

ROMAN VIEWS ON ‘ACTIVE AGEING’ – LESSONS AGAINST AGEISM

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ABSTRACT

Mostly due to negative demographic trends and unfavourable ratios between the inactive and active working population, prejudiced ideas against older people, that they are unproductive and redundant, are contributing to discrimination and their exclusion. Although human rights should not diminish with age, we are nowadays witnessing discriminatory practices against the older persons considering employment, social protection and access to services.

The social construct of ‘ageism’, according to which older people are treated differently because of the attitudes relating to their age, is not a contemporary idea. Rather, it is a human rights issue that has existed throughout history. Examining the extremely positive and negative descriptions of elderly in ancient Roman literature, the first part of this article contains an analysis of the legal and social position of older people and, consequentially, their contribution to society. Focusing on the concept of ‘active ageing’, specifically propagated by the Article 25 of the Charter of Fundamental Rights, the second part of the paper will tackle the existing efforts of the EU in the struggle against ageism.

*Although Croatian national legislation is largely aligned with the European *acquis*, due to the large margin of discretion left to Member States, a systematic approach to care for the elderly is still lacking, not to mention its effective implementation. Finally, by exploring the experiences from the past and reflecting on the current EU policy advancements, the goal of this paper is to facilitate a vital shift from the paradigm of the old people as a burden of passive service recipients towards active participants in society.*

Keywords: *active ageing, ageism, ancient Roman society, Charter of Fundamental Rights of the EU, discrimination*

1. INTRODUCTION

Both today and throughout history, ideas about age have fluctuated depending on various cultural, biological and social elements. In times when the old age threshold is constantly being re-assessed,¹ Evans's definition of age as "a number derived from a birth certificate" that "cannot be a cause of anything (apart from prejudice)"² is highly applicable. The prejudices on grounds of age are an integral part of the social construct of ageism, which was introduced to popular discourse by Robert Butler, the first director of the U.S. National Institute of Ageing in 1969, who compared it to bigotry similar to racism and sexism.³ Numerous attempts at defining the term boil down to discrimination and prejudice based solely on the person's age, and since it results in the insufficient contact of young people with the elderly, it eventually led to the creation of stereotypes and myths. Butler gives an interesting explanation of ageism as a fear and dread of growing old, which ultimately serves as a psychological mechanism that makes it possible for the younger individuals to avoid dealing with the reality of getting old.⁴ Regardless of the proposed exposition, it can be recognized that ageism as such contributes to the poor treatment of old people and their consequential social exclusion.

Specifically in modern capitalism, given that older people are seen as an unproductive part of society, they are perceived exclusively as a burden on resources, primarily in terms of medical care and pensions. This is partly due to changes in demographic structure that resulted in a significant increase in the number of old-

¹ There is little consensus in contemporary society regarding the beginning of old age. For the purpose of this discussion, we agreed to use the UN Department of Economic and Social Affairs, Population Division's approach shown in its 2019 report, according to which the term 'old people' is nowadays used to describe a person aged 65 years or older. The United Nations Department of Economic and Social Affairs, *World Population Ageing 2019*, p. 1, available at: [<https://www.un.org/en/development/desa/population/publications/pdf/ageing/WorldPopulationAgeing2019-Report.pdf>], accessed 20. June 2020

² Evans, J.G., *Age discrimination: Implications of the Ageing Process*, in: Fredman, S.; Spencer, S. (eds.), *Age as an Equality Issue*, Hart Publishing, Oxford, 2003, p. 19

³ Butler described the term as "a process of systematic stereotyping and discrimination against people because they are old"; see Butler, R. *Ageism*, in: Maddox, G. (ed.), *The Encyclopedia of Aging*, p. 38–39. Bitheway points out that "ageism is not a discrimination by the dominant social group against a specific minority group but a set of beliefs originating in biological variation between people and relating to the ageing process and it is in the actions of corporate bodies." Bytheway, B., *Ageism*, Open University Press, Buskingham, 1995, p. 14. Compare with other similar definitions, for instance: Palmore, E.B., *Ageism, Negative and Positive*, Springer, New York, 1999, p. 4; Cuddy, J. A. C.; Fiske, S. T., *Doddering but Dear: Process, Content, and Function in Stereotyping of Older Persons*, in: Nelson, T.D. (ed.), *Ageism, Stereotyping and Prejudice against Older Persons*, Cambridge, 2002, p. 1–27; Greenberg, J.; Schimel, J.; Martens, A., *Ageism: Denying the Face of the Future*, in: Nelson, T. D. (ed.), *Ageism: Stereotyping and prejudice against older persons*, MIT press, Cambridge & London, 2004, p. 27

⁴ Butler, *ibid.*

er people in relation to the total population. Results of the last Croatian national census from 2011 show that 17,7% of the Croatian population is older than 65 years, and it is anticipated that this percentage will be 37,4% by 2030. At the same time, it is estimated that the percentage of people older than 65 years in the EU is currently around 19,7% and that it will grow to 31,3% by the year 2100.⁵ Such estimations show reasons for concern, especially if we take into account the data on discrimination against the older population, which is on the rise.

As one of the tools to combat ageism and to ensure a higher quality of ageing, the WHO originally introduced the theoretical concept of ‘active ageing’, which is widely used to form strategies and policies at the international as well as the EU level.⁶ Since the philosophy of the social virtue of ageing actively has been known from antiquity, the aim of this paper is, through historical and comparative methods, to explore the challenges of ageing from historical and contemporary perspectives and use the wealth of experience from past human actions in a problem-oriented manner to tackle the modern-day social issues of ageing.

Considering that the historical perspective can unveil values that are influencing social behavior, the first part of the contribution will elaborate the discussion and controversies about old age in ancient Rome. As an integral part of the relatively new field of ‘elder law’⁷, an overview of the European legal framework against discrimination of the old persons and the active ageing policy will be provided in the

⁵ Državni zavod za statistiku Republike Hrvatske, *Projekcije stanovništva Republike Hrvatske od 2010. do 2061.*, Zagreb, 2011, [https://www.dzs.hr/Hrv_Eng/Projections/projekcije_stanovnistva_2010-2061.pdf], accessed on 14. June 2020; Eurostat, *Population structure and ageing*, [https://ec.europa.eu/eurostat/statistics-explained/index.php/Population_structure_and_ageing#The_share_of_elderly_people_continues_to_increase], accessed 14. June 2020. On the increased share of older age groups in Croatia and the EU see: Lulić, M.; Rešetar Čulo, I., *The rights of older persons with disabilities in the Republic of Croatia*, in: Vinković, M. (ed.), *New Developments in EU Labour, Equality and Human Rights Law*, Osijek, 2015, p. 198–202

⁶ It refers to a “process of optimizing opportunities for health, participation and security” for the purpose of improving the quality of ageing. Cf. *Active Ageing. A Policy Framework*, p. 12 [https://extranet.who.int/agefriendlyworld/wp-content/uploads/2014/06/WHO-Active-Ageing-Framework.pdf], accessed 29 July 2020; For a debate on different approaches and definitions of ‘active ageing’ see Boudiny, K., ‘Active ageing’: from empty rhetoric to effective policy tool, *Ageing & Society*, vol. 33, no. 6, 2013, pp. 1077–1098.

⁷ The field of ‘elder law’ has experienced considerable advancements, however due to the global demographic changes, strategic dialog and effective instruments on the international level are required. Cf. Doron, I., *From National to International Elder Law*, *The Journal of International Ageing & Policy* 1, 2005, pp. 43–67; Numhauser-Henning, A., *An Introduction to Elder Law and the Norma Elder Law Research Environment*, in: Numhauser-Henning, A. (ed.) *Introduction to the Norma Elder Law Research Environment: Different Approaches to Elder Law*, Lund University, 2013, pp. 21–38; Mikołajczyk, B., *Is the ECHR ready for global ageing?*, *The International Journal of Human Rights*, 17:4, 2013, 511–529

second part of this article. Given that Croatia is not lacking the legal framework but an efficient implementation in the field, the third part aims at substantiating the Croatian challenges in standards of care for the elderly, specifically considering their health, participation and security. Finally, in order to help old persons to remain valuable members of society, we will conclude with the potential to adapt old ideas and solutions to the contemporary practice of active ageing.

2. AGEISM AND ACTIVE AGEING IN ANCIENT ROME

It is not possible to determine with certainty who was considered old in ancient society and which was the overall demographic structure of the Roman population as we do not have access to the relevant statistical data. To some extent, demographic evidence can be extracted from indirect sources, such as epigraphic monuments, legal documents and literary works. Useful epigraphical evidence can be traced from the age of the deceased commemorated on tombstones.⁸ Nevertheless, since not all age groups were equally represented, these epigraphic samples do not provide reliable mortality data.⁹ However, the inscriptional data evidence evaluated with reference to the external standard of the UN model life tables, which were completed by Hopkins, show that life expectancy at birth was presumably under 30.¹⁰ This current estimate may lead us to the conclusion that there was almost no older population because the statistical data is affected by high infant and child mortality, above 200 per 1,000.¹¹ According to information from the Roman census conducted in 73 AD, which has been preserved for us thanks to Pliny's comment (*Nat. Hist.* 7,162–163), 81 people in the Po region claimed to be over 100 years old. Although it is surely an exaggeration, Pliny enumerates over-90-year-olds by name to prove his point and emphasize the cases of longevity.¹² Surprisingly, but very similar to today's notion, old age, according to the perception of Romans, began around the age of 60, when the Roman citizen was freed

⁸ E.g. CIL XIII 7101; CIL VIII 1558; CIL VIII 298; CIL VIII 579

⁹ For attempts of mapping the age structure of the Roman population and limitations that come with the usage of inscriptions for the purpose of mortality calculations, see Hopkins, K., *Sociological studies in Roman history*, Cambridge University Press, 2017, 106–134; Durand, J. D., *Mortality estimates from Roman tombstone inscriptions*, *American Journal of Sociology*, vol. 65, no. 4, 1960, pp. 365–373; Parkin, T. G., *Demography and Roman society*, JHU Press, Baltimore, 1992, 4–19

¹⁰ Hopkins, *ibid.*, p. 133

¹¹ It is estimated that as many as 50% of children died before the age of ten, but if they survived that year, life expectancy would increase significantly. Cf. Cokayne, K., *Old Age in Ancient Rome*, 2005, [<https://www.brsl.org/events-proceedings/proceedings/25020>], accessed 10. June 2020

¹² Harlow, M; Laurence, R., *Growing up and growing old in ancient Rome: a life course approach*, Psychology Press, London & New York, 2000, p. 7; Parkin, *op. cit.*, note 9, p. 107–111

from military duties and other civic obligations (*munera*).¹³ The only specificity, Cokayne points out, compared to the current share of the total population is that the Roman figure was approximately around 6–8%.¹⁴ The argument in favour of that percentage arises from the commonly named Ulpian's 'Life Table', which is included in Justinian's digest D. 35,2,68 pr as an excerpt from the second book *Lex Iulia de vicesima hereditatum* from the jurist Aemilius Macer. The regulation was probably an administrative provision for the purpose of the calculation of tax annuities, but Macer's citation of Ulpian's chart with age categories could also serve as a table of life expectancy in the 3rd century AD. Although it is certain that such an ancient actuarial table does not statistically have a foothold in the actual population,¹⁵ the data are indicative and provide us with a rough overview of life expectancy according to which 7,87% of the population would be 50 years or older, similar to other pre-industrial societies.¹⁶

As in today's society, chronological transition to a certain age did not necessarily affect everyone equally, but it depended on the physical and psychological complexity of the individual experience.¹⁷ Moreover, the experience of ageing differed significantly depending on the social status of the individual. Literary sources provide evidence to the various psychological, physiological and emotional changes of a person in old age.¹⁸ Perhaps the best known complete work on the sorrows and consolations of old age is Cicero's discourse *Cato Maior de Senectute*. Given that he himself was then 63 years old when he wrote it, Cicero expressed his own sentiments of ageing and identified its four major challenges: exclusion from activities, physical disabilities, absence of pleasures and awareness of imminent death.¹⁹ Likewise, in his late sixties, Seneca dealt intensively with the vulnerabilities of

¹³ Covey, H. C., *The Definitions of the Beginning of Old Age in History*, *The International Journal of Aging and Human Development*, vol. 34, no. 4, 1992, p. 327; Luh, A., *Das „Goldene Zeitalter der Alten“? Alter in historischer Perspektive*, *Zeitschrift für Gerontologie und Geriatrie*, vol. 36, no. 4, 2003, p. 307. The term *senex* was not clearly defined in the context of age; however, according to the analysis of literature conducted by Parkin, it could cover the range from 45 to 77 years. This notion was much more dependent on the appearance, health and behavior of the individual than their actual chronological age. Parkin, T. G., *Ageing in antiquity. Status and participation*, in: Johnson, P.; Thane, P. (eds.), *Old age from antiquity to post-modernity*, Routledge, London & New York 2002, p. 21

¹⁴ Cf. Cokayne, *op. cit.*, note 11; Parkin, T. G., *Old age in the Roman world: a cultural and social history*, JHU Press, Baltimore, 2003, p. 50

¹⁵ Cf. Parkin, *ibid.*, p. 27–41

¹⁶ Frier, B., *Roman life expectancy: Ulpian's evidence*, *Harvard Studies in Classical Philology* vol. 86, 1982, p. 248

¹⁷ For a positive perspective towards ageing, see for example: *Plinius, Epistulae* 3,1; *Seneca, Epistulae* 12. Negative attitudes towards ageing are expressed in: *Plinius, Epistulae* 8,18, 9–10

¹⁸ Cf. *Ovidius, Metamorphoses* 15, 199–236; *Plutarch, Moralia* 786a

¹⁹ Cf. *Cicero, De senectute* 5,15

ageing and, in the last two years of his life, compiled a series of letters dealing with the subjects of the loss of physical ability, fear of death, cessation of work, childish behaviour and dependability of the elderly.²⁰ Even though we can assume that the observations of individual writers were very subjective and affected by their own backgrounds, at the same time, they were able to detect and indicate the fundamental difficulties that are universally inherent to ageing.

On the other hand, negative stereotyping which is seen in the attribution of distinctive features to all *senibus* gives evidence that discrimination was an integral part of the society.²¹ Prejudices were mostly manifested in descriptions of real or imaginary characters who embodied the major characteristics of the group's key attributes. In his epistle *Ars Poetica*, Horace focuses on the behavioural description of a *senex* as a quarrelsome, greedy, cowardly grumbler, and compared to other stages of life, he portrays this last one as extremely negative.²² Indictment of ageing was quite harshly expressed in comedy²³ and satirical genres.²⁴ The attribution of distinctive negative features of the elderly often coincides with gender discrimination, which can be observed in the satirical representations of older, often affluent women.²⁵ Even though it is clear that the utilization of the old persons as objects

²⁰ Cf. Seneca, *Epistulae morales ad Lucilium* 4, 19, 24, 26

²¹ Cf. e.g. Juvenalus, *Satires* 10, 198–204: [...] but old men all look alike. Their voices are as shaky as their limbs, their heads without hair, their noses drip like an infant's, and their bread, poor wretches, has to be chewed by toothless gums. They become so offensive to their wives, their children and themselves that even the legacy-hunter, Cossus, turns from them in disgust. Their numbed palate no longer takes pleasure in wine or food, and sex has long been forgotten. 10, 241–5: And even if the powers of his mind remain strong, he [an old man] must carry his sons to burial and he must see the funeral pyres of his dear wife and his brothers and urns filled with the ashes of his sisters. Such are the penalties of the one who lives for long: he sees renewed disasters hit his house, he lives in a world of sorrow, growing old among constant grief and mourning clothes. *Trans. cit.* Hope, M. V., *Death in Ancient Rome: A Source Book*, Routledge, New York, 2007, 16. See also Pliny's description of Domitius Tullus *Epistulae* 8,18,9

²² Horatius, *Ars Poetica* 169–174: Many discomforts besiege an old man, either because he seeks [things] and [yet], wretched, holds back what he has found and fears to use it, or because he manages all things timidly and coldly, a delayer, long in hope, inactive and fearful of the future, a curmudgeon, given to complaining, a praiser of time past when he was a boy, a chastiser and censor of younger ones. The years as they come bring many comforts with them, and take many away as they recede. *Trans. cit.* Ferriss-Hill, J., *Horace's Ars Poetica: Family, Friendship, and the Art of Living*, Princeton University Press., Princeton & Oxford, 2019, pp. xxii–xxiii

²³ In his comedy *Casina*, Plautus ridicules the childishness and frivolity of old men (*senex amator*) by describing their different approaches in seducing young women. Stinginess and mistrust are the main features of the elderly protagonist Euclio in comedy *Aulularia* (21–23, 311–313), while the typical physical appearance of an old man was portrayed by Demipho in *Mercator* (546–549).

²⁴ Cf. e.g. Pliny's description of Domitius Tullus *Epistulae* 8,18,9; Juvenalus, *Satires* 10

²⁵ E.g. Juvenalus, *Satires* 6; Plautus, *Aulularia* 534–535; Horatius, *Epodes* 8; 12; Propertius, *Elegies* 3,25, 11–16

of ridicule are exaggerations for the purpose of critical assessment of the society, they still give a hint of the fundamental stereotypes (as senile, rigid, conservative and useless) based exclusively on the belonging to the social group of the elderly.

Since age, in spite of all the accompanying negative features, was seen as a natural process dependent on the mind-set and initiative of the individual, Parkin calls attention to the fact that “systematic and deliberate marginalisation of the elderly did not occur”.²⁶ He pointed out that the integration of the elderly in the society, aside from their status and gender, depended mostly on the competences of the individual and his/her abilities to stay useful to the community. All the shortcomings of ageing were attributed to the person’s character rather than age.²⁷ According to Cokayne, old persons could enjoy respect, authority and status as long as they were still useful to their community and inasmuch as they fulfilled the societies’ expectations on how to live.²⁸ Protection against social marginalization was provided by the Roman family and the institute of *patria potestas*,²⁹ while the concept of *pietas* incorporated a moral duty to respect one’s parents.³⁰ The obligation of financial support of children towards their parents and other ancestors was legally regulated.³¹ Despite the fact that there was no retirement, for those who had the financial means, a withdrawal from public life was common.³² This did not mean, however, that the elderly would not be included as counsellors. In his essay, *Whether an old man should engage in public affairs*, Plutarch reveals the need for justification that older people can still contribute to society with their experience, knowledge and determination. In an attempt to strike out a better social and political position for the elderly, he argues, “For youth is meant to obey and old age to rule, and that State is most secure where old men’s counsels and the young men’s spears hold highest rank.”³³ Cicero stressed that the elderly should be given due respect because of their experience and advisory function, which would

²⁶ Cf. Parkin, *op. cit.*, note 13, p. 39

²⁷ “[...] the actual status of an old person in the ancient world depended more on the person him or herself than on the general fact that he or she was old.” Cf. Parkin, *ibid.*, pp. 34

²⁸ Cokayne, *op. cit.*, note 11

²⁹ Cf. *Gai. Inst.* 1,55

³⁰ Cf. *Ulp. D.* 27,10,4; *Cicero, De inventione* 2,22,66

³¹ Cf. *Ulp. D.* 25,3,5,1-2

³² Harlow, M.; Laurence, R., *Growing up and growing old in ancient Rome: a life course approach*, Psychology Press, London & New York, 2000, p. 118

³³ *Plutarch, Moralia* 789 *Trans. cit.* [http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Plutarch/Moralia/An_seni_respublica_gerenda_sit*.html], accessed 01. July 2020

motivate them to stay productive in the community, especially in caring for and tutoring the younger generation.³⁴

Apart from the conventional advice about the need for a regular biorhythm, physical and intellectual activity, and a healthy diet regimen prescribed by Pliny,³⁵ one philosophical approach constantly re-emerges in all Roman sources. A very important idea on which we should build our action plan nowadays was expressed in Cicero's words: "... to those who have not the means within themselves of a virtuous and happy life every age is burdensome."³⁶ Regardless of age, according to him, the most important is the approach to life. Ageing is a natural course of events for which we need to prepare, so with the right approach, we will find it easier to bear. Ambrosius perfectly underlined that concept with this statement: "Years and grey hair do not make this an honourable age; one's actions do."³⁷ Given the above, we can conclude that the Romans had already established a philosophical and practical approach to active ageing that included a healthy lifestyle and proactive engagement in the community.

3. OVERVIEW OF THE EU LEGISLATIVE FRAMEWORK

As if no time has passed, older people nowadays still experience discrimination based on their age. This discrimination is mostly grounded on the stereotypes that they lack motivation and flexibility and are unable to accept new ideas.³⁸ Such discrimination violates the fundamental right to human dignity, and it results in social exclusion, the refusal to grant access to basic goods and services, and poverty, which consequentially disturbs the economic and social welfare of the society.³⁹ Even though law and society started to recognize the importance of 'social groups' as the societal approach of systematic discrimination, age as a specific legal

³⁴ Cicero, *De Senectute* 5,15 sqq

³⁵ Plinius, *Epistulae* 3,1: „[...] I like to see men map out their lives with the regularity of the fixed courses of the stars, and especially old men. [...] Then dinner is served, the table being as bright as it is modest, and the silver plain and old-fashioned; [...] he has passed his seventy-seventh year, his hearing and eyesight are as good as ever, his body is still active and alert, and the only symptom of his age is his wisdom.

³⁶ Cicero, *De Senectute* 2,4

³⁷ Ambrosius, *Epistulae* 16,5

³⁸ On the definition and analysis of discrimination, see: Horta, O., *Discrimination in Terms of Moral Exclusion*, *Theoria*, vol. 76, 2010, pp. 314–332; Mair, J., *Direct discrimination: limited by definition?*, *International Journal of Discrimination and the Law*, vol. 10, 2010, pp. 3–17

³⁹ Fredman, S. *The age of Equality*, in: Fredman, S.; Spencer, S. (eds.), *Age as an Equality Issue*, Hart Publishing, Oxford, 2003, pp. 22–35; O'Conneide, C., *Age discrimination and European Law*, European Commission, 2005, p. 10

category is often missing or invisible.⁴⁰ ‘Elder law’ is still *in statu nascendi*, and while discrimination as a negative and unwanted phenomena of making distinctions between humans on numerous grounds is forbidden by several international conventions, age as a discrimination ground is often not directly mentioned but rather covered by an open clause: “discrimination on any ground, such as.”⁴¹

The social exclusion of certain groups, such as women, ethnic and sexual minorities and older people, as a process which disables individuals or groups from adequately taking part in the social, political and economic life of the community, is recognized in the EU, which has led to the development of EU antidiscrimination legislation.⁴² At the primary EU law level, age is covered by the mentioned anti-discrimination clause. Art. 19 of the *Treaty on the Functioning of the European Union (TFEU)* as a legal solution introduced by the Amsterdam Treaty in 1999. It provides that the EU may take actions to combat discrimination. Another important provision is Article 21 of the *Charter of Fundamental Rights of the European Union*, which prohibits discrimination based on age, amongst other grounds.⁴³

Within secondary EU law, discrimination based on religious belief, disabilities, sexual orientation and age has been covered by the *Framework Equality Directive 2000/78*.⁴⁴ However, the Directive is applicable only in the field of occupation and employment, such as conditions for employment, access to vocational training and guidance, working conditions including salary and dismissals, and membership in unions, regardless of whether the employment is in the public or private sector. This directive provides protection against both direct and indirect discrimination, harassment, and orders to discriminate. Unfortunately, apart from this legal rem-

⁴⁰ Doron, I. I.; Georgantzi, N., *Introduction: between law, ageing and ageism*, in: Doron, I. I.; Georgantzi, N. (eds.), *Ageing, ageism and the law: European perspectives on the rights of older persons*, Edward Elgar Publishing, 2008, p. 1

⁴¹ For instance, see Article 26 of the UN International Covenant on Civil and Political Rights and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5

⁴² See more in: Čapeta, T. *et al.*, *Reforma Europske Unije, Lisabonski ugovor*, Narodne Novine, Zagreb, 2009, p. 343-361; Vasiljević, S., *Equality, non-discrimination & fundamental rights: old habits die hard!*, in: Vinković, M. (ed.), *New Developments in EU Labour, Equality and Human Rights Law*, Osijek, 2015, p. 177-195

⁴³ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2016] OJ C 202/13; Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02. On the origins of the EU antidiscrimination law see: Craig, P.; De Búrca, G., *Eu Law, Text, Cases, and Materials*, Oxford, 2016, p. 893 *sqq.* On the relation between Article 13 of the TFEU and Article 21 of the Charter see: Bercusson, B., *European Labour Law*, Cambridge, 2009, p. 240-242

⁴⁴ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303, 2.12.2000

edy, there is no directive, which would broaden the principle of non-discrimination horizontally. Thus, the EU still has a task ahead of it to adopt a far-reaching secondary legal framework which would ensure the equal position of old people, especially considering the access to health care, housing and social protection. A legislative proposal, the *Equal Treatment Directive (ETD)*, which could fill the legal gap and have far-reaching effects, was drafted by the Commission in 2008. Due to complaints that it infringes upon the competence of the member states in certain matters and that it is in conflict with the principles of subsidiarity and proportionality, the legal instrument has still not been accepted as unanimity in the Council has not been reached so far.⁴⁵

Another important tool against all kinds of discrimination is the fact that the European Court of Justice (ECJ) has increasingly relied on equal treatment as a general principle of EU law.⁴⁶ This principle has its roots in a question of equal treatment and non-discrimination between genders as seen in cases *Defrenne III*, *P v S* and *Schröder*.⁴⁷ After the already mentioned expansion of the non-discrimination principle in the Treaty of Amsterdam, the ECJ started to broaden the principle of equal treatment outside the field of gender equality.⁴⁸ For this topic, in the case of *Mangold*, the ECJ declared that a general principle of non-discrimination on the grounds of age is relevant to EU law.⁴⁹ In quoted cases, even though the period for transposing the Framework Employment Directive into national law has still not expired, the ECJ nevertheless ruled that the general principle of equal treatment in EU law precluded national law from permitting the arbitrary discrimination on the grounds of age.⁵⁰ So, the ECJ has decided that even though the implementation period has not yet expired, discrimination based on age, which was forbidden by the (at that time) non-effective Directive, is applicable, which ultimately means it is binding for the national legislation and courts as a general principle. This was subject to certain criticism, and later, the ECJ later backtracked on the

⁴⁵ *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation* COM(2008)0426 - 2008/0140(CNS), available at: [<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52008PC0426>], accessed 03. July 2020

⁴⁶ Craig; Búrca, *op. cit.*, note 43, p. 932

⁴⁷ Case 149/77 *Defrenne v Sabena* [1978], ECR 1365; Case C-13/94 *P v S and Cornwall County Council* [1996] ECR I-2143; Case C-50/96 *Deutsche Telekom v Schröder* [2000] ECR I-7

⁴⁸ Craig; Búrca, *op. cit.*, note 43, p. 933

⁴⁹ Case C-144/04 *Mangold v Rüdiger Helm* [2005] ECR I-9981

⁵⁰ Schiek, D., *The ECJ Decision in Mangold: A Further Twist on Effects of Directives and Constitutional Relevance of Community Equality Legislation*, *Industrial Law Journal*, vol. 35, no. 3, 2006, p. 332; Schlachter, M., *Mandatory Retirement and Age Discrimination under EU Law*, vol. 27, no. 3, 2011, p. 288

application of principle of age discrimination in the *Bartsch* case before the expiry of implementation period, but it continued to address non-discrimination on the grounds of age as a general principle.⁵¹ As a result, we can say that the continuous struggle to enable the equal treatment of older people within EU legislation and in the activity of the ECJ is visible, which gives hope that both will continue to operate in the same direction.

A document that shows the real situation on the field in the member states is the *Fundamental Rights Report*, which is issued every year by the European Union Agency for Fundamental Rights. Comparing the 2019 and 2020 reports, which published research on equality in member states as well as an analysis of good practices regarding age as grounds for discrimination, reveals the rise of discriminatory practices.⁵² Especially in the field of employment, according to the Eurobarometer survey, old age is perceived as the most common form of discrimination and producing the highest disadvantage for the job applicants.⁵³ The concerning data is that the three out of four data subjects who were exposed to discrimination did disclose or report it, mainly because they thought it would not change anything. The best practices pointed out in this publication that could serve as a role model are the retirement and fixed-term contract guidelines issued by the Irish Equality and Human Rights Commission. These guidelines direct older workers to legal and human resources professionals, trade unions and other competent bodies in order to ensure that they are not discriminated against if they choose to remain in employment.

The international *acquis* specifically dealing with active ageing is mostly based on soft law, which serves as guidelines and checklists for stakeholders. *The United Nations Principles for Older Persons, General Assembly resolution 46/91* of 16 December 1991 in particular urges governments to integrate certain standards concerning independence (especially the decision about withdrawal from work into retirement), participation (as active members of the society), dignity (safe from abuse and discrimination), self-fulfilment (by developing their potential and continuing

⁵¹ Case C-427/06 *Bartsch* [2008] ECR I-7248. For criticism of Mangold, see: Craig; Búrca, *op. cit.*, note 43, p. 933; Krebber, S., *Social Rights Approach of the European Court of Justice to Enforce European Employment Law*, *Comparative Labour Law and Policy Journal*, vol. 27, no. 3, 2006, pp. 377–404; Masson, A.; Micheau, C., *The Werner Mangold Case: An Example of Legal Militancy*, *European Public Law*, vol. 13, no. 4, 2007, p. 587–594

⁵² European Union Agency for Fundamental Rights, *Fundamental Rights Report 2019*, p. 73, available at: [<https://fra.europa.eu/en/publication/2019/fundamental-rights-report-2019#TabPubOverview0>]; *Discrimination in the EU in 2015*, Special Eurobarometer 437, pp. 16, 78 [<https://ec.europa.eu/comfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2077>], all accessed 02. July 2020

⁵³ *Discrimination in the EU in 2015, ibid.*, pp. 16, 78

education) and access to healthcare or other services into national agendas. *Madrid Political Declaration* and *Madrid International Plan of Action on Ageing* from 2002 put emphasis on three key areas: creating supportive environments, improving health and full participation of the elderly in the development. We have to admit, that the focus of the economy is on productivity; certainly not on the older population, so the success of this legal instruments will depend on the consent of states and awareness of the importance of the social category of the elderly. Mikołajczyk expressed his view, which we support entirely, that if we do not want the concept of active ageing to become a hollow form without substance, there is a need for a consolidated European strategy that would stimulate EU member states in an active approach to their internal protocols.⁵⁴

4. CROATIAN CHALLENGES IN STANDARDS OF CARE FOR OLD PEOPLE

Demographic trends that indicate reduced birth rates and the continuous ageing of the population position Croatia amongst the oldest nations in Europe⁵⁵ and pose major challenges to standards of care for the old people guaranteed by the EU. The national legislation being largely aligned with the European *acquis*, the real obstacles arise in the actual implementation of the adopted requirements. Taking into account the active ageing concept, quality of life is predominantly dependent on the health, participation and security of the elderly and such a comprehensive and systematic approach is lacking.⁵⁶

An issue that is very prominent in Croatia and contributes to reduced quality of life is the lack of activity,⁵⁷ especially if we consider that the active participation

⁵⁴ Mikołajczyk, B., *Legal basis of active ageing: European developments*, in: Doron, I. I.; Georgantzi, N. (eds.), *Ageing, ageism and the law: European perspectives on the rights of older persons*, Edward Elgar Publishing, Cheltenham & Northampton, 2008, p. 90

⁵⁵ The average age of the total Croatian population is 43.1 years (men 41.3, women 44.8), with an ageing index of 136,9%. Croatia entered the ageing process as early as 1953, when the average age was significantly lower—only 30.7 years—and the ageing index was 27,9%. Cf. *Population estimate of Republic of Croatia 2017*, Croatian bureau of statistics, [https://www.dzs.hr/Hrv_Eng/publication/2018/07-01-03_01_2018.htm], accessed 29 June 2020; *Social care strategy for the elderly in the Republic of Croatia for the period from 2017 to 2020*, p. 6, Official Gazette 150/11, 119/14, 93/16

⁵⁶ The main objectives listed in the *Social care strategy for the elderly in the Republic of Croatia for the period from 2017 to 2020* include the improvement of the legislative framework, raising awareness about the rights of old persons and improving services with the help of EU funds. *Ibid.* p. 5. The long-term effects of the strategy have yet to be assessed.

⁵⁷ Lepan, Ž.; Leutar, Z., *Važnost tjelesne aktivnosti u starijoj životnoj dobi*, *Socijalna ekologija Zagreb*, vol. 21, no. 2, 2012, p. 204; Puljiz, V., *Demografske promjene i socijalna politika*, in: Živić, D.; Pokos, N.; Mišetić, A. (eds.), *Stanovništvo Hrvatske – dosadašnji razvoj i perspektive*, Zagreb, 2005, p. 105. The

of the elderly in recreational physical activity, besides providing direct medical benefits for physical health, also contributes to their subjective life satisfaction and independence, as demonstrated by Lepan and Leutar.⁵⁸ Within the EU, the scope of activity in old age is calculated with the help of a tool, the Active Ageing Index (AAI), which investigates 22 indicators in four areas: employment, participation in society, independent living and an enabling environment for ageing actively in order to aid the stakeholders to identify problems and define goals for enhancement.⁵⁹ The most recent data of the AAI, calculated for EU countries, positions Croatia at the bottom of the list, way below the European average.⁶⁰

Older people privately remain active contributors to their families, but due to insufficient understanding of the importance of voluntary work, in Croatia, they are still not recognized as a strategic resource. Specifically, the share of people over the age of 60 in volunteer activities is unsatisfactory.⁶¹ Volunteering of the elderly has the potential to become a significant form of building social capital in the local community and combating social exclusion. This process has a double gain: by volunteering, certain local or global (social) problems are addressed without the need for additional capital investment, and on the other hand, older volunteers receive recognition for their contribution and the feeling of (still) being needed by society.⁶² So far, volunteering is the focus of numerous NGO projects, but it

lack of physical activity contributes to the reduction of the quality of life and consequences in older age are more severe and expressed much faster. For instance, negative effects of the lack of physical activity are the weakening of the muscle structures, the loss of minerals in bones, the possibility of a diabetes or coronary diseases, and even certain types of tumours. Cf. Maček, Z. et al., *Fizička aktivnost u zdravom i aktivnom starenju*, Physiotherapia Croatica, vol. 14 (supplement), no. 12, 2017, p. 146–148; Vuori, I., *Physical activity and cardiovascular disease prevention in Europe: an update*, Kinesiology, vol. 42, no. 1, 2010, p. 12

⁵⁸ Lepan; Leutar, *ibid.*, p. 218

⁵⁹ Mikołajczyk, *op. cit.*, note 54, p.73 sqq

⁶⁰ With the index 29.3, Croatia took the penultimate position in the ranking, slightly better than Greece with the score of 27.7. See *2018 Active ageing index, Analytical report*, United Nations Economic Commission for Europe, 2019, p. 6 & 11, [http://www.unece.org/fileadmin/DAM/pau/age/Active_Ageing_Index/ECE-WG-33.pdf], accessed 01. July 2020

⁶¹ For example, according to the Annual Report of the Volunteer Center Zagreb from 2010, the share of people over 60 was 1%. In 2019, that percentage increased to 6%. [<https://www.vcz.hr/vcz/godisnji-izvjestaji/>], accessed 13. July 2020

⁶² In this sense, research conducted by Rusac and Dujmović has shown that the volunteering of old people, besides obvious physical activity, also has a beneficial influence on their overall health and self-esteem, which consequently raised the quality of their lives. Rusac, S.; Dujmović, G., *Volontiranje u starijoj životnoj dobi*, Nova prisutnost, vol. 12, no. 2, 2014, p. 286; Warburton, J.; Maypeel, N, *Volunteering as a productive ageing activity: the association with fall-related hip fracture in later life*, European Journal of Ageing, vol. 5, 2008, p. 129-136

requires additional financial resources and the promotion of its positive aspects in the earlier stages of life.

On a global scale, modern society focuses on profit and the prevailing ideals of youth and success. These 'values' are constantly promoted by the media, and Croatia is no exception.⁶³ The influence of mass media on the general perception of ageing and on elderly people in general have been the subject of several studies.⁶⁴ Such a view of the elderly has a highly negative impact on their social status and the life quality since younger people tend to avoid them; thus, it makes communication and social interaction difficult. This contributes to the continuation of prescribed stereotypes and the creation of new ones, which eventually discourage younger people from interacting with the older ones. Systematically conceptualized campaigns through the media, education of the youth, and the creation of programs that enable interaction between the young and old through activities are of utmost importance.

Regardless of economic changes and GDP growth, the risk of poverty puts older persons in a vulnerable position.⁶⁵ The Croatian ombudsman pointed out that the average pension is below the 'at-risk-of-poverty threshold', and many elderly, due to strict censuses, unfortunately do not have access to the social security system.⁶⁶

⁶³ In Croatia, mass media often aim at younger people, and in this sense, certain studies have demonstrated a deficit of older people in movies, commercials and central news programs, and when they do appear, their portrayal is often negative or comical. Kovačević, I.; Milosavljević, Lj., *Kratki rezovi; antropološko proučavanje savremene reklame*, Etnoantropološki problemi, vol. 9, no. 2, 2014, p. 446 ff.; Perišin, T.; Kufrić, T., *Ageizam u televizijskom mediju na primjeru središnjih informativnih emisija HRT-a, RTL-a i Nova TV*, Ljetopis socijalnog rada, vol. 16, no. 1, 2009, pp. 36–44; Robinson, T.; Callister, M.; Magoffin, D., *Old characters in teen movies from 1980–2006*, Educational Gerontology, vol. 35, no. 8, 2009, p. 699–700

⁶⁴ Zovko and Vukobratović point out that the social dimension of old age is often connected with negative stereotypes, while Green states a typical stereotype is that older people are tired, capricious, passive and often lack energy. Green, S. K., *Attitudes and Perceptions about the Elderly: Current and Future Perspectives*, The International Journal of Aging and Human Development, vol. 13, no. 2, 1981, p. 100; Zovko, A.; Vukobratović, J., *Percepcija starenja i društveno-medijska slika o starima*, Androloške studije, no. 1, 2017., p. 113. See more on research on stereotypes of ageing in Heckhausen, J.; Lang, F. R., *Social Construction and Old Age: Normative Conceptions and Interpersonal Processes* in: Semin, G. R.; Fiedler, K. (eds.), *Applied Social Psychology*, Sage, 1996, London, p. 382 sqq

⁶⁵ Compared to the EU average of 14.4%, the risk of poverty for those over aged 65 is 28,1%, while for singles at that age it is as high as 48,1%. Approximately 64% of the Croatian population over the age of 65 receives pension. *Indicators of poverty and social exclusion 2018, Statistics on income and living conditions 2018*, Croatian Bureau of Statistics, [https://www.dzs.hr/Hrv_Eng/publication/2019/14-01-01_01_2019.htm], accessed 02. July 2020

⁶⁶ *Croatian Ombudsman's report for 2019*, p. 62 [https://www.ombudsman.hr/wp-content/uploads/2020/04/Izvjeste%20C5%A1%C4%87e-pu%C4%8Dke-pravobraniteljice-za-2019._3.pdf], accessed 02. July 2020

Due to insufficient accommodation capacities, the *Social care strategy for the elderly in the Republic of Croatia for the period from 2017 to 2020* envisaged the introduction of the special status of caregivers for people caring for elderly and infirm family members, but to our knowledge this institute has not been introduced yet. In terms of retirement, contradictions occur: while the state pressures the extension of the working age within the pension reform, employers discriminate against older workers and force them into early retirement, often just prior to their achieving the requirements for a pension.⁶⁷ In rural areas, the elderly are often isolated and lonely, which indicates that a support network is not effectively established. The same problem is visible in the unequal availability of health care. Where the state fails to provide adequate support services, diverse models of non-institutional protection are acquiring significance.

The lack of basic means of subsistence make older persons dependent on informal care and family solidarity and place them at higher risk of financial abuse. As such, it is one of the most common—and yet most rarely reported—forms of abuse of the elderly. The WHO quotes UK's 'Action on Elder Abuse' definition of abuse as “a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person”, with the addition that financial abuse means: “the illegal or improper exploitation and/or use of funds or resources.”⁶⁸ Croatian national legislation unfortunately still does not have a definition of financial abuse of the elderly, but the phenomena is partially covered in Article 10 of the *Protection from Domestic Violence Act*.⁶⁹ The most common form of financial abuse of older people is represented in the lifelong support contract and the until-death support contract, which are regulated in *Civil Obligations Act* (Art. 579–589).⁷⁰ Both contracts should provide the respondent with care for the counteraction consisting of the transfer of property to the provider of the support, the only difference being the moment at which the transfer of ownership has been carried out. Since the caregiver immediately becomes the owner of the dependent's property, the until-death support contract often leads to fraud and becomes a tool for the acquisition of property with minimum investment. This puts the supported person in a

⁶⁷ *Croatian Ombudsman's report for 2018*, p. 94, [<https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmdl=6777&refresh=5f088d18f2dd81594395928>], accessed 02. July 2020

⁶⁸ WHO, *Missing voices: views of older persons on elder abuse, A study from eight countries: Argentina, Austria, Brazil, Canada, India, Kenya, Lebanon and Sweden*, 2002, p. 3, available at: [https://www.who.int/ageing/publications/missing_voices/en/], accessed 14. June 2020

⁶⁹ Protection from Domestic Violence Act, Official Gazette 70/17, 126/19

⁷⁰ Civil Obligations Act, Official Gazette 35/05, 41/08, 125/11, 78/15, 29/18

highly dependent position with eventual loss of financial resources and adequate care and no other means than to initiate uncertain, expensive and exhausting legal proceedings for rescinding the contract. Unaware of the threats and mechanisms of protection against fraud and abuse, such types of discrimination are rarely reported because of insufficient knowledge of their own rights, distrust in legal institutions and unenviable financial situations. Still, in recent times, progress can be seen in the sense that there are numerous publications and campaigns that educate older people about the risks and advantages of such contracts.⁷¹

The significant problem with the financial abuse of older people is in fact that abusers, in most cases, are their grown up children, grandchildren or other relatives, which complicates detection and prevention, especially because such abusers consider that material property of older people belongs to them as family property, which they will inherit anyway.⁷² Another problem of older victims of financial abuse can be recognized in the absence of its reporting to competent bodies, such as the police or the Centre for Social Welfare, due to fear and shame. We believe this emanates from the traditional view of the family, where all the problems which arise should be solved within the family. Also, there is a problem in the fact that it is hard for the older person to accept that the abuse is conducted by someone with whom he/she has spent most of a lifetime. However, there have been positive actions in Croatia, which can be seen in the activity of the Croatian Pensioners'

⁷¹ See more in: Butković, M., *Ugovor o doživotnom i dosmrtnom uzdržavanju u sudskoj praksi*, Prilozi Hrvatske javnobilježničke komore, vol. 3, 2012, available at: [<http://www.hjk.hr/Portals/0/CasopisJB/Prilog%20uz%20br%2037.pdf>]. For examples of mentioned brochures see: Victims and Witnesses Support Association website [<http://pzs.hr/prava-kod-ugovora-o-doivotnom-i-dosmrtnom-uzdravanju/>]; SOS Rijeka, Center for Nonviolence and Human Rights website [<http://sos-rijeka.org/wp-content/uploads/Brosura-Ugovori-o-doivotnom-i-dosmrtnom-uzdravanju.pdf>]. For news articles, see: Bogdanović, S., *Ovo morate znati o ugovorima o doživotnom i dosmrtnom uzdržavanju*, My time website, [<https://www.mojevrijeme.hr/magazin/2017/10/ovo-morate-znati-o-ugovorima-o-doivotnom-i-dosmrtnom-uzdravanju/>]; Belak Krile, A., *Pazite što potpisujete: ugovor o dosmrtnom ili doživotnom uzdržavanju - razlika je velika!*, Zadarski.hr website [<https://zadarski.slobodnadalmacija.hr/zadar/regional/pazite-sto-potpisujete-ugovor-o-dosmrtnom-ili-doivotnom-uzdravanju-razlika-je-velika-607352>]; Penzići [Pensioners] Rijeka website, [<https://penzici.rijeka.hr/ugovor-o-doivotnom-i-dosmrtnom-uzdravanju/>]. In addition to that, the Croatian ombudsman proposed measures in the prevention of abuse by introducing a special 'registry of maintenance providers', limiting the number of possible contracts a single provider can conclude, and by accelerating the court proceedings. *Croatian Ombudsman's report for 2018*, p. 110, [<https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmdl=6777&refresh=5f088d18f2dd81594395928>], all sites accessed 02. July 2020

⁷² Jackson, S. L.; Hafemeister, T. L., *Characteristics Differ across Four Types Of Elder Maltreatment: Implications for Tailoring Interventions to Increase Victim Safety*, *Journal of Applied Gerontology*, vol. 33, no. 8, 2014, pp. 982–997; Vuić, I.; Rusac, S., *Financijsko zlostavljanje starijih osoba*, *Revija socijalne politike*, vol. 24, no. 3, 2017, p. 332; Naughton C. et al., *Elder abuse and neglect in Ireland: results from a national prevalence survey*, *Age and Ageing*, vol. 41, no. 1, 2012, pp. 98–103

Union's project, "Zaustavimo zloupotrebu starijih osoba" [Let's stop the abuse of older people].⁷³ The main goal of this project was the dissemination of information to the general public on the often unspoken abuse and the discrimination against older people, which we consider the best way to address the mentioned issues on the national and supranational levels. Even though a single project is not enough, it represents a good starting point that should be encouraged.

Maybe the biggest obstacle in the Croatian mentality is the belief of the elderly themselves that they are supposed to be passive service recipients who have no confidence to voice their claims for the recognition of rights or power to change their position in society. As this confidence has been degraded by small pensions as well as lack of social care and access to medical services, it would be too much to expect them to have the courage to change the system. Their right to make their own choices was also often not respected. In the context of the legal capacity of individuals, the issue of independence of older persons was even raised by the ECHR in the case of *X and Y v. Croatia* (EctHR 2011b).⁷⁴ However, creating conditions at the state level through effective legal instruments, the sustainability of the pension system, and accessible social and medical care would give them their dignity back. Volunteering and social inclusion would stimulate their awareness that they themselves are capable of changing things. Modern science has confirmed the Roman philosophical approach and the findings of Levi et al. that, in addition to chronological age, the attitude towards one's own ageing is the most important predictor of an individual's life expectancy.⁷⁵ Although the attitude of a person towards ageing is individual, empowerment from the earliest age would certainly contribute to creating responsible and active citizens.

5. CONCLUSION

Conducted comparisons of Roman and modern collective views of the elderly reveal that all societies are in essence ageist and that ancient features of this modern construct were practiced in Roman culture and reflected in negative stereotyping. The age composition and number of the elderly in proportion to the total population today varies significantly from the Roman example; the chasm between the

⁷³ Croatian Pensioners' Union website [<http://www.suh.hr/index.php/18-naslovna/278-suh-krenuo-s-projektom-za-prevenciju-financijskog-zlostavljanja-starijih>], accessed 14. June 2020

⁷⁴ The procedure was conducted at the request of Social Services in order to deprive a person suffering from dementia of her legal capacity. The Court found the violation of right to a fair trial and the right to private and family life (Art. 6 §1 and Art. 8) of the European Convention on Human Rights

⁷⁵ This research found that a positive attitude towards ageing extends the life expectancy by 7.5 years. Levy, B. R. et al., *Longevity increased by positive self-perceptions of aging*, Journal of personality and social psychology, vol. 83, no. 2, 2002, p. 261

young and old is even more pronounced nowadays. Furthermore, in the absence of a pension system, the well-being of the elderly in the past depended mostly on the family and was rather a moral obligation. Despite various institutional supports aimed at the oldest age group, due to changes in family structures, the social exclusion and alienation of the elderly has never been higher. Once experienced as a natural stage of the lifecycle, ageing is now considered a major social challenge, and just as old people in today's society have become invisible, so is their discrimination pushed somewhere into the shadows. Therefore, it is of utmost importance to raise awareness about the subject and sensitize the society to the stereotyping of a vulnerable but not homogenous group of the elderly.

Since social constructs are generally created to help explain and organize the objective world, they can be altered by changing the values and beliefs about the specific construct. What we need is the shift that Cicero once pled for—a transformation in thinking about old age as a burden that weighs down society into the integration of the elderly as active advocates of their rights: “For old age will only be respected if it fights for itself, maintains its own rights, avoids dependence on anyone, and asserts control over its own to the last breath. For just as I approve of the young man in whom there is a touch of age, so I approve of the old man in whom there is some of the flavour of youth. He who strives thus to mingle youthfulness and age may grow old in body, but old in spirit he will never be.”⁷⁶

As we have demonstrated, the EU has gradually developed appropriate legal foundations for the protection of older people against discrimination as well as various mechanisms which aim at the social inclusion and prevention of all kinds of discrimination, including the one on the grounds of age. However, its implementation in practice leaves room for improvement. Furthermore, there is a need to adopt the Equal Treatment Directive, which would offer comprehensive protection against age discrimination in areas such as education, social protection and access to goods and services as well as to work on a consolidated EU strategy to achieve the overall goal of active ageing.

The problems of the elderly in Croatia are not difficult to identify but to enumerate: discrimination at work, poverty as a result of small and unfair pensions, differences in regional access to social care, insufficient space and non-transparent admission to nursing homes, long waiting lists, unavailability of medical care, unprofessional treatment in the institutions, exposure to neglect and domestic violence, no access to information, disorientation in the digital environment, social marginalisation and exposure to prejudice, to name the most basic ones. It is

⁷⁶ Cicero, *De Senectute* 38

pointless and unfair to expect the elderly to be assertive and actively voice their challenges when they are deprived of their dignity and live on the edge of existence. As soon as the state, in line with the adopted legal framework, creates the basic conditions for a decent existence, only then it will be possible to expect greater initiative of older people. Meanwhile, volunteering and intergenerational joint activities can be used as examples of good practice to foster social inclusion, independence, self-confidence and the feeling of contribution to the local community. In the long term, we consider that a shift in paradigm is needed. Change in mentality can only be achieved through education for active citizenship from an early age into adulthood to secure fruitful and pleasant old age for the generations to come. It will take time, financial means and a lot of effort of the community to address explained issues and to reach the proposed goal. The positive philosophical Roman approach is very much applicable. In a hopeless state where the system is inefficient and one is often left to one's own devices, a personal attitude indeed does make a difference.

REFERENCES

BOOKS AND ARTICLES

1. Bercusson, B., *European Labour Law*, Cambridge, 2009
2. Boudiny, K., 'Active ageing': *from empty rhetoric to effective policy tool*, *Ageing & Society*, vol. 33, no. 6, 2013, pp. 1077–1098
3. Butler, R. *Ageism*, in: Maddox, G. (ed.), *The Encyclopedia of Aging*, p. 38–39
4. Bytheway, B., *Ageism*, Open University Press, Buskingham, 1995
5. Čapeta, T. et al., *Reforma Europske Unije, Lisabonski ugovor*, Narodne Novine, Zagreb, 2009
6. Covey, H. C., *The Definitions of the Beginning of Old Age in History*, *The International Journal of Aging and Human Development*, vol. 34, no. 4, 1992, pp. 325–337
7. Craig, P.; De Búrca, G., *Eu Law, Text, Cases, and Materials*, Oxford, 2016
8. Cuddy, J. A. C.; Fiske, S. T., *Doddering but Dear: Process, Content, and Function in Stereotyping of Older Persons*, in: Nelson, T.D. (ed.), *Ageism, Stereotyping and Prejudice against Older Persons*, Cambridge, 2002, p. 1–27
9. Doron, I.; Georgantzi, N., *Introduction: between law, ageing and ageism*, in: Doron, I. I.; Georgantzi, N. (eds.), *Ageing, ageism and the law: European perspectives on the rights of older persons*, Edward Elgar Publishing, 2008, pp. 1–13
10. Doron, I., *From National to International Elder Law*, *The Journal of International Ageing & Policy* 1, 2005, pp. 43–67
11. Durand, J. D., *Mortality estimates from Roman tombstone inscriptions*, *American Journal of Sociology*, vol. 65, no. 4, 1960, pp. 365–373
12. Evans, J.G., *Age discrimination: Implications of the Ageing Process*, in: Fredman, S.; Spencer, S. (eds.), *Age as an Equality Issue*, Hart Publishing, Oxford, 2003, p. 11–21

13. Ferriss-Hill, J., *Horace's Ars Poetica: Family, Friendship, and the Art of Living*, Princeton University Press., Princeton & Oxford, 2019
14. Fredman, S., *The age of Equality*, in: Fredman, S.; Spencer, S. (eds.), *Age as an Equality Issue*, Hart Publishing, Oxford, 2003, pp. 21–71
15. Frier, B., *Roman life expectancy: Ulpian's evidence*, *Harvard Studies in Classical Philology* 86, 1982, pp. 213–251
16. Green, S. K., *Attitudes and Perceptions about the Elderly: Current and Future Perspectives*, *The International Journal of Aging and Human Development*, vol. 13, no. 2, 1981, pp. 99–119
17. Greenberg, J.; Schimel, J.; Martens, A., *Ageism: Denying the Face of the Future*, in: Nelson, T. D. (ed.), *Ageism: Stereotyping and prejudice against older persons*, MIT press, Cambridge & London, 2004, pp. 27–48
18. Harlow, M; Laurence, R., *Growing up and growing old in ancient Rome: a life course approach*, Psychology Press, London & New York, 2000
19. Heckhausen, J.; Lang, F. R., *Social Construction and Old Age: Normative Conceptions and Interpersonal Processes* in: Semin, G. R.; Fiedler, K. (eds.), *Applied Social Psychology*, Sage, 1996, London, 374–399
20. Hope, M. V., *Death in Ancient Rome: A Source Book*, Routledge, New York, 2007
21. Hopkins, K., *Sociological studies in Roman history*. Cambridge University Press, Cambridge, 2017
22. Horta, O., *Discrimination in Terms of Moral Exclusion*, *Theoria*, vol. 76, 2010, pp. 314–332
23. Jackson, S. L.; Hafemeister, T. L., *Characteristics Differ across Four Types Of Elder Maltreatment: Implications for Tailoring Interventions to Increase Victim Safety*, *Journal of Applied Gerontology*, vol. 33, no. 8, 2014, pp. 982–997
24. Kovačević, I.; Milosavljević, Lj., *Kratki rezovi; antropološko proučavanje savremene reklame*, *Etnoantropološki problemi*, vol. 9, no. 2, 2014, pp. 435–462
25. Krebber, S., *Social Rights Approach of the European Court of Justice to Enforce European Employment Law*, *Comparative Labour Law and Policy Journal*, vol. 27, no. 3, 2006; pp. 377–404
26. Lepan, Ž.; Leutar, Z., *Važnost tjelesne akitvnosti u starijoj životnoj dobi*, *Socijalna ekologija Zagreb*, vol. 21, no. 2, 2012, pp. 203–223
27. Levy, B. R. et al., *Longevity increased by positive self-perceptions of aging*, *Journal of personality and social psychology*, vol. 83, no. 2, 2002, p. 261–270
28. Luh, A., *Das „Goldene Zeitalter der Alten“? Alter in historischer Perspektive*, *Zeitschrift für Gerontologie und Geriatrie*, vol. 36, no. 4, 2003, pp. 303–316
29. Lulić, M.; Rešetar Čulo, I., *The rights of older persons with disabilities in the Republic of Croatia*, in: Vinković, M. (ed.), *New Developments in EU Labour, Equality and Human Rights Law*, Osijek, 2015, pp. 195–213
30. Maček, Z. et al., *Fizička aktivnost u zdravom i aktivnom starenju*, *Physiotherapia Croatica*, vol. 14 (supplement), no. 12, 2017, p. 146–148
31. Mair, J., *Direct discrimination: limited by definition?*, *International Journal of Discrimination and the Law*, vol. 10, 2010, pp. 3–17

32. Masson, A.; Micheau, C., *The Werner Mangold Case: An Example of Legal Militancy*, *European Public Law*, vol. 13, no. 4, 2007, pp. 587–594
33. Mikołajczyk, B., *Legal basis of active ageing: European developments*, in: Doron, I.; Georgantzi, N. (eds.), *Ageing, ageism and the law: European perspectives on the rights of older persons*, Edward Elgar Publishing, Cheltenham & Northampton, 2008, pp. 73–97
34. Mikołajczyk, B., *Is the ECHR ready for global ageing?*, *The International Journal of Human Rights*, 17:4, 2013, 511–529
35. Naughton C. *et al.*, *Elder abuse and neglect in Ireland: results from a national prevalence survey*, *Age and Ageing*, vol. 41, 41, no. 1, 2012, pp. 98–103
36. Numhauser-Henning, A., *An Introduction to Elder Law and the Norma Elder Law Research Environment*, in: Numhauser-Henning, A. (ed.) *Introduction to the Norma Elder Law Research Environment: Different Approaches to Elder Law*, Lund University, 2013, pp. 21–38
37. O’Cinneide, C., *Age discrimination and European Law*, European Commission, 2005
38. Palmore, E.B., *Ageism, Negative and Positive*, Springer, New York, 1999
39. Parkin, T. G., *Ageing in antiquity. Status and participation*, in: Johnson, P.; Thane, P. (eds.), *Old age from antiquity to post-modernity*, Routledge, London & New York 2002
40. Parkin, T. G., *Demography and Roman society*, JHU Press, Baltimore, 1992
41. Parkin, T. G., *Old age in the Roman world: a cultural and social history*, JHU Press, Baltimore, 2003
42. Perišin, T.; Kufrin, T., *Ageizam u televizijskom mediju na primjeru središnjih informativnih emisija HRT-a, RTL-a i Nova TV*, *Ljetopis socijalnog rada*, vol. 16, no. 1, 2009, pp. 29–50
43. Puljiz, V., *Demografske promjene i socijalna politika*, in: Živić, D.; Pokos, N.; Mišetić, A. (eds.), *Stanovništvo Hrvatske - dosadašnji razvoj i perspektive*, Zagreb, 2005, p. 95–118
44. Robinson, T.; Callister, M.; Magoffin, D., *Old characters in teen movies from 1980–2006*, *Educational Gerontology*, vol. 35, no. 8, 2009, p. 687–711
45. Rusac, S.; Dujmović, G., *Volontiranje u starijoj životnoj dobi*, *Nova prisutnost*, vol. 12, no. 2, 2014, p. 279–293
46. Schiek, D., *The ECJ Decision in Mangold: A Further Twist on Effects of Directives and Constitutional Relevance of Community Equality Legislation*, *Industrial Law Journal*, vol. 35, no. 3, 2006, p. 329–341
47. Schlachter, M., *Mandatory Retirement and Age Discrimination under EU Law*, vol. 27, no. 3, 2011, p. 287–299
48. Vasiljević, S., *Equality, non-discrimination & fundamental rights: old habits die hard!*, in: Vinković, M. (ed.), *New Developments in EU Labour, Equality and Human Rights Law*, Osijek, 2015, p. 177–195
49. Vuić, I.; Rusac, S., *Financijsko zlostavljanje starijih osoba*, *Revija socijalne politike*, vol. 24, no. 3, 2017, p. 321–342
50. Vuori, I., *Physical activity and cardiovascular disease prevention in europe: an update*, *Kinesiology*, vol. 42, no. 1., 2010, p. 5–15
51. Warburton, J.; Maypeel, N., *Volunteering as a productive ageing activity: the association with fall-related hip fracture in later life*, *European Journal of Ageing*, vol. 5, 2008, p. 129–136

52. Zovko, A.; Vukobratović, J., *Percepcija starenja i društveno-medijska slika o starima*, Androloške studije, no. 1, 2017., p. 111–124

LIST OF NATIONAL REGULATIONS, ACTS AND COURT DECISIONS

1. Social care strategy for the elderly in the Republic of Croatia for the period from 2017 to 2020, Official Gazette 150/11, 119/14, 93/16
2. Civil Obligations Act, Official Gazette 35/05, 41/08, 125/11, 78/15, 29/18
3. Protection from Domestic Violence Act, Official Gazette 70/17, 126/19

COURT OF JUSTICE OF THE EUROPEAN UNION

1. Case 149/77 Defrenne v Sabena [1978], ECR 1365
2. Case C-13/94 P v S and Cornwall County Council [1996] ECR I-2143
3. Case C-144/04 Mangold v Rüdiger Helm [2005] ECR I-9981
4. Case C-427/06 Bartch [2008] ECR I-7248
5. Case C-50/96 Deutsche Telekom v Schröder [2000] ECR I-7

ECHR

1. European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5
2. X and Y v. Croatia (EctHR 2011b)

EU LAW

1. Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02
2. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2016] OJ C 202/13
3. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303, 2.12.2000
4. Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008)0426 - 2008/0140(CNS)

INTERNATIONAL LAW

1. The United Nations General Assembly, International Covenant on Civil and Political Rights, Treaty Series, *vol.* 999, December 1966
2. The United Nations Principles for Older Persons, General Assembly resolution 46/91 of 16 December 1991
3. Madrid Political Declaration and Madrid International Plan of Action on Ageing 2002

WEBSITE REFERENCES

1. *2018 Active ageing index, Analytical report*, United Nations Economic Commission for Europe, 2019 [http://www.unece.org/fileadmin/DAM/pau/age/Active_Ageing_Index/ECE-WG-33.pdf], accessed 01. July 2020
2. *Active Ageing. A Policy Framework* [<https://extranet.who.int/agefriendlyworld/wp-content/uploads/2014/06/WHO-Active-Ageing-Framework.pdf>], accessed 29. July 2020
3. *Annual Report of the Volunteer Center Zagreb* [<https://www.vcz.hr/vcz/godisnji-izvjestaji/>], accessed 13. July 2020
4. Belak Krile, A., *Pazite što potpisujete: ugovor o dosmrtnom ili doživotnom uzdržavanju - razlika je velika!*, Zadarski.hr website, [<https://zadarski.slobodnadalmacija.hr/zadar/regional/pazite-sto-potpisujete-ugovor-o-dosmrtnom-ili-doživotnom-uzdržavanju-razlika-je-velika-607352>], accessed 14. June 2020
5. Bogdanović, S., *Ovo morate znati o ugovorima o doživotnom i dosmrtnom uzdržavanju*, My time website, [<https://www.mojevrijeme.hr/magazin/2017/10/ovo-morate-znati-o-ugovorima-o-doživotnom-i-dosmrtnom-uzdržavanju/>], accessed 14. June 2020
6. Butković, M., *Ugovor o doživotnom i dosmrtnom uzdržavanju u sudskoj praksi*, Prilozi Hrvatske javnobilježničke komore, vol. 3, 2012, available at: [<http://www.hjk.hr/Portals/0/CasopisJB/Prilog%20uz%20br%2037.pdf>], accessed 14. June 2020
7. Cokayne, K., *Old Age in Ancient Rome*, 2005 [<https://www.brsls.org/events-proceedings/proceedings/25020>], accessed 10. June 2020
8. Croatian Ombudsman's report for 2018 [<https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmdl=6777&refresh=5f088d18f2dd81594395928>] accessed 02. July 2020
9. Croatian Ombudsman's report for 2019 [https://www.ombudsman.hr/wp-content/uploads/2020/04/Izje%C5%A1%C4%87e-pu%C4%8Dke-pravobraniteljice-za-2019._3.pdf], accessed 02. July 2020
10. Croatian Pensioners' Union website, [<http://www.suh.hr/index.php/18-naslovna/278-suh-krenuo-s-projektom-za-prevenciju-financijskog-zlostavljanja-starijih>], accessed 14. June 2020
11. Discrimination in the EU in 2015, Special Eurobarometer 437, [<https://ec.europa.eu/comfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2077>], accessed 02. July 2020
12. Državni zavod za statistiku Republike Hrvatske, *Projekcije stanovništva Republike Hrvatske od 2010. do 2061.*, Zagreb, 2011, available at: [https://www.dzs.hr/Hrv_Eng/Projections/projekcije_stanovnistva_2010-2061.pdf], accessed 14. June 2020
13. European Union Agency for Fundamental Rights, *Fundamental Rights Report 2019*, available at: [<https://fra.europa.eu/en/publication/2019/fundamental-rights-report-2019#Tab-PubOverview0>], accessed 18. June 2020
14. European Union Agency for Fundamental Rights, *Fundamental Rights Report 2020*, available at: [<https://fra.europa.eu/en/publication/2020/fundamental-rights-report-2020>], accessed 18. June 2020

15. Eurostat, Population structure and ageing, [https://ec.europa.eu/eurostat/statistics-explained/index.php/Population_structure_and_ageing#The_share_of_elderly_people_continues_to_increase], accessed 14. June 2020
16. Indicators of poverty and social exclusion 2018, Statistics on income and living conditions 2018, Croatian bureau of statistics, [https://www.dzs.hr/Hrv_Eng/publication/2019/14-01-01_01_2019.htm], accessed 02. July 2020
17. Penzići [Pensioners] Rijeka website, [<https://penzici.rijeka.hr/ugovor-o-dozivotnom-i-dosmrtnom-uzdrzavanju/>], accessed 14. June 2020
18. Population estimate of Republic of Croatia 2017, Croatian bureau of statistics, [https://www.dzs.hr/Hrv_Eng/publication/2018/07-01-03_01_2018.htm], accessed 29. June 2020
19. SOS Rijeka, Center for Nonviolence and Human Rights website, [<http://sos-rijeka.org/wp-content/uploads/Brosura-Ugovori-o-dozivotnom-i-dosmrtnom-uzdrzavanju.pdf>], accessed 14. June 2020
20. United Nations Department of economic and Social Affairs, *World Population Ageing 2019*, [<https://www.un.org/en/development/desa/population/publications/pdf/ageing/WorldPopulationAgeing2019-Report.pdf>], accessed 20. June 2020
21. Victims and Witnesses Support Association website, [<http://pzs.hr/prava-kod-ugovora-o-dozivotnom-i-dosmrtnom-uzdrzavanju/>], accessed 14. June 2020
22. WHO, *Active Ageing, A Policy Framework*, 2002, available at [https://www.who.int/ageing/publications/active_ageing/en/], accessed 16. June 2020
23. WHO, *Missing voices: views of older persons on elder abuse, A study from eight countries: Argentina, Austria, Brazil, Canada, India, Kenya, Lebanon and Sweden*, 2002, available at: [https://www.who.int/ageing/publications/missing_voices/en/], accessed 14. June 2020