

Minimum Income in old age: Comparative aspects and European Law questions

Social Participation and Social Security of older persons in the International and European Human Rights Systems

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I. Introduction

- The number of persons aged 65 or over is constantly increasing and already represents a relevant proportion of the population, with an upward trend.
- In addition to that these persons are quite a heterogeneous group of the population concerning their economic and social situation as well as their health situation resp. their physical and mental capacity.
- Their human rights vulnerability is correspondingly high.
- Against this background it is to be clarified which specific human rights protection older persons actually enjoy and, if necessary, how it could be improved.

II. Statistical data on population development

Worldwide

- In 2020 the **total population** was 8 billion.
- The **population of older persons** (i. e. those aged 65 or over) was 728 million.
 - In the next 30 years, this number is expected to increase by more than 100 % to 1,5 billion.
- The share of the global population aged 65 or over is expected to increase from 9 % in 2020 to 16 % in 2050.

Sources: UN Department of Economic and Social Affairs, World population prospects 2019, 2019 (<https://population.un.org/wpp/Download/Standard/Population/>); UN Department of Economic and Social Affairs, Government policies to address population aging, Population Facts, No. 2020/1 (https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Oct/undesa_pd_2020_pf_government_policies_population_aging.pdf).

II. Statistical data on population development

European Union

- **total population**
 - It is projected to increase marginally from 447 million at the beginning of 2019 to peak at 449 million during the period from 2026 to 2029.
 - It will slowly fall back to 442 million by 2050.
- **population of older persons** (i. e. those aged 65 or over)
 - It will increase significantly, rising from 91 million at the beginning of 2019 to reach 130 million in 2050.
 - During this period, the number of persons aged between 65 and 74 is projected to increase by 17 %, and the number of persons aged between 75 and 84 even by 56 %.
 - By contrast, the latest projections suggest that there will be 14 % fewer people aged less than 55 in 2050.

Source: Eurostat, Ageing Europe – statistics on population developments, data extracted in July 2020 (https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Ageing_Europe_-_statistics_on_population_developments#Older_people_.E2.80.94_population_overview).

II. Statistical data on population development

Germany

- The number of persons aged 65 or over increased between 1990 and 2018 by 50 %, from 12 to 18 million.
- In 2018 the share of the total population aged 65 or over amounted to 22 %, compared to 15 % in 1990.
- Over the next 20 years, this number will grow by another 5 to 6 million to at least 23 million.

Sources: German Federal Statistical Office, 2022 (available under: <https://www.destatis.de/DE/Themen/Querschnitt/Demografischer-Wandel/Aeltere-Menschen/anstieg-aeltere.html>); German Federal Statistical Office, Population update on the basis of Census 2011, 2021 (available under: https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Bevoelkerungsstand/_inhalt.html).

III. The international and european human rights system

- human rights protection at the level of the **United Nations** (UN)
 - “Universal Bill of Human Rights”
 - Universal Declaration of Human Rights (UDHR)
 - International Covenant on Civil and Political Rights (ICCPR)
 - International Covenant on Economic, Social, and Cultural Rights (ICESCR)
 - group related human rights protection
- human rights protection at the level of the **Council of Europe** (CoE), especially
 - European Convention on Human Rights (ECHR)
 - European Social Charter (revised) (ESC (revised))
- human rights protection at the level of the **European Union** (EU), especially
 - Charter of Fundamental Rights of the European Union (CFR)

IV. Older persons in the international human rights system

At the level of the UN – the legal level: ICESCR

- Older persons are not directly mentioned in the ICESCR.
- However the Committee on Economic, Social and Cultural Rights has focused on them specifically in its **General Comment No. 6 “The economic, social and cultural rights of older persons” (1995)**.
- In addition to that the following ICESCR rights have special importance for this group:
 - **art. 9: The right to social security**
 - The **General Comment No. 19 “The right to social security (art. 9)” (2008)** defines old age as a principal branch of social security and requests the states parties, within the limits of available resources, to provide non-contributory old-age benefits, social services, and other assistance, if they have no other source of income.
 - **art. 2, para. 2: Prohibition of discrimination**
 - The older persons have to be subsumed under the prohibition of discrimination on the grounds of “other status” (**General Comment No. 20: “Non-discrimination in economic, social and cultural rights (art. 2, para. 2)”, 2009**).

IV. Older persons in the international human rights system

At the level of the UN – the political level: Standing Working Group on Ageing

- an intergovernmental body which is a subsidiary to the Executive Committee of the United Nations Economic Commission for Europe (UNECE)
- first convened in 2008
- 56 member states
- aims to help all countries in the UNECE region to **(1)** mainstream the population ageing in their policy and regulatory framework, **(2)** adjust to demographic change and **(3)** create an environment that is conducive to the full realization of the individual and societal potential of longevity
- supports the realization of the policy principles set out in the Report of the Second World Assembly from 2002, the so-called **Madrid International Plan of Action on Ageing (MIPAA)**, and its Regional Implementation Strategy (RIS)
- strives for synergies in the activities linked to the implementation of population-related international frameworks, e. g. the **UN 2030 Agenda for Sustainable Development**, the WHO Global Strategy on Ageing and Health and the UN Decade of Healthy Ageing (2021 to 2030)

IV. Older persons in the international human rights system

At the level of the UN – the political level: Open-ended Working Group on Ageing

- established by the General Assembly in 2010
- aims to consider proposals for an **international legal instrument** to promote and protect the rights and dignity of older persons, based on the holistic approach in the work carried out in the fields of social development, human rights, and non-discrimination as well as gender equality and the empowerment of women
- The 12th Session of the Working Group took place in April 2022.
 - One focus area was the contribution of older persons to **sustainable development**, which concerns, inter alia, poverty elimination, health promotion, and gender equality.

IV. Older persons in the international human rights system

At the level of the CoE – the legal level: ESC (revised)

Art. 23: The right of elderly persons to social protection

To ensure the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in cooperation with public or private organizations, appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as possible, using:
 - a. Adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
 - b. provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
- to enable elderly persons to choose their lifestyle freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, using [...];
- to guarantee elderly persons living in institutions appropriate support while respecting their privacy, and participation in decisions concerning living conditions in the institution.

IV. Older persons in the international human rights system

At the level of the CoE – the legal level: ESC (revised)

- The task of the state is the implementation of the rights guaranteed by the ESC (revised) using appropriate legislation.
- But the ESC (revised) guarantees are formulated only as a call to action for the state, not as subjective rights of individuals.
- the German ratification status
 - The ESC (revised) was ratified in 2020 and entered into force in 2021.
 - The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, on the other hand, was not ratified.

V. Older persons in the european human rights system

CFR

Art. 25: The rights of the elderly

The Union recognizes and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

V. Older persons in the european human rights system

CFR – Explanations relating to the CFR (OJEU, No. C 303 of 14 December 2007, p. 17 ff.)

- The right of Art. 25 CFR draws on
 - Art. 23 ESC (revised) and
 - Art. 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers.
 - **Elderly Persons**
 24. Every worker of the European Community must, at the time of retirement, be able to enjoy resources affording him or her a decent standard of living.
 25. Any person who has reached retirement age but who is not entitled to a pension or who does not have other means of subsistence, must be entitled to sufficient resources and medical and social assistance specifically suited to his needs.
- It also covers participation in political life.

V. Older persons in the european human rights system

CFR – Explanations relating to the CFR (OJEU, No. C 303 of 14 December 2007, p. 17 ff.)

- Art. 25 CFR only contains a principle, not a right.
 - The distinction between rights and principles is clarified in art. 52, para. 5 CFR.
 - Rights shall be respected, whereas principles shall be observed (also see art. 51, para. 1 CFR).
 - Principles may be implemented through legislative or executive acts.
 - Accordingly, they become significant for the Courts only when such acts are interpreted or reviewed.
 - They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities.

VI. Conclusion

- Given demographic change older persons are becoming increasingly important to society not only in individual regions but worldwide.
- So their living situation is of great social, political, and legal importance.
- Indeed in the field of human rights there exist some legal approaches and a lot of political initiatives to make older persons more visible and to improve their partly precarious situation.
- However at the level of the **UN** older persons are neither mentioned in the universal human rights covenants nor exists a separate convention for this group.
 - The General Comments of the Committee on Economic, Social, and Cultural Rights partially address older persons, but have no legally binding character; they just serve as an aid to interpretation.
- At the level of the **CoE** and **EU** older persons are directly addressed by Art. 23 ESC (revised) and Art. 25 CFR, but both articles do not confer subjective rights; they are merely policy target commitments.

VI. Conclusion

- **result:** An effective human rights protection specifically for older persons is missing.
- **conceivable approaches to remedy the problem**
 - At the level of the **UN** it should be
 - developed a **Convention on the Rights of Older Persons**;
 - in addition to that enacted an **Optional Protocol to the Convention on the Rights of Older Persons** regulating an **individual complaint** as a mechanism that allows individuals, groups, and under certain circumstances also NGOs to seek enforcement of their rights;
 - established a **Committee on the Rights of Older Persons** being responsible, inter alia, for the receipt and examination of individual complaints;
 - regardless of this, established **greater visibility of older persons in the universal human rights protection**, e. g. through their explicit mention in Art. 2, para. 2 ICESCR.
 - At the level of the **CoE** and **EU** the existing rights should be structured as **subjective and enforceable rights**.

Thank you for your attention.

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