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# Chapter 20

## The Council of Europe's Approach towards Ageism



Barbara Mikołajczyk

### 20.1 Introduction

Robert Butler coined the term ageism almost 50 years ago to describe symptoms and roots of unequal and degrading treatment of older persons (Butler 1975, 1969). Ageism in the twenty-first century continues to be a rampant and widespread phenomenon. *Epidemic ageism* (Palmore 2001, p. 574) is believed to affect more than 164 million seniors living in Europe (Age UK 2011), which means that a significantly higher proportion of Europeans are exposed to ageism than to sexism or racism (Grześkowiak 2012). Not surprisingly, ageism is becoming a question of common concern in European forums, including the Council of Europe—an inter-governmental organization of 47 European countries, including the 28 European Union member states.

According to Article 1 of the Statute of the Council of Europe, one of the main aims of the Council is “to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles [through] discussion of questions of common concern and by agreements and common action in ... the maintenance and further realisation of human rights and fundamental freedoms” (Council of Europe 1949). This provision clearly indicates that the Council of Europe is a forum for discussion in which democratic and human rights standards are worked out. While it does serve as a platform for discussion, the Council, unlike the European Union, does not have at its disposal any strict (financial) sanctions. It does, however, have some organizational sanctions, such as suspending the rights of representation stipulated in Article 8 of the Statute.

The substantial legal output of the Council of Europe bodies and the establishment of mechanisms controlling and monitoring the fulfilment of obligations arising

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from human rights treaties makes it possible to speak of a Council of Europe “mega-system” of human rights protection (Madsen 2007, p. 154), covering over 820 million people in Europe, including older persons. For this reason, the Council of Europe appears to be a legitimate forum for taking up the issues of ageing, the status of older persons and, finally, ageism, because, as social challenges, they fully match the goals of this organization. Ageism is assuredly a very arduous matter for international lawmakers, more so even than racism and sexism. When working out standards for the protection of rights of older persons, the Council of Europe bodies should take into account not only cultural, economic, and social differences between groups living in member states, but also the various concepts, forms, and symptoms of ageism, which are quite often imperceptible at first glance.

In this chapter, I examine the degree of interest in ageism among Council of Europe members, and the degree of interest in its elimination through the Council of Europe forum. I also examine the interpretation of the concept of ageism by various Council of Europe institutions. Finally, I explore the Council’s willingness and ability to eliminate or at least mitigate ageism effectively.

It may be assumed that the Council of Europe has appropriate instruments with which to fight ageism, but these tools appear to be scattered across its various bodies. That is why, in order to identify the Council’s potential to fight ageism, it is first necessary to extract these tools and examine them separately. Second, taking into account the thousands of documents issued by the Council’s many bodies, it is also necessary to single out relevant acts for examination. As a result, this chapter is divided into two parts. The first is a short description of the selected Council of Europe institutions and their competences. The second is dedicated to the Council of Europe’s output on the subject of the rights of older persons, including treaties and not legally binding acts.

## 20.2 Council of Europe Institutions Relevant to Ageism

The rights of older persons and their protection from ageism is increasingly to become a subject of interest to various Council of Europe institutions. Generally, most of the Council of Europe bodies have the power to take on the problem of age discrimination, stereotypes of older persons, and ageism. However, this chapter focuses mainly on the current outputs of the Parliamentary Assembly and the Committee of Ministers, which are supported by their advisory committees (Bond 2010), and on the work of the main treaty bodies—the European Court of Human Rights and the European Social Committee.

The Parliamentary Assembly is a deliberative body consisting of representatives from national parliaments. The most important European human rights issues are discussed in the Parliamentary Assembly. According to Article 29 of the Statute, the Parliamentary Assembly is entitled to issue resolutions embodying recommendations and proposals for discussion to the Committee of Ministers. This happens quite often in response to current political and social issues.

Composed of the foreign ministers of all the member states (in accordance with Articles 13–14 of the Statute), the Committee of Ministers is the main decision-making body. Its decisions are embodied in legally binding conventions or in the form of recommendations addressed to governments. The Committee of Ministers' recommendations are usually reactions to previous initiatives of the Assembly (Świtalski 2009). According to Article 15 of the Statute, at the recommendation of the Parliamentary Assembly or on its own initiative, the Committee of Ministers is competent to consider actions required in order to further the aim of the organization, including the conclusion of conventions or agreements, as well as the adoption of common policy. In addition, the conclusions issued by the Committee may take the form of recommendations to the governments of member states, and the Committee may monitor the member states' actions with regard to such recommendations.

The Council of Europe Commissioner for Human Rights is another institution relevant to the problem of ageism. The Commissioner is an independent body with the objective of promoting respect for human rights in the member states (Sivonen 2012). Among other initiatives, the Commissioner's awareness-raising activities are crucial to the fight against ageism. The situation of older adults, including age-related aspects of issues such as housing, poverty, and institutional care, are within the scope of the Commissioner's interest. Thomas Hammarberg, who was Commissioner in 2006–2012, placed special attention on the situation of older adults in Council of Europe member states in the context of an information campaign against elder abuse and other symptoms of ageism. In his country reports and "Human Rights Comments" he referred to the dilemmas of "whistle-blowers" (Jones and Kelly 2014) and the adoption of relevant legislation to better protect personnel working in various types of institutions for older persons when reporting poor conditions or abuses (Council of Europe Commissioner for Human Rights 2011). He branded bad practices and harmful legislation and pointed out successful initiatives such as the Irish NGO programme, "Older & Bolder", aimed at identifying negative stereotypes against older adults (Cantillon and Vasquez del Aguila 2011; Hammarberg 2012). The steps taken by the Commissioner for Human Rights, as well as the potential for future steps, contribute to shaping European awareness about the rights of older persons and the threats of ageism.

Another group of institutions are those established by virtue of treaties ratified by the Council of Europe member states. They are not the Council of Europe's organs as such, but they are firmly placed within the structure of the Council of Europe. First, the European Court of Human Rights, an international court established in 1959, rules on applications by individuals or states with allegations of violations of the civil and political rights set out in the European Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). The Court's case-law makes the Convention a powerful living instrument for meeting new challenges in Europe.

Two other independent committees should be noted. The European Committee of Social Rights evaluates legal and practical steps taken by the state parties to the European Social Charters and their conformity with the provisions of these treaties.

The Committee of Social Rights also adopts conclusions on national reports submitted by states. If a member state ratifies a particular protocol, the Committee is also able to consider collective complaints submitted by civil society organizations and to make decisions based on these complaints.

Finally, the main competence of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the Committee for the Prevention of Torture)—a non-judicial mechanism existing alongside the judicial mechanism of the European Court of Human Rights—is to visit places of detention, such as prisons, police stations, psychiatric hospitals, and other closed institutions, to assess how individuals deprived of their liberty are treated. After each mission, the Committee sends a detailed report to the state concerned, containing the Committee's findings, recommendations, comments, and requests for information.

The institutions listed above were established on a variety of legal bases, and have different natures and competences. Regardless of these differences, they have a common goal of facilitating economic and social progress, achieving greater unity between Council of Europe members, ensuring the protection of human rights, and achieving the ideals and principles that constitute the common European heritage (Table 20.1).

## 20.3 Treaty Law

The main way to harmonize and unify human rights standards in Europe is for states to adopt treaties in the Council of Europe forum. Benoît-Rohmer and Klebes (2005) state that, “by creating a common legal area, they make the member states more cohesive—democratically, socially and culturally” (p. 85). As a result, over 200 treaties and additional protocols have been adopted through the Council of Europe forum. The treaties ideally help member states cooperate on many sensitive issues, including ageing and ageism. However, no convention referring to the elimination of ageism has been adopted at the Council of Europe forum, and no treaty has yet explicitly discussed the rights of older persons or referred to the fight against ageism.

### 20.3.1 *Treaties Protecting the First Generation of Human Rights*

The principal Council of Europe treaty, the previously mentioned 1950 European Convention on Human Rights (Council of Europe 1950), and its additional protocols, form what is known as the first generation of human rights, being essentially linked with dignity, liberty and participation in political life. Rights belonging to this generation are more of a civil and political nature and include, among other things, the right to life, a ban of torture and degrading treatment, equality before the

**Table 20.1** European institutions competent to take action against ageism

Body	Legal basis	Status	Members	Selected competences
Parliamentary Assembly	Statute of the Council of Europe of 1949	Statutory organ	Parliamentarians from the member states	Serving as a platform for discussion; issuing resolutions; inspiring, proposing, and helping to shape new national laws
Committee of Ministers	Statute of the Council of Europe of 1949	Statutory organ	Foreign ministers of the member states or their deputies	Acting as a “guardian” of the fundamental values of the organization; monitoring member states’ compliance; developing international law through conventions; adopting recommendations and resolutions; supervising states’ implementation of the European Court of Human Rights’ judgements
Commissioner for Human Rights	Resolution (99) 50, adopted by the Committee of Ministers on 7 May 1999	Independent	“Eminent personality of a high moral character having recognised expertise in the field of human rights” according to Article 10 of the Resolution (99)50	Fostering the effective observance of human rights; assisting member states in implementing human rights standards; promoting education in and awareness of human rights; taking part in proceedings before the European Court of Human Rights
European Court of Human Rights	European Convention on the Protection of Human Rights and Fundamental Freedoms of 1950	Treaty body	Independent judges	Issuing judgements and decisions in cases submitted by individuals against member states; issuing judgements in inter-state cases; interpreting the European Convention on Human Rights

(continued)

**Table 20.1** (continued)

Body	Legal basis	Status	Members	Selected competences
European Committee of Social Rights	European Social Charter 1961	Treaty body	Independent experts	Monitoring implementation of the 1961 European Social Charter, its additional protocols, and the 1996 Revised European Social Charter; examining states' reports and adopting conclusions; considering collective complaints and issuing decisions
	Revised European Social Charter of 1996			
European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (European Committee for the Prevention of Torture)	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987	Treaty body	Independent experts	Visiting member states on a periodic basis to assess how individuals deprived of their liberty are treated; making observations, public statements, and recommendations; preparing reports; setting up standards

law, the right to fair trial, the prohibition of slavery, freedom of speech and religion, and voting rights (Vasak 1977). The Convention refers to the rights and freedoms of “everyone” and does not contain any specific reference to the rights of older persons, or even to age discrimination, which is inextricably linked to ageism.

Article 14 of the Convention on Human Rights, which prohibits discrimination, does not explicitly specify age for non-discrimination. It states: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” However, the last premise of “other status” suggests that no-one shall be discriminated against on any other ground.

It is also easy to notice that this provision has a non-autonomous character, which means that it is tied only to the rights contained in the European Convention on Human Rights and its additional protocols. Unfortunately, ageism also affects people in spheres beyond the scope of the Convention—that is, in social areas not covered directly by this treaty. Protocol No. 12 to the Convention (Council of Europe 2000a) has removed this limitation and now it establishes a general standard of non-discriminatory treatment by public authorities (Martin et al. 2015), but it failed to expand the list of premises prohibiting discrimination. It was explained that further inclusion was considered unnecessary from a legal point of view, because the list of non-discrimination grounds is not exhaustive (Council of Europe 2000b,



para. 20). It was also proved in the case *Schwizgebel v. Switzerland* considered by the Court (European Court of Human Rights 2010a). In this case, the author of the complaint was a 47-year-old single woman who, due to her age, had been refused permission to adopt a child. The Court, invoking the principle of the best interest of a child, did not find a violation of Article 14 in connection with Article 8 of the European Convention on Human Rights (respect for private and family life) but it finally considered age as a premise covered by Article 14. This case should be recognized as exceptional, because the European Court of Human Rights tends to be cautious about issuing judgements referring solely to age. When the Court does refer to an applicant's age, it is usually in combination with questions of health and conditions of detention, procedural safeguards, or gender discrimination (De Pauw 2014). The case of *Schwizgebel v. Switzerland* did not refer to ageism, but the recognition of age as a separate premise may be the first step toward a deeper consideration of age-related issues, including ageism, by the Court. It should be remembered that the European Court of Human Rights might, within the framework of its dynamic interpretation of the European Convention on Human Rights (Dzehtsiarou 2011), refer to ageism as a source of discrimination or as a unique or special form of discrimination. Nevertheless, in the *Tyrer v. United Kingdom* ruling the Court described the Convention as "a living instrument, which must be interpreted in the light of present-day conditions" (European Court of Human Rights 1978). Moreover, in the judgement of 13 June 1979, *Marckx v. Belgium*, the Court stated that member states are obliged to provide effective and reasonable possibilities to their citizens to benefit from the Convention (European Court of Human Rights 1979). The doctrines set out in these rulings allow the expectation that victims of ageism will not be excluded from the protection offered by the European Convention on Human Rights. However, it appears that currently compared to victims of racism and sexism, a person suffering from any form of ageism is put at a disadvantage in asserting his or her rights (Wintemute 2004; Meenan 2007; Mikołajczyk 2013).

Because "age" is not listed among the premises, older Europeans are often not aware of the possibilities provided by the Convention. Despite quite a significant number of older (over 60) complainants submitting applications to the European Court of Human Rights, it is unclear whether they have submitted claims because they feel that their human rights were violated exclusively due to their age (Spanier et al. 2013; Mikołajczyk 2013). Moreover, the concepts of ageism and even age discrimination have never appeared in claims submitted to the Court in obviously "old age related" cases. These include the involuntary transfer of an older person from one care home to another, as in *Watts v. the United Kingdom* (European Court of Human Rights 2010b); forced placement in a nursing home, as in *H. M. v. Switzerland* (European Court of Human Rights 2002a); and the limitation of nighttime care in the case of *McDonald v. the United Kingdom* (European Court of Human Rights 2014). Other cases include the divestiture of individuals of their legal capacity, as in *X and Y v. Croatia* (European Court of Human Rights 2011a); the insufficiency of old-age pensions to maintain an adequate standard of living, as in



*Larioshina v. Russia* (European Court of Human Rights 2002b) and *Budina v. Russia* (European Court of Human Rights 2009); and poor hospital conditions, inappropriate treatment, or negligence by nursing home staff, as in *Volintiru v. Italy* (European Court of Human Rights 2008a) and *Dodov v. Bulgaria* (European Court of Human Rights 2008b).

However, this is not to say that the jurisprudence of the European Court of Human Rights does not contribute at all to limiting ageism in the Council of Europe member states. For example, in the case *Heinisch v. Germany*, the Court found a violation of Article 10 of the European Convention on Human Rights (freedom of speech) and argued in its judgement, among other things, that the information provided by the applicant (a nurse reporting on poor conditions in a geriatric nursing home where she had been employed) had been disseminated in the public interest, which ranked over the employer's interest (European Court of Human Rights 2011b). This case should be considered in the context of the protection of whistle-blowers, which was revealed by the Council of Europe Commissioner for Human Rights.

Obviously, this judgement is significant for the fight against elder abuse. It has also become an important element in the campaign to raise awareness of the situation of older persons and, as a result, is important to the anti-ageism campaign.

When discussing *elder abuse*, we should also take into consideration the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987 (Council of Europe 1987). Although this Convention does not refer directly to older persons, its essence is to protect people placed not only in prisons (some of whom might be older adults), but also in other institutions where people are de facto deprived of their liberty. As mentioned in the beginning of this chapter, the European Committee for the Prevention of Torture, established on the basis of Article 1 of this Convention, organizes visits to various places of detention in the member states, including hospitals, psychiatric hospitals, and care centres, in order to assess how individuals placed in such institutions are treated. To date, the notion of ageism has not appeared directly in reports, standards, or conclusions of this Committee. However, the Committee does take into account the situation of older prisoners and older patients of psychiatric establishments. For example, in the Committee's standards, revised in 2015 (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2015a), referring to involuntary placement in psychiatric establishments, the Committee stresses the patients' right to privacy and the needs of older patients in this sphere, especially in relation to personal hygiene. The Committee reproached many practices encountered during the country visits in relation to older persons, which might have been rooted in intentional or implicit ageism. For example, the Committee observed that the practice in "some psychiatric establishments of continuously dressing patients in pyjamas/nightgowns is not conducive to strengthening personal identity and self-esteem; individualisation of clothing should form part of the therapeutic process" (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1998, sec. 34).

It is also worth mentioning this Committee's questionnaire for visits to social care institutions (European Committee for the Prevention of Torture and Inhuman

or Degrading Treatment or Punishment 2015b). The questionnaire does not have a legal, but rather a practical nature, containing a long list of questions that may contribute to the identification of ageism. The checklist includes such questions as: Is there ill-treatment by staff (physical and/or verbal)? Is there inter-resident violence? Do members of staff react and intervene promptly in case of incidents? Are measures taken to protect particularly vulnerable residents? Regarding the allocation of different groups of residents, are there placement policies? Regarding residents' privacy, are there individual wardrobes? Lockable space for personal belongings? Can residents keep personal belongings in their room? What types of restraint are used? Seclusion? Physical restraint? Mechanical restraint (straps, straitjacket, bed sides, net bed, etc.)? Chemical restraint? Other types? Are staff properly trained (including in non-physical de-escalation techniques)? Certainly, these questions may be very useful in detecting ageist behaviour/approaches of the staff in a given institution. However, the results of this procedure will also depend on the awareness and sensibility of the inspectors.

### ***20.3.2 The Council of Europe's Social Law***

Civil and political rights contained in the European Convention on Human Rights are complemented by social and economic rights set out in the European Social Charter adopted in 1961 (Council of Europe 1961) and amended by three protocols (Council of Europe 1988a, 1991, 1998) as well as in the Revised European Social Charter of 1996 (Council of Europe 1996a). They guarantee a broad range of everyday human rights related to employment, housing, health, education, social protection, and welfare. The European Social Charter of 1961 Articles 12–15 contain rights of significant importance for older persons: the right to social security, to social and medical assistance, to benefit from social welfare services, and the right of a disabled person to independence, social integration, and participation in the life of the community. However, it cannot be assumed that the authors of the Charter in the early 1960s intended to relate it in any way to ageism or similar phenomena, because at that time, this issue went beyond the sphere of interest of the international community, and age (including old age) was not considered as a separate premise of non-discrimination in human rights law. Some progress in this field can be observed in the case of Article 4 of the Additional Protocol of 1988 to the European Social Charter, which was subsequently copied in 1996 by Article 23 of the Revised European Social Charter. Article 23 provides for the right of older people to social protection. Parties are obliged to ensure the effective exercise of this right by adopting appropriate measures: “to enable elderly persons to remain full members of society for as long as possible, by means of: (a) adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life; (b) provision of information about services and facilities available for elderly persons and their opportunities to make use of them”; “to enable elderly persons to choose their life-style freely and to lead independent lives in their

familiar surroundings for as long as they wish and are able, by means of: (a) provision of housing suited to their needs and their state of health or of adequate support for adapting their housing; (b) the health care and the services necessitated by their state”; and “to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution” (Council of Europe 1996a). Although the Protocol and the Revised European Social Charter do not explicitly mention ageism, all the itemized elements of social protection for older persons have tackled the most ageist, age-sensitive situations. Furthermore, the Explanatory Report to the Protocol clarifies that “the expression ‘full members’ means that elderly persons must suffer no ostracism on account of their age” (Council of Europe 1988b, p. 7, para. 54). It could be assumed that *ostracism* may be construed here as one aspect of ageism, and therefore all the measures taken under Article 23 seem to be crucial for combating ageism as well.

It should also be mentioned that the Revised European Social Charter encompasses other rights that are connected with the situation of older persons in contemporary Europe. The first section of Article 26 touches upon the right to dignity at work, aiming to prevent sexual harassment in the workplace. However, the second section aims at awareness, information, and the prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work. It also means that the states are obliged to take measures that encompass actions protecting older workers against ageist behaviours of employers and other employees.

The Revised Charter also contains an anti-discrimination clause—Article E, which is based on Article 14 of the European Convention of Human Rights (Council of Europe 1996b, para. 136), so as a result, the premise of age is not on the list.

Both Social Charters contain mandatory and non-mandatory provisions. A contracting party should elect to be bound by a specified number of non-mandatory provisions. However, Article 23—potentially the most anti-ageist provision in the Council of Europe social law—is not among the mandatory provisions of the Charter. As a result, member states tend not to be willing to be bound by these obligations, deeming them too demanding.

As stated above, not all 47 member states of the Council of Europe are parties to the charters. Only 27 are, and most of them also ratified the Revised European Social Charter, which is binding on 34 states.<sup>1</sup> As parties to the Charters, the ratifying states had to accept the reporting mechanism, but only 15 of them agreed to collective complaints being submitted to the European Committee of Social Rights by social partner organizations and non-governmental organizations against a given state. However, in the Committee’s conclusions in reference to Article 23, the notion of ageism was not touched upon. Neither was it discussed when the Committee examined collective complaints on the grounds of Article 23 in the cases related to old age submitted in *International Federation of Human Rights Leagues (IFHR) v. Ireland, complaint 42/2007* (European Committee of Social Rights European

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<sup>1</sup>July 2017.

Committee of Social Rights 2008) and *The Central Association of Carers in Finland v. Finland, complaint No.70/2011* (European Committee of Social Rights 2011).

## 20.4 Beyond the Council of Europe Treaties—Soft Law

Because ageism and anti-ageism norms do not appear explicitly in the Council of Europe treaties, it is reasonable to focus on the Council of Europe non-binding documents, which are often concerned with soft law covering a wide range of instruments of varying natures and goals. There are various concepts of *soft law* in the international law doctrine, and various acts issued by international bodies are classified as soft law. There are opinions contesting the existence of this kind of law, but opposing views recognize it as a new quasi-source of international law. Shelton (2000) defined these norms as “normative provisions contained in non-binding texts” (p. 292). There are also opinions that soft law, just as legal norms, is not binding, but that the norms might influence the development of international customary law which is, alongside treaties, the most important *hard law* source. Moreover, soft law still might be used by courts to interpret binding norms contained in treaties (Terpan 2015; Spanier et al. 2016).

Soft law may not only affect the interpretation of treaties by relevant bodies, but may also fill in the gaps or supplement the hard law instruments (Shelton 2003). This soft law function appears fundamental in the absence of a treaty dedicated to older adults. Finally, it might be observed that currently non-binding instruments have strong enforcement mechanisms, sometimes even stronger than treaties (Terpan 2015), so the differences between binding and non-binding acts may turn out to be “really blurred” (Shelton 2003, p. 8). It might be assumed that significant potential power is embedded in the Council of Europe's activity beyond the concluded treaties, especially in the resolutions and recommendations of the Parliamentary Assembly and the Committee of Ministers.

### 20.4.1 A Piecemeal Approach

The acts adopted by the Council of Europe organs can be divided into two groups of documents: those directly referring to older persons' issues of age in Europe; and those that are part of a wider issue, such as social cohesion, mental health, family policies, dependence, old age pensions, health care in prisons, and the full participation of people with disabilities in society. Although they do not refer to ageism explicitly, all the documents belonging to the latter group affect European opinion on the situation of vulnerable people, including older adults. Therefore, relevance to ageism should also be sought in documents dedicated specifically to ageing and older persons.

As it happens, only a few resolutions and recommendations of the Committee of Ministers and the Parliamentary Assembly address ageism. Most of documents dedicated to ageing and senior citizens do not refer to ageism at all. Some of these acts indirectly, and just barely, tackle ageism, such as the “Guiding Principles to be Taken Into Account When Taking Measures Concerning Elderly People” enclosed in the Committee of Ministers Recommendation (94) 9 (Committee of Ministers 1994). These guidelines stressed the crucial role of the media, appropriate information, and education. According to this document, adequate steps taken should increase family and public sensitivity to issues of relevance to seniors, and in particular should enhance the positive perceptions of the role of older people in society.

In Recommendation 1428 (1999), *Future of Senior Citizens: Protection, Participation, Promotion*, the Assembly requested the Committee of Ministers to consider the possibilities of asking the member states to take relevant steps in the area of raising awareness and training of welfare and medical staff to detect mistreatment in any environment in which older people might be living, and to encourage states to create different, more positive images of older adults. Hancock (1999), the author of the Explanatory Memorandum to Recommendation 1428, clarified the background of the Recommendation by indicating that “the right to dignity would be clearly backed up by greater respect for older persons, particularly in public life and in terms of the image projected of them” (Council of Europe 1999, para. 40).

Parliamentary Assembly Resolution 1793 (2011), *Promoting Active Ageing—Capitalising on Older People’s Working Potential*, should also be recognized as an important document. For the first time, the Assembly used *expressis verbis* the term “ageism,” confirming that, although it is less well known than racism or sexism, it is nevertheless “a harmful prejudice that results in widespread lack of respect for older people, whether through the media, which promote stereotypical and degrading images of older people, within society, where they are the victims of physical and financial abuse, in the workplace, where they are subject to unequal treatment, or in the health sector where they do not always receive appropriate medical care and services” (Parliamentary Assembly 2011, para. 1).

In the report that served as a basis for this Resolution, Jacquat (2011) noticed that differences in treatment between individuals or groups on the grounds of age are often based on generalized assumptions or casual stereotypes. Even if direct discrimination is forbidden by law, negative attitudes towards older workers are still deeply rooted in our contemporary work culture. Older workers have more limited chances of finding a new job and of accessing training and education. Quite often they are forced to give up work against their will. Because age discrimination and age-related harassment in the workplace demean older people’s dignity and damage their self-esteem, the creation of a more positive approach among employers of older workers is a requisite. Hence, special emphasis should be placed on highlighting the positive aspects of employing older workers, and measures should be taken to ensure that the advantages of employing older workers are more widely acknowledged (Council of Europe 2011).

Finally, Parliamentary Assembly Resolution 1958 (2013), *Combating Discrimination Against Older Persons on the Labour Market*, is another document

that explicitly addresses ageism. In this document, the Assembly identifies age discrimination, including discrimination in the field of recruitment and work relations, as one of the most widespread forms of discrimination, and indicates substantial differences between the Council of Europe member states in terms of awareness of the problem and the scale of efforts undertaken to combat it. What is more important, according to the Parliamentary Assembly, “age discrimination goes hand-in-hand with the more general phenomenon of ‘ageism’, driven by a negative view of ageing in society” (Parliamentary Assembly 2013, para. 4). The Parliamentary Assembly is of the opinion that it is vital to strive to change beliefs and attitudes in order to eliminate stereotypes, as well as build a positive and true image of workers in all age groups. Therefore, the Assembly invited the Council of Europe member states to support information campaigns aimed at changing attitudes about ageing, to raise public awareness of the experiences of older workers, to encourage mentoring programmes, and to facilitate intergenerational dialogue. This Resolution was based on a report by Sahiba Gafarova (Council of Europe 2013) which contains more references to ageism. Gafarova defined age discrimination as “differential treatment and denial of rights or opportunities unjustified on any other grounds. This form of discrimination has become a sociological concept in its own right known as ageism. Like racism and sexism, ageism concerns prejudices on the part of one group against other groups” (Council of Europe 2013, B1. 2).<sup>2</sup>

Gafarova also observed that ageism in the area of employment is reflected in discriminatory language, attitudes, and practices based on age. It may be conscious or unconscious and is guided by various stereotypes. Moreover, providing arguments for the submission of the draft of Resolution 1958 (2013), she identified a number of prejudices affecting the ageing population, including: physical difficulties (being slow, requiring rest periods, physical inability to perform work duties); mental and cognitive difficulties (elderly workers deal poorly with emergency situations; they are not self-confident); proneness to mistakes and accidents (as a result, older workers are associated with extra costs); inability to concentrate; limited skills; lack of creativity or capacity for innovation; being too old for training; having difficulties in relations with young people; and being resistant to changes.

Finally, in May 2017 the Parliamentary Assembly issued the Resolution 2168 (2017) entitled *Human Rights of Older Persons and Their Comprehensive Care* dedicated to improvement of care for older persons and preventing their social exclusion. In this new Resolution the Assembly calls on the member states to take measures with a view to combating ageism. These measures should, inter alia, prohibit, in law, age discrimination in the provision of goods and services and promote a positive attitude to ageing through awareness-raising campaigns targeting the media (Parliamentary Assembly 2017). Thus, “ageism” is used for a third time in the text of the Assembly’s resolution, indicating that ageism and its symptoms are becoming increasingly better identified within the Council of Europe.

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<sup>2</sup>The author of the report confirmed that there are many types of ageism, which also affect young people, but the report and the drafted Resolution did not cover these.



### 20.4.2 *A Holistic Approach*

The most crucial document relating to older persons is the Committee of Ministers Recommendation CM/Rec(2014)2 to Member States on the Promotion of Human Rights of Older Persons of 19 February, 2014 (Committee of Ministers 2014). It is a complex response to previous initiatives of the Parliamentary Assembly and applies a human rights-based approach to the situation of all older persons. The main assumption of this Recommendation is that older adults should enjoy their fundamental rights and freedom on an equal basis with other people. Its main goal is to eliminate barriers denying senior citizens their rights.

The Recommendation to Member States on the Promotion of Human Rights of Older Persons is of a new generation. It consists of two parts: a recommendation, and an appendix containing guidelines and good practices in the areas of non-discrimination, autonomy, and participation, an older person's status before justice institutions, protection from violence and abuse, social protection, employment, and various aspects of care (including consent to medical care, palliative care, residential care, and institutional care). The Committee of Ministers recommends that member states ensure the implementation of the Recommendation's principles within national legislation and practice, that they consider providing examples of good practices, and that they evaluate the effectiveness of the measures taken. Aimed at raising awareness of the human rights and fundamental freedom of older persons, the Committee advises the wide dissemination of this document by the states among the relevant authorities and other stakeholders. The Recommendation provides that the Committee of Ministers will examine the implementation of its provisions within 5 years of its adoption. So, despite its non-binding character, the Recommendation is equipped with a follow-up mechanism, which might improve its chance of achieving long-term effects.

Surprisingly, the term "ageism" was not used in the text of the Recommendation. According to the Explanatory Memorandum interpreting this Recommendation, it merely "aims at promoting older persons' protection in societies where the ageism is rising or in situations where they may be vulnerable" (Council of Europe 2014, para. 30). The Memorandum does not explain the meaning of ageism, but it refers to the concept of ageism contained in Parliamentary Assembly Resolution 1793 (2011), *Promoting Active Ageing—Capitalising on Older People's Working Potential*.

Although the Recommendation does not use the term ageism, it tackles the principle of ageism directly and indirectly, through related issues such as age discrimination and awareness, by raising campaigns on older persons' rights, including the protection of whistle-blowers. The interpretation of the anti-discrimination clauses provided in the Memorandum to the Recommendation should be recognized as particularly important, because it may affect the future case law of the European Court of Human Rights and the European Committee of Social Rights. The Memorandum explains that the Recommendation reaffirms the principle of the full enjoyment of all human rights and freedoms of older persons without any discrimination in the



meaning of Article 14 of the European Convention on Human Rights and Article E of the Revised European Social Charter. As mentioned above, “age” is not indicated among the premises stipulated in these anti-discrimination clauses, which, until the adoption of the Memorandum, created various controversies and ambiguities. Therefore, it is significant that the Memorandum provides extensive interpretation of these clauses by including age as a premise of “other status” (Council of Europe 2014, para. 31).

In the area of raising awareness, the Committee invites the member states to take appropriate measures to protect older persons from financial abuse, deception, and fraud. As to the situation of older persons who require assistance and care, the Committee places special attention on the implementation of sufficient measures aimed at raising awareness among medical staff, care workers, informal carers, and other individuals who provide services to older persons. The appendix to the Recommendation indicates German, Greek, Austrian, and Finnish good practices in this area as models to be followed by other member states. It also mentions the European project “Breaking the Taboo” (co-financed by the European Commission) aiming at drawing up a strategy for recognizing and counteracting violence against older women within families. At the same time, the Memorandum, referring to the European Court of Human Rights judgement in the *Heinisch* case, explains that one of the Recommendation’s goals is to encourage member states to take legislative or other measures to protect anyone reporting abuse of older adults from dismissal or other reprisals. All such initiatives, if they are adopted by the states, might also contribute to the elimination of ageism, as the background of ill-treatment of older people.

## 20.5 Conclusions

Taking into account almost seven decades of the Council of Europe’s activity in the field of human rights, addressing the rights of older persons is relatively new in this forum. Ageism has scarcely appeared in documents adopted in the last decade. It might also be stated that the threat of ageism and the need to take steps against it have only slowly been breaking through, with difficulties, in the agendas of the Council of Europe bodies, and have been introduced into very few Council of Europe official documents. However, it should be remembered that the Council of Europe is created by its member states and it reflects those member states’ attitudes towards ageism and their political will to identify and eliminate it. Each document adopted by the Parliamentary Assembly and the Committee of Ministers is a result of a consensus achieved by the member states, which are not always aware of the existing problem, or are not interested in taking steps that require financial outlay, such as financing media campaigns or training caregivers and officials.

Currently, ageism is more often indicated in explanations to soft law documents, where it is understood as prejudice or stereotypes serving as grounds for discrimination, elder abuse, and other violations of older persons’ human rights. It is confirmed

that ageism is inextricably intertwined with discrimination, but both concepts are not used interchangeably. Only once has ageism been described as a special or unique form of discrimination and not as its source.

On the other hand, although ageism does not appear on the Council of Europe's agenda as often as sexism, racism, or homophobia, the Council of Europe has tangible tools at hand to take action against it. Potentially, each of the Council of Europe organs indicated at the beginning of this chapter is or might be competent to contribute to the elimination of ageism. This aim might be achieved thanks to the proper interpretation of the presently binding treaties, through calling on member states to take relevant measures and monitoring the implementation of these measures, and finally, through pointing out good and bad practices towards older persons. Certainly, the European Court of Human Rights, as a "hard" controlling mechanism, plays an extremely important role in this area. If it takes a position on ageism, or simply refers to relevant soft law documents, in its jurisprudence, it will be a quantum leap forward in the protection of older persons in Europe. If the fight against ageism is to be effective, other tools at the Council of Europe's disposal, such as monitoring and warning on violations of human rights, must also be mobilized. However, it seems that, at the present time, the Council of Europe is just at the beginning of this fight.

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