

EQUAL TREATMENT OF YOUNG PEOPLE AND SENIORS: “PLEADING” FOR A SPECIAL LAW ON AGE DISCRIMINATION

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Abstract

Prohibition of age discrimination is one of the sine qua non conditions of dignified life of any and every citizen. Regardless if we relate to labour or to other domains of public life, namely education, health, culture, participation in decision making process or access to goods and services, people should be equal in rights throughout their lives. The human life cannot be divided into spans in which the violation of human right is permitted and spans in which it is not. Age is always a quality and never a weakness. However, in real life, exclusion, restrictions and limitations of rights based on age criteria are day-to-day occurrences. Age discrimination affects young and less young individuals, women and men, and seems to be accepted in many countries and is even more so accepted in Romania. It is ordinary for a young person or for a person having a certain age to be rejected by the employers or by some of us, in our day-by-day life. The present paper aims to underline the seriousness of age discrimination, to analyse the rights provided by the legal rules and ignored through different practices according to age criteria, to identify legal measures having as purpose to improve the legal regime of equal treatment regarding age criteria in all fields of public life and to overcome the consequences of discrimination based on age.

Keywords: young people, seniors, age discrimination, equal treatment, *de lege ferenda*.

1. Introduction

The issue of age discrimination of young and senior employees is relatively new in the Romanian legal system and Romanian juridical literature, aspect which is explainable taking into account that the first normative acts regarding this subject in Romania have been adopted in the year 2000. It should be pointed out that national-level legislative action has risen from our obligation as a candidate state for accession to the European area to embrace the Community *acquis* in domain.

The mere existence of a legislative framework did not modify the practices of employers. Paradoxically, in the recruitment process, young people are required to have working experience, whilst, for seniors, the same experience is no longer an employment criteria. Either this, or young employees have small salaries because “they are young”, and seniors are no longer kept within the company because “they are no longer young”. And these are just two of the many cases in which age makes the two previously mentioned categories to be vulnerable within the labour market, marginalized and even stigmatized¹.

Age discrimination is increased in Romania and the consequences are severe and have a great impact on Romanian society. The abilities, needs, and aspirations are regarded in an unlawful, immoral way through their age.

This article aims to achieve to an analyses of the legal regulations regarding age discrimination, which

can offer research ideas towards practical and efficient legislative measures, so that compliance with the right to equality of treatment regardless of age and irrespective of the domain of public life in which this right is exercised to be protected, and that the principles of human dignity to find themselves within the life of each and every citizen.

2. The European legal framework on young and seniors discrimination.

The principle of equality of treatment and prohibition of discrimination have been established from the beginning of the European construction, through the Treaty establishing the European Economic Community signed in 1957 and entered into force in 1958. The treaty’s norms relate to non-discrimination of producers and consumers within the common agricultural policy, non-discrimination of citizenship of nationality of communitarian employees in the context of free movement of people, non-discrimination between men and women regarding payment for equal work.

The next important legislative step in the field was the Treaty of Amsterdam signed at in 1997, and entered into force in 1999, which extend the power of the Community against other criteria-based discrimination, namely race, ethnic origin, religion, beliefs, disability, age and sexual orientation. Thus, according to provisions introduced in article 13 from TCE (former article 6 a EEC) “Within the limits of the

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¹ Manolescu A., Brînzea V.-M., *The age-Un important criteria of discrimination on the labour market* in *Analele Universității “Constantin Brâncuși” Târgu Jiu, Seria Economie*, Nr. 3/2011, pp 16- 28; Stanciu M. C., *Ageism in Romania and Intergenerational Practices*, *Procedia - Social and Behavioral Sciences*, 4th Worlds Conference on Educational Sciences (WCES-2012) 02-05 February 2012 Barcelona, Spain Edited by Prof.Dr.Gülsün A. Baskan, Assist.Prof.Dr.Fezile Ozdamli, Sezer Kanbul; Deniz Özcan, Volume 46, 2012, pp 4736-4740

powers provided for, the Council, acting unanimously, on a proposal from the Commission, and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”².

In the year 2000, immediately after the entering into force of the Treaty of Amsterdam, the secondary European legislation has adopted the Directive 2000/43/EC of the Council from June 29th, 2000 of implementing the principle of equal treatment between people, without differentiation based on sex or ethnical origin³. Given that in the field of employment relationships cases of discrimination are more often than in other fields, the European legislator adopted in the same year Directive 2000/78/EC of the Council, from November 27th, 2000 to create a general framework that would favour equal treatment regarding employment⁴.

There are two new aspects brought forth by Directive 2000/78/EC in comparison to Directive 2000/43/EC:

- on one hand, aims to provide a special regulation for the access to labour market and employment relationships, and;
- on the other hand, to extend the field of application of the principle of equal treatment to other protected reasons, expressly providing prohibition of age discrimination.

Thus, according to article 1, the Directive’s objective is to “lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.”

In accordance with the provisions of article 3 in conjunction with those of article 1 from Directive 2000/78/EC, young people and seniors must have access to employment based on non-discriminatory selection and recruitment criteria, to benefit from vocational training, improvement, promotion, retraining and practical experiences regardless of age, to have equal treatment with regard to employment and work conditions, dismissal and payment conditions, affiliation to an employee organization or any other organization of which members exert a profession. Prohibition of age discrimination is applicable to all the

aspects which are entailed by the exercise of the right to equal treatment by its beneficiaries.

Practice in the field has revealed that advertisements and interviews are steps in the employment process in which candidates are constantly discriminated based on their age and we can illustrate with the situations in which employment is conditioned by seniority or by an age which guarantees the existence of a reasonable period of employment before retirement. Employee promotion runs into the same obstacle of a too young or too old age, regarding those who may benefit from the levels of the career. In regard to termination of employment, it is notorious that the employees age is within the unofficial reasons behind the official reasons of dismissal.

Due to the fact that the employers request that an employee must have a minimum and maximum age to exercise within equal terms his or hers right to work is a flagrant infringement of the principle of equal treatment, social realities of such have been founded the provisions of article 6 (1) paragraph 2 f Directive 2000/78/EC, which expressly stipulated that differential treatment based on motives such as age may specifically refer to:

- the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;
- the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
- the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

Employers can oppose the right of non-discrimination based on age criteria in case in which employees invoke those provisions on the Directive 2000/78/EC according to which objective reasons, justified by a legitimate objective and put into force through adequate and necessary methods may justify a different of treatment without this being considered discrimination.

On what can be criticised towards the Directive is the general nature of the norms which regulate the justification of differences of treatment on grounds of

² The Treaty of Lisbon gives mandatory legal force and grants juridical value equal to that of treaties to the Charter of Fundamental Rights of The European Union (Article 6 paragraph (1) from EUT), which completes the European legislative framework on discrimination. According to Article 21 (1) from Charter of Fundamental Rights of The European Union “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”

³ Published in The Official Journal of European Communities (OJEC) L series, no. 180 from June 19th, 2000. It should be specified that the first directive is applicable in labour domain as well.

⁴ Published in The Official Journal of European Communities (OJEC) L series, no. 300 from December 2nd, 2000. As a basis of comparison, we underline that in the United States of America, the first federal regulation regarding age discrimination *The Age Discrimination in Employment Act (ADEA)* was adopted in the year 1967. The Age Discrimination in Employment Act (ADEA) prohibits discrimination of those at the age of 40 or older. Regarding protection of young people, there is no federal law, but some States have regulations that protect young people against age discrimination in labour. The USA States have their very own legislation on employee and possible employee discrimination based on their age. It is notable that the Colorado State has such regulation since 1903.

age, which are often transposed with the same level of generality in the legislation of the Member States, so that in present leave the possibility of interpretations extremely generous with the practices of the employers that discriminate on base of age⁵.

From our point of view, *de lege lata*, European law offers the Member States a articulated set of rules, which allow them, through national act of transposition, to create a state of normality in the field of labour, which benefits both those who want to be employed or those who are already employed, regardless of age, and the employers, which can increase their profit not just by decreasing costs related to work force, but also by valorisation this very work force

De lege ferenda, we acknowledge that the assessment of weather the way in which within national level legislation of the Member States, the intentions of the European legislator lead to an improvement in the juridical conditions of all employees, regardless of age, and is case in which this analysis shows that the objectives have not been reached, Directive 2000/78/EC should be amended towards a more detailed regulation of discrimination based on age criteria in terms of acts of discrimination and justifications of these acts which exclude the existence of discrimination.

3. The Romanian legal framework on young and seniors discrimination.

European directives have been transposed in Romanian law system, trough G.O. no. 137/2000 regarding the the prevention and sanctioning of of all forms of discrimination⁶.

As provided for in the regulation field of G.O. no. 137/2000, age is one of the expressly regulated criteria regarding to which discrimination is prohibited⁷.

The juridical regime of this type of discrimination is shared with those of the majority of other criteria. Thus, criteria such as race, nationality, ethnicity, language, religion, social category, beliefs, sexual orientation, age do not benefit of a special regulation. Meanwhile, in our legislation there exist other types of discrimination such as discrimination based on gender, which benefits of a special legal framework – Law no. 202/2002 regarding Equal Opportunities of Women and Men, republished⁸.

In our opinion, *de lege ferenda*, a specialized law regarding combating age discrimination presents itself as a solution to both ensuring the respect for the dignity of Romanian citizens and the guarantee of their rights and freedoms, and solving the economic and social problems, at individual and society level, which have their roots in this type of discrimination.

The reasons for which we support the adoption of a normative act are the following:

- a special law would rise awareness regarding age discrimination and promote equal opportunities regardless of age;
- a special law may be focused on discrimination in the field of labour, but may equally regulate age discrimination in other areas of public life;
- a special law would identify clearly, completely and in detail the purpose, the scope of the normative act, the sphere of social relations which are regulate, the rights and the obligations of the subjects to law, and particular behaviour in this respect. We believe that acts of age discrimination currently foreseen in national norms, even if pretty numerous, their phrasing is general, limiting their applicability in practice, either because those entitled do not succeed to the noticed differences of treatment as discrimination, or because those who should respect the right to equal treatment use the general nature of the law in a astute way in order to bypass the consequences of non-compliance with that rules;
- a specialized law may have a better defined preventive effect; stipulating sanctions rigorously defined depending on the particular act of age discrimination and the harm done by this may shape subjects to law behaviour and would prevent discriminatory and abusive practice;
- a special law may have an educational effect and may reconfigure both relationships between employers and employees, between co-workers and the way juniors and seniors are perceived and treated by society.

Such a normative act must first of all be based on a quantitative and qualitative research on acts of age discrimination faced by Romanian citizens within the employment relations and in other areas of public life.

A source of inspiration in preparing an age discrimination normative act proposal can be Law 202/2002 regarding gender equality, which, in our opinion, has an important contribution to the progress made towards equal opportunities and treatment

⁵ Article 6 (1), entitled “Justification of differences of treatment on grounds of age” provides the following: “Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.”

⁶ Republished in The Official Gazette, Part I, no. 166 from March 7th, 2014.

⁷ The discrimination is defined in the article 2 of the Ordinance. According to the provisions stipulated under paragraph 1 discrimination is “any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social status, belief, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, membership of a disadvantaged group and any other criteria which has the purpose or the effect of restriction, elimination of recognition, use or exercise of fundamental human rights and freedoms or of rights recognized by the law in the political, economic, social or cultural field or in any other field of public life.”

⁸ Republished in The Official Gazette, Part I, no. 326 from June 5th, 2013. Law 202/2002 taken over provision from European directives regarding the principle of equal treatment between men and women in the area of work relationships.

between men and women, proving the efficiency of a special regulation.

Research with a view to proposing a special law may also include study of the Age Discrimination in Employment Act (ADEA)⁹, or the laws through which other Member States have transposed Framework Directive 2000/78/EC, laws which present many similarities and differences as well¹⁰. The latter regard aspects like the definition of discrimination¹¹, justification of difference of treatment¹², the term in which a request for restore of rights by the discriminated person¹³, sanctions which the author of the discrimination act must bear¹⁴.

4. Conclusions

The study of age discrimination regarding both young people and seniors constitutes, first of all, a contribution towards raise the visibility of the vulnerabilities of the previously specified two categories especially in the labour market, but also in other areas of public life¹⁵.

An analysis of European and national level statistics may lead *in extremis* to the conclusion that the only time span a person can have high level of certainty that he or she will not be discriminated on the base of age is that between 25 years and 40 years.

In other words, the guaranteed active period may be reduced to 15 years, instead of 47 years, which should be the proper timespan for a person who is employed at the age of 18 and retires when he or she is 65. Moreover, for women who chose to become mothers or men who wish to benefit from a leave for child's growth, there are high risks of discrimination,

including the period of the "protected" age span (between 25 years old and 40 years old).

The effects that such an abnormality on individual and social levels may become the subject of different research. Although normality would presume the existence of a predefined, secure career route, promotion based solely on competence and labour management in the active period, what happens in reality is quite alarming. Furthermore, normalcy would mean that generations ought to collaborate, to support each other and to bring adds value depending on the professional stage in which individuals find themselves, not to be in conflict, having antagonists relationships¹⁶. Basically, they have common interests, all generations desire to exercise their right to dignity, their right to equal treatment and they have to stick together in this respect.

In Romanian society, in general, treatment of young and seniors people is still in the sphere of inadequate, insulting language, which is perceived as a good joke, irony, not as a violation of human dignity. Particularly in labour, age discrimination is justified by companies through the objective nature of their employment policies and is permitted by the general character of juridical norms in this domain. In their turn, those discriminated often chose not to file a complaint regarding the discriminatory treatment, as they often appreciate that proving that such discriminatory acts have taken place is hard to prove.

We consider that our proposal towards the adoption of a special law having as purpose to eliminate all types of age discrimination, which should contain detailed provisions regarding regulated social relationships, specifying concrete acts of discrimination and stipulating sanctions for each and

⁹ According to the Age Discrimination in Employment Act (ADEA), an applicant shall not be required to include in their CV information regarding their date of birth or their civil status. Furthermore, relevant professional experience is limited to the last 10 years of work. Any practice that interferes with these norms is considered discriminatory. We identify three situations in which noncompliance with the non-discrimination obligation on age and civil status criteria may be invoked in the American legal text. What draws attention and would be useful to implement in the Romanian law system is the fact that acts of discrimination are specifically stipulated, so that the application of norms does not leave room for misjudgement, thus the 'restoration of the discriminated rights' is guaranteed.

¹⁰ The Netherlands have adopted in 2004 a special legislative act that prohibits discrimination on age criteria –Age Discrimination Act. Most of the Member States have transposed the Directive into the national laws in similar terms through normative acts including all grounds of discrimination.

¹¹ In the French law system, discrimination is represented by "every distinction between natural persons based on their origins, sex, family circumstances, pregnancy, physical appearance, vulnerability caused by their financial circumstances, known or unknown by the author of the act of discrimination, family name, residence, medical condition, disability, genetic features, habits or manners, sexual orientation or identity, age, political opinions, trade union activity, affiliation, real or suspected, to a certain ethnicity, nation, race or religion. Moreover, French law prohibits discrimination between legal persons based on the aforementioned criteria (leaving aside pregnancy), with the addition of employee affiliation of these legal persons." The French legislator had chosen an extensive transposition of discrimination concept comparing with our legislator.

¹² In Ireland, according to law, when employment requires training before retiring age, we find ourselves before a justification of difference of treatment, which is why setting a maximum employment age is permitted in this kind of situations.

¹³ In Germany, the law provides that the victims of discrimination must file a complaint in a period of maximum two month from the moment the act of discrimination took place, not a year, such as is provided by the legislation of other Member States.

¹⁴ In Austria, the common penalty is an administrative fine of maximum 360 euros; furthermore the victim can require compensation in some situations. In France, the amount to which the victim can request can rise to as much as 45.000 euros and even surpass this sum if the act of discrimination has been carried out under aggravating circumstances.

¹⁵ According to National Statistical Institute, In Romania, in 2017, second semester, the employment rate of people between 20-64 years was 70,5%, of which 65,5% were seniors and 35, 5% were young people. An important part of active human resources, using the their right to free movement within European Union, have left our country in favor of those European countries where they have found jobs. The depopulation phenomenon of Romania is increasing and the prevention of work-force emigration has to be to be a priority for our society.

¹⁶ In October 1999, in Netherlands, there was an international meeting of intergenerational specialists where it was launched The International Consortium for Intergenerational Programmes (ICIP), an international organization, registered under Dutch law, having as purpose to promote intergenerational projects, strategies and public policy from a global perspective, and to improve the relationships between generation, especially between younger and seniors people, through intergenerational practices and activities.

every one of these acts may answer to a social necessity. Such a normative act would support all citizens, regardless of age, helping them build a career, would be beneficial to family relationships due to the fact that the two discriminated categories would have financial stability, not having to consume the resources

of active family members anymore. The transposition of this idea into practice would contribute to the improvement of relationships profile between young people and seniors, on one hand, and society, on the other hand.

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