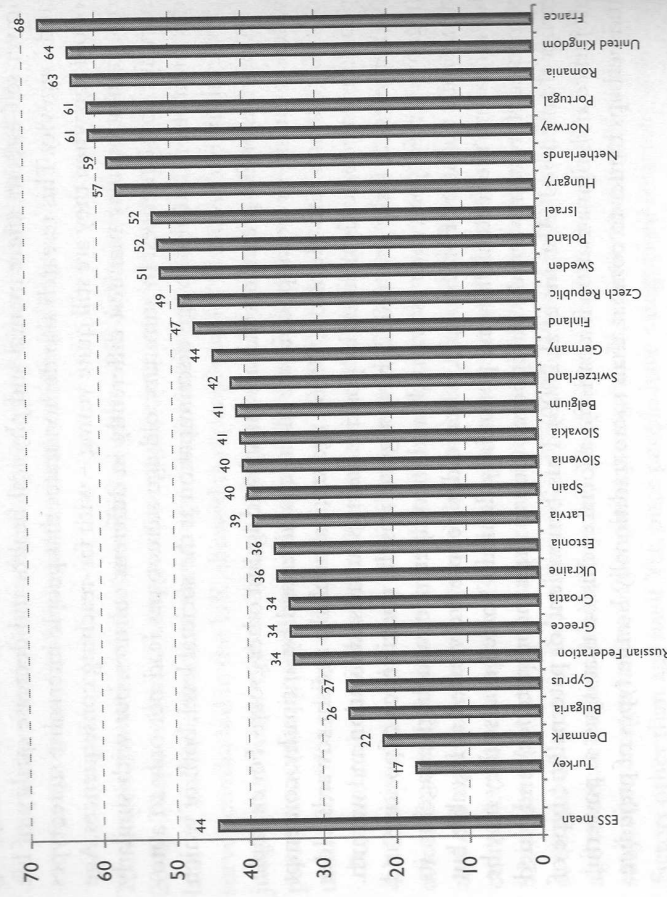


the pervasiveness of ageism. Again, there were substantial differences between countries. For example, 47% of respondents from the Netherlands but only 24% from Hungary reported receiving unfair treatment because of age. Ageism was more often experienced as being patronised or ignored (39%) than directly insulted or abused (29%).

**Figure 8.1: Percentage of respondents from different countries in the European Social Survey who regard age discrimination to be a quite serious or very serious problem, 2008**

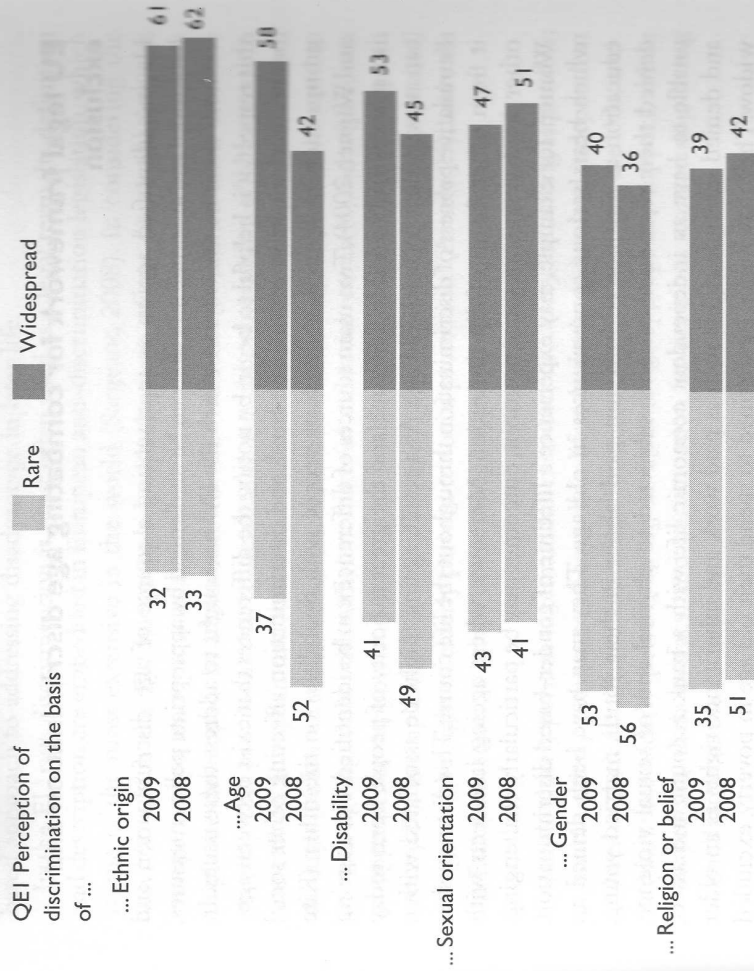


Source: European Social Survey (Abrams et al, 2011a).

These results are echoed by the European Commission's third Eurobarometer survey (2009) on attitudes to discrimination in the EU. Eurobarometer – with a sample of 26,756 people interviewed in 30 countries – tracks perceptions of people in Europe towards different forms of discrimination and diversity. The absolute proportions of people reporting any type of discrimination are much lower than those in the ESS as a result of differences in question wording. However, as in earlier Eurobarometer surveys in 2007 and 2008, age discrimination was reported by more people than any other type of discrimination. In keeping with the ESS data, the Eurobarometer evidence also shows that almost as many people perceive age discrimination to be widespread as ethnic discrimination. Moreover, there has been a disproportionate increase since 2008 in the number of people who consider that there is widespread discrimination based on age (up 16 percentage

points since 2008 compared with an increase of 8 percentage points for disability, no change for ethnicity, and decreases of 4 percentage points for sexual orientation and 3 percentage points for religion) (see Figure 8.2).

**Figure 8.2: Perceptions of discrimination on the basis of age and other criteria, EU, 2009**



Source: Eurobarometer (European Union, 2009).

Capturing pervasive social attitudes and expectations about work and age is helpful in highlighting the potential value of anti-discriminatory employment legislation. For instance, in the 2008 ESS, 51% of respondents, and particularly those aged 50–64 (57%), were concerned that employers would show preference to people in their 20s. On average, people viewed a suitably qualified 30 year old to be more acceptable as an employee than an equally qualified 70 year old. And 57% of people perceived those aged over 70 years as contributing little to their national economy. Such views vary sharply between nations. For example, while fewer than 15% of UK respondents viewed people over 70 as placing a burden on health services, the respective proportion was 50% in the Czech Republic (Abrams et al, 2011b).

These data highlight three key points. First, ageism is perceived and experienced as a widespread and serious problem in Europe. Second, it is more likely to take subtle or indirect than direct and hostile forms. Third, there are large variations among countries, showing that ageism is strongly influenced by legislative, cultural and other factors; that is, ageism is something that can, in principle, be challenged and reduced.

### EU legal framework for combating age discrimination and exclusion

Having identified ageism as representing a source of age discrimination and exclusion, and as something that can be challenged by appropriate policy measures, we now examine the ways in which the EU has sought to address these issues. In this respect, it is helpful to begin by noting the differences that exist between age-based discrimination on the one hand, and discrimination affecting other social groups such as women, children or people with disabilities on the other (Kite and Wagner, 2004). Two main sources of difference can be identified. First, ageing is a process embedded in a lifetime and the great majority of people born today can now expect to reach old age. As a result, ageing might be associated with a cumulative process of discrimination throughout the life course. This distinguishes it from other forms of discrimination. Moreover, where ageing intersects with other disadvantageous social positions, outcomes may be particularly challenging. Women, for example, may experience a lifetime of gender-based discrimination, which bears serious consequences in old age. They may have been denied an education as girls, forced into non-paid labour in their youth, married young, denied their reproductive rights, subjected to physical and/or sexual violence, unable to have an independent economic life with a bank account and assets, and denied multiple rights such as paid work and inheritance rights as an older widow. They may, hence, be destined to spend their old age in poverty, excluded from their fundamental human rights.

Second, unlike other types of discrimination, such as racism or sexism, under some circumstances, and in particular nations, age discrimination can be officially sanctioned. Examples include policies that encourage early retirement, as was the case in Europe for much of the 1990s. Similarly, employers may be permitted to discriminate on the basis of age if they can demonstrate that age differentiation is a legitimate aim – for example, when jobs require particular competencies, such as specific technological skills, which are less prevalent in the older age group because of a cohort effect.

These features of age-related discrimination highlight the need for 'evidence-based legislation' (Jones, 2009), at European and international level, to prevent age discrimination and to ensure equal rights for, and eliminate harmful practices against, older persons (Age UK, 2011). This might explain why age discrimination has been the first feature to be included in recent European legal directives, particularly on employment. While large-scale surveys and experimental

research can demonstrate the overall impact of ageism on individuals' lives, it is also necessary to generate clear and vivid case studies to exemplify the multiple and cumulative consequences of the violation of older persons' human rights in terms of such negative outcomes as exclusion, reduced quality of life, ill-health and poverty (Fromont, 2001; Niveau and Dang, 2008). In his later work, Peter Townsend (2007) drew heavily on such case studies to argue for a human rights-based approach to addressing disadvantage in later life.

In the EU, age discrimination is most often used as a legal term. Its definition and description are embedded in European anti-discrimination legislation, which is one of the most extensive in the world (Sargeant, 2008). In considering the ways in which the EU has grappled with the issue of age discrimination, the European experience provides an example of how a wider international framework might be developed. In addition to the EU Directives, outlined later, there are several other provisions that recognise the specific vulnerability of older persons and call on European nations to take measures to protect ageing adults. Viewed through the lens of social exclusion, such measures tend to emphasise the need to provide ageing adults with sufficient material and social resources, and with access to appropriate support and services, to enable their continued participation in society. For example, the Council of Europe's (1996) *European social charter (revised)* recognises 'the right of elderly persons to social protection' (Article 23), and calls on European states to adopt or encourage appropriate measures to:

1. enable elderly persons to remain full members of society for as long as possible;
2. enable elderly persons to choose their lifestyle freely and to lead independent lives in their familiar surroundings for as long as they wish and are able; and
3. guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institutions.

Within the EU, the most recent reinforcement of fundamental rights and non-discrimination came in 2000 with the proclamation of the 'Charter of Fundamental Rights'. Article 21 of the Charter:

prohibits discrimination, 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 and also discrimination on the grounds of nationality. (European Union, 2000)

Also in 2000, the EU adopted two far-reaching laws to combat discrimination in the workplace. These laws – termed Directives within the EU context – have since been incorporated into Article 19 of the 2009 Treaty of Lisbon, which forms the constitutional base of the European Union. First, the Employment Equality Directive (2000/78) protects everyone in the EU from discrimination

and represented the first specific acknowledgement of age. Under the Directive, age is granted equal status to other forms of discrimination based on gender, racial or ethnic origin, religion or belief, disability, or sexual orientation. Article 2 of the Directive is explicit about the concept of discrimination drawing on the 'principle of equal treatment', particularly in relation to employment: 'The principle of equal treatment for men and women whatever their age as regards access to employment, including promotion, and to vocational training and as regards working conditions and social security'.

Second, the Racial Equality Directive (2000/43) was introduced (European Commission, 2000b). Alongside the Employment Equality Directive, this identifies four forms of prohibited discrimination. In addition to outlawing *harassment* – conduct that has the 'purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment' (European Union, 2009) – and *instructions to discriminate*, both direct and indirect forms of discrimination are prohibited. *Direct discrimination* occurs when a person is treated less well, in comparison with someone else, because of his or her racial or ethnic origin, religion or belief, disability, age, or sexual orientation. This might arise, for example, when an employer refuses to hire suitably qualified people simply because they are of a certain age, or when an employer specifies in a job advert that only young people should apply even though the job in question could be done perfectly well by an older person. *Indirect discrimination* reflects a situation in which an apparently neutral specification, criterion or practice would disadvantage people on the grounds of racial or ethnic origin, religion or belief, disability, age, or sexual orientation unless the practice can be objectively justified by a legitimate aim. An example of such discrimination would be when a company insists that all those applying for jobs have a driving licence even though this is not a core requirement for doing the job. This might prevent some people who do not drive (including those who are older or have disabilities that prevent them from driving) from securing the job.

It is interesting to note that the first area in which application of the EU's Charter of Fundamental Rights has been successfully implemented is that of work and employment. The Employment and Equality Regulations have inspired new age discrimination legislation in all EU member states, including Ireland (1998), Denmark (2004) and the UK (2006). Building on the new regulations, several countries have also passed anti-discrimination acts and equal opportunity laws or have either adapted, or are in the process of adapting, their national constitutions (e.g. Germany, Greece and Lithuania). While Hungary and the Netherlands now have dedicated anti-discrimination and/or equal treatment authorities, Cyprus and Austria have introduced an ombudsman for equal treatment and are preparing for the establishment of a monitoring and advisory office on age discrimination (UNECE, 2008). Despite the progress made, the outcomes vary across countries and protection in a range of areas requires more development.

Of course, many practical difficulties arise when implementing a rights-based policy approach to age discrimination. Three key lessons have been learnt from a

range of countries about this experience. First, legislation by itself is inadequate in bringing about changes in behaviour, and attitude change is crucial. Second, legislation can only help to change attitudes when it is combined with employer education and other policies to promote equal rights for older workers. Third, eradicating ageist employment practices is a 'long-term process'.

Moreover, in the EU context, even though direct and indirect forms of age discrimination are now contrary to law – following the Employment Equality Directive (2000/78) referred to earlier – there are gaps in the legislation. For example, Article 6 of the Directive permits a justification for discrimination where, in the context of national law, it is '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'.

A case heard in 2009 at the European Court of Justice (ECJ) concerns the extent to which this justification permits an employer to treat workers differently purely on the grounds of age (McKay, 2009). The case raised the issue of retirement in relation to age discrimination leading to the ECJ ruling that there can be justifiable reasons for dismissing workers on account of their age and that this would not necessarily infringe EU law. The case concerned the Incorporated Trustees of the National Council on Ageing (Age Concern England) vs. Secretary of State for Business, Enterprise and Regulatory Reform (Case C-388/07). It addressed the UK's age discrimination legislation, which specifically permits employers to dismiss their employees at the age of 65 years without such treatment being regarded as discriminatory. The National Council on Ageing, a charity promoting the well-being of older people, challenged the legality of the UK legislation as being contrary to Directive 2000/78, arguing that the country's legislation had failed to specify the kinds of differences in treatment that would be justified under an Article 6 exemption. In ruling against the National Council on Ageing, the ECJ stated that there was no requirement to specify these differences in national law. Provided that the national courts in EU member states determined that the legislation at issue was consistent with a legitimate aim, as highlighted in Article 6, and that the means chosen were appropriate and necessary to achieve that aim, the law was deemed to be in compliance with Directive 2000/78.

This recent case shows that age discrimination – a key element of the exclusion of older people from the labour market and, more broadly, from access to material resources – continues to be a matter of concern despite progressive legislation. Even in the EU, where age discrimination legislation is relatively well developed by international standards, a strong case can be made for suggesting that more needs to be accomplished if age equality in all activities and policies is to be achieved.

### The need for an international human rights framework

In international terms, the EU effort to develop a legislative framework to protect the rights of older citizens, especially in relation to employment, is unique. This