**Mandate of the Independent Expert on the enjoyment of all human rights by older persons**

**Call for contributions: The right to adequate housing of older persons**

To inform her report, the Independent Expert wishes to receive written contributions from relevant stakeholders, including national and local governments, national and international non-governmental organizations, national human rights institutions, international and regional inter-governmental organizations, United Nations agencies and entities, activists, and academics.

She strongly encourages sharing concrete examples of good practices where available.

She invites all interested stakeholders to share their views and provide information on any or all the following issues:

1. **What are the local and national legal, policy and institutional frameworks protecting and promoting the right to adequate housing of older persons? Please identify both existing or planned legal frameworks such as constitutional provisions, laws, regulations, or decrees.**

Contribution by the Federal Anti-Discirmination Agency

The General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz - AGG) prohibits discrimination in the access to housing, inter alia on grounds of age (section 19 (1) no. 1 of the AGG). Nor may anyone be disadvantaged when terminating or during an existing tenancy. However, there are exceptions from the prohibition of discrimination. As a rule, the AGG only affords protection from discrimination on grounds of gender, religion, age, disability or sexual orientation if the lessor has more than 50 housing units for rent. In addition, the AGG provides for an exemption from the prohibition of discrimination if the tenancy establishes a special relationship of closeness or trust (section 19 (5) sentence 3 of the AGG). In the context of obligations under civil law, moreover, an objective ground suffices to justify differences of treatment based on age (section 20 (1) of the AGG).

1. **What are the existing local and national action plans, development plans and support** **programmes for advancing the right to adequate housing for older persons? If available, please specify the budget allocated for their implementations.**

In Germany there is a support programm for advancing the right to adequate housing for older people „Age-approriate remodeling“ („Altersgerecht Umbauen“). The support is for everyone who is remodeling a home to reduce barriers or purchasing a newly converted home. The programm is for senior citizens, but it also benefits persons with limited mobility and families with children. Financing examples are remodeling to reduce barriers, such as walk-in bath­tubs and handles, lift facilities, stair lifts, the creation of adequate clear space, for example for wheel­chair users.

The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*BMFSFJ*) is conducting a **model program** **“Living as usual”** (**"Leben wie gewohnt"**) which, in practical projects serving as examples, aims at demonstrating, how a self-determined life in old age and a continued stay at home and/or in the familiar surroundings/a familiar setting can be achieved. To this end, building and investment projects are funded in rural and urban areas. Besides strengthening inclusive and communal forms of living as well as mobility and participation, the project also aims at promoting digital and technology-assisted (enhanced) forms of living. Another goal is to provide alternatives to institutional care, which, in general, is more cost intensive, as well as to avoid unnecessary and unwanted relocations to institutions.

Already in the past, the *BMFSFJ* financed various model programs and projects on communal living.

1. **What challenges, barriers and forms of discrimination are faced by older persons in fulfilling their right to adequate housing? Please also include any existing legislation, policy or practice. Please also state how it impact older persons’ enjoyment of other human rights.**

Contribution by the Federal Anti-Discrimination Agency

In a 2019 population-representative survey carried out on behalf of the Federal Anti-Discrimination Agency, eight percent of interviewees looking for housing at any time in the previous ten years reported experiencing discrimination on account of their age. The youngest and oldest cohorts surveyed were most likely to report being affected by this. Specifically, 16 percent of interviewees aged between 16 and 34, and 11 percent of those aged 60 or over reported such experiences.[[1]](#footnote-1)

Time and again, consultation is sought from the Federal Anti-Discrimination Agency by people who have been turned away by the lessor when looking for housing on grounds of their age. Older people seeking advice tend to report, for instance, being turned away because only “young families” were welcome. Conversely, younger clients report that lessors only accept persons above a certain age or that housing ads are explicitly addressed to pensioners or senior citizens. Such cases regularly illustrate the issues addressed in section 19 (5) of the AGG . If the lessor does not let out more than 50 apartments, the AGG’s protection against discrimination on grounds of age does not apply. [[2]](#footnote-2)

When people with a disability turn to the Federal Anti-Discrimination Agency on account of discrimination on the housing market, it most often concerns a lack of accessibility. Firstly, some lessors do not allow their lessees to remove barriers (such as by fitting door openers or home modifications), although there is a legal requirement to accommodate disabilities (section 554 of the Civil Code - BGB). Secondly, it is seen as discriminatory that too little accessible housing in general is available. [[3]](#footnote-3) These cases are relevant here because the proportion of persons of disabilities and impairments rises with age. [[4]](#footnote-4)

More examples of challenges that confront older persons in the area of housing can be found in a discussion paper on “Fighting Discrimination on the Ground of Age” by Equinet, the European Network of Equality Bodies. [[5]](#footnote-5)

1. **How do other factors (i.e., gender, sex, race, ethnicity, indigenous identity, disability, sexual orientation, gender identity, religion, social status, place of origin and immigration status) intersect and impact the enjoyment of older persons’ right to adequate housing?**

Contribution by the Federal Anti-Discrimination Agency

The results of a population-representative survey conducted on behalf of the Federal Anti-Discrimination Agency suggest that women (relative to men) and persons with disabilities (relative to persons without impairments) are significantly more likely to report ageism.[[6]](#footnote-6) While the result does not refer to the housing market, but to discrimination experiences in general, it is highly likely that, in this area too, disadvantages would be exacerbated or less easily compensated due to various factors (e.g. a low income).

What is more, older persons are much more likely to have a disability and are more at risk of poverty (this particularly applies to older women). [[7]](#footnote-7)

1. **What impact has had the COVID-19 pandemic on older persons’ right to adequate housing in your country (e.g., has the pandemic caused any policy shift away from institutions and more emphasis on community supports)? What measures have been taken to minimize its impact?**

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The Covid 19-pandemic has underlined the importance of housing once gain. In general and in particular under these conditions it is important that especially older persons are in a position to coninue living an independent life but at the same time keep in contact with other people and participate in society.

1. What **alternative housing strategies for older persons**, other than care homes and state institutions, exist in your country? What policies/programmes are in place to enable older persons to live independently in their communities as they age? Please provide detailed information.

“Living as usual” – this is what everyone wants, even though personal circumstances for a life in one’s own four walls have changed due to old age and illness-related restrictions. As already pointed out in question 2, the *BMFSFJ* funds, *inter alia*, new approaches and technologies fostering a self-determined and independent life and living.

Many interested persons have questions in this context. Therefore, the *BMFSFJ* established a counselling service titled “**knowledge, information, networks – WIN** (***Wissen, Informationen, Netzwerke***) in favor of communal living”. WIN is a nationwide coordination service and information platform for forms of communal living. Target groups are interested persons looking for information, civil society initiatives, municipalities, organizations executing projects in the housing sector and the social economy, wishing to implement projects of communal living. This also includes communal living in combination with, e.g. shared housing accompanied by outpatient care, meeting spaces in the living quarters and low-threshold support services. The key objective is to support the creation of projects of communal living by spreading knowledge, information (e.g. on existing possibilities for funding opportunities) and networks.

1. **How does the State fulfil its obligations to ensure older persons’ access justice, and to obtain remedies and reparations, when their right to adequate housing have been violated?**

Contribution by the Federal Anti-Discrimination Agency

Persons affected by discrimination on the housing market can turn to the Federal Anti-Discrimination Agency. The Agency provides information about claims under the AGG and approaches to securing protection from discrimination on the strength of statutory provisions.

As with other obligations under civil law, housing-related breaches of the discrimination ban can entail claims for compensation and damages (section 21 (2) of the AGG). The claims must be asserted in writing within a period of two months (section 21 (5) of the AGG). However, having suffered discrimination does not amount to a claim to enforce the conclusion of a rental contract.

A compilation of good practice examples against discrimination in allocating, letting out and managing housing is currently being prepared on behalf of the Federal Anti-Discrimination Agency. It is designed to include measures that cater to older persons. Its publication is scheduled for the second half of 2022.

1. Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) 2020: *Rassistische Diskriminierung auf dem Wohnungsmarkt.* *Ergebnisse einer repräsentativen Umfrage*, p. 8. <https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Umfragen/umfrage_rass_diskr_auf_dem_wohnungsmarkt.pdf?__blob=publicationFile&v=4> [↑](#footnote-ref-1)
2. Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) 2021: *Diskriminierung in Deutschland – Erfahrungen, Risiken und Fallkonstellationen.* *Vierter Gemeinsamer Bericht der Antidiskriminierungsstelle des Bundes und der in ihrem Zuständigkeitsbereich betroffenen Beauftragten der Bundesregierung und des Deutschen Bundestages,* p. 131. (Fourth Joint Report from the Federal Anti-Discrimination Agency and the relevant Commissioners of the Federal Government and the Bundestag) <https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/BT_Bericht/gemeinsamer_bericht_vierter_2021.pdf?__blob=publicationFile&v=8> [↑](#footnote-ref-2)
3. ibid., p. 135 [↑](#footnote-ref-3)
4. Cf.. [https://www.destatis.de/DE/Presse/Pressemitteilungen/2020/06/PD20\_230\_227.html#:~:text=Behinderungen%20treten%20vor%20allem%20bei,und%20Jugendliche%20unter%2018%20Jahren](https://www.destatis.de/DE/Presse/Pressemitteilungen/2020/06/PD20_230_227.html%23:~:text=Behinderungen%20treten%20vor%20allem%20bei,und%20Jugendliche%20unter%2018%20Jahren). [↑](#footnote-ref-4)
5. Equinet (2018): Fighting Discrimination on the Ground of Age. Discussion Paper, S. 37 ff. <https://equineteurope.org/publications/fighting-discrimination-on-the-ground-of-age/> [↑](#footnote-ref-5)
6. Cf. *Beigang et al. (2017): Diskriminierungserfahrungen in Deutschland. Ergebnisse einer Repräsentativ- und einer Betroffenenbefragung*, p. 112. <https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/expertise_diskriminierungserfahrungen_in_deutschland.pdf?__blob=publicationFile&v=6> [↑](#footnote-ref-6)
7. Cf. [https://www.destatis.de/DE/Themen/Querschnitt/Demografischer-Wandel/Aeltere-Menschen/armutsgefaehrdung.html#:~:text=Mit%20zunehmendem%20Alter%20wird%20der,Quote%2011%2C7%20%25%20betrug](https://www.destatis.de/DE/Themen/Querschnitt/Demografischer-Wandel/Aeltere-Menschen/armutsgefaehrdung.html%23:~:text=Mit%20zunehmendem%20Alter%20wird%20der,Quote%2011,7%20%25%20betrug). [↑](#footnote-ref-7)