

Age: a dubious criterion in legislation

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ABSTRACT

Polymakers like to make use of age criteria, because they provide a transparent and seemingly objective standard. In reality, however, age limits are not as innocent as they appear: distinctions on the basis of age are often irrelevant and the actual age thresholds tend to be arbitrary. Age limits can also be criticised from a theoretical perspective: how can the heterogeneity of today's older people be reconciled with uniform age-defined classes? In response to a *European Union* Directive of 2000, Belgium implemented strict anti-discrimination legislation. This provides all the more reason to ascertain the prevalence and justification of the use of age criteria in legislation. Belgium is a federal state with three communities and three regions, and the scrutiny has been restricted to the Flemish community and region. All legislation has been screened for the use of 50 or more years as an age criterion, and all occurrences have been critically examined. The paper focuses on three fields of statutory regulation: early retirement, concessionary public transport fares, and the different care entitlements of people with disabilities and of older people. Evidence of age discrimination was found, although often in a form that benefits older people. The justification of the age criterion was often inadequate, so the adoption often appears no more than convenient standard practice. The paper concludes that policy makers should consider the systematic replacement of age thresholds by other criteria.

KEY WORDS – old age, legislation, age limits, age discrimination, retirement age.

Introduction

Western societies are becoming increasingly aware of ageism and age discrimination. Discrimination on the basis of age differs from gender and race discrimination in that it is frequently incorporated into legislation. While legislators usually find gender and race irrelevant, age is generally seen as an acceptable regulatory criterion and it plays a considerable role in the allocation of public goods and services. Statutory age limits have a long history and are geographically widespread (Eglit 1985). All countries belonging to the *Organisation for Economic Co-operation and Development*

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(OECD), for example, have a legal retirement age that determines the moment when retirement becomes a right – or sometimes a duty (Turner 2003). There are also quite a few age criteria that apply to children and young adults, *e.g.* the age limits for access to the educational system, for obtaining a driver's licence, for participating in elections and for holding certain political offices.

Yet age is by no means an innocent criterion; it gives rise to unjustified forms of discrimination. All *European Union* (EU) member states were required by the end of 2003 to have implemented two EU directives of 2000 that, among other things, banned discrimination on the grounds of age. As government legislation and directives should contain models of both good and customary practice, it is interesting to ascertain whether these instruments contain forms of (unjustified) age discrimination. To this end, we have identified the statutory age limits that apply to people aged 50 or more years in various Flemish statutory instruments (Flanders is the northern part of the federal state of Belgium, where Dutch is the official language).

Theoretical perspectives: an ageless society

The use of age criteria is called into question by several precepts of 'age-independency in the lifecourse' theoretical models. These argue that we should no longer accept the now prevailing norm of the *fixed* lifecourse, with sequential periods of education, paid work or family care, and retirement (the last often subdivided into an initial 'third-age' stage of leisure and a final stage of care-dependency), and should promote an alternative model of a *more flexible* lifecourse. In a flexible lifecourse, age is no longer an organising criterion, and alternative criteria influence participation in the various social domains (Smolenaars 1999). Neugarten (1982) argued that the notion of a pre-fabricated lifecourse had become obsolete, and advocated the notion of the 'age-irrelevant society'.

Age criteria for entitlements carry the risk of the unjust treatment of those who belong to a different age group. The inequalities in a society based on age are firmly contested in the so-called 'age stratification model'. Currently, social roles are determined by age cohorts, but recent changes in our lives have not been paralleled by appropriate revisions of social structures. Riley and Riley (1994, 2000) used the term 'structural lag' to indicate that social structures do not keep pace with changes in general living conditions, but also discerned the inverse phenomenon – 'people lag'. As they put it, 'if structural lag led to age integration in the past, in the future the flexibilities of age integration in turn may well

facilitate adaptation of both people and structures to the overarching world changes' (Riley and Riley 2000: 269). Flexible age criteria are seen as one condition for age integration (the second condition is age heterogeneity in participation or, at the individual level, increased opportunities to interact with others of different ages), which allows people access to structures such as the educational system and the labour market at all stages of their lives.

Kohli (2000: 279) argued that structural lag remains omnipresent, and that consequently age integration is low: 'age criteria are still highly inflexible, and structural age barriers remain important. Structures such as those of education, work, or leisure thus tend to be age homogeneous, that is, they do not offer individuals the opportunity to interact with others who differ in age'. Uhlenberg (2000) elucidated the ways in which the standard lifecourse is constructed by age barriers, and determines which activities people engage in at various ages. A more flexible approach to lifecourse organisation, whereby learning, work and leisure are engaged in throughout life, requires age integration through the removal or reduction of the age barriers that restrict access. Uhlenberg (2000) was convinced that a more age-integrated society would be beneficial, and thought that when individuals of various ages interacted and worked together (*i.e.* when there is more age heterogeneity), age stereotypes and prejudices would be reduced. Removing age barriers that limit the participation of older people in work and volunteer organisations could increase the contributions to societal welfare by older people. Age integration would not only help achieve 'productive ageing', but could also enhance the productive commitment of younger people. Moreover, reducing age barriers and increasing cross-age interactions may reduce the perception that government uses age unfairly in the redistribution of resources, and thereby reduces divisions and generational conflicts, resulting in a more civilised and inclusive society.

To the extent that age criteria discriminate against older people, they are also rejected by the political economy model that focuses on the inter-relationships between the economy, politics and ideology, and how these structure the systems that construct people's lives. Political economy theorists certainly do not blame older people for not coping with ageing, nor do they see age discrimination as a simple consequence of ageist ideology, but rather argue that age discrimination follows from the structural characteristics of the state and the economy, and from inequalities in the distribution and allocation of resources (McMullin and Marshall 2001). They argue that the age criterion for retirement segregates an entire population category into a passive state. In this neo-Marxist approach, many age distinctions are explained in terms of social class; for instance,

the political economy of old age scorns the idea of an obligation to retire and points out that people in executive jobs enjoy more opportunities to continue in paid-work. Compulsory early-retirement systems are more common for low-grade employees, and they enhance their dependency (Smolenaars 1999).

The benefits and drawbacks of age limits

The broad application of age limits should not be a surprise, for clearly they have certain advantages. Age as a criterion in policy-making is not objectionable *per se*: it can be an objective and easy-to-use criterion by which to promote legal security and equality. It can, after all, ensure that everyone of the same age is treated in the same manner, and used in this way, is a useful tool for distributing scarce resources (Westerveld 2005). Moreover, age limits avoid the use of expensive, psychologically-taxing, stigmatising and administratively-cumbrous procedures. They usually seek to protect weaker groups so that their abolition could prove more detrimental than beneficial (Haimé, Ling Ket On and Van Schelven 1999). In the case of the age limits that apply to children, the protective purpose is often clear. Likewise, a substantial proportion of the regulations targeted at older people were created to provide protection, the retirement age being a case in point, as its purpose is to eliminate the need for older people to work until they die. As Macnicol (2005: 301) remarked: ‘The controversial ideal of an “ageless” society has as its obverse the implication that the protective walls that have hitherto shielded older people, notably via state pension systems, should be demolished. If that happens, the achievement of an “ageless” society may not be in the best interests of older people’. One immediately obvious disadvantage, however, is that the legal retirement age marks the end of a working life for only a small proportion of employees, as the majority participate in early-retirement schemes. In other words, while age limits do provide a sense of legal security, for some their social relevance is questionable and they seem primarily to be applied for administrative convenience.

A further problem with age limits is that treating everyone of the same age in the same manner can be inappropriate. Age limits presuppose that age groups are homogeneous, which older people certainly are not. Indeed, senior citizens have exceptionally diverse interests, experiences, needs and desires, so that clearly their common age is an ineffective discriminating criterion. One example of the crude application of an age criterion is the Flemish authority’s recent introduction of an age limit of 75 years for members of church councils. The Belgian constitutional court subsequently cancelled that stipulation on the grounds that it was

discriminatory to assume that persons over 75 years-of-age did not have the required competencies, and that some people decided that they wished to join a church council only when of these older ages.

Many age limits are set arbitrarily. It is very hard to define an appropriate age threshold, so that in many cases the legislator falls back on a reference or customary age, commonly the state retirement age of 65 years. But ageing is a continuous process and no cut-off point distinguishes older people from the non-elderly. Imposing a threshold may create substantial differences in the treatment of two people whose ages differ little (even by only a day). Age limits are also rigid: many do not change in line with the social context. The most conspicuous example is the 'official' retirement age: the prescribed ages have remained unchanged for many decades (at least for men), while life expectancy has gradually increased. Since the state retirement age was introduced, average life expectancy has increased by 15 to 20 years. Social conditions can change so much that a rule created to provide protection may degenerate into a curtailment. Another disadvantage of age limits is that they contribute to the stereotyping of older people as poor, passive and care-dependent. Reduced charges for older people, for example, enhance the perception of older people as dependent and impoverished (Bonnet 2004; Haimé, Ling Ket On and Van Schelven 1999).

The evaluation of age limits in Flemish regulations

We were commissioned by the Equal Opportunities Department of the Ministry of the Flemish Community to examine statutory age limits relating to elderly people. The aims were to identify all age-related rules, to elucidate their rationale and meaning (*i.e.* to understand the rationale for both the age restriction and for setting it at a certain age), and to assess the legitimacy of each rule. The findings are based on a comprehensive screening of Flemish legislation and an extensive review of relevant social science, legal and policy literature. We also collected texts and documents from the public debate on age discrimination and on the applications and effects of age criteria.

Additional information was gathered from three focus groups with 22 members of local Senior Citizens' Boards. Representing the older people resident in a municipality, the boards advise the local authorities about any subject relevant for their age group. The 22 participants were over 60 years old and came from all five Flemish provinces, with their differing levels of urbanisation. Most were the chairpersons of the boards, which implies that most of them were very active participants of social

organisations, but only a few were women. We gauged these senior citizens' knowledge of and attitudes towards age limits.

Flemish legislation was screened in its entirety, and all provisions applying to people aged 50 or more years were identified. The reason for the low cut-off age was to include regulations applicable to older employees as well as retired people. No exclusions were set for type of regulation, so all 'statutory instruments' and regulations with the power of law were surveyed, including decrees proclaimed by parliament, the government and ministers, and all Flemish government circulars that explained and implemented legislation and administrative practices. As all the legislation is available on the Internet, it was easy to identify most age limits by searching documents for key terms. More particularly, we screened for thresholds at age 50, 55, 60, 65 and 70 years, and conducted searches using the terms 'old' and 'age'. Since the 1970s, Belgium has evolved into a federal state of regions and communities that possess a broad range of competences, but some important responsibilities remain federal matters, including social security and most labour and health-care issues. The screening did not extend to federal competences. For Flemish instruments, however, it was comprehensive until 1 December 2001 (Breda and Schoenmaekers 2002). Subsequent legislation and decrees have been monitored, and little has changed since.

Findings

Important examples of regulations involving age restrictions were found in the following policy fields: public transport, social housing, disability, employment, public health, civil service and government representation. The critical evaluation presented in this article is however restricted to three issues: early retirement for civil servants, free public transport for those aged 65 or more years, and the different care entitlements and provision for those aged under and over 65 years.

Age criteria for early retirement

As far as labour conditions are concerned, the Flemish authorities can only impose regulations on its own civil servants, for which quite extensive use has been made of age criteria. One example is the obligation on civil servants to retire at age 65 years. In practice, few are touched by this rule, given the widespread use of category-based early retirement, which can usually be taken at age 55 years. Both the EU and the OECD (2003) now firmly believe that Belgians exit the labour market at too young an age

(currently on average 58.3 years for men and 56.9 years for women). These and other institutions recommend that the official (and actual) retirement ages be raised, among other reasons to keep pensions affordable in the light of the age-structure projections. At present, even workers in their forties are steered towards early labour-market exit, as is apparent from their reduced participation in job training schemes (Herremans 2002). As Guillemard (2003) has demonstrated, there is a danger in countries like Belgium with many early exits from the labour market, that employees will be regarded as 'less productive' from early in the second half of their careers.

The Flemish Authority does not, however, set a good example in the management of the age of retirement of its own employees: many of the age criteria encourage early retirement. One notable exception in recent years has been a gradual change in the 'early-exit formulae' for education-sector staff, for which the retirement age has been increased from 55 to 58 years, and less generous early-retirement allowances introduced. At the same time, however, a new form of discrimination has been introduced, because nursery-school teachers may now retire at age 56 years. The reason is that enough are available, which suggests that the government bases its regulations on labour-market factors rather than on the preferences and circumstances of its older employees.

For some groups of public employees, the mandatory age has been lowered to 60 years. When government outsourced its information and communications technologies services, the staff were asked to leave at that age, as, more generally, are civil servants who have reached the age of 60 years and have been on sick leave for more than one year. In other words, a bureaucratic procedure based on an age limit has been used rather than a criterion of competence. Likewise, middle- and senior-grade staff of the public broadcasting company were required to retire at the age of 60 years under the terms of a thorough reorganisation. This measure obviously affected more work-willing people than a 65-years age limit, particularly as employees in more senior positions tend to prefer to work to a higher age, and see a low age limit as restricting their options and personal development (see Smolenaars 1999). Furthermore, it could be argued that, besides generating potentially negative personal consequences, such a statutory retirement age is detrimental to society, as it makes valuable experience and human capital unproductive (Uhlenberg 2000; Elchardus and Cohen 2003). In the event, some of those affected found new jobs, sometimes in similar work in the private sector. Others disputed the measure in court, but unsuccessfully, for the judgement was that the means were proportionate to the goal, *i.e.* to create a more efficient organisational structure that would be conducive to a creative and

innovative broadcasting service. As the consequences of the measure were mitigated by favourable financial compensation, the court felt that the means applied were reasonable.

Other stipulated age limits are intended to make gradual retirement possible. Most civil servants and teaching staff can work part-time from the age of 50 years until their retirement. In the Flemish ‘social profit’ or welfare-work sector, part-time work is encouraged by a system of premiums, which range from €124 to €372 gross per month. Some less intrusive measures also enable specific categories of government staff to work fewer hours, particularly additional leave days or a shorter working week, under a progressive age-related system. A phased transition to retirement may help extend professional careers (Elchardus and Cohen 2003). The age-based restriction of the right to work is not perceived in the same way by everyone, and people’s reactions are influenced by their perceptions of their current jobs, their occupation or profession, personal capacities, and their financial needs and prospects. Generally, however, although many retirement-age regulations have some flexibility, as for the sick, they do not tie well with lifecourse variations (Smolenaars 2005). Early labour-market exit, whether forced or otherwise, is contrary to the rhetoric or official discourse of the so-described ‘active welfare state’, meaning that the jobless have to be activated, and so offered incentives to work. Clearly, the regulations that govern early-exit schemes follow a similar logic to those for the retirement age. The decisive criterion is usually age, sometimes with additional conditions about length of service. While the EU Directive still sanctions retirement regulations based on age, although not in clear terms (Westerveld 2005: 347), the same does not hold for early retirement. As the ease with which the early-retirement age for teachers was changed clearly demonstrates, policy is not based on scientific criteria but on *ad hoc* management decisions.

On the whole, the focus-group participants found retirement before 60 years-of-age to be premature, but certainly did not reject the principle of compulsory retirement. One informant, who had been forced to leave a very good job by an early-exit scheme, described the process as discrimination. Many others shared his view, and referred to the great variability of people’s situations and capacities at a certain age. When the system of compulsory retirement was defended, four arguments came to the fore. The first was that older people should yield their job to a younger person, and this principle should be applicable to everyone – although known cases of general practitioners practising in their eighties produced ambivalence. Secondly, it was believed that older workers are less capable in certain jobs. It was accepted, for example, that nursery-school teacher vacancies are better filled by young people. A former teacher said she

disliked the idea of teaching children as young as her own grandchildren. Another advantage of a fixed retirement age is the financial guarantee of the pension benefit. Finally, it was accepted that an age barrier diminishes the social differences past that age, and some therefore argued that the gap between the minimum and maximum retirement ages should not be great.

Age criteria in eligibility for public-transport fares concessions

Few countries go as far as Flanders or Belgium to make local public transport free for older people, but the principle of reduced fares is widespread (for the Dutch case, see Smolenaars 2005: 41). The rationale behind the introduction of this measure is that older people have fewer means of travel than younger adults, and that good mobility is important for their social integration. As people grow older, they are less able to walk or cycle long distances, while driving also becomes harder. A substantial proportion of the current cohort of older people does not possess a driver's licence, especially among women. As women tend to outlive men, those without a licence are at risk of severely restricted mobility in old age. Other reasons for the high proportion of older people without cars are ill-health and low income (Mobiliteitscel 2001). The evidence from a transport survey in 1999 was that older people in Flanders made little use of public transport services, the services were of limited importance to their overall mobility, and that by and large their means of transport were similar to those of the middle aged (Figure 1). The younger generation made more use of different transport modes, with walking as important as the car for their mobility. The data suggest that to enhance the mobility of older people by facilitating their use of public transport, a spectacular change in the use of different transport modes will have to occur.

Flanders introduced a zero public-transport fare for those aged 65 or more years in 2000, and the measure was soon extended throughout Belgium. A similar age criterion is applied for massive rail-fare reductions, although the concessions apply only after 9 am and not during summer weekends: 'pensioners' are in effect encouraged to travel by train off-peak. These concessions exemplify the general rule, that age-based entitlements tend to be supply-oriented and are *not* designed to address the needs of senior citizens, in this case for mobility. Even after the introduction of the zero fare, public transport accounted for only a small share of their journeys. In 2001, the over-65s represented 10.4 per cent of public transport users, but constituted 17 per cent of the population (*De Lijn* 2002). Almost one-half of those aged 66–75 years never take a bus, although one-quarter travel by bus at least once a week – many fewer in the countryside

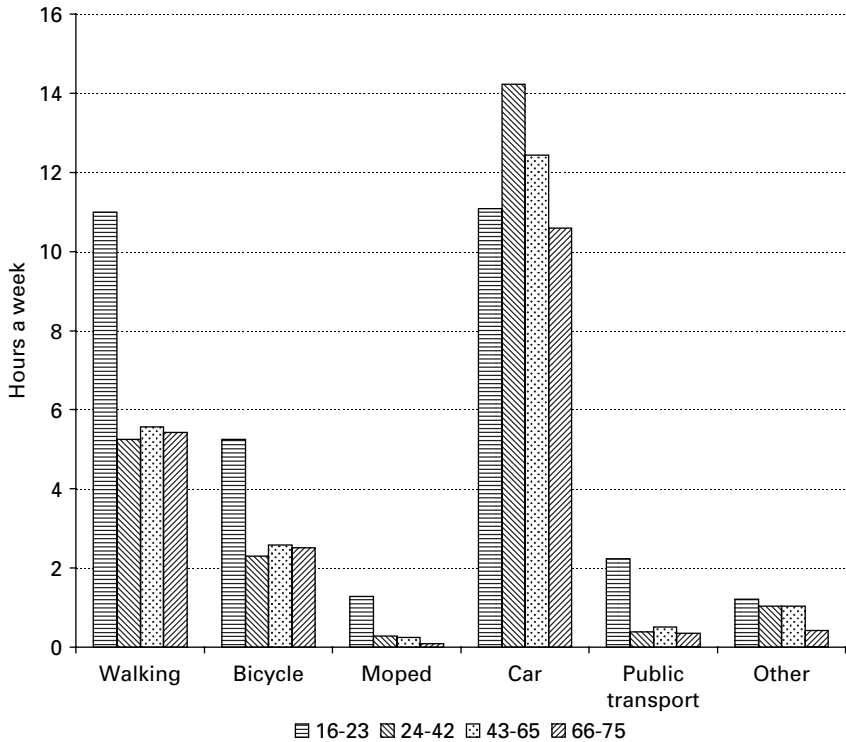


Figure 1. Hours per week spent travelling by different means and by age, Flanders 1999.
 Source: Adapted from Glorieux *et al.* 2002.

than in the towns. The car remains by far the most important means of transport for older people (Nuyts 2002). More recent figures have confirmed that older people make relatively little use of public transport. In April 2005, just over one-quarter (25.9%) of those aged 65 or more years made use of their free public-transport pass. The rate was similar among those aged 70–79 years, but at older ages sharply declined. Among the over-85s, only a minority (7.5%) travel by tram or bus. There were striking differences in free public transport use by location: in Antwerp, the largest city of Flanders, usage was almost twice as high as elsewhere (authors' calculations from data provided by the public transport company *De Lijn*).

According to the OECD (2001), the next generation of elderly people are expected to travel more by car, replacing journeys on foot and, to a lesser extent, by public transport. Many older people lack alternatives to the car, as the availability of public transport is limited, particularly in remoter areas and during the evenings and weekends. Furthermore, many older people are physically able to travel by car after becoming unable to

use public transport: with increasing age, many are no longer able to walk to a bus or tram stop, or can no longer safely get on or off the vehicle (Toint 2001). Many also have a strong sense of personal insecurity, which dissuades them from using public transport. Surveys in several European countries have suggested that older public transport users complain about the long distances between bus stops, the lack of user-friendly vehicles with low floors and safe and comfortable seating, insufficient time to board and to be seated, of bus stops and railway stations without security, seats and protection from the rain and wind, and of inconsiderate and impolite drivers (OECD 2001).

Given such factors, many Flemish older people benefit very little from their free bus or tram pass. Local public transport fares in any case amount to only one-quarter of the real cost and are affordable to most people. On the other hand, older people are vulnerable road users and have high accident risks: elderly pedestrians account for nearly one-half of pedestrian fatalities in many European countries. Among older people, pedestrians and cyclists are much more numerous than public transport users, so ensuring their mobility requires the road infrastructure to be tailored to their needs (OECD 2001). To raise their mobility by public transport needs improvements in access and usability rather than fare subsidies.

When our criticisms of this age limit were published in the media, a common response was that older people still perceive the 'free public transport for the over-65s' policy as a positive measure. While only a few of the focus-group participants felt that the measure was an unwarranted use of the age criterion (one expects the beneficiaries of an entitlement to applaud it), many criticised the inadequate supply of public-transport services. It was argued that it is a real problem for an older person if the stops are far away, that the age-based concessions are justified by the impaired mobility capacities of older people, and that free public transport reduces loneliness, especially amongst the poorest older people. The fare-concession age-thresholds are the best-known use of age criteria in Flemish regulations, and continue to stir public opinion.

A final observation about the threshold age of 65 years is that it is set too high. Since the average age of exit from the Belgian labour market is 57 years, free public transport comes too late to realise the government's goal of preventing the loss of social contacts when adjusting to retirement, and in any case the rationale does not apply to those who have not been in paid work, *e.g.* housewives. In summary, we believe that the zero public transport fare is an instance of unjustified positive discrimination, as being below or above 65 years-of-age does not distinguish those with more and fewer opportunities to travel.

Age criteria for entitlements among those with disabilities

The *Vlaams Fonds voor Sociale Integratie van Personen met een Handicap* [*Flemish Fund for the Social Integration of Disabled Persons*], in short *The Flemish Fund*, is a government agency that provides social care for disabled people: it grants allowances for, among other things, residential care, certain types of home-care, assistive-technology devices, and labour-market participation. In one of its regulations, a sentence with far-reaching consequences for older people specifies an age limit of 65 years for entitlement to its allowances. An older person who suffers a disability is advised to seek ‘Older People Care’, even though its entitlements do not include equivalents to all the Flemish Fund allowances. A limited exception is that those who are registered with the Fund before 65 years-of-age can continue to claim the assistive-devices benefit, but only for the costs generated by a disability identified before the person attained 65 years-of-age. As a consequence of this remarkable distinction, there are huge differences in the amounts that people with identical disabilities but of different ages must pay for assistive devices. Furthermore, a working-age adult with a disability is required to make only a minor personal contribution for a residential stay, whereas the costs of living in homes for older people have to be paid by the resident, with a subsidy towards the cost of care. In Belgium, residential care for older people is accessible from 60 years-of-age, although exceptions (both below and above this age) are possible. Home-care services cater largely for older clients, although age barriers have been lifted.

The age limit applied by the *Flemish Fund*, which was established in 1990, was inherited from its predecessor agency and dates back to 1963. At that time, ‘social integration’ was equated with labour-market inclusion, so that the statutory retirement age served as the age criterion. In 1990, the *Flemish Fund* asserted explicitly that social integration should not be confined to labour-market participation, but the age limit of 65 years was retained for budgetary reasons. This age criterion was challenged in the courts before the new anti-discrimination law that responded to the EU directives. The courts found, however, that the age limit did not contravene the constitutional principle of equality. Both the age of the person concerned and the moment of application to the *Flemish Fund* were considered legitimate criteria for its help and support. The courts agreed that the dominant consideration was the legislation’s objective to assist non-elderly disabled persons to be ‘socially integrated’, and that older people with a disability could rely on the ‘Older People Care’ system.

Partly as a consequence of our research report, the Minister of Welfare was requested by the Flemish Parliament to review this instance of age discrimination. The Minister argued that retired people – having

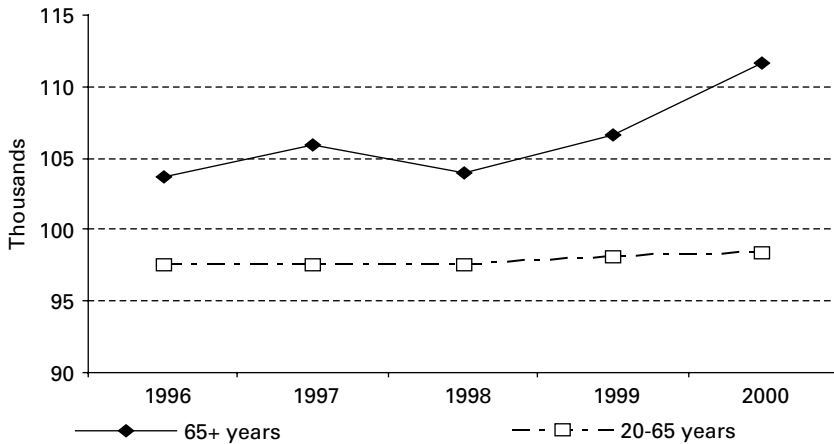


Figure 2. Number of people entitled to disability benefit by age, Belgium, 1996-2000.
 Source: Bestuursdirectie van de Uitkeringen aan Personen met een handicap 2002.

accumulated more capital during their working lives than the disabled – can call on ‘Older People Care’. While she recognised that this differential treatment was unfair and could indeed be regarded as an instance of age discrimination, she refused to adapt the existing legislation, even in part, because to provide the same allowances to older disabled people would have huge financial implications. When one is aware how many people over the age of 65 years have disabilities, it is manifest that abolishing the age limit would be very expensive. As Figure 2 shows, there are fewer disabled persons aged 20–65 years than older, and the share of all people with disabilities who are elderly will continue to rise (*Bestuursdirectie van de Uitkeringen aan Personen met een handicap 2002*).

Although it is a legitimate goal for the government to keep costs under control, we believe that administrative arrangements that involve the exclusion of the over-65s are unacceptable. Having a single age threshold is far too abrupt and generates unjustifiable inequalities between people with similar disabilities. Although some politicians and interest groups have described the rules as an instance of age discrimination, most people are not aware of the differential entitlement to care by age, as became apparent in the focus-group discussions. One chairperson of a senior citizens’ board did correctly mention the example of hearing devices, and when the other participants became aware of this age limit, they opposed the age discrimination. Many said that disability occurs at any age and that, if anything, older people should receive preferential treatment, because they generally face higher medical expenses and have lower incomes. There was, however, no willingness to take action to combat this regulation, and

an age-based explanation was heard: ‘These are the retired, they cannot defend themselves any more’.

Comparable age-based distinctions persist in several European countries. In France, for example, separate mechanisms and allowances apply to people with functional impairments aged 20–59 years, referred to as ‘disabled persons’, and to the over-60s, referred to as ‘dependent persons’. At the end of the 19th century, when policies towards the disabled and older people were first framed, different regimes of compensation were introduced for the two groups because their inability to participate in the labour market had different causes. The French *Economic and Social Advisory Board* is pressing to replace this differential treatment with a single regime for all persons in need of social care, for otherwise, it argues, age discrimination will persist, and there is no objective reason for treating people with the same disability differently on the basis of their age (Bonnet 2004). Moreover, the epidemiological evidence on the relationship between age and impairments provides no reason for using 60 years as a threshold. The exponential rise steepens markedly only at older ages, while some forms of cognitive-disability onset well before age 60 years. The Board also remarks that current definitions exclude some people with similar needs, namely the chronically ill. Following an EU recommendation of 1998, some countries, including Germany, The Netherlands and Sweden, have introduced a unified system for those in need of care (Bonnet 2004).

The weakness of the case for age limits

All in all, age criteria are used sparingly in Flemish regulations, and the opposite stipulation, ‘regardless of age’, is sometimes used, but age limits have entered the regulatory framework and have potentially significant consequences. Since the disadvantages of age limits are numerous, their use should be well justified, which is not always the case. Several weak arguments or justifications can be identified in Flemish decrees (and are similar to those found by Haimé, Ling Ket On and Van Schelven (1999) for The Netherlands). The first is to refer to European or national legislation. There are, for example, European guidelines on the age limits for breast-cancer screening among women, namely 50 to 69 years (Perry *et al.* 2001). Many Flemish community regulations have adopted the age limits prescribed in the Belgian legislation that they have replaced. This results in many inconsistencies, as with the variable retirement ages for different occupational groups. We have already pointed out that age criteria tend to become archaic; this is because administrative practice becomes ‘path-dependent’, and its principles become standard practice and difficult to

reform. It seems that legislators are sometimes obliged to follow their predecessors.

The use of age limits generates the phenomenon of a ‘reference age’. The clearest example in Belgium is the widespread use of 65 years to delineate ‘older’ people (as also in The Netherlands, see Smolenaars 2005). This age defines not only the official age for the beginning of retirement (even though on average a Belgian stops working at 57 years-of-age), but many other things, including the age of entitlement to free or much cheaper public transport. The use of 65 is regarded as ‘objective’ simply because it is used in inherited legislation, and both policy-makers and the public are beguiled by this circular reasoning that precludes any protest or deviation (Smolenaars 1999). Political economy theorists argue against the use of age-defined retirement. Walker (2000) recognised that there are other causes of age discrimination, but argued that this practice is the main cause of age discrimination in employment, social security and in wider social relations. Put another way, the institutionalisation of retirement has encouraged the view that, past a certain age, an individual’s economic and social worth is diminished.

Age limits are often applied alongside other criteria and so do not function autonomously. Many entitlement formulae for early retirement, for example, include conditions of seniority or length of service. This implies that alongside age discrimination, sex discrimination comes into play. Many women quit the labour market for several years to care for their children, making it impossible for them to attain certain seniority and length-of-service requirements (Haimé, Ling Ket On and Van Schelven 1999; Smolenaars 1999). This brings us to the protective function of age limits: a legal retirement age that determines when one becomes entitled to a basic pension offers income security to those with ‘incomplete’ careers (as for many women and immigrants). The reasons that can be evinced or inferred for the use of age criteria in Flemish regulations suggest that the interests of older people play a limited role. Most age differentiations in welfare policy are not primarily to promote the interests of particular age groups, but rather serve organisational needs (as in human-resource management), bureaucratic convenience (as with zero public transport fares), and budgetary considerations (for many welfare programmes) (see Smolenaars 1999).

Policy implications

In Belgium, a fierce debate about the structuring of the end of working life unfolded in the autumn of 2005, and several age thresholds were

suggested: for a bridging pension from 50, 52, 55 or 58 years; and for early retirement from 60 years-of-age under various conditions, including a minimum number of years' work. We heard assertions such as, 'anyone who becomes unemployed at 52 years-of-age cannot find a new job without assistance', and 'anyone who started working at 15 years-of-age will be burnt out before they reach 60'. There is truth in both assertions, and age limits can themselves be a means of social protection, but the question remains as to whether they are the most practical or appropriate approach. Midwinter (2005: 11) dubbed the practicality argument for age limits 'neo-realistic', and it should be noted that there used to be administrative schemes that legitimised discrimination on the basis of race and disability. We argue that the appropriateness of age limits should be measured less by their practicality than by their protective effect (see also Smolenaars 2005). The relevant question is not whether protection *can* be provided using an age criterion, but whether this is the *most effective* approach. In contemporary society, there is arguably a need for more differentiated and variable criteria than rigid age thresholds. Each area of welfare policy requires a specific set of targeting tools, and all policy measures should be tested for the extent to which they contribute to age integration.

Given the numerous disadvantages of age limits, their use should always be carefully evaluated and justified, not least the rationale for the specified age. Many applications fail these tests, which complicates the debate. Whenever an age limit is declared, it would be appropriate to explain why other criteria have been rejected, for legal security and equality requirements can often be attained by other means. Clear alternatives include criteria of need (*e.g.* for social care), merit (*e.g.* retirement benefits related to work contributions), competence (*e.g.* driver's licence), or rotation (for representative positions). Age can be used in some cases – often as a second criterion – to delineate more precisely a group that requires protection, *e.g.* for people who have not built up sufficient social rights because of an incomplete working career. After all, older people do need to be guaranteed an acceptable level of income without the requirement to work (Smolenaars 2005; Macnicol 2005).

The three examples of age-related measures discussed in this paper have in common that they unjustifiably treat people from a certain age as homogeneous. In practice, one sees that some people in their sixties want to continue to work, that a 66-year-old disabled person demands the same rights as a 64-year-old in a comparable situation, and that only a minority of the 'isolated target group' of elderly people – probably the least isolated – make use of their free public transport pass. On the entitlement to early retirement, we argue that age is too crude a criterion, if only because the age at which people first entered the labour market varies so much. We

recommend that age should generally be used as a secondary criterion of eligibility, and argue that the continued widespread use of the 65-years threshold is harmful. It casts a shadow into the future, as people tend to adapt their behaviour to its implications well in advance. As the low participation in training of workers aged in their forties shows, some of its effects manifest themselves remarkably early in the lifecourse. To abolish all age limits would however be too extreme and have serious negative consequences, because special entitlements for older people are prominent in the welfare state. As Uhlenberg (2000: 264) put it, 'one could argue that using an age criterion becomes an age barrier that keeps non-old persons from enjoying benefits of income maintenance and health-care access programs'.

Likewise, some circumspection is called for in the application of age-related benefits. After all, we are essentially concerned here with the resulting contradictions, *e.g.* one cannot expect society to treat older people just like any other group if they are entitled to reduced fares. More broadly, if older people wish to claim the same rights as others, they must accept the same duties (Midwinter 2005: 10). Any measure for the benefit of older people is in fact a measure that benefits a minority to the detriment of those who are not elderly. This viewpoint ties in with the life-course perspective that, among other things, argues that all societal domains should be accessible regardless of age. This goal is consistent with the use of an age criterion to fulfil a protective role. With reference to the retirement age, the pertinent question is therefore not whether the over-65s can continue to work, but rather under what conditions they may do so (Westerveld 2005). Such a policy would be conducive to age integration (Riley and Riley 2000).

Finally, it is noted that the relatively few age limits in Flemish regulations do not mean that Flanders is a paradise for older people. The research appraised existing age limits, not elderly welfare measures as a whole. To prevent older people from being treated as second-class citizens, dedicated programmes may well be necessary. In fact, we subscribe to the view that more effort is required to remedy older people's disadvantages in several societal fields, including mobility and social integration. It is also recognised that indirect discrimination may occur if measures without age criteria are targeted at a specific age group. But some age-defined measures have no clear legal or needs basis, a recent Flemish example being a new entitlement, from the age of 70 years (with some exceptions), to a special type of sheltered housing.

We suspect that the use of age limits is widespread in Belgian federal legislation, particularly in the important social domains of employment, social security and health care, and there is circumstantial evidence that

they are widespread in broader society, *e.g.* in insurance companies' terms, for people of different ages, and in employers' age-based training, promotion and recruitment practices. The focus groups participants said that high car and hospital insurance premiums for older people were among the most disadvantageous age-defined measures that they had encountered. The right treatment of elderly people is not only a task for legislators, but a matter for society as a whole.

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