

*Activities carried out by the Council of Europe with regard to age, in particular age discrimination*

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The Council of Europe as a regional human rights organisation has been advocating the rights of older persons for many years.

First and foremost, one should mention the European Convention on Human Rights (ECHR). Even though that Convention does not explicitly mention older persons, there are certain cases of relevance. It should be said that the European Court of Human Rights does not specifically build on the age of the persons concerned, but on their particular conditions, such as having disabilities or being vulnerable or (economically) dependent. For example, the detention of a disabled person with a wheelchair could be of relevance for older persons, even though the applicant in the actual case was not of old age. In other cases, the Court has taken into account the particular conditions of older persons when applying the Convention. For example:

- *Article 2 ECHR (the right to life)*: with regard to state’s procedural obligations to investigate the disappearance from a nursery home of an older persons suffering from Alzheimer;

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- *Article 3 (prohibition of torture and inhuman and degrading treatment or punishment)*: the minimum level of severity for such behaviour is a relative one, and age may be considered as a factor, e.g. regarding the question whether the imprisonment of an older person is compatible with Article 3 ECHR; in a pending case against one member state, the Court will have to look at the envisaged expulsion of a 91-year old woman who is reported to suffer from dementia and near-blindness;
- *Article 5 ECHR (the right to liberty and security)*: concerning the involuntary placement of an older person in a nursery home;
- *Article 6 ECHR (the right to a fair trial)*: the Court has decided in several cases that age may be a relevant factor in considering whether a case was considered by national courts “within a reasonable time” as required by Article 6 ECHR.
- *Article 10 (freedom of expression)*: In the case of *Heinisch v. Germany* - a case concerning the dismissal of a whistle-blower in a home for elderly patients - the Court found a violation of Article 10 ECHR and stated:

*“In societies with an ever growing part of their elderly population being subject to institutional care, and taking into account the particular vulnerability of the patients concerned, who often may not be in a position to draw attention to shortcomings in the care rendered on their own initiative, the dissemination of information about the quality or deficiencies of such care is of vital importance with a view to preventing abuse.”*
- *Article 14 (prohibition of discrimination)*: “age” is not particularly mentioned in Article 14 which guarantees that everyone enjoys the

Convention rights without discrimination on grounds such as, for example, sex, race, colour, language, religion or other status. However, it is recognised that “age” is considered under the notion “other status” under that provision. There is hardly any case-law yet in this respect (except in a case on a difference in the retirement age for men and women in one member state, which was however rather a discrimination on grounds of sex than of age). Moreover, age would probably be included in the notion of “other status” under Article 1 of Protocol 12 containing a general prohibition of discrimination. Other international treaties (such as the ICCPR or the African Charter of Human and People’s Rights) also do not mention age explicitly in their anti-discrimination provisions, with the exception of the EU Fundamental Rights Charter. National legislation which recognises “age” explicitly in this context would certainly make a stronger case against age discrimination.

While, as already mentioned, the European Convention on Human Rights contains no explicit provision on older persons, Article 23 of the Revised European Social Charter does by stating that states must ensure the right of elderly persons to social protection. The European Committee of Social Rights, the monitoring body for that Charter, held that the objective of this provision is to “enable elderly persons to play an active part and have some influence in society, to guarantee them sufficient resources to live independently, to provide housing and an environment suited to their needs, and to guarantee adequate health care and social services. It also includes their protection against ill-treatment. Moreover, states are required to combat discrimination, especially with regard to the access to goods, services and

facilities. Parties to the Charter which accepted Article 23 are required to adopt measures that protect in law and practice the aged against discrimination and guarantee the elderly's full participation within society. The Committee has developed the social rights contained in the Charter mainly through its "conclusions" when reviewing state reports. Collective complaints against states under this system are rarer. As to date, the Committee has decided only one complaint with relevance for older persons. In the case of *International Federation of Human Rights Leagues v. Ireland*, the Committee had to rule on the old age pensioning system in Ireland. However, two other complaints regarding social security schemes are pending which could be relevant for older persons.

The Council of Europe's Parliamentary Assembly, which comprises national representatives from 47 national parliaments in Europe, has adopted several recommendations and resolutions concerning older persons. With regard to age discrimination, last year's Resolution 1793 on "Promoting active ageing: capitalising on older people's working potential", the Assembly stated that:

*"Age discrimination is often unconscious, but it undermines older people's dignity, their human rights and self-esteem and is a huge waste of talent. The Parliamentary Assembly considers that, although ageism is less acknowledged than racism or sexism, it is a harmful prejudice that results in widespread mistreatment of older people, ranging from stereotypic and degrading images in the media to physical and financial abuse, unequal treatment in the workplace and denial of appropriate medical care and services."*

Therefore, the Assembly made the following recommendations:

- adopting legislation to prohibit age discrimination and removing labour-market barriers;
- empowering older persons to enter, remain, or return to the labour market, in accordance with their capabilities and willingness to work;
- implementing programmes that redirect both employees' and employers' attitudes towards a more positive assessment of active ageing.

Moreover, it should be added that the Committee on Equality and Non-Discrimination of the Parliamentary Assembly is currently preparing a report on addressing age discrimination on the labour market.

Recommendations by the Council of Europe do however not only come from the Parliamentary Assembly, but also from the Committee of Ministers. Although soft-law, they can be powerful as they represent the common understanding of 47 governments in Europe. And even though the Committee of Ministers has issued in the past recommendations with regard to age, the last document generally devoted to older persons is almost twenty years old. Many things have changed since then in European societies, not least in a demographical sense. Therefore, the Committee of Ministers has given last November the mandate to create a drafting group (called "CDDH-AGE") comprised of experts from 12 different European states as well as civil society (such as the AGE Platform Europe and the Global Alliance for Older Persons) to draft a new instrument on the human rights of older persons, including age discrimination, which should identify gaps in the human rights protection and come with a guide of good practices from all European states.

The Group has already held two meetings this year during which it negotiated a first draft of a recommendation on the rights of older persons. You should have the document, or an unofficial translation of it in Czech, in front of you. Many topics are covered such as autonomy and decision-making, protection from violence and abuse, the right to social protection, home and institutional care, palliative care, and judicial issues. As you may see, the issue of age discrimination has a very prominent place right at the beginning of that document and focuses on the following issues:

- Older persons shall enjoy their rights and freedoms without any discrimination on grounds of age, in particular in areas such as employment, health care, life-long learning, housing, social and financial services.
- Member states shall take effective measures to avoid multiple discrimination of older persons. They should recognise that older women are in particular subject to multiple discrimination, and be conscious of the fact that such discrimination may equally arise where an older person has, for instance, a disability or a different sexual orientation. In this respect, member states should also be particularly aware of and sensitive to the specific problems of older migrants.
- Member states should consider the ratification of Protocol No. 12 to the European Convention on Human Rights providing for a general prohibition of discrimination, including on grounds of age.

It should be added that the CDDH-AGE decided at its last meeting that the draft recommendation should be accompanied with a guide of good practices. It is planned that member states to the Council of Europe as well

as certain non-governmental organisations would be asked to provide relevant information and propose examples of good practices. This will of course also concern issues of age discrimination.

In this respect, it is also good to look for inspiration beyond the borders of our continent. Australia, for example, has had for many years an Age Discrimination Act with an Age Discrimination Commissioner raising awareness. The United States have an Age Discrimination Act and the Age Discrimination in Employment Act, implemented by an Equal Employment Opportunity Commission. As to the UN level, we have already heard about the work of the Open-Ended Working Group by the previous speaker. Moreover, the Organisation of American States is negotiating an Inter-American Convention on the Rights of Older Persons. A first draft appears to contain a provision on age discrimination which is along the lines with the CDDH-AGE proposal, requiring legislation, special priority measures and policies to address age discrimination, including multiple discrimination. These are just a few examples of how age discrimination is being addressed at the international and national level, but they demonstrate that the topic is becoming increasingly relevant.