care reinforcement laws) will – if at all – only have indirect effects on the avoidance of violence; and then, only in the area of care. The heart of the problem: namely, the conception of nursing care insurance as a "partial-coverage insurance" and the shortcomings in terms of quantity and quality equipment of caregivers will not be resolved thereby.

Even when caregivers in mobile nursing care find signs of abuse on the older persons in their charge, there are neither established channels for reports nor possible interventions. On the contrary, data privacy guidelines tend to hamper efforts to report.

The helplines, which are, incidentally, underfunded and whose staff are largely volunteers, are not active in prevention either; rather, they provide counselling in cases of violence and/or abuse. Nor are they suited to the specific circumstances of

older persons. Funding is lacking for specific awareness-building of conflict avoidance. Whether that is the purpose of phone helplines is also debatable.

Manifestations of violence

Older persons are facing different types of violence, abuse and neglect, including but not limited to physical, psychological, sexual, financial, neglect, abandonment and exploitation.³ This can be a single or repeated act, be against one person or be systemic, structural or part of an institutional practice. The explicit or implicit exertion of pressure on an older person to decide on a certain type of living arrangement (at home alone; with family; in an institution) is also a form of violence.

Violence, abuse or neglect occurs in many ways, especially in dependency situations such as care, whether in a family or institutional setting, as well as in care relationships. Older persons in need of support and care are especially vulnerable as they are dependent on help. Dependency can be physical, but also mental. However, not all acts of violence are registered because most often the older persons in need of care are dependent on their caregivers and therefore do not register a complaint.

Financial abuse (theft, fraud), too, can occur both within the family as well as in institutional settings. A new form of fraud has appeared with the advent of digitalization. Deceptive electronic messages that urge the recipient to disclose bank account data and/or make payments are often difficult to identify as fraudulent.

Intersectionality

Older women are particularly vulnerable to violence, abuse and neglect. It can take place in different contexts and take different forms. As in other age groups, the perpetrators of intimate partner violence are mostly male. Many older women are also burdened by previous experiences of violence. In the case of experiences of violence from war (e.g. war rape), these are often particularly serious events that are difficult to cope with. Violence against older women, in particular sexual abuse, is still largely a taboo. An issue of particular concern is that older women are less likely to separate from violent partners than younger women and to press charges, also

³ We are not commenting here on the deprivation of liberty, for instance, through restrictive measures in care settings, as this has been subject of a previous call by the IE.

because the chances of absorbing material and social consequences of a separation in cases of partner violence are lower in old age.⁴

Many **older LGBTI persons** carry with them previous experiences of physical or verbal violence as a reaction to their sexual orientation in younger years, threat of criminalisation and fear of death because of their way of life as well as violence in health settings in times when homosexuality was still seen and treated as a disease.⁵

Lifelong **disability** often has a decisive effect on a person's entire life course and has a lasting impact on their life in old age. Changes in living conditions and disadvantages in earlier stages of life pose risks for participation opportunities in old age and increase the risk for violence, abuse and neglect.

The biographies of **older persons with migration backgrounds** often contain experiences of discrimination, shame, lack of user-orientation of services or financial constraints, increasing their risk to violence, abuse and neglect. Older persons with migration backgrounds are also more frequently in need of care, demand higher levels of care and in average need care support about 10 years before the non-migrant population.⁶ This is an additional risk for violence, abuse and neglect.

Older **refugees** coming to Germany face accumulated risks for violence, abuse and neglect, often combined with other grounds beyond age and refugee status.

Moreover, **persons without family support or a reliable social network** are also at risk of physical violence and, in particular, of financial exploitation. Specific living conditions under which older persons often live or receive care, make such individuals especially vulnerable to “exploitation” in both emotional and material terms and expose them more acutely to the risk of becoming a victim of violence. In reaction to a study published by Goethe University in 2018, showing that violence

⁴ <https://www.frauen-gegen-gewalt.de/de/infotehek/gewalt-gegen-seniorinnen/merkmale-und-tatsachen.html>

⁵ https://rubicon-koeln.de/wp-content/uploads/2021/03/Kultursensible_Pflege_fuer_Lesben_und_Schwule_Informationen_fuer_die_Professionelle_Altenpflege.pdf

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https://www.wido.de/fileadmin/Dateien/Dokumente/Publikationen_Produkte/Buchreihen/Pflegereport/2017/Kapitel%20mit%20Deckblatt/wido_pr2017_kap07.pdf

and neglect in family care settings are not seldom, BAGSO developed recommendations for the prevention of elder abuse in such care settings.⁷

Data

There is some data at national and local level about violence, abuse and neglect of older persons, for instance in care settings by the Centre for Quality in Care (*Zentrum für Qualität in der Pflege* (ZQP)). The Centre supports research projects and maintains a website on violence in care settings,⁸ for example, containing a report on the prevention of violence in care.⁹

National surveys about violence provide data for the older population. For instance, the Federal Agency for Crime (*Bundeskriminalamt*) provides information on the experiences of people living in Germany as victims of crime, their perception of safety and their perception and evaluation of the work of the police. Further, in its Police Crime Statistics (*Polizeiliche Kriminalstatistik*) for 2021, the Agency shows that older people aged 60 and over are relatively rarely victims of violence: 12,572 older persons were registered as victims in 2021. This is approx. 6.4 percent of all victims of violent crime (195,368).¹⁰ While these statistics are for the general population, data is disaggregated by age.^{11,12}

Statistics on sexual violence is also disaggregated by age¹³, showing that 2.7 percent of all victims are aged 60 and above. It is likely, though, that sexual abuse among older women is hugely underreported, as the violence often happens in care settings.

7

https://www.bagso.de/fileadmin/user_upload/bagso/03_Themen/Pflege/Angehoerige/doku_expert_enworkshop_gewaltpraevention_pflege.pdf

⁸ <https://www.pflege-gewalt.de/>

⁹ https://www.zqp.de/wp-content/uploads/Report_Gewalt_Praevention_Pflege_Alte_Menschen.pdf

¹⁰ <https://www.polizei-dein-partner.de/themen/gewalt/gesellschaft/detailansicht-gesellschaft/artikel/gewalt-gegen-senioren.html>

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https://www.bka.de/DE/UnsereAufgaben/Forschung/ForschungsprojekteUndErgebnisse/Dunkelfeldforschung/SKiD/Ergebnisse/Ergebnisse_node.html

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https://www.bka.de/EN/CurrentInformation/Statistics/PoliceCrimeStatistics/2021/pcs2021_node.html

¹³ <https://de.statista.com/statistik/daten/studie/152661/umfrage/verteilung-der-opfer-von-sexualdelikten-nach-altersgruppen/>

The German University of the Police (*Deutsche Hochschule der Polizei*) undertakes research and prevention projects in the field of violence against older persons.¹⁴ The results of a recently started research project on sexual abuse in older age, led by Prof. Görgen, are still to become available.

Some other sources of evidence are rather outdated. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth published reports on the topic (Experience of criminality and violence in the life of older people, Violence against women in partner relationships and Living safely on old age), but those reports date back to 2009 and 2012 respectively. In 2018, the National Agency for the Prevention of Torture specifically looked at the situation of older people in care settings in its annual report.¹⁵

Access to justice

To fulfil its obligations to ensure older persons' access to justice, and to obtain remedies and reparations, when their human rights have been violated as a result of violence, abuse and neglect, the State maintains the German Institute for Human Rights, the Federal Anti-Discrimination Agency and some ombudspersons, like the Federal Commissioner of Patients or of Persons with Disabilities. There is no such ombudsperson specifically for older persons, moreover the German Institute for Human Rights is not an ombudsperson institution and has therefore no mandate to deal with individual complaints on human rights violations.

Examples of good practices

In terms of projects on violence against older persons in care settings, a report by the Centre for Quality in Care provides an overview.¹⁶ In addition, there are several helplines. However, they do not directly/exclusively address older victims of violence, abuse and neglect.

In conclusion

To better protect older persons from violence, abuse and neglect, BAGSO is calling for a UN Convention on the Rights of Older Persons. Such a comprehensive legally

¹⁴ https://www.dhpol.de/departements/departement_III/FG_III.1/publikationen_goergen.php

¹⁵ https://www.nationale-stelle.de/fileadmin/dateiablage/Dokumente/Berichte/Jahresberichte/Nationale_Stelle_Jahresbericht_2018_01.pdf

¹⁶ https://www.zqp.de/wp-content/uploads/Report_Gewalt_Praevention_Pflege_Alte_Menschen.pdf

binding instrument would contribute to raising the awareness of this important topic among politicians and the public. Moreover, a Convention would empower older persons to assert their rights and seek justice when their rights are violated.



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BAGSO – The voice of older people

BAGSO, the German National Association of Senior Citizens' Organisations, represents the interests of older generations in Germany. It stands up for active, healthy and self-determined ageing in social security. BAGSO is an umbrella organisation of more than 120 civil society organisations that are run by or work for older people.