

Brussels, 26th April 2016

AGE Platform Europe Position on Structural Ageism

Across the EU there exist laws, policies and practices that reflect ageist prejudices and de-prioritise, disregard or even exclude older people. On the occasion of the EU Day of Solidarity between Generations, AGE Platform Europe wishes to draw attention to these persisting forms of structural ageism based on a survey gathering views of some of our 150+ member organisations' common experiences, and to make recommendations to promote older people's rights in the context of intergenerational fairness.

Structural ageism is a form of *systematic* stereotyping and can be defined as the way in which society and its institutions sustain ageist attitudes, actions or language in laws, policies, practices or culture. It can be encountered in the legal system, the media, health care provision and the economy, among many other areas. It takes the form of upper age limits, the inadequate provision of services for the needs of older people, the failure to take situations, experiences or aspirations of individuals into account when making decisions or allocating resources, or the segregation of people in later life due to a lack of real choice to remain active in their communities. It is also common for older persons not to be appropriately represented in surveys or studies, which very often group everybody together into one homogeneous 'older' age range (i.e. 60+), or exclude older people beyond a certain age, allowing for little nuance in information presented publicly about older generations¹.

"In the media we often see the expression 'elder-burden'."

AGE Platform Europe member from Denmark

Structural ageism reflects negative images of ageing and older people, which are exacerbated in the context of continued austerity. Due to fiscal consolidation, older people are habitually represented as a 'burden' in debates, economic projections, reports, policy frameworks and the media. Such stereotypes overlook older people's numerous contributions to society and advance measures that make economic sense while largely ignoring whether they adequately meet the needs of the older population in a dignified manner. This is especially the case regarding shrinking care packages, support to informal caregivers, old age income and access to healthcare. According to a recent Eurobarometer survey, Europeans think that measures taken as a response to the economic crisis exclude older persons more than any other group².

In addition to this, women are more likely to live longer than men, and for longer with a disability, leaving them more at risk of accumulated disadvantages. It is also important to consider other forms of discrimination that could add to an individual's experience of structural ageism, such as socio-economic status, disability, sexual orientation and race. Ageist attitudes can build upon these complex intersections, leading to many older people experiencing multiple discriminations. Taking into account the fact that there remain very few policies in Europe that directly acknowledge people's different experiences of ageing, any further political responses to structural ageism must better take these intersections into account.

¹ <http://www.ssb.no/en/valg/statistikker/kommvalgform/hvert-4-aar-representanter/2016-01-28?fane=tabell&sort=nummer&tabell=253873>

² http://ec.europa.eu/justice/events/colloquium-fundamental-rights-2015/files/factsheets/factsheet_eurobarometer_fundamental_rights_2015_en.pdf



While progress has been made in some areas, as shown in the examples that follow, older persons across Europe continue to experience discrimination in numerous spheres.

Financial services

Information from our members demonstrates that unjustified age limits in access to financial services are still extensively experienced by older people in Europe. Stricter rules and higher premiums for travel, car, holiday, home, accident and healthcare insurance make it more difficult and more expensive for older people to remain or become insured. In addition to this, older persons also often experience unjustified discriminatory upper age limits when applying for mortgages and bank loans. Even without this kind of overt ageism, older persons can be disadvantaged indirectly when applying for a bank loan because of the difficulties of it being approved even when they have property as guarantee. This creates barriers for older people to access credit for housing, including for necessary home adaptations to enable them to continue living in their community.

In Belgium, the Interfederal Centre for Equal Opportunities dealt with a case where a life insurance policy contained a rule according to which death due to the consequences of an accident is covered only if the victim dies within a period of 12 months. For people above 75 years of age, this period was reduced to 30 days (even when there was a clear connection between the accident and the cause of death). Luckily after an intervention by the Centre, the insurance company admitted that this policy was discriminatory and all contracts were adjusted³; however, this example showcases the extent to which ageist views are entrenched in practices and how even life is devalued in old age.

Crucially, the lack of harmonising anti-discrimination legislation and monitoring among EU Member States leaves a very noticeable gap and as a result older people living in some countries are better protected than others. For instance, there is legislation in Bulgaria, Croatia, France, Hungary, Italy, Slovenia, Sweden, the United Kingdom and to some extent Slovakia which prohibits age discrimination in access to goods and services (albeit often with exceptions related to financial services), although in the rest of the EU older people are not explicitly (or only minimally) protected from being discriminated against outside of employment⁴. What's more, in six EU countries, equality bodies that monitor and register allegations of discrimination do not cover age discrimination in goods and services, while the Spanish and Portuguese bodies do not deal with age-related issues at all (either within or beyond employment)⁵. These divergences can cause real barriers for older people to reside and travel within the EU, violating the European Union's fundamental freedom to move and live in any EU country.

Social and civic participation

Upper age limits exist in a variety of other areas: for instance, in jury service, being a member of a state or voluntary board, obtaining a driving license, renting a car and taking part in education activities. Our members have also brought to our attention cases where the lack of insurance coverage prevented older people from taking part in voluntary activities. For example, in Belgium a residential care institution imposed an upper age limit of 75 years for volunteers, supposedly because of conditions imposed by the insurance company and negative experiences with volunteers older than 75. After negotiations by the Centre for Equal Opportunities, this decision was revoked⁶. In addition, AGE has raised concerns about a policy of the European Opera Centre which excludes

³ <http://unia.be/fr/jurisprudence-alternatives/solutions-negociees/discrimination-dage-dans-une-assurance>

⁴ <http://www.equalitylaw.eu/downloads/1328-developing-anti-discrimination-law-in-europe-2014>

⁵ <http://www.equineteurope.org/Equality-bodies-and-Equinet>

⁶ <http://unia.be/fr/jurisprudence-alternatives/solutions-negociees/limitation-dage-dans-une-maison-de-repos>

older people from training opportunities⁷. Such policies prevent older people from continued education and a late change in their career. In Belgium's private rental housing market, older people are also often discriminated against because of their (assumed) worse income and health situation⁸.

As explained above, the majority of EU member states do not have legislation against age discrimination in access to goods and services and lacking an EU-wide legislation such practices remain unchallenged. The *Draft EU Horizontal Directive* would extend anti-discrimination legislation, including for older persons, to more comprehensively cover areas such as social protection, social security, healthcare, education and access to goods and services – inclusive of a wide range of private and public activities like the provision of education, housing, transport, service delivery and goods.

Employment

Despite the existence of the Employment Framework Directive, a job applicant's advanced age (55+) is perceived as a disadvantage more than any other grounds of discrimination⁹. Whereas the overall employment rate of older people is rising¹⁰, older people are not as frequently selected to interview for jobs and when they are they have less chance of securing a position. In the Netherlands, for instance, nearly four out of ten job hunters aged between 55 and 64 said that they have lost out on a job due to their age¹¹. A large field study conducted by the Ghent University in Belgium showed that older people receive on average 39% less invitations for a job interview even when they have identical profiles with younger job seekers (with the exception of the extra years of age). The difference reaches 65% if their extra experience was irrelevant to the job and 41% if older people had remained inactive due family or household responsibilities¹².

Moreover, many firms (three out of four surveyed in Belgium between 2009 and 2012¹³) invest less in vocational training for older employees, leading to them having fewer opportunities to progress in the workplace. Likewise, in France employers do not always offer the same (re-)training opportunities to older workers approaching retirement age¹⁴. This makes senior employees less competitive in their field of work and creates a perpetual circle of unemployment in case of job loss. In addition, unlike workers with disabilities, older people do not have an automatic right to reasonable accommodation, which would allow them to benefit from adapted working conditions, flexible arrangements (such as working less hours or from home to combine with care responsibilities), or having a gradual transition to retirement. One in five workers between 55 and 65 - most of them women - are caring for their relatives, while employment rates for this age group are dramatically low.

"For older persons who lose their job often it is difficult to get an employment elsewhere. Younger people who have knowledge of new technologies are preferred. The employers also have to give possibilities of employment to older people by giving them the opportunity to learn how to work with

⁷ <http://age-platform.eu/age-work/age-policy-work/anti-discrimination/age-work/1933-age-letter-for-age-limits-for-training-opportunities-with-the-european-opera-centre>

⁸ Interfederal Center for Equal Opportunities, [annual report 2014](#), page 59.

⁹ http://ec.europa.eu/justice/events/colloquium-fundamental-rights-2015/files/factsheets/factsheet_eurobarometer_fundamental_rights_2015_en.pdf

¹⁰ <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2500&furtherNews=yes>

¹¹ http://www.dutchnews.nl/news/archives/2014/01/older_job_hunters_say_they_fac/

¹² Summary in dutch [here](#)

¹³ http://unia.be/files/legacy/le_barometre_de_la_diversite_emploi.pdf

¹⁴ Marie Mercat Brun, Age and disability differential treatment in France – Contrasting EU and national court's approaches to the inner limits of anti-discrimination law, *International Journal of Discrimination and the Law* (2015)

new technologies. As soon as older persons get enough knowhow of new technologies they are able to work with them."

AGE Platform Europe member from Belgium

While the EU's *Employment Framework Directive* has helped to challenge the typically incorrect notion that upper age limits are not discriminatory, the Directive's caveat that age limits can be 'justified' makes such provisions difficult to implement. In fact, the Netherlands is the only country in which every government department was obliged to produce a report identifying and justifying all age criteria in its legislation during the process of transposing the EU Directive into national law¹⁵. Without other states also being required to perform such an exercise, the Directive (and any future legislation with similar provisions) clearly cannot be adequately enforced because it leaves open the possibility for discriminatory upper age limits to persist if left unchallenged – a likely situation given that only 17% of Europeans would report discrimination to their national equality body¹⁶. This lack of legal clarity as to what constitutes discrimination and what can be justified or not creates a fertile ground for abuse.

AGE members also frequently highlight the negative psychological and economic outcomes of forced retirement for those who remain willing and able to work. Whereas some countries have abolished default retirement ages, legislation in Belgium, Cyprus, Germany, Latvia, Luxembourg, Portugal, Spain, France and Hungary require public sector employees to retire at a certain age, and compulsory retirement exists for workers in the public *and* private sectors in Finland, Italy, Malta, the Netherlands, Romania, Sweden, Croatia and Ireland¹⁷. These laws do not make a distinction between the age at which people are eligible for a pension (pensionable age) and the age at which they are required to stop working (retirement age). They therefore not only perpetuate the negative stereotype of employees no longer being useful past a certain age but also infringe older people's right to continue contributing to society in an employed capacity. Companies also miss out on the accumulated experience and expertise of older workers, which are rarely replaced by young people. The European Court of Justice has accepted retirement ages as being justified on the basis of avoiding the stigmatisation of asking people to retire when they are no longer able to work¹⁸. Such rulings fail to tackle the ageist assumption that old age equals sickness, impairment and incapacity and disregard the changing life course expectations of older people. Even in countries where retirement is not enforced on the basis of age (with some exceptions, such as airline pilots), indirect discrimination as a result of these assumptions may still be experienced, making it harder for older people to remain in work. For example in Denmark – among other countries – unemployment benefit is not extended to people beyond the age of 65 on the account that they are eligible for a pension. Such age limits are in contradiction with government reforms aiming to extend working lives and promote active ageing.

Social security

Access to adequate pension payments to combat poverty is one of the most crucial issues for older people in Europe. Although there are large discrepancies across the EU, 20.5% of people over the age

¹⁵ http://www.migpolgroup.com/wp_mpg/wp-content/uploads/2013/07/Developing-Anti-Discrimination-Law-in-Europe-2012-EN-.pdf

¹⁶ http://ec.europa.eu/justice/events/colloquium-fundamental-rights-2015/files/factsheets/factsheet_eurobarometer_fundamental_rights_2015_en.pdf

¹⁷ <http://www.equalitylaw.eu/downloads/1328-developing-anti-discrimination-law-in-europe-2014>

¹⁸ See for example Joined Cases C-159/10 and C-160/10, Gerhard Fuchs and Peter Kohler v Land Hessen, where the ECJ suggested it is legitimate to retire older workers to encourage the promotion of a younger workforce and prevent disputes concerning employees' fitness to work beyond a certain age.

of 65 remain at risk of poverty¹⁹. Very critically, the European Commission's 2015 Pension Adequacy Report reveals the gender pension gap to stand at almost 40% - more than twice the figure of the gender pay gap for people of working age. This reflects the multiple discriminations faced by women, leaving them at a higher risk of living in poverty in old age²⁰. While the equalisation of statutory pension ages between men and women improves gender equality, most recent pension reforms reinforce the gender pension gap; moving from pay-as-you-go social security pensions to individually funded pensions results in less mutualised compensation for career breaks linked to care responsibilities. Such structural reforms continue to penalise older women and create disadvantages leading to their social exclusion.

"I don't want special protection, but I do want the same protection from the law as anyone else."
Quote from the Declaration of Rights of Older People in Wales, United Kingdom²¹

Differences in social protection systems also have a notable impact on older people with disabilities who are being denied certain types of support because of their age. The Special Rapporteur on the human rights of persons with disabilities has highlighted some of these structural inequalities faced by older people that lead into poverty traps²². Examples of the differential treatment of older people with disabilities are widespread across the EU. For instance, in Catalonia, Spain, disabled people above the age of 64 are not eligible for the same personal assistance as a younger person²³; in Flanders, Belgium, people who become disabled after the age of 65 have no access to any type of support delivered by the Flemish Agency for Disabled Persons; in Sweden older people lose some state disability benefits when they reach the age of 65 – financial support for adjusted cars, for example. In addition to this, Cyprus' Supreme Court recently ruled in favour of a claim questioning the age limit for disability benefits that puts older people in a disadvantaged position²⁴. As AGE has demonstrated in a recent position²⁵, such laws persist in various EU countries. Also important is that caregivers of older people sometimes have access to less support or rights. For instance, in Greece and the Czech Republic, respite care is given to workers when their spouse or children need care but not in the case of an older relative needing assistance.

These examples are particularly troubling as support needs for a 70 year old are no different from when that person was 30, making clear that a reduction in financial support or services for disabled older people would undoubtedly have the effect of reducing that person's quality of life and ability to remain independent. In some countries, including the Netherlands, Belgium and Finland, a certain type of medical diagnosis is needed to benefit from disability allowances, reasonable accommodation in employment or make a disability-related claim. These restrictions create additional difficulties for older people to receive equal treatment, as old age disabilities are not necessarily linked to a specific condition, while medical professionals tend to attribute some of the difficulties encountered 'just to old age'.

¹⁹ <http://ec.europa.eu/social/main.jsp?catId=751>

²⁰

<http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7828&visible=0&preview=cHJldkVtcGxQb3JlOYWwhMjAxMjAyMTVwcmV2aWV3>

²¹ <http://gov.wales/docs/dhss/publications/140716olderen.pdf>

²² http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/297

²³ <http://www.independentliving.org/docs7/Spain-personal-assistance-not-reality.html>

²⁴ http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2016/4-201601-2005-2012.htm&qstring=%E4%E9%E1%EA%F1%E9%F3%2A%20and%202016

²⁵ <http://age-platform.eu/age-work/age-policy-work/anti-discrimination/age-work/2950-age-views-on-the-right-of-older-people-in-need-of-care-to-live-independently>

Health and long term care

AGE members have highlighted a particular prevalence of unequal access to healthcare services, such as surgical treatments and medical rehabilitation, despite older age groups requiring these services more frequently and being much fitter than in previous generations. In Cyprus, for instance, the Ombudsman has dealt with cases where innovative surgical treatment did not cover older people, even though it could have had beneficial results for the patients²⁶. In Finland, the scheme for medical rehabilitation was reformed in 2016 and is no longer available to people over the age of 65. This shows a need for better dialogue between healthcare professionals and older patients in order to avoid a paternalistic approach which sees older people excluded from making decisions about their own treatment.

In another particularly demonstrable example of ageism, one of the indicators in the UK of the National Health Service's performance is 'premature death', which is set at the age of 75. Such assessments are ageist and they promote a vision of people over the age of 75 as not being equally worthy of medical treatment. The use of alternative indicators, such as 'preventing avoidable deaths', would be more inclusive and ensure that medical judgements depend solely on the health of the individual rather than on age-based assumptions.

The decisions of medical professionals *"may not always be made on the basis of a comprehensive and objective assessment, but on a series of assumptions about fitness in older age. This could be due to outdated perceptions of how demanding a treatment regime may be, or a lack of awareness about demographic changes and the increasing fitness of older people."*

'Accessing all Ages: Assessing the Impact of Age on Access to Surgical Treatment' (report)²⁷

In austerity-conscious health and social care systems, it is common that services are no longer offered as legal entitlements but become means-tested or require considerable amounts of out-of-pocket payments. Older people constitute one of the largest groups of users of such services and are therefore particularly penalised by related reforms, which take place in addition to shrinking pension incomes. Moreover, there is a danger that prejudicial value judgements (or 'age-based rationing') may occur when assessing older people's health and long term care needs, resulting in them not being allocated the appropriate resources to live independently and with dignity. In 2012, a study from Belgium showed that almost 40% of the people in Flanders were convinced that people beyond the age of 85 were not worthy of expensive medical treatment. Such assessments are due to lower expectations of the life that older people should be able to live. A 2008 analysis in the UK concluded that spending on older people's services would have to be increased by 25 per cent to achieve equality of outcomes with services for younger adults²⁸. More decentralised arrangements, such as in Germany, Austria, the Netherlands, France and Belgium, may also see similar effects as there is a risk of resources being allocated unequally to local authorities and actions taken 'downgraded' to treatments catering for bare necessities rather than rights.

Such systems also do not take into account the risk of elder abuse which is inter-related with poor quality of care and treatment. Numerous studies have showcased how shrinking resources lead to neglect and maltreatment of older people and also put pressure onto family carers, creating risk for the rights of both caregivers (the majority of whom are older women) and care recipients. Older women and people living with dementia are most at risk of experiencing elder abuse, and the World

²⁶ See cases AKP 164/2008 and AKP 63/2010

²⁷ <http://www.rcseng.ac.uk/publications/docs/access-all-ages>

²⁸ The costs of addressing age discrimination in social care, Julien Forder, PSSRU discussion paper 2538, April 2008

Health Organisation suggests that overall one in ten older people experience abuse every month²⁹ – a public health issue likely to worsen as a result of government budget cuts, ageist stereotypes and Europe’s changing demographics. Elder abuse can lead to serious physical injuries, malnutrition, dependency and various other long-term psychological effects, although it often remains invisible and even omitted from the training of healthcare professionals, such as GPs or emergency services staff.

Conclusions

The impact of ageism on individuals can be very serious. From the perspective of society, the failure to tackle age discrimination and ageism means that there we do not fully realise the positive contribution that older people have to make. Legal and policy frameworks that do not adequately protect older persons in all areas of life perpetuate ageism and structural discrimination; our members deem it vital that these frameworks are strengthened at national and EU levels to ensure a more complete coverage than currently exists and to inspire a new understanding of equality at all stages of life.

AGE Platform Europe recommends:

- Improving monitoring mechanisms and implementation of the *Employment Equality Directive*, including higher levels of scrutiny of justifications of age discrimination that take into account the changing life course patterns: Forced retirement ages, age limits and inflexible employment policies fall short of reaching active ageing targets;
- Addressing age discrimination faced by older people in the implementation of the UN Convention on the Rights of Persons with Disabilities and the EU Disability Strategy;
- Engaging in a constructive discussion around a new UN convention on the rights of older people and its added value in tackling structural ageism.
- Extending the right to reasonable accommodation to older workers in order to cater for their changing needs, transition to retirement and care responsibilities;
- Unblocking and following through on the *Horizontal Directive on Equal Treatment* to ensure older people’s rights are consistently protected in areas outside of employment;
- Adopting a European directive on carer’s leave promoting the work-life balance of older workers;
- Addressing poverty in older age by introducing a Directive on minimum income to fulfil all older people’s essential needs and preserve decent standards of living and personal dignity;
- Mainstreaming a rights-based approach to ageing in all legislative proposals and Impact Assessments;
- Launching an intergenerational solidarity campaign to highlight the important societal value of older people and activate their potential in society by challenging pervasive negative stereotypes;
- Collecting data for all age groups, without age limits and with additional age bands: Without such data it is difficult to evaluate the impact on older people and to eliminate unlawful age discrimination and promote age equality.

For more information

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²⁹ <http://www.who.int/mediacentre/factsheets/fs357/en/>