

Kasper Lippert-Rasmussen

The EU and age discrimination: Abolish mandatory retirement!

Proposal

The EU should adopt stricter standards on age discrimination and prohibit mandatory age retirement rules.

Motivation

Age discrimination is in many ways similar to other forms of discrimination. If we were to adopt a stance towards age discrimination that is warranted by the

similarities between age discrimination and other forms of discrimination, we would abolish mandatory retirement. Also, European populations are becoming older. Insofar as mandatory retirement age is age discrimination, it is a form of discrimination that will affect many more EU citizens in the future. Besides that, mandatory retirement age rules shrink the size of an already-shrinking workforce even further.

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Imagine you are a professor. Over the years, you have figured out how to be a good teacher. You are in the middle of an exciting research project. You are in good health, you love your work, and you would like to continue at least until your youngest child has completed her education. By the end of the month, though, you will be retired against your wishes because you have reached 65. Is that just?

In 2000, the EU adopted a directive prohibiting discrimination on grounds of age in employment. This prohibition, however, is explicitly “without prejudice to national provisions laying down retirement ages”. The European Court of Justice has since ruled that certain age-based differences in treatment that are “objectively justified” are permissible. Member states and employers within member states may use mandatory retirement ages where these are “appropriate and necessary in order to achieve 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”. One such legitimate aim is to augment the career prospects of junior employees. Hence, a mandatory retirement age is legally enforced in a number of EU member states.

I believe the EU should abolish mandatory retirement. My core argument is this: Discrimination on grounds of age is in many ways similar to other forms of discrimination, such as on grounds of gender, race, religion, etc. If we adopted a stance towards age discrimination that is warranted by the similarities between age discrimination and other forms of discrimination, we would abolish mandatory retirement. We are rightly very critical – in fact, intolerant – of other forms of discrimination. Thus, we should abolish mandatory retirement.

Why mandatory retirement is a political concern

Mandatory retirement is an important issue. The age structure of European populations is changing profoundly. Some predict the European median age, i.e. the age such that half the population is older and the other half younger, will increase from 37.7 years in 2003 to 52.3 years in 2050.

Such an increase would have two consequences. First, insofar as a mandatory retirement age is a form of discrimination, it is a discrimination that will affect many more EU citizens in the future. To be sure, discrimination against small minorities is also an important concern. Yet, all other things being equal, the more people are subjected to a certain injustice, the more important it is to address that injustice.

Second, a mandatory retirement age will produce even greater economic costs in the future. A mandatory retirement age in an aging population means that a growing proportion of the EU's citizens will stop being part of the workforce and will instead rely on transfers from those citizens who remain part of it. The European statistics agency Eurostat estimates that the ratio of over-65-year-olds to 15- to 64-year-olds will increase from 31 percent in 2018 to 50 percent in 2050.

One problem with present compulsory retirement ages is that, in many EU countries, these have been more or less fixed since the 1950s. However, the meaning of old age has changed dramatically since then due to better working and living conditions. When a coal miner reached retirement age in 1960, he was typically much less healthy – and thus less able to work – than is a software designer who reaches a similar age in 2018. His life expectancy after retirement was much lower. Hence, part of the problem of increasing old-age dependency rates can be addressed by at least increasing the mandatory retirement age.

However, doing so does not address the core of the issue from an anti-discrimination perspective. Like other forms of discrimination, such as gender or race discrimination, age discrimination means that those discriminated against are not treated as individuals. In other words,

people over the retirement age who are perfectly capable of continuing in their jobs are forced to retire simply by virtue of having become a member of a certain age group.

Principled objections

My proposal may meet various lines of objections. The Twelve Stars online debate has raised some of those. I shall deal with them in turn.

First, some people press the putative point that, unlike gender and race, jobs age for many is a fairly reliable indicator of ability to fulfil the relevant functions. However, it is not clear that we would accept a similar argument in the case of other social identities. Suppose gender is a pretty reliable indicator of the sort of abilities one needs in special elite forces. Surely, many would consider the requirement of a particular gender to be discriminatory. Rather, they would expect applying women to be given the chance to undergo the same tests as applying men and to be accepted if they actually pass it. Why should we not say the same about age?

Second, some people say that age discrimination, unlike gender and race discrimination, does not involve stigmatisation and negative stereotypes of those discriminated against. This, however, is just not true. While it might be more acceptable to stigmatise old people as confused, rigid, unable to adapt to new ways, etc than to stigmatise women or members of racial groups, there is no less stigmatisation of elderly people than of other typical groups.

Third, some people defend a more relaxed attitude towards age discrimination than towards gender and race discrimination on the ground that everyone will – unless they die young – eventually become subjected to the former. Hence, age discrimination is compatible with everyone being treated equally from a lifetime perspective.

There is some truth to the objection. Age discrimination is less bad than other forms of discrimination because it is less detrimental to equality of opportunity than, say, gender or race discrimination. Still, I do not think this objection makes mandatory retirement defensible.

Something can be unjust even if we are all subjected to it. Here is one example that shows this: Suppose we all had to take turns being subjected to some arbitrary prohibition, such as the prohibition to ride a bike for one year. Such a scheme would be unjust even if the temporary prohibition to ride a bike was imposed on everyone, and even if everyone would in the absence of the prohibition ride a bike (think of the Netherlands). The reason it is unjust is that it curtails the freedom of people without proper justification. The fact that freedom is arbitrarily constrained for everyone does not make up for the lack of justification. Forcing people to give up their jobs simply on account of having reached a certain age is similarly unjustified. The fact that everyone lucky enough to live a long life reaches the age limit does not make up for the lack of justification in this case, either.

Rejecting the employment argument

Fourth, people submit that a compulsory retirement age could be, and often is, justified because, as the EU directive stipulates, it is “appropriate and necessary in order to achieve a legitimate aim in the context of national employment policy”. More specifically, in the absence of compulsory retirement, young people will have worse job opportunities, since the positions that would otherwise have been vacated by elderly people remain occupied.

Again, there might well be some truth to this objection. However, it points in a different direction than a mandatory retirement age for at least two reasons: First, the objection illicitly extrapolates from what might be true in the individual case to what is true in the aggregate. As mentioned, due to the ageing of European populations, a compulsory retirement age means that the ratio of retired people to workers will develop in an even more unfavourable direction. Excluding ever more people from the job market puts an ever-higher burden on the young who have to feed them.

The second flaw of the employment policy objection is normative. Suppose there is an important consideration of justice that speaks in favour of

equalising opportunities across different birth cohorts. In that case, there might be (not: is) a case in favour of a compulsory retirement age. For example, what if present 50-year-olds enjoyed full employment when they were young such that they could easily get jobs then, but present 20-year-olds are struggling due to high youth unemployment? Under such circumstances, equalising opportunities across birth cohorts speaks in favour of a compulsory retirement age. But the situation could well be the reverse. If present 50-year-olds struggled with high youth unemployment when they were in their twenties, and present 20-year-olds enjoy a relatively benign job market, then equalising opportunities across birth cohorts, by parity of reasoning, supports a compulsory job market *entry* age!

Practical arguments

Finally, some people remain sceptical of my rejection of a compulsory retirement age on purely pragmatic grounds. It is difficult and costly to determine each individual employee's present productive potential, and rules of thumb such as that embodied in a mandatory retirement age save time and costs from the perspective of the employer. After all, at some point in time, getting older does begin to reduce performance in everybody. Moreover, a mandatory retirement age might even be good from the perspective of the employee. Not having to struggle with the difficult question of when to retire may be a relief, especially for those torn between conflicting claims of partners, children, etc.

This remaining scepticism is insufficient to defeat the case against a compulsory retirement age. Take first the fact that, at some point in our lives, the overwhelming majority of us will start becoming worse at what we do for a living. However, that is not a good reason for a compulsory retirement age. Stephen Hawking died at the age of 76. I do not know whether his abilities as a researcher and teacher declined after the common EU retirement age. But, surely, even if they did so, at the age of 76, he was still a better physicist than many of his much younger colleagues.

Appealing to age-based decline to justify compulsory retirement age is like appealing to statistical differences in physical strength between

men and women to justify, say, a rule to the effect that firefighters must be men. The latter rule is justly considered sexist. It is easy to measure strength, so individual tests are neither costly nor time-consuming. Being a good physicist is obviously a more complicated matter, but most universities still rely on a number of indicators when recruiting new university lecturers (e.g. citation indexes), and the same holds true for other professions. Why not use such indicators as a basis for determining when to ask employees to retire rather than having a blanket rule that uses age as a proxy in a one-age-fits-all style?

Take next the perspective of employees. For some people, having a mandatory retirement age is undoubtedly better because it makes life easier. However, making a mandatory retirement age illegal would be compatible with giving employees – and not employers – the right to request at the time they are employed that their contract specify when their employment ceases. Accordingly, people who suspect that they would be

better off binding their futures can request when they are hired as, say, 45-year-olds that their contract expire once they turn 65.

In any case, it is an illusion to think that a mandatory retirement age eliminates having to face difficult choices for everyone. Some people retire prior to reaching the mandatory retirement age. Others – in fact, more and more – continue working self-employed after having reached retirement age. But, most importantly, even if the postulated benefits of a mandatory retirement are real for some employees, they must be weighed against the harm done to those who would have liked to continue to work. Add to this the loss for all the rest of us who will be deprived of the goods and services that the involuntarily retired would have produced if they had been allowed to remain in their jobs.

For background information on how the proposal fits with the EU's political agenda and procedures, see www.twelvestars.eu/CMV/Kasper-Lippert-Rasmussen.

Further reading:

Bidadanure, Juliana. "Making sense of age-group injustice: A time for relational equality?" *Politics, Philosophy & Economics* 15 (3): 234–260, 2016.

Lippert-Rasmussen, Kasper. "Is it unjust that old people suffer from worse health than young people? Distributive and relational egalitarian views." Forthcoming.

Lippert-Rasmussen, Kasper. *Relational Egalitarianism: Living as Equals*. Cambridge: Cambridge University Press, 2018.

Lippert-Rasmussen, Kasper. *Born Free and Equal? A Philosophical Inquiry into the Nature of Discrimination*. Oxford: Oxford University Press, 2013.

McKerlie, Dennis. *Justice Between the Young and the Old*. Oxford: Oxford University Press, 2012.

Objections

On 20 July 2018, Kasper Lippert-Rasmussen defended his proposal in the Twelve Stars debate. The main objections are presented below. Rebuttals can be followed in the online debate.

www.twelvestars.eu/CMV/Kasper-Lippert-Rasmussen

Would it be beneficial if the EU abolished mandatory retirement?

“‘[Justice] also comprises our relating to one another as equals.’ – Only when people are actually equal. Someone that had the opportunity to work is not equal to someone that didn’t.” *ElysiX*

“[The] core argument, that age discrimination is very similar to race or gender discrimination, is incorrect. That’s because something like race is a characteristic that doesn’t have any bearing on an individual’s capabilities. [...] Generally, an employer that selects employees based on race is considering a quality that has nothing to do with the work. However, there are practical reasons why a company might prefer an older or a younger worker.” *LordVerulam*

What would be the risks associated with the EU abolishing mandatory retirement?

“‘A society in which elderly people are excluded from large parts of the labour market violates that condition [of non-discrimination].’ – How about a society in which young people are excluded from large parts of the labour market because old people who didn’t have that problem refuse to retire?” *ElysiX*

“[T]he mandatory retirement age also serves as a protection of the worker/employee.” *annapompilius*