

# Discrimination against Older Workers and the Promotion of Equality of Opportunity

G. BOGLIETTI<sup>1</sup>

**A**LTHOUGH MATURITY has from time immemorial been considered the culmination of man's physical and mental development, this is a view which seems to be losing ground in industrialised societies, where middle-aged men and women frequently encounter serious difficulties in their working lives. They are into or beyond the forties but have not yet reached the age of retirement; they are still part of the labour force and are still capable of doing a job of work; but on account of their age they are in danger of being unemployed for longish periods: they are the victims, in fact, of discriminatory prejudice.

This situation is prevalent to varying degrees in all the developed countries, and particularly in those with market or mixed economies. In socialist countries or those with planned economies, the State is able by virtue of various political, economic and social factors peculiar to such régimes to act more directly to eliminate difficulties arising out of changes in the production process, the industrial structure and occupational skills, or manpower shifts from one undertaking or region to another. The developing countries, for their part, are currently preoccupied with other urgent concerns but as they become more industrialised they will have to face up to the same sort of problems as the developed countries with regard to older workers. For example, the symposium on equality of opportunity in employment held in Panama from 1 to 12 October 1973 under the auspices of the ILO drew attention to the fact that discrimination on the grounds of age against workers aged 35 and over is becoming a crucial problem in a number of countries in the Western Hemisphere.

Discrimination against older workers is not a new subject of concern for the ILO. As long ago as in 1938, at the request of the Governing Body, the Office drew up a report concerning discrimination against

---

<sup>1</sup> International Labour Office.

elderly workers and presented it to the 85th Session of the Governing Body. A supplementary note reopened the question at the 86th Session held in March 1939, when the whole problem was scheduled for discussion. Unfortunately, with the Second World War breaking out a few months later, the matter did not get beyond the preliminary stage.

In the 1950s renewed interest in attempts to improve the position of groups experiencing particular difficulties in respect of employment and occupation led to the adoption in 1958 of a Convention<sup>1</sup> aimed at eliminating all discrimination "on the basis of race, colour, sex, religion, political opinion, national extraction or social origin".

It will be noticed that age is not specified among the grounds for discrimination but it was understood that it could be included by countries ratifying the Convention; according to subparagraph 1 (b) of Article 1, the term "discrimination" includes any

distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

Considerable progress has been made over the past ten years in combating age discrimination and promoting equality of opportunity for middle-aged and older workers.

It is important to note that if, as some demographers expect, the world population doubles between now and the end of the century (with a similar increase in the over-45 age group), there will also be a considerable, if less spectacular, increase in the size of the workforce. By 1980, according to some projections, the world labour force will exceed 1,600 million persons, an increase of 42 per cent over the 1960 figure.

Moreover, the significant improvement since the war in life expectancy at birth has increased the average span of man's working life. Medical, economic and technological progress as well as improved living conditions and social services have had a cumulative effect which has tended to reduce mortality at all ages. The labour force participation rates for different age groups will also undergo profound changes with socio-economic effects that should not be underestimated.

When the United States Bureau of Labor Statistics drew up working-life tables for a number of countries, it found that the average duration of working life for a youth of 17 was 45.4 years in the United States, 46.5 in the United Kingdom, 44.8 in New Zealand, 49 in Japan, 46 in Malaysia and 46.8 in Egypt. Male participation rates in these countries follow the same general pattern: they increase rapidly during adolescence and the early twenties, approach 100 per cent in the middle of adult life and then decrease after the age of 50. The over-45 age group constitutes one-third

---

<sup>1</sup> The Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

of the workforce in most of the economically developed countries. In the United States, persons aged 40 to 65 made up 44 per cent of the working population in 1971.

### **Risks of long-term unemployment**

In the majority of countries, the current state of statistics is such that precise measurement of the extent of the employment problem with regard to age is impossible. In some cases the available data enable the percentages of older unemployed persons to be compared, but there are very few countries which publish statistics on the duration of unemployment for different age groups, and in particular for the over-45s.

In general, middle-aged workers do not experience more difficulties than their younger colleagues as long as they have a job. But if they are out of work, the risk of long-term or even permanent unemployment increases gradually up to the age of 50 and then very rapidly as the retirement age grows nearer.

This is corroborated by the data available for Western Europe, the United States and Canada, which all show that periods of unemployment are much longer for workers over the age of 45. Belgian statistics show that the average duration of unemployment is at least four times longer for workers over 45 than for those under 20. Data for France, Sweden, the Federal Republic of Germany, Italy and Greece all point to a similar situation. The same applies in the United States, where workers over the age of 45 made up 20 per cent of the total unemployed in January 1973, and 25 and 31 per cent respectively of those who had been unemployed for more than 15 and 27 weeks. The numbers receiving unemployment benefits rose between 1960 and 1970 in the over-45 category (men and women combined), particularly those between the ages of 55 and 64. As regards duration of unemployment, too, persons in this latter age group formed the majority of those unemployed for 5 to 15 and more than 27 weeks. In Canada, long-term unemployment accounts for 37.4 per cent of all unemployment among persons over 45, as against approximately 25 per cent in the 25 to 44 age group. A French survey of unemployed wage earners over the age of 50 carried out in 1972 showed that 72 per cent had drawn unemployment benefit for more than six months and 45 per cent for more than a year. In Japan, data concerning workers in receipt of unemployment benefits and the 1965 and 1969 placement rates show up the difficulties experienced by middle-aged workers (both men and women) in finding jobs, particularly those aged 41 to 50 and over 55. In the United Kingdom, the July 1966 statistics showed that long-term unemployment amounted to 22.7 per cent of all unemployment among persons in the 35 to 39 age group and to 49 per cent for the 55 to 59 group; it was as high as 58.2 per cent for workers aged 60 to 64. Among

the long-term unemployed the over-45 age group accounted for 76 per cent, the 55 to 64 group making up 57 per cent, and the 60 to 64 group 43 per cent.

The longer duration of unemployment with increasing age becomes more marked—for both men and women—after the age of 40. It does not seem to depend on the general level of unemployment.

The Secretary-General of the United Nations observed in a report to the 28th Session of the General Assembly that “the loss of the work role for those of advanced age appears to be a world-wide phenomenon, although more related to the urbanised and industrialised areas”.<sup>1</sup> The Commission of the European Communities, for its part, recently emphasised “the obstacle to the resumption of work which an advanced age represents, even if . . . older unemployed persons can still be considered fit for work”.<sup>2</sup>

### **Causes of unemployment**

The causes of unemployment among older workers are manifold and at times complex since they have their origin both in discriminatory practices resulting from traditional prejudices concerning age, and in natural phenomena such as ageing or other factors such as educational standards.

One of the most widely practised forms of discrimination is the fixing of a maximum age limit of 40 to 45 in employment offers and job descriptions. Refusal to hire persons aged 40 to 65 was the second most prevalent form of violation of anti-discrimination legislation registered by the United States Department of Labor in 1972 and the most frequent in 1973. Among the EEC member States, it seems to be current practice to refuse to hire manual workers over 50 and white-collar workers over 40 years of age, especially in small undertakings.

Most countries impose an upper age limit on access to the civil service and to public services and undertakings, which does nothing to help eliminate discriminatory prejudices in the private sector. It is true that this restriction is associated with the career concept; but it is not uniform and there are many variations. A United Nations study on civil service laws and practices throughout the world has drawn attention to

the degree of limitation imposed by age limits, and how they are imposed by . . . States which statutorily lay down a minimum age, but permit the maximum to be adjusted by regulation; others only require that an entrant be young enough to fill the minimum period required to qualify for a pension before superannuation.<sup>3</sup>

<sup>1</sup> United Nations: *Question of the elderly and the aged*. Conditions, needs and services, and suggested guidelines for national policies and international action (New York, 1973; doc. A/9126), para. 107.

<sup>2</sup> Commission of the European Communities: *Report on the development of the social situation in the Community in 1973* (Brussels and Luxembourg, 1974), para. 42.

<sup>3</sup> Department of Economic and Social Affairs, Public Administration Branch: *Handbook of civil service laws and practices* (New York, 1966; Sales No.: 66.II.H.2), pp. 427-428.

Many reasons are given for setting upper age limits for hiring. A survey carried out in the United States in 1965 showed that 34 per cent of the reasons cited related to physical capacity—25.1 per cent for the work to be done and 9.1 per cent to comply with the standards of the undertaking. The position was anything but clear, however: whereas some employers limited employment of older workers on the grounds of the physical demands made by the work, others hired them for the same sort of work without any mention of physical capacity.

The reasons advanced by French undertakings are similar to those given in other countries; additional reasons are the moral responsibility of taking on a fairly old worker if he has to be dismissed soon afterwards (even if he is engaged only for a trial period), and the age of the applicant's future supervisor in view of the fact that many workers are reluctant to give orders to persons older than themselves. A study carried out by the OECD<sup>1</sup> has drawn attention to the effects of hiring older workers on personnel procedures such as promotion from within, salary scales, pension plans and health insurance schemes.

The consequences of technological progress and industrial or regional structural changes obviously affect the labour force as a whole since they can lead to dismissals or transfers. Nevertheless, older workers are particularly vulnerable in that the risk of being unemployed for longer than is normally admissible in changing jobs then becomes a reality. In times of recession they may be the first to be laid off and the last to be taken on again when the economy picks up, because of discrimination on the grounds of age and diminished capacity to perform particularly arduous work but also because they lack necessary skills and live in a depressed area which their reduced mobility makes it harder to leave.

Attempts have also been made to explain the high unemployment rate by relating it to education. Generally speaking, it seems that the better a worker's educational background, the more chance he has of surmounting the negative effects of age in matters of employment and occupation. Be that as it may, unemployment is commoner among older workers than it is among the young whatever the level of education. At the same time, the unemployment rate in each age group is higher for those workers with the least education.

A survey on unemployed workers in the United Kingdom in October 1964 showed that unskilled labourers were liable to be jobless at any stage in their working lives whereas more than 50 per cent of unemployed managerial staff, skilled workers and white-collar workers were over 60. The data collected in 1968 during an in-depth case study of a plant closure in the United States confirm that education plays a decisive part in obtaining a new permanent job and maintaining the previous income

---

<sup>1</sup> *Promoting the placement of older workers*, Employment of Older Workers No. 4 (Paris 1967), p. 17.

level.<sup>1</sup> These results need to be qualified, however, in the case of management staff and university graduates for whom there comes a time when it is as difficult as for other workers to find a job, particularly one that matches their knowledge and capabilities.

Diminished working capacity is frequently put forward—or at least tacitly understood—as a justification for certain forms of discrimination against older workers. It cannot be denied, of course, that as people grow older they undergo constitutional changes which have their negative as well as their positive side. At the age of 50, or indeed at any other age, tremendous variations can be observed in the “apparent age” of different individuals, and these variations do not by any means all tend in the same direction. Occupational health services and personnel departments have often deplored their inability, for lack of technical facilities, to establish objective differences between persons of the same age who, subjectively, can be seen to vary greatly.

The results of laboratory and clinical investigations confirm that the principal change brought about by ageing is the reduced capacity for *heavy* work. There is, therefore, a correlation between age and physical working capacity. Nevertheless, the difficulties this is often held to create do not appear to be as insuperable as one might at first suppose. Barkin, for instance, found in one study that the proportion of workers engaged in very arduous work was only about 5.5 per cent in the youngest age groups but rose to about 18 per cent in the 40 to 44 age group.<sup>2</sup> These findings appear to be confirmed by more recent research.

In its reply to an ILO questionnaire on the vocational guidance and training measures that might be necessary to meet difficulties faced by older workers in employment, the Government of the Federal Republic of Germany considered that “it should be made clear that older workers do not as a rule suffer from lower performance”, and should therefore not be systematically assigned to “lighter” work.<sup>3</sup> In the United States, workers over the age of 45 constitute 14 per cent of the personnel recruited by the Postal Administration for work as postmen, or double the hiring rate for office jobs for this same age group. And yet a postman’s work is fairly arduous: there is a lot of walking and standing up involved, and he has to shift heavy bags, drive vans and load, unload and deliver parcels.

On the other hand, the physical or mental stresses of the *working environment* are of overwhelming importance. For example, surveys on heat stress, atmospheric pollution, noise and lighting in workplaces have shown that continuous exposure to certain hazards affects the more

---

<sup>1</sup> Felician F. Foltman: *White- and blue-collars in a mill shutdown*, ILR Paperback No. 6 (Ithaca (New York), Cornell University, 1968).

<sup>2</sup> S. Barkin: *The older worker in industry* (Albany (New York), Lyon, 1933).

<sup>3</sup> ILO: *Human resources development: vocational guidance and vocational training* Report VIII (2), International Labour Conference, 59th Session, 1974, p. 50.

vulnerable heart and lungs of the older worker and can result in serious disorders.

Nevertheless, not enough is known yet about the physiological and, more particularly, the psychological processes of ageing and the way they affect working capacity. No other proof is needed than the often contradictory results arrived at in studies on the relationship between age and accident liability at work. According to some writers, accident liability decreases with age, whereas others report increases of one sort or another; yet others find very little variation in the over-all accident rate with age but considerable differences in the causes of accidents.<sup>1</sup>

Studies and surveys on the effects of ageing have shown that the impairment of physical and mental capacities is a slower and more gradual process than has generally been supposed and that it is offset by the development of a number of qualities such as occupational conscientiousness and dexterity, stability in employment and greater attention to safety.

### **Legislative measures**

The arguments used to justify age discrimination vary little from country to country. Their scientific basis is somewhat shaky and they do not carry equal weight.

Some highly industrialised countries have taken legislative and practical measures to combat this type of injustice and to guarantee equality of opportunity for older workers. Elsewhere, labour legislation and collective agreements make dismissal and transfer subject to the consent of the worker concerned or to the agreement of the undertaking's trade union committee. Labour codes sometimes contain provisions stipulating equality of treatment between workers irrespective of age.

Among more general provisions covering the entire workforce, mention should be made of legislative or contractual measures limiting the power of employers arbitrarily to terminate a worker's employment. These measures, which are to be found in over 40 countries, are based on the principle that dismissal must have a "valid reason", and "objective cause", "specified serious grounds", or "real and serious grounds"; there can be no dismissal "without legitimate grounds", or if it is "unjustifiable" or "without just cause".<sup>2</sup>

A law specifically dealing with age discrimination in employment has been adopted in the United States. The purpose of this Act is to prohibit discrimination on the grounds of age, "to promote employment of older persons based on their ability rather than age" and "to help employers

---

<sup>1</sup> Stephen Griew: *Job re-design, Employment of Older Workers No. 1* (Paris, OECD, 1964).

<sup>2</sup> See ILO: *General survey of the reports relating to the Termination of Employment Recommendation, 1963 (No. 119)*, Report III (Part 4B), International Labour Conference, 59th Session, 1974, p. 16.

and workers find ways of meeting problems arising from the impact of age on employment". It applies to private employers, labour organisations and employment agencies and it gives the Secretary of Labor a number of powers and responsibilities, including that of reporting any legislative recommendations to the President and the Congress.<sup>1</sup> Thirty-five states had likewise promulgated legislation by the end of 1973 to prohibit discrimination on the grounds of age. An amendment to extend the provisions of the federal Act to state and local authority employees was adopted by the Senate in 1972, but for procedural reasons it has not been finally approved.

Some Canadian provinces have adopted laws condemning age discrimination in employment (in British Columbia and Ontario for persons over 45 years of age, and in Alberta and Newfoundland for those over 40); a draft amendment seeking to have this condemnation included in the Labour Code was submitted to the Federal Parliament in 1972.

In Finland, the 1970 Act respecting contracts of employment<sup>2</sup> provides that the employer must refrain from any discrimination on a number of grounds including age, and the Hungarian Labour Code<sup>3</sup> contains a similar provision. Penalties are provided under Costa Rican law for discrimination based on age, while in France the prohibition on such discrimination is restricted to job vacancies advertised in the press. A draft bill submitted to the British Parliament in May 1971 would have made refusal to hire persons aged over 45 illegal. Under Colombian and Japanese legislation, undertakings are required to employ quotas of older workers varying with the total size of the workforce.

Similar legislation introduced in the Netherlands in 1945 and the Federal Republic of Germany in 1956 did not live up to the hopes of its authors, but since then the idea has gained ground in the EEC. Some recent suggestions concerning the right to terminate employment propose that it should be made compulsory to employ a quota of older workers and that any dismissals should be subject to approval by the competent authority.<sup>4</sup> Other proposals seek to increase the period of notice given to older workers. New standards might require the length of notice to vary with the workers' age, for example three months for those over 40 and six months for those over 50. This would be the minimum period of notice and could of course still be increased in accordance with the workers' length of service in the undertaking.<sup>4</sup>

---

<sup>1</sup> Act of 15 December 1967 (see ILO: *Legislative Series*, 1967—USA 1). Section 12 states that the prohibitions in the Act shall be limited to individuals who are at least 40 years of age but less than 65.

<sup>2</sup> *Legislative Series*, 1970—Fin. 2.

<sup>3</sup> *Ibid.*, 1967—Hun. 2B.

<sup>4</sup> "Dispositions en faveur des travailleurs en cas de licenciements dans le droit des pays membres des Communautés européennes", *Rapport de synthèse et conclusion de la Commission des Communautés européennes* (Brussels, 1972; doc. SEC(72) 15/6 final).



These ideas appear to have been anticipated by the law and jurisprudence of certain countries which already afford middle-aged workers at least partial protection in this respect. Thus, in Belgium, the period of notice is calculated on the basis of the worker's length of service in the undertaking.<sup>1</sup> The courts take both age and seniority into consideration and it is not unusual for them to fix the period of notice at three or three-and-a-half years, or to award compensation in lieu of notice equivalent to the amount that would have been received in wages. In Czechoslovakia, the notice is fixed at three months for persons over 40.<sup>2</sup> In the Netherlands, workers are entitled to two weeks' notice for each year's service after the age of 45 and to three weeks per year after 50 (with a minimum of one year's service)<sup>3</sup>, while the principal criterion applied by the courts in cases of contested dismissal is the worker's chance of finding a new job.

In Sweden, a worker who has been in the service of the same employer for not less than 24 months during the three previous years is entitled to two months' notice as from the age of 45, four months from the age of 50 and six months from the age of 55.<sup>4</sup> If a worker has been laid off without notice for more than 14 consecutive days, the local labour council can issue directives concerning his employment in the undertaking concerned.<sup>5</sup> In Norway, workers aged 50 to 60 are entitled to an additional month's notice and those over the age of 60 to two extra months, provided that they have served ten consecutive years with the same employer.

In some cases the compensation payable for dismissal is substantially increased for older, long-service workers with a view to discouraging discriminatory termination. Thus the compensation awarded in the Federal Republic when the employment relationship is dissolved by judgement of a court is usually equal to 12 months' earnings, but it is increased by three months' earnings if the employee has reached the age of 50 and has had 15 years of service and by six months' earnings if he has reached the age of 55 with 20 years of service.<sup>6</sup>

Social security legislation in a good many countries reflects the desire to alleviate the social and economic consequences of lay-offs for older workers in view of the difficulties they experience in finding new jobs. Provision is made for social security assistance in cases of involuntary and longer-term unemployment or where the worker opts for premature retirement, particularly in those countries where the retirement age is over 60.

---

<sup>1</sup> Act of 21 November 1969 (*Legislative Series*, 1969—Bel. 2).

<sup>2</sup> Labour Code, s. 45 (*ibid.*, 1965—Cz. 1).

<sup>3</sup> Act of 30 May 1968.

<sup>4</sup> Act No. 199 of 10 June 1971 (*Legislative Series*, 1971—Swe. 2).

<sup>5</sup> Act No. 202 of 10 June 1971.

<sup>6</sup> Act of 25 August 1969 (*Legislative Series*, 1969—Ger.F.R. 3).

Legislation in the Federal Republic grants early retirement to workers over the age of 60 if they have been unemployed for one year. Since 1969 every insured Norwegian worker aged 65 or over has been entitled to unemployment benefits for up to 52 weeks a year until he reaches retirement age. An unemployment benefit equivalent to the amount of the old-age pension is payable in Finland for a period of six months which may be extended if the employment office certifies that a worker aged over 60 has been unable to obtain a suitable job. In the United States, under an amendment to the law concerning retirement, pensions are payable from the age of 62.

In seven countries of Latin America and the Caribbean (Bolivia, Chile, Ecuador, Guatemala, Mexico, Trinidad and Tobago and Uruguay), insured workers are entitled to a reduced early retirement pension for a specified number of years (usually five at most) before the normal age of retirement if they have been involuntarily unemployed for 6 to 12 months. In Uruguay, a worker who is involuntarily unemployed qualifies for a reduced pension after the age of 40 if he has paid contributions for 10 years.

### **Non-legislative measures to combat discrimination**

Legislation to prohibit discrimination against older workers and to alleviate its consequences is not in itself enough to eliminate discriminatory practices and prejudice and at the same time promote equality of opportunity for these workers in employment and occupation. In practice, other measures need to be introduced in different areas of governmental activity, while the support and active participation of trade union organisations and voluntary bodies are absolutely indispensable.

Collective bargaining between employers and workers has an important role to play here too. Many collective agreements in several branches of industry in the United States contain an anti-discrimination clause with regard to age: a worker who is discriminated against may invoke the procedure laid down for seeking redress. Such clauses are to be found in collective agreements in the automobile, steel and electrical equipment industries; they are found less frequently in the mines, services and textile industries. Although there is no satisfactory way of measuring their effectiveness, the inclusion of clauses of this type certainly shows that the parties to the agreement at least intend not to discriminate against older workers, so the clauses are not without some value.<sup>1</sup>

Seniority clauses are also everywhere used in collective agreements to afford protection to the older worker. In general, trade union organisations tend to stress the importance of seniority in the undertaking as a guarantee of security of employment, and regard it as one of the main

---

<sup>1</sup> Ewan Clague, Balraj Palli and Leo Kramer: *The aging worker and the union—employment and retirement of middle-aged and older workers* (New York, Praeger, 1971).

criteria in decisions concerning work organisation, promotion, selection, transfers and wage increases.

In the EEC countries, the seniority clauses in collective agreements are usually more favourable than the statutory provisions. In the Federal Republic, for example, in order to afford older workers protection against rationalisation measures, collective agreements in the engineering, iron and steel, and textile industries provide that workers with 10 to 20 years' service cannot be dismissed if they have reached a specified age (55 to 60). The same clause applies in the civil service. It is also through collective bargaining that workers have won the right to supplementary compensation based on length of service; this takes the form either of a lump sum or of a regular allowance until retirement age is reached.

An income guarantee scheme for unemployed workers over the age of 60 was introduced in France under the national multi-industry agreement of 27 March 1972, which provides for state contributions. In the United States, following the pattern laid down in their first agreement with Fords in 1956, the United Auto Workers have since 1964 been negotiating agreements with the other companies under which workers can retire after 30 years' service, whatever their age, or at the age of 60, with a monthly pension which in 1973 amounted to \$700. A number of trade unions in the United States seem to have taken their cue from the classic army concept according to which a man is considered to be old at 40. This notion has spread into a number of other dangerous occupations, including the police force, the fire service and employment in psychiatric institutions. In 1968, workers in the New York Public Health Service negotiated a collective agreement entitling them to 50 per cent of their pay after 20 years' service irrespective of age.

Nevertheless, these measures and agreements have only an indirect impact on discrimination. They attenuate the consequences of the evil but they do not attack it at the roots. Pinpointing factors affecting the employment conditions of older workers and developing a new approach to social policy, making it less age-biased and more responsive to individual differences—these are areas which provide scope for effective action by public employment services and placement offices provided they are actuated by techniques and policies adapted to the needs of older workers. In a number of countries the employment services already have special procedures for finding work for "hard-to-place" jobseekers, including elderly workers. The latter can avail themselves of the services of vocational guidance counsellors in the Federal Republic and Sweden, and also to a lesser extent in France, Canada and the United States. In the Netherlands a counsellor known as the Special Plans Officer is the linchpin of the service specially designed to help older workers. All these arrangements represent a completely new departure which, as such, provokes varied reactions. In the Netherlands, for example, opinions are divided as to the usefulness of a special service for older workers. For the

most part, in fact, employment service staff in nine European countries are themselves opposed to the creation of a separate body or publicity campaigns on behalf of older workers. They would prefer these workers to be treated like any others, although they admit that on the whole they will probably be more difficult to place.

Some employment services have taken steps to increase public awareness of the problems involved. They have also appealed to the official tripartite consultative bodies to keep in close touch with the workers directly concerned as well as with employers and governments. This is the case in Canada, the Federal Republic, the Netherlands, Sweden and the United States where these bodies are active at the local, regional and national levels.

One factor that exercises a considerable influence on action to promote equality of opportunity is the scope for updating knowledge and skills and retraining in the more general area of vocational guidance and training. The first requirement here is to eradicate the discriminatory practice of fixing upper age limits for admission to adult workers' training courses organised by or under the auspices of the public authorities, as well as those organised by public and private undertakings. Already numerous governments hold the view that there should be no maximum age limit for adult workers' training.<sup>1</sup>

Secondly, measures should be taken to eliminate, as far as is possible, the difficulties experienced by older workers in their jobs. In-service training and paid educational leave could help to ensure continuity of employment for older workers and strike a blow against discrimination.

With measures such as these, and the elaboration of teaching methods specially designed for them, older workers would receive the guidance and training they need (updating of knowledge and skills, transfer to another job, or to a new trade where their skills and experience can be used to the best advantage, etc.) and they would be encouraged to make full use of the facilities offered them.

### **ILO action**

Over the years a number of Conventions and Recommendations have been adopted by the ILO which afford specific protection to older workers, particularly those who are no longer at work and are entitled to an old-age pension.<sup>2</sup> Some of these relate to the period prior to retirement

---

<sup>1</sup> See ILO: *Human resources development* . . . , op. cit., pp. 49-52.

<sup>2</sup> The Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), and the Old-Age Insurance (Agriculture) Convention, 1933 (No. 36); the Social Security (Minimum Standards) Convention, 1952 (No. 102) (Part V); the Equality of Treatment (Social Security) Convention, 1962 (No. 118), and the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); the Invalidity, Old-Age and Survivors' Insurance Recommendation, 1933 (No. 43) (Part IIB), and the Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131).

only in so far as they cover early retirement on account of invalidity. Other Recommendations include specific references to problems facing older workers.<sup>1</sup>

The problems of older people in relation to work and retirement were the theme of the report of the Director-General of the ILO to the 46th Session of the International Labour Conference in 1962. In 1970 the Conference adopted a resolution concerning the employment of older workers which was particularly important in that it spelt out the broad lines of future ILO action in this field. Another resolution adopted at the 57th Session of the Conference in 1972 concerning labour and social implications of automation and other technological developments urged that "special efforts should be made to protect the jobs of older or disabled workers".

At its 188th Session in November 1972, in the course of its examination of the draft long-term plan submitted by the Director-General, the Governing Body of the ILO decided that further studies should be undertaken of problems relating to age discrimination.

### **Conclusions**

The obvious cause-and-effect relationship between age prejudice and discriminatory practices produces "detrimental distinctions which do not take account of the particular characteristics of an individual as such, but take into account only collective qualifications deriving from his membership in a certain social or other group".<sup>2</sup>

During the 1960s progress was made in combating various aspects of discrimination on the grounds of age. A number of countries have advanced from research, theoretical studies and analyses of specific situations to legislation and other practical measures to promote equality of opportunity and, in particular, to give concrete expression to the idea of security of employment for middle-aged and elderly workers. It has been demonstrated that it is possible to offer these workers a greater number of employment opportunities and a wider range of occupations.

By emphasising the need for social and humane solutions to current problems, employment policies in general and the policy of maintaining high levels of employment in particular have created an awareness of the

---

<sup>1</sup> The Unemployment Provision Recommendation, 1934 (No. 44), Paras. 4 (b) and 11 (b); the Employment Service Recommendation, 1948 (No. 83), Para. 5 (b); the Vocational Training Recommendation, 1962 (No. 117), Paras. 25, 44 (1) (b) and 55 (1) (c); the Termination of Employment Recommendation, 1963 (No. 119), Para. 15 (2); the Employment Policy Recommendation, 1964 (No. 122), Para. 16, Annex, Para. 1 (1) (a) (i), and Para. 6 (1), (2) and (3); and the Employment (Women with Family Responsibilities) Recommendation, 1965 (No. 123), Para. 9 (2).

<sup>2</sup> United Nations, Commission on Human Rights: *The main types and causes of discrimination* (Lake Success (New York), 1949; Sales No.: 1949. XIV. 3), p. 26.

difficulties faced by older workers as a result of technological progress and structural changes in a given industry or region. Furthermore, they have succeeded in bringing home to the general public that the constant increase in the ratio of economically inactive to economically active population as a result of raising the school-leaving age and lowering the age of retirement—accentuated in most countries by increased life expectancy—means that full use has to be made of working capacity right up to the age of retirement (and even beyond if the worker so desires) so that the burden placed on society by the economically inactive may be reduced.

Legislative measures have been proposed recently which, while preserving the freely negotiated character of the employment contract and the right of each party to terminate it, would eliminate abuses against groups which are the victims of prejudice, such as workers over the age of 35.<sup>1</sup>

Measures have also been suggested to ensure security of employment for older workers by introducing statutory or contractual guarantees regarding notice, developing the consultation machinery of labour services and staff representation bodies, and taking proper account of workers' ages, aptitudes and their possibilities of retraining when the lists of collective lay-offs and re-engagements are being drawn up.<sup>2</sup> It has also been suggested that individual enterprises should promote the continued employment of their older employees through appropriate personnel policies<sup>3</sup> and even that the government should become "the employer of last resort".<sup>4</sup>

The United Nations General Assembly has recommended that governments should take appropriate measures to "discourage, wherever and whenever the over-all situation allows, discriminatory attitudes, policies and measures in employment practices based exclusively on age". It also requests the Secretary-General, in co-operation with the specialised agencies concerned, to take appropriate action to "promote research, at the national and international levels, for the further development of policies and standards, planning and evaluation methods and practical action in the field of ageing".<sup>5</sup>

As has already been pointed out, ILO standards, and particularly certain Recommendations, contain provisions concerning various aspects

---

<sup>1</sup> See António de Lemos Monteiro Fernandes: "O problema da 'condição de idade máxima'", in *Estudos Sociais et Corporativos* (Lisbon), No. 15, July-Sep. 1965.

<sup>2</sup> European Coal and Steel Community and Commission of the European Communities: *Problèmes de réemploi des travailleurs âgés ou handicapés* (Luxembourg, 1967), pp. 114-115.

<sup>3</sup> OECD: *Promoting the placement of older workers*, op. cit., p. 9.

<sup>4</sup> Garth L. Mangum: "Government as employer of last resort", in Sar. A. Levitan, Wilbur J. Cohen and Robert J. Lampman (eds.): *Towards freedom from want* (Madison (Wisconsin), Industrial Relations Research Association, 1968).

<sup>5</sup> United Nations, General Assembly, Resolution No. 3137 (XXVIII), adopted 14 December 1973.

of the working life of workers aged 40, 45 or more. Furthermore, action of the type advocated by the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), has already been extended by a number of countries to the elimination of discrimination on the grounds of age and to the promotion of equality of opportunity for older workers.

There is a need for international co-ordination to encourage and broaden these efforts as well as all the essential related measures in such different fields as industrial relations and working conditions, industrial medicine and gerontology, social security and social services.

---