

Human rights of older persons: participation, equality and dignity

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Europeans are becoming older. The median age within the EU has already risen from 35 years in 1990 to 41 currently and may reach 48 in 2060. 17 per cent of the population is now over 65 years' old and this percentage is projected to almost double to 30 in 2060.

This demographic trend has huge implications for European societies. The size and age of the working population as well as old-age pension and care systems will all be subject to important changes. The need for sufficient labour force will affect immigration policies. Inter-generational solidarity will matter even more than before.

The number of people living longer than 80 years is also increasing rapidly. From 5 per cent in the EU today, their share may reach 7 per cent in 2030 and 12 per cent in 2060. For some individual countries, these figures will be even higher, and an unprecedented number of people will live beyond 100 years.

Of course older persons are a highly diverse group and we should by no means view them through well-rehearsed stereotypes. Their individual characteristics, life choices, experience and capabilities vary immensely. Yet all of them are holders of human rights which have to be respected.

The Universal Declaration of Human Rights stated specifically that older persons have the right to security. The revised European Social Charter highlights the right of elderly persons to social protection. In fact, all major human rights treaties apply to older persons without discrimination. Although age is not always explicitly mentioned as a protected ground against discrimination in the treaties, it is interpreted to be one of the protected characteristics. Member states are under an obligation to ensure the full enjoyment of all human rights by older persons and to protect their human dignity.

In reality, the human rights of older persons are still often ignored and sometimes totally denied. Older people suffer from prejudice viewing them as non-productive members of society and therefore not worthy of full social participation. One problem is that older people often do not have a strong say in politics. Organisations defending their interests are – with few exceptions – weak and political parties do not give older persons enough attention as voters and political activists. The fact that the majority of the elderly are women may also have contributed to this lack of political attention. Gender balance is still to be achieved in politics in most member states.

The rapid demographic development should see the end to the politicians' ignorance of older people. A serious review of working life, available services and inter-generational solidarity must be initiated. The active participation of the growing number of older persons in the political process will be necessary.

The main objective of the European Social Charter's provision on the elderly is to enable older persons to lead a decent life and participate in society. To put this into practice, states should ensure that their social protection systems, health care and housing

policies are suited for older people. They should also enact non-discrimination legislation in certain areas including the labour market.

Within the EU, the employment equality directive specifically prohibits age discrimination in employment. In many member states, national non-discrimination guarantees related to age are extended to other fields of activity as well such as access to goods and services. The EU Charter of Fundamental Rights prohibits age discrimination explicitly. It also recognises the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

The Court of Justice of the European Union has stressed that the prohibition of age discrimination is an integral part of equal treatment and therefore belongs to the fundamental norms of the EU legal order. Accordingly, any justification for differential treatment based on age has to be tested rigorously. While the Luxembourg Court has upheld the right of member states or collective bargaining to set mandatory retirement ages, it has subjected them to detailed scrutiny on the objectives pursued. A few weeks ago in the *Prigge* case, it ruled that collective agreements could not force airline pilots to retire automatically at the age of 60 when the general safety legislation allowed them to fly until the age of 65 under certain conditions.

Indeed, many people who are reaching the mandatory retirement age wish to go on working and are perfectly fit to do so. The current demographic change is provoking a rethink about the length of working lives and pension systems. More opportunities for longer careers will most likely be offered which will enable us to profit from the professional skills, experience and dedication of the individuals concerned. Pensionable age is likely to be higher in most countries and rigid age limits for automatic retirement will be reconsidered. With some adjustments in working conditions, including work hours, many more may want to continue long after the present pension day.

The Luxembourg Court's serious approach to age discrimination should be extended to other fields than employment. The differential treatment of older persons in health care and education, for example, may often lack objective justification and be based on prejudice and stereotypes. We should take a fresh look at our national laws and practices to screen them against age discrimination.

The true diversity of older people needs to be taken into account when taking measures against discrimination. Older persons have many other characteristics than their age and may suffer from multiple discrimination. Old age can compound the discrimination faced by women, ethnic minorities, migrants, people with disabilities or lesbian, gay, bisexual and transgender persons. The specific needs of each group would have to be considered.

Age can also be an indicator of discrimination. If the life expectancy of a certain minority is clearly below average, the reasons for this would require serious attention. This tends to be the case with Roma, for example.

Healthy ageing preserving the maximum extent of personal autonomy should be the aim of national policies on ageing. Both the Social Charter and the EU Charter of Fundamental Rights highlight independent lives and full participation in society for the elderly. Specific protective measures should ensure the availability of adequate financial

resources, housing and health care. The human dignity of older persons must always be respected.

Protection measures should be adaptable so as to fit the individual needs. The increasing number of older people will inevitably be a strain on the social and health care system. Even with a more flexible employment and pension policy, there will be a less favourable relationship in future between the proportion of the working population and those in need of long-term care. However, a humane and just society must accept that responsibility and respect the rights of the very oldest.

Many older persons live in poverty: their human right to an adequate standard of living is not respected. In many cases older women receive a relatively small pension if their professional life has been shorter owing to unpaid activities at home. In many countries old people have suffered disproportionately from changes related to economic restructuring and have had little possibility to compensate price increases with more work or higher salaries. A great number of them have had to accept, for instance, a dramatic downturn in housing standards and even homelessness. New social security strategies are required in order for older people to have adequate protection in the future. It is also important to make pension systems more transparent so that future pension entitlements can be predicted with clarity in individual cases.

An OECD report published in May states that half of all people who need long-term care are over 80 years old.¹ Driven by ageing populations, spending on long-term care is set to double or triple by 2050 among the OECD countries. While family-carers currently provide the backbone of long-term care, a great number of long-term carers are in fact migrants. In some countries such as Austria, Greece and Italy one in two of long-term carers are migrants. Major reforms to attract more care workers are necessary. Immigration policies and attitudes must be reviewed with these facts in mind.

The possibility to remain in ordinary housing for as long as possible is usually the preferred option among older persons. It boosts independence and is cost-effective. A wide range of support measures can be made available at the home by family or professional carers. Adjustments to the living environment and transportation are often needed to enable accessibility and mobility.

However, it is my impression that more could be done to offer the elderly more choices and more influence on what care they would prefer now and later. One aspect is to give more priority to supporting and sometimes off-loading family members who are carers. Professional carers also need more recognition and these professions will have to attract more interest in the future. The well-being of care givers has a significant impact on the quality of care and the dignity of those cared for.

Institutions for the care of the elderly are challenging. There have been too many reports about bad treatment and abuse. During my visit to Ireland in June, I welcomed the intent of the authorities to introduce whistle blower legislation which would protect staff in such institutions from negative consequences when reporting on sub-standard conditions or abuse. A recent survey published by the Financial Times demonstrated that the quality

¹ Organisation for Economic Co-operation and Development, *Help wanted? Providing and paying for long-term care*. 2011.

of services in many privatised care homes for older persons in the UK had deteriorated to a worrying degree.

I have seen the extremes during my country visits: both modern and home-like institutions with a democratic atmosphere and excellent medical care but also centres in which the residents were reduced to numbers while the staff were untrained, overstretched and resigned. There is clearly a need in many member states to monitor the conditions in institutions for the elderly much more thoroughly through independent complaints and inspection systems. Minimum standards for care in institutions would have to be drawn up to prevent ill-treatment and promote quality care.

Persons living in institutions should of course receive adequate care and services. Their right to privacy and dignity should be fully respected. They have also the right to participate in decisions concerning their treatment as well as the conditions of the institution. It should also be possible for individuals to make decisions on the future direction of their care and on options for assisted decision-making in case of diminished capacities. The UN Convention on the Rights of Persons with Disabilities has been instrumental for encouraging the development of supports for assisted decision-making.

Faced with undeniable demographic developments, political discussions on future approaches to ageing are under way. European political leaders will have to review their policies for fulfilling the human rights of older people. Realism and long-term vision are necessary: a wide range of policies related to employment, immigration, pensions, health and social care are to be reconsidered. These questions will not go away through populism and quick fixes. The human rights principles of participation, equality, and human dignity have more to offer in guiding the search for sustainable solutions.