Normative content of the right to equality & non-discrimination in old age

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AGE Platform Europe is a European network of more than 140 organisations of and for people aged 50+ representing directly over 40 million older people in Europe.
Building on various resources

• Views of AGE members
• Submission by informal expert group
• Preliminary PhD findings
• Written submissions to OEWG
REVIEW OF SUBMISSIONS

Divergence, gaps & lack of information
Protection from discrimination

Divergence/inconsistencies in terms of:

- **Source**: constitution, national, federal or regional law
- **Specificity**: Explicit protection of age/older people
- **Material scope**
- **Exceptions and positive action**

Data is insufficient, incomparable, not targeted, unofficial, not periodic but sufficient evidence that discrimination is widespread

Significant protection gaps compared to other grounds
WHAT IS AGE DISCRIMINATION?
A hidden problem
Gaps in submissions

**Structural discrimination**

- **Denmark:** local authorities have to pay a higher tariff for the hospitalisation of people 80+

- **France:** “If you have a stroke before the age of 60 you have access to a relatively good system, but beyond that age – at best - you are given a few euros and left to your own devices!”

- **Ireland:** ”Nobody else - children in society or their parents- do not have to mortgage part of their house to give them care as they go through life but they do have to do that for older people”.


EQUAL VS DIFFERENTIAL TREATMENT

Opposite sides of the same coin?
Gaps in submissions

When is differential treatment justified?

• Ex. Mandatory retirement ages
• Exceptions without or general justification
• Lack of scrutiny about age limits in law and unfair treatment in practice
Question:

What paradigm do we want to promote?

• We don’t want special treatment, we want equal application!
• Older people are subjects of special protection under the law
• Preferential treatment is a general principle of OAS convention
Age neutrality vs. Age blindness

Some age categories might make sense/be desirable:
- Pensions
- Education systems
- Free transport
- Free health care
- Legal assistance
- Priority medical consultation
- Priority in humanitarian intervention
Age-specific measures can also be perceived as **discriminatory**

Because the law [i.e. specific law on ageing] is discriminatory! It speaks about the old as old; we are citizens, we are not old...

Part of what we do is trying to say that people at this age, say 65-66 are no different from people at this age, 45-46. So balancing that with ‘oh, but we want a separate charter for the rights of the older adult’, it can become difficult.
Universality vs. specificity?
NORMATIVE ELEMENTS
Towards a normative understanding of equality in old age

- Shift the focus from ‘age discrimination is objectively justified’ to ‘age discrimination is unacceptable as it serves to marginalise and diminish older people’
- Explicitly prohibit age discrimination in all areas of life
Towards a *normative understanding of equality in old age*

- The principle of non-discrimination requires that comparable situations are treated in the same way but where people are not in a comparable situation, they should be treated differently.
- Ex. Vaccines for children, geriatric services, etc

*So differential treatment inherent in principle of equality BUT we need to be critical about when it is necessary to avoid abuse and unfair treatment*
Towards a *normative understanding of equality in old age*

- Multidimensional approach to equality
  - Formal (no discrimination in the law)
  - Substantive (actual effect)
  - Responsibility for private actors
  - End discrimination through positive action to counter structural ageism in institutions, practices, culture, mindset (ex. Awareness, research, involvement, etc)
Towards a normative understanding of equality in old age

The prohibition of discrimination in older age should not be subject to a wider range of exceptions than is permitted for any other ground.

• Any exception require specific justification and review under a duty to consider the differential impact of all decisions on older people.

• Permissible justifications must not undermine human rights principles including those of non-discrimination, equality and dignity.
THANK YOU!

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