

## Report on ageism and age discrimination in Austria

A joint input from the Austrian Ombud of Equal Treatment, the Styrian Anti-Discrimination Office and Marie Skłodowska-Curie fellow Stefan Hopf

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The Austrian Ombud for Equal Treatment (OET) is the main public institution for the enforcement of the right to equal treatment and equality and for the protection against discrimination. In the fulfilment of this activity, the Ombud for Equal Treatment is autonomous and independent. The basis of its mandate is the Austrian Equal Treatment Act. The central task is to counsel and support people who have experienced discrimination in enforcing their right to equal treatment. In addition, the Ombud for Equal Treatment actively distributes information and contributes to awareness-raising on the topics of discrimination, equal treatment and equality, and takes initiative in working towards the improvement of legal standards and of the social situation with regard to equal treatment and protection against discrimination.

The Antidiscrimination Office Styria (AOS) is a Helping Hands Graz project financed by the Styrian government and the city of Graz. It is a central contact, clearing, counselling and monitoring office that is available as a low-threshold initial contact point to all people living in Styria, institutions and organizations active in anti-discrimination work and responsible persons from politics and administration. Its main activity is to counsel and support people who have experienced discrimination by providing an opportunity to lodge their complaints, regardless of the grounds for the discrimination and the legal framework. In addition, the office acts as a regional monitoring body, supports scientific work on the topic of anti-discrimination and contributes to raising awareness of discrimination among the population.

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*Disclaimer:*

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The present information reflects the views of the Austrian Ombud for Equal Treatment, the Anti-Discrimination Office Styria and Stefan Hopf only. They do not in any way represent the views of the Austrian federal or Styrian provincial government, AGE Platform Europe or the Irish Centre for Social Gerontology, NUIG.

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1. What forms does age discrimination affecting older persons take and which ones are the most prevalent? Where available, please provide concrete examples and collected data including in employment, education, social protection, and health, financial and social services.

Ageism and age discrimination against older persons are global phenomena<sup>1</sup> and can take on many different forms. Both can manifest themselves at the individual level and within different social fields and sectors. In addition, ageism and the social discrimination of older age and older people as a group within society can be expressed in the form of certain normative expectations or value judgements in relation to different stages of life or the devaluation of older people's contribution to society.

### 1.1. Ageism and age discrimination at the individual level

At the individual level age discrimination or ageism can manifest via so called 'elderspeak', which consists in over-simplified speech, exaggerated high pitches, baby talk, speaking very slowly, or an overall low conversation quality<sup>2</sup>. Beside the use of ageist language<sup>3</sup>, ageism and age discrimination can also manifest in concrete actions. A typical example of this is when relatives take tasks out of the hands of an older family member without asking because the person is supposedly "too old" to do it themselves<sup>4</sup>. Another form of ageism found at the individual level is so called "self-ageism". This describes the internalisation of negative age stereotypes and their influence on one's own thoughts and actions<sup>5</sup>. Hence, on the individual level external (negative) attributions as well as self-applied perceptions of being "too old" have an impact on the agency and capacity of older persons. One well studied example is that the fear of being attributed negative stereotypes (stereotype threat) has an impact on the perception and use of digital technology among older people<sup>6</sup>. Likewise, negative external and internal stereotypes substantiate reservations against participation in e.g. sport<sup>7</sup> or cultural activities<sup>8</sup>. Furthermore, such stereotypes and prejudices can undermine highly sensitive

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<sup>1</sup> Swift, Abrams, and Lamont, 'Ageism Around the World'.

<sup>2</sup> Paula Couto de and Rothermund, *Vorurteile im Arbeitsleben*.

<sup>3</sup> Gendron et al., 'The Language of Ageism'.

<sup>4</sup> Ojala, Pietilä, and Nikander, 'Immune to Ageism?'

<sup>5</sup> Lev, Wurm, and Ayalon, 'Origins of Ageism at the Individual Level'.

<sup>6</sup> Mariano et al., 'Too Old for Technology?'

<sup>7</sup> Grant, "'You're Never Too Old'".

<sup>8</sup> Gallistl, 'The Emergence of the Creative Ager – On Subject Cultures of Late-Life Creativity'.

situations like doctor-patient conversations. Here older patients are often passed over as the actual contact person and the consultation is conducted with the (younger) accompanying third party<sup>9</sup>.

## 1.2. Ageism and age discrimination across different areas of society

Ageism and age discrimination can be found across different areas of society, like the labour market, the health care sector, in access to services and goods, in education, housing etc. Here ageism and age discrimination often manifest themselves directly in the form of formal and informal age limits or indirectly because policies or legal regulations, despite their neutral appearance, predominantly affect and disadvantage older people. Beside the labour market, where ageism and age discrimination are comparatively well researched, three areas that are especially worth highlighting are the financial service sector, the health care sector and the (individual/public) transportation sector.

### Financial sector

With regards to financial goods and services ageism and age discrimination can appear in all matters, from saving and managing financial assets to opening or closing bank accounts and applying for loans, mortgages, bank or credit cards<sup>10</sup>. Another main topic in relation to ageism and financial services is the financial exploitation of older adults through fraud (financial abuse) or unsuited sales practices<sup>11</sup>.

Furthermore, older adults are frequently identified as “financially vulnerable”, “vulnerable” or “disadvantaged consumers” and stated to be among the groups affected by “financial exclusion”<sup>12</sup>, which is closely linked to social exclusion and the negative effects that come with it<sup>13</sup>. At least in those areas where such exclusion is based on age limits, age discrimination can be assumed.

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<sup>9</sup> Greene et al., ‘The Effects of the Presence of a Third Person on the Physician-Older Patient Medical Interview’.

<sup>10</sup> Setzfand and Watson, ‘Passive Ageism and Its Effect on Older Adults’ Finances.’

<sup>11</sup> Wood and Lichtenberg, ‘Financial Capacity and Financial Exploitation of Older Adults’.

<sup>12</sup> Clifton, Fernández-Gutiérrez, and García-Olalla, ‘Including Vulnerable Groups in Financial Services’; Lachs and Han, ‘Age-Associated Financial Vulnerability’; Oumlil and Williams, ‘Financial Services and the Elderly Poor’; Wood and Lichtenberg, ‘Financial Capacity and Financial Exploitation of Older Adults’.

<sup>13</sup> Carbo, Gardener, and Molyneux, ‘Financial Exclusion in Europe’.

Therefore, especially in the credit and insurance business, where actuarial risk assessment is mostly based on chronological age limits,<sup>14</sup> age discrimination is a recurrent problem<sup>15</sup>.

Yet, studies on experienced ageism and age discrimination in the financial service sector are rare. In the U.S. the Elder Investment Fraud and Exploitation Survey 2010 showed that 20% of the 590 surveyed older adults have experienced some form of financial exploitation, including inappropriate investment or unreasonable high fees<sup>16</sup>. In Germany, 5% of the 1,573 members surveyed by the Bundesverband der Seniorenorganisationen (BAGSO) in 2005 reported that their bank had refused them benefits or that they had experienced negative changes due to their age<sup>17</sup>. In 2011 the European Network of Equality Bodies (Equinet) asked its members about their work on age discrimination. The majority of the equality bodies reported that besides discrimination in the field of employment, complaints about age discrimination mostly concerned the access to insurances and banking services<sup>18</sup>.

#### Health care sector

A substantial body of research has addressed age discrimination and ageism in the health care sector and increasingly also structural issues, in particular the rationing of health services, are being researched<sup>19</sup>. Here, studies from Austria and Germany for example show that less resources are spent on health care for older people and that health care services are informally and covertly rationed, i.e. medical services and treatments are withheld despite need<sup>20</sup>.

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<sup>14</sup> CIVIC Consulting, 'Study on the Use of Age, Disability, Sex, Religion or Belief, Racial or Ethnic Origin and Sexual Orientation in Financial Services, in Particular in the Insurance and Banking Sectors. Final Report. Part I: Main Report'.

<sup>15</sup> Hejny, 'Age Discrimination in Financial Services: The United Kingdom Case'; Michael, *Gleiches Recht der Älteren auf gesellschaftliche Teilhabe*.

<sup>16</sup> Wood and Lichtenberg, 'Financial Capacity and Financial Exploitation of Older Adults'.

<sup>17</sup> Keck, 'Ältere Als Bankkunden'.

<sup>18</sup> Equinet, *Tackling Ageism and Discrimination*.

<sup>19</sup> Brockmann, 'Why Is Less Money Spent on Health Care for the Elderly than for the Rest of the Population?'; Dey and Fraser, 'Age-Based Rationing in the Allocation of Health Care'; Esslinger et al., 'Einstellungen zur altersbedingten Rationierung von Gesundheitsleistungen'; Hoppe, '„Die heimliche Rationierung muss endlich aufhören“'; Katvan et al., 'Age Limitation for Organ Transplantation'; Otten, Schreier, and Diederich, 'Explorationsstudien zur Priorisierung medizinischer Leistungen: Kriterien und Präferenzen von Vertreter/Innen der Krankenkassen'.

<sup>20</sup> Brockmann, 'Why Is Less Money Spent on Health Care for the Elderly than for the Rest of the Population?'; Ulla and Krugmann, 'Rationierung: Realität in der Versorgung älterer Menschen?'

Another structural form of age discrimination in the health care sector is the exclusion of older people or certain sub-groups of the older population from clinical trials, including those investigating diseases and treatments that are common to older age <sup>21</sup>. In many clinical trials participants are usually younger than 75, have only minimal comorbidity, are cognitively fit, take few medications, and are independent in activities of daily living <sup>22</sup>. Given that the opposite "patient type" (who unfortunately suffers from several diseases, has limited physical and cognitive abilities and takes several medicines) tends to challenge and predominate in geriatric practice, this bias is highly problematic.

#### Driving and transportation

In terms of fitness to drive and road safety, older drivers are often portrayed as less capable and said to pose a higher risk. However, the evidence for this is far from being unequivocal <sup>23</sup>, also because the alleged higher accident involvement risk of older drivers to some degree stems from the so called "short distance" or "low mileage" bias<sup>24</sup>. Research accounting for this low mileage bias has repeatedly shown that older drivers do not have a higher accident risk compared to other age groups<sup>25</sup>.

Nevertheless, older drivers are confronted with negative stereotypes. They are perceived as dangerous and unsafe drivers, who are affected by cognitive deficits and by perceptual and physical

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<sup>21</sup> Bourgeois et al., 'Exclusion of Elderly People from Randomized Clinical Trials of Drugs for Ischemic Heart Disease'; Cherubini et al., 'Fighting Against Age Discrimination in Clinical Trials'; Godlovitch, 'Age Discrimination in Trials and Treatment'; Hadbavna and O'Neill, 'Ageism in Interventional Stroke Studies'; McMurdo, 'Clinical Research Must Include More Older People'.

<sup>22</sup> Bourgeois et al., 'Exclusion of Elderly People from Randomized Clinical Trials of Drugs for Ischemic Heart Disease'.

<sup>23</sup> Albert et al., 'The Challenge of Safe Driving among Elderly Drivers'.

<sup>24</sup> This bias points out the non-linearity between miles driven and car crashes, because occasional drivers who only have a small yearly mileage show, independently of age, higher accident rates than frequent drivers who cover a high annual mileage. This non-linearity results from the different driving patterns of "frequent drivers" and "occasional drivers". While frequent drivers accumulate the majority of their miles on the freeway, where the accident risk is comparatively low, occasional drivers drive mostly for short distances in more densely trafficked areas Janke, 'Accidents, Mileage, and the Exaggeration of Risk', which have been found to be most risky roads for all age groups Keall and Frith, 'Older Driver Crash Rates in Relation to Type and Quantity of Travel'.

<sup>25</sup> Hakamies-Blomqvist, Raitanen, and O'Neill, 'Driver Ageing Does Not Cause Higher Accident Rates per Km'; Langford and Koppel, 'The Case for and against Mandatory Age-Based Assessment of Older Drivers'; Langford et al., 'A RE-ASSESSMENT OF OLDER DRIVERS AS A ROAD SAFETY RISK'; Langford, Methorst, and Hakamies-Blomqvist, 'Older Drivers Do Not Have a High Crash Risk—A Replication of Low Mileage Bias'.

decline and consequently pose an increased risk in traffic <sup>26</sup>. Such stereotypes towards older drivers can also be (re-)enforced by the media <sup>27</sup>.

Negative stereotypes may also manifest themselves in driving licensing and car insurance policies. Licensing policies and examination procedures vary considerably between European countries and many stipulate age-based mandatory assessment programs, which evaluate the fitness to drive. Yet these tests have failed to demonstrate to improve road safety <sup>28</sup>. Conversely, the negative effects of these policies are well known. Certain forms of renewal requirements, e.g. mental testing, have been found to reduce driving and increase driving cessation <sup>29</sup>, which is related to a decrease in quality of life and independence, an increase in depression and a loss of self-confidence <sup>30</sup>. Furthermore, driving cessation has negative effects on employment, as well as on formal and informal volunteering <sup>31</sup>. In addition, driving test themselves can cause anxiety and are seen as a form of age discrimination <sup>32</sup>.

Discriminatory and ageist practices in public or comparable transport services are rarely direct <sup>33</sup>, but subtle and linked to social exclusion. This relation between access to transport services and social exclusion is evident <sup>34</sup> and older people, especially those living in rural areas, are among the risk groups<sup>35</sup>. Consequently, we argue that present public transport models often do not adequately consider the transportation needs of older adults, and therefore increase or at least perpetuate their risk of social exclusion <sup>36</sup>.

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<sup>26</sup> Joannis, Gagnon, and Voloaca, 'Overly Cautious and Dangerous'.

<sup>27</sup> Martin, Balding, and O'Neill, 'Are the Media Running Elderly Drivers off the Road?'

<sup>28</sup> Langford and Koppel, 'The Case for and against Mandatory Age-Based Assessment of Older Drivers'; Siren and Haustein, 'Driving Licences and Medical Screening in Old Age'.

<sup>29</sup> Kulikov, 'The Social and Policy Predictors of Driving Mobility Among Older Adults'.

<sup>30</sup> Adler and Rottunda, 'Older Adults' Perspectives on Driving Cessation'; Musselwhite and Shergold, 'Examining the Process of Driving Cessation in Later Life'; Oxley and Whelan, 'It Cannot Be All about Safety'.

<sup>31</sup> Curl et al., 'Giving Up the Keys'.

<sup>32</sup> Davey, 'Older People and Transport'.

<sup>33</sup> Metz, 'Transport Policy for an Ageing Population'.

<sup>34</sup> Lucas, 'Transport and Social Exclusion'; Schwanen et al., 'Rethinking the Links between Social Exclusion and Transport Disadvantage through the Lens of Social Capital'.

<sup>35</sup> Sammer et al., 'Identification of Mobility-Impaired Persons and Analysis of Their Travel Behavior and Needs'; Shergold and Parkhurst, 'Transport-Related Social Exclusion amongst Older People in Rural Southwest England and Wales'.

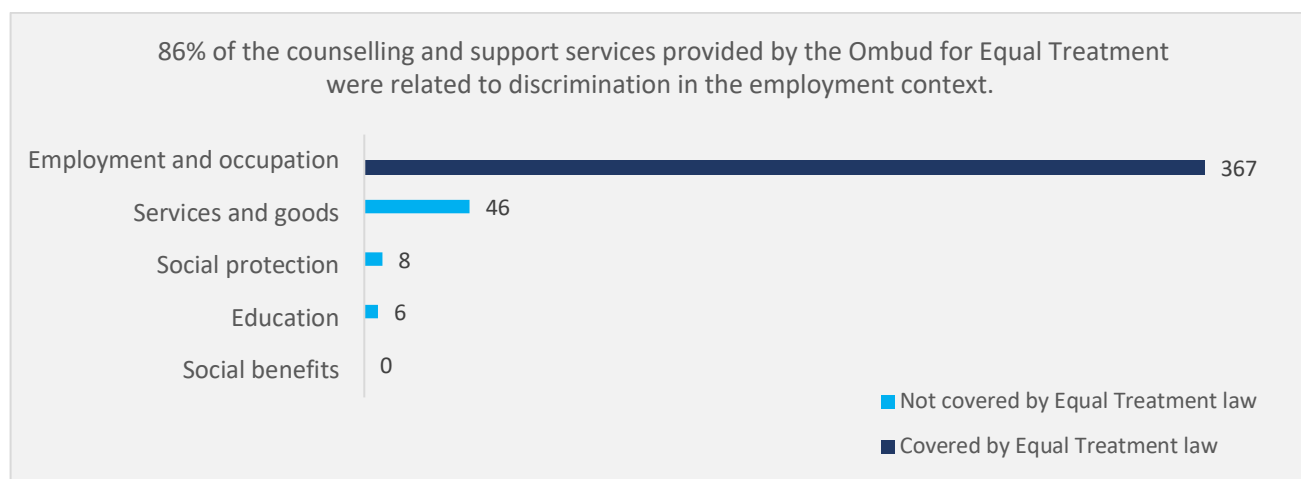
<sup>36</sup> Ryan and Wretstrand, 'What's Mode Got to Do with it?'

2. Please provide information and data collected about the causes and manifestations of ageism in society, both for younger and older generations, and how it translates into discriminatory practices.

National data on ageism and age discrimination is limited in Austria. A survey conducted by the research institute SORA<sup>37</sup> on discrimination in Austria among 2,317 respondents from 2019, shows that 14% of the participants over 50 years report that they have experienced discrimination because of their age. Respondents over 60 were particularly affected by discrimination in the health sector. A critical aspect of the study is that it had an upper age limit of 65 years for participants. In the Eurobarometer 2015 survey, 7% of the Austrian respondents indicated to have felt personally discriminated because they are over 55 years old.

Case data from the Austrian Ombud for Equal Treatment shows that age discrimination is widespread in the employment domain. For the period 2018 to 2019 427 requests related to age discrimination were documented. 86% of these requests concerned employment and occupation, 11% the access to and supply of goods and services. Only six cases concerned education - this corresponds to 1%. None of the requests concerned social benefits (see Table 1).

Table 1. Age discrimination cases reported to the OET 2018-2019

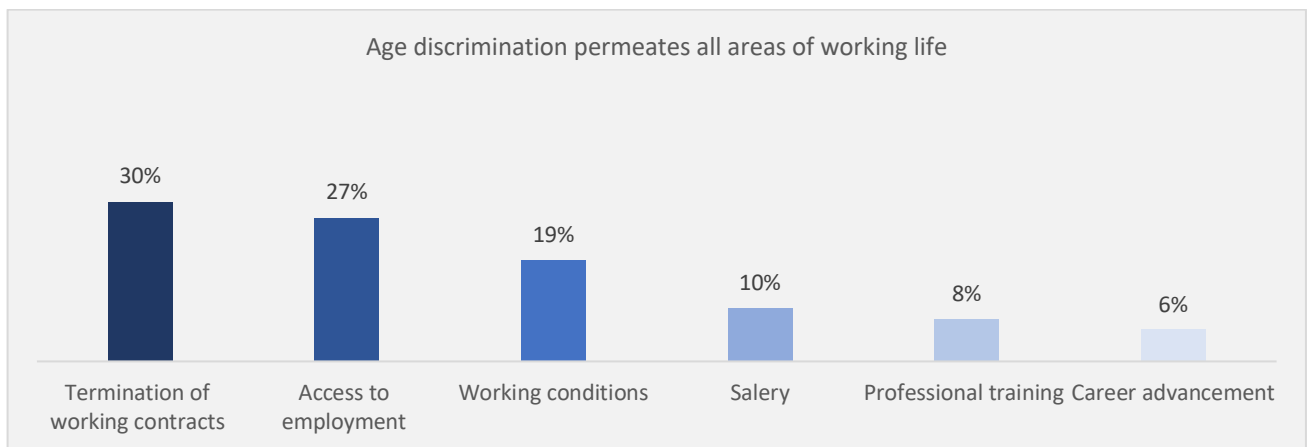


<sup>37</sup> Schönherr et al., 'Diskriminierungserfahrungen in Österreich.'



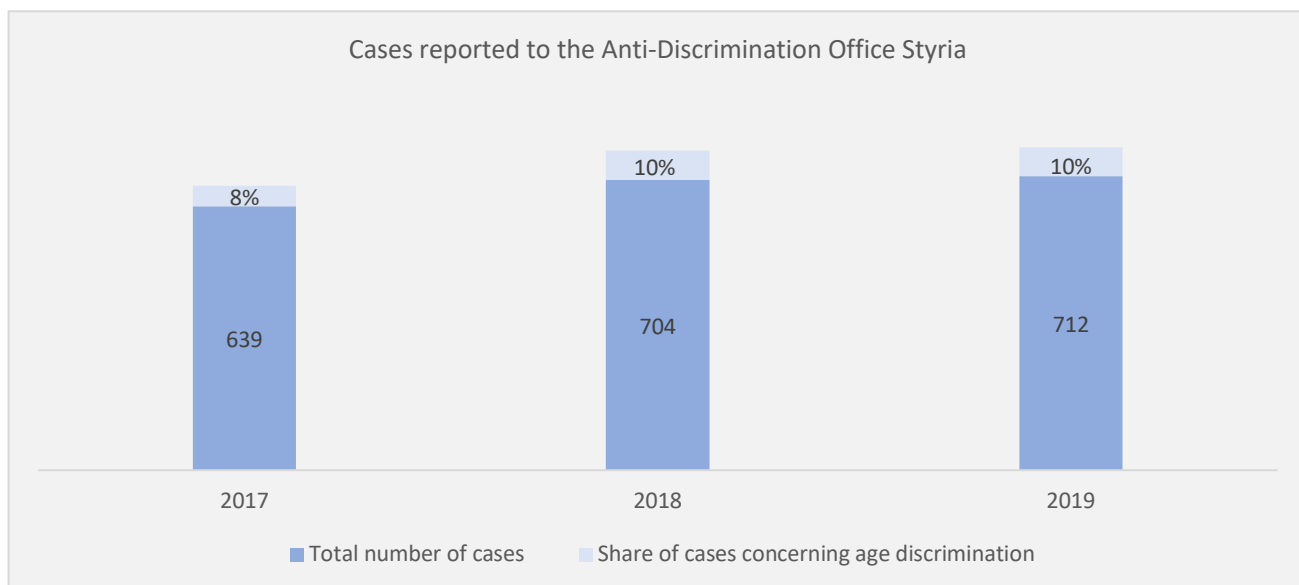
With regard to age-discrimination in employment and occupation age discrimination permeates all areas of working life (see Table 2). The majority of cases reported to the Ombud for Equal Treatment concerned the termination of working contracts (30%) and the access to employment (27%). Numerous clients of the Ombud for Equal Treatment experienced changes with regard to their working conditions (19%). The remaining reports were related to salary issues (10%), to professional training (8%) or career advancement (6%).

*Table 2 Share of reported age discrimination cases to the OET by different areas*



Discrimination or unfavourable treatment on the ground of age with regard to employment and occupation is closely linked to prejudice and stereotypes. In general, the idea that older persons are less flexible and less innovative than younger people is still widespread, also among employers. Instead of managers and employers recognising age diversity as an opportunity for the company or organisation, these persistent stereotypes and prejudices continue to perpetuate discrimination, especially against older workers.

Table 3 Case documentation Anti-discrimination Office Styria 2017-2019



Concerning unequal treatment and discrimination on the ground of age beyond the field of employment and occupation, the Ombud for Equal Treatment documented mainly cases in which older persons experienced difficulties with regard to insurances, the lending sector and other financial dealings. This is also supported by documentation of the Anti-Discrimination Office of Styria. The following two cases are exemplary:

*Mr. A. is 70 years old and has a pension of € 5,000 His savings add up to over € 20,000 - he does not need an overdraft facility, but nevertheless had one until 2020, amounting to € 8,000 The overdrafts on the bank account were suddenly reset from € 8,000 to € 0. Following his request, the bank told him that it was not responsible for this change, because it was done automatically. After an intervention by the Anti-Discrimination Office of Styria, the bank explained that this had happened by mistake.*

*Ms. B. is 49 years old, a teacher, translator and wanted to buy a flat for herself. After she considered a property, the estate agent informed her that there was the possibility of obtaining a building loan through debt financing. She contacted the recommended bank and submitted all the necessary documents. Although the bank initially agreed to the financing, Ms. B was informed several months later that, because she would be retiring in 16 years, she would not be able to get the loan.*

In addition to the financial sector, there is also evidence of age discrimination in the health care sector in Austria. On the basis of a standardised survey from 2008 geriatricians in Austria were asked about their attitudes and experiences with regard to the allocation of medical services for older patients. The results show that such age-related rationing seems to exist and is well known among professionals.

3. From an intersectional perspective, are there specific factors that aggravate ageism and age discrimination and how? Please provide concrete examples and collected data where available

Results of the 2019 SORA<sup>38</sup> study show that older people (50+) are more likely to cite more than one characteristic as a reason for experiencing discrimination compared to other age groups. The most common combinations of intersectional discrimination are discrimination based on age and gender and discrimination based on age and social status. The fact that age and gender represent a typical intersectional discrimination profile is also shown by the documentation of the Ombud for Equal Treatment. In the period 2018 to 2019, the Ombud for Equal Treatment received 20 requests due to intersectional discrimination. All of these were related to employment and occupation and concerned cases where the combination of female gender and age resulted in unequal treatment, like the example below illustrates.

*Mrs. C reported that when she was hired, the employer informed her that they do not want women older than 35 working for the enterprise. Therefore, women's' working contracts are terminated then.*

4. What international, regional and national legal instruments are in place to combat ageism and age discrimination?

#### Europe

- Article 23 of the *European Social Charter*, aims to ensure the effective exercise of the right of older persons to social protection, to enable older persons to remain full members of

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<sup>38</sup> Schönherr et al.

society for as long as possible, to choose their life-style freely and to live independently in their familiar surroundings for as long as they wish and are able to, to guarantee older persons living in care institutions appropriate support while respecting their privacy and to ensure their participation in decisions concerning living conditions in care institutions.

#### European Union

- Article 21 section 1 of the *Charter of Fundamental Rights of the European Union* prohibits discrimination based on any ground such as gender, 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.
- Article 25 of the *Charter of Fundamental Rights of the European Union* describes the recognition of the rights of older persons. This article explicitly states that the European Union recognises and respects the rights of older persons to live a life of dignity and independence and to participate in social and cultural life.
- *EU Council Directive 2000/78/EC* established a general framework for equal treatment in employment and occupation also in relation to age. According to article 1 the aim of the directive is to create a general framework for combating discrimination with regard to employment and occupation on the grounds of religion or belief, disability, age or sexual orientation, in order to give effect in the Member States to the principle of equal treatment.

#### Austria

- Article 7 of the Austrian Federal Constitution<sup>39</sup>, the so-called equality principle (*Gleichbehandlungssatz*), explicitly prohibits discrimination on the basis of some characteristics, such as gender or disability. However, age is not specifically listed<sup>40</sup>.

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<sup>39</sup> Art 7 Bundersverfassungsgesetz, BGBl I 24/2020.

<sup>40</sup> Pöschl, 'Altersdiskriminierung und Verfassung'.

- The *EU Council Directive 2000/78/EC* was implemented into national Austrian law, leading to changes in the Equal Treatment Act (Gleichbehandlungsgesetz<sup>41</sup>), the Austrian Federal Equal Treatment Act (Bundes-Gleichbehandlungsgesetz<sup>42</sup>) and anti-discrimination and equal treatment laws of the nine Austrian provinces<sup>43</sup>.

5. Please also note any action plans or policies to raise awareness and combat ageism (including anti-ageism in school curricula) and to move toward a more age-friendly and inclusive society.

- In Austria the Federal Plan for Seniors (FPS) "Altern und Zukunft - Bundesplan für Senioren und Senioren"<sup>44</sup> was presented in 2012 by the Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection in cooperation with the Austrian Senior Citizens Council<sup>45</sup>. It covers a broad range of topics including for example the economic and labour market situation, health and care issues, volunteering, political and social participation, education, intergenerational relations, housing etc. The central aim of the plan is to establish, maintain or improve the quality of life of all older people or individual groups among them. One chapter is explicitly devoted to age discrimination. Moreover, aspects related to discrimination, like stereotypes and prejudices or social exclusion, are also tackled in other sections.

In addition, there are corresponding activities at the regional level. The following activities of the Anti-discrimination Office Styria are illustrative of this:

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<sup>41</sup> Bundesgesetz über die Gleichbehandlung, BGBl. I 16/2020.

<sup>42</sup> Bundesgesetz über die Gleichbehandlung im Bereich des Bundes, BGBl. I 153/2020.

<sup>43</sup> Viennese Anti-Discrimination Act, Wr LGBl 35/2004; Burgenlandian Anti-Discrimination Act, Bgl LGBl 84/2005; Lower Austrian Anti-Discrimination Act, N. LGBl 24/2017; Upper Austrian Anti-Discrimination Act, O. LGBl 50/2005; Salzburgian Equal Treatment Act, Slzb LGBl 31/2006; Styrian Equal Treatment Act, Stmk LGBl 66/2004; Carinthian Anti-Discrimination Act, Kntn LGBl 63/2004; Tyrolian Anti-Discrimination Act, T LGBl 25/2005; Vorarlbergian Anti-Discrimination Act, VlbG LGBl 17/2005.

<sup>44</sup> Ageing and Future - Federal Plan for Seniors.

<sup>45</sup> The Austrian Seniors' Council is a legally appointed umbrella organisation of seniors' organisations to represent, promote and safeguard the interests of Austrian seniors. In matters that may affect the interests of Austrian senior citizens, the Austrian Senior Citizens' Council is equivalent to the statutory representations of interests of employees, entrepreneurs and farmers.

- 2015: Open letter from the Anti-Discrimination Office Styria to the federal government of Austria regarding the amendment of the Equal treatment act, because age discrimination is not protected by law in the service sector at the national level<sup>46</sup>.
- 2018: Yearly report with focus on ageism and age discrimination in Austria.<sup>47</sup>

6. At the national level, please outline the legal protections available against age discrimination and indicate whether age is explicitly recognised as a ground for discrimination? If so, are there specific areas for which equality is explicitly guaranteed? Are there any areas where differential treatment based on older age is explicitly justified?

#### Equal Treatment Act Part II<sup>48</sup>

Article 16 of the Equal Treatment Act explicitly prohibits age as a ground for discrimination in relation to employment and occupation. In other areas the Equal Treatment Act does not recognize age as ground of discrimination. With regard to protection against age discrimination in employment and occupation the Equal Treatment Act stipulates in the form of an exception clause in Section 20 (3) to (5) the conditions upon which a certain conduct or measure does not constitute discrimination within the scope of the Act. Furthermore Article 20 section (3) states that differences of treatment on grounds of age shall not constitute discrimination, if they are objectively and reasonably justified by a legitimate aim, including legitimate employment policies, labour market and vocational training objectives, and if the means of achieving the aim are appropriate and necessary.

#### Federal Equal Treatment Act<sup>49</sup>

The Federal Equal Treatment Act prohibits age discrimination for federal employees, clients of federal authorities and university students.

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<sup>46</sup> <https://www.antidiskriminierungsstelle.steiermark.at/cms/beitrag/12318494/122545711>.

<sup>47</sup> <https://www.antidiskriminierungsstelle.steiermark.at/cms/beitrag/12755035/154158206>.

<sup>48</sup> BGBl. I 16/2020.

<sup>49</sup> BGBl. I 16/2020.

### Anti-discrimination laws of the provinces

The equality and anti-discrimination laws in the nine provinces of Austria (Bundesländer) prohibit age discrimination also beyond the field of employment and occupation, in relation to accessing services and goods, social protection including social security and healthcare, social advantages and education.

However, protection at the federal level is extensively limited by the regulation-competence distribution between the federal government and the nine provinces. Hence, legal protection exists only for matters that are to be regulated by provincial law (e.g. certain forms of social security, protection of minors, kindergartens, after-school care, cultural events, nursing homes, etc.). A special case is the provision of the Styrian Equal Treatment Act. Here, equal treatment on the ground of age is only stipulated for employees of the province of Styria, its municipalities, teachers at mandatory schools and agricultural and forestry schools, clients of the province of Styria and its municipal authorities.

7. Do the existing legal protections against age discrimination allow for claims based on intersectional discrimination, that is discrimination which is based on the intersection of age and other characteristics such as race, ethnicity, gender, disability, sexual orientation or other status?

According to a definition of the Council of Europe, the term intersectional discrimination describes a situation in which two or more grounds “operate simultaneously and interact in an inseparable manner, producing distinct and specific forms of discrimination.”<sup>50</sup>

In Austria, the Equal Treatment Act does not include a definition or a provision on intersectional discrimination. Therefore, claims based on intersectional discrimination<sup>51</sup> are currently not possible and there is no legislation taking into account intersectional discrimination. Article 12 section 13, article 26 section 12 and article 51 section 10 of the Equal Treatment Act solely state the necessity to take into consideration multiple discrimination with regard to claims for damages and a compensation for the personal disadvantage suffered.

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<sup>50</sup> <https://www.coe.int/en/web/gender-matters/intersectionality-and-multiple-discrimination>.

<sup>51</sup> In Austria intersectional discrimination does not describe instances where a person experiences discrimination because of two or more separate grounds. This is called “multiple discrimination”.

8. What legal and other measures have been taken to address and protect from racism, sexism, ableism or other similar forms of discrimination that might be useful models for addressing ageism?

The Austrian Ombud for Equal Treatment and the Styrian Anti-Discrimination Agency emphasise the importance and promote the so-called *levelling-up*. The term levelling-up describes the extension of the existing protection against discrimination beyond the field of employment and occupation, as it currently exists in Austria at national level only for the grounds of gender and ethnic origin, to all those grounds of discrimination that are already protected within the framework of employment and occupation in the Equal Treatment Act.

9. Please indicate if there are institutional or complaints mechanism to address inequalities or grievances related to ageism and age discrimination. If so, please provide statistics on cases and types of cases received?

Under the Equal Treatment Act, affected persons can take their case to court. A second possibility is to bring the case before the Equal Treatment Commission. Procedures in front of the Commission for Equal Treatment are free of charge. Appeals to the Equal Treatment Commission lead to a suspension of the time limits for filing complaints to court. The decisions of the Equal Treatment Commission are not legally binding, but subsequent court decisions deviating from these must be adequately justified by the respective court.



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