

Aged by Law

Ages of Life in Austrian Law

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There are far more than one thousand regulations¹ concerning age in all areas of Austrian law, such as civil, criminal, labor, or administrative law, to mention only a few. It is inevitable that age limits are concerns of law making and legal regulations, but is it law that defines us as ‘young’ or ‘old’? What influence does law have on our perceptions of age and life phases? Basically, we have to differentiate between chronological age and what society associates with the years lived, i.e. cultural age. Cultural age is a social definition (Maierhofer 82), and law contributes to how this is determined. Law uses chronological age (the number of years that we have lived) to assign specific rights and duties based on reasonable classifications. By doing so, law constitutes a social status (Ruppert 138, 141; Kaufmann 121, 123; Ehmer 169), and creates part of a cultural reference system to which everyone belongs (Haltern 207). Age limits thus generate images and social meanings of life phases. In addition, law contributes to aspects of social discourse on age and uses established research, such as developmental psychology, to set up markers as a condition to grant rights or assign duties. Therefore, law is not only a source, but an integral part of social discourse concerning age.

Age regulations affect all aspects of life, from school enrollment to retirement. Kholi talks about the ‘institutionalization of the life course’ (Kholi 1). This legally defined *vita* provides orientation to the members of a legal system and structures individual biographies through legal age limits (Haltern 207; Ruppert XXXI). In terms of the legal system, these limits

1 | Laws and decrees are cited in German, and can be accessed through the Austrian Federal Law Information System: <http://ris.bka.gv.at>.

define who is 'young' and who is 'old,' and who may, may not yet, or is no longer allowed to exercise specific rights, and they determine which legal status applies to chronological age.

The following analysis can be seen as an interdisciplinary contribution to the overall topic of the book, *The Ages of Life: Living and Aging in Conflict?* Age as a cultural phenomenon addressing all phases of life can only be understood in connection to definitions of childhood, adolescence (youth), and adulthood (Hareven 165). On the basis of what it means to be 'aged by culture' (Gullette), this article explains what it means to be aged by law. Which age regulations and limits can be found in different sections of Austrian law, how did they develop and how are they justified?

INSTITUTIONALIZATION OF BIOGRAPHY

The link between a specific biographical age and rights or duties was established in the middle of the 18th century (Ruppert 142, XXIV), when life phases were specifically defined and differentiated by law. Law in modern societies treats cohorts equally, making generations of people pass simultaneously through phases of life on the basis of standardized assumptions (Ruppert 144; Hareven 176). By defining by law which behavior is allowed, norms of class were replaced by legal regulations (Ruppert XXIX). Legal age phases influence the use of age as an identity marker creating social norms and defining specific behavior adequate for a certain age (Kaufmann 123). In the 19th and 20th century, a decrease in infant mortality rate and an increase in life expectancy led to demographical changes that made structuring life phases important (Hareven 173; Ehmer 162, 169; Kaufmann 122). Based on the central period of employment, life phases were defined as childhood, adolescence, adulthood, and old age. This institutionalized life course was divided into three phases: education, employment, and retirement (Ehmer 169; Weymann 213). Extended compulsory education and the establishment of retirement systems determine the dividing lines of these phases. Individuals now pass through these life phases simultaneously and experience higher pressure to change their roles at the points of transition (Hareven 166, 176, 179; Kaufmann 122).

Childhood is constituted by compulsory education and prohibition of child labor. Definitions of the phase of childhood can be found as early as the 18th century. After the effective abolition of child labor, the welfare state

organized childhood in a clear structure with a high concentration on regulations. Children usually spend their first years at home, followed by some years of kindergarten and school, before moving into a crossover phase of adolescence (Honig 25, 27-28, 43, 45; Hareven 167). At the beginning of the 20th century, development psychology declared adolescence a specific stage of life resulting in socialization of public schools and grouping adolescents by age groups. Laws directly addressing young people strengthened their identity as a group (Abels 113-14; Hareven 168). Granting rights and enforcing duties are connected to a pedagogic and psychological concept of maturity. However, different areas of law establish different connections between age and maturity. Therefore, adolescence is not defined consistently; its definition depends on whether physical or social maturity is taken as a basis (Abels 124).

Childhood and adolescence law serve mainly as means of protection. Extended periods of education can even cause longer periods of 'post adolescence.' Young adults are very often intellectually, culturally, and politically, but not economically independent (Abels 133-34). Therefore, transition phases are often difficult to determine. Adulthood is commonly characterized by employment and as the phase between adolescence and old age. At the end of the 19th and the beginning of the 20th century due to industrialization, old age was defined as a life phase following the phase of employment. General awareness of old age was encouraged by studies in gerontology, negative images of old age and regulations for retirement (Hareven 164, 168; Ehmer 167). In England at the beginning of the 19th century, sixty-five years of age was determined as retirement age. Other European countries followed this example granting special benefits to public servants and soldiers. Nowadays, the sixty-year-limit has become part of the age discourse (Göckenjan 194, 197; Ehmer 162, 165; Ruppert XXI).

Retirement regulations have created a new social age that is marked by two main elements: reward for former efforts free from labor and loss of central roles and perspectives in life (Saake 271; Göckenjan 198). As the period of retirement steadily extends, it is sometimes split into further categories: third and fourth age or young old and old old with a transition point between eighty and eighty-five years of age (Ehmer 163, 165-66). Typical for this final phase is loss or decrease of self-determination, sometimes due to physical infirmities.

LIFE PHASES IN AUSTRIAN LAW

Childhood

Childhood is constituted by various age limits. Social insurance claims are granted to children until the age of eighteen. In Austria, school or professional education can extend the phase of childhood to the age of twenty-seven (§ 252 ASVG), which in legal terms is the last year of being a child. In some specific cases, childhood can be extended for those who suffer from a mental or physical handicap, if retirement insurance is available through the parent or guardian. Retirement insurance may insure the parent or guardian until the child is forty years of age (§ 18a para 1 ASVG).

Childhood begins at birth, where a person earns certain rights which steadily increase with age culminating in the most important right according to civil law, the legal capacity to contract. Three phases determine the increase in rights: Until 2001, a person was defined as a child until the age of seven. The next phase was made up by nonage-minors ranging from seven to fourteen, and followed by minors that have reached the age of consent (fourteen years). This phase lasts from fourteen to eighteen (§ 21 para 2 ABGB). Usually, after the eighteenth birthday mentally healthy people reach the age of majority and then possess full legal capacity to contract. Before reaching the age of majority, people are under specific protection of the law determined by their physical, intellectual and emotional development (ErläutRV 296 21. GP). In contrast to adults, adolescents cannot be taken advantage of in business because of the assumed lack of common sense and experience and cannot be charged for neglect of duties (Koziol and Welser 50). Very often special needs are taken into consideration due to their weak economic position, as for example price benefits for public transportation. Many rules and regulations for childhood and adolescence prove the intention to protect. One of the first regulations focuses on the second year of life. Female prisoners, for example, are allowed to keep their children with them until that age (§ 74 para 2 Strafvollzugsgesetz) in order to make allowances for the specific needs of a child of that age. Passengers of this age group are exempt from flight taxes (§ 3 Flugabgabegesetz) if no separate seat is booked. After the age of five, reasoning capacity and self-determination are assumed. Children at this age have the right to be heard in a case of adoption (§ 181a ABGB). Compulsory education starts with September 1 following the sixth birthday (§ 2 Schulpflichtgesetz), and lasts for

nine years (§ 2 Schulpflichtgesetz). From that age on, a broad spectrum of definitions and protective regulations for children are in place. Under the age of six, children are not allowed to use public transportation unaccompanied. With six years of age, children can escort younger children (§ 14 Z 4 Kf-Bef Bed). From the sixth until the fifteenth birthday, public railway transports children for half the usual fare (§ 16 para 2 EBG). If parents with children under the age of twelve need to take care of their sick child, payment is continued by their employer (§ 16 UrlG). Children under fifteen are not allowed to be commercially employed. However, with thirteen years of age children can be hired for lighter work, if the working hours do not conflict with school (§§ 5, 5a KJBG). At fourteen, children have the right to consult records and obtain information, if fathered by sperm from a third party (§ 20 para 2 FMedG). Children of diplomats under twenty-one can under special conditions be exempt from employment regulations for foreign citizens (§ 1 Z 13 AuslBVO). How the phase of childhood is defined depends on the area of law analyzed. You can legally be considered a child at seven, fifteen, eighteen, twenty-one, twenty-seven, twenty-eight or forty years of age. Age markers, however, are defined on the second, fifth, sixth, twelfth and fourteenth birthday. Transition between childhood and adolescence is therefore fluid.

Adolescence

Criminal law defines an adolescent between the ages of fourteen and eighteen as a person deserving milder treatment (§ 1 Z 2 JGG). The term ‘young adult’ refers to people under twenty-one (§ 46a JGG). Social insurance law defines people between fifteen and eighteen as adolescents (§ 132a para 2 ASVG), while ‘adolescent employees’ refers to persons under eighteen as well as to interns under twenty-one (§ 123 para 3 ArbVG). Special discount air fares can be limited to adolescents until the age of twenty-five, while federal youth representation law and federal youth support law include everyone until the age of thirty. These laws intend to represent the interests of young people on a federal level and to support the development of mental, physical, social, political, religious, and ethical competences of children and adolescents (§§ 1, 2 Bundes-Jugendvertretungsgesetz, §§ 1, 2 Bundesjugendförderungsgesetz).

Definitions of adolescence range from fourteen to eighteen, twenty-one, twenty-five or even thirty reflecting protective intentions in specific

areas of law. In Austria, fourteen is an age where a broad spectrum of regulations applies. From age fourteen on, people become legally responsible for their behavior. This basically applies to civil law (§ 153 ABGB) as well as criminal law (§ 4 para 2 JGG). In civil law, children can be made responsible even earlier, depending on their individual ability to realize and expiate (§ 1310 ABGB). However, in criminal law the age border is absolute: people under the age of fourteen are not punishable (§ 4 para 2 JGG). In criminal law, adolescents are also not punishable if under specific circumstances they are not able to realize what they did wrong (§ 4 para 2 Z 1 JGG). At fourteen, young people are responsible for certain decisions, for example, they can decide independently whether they want to continue with their religious education (§ 1 Religionsunterrichtsgesetz). Some protective regulations even apply to ages eighteen and older. The possession of explosives is only allowed after the age of twenty-one (§ 4 para 1 SprG). Advertisements for tobacco products specifically targeting adolescents, and presenting adolescents or people whose age cannot be clearly determined as being older than thirty is prohibited in cigarette ads (§ 11 Tabakgesetz).

Different fields of law draw different conclusions concerning the connection between age and maturity. Extending adolescence to the age of twenty-seven in terms of family insurance takes the economic situation of young people into account. In Austria, lowering the age for receiving family benefits from twenty-seven to twenty-four (§ 2 para 1 lit b Familienlastenausgleichsgesetz) shows that the economic aspect of regulations influences the legal definition of the phase of adolescence (Ruppert 141). Transition to the phase of adulthood is thereby fluid and dependent on the laws applied.

The dividing line between majority and voting age as well as compulsory military service (only for men) determine the transition phase. In 1811, the age of majority was reached at twenty-four, in 1919 at twenty-one (StGBL 96/1919), in 1973 at nineteen (BGBl 1973/108), and in 2001 at eighteen (BGBl 2000/135). The downshifting of the limit for the age of majority has reduced the phase of adolescence. Results in child and adolescence psychology had impact on national legislation. Research showed that young people enter the phase of adolescence earlier and are ready to make independent decisions and bear responsibility at an earlier age. Austria was the last member of the European Council to lower the majority age limit, and thereby respond to requirements of increasing mobility and flexibility in education (ErläutRV 296 21. GP). In Austria, compulsory military service

applies to all men of seventeen (§ 10 para 1 Wehrgesetz 2001). At the age of eighteen they can be drafted as long as they are Austrian citizens and have the necessary physical and mental abilities (§ 9 para 1 WG 2001).

In Austria, voting age, which entitles to political participation, is lower than the age of majority. Since 2007, sixteen is the age to vote for federal parliament (Art 26 para 1 B-VG, § 21 NRWO) making Austria the first member of the European Union to adopt a voting age of sixteen. The same voting age applies to elections for the European Parliament (Art 23a para 1 und 3 B-VG) and all regional elections (Art 95 para 2, Art 117 para 2 B-VG). As fourteen- year-olds are allowed to make important decisions about private and professional aspects of their lives, this right was extended to political decisions in order to support participation in democratic processes. Studies in psychology confirmed that people of that age already have the necessary understanding to vote. In addition, it is seen as a good way of balancing future interests of young and old. Another intention was that younger members of parliament would be elected by a younger voting public (StenProt NR 23. GP 24. Sitzung 06.06.2007). Age of candidacy at which a person can legally qualify to become a member of parliament is now eighteen (Art 26 para 4 B-VG).

Originally, voting age and the age of majority were closely connected (Ucakar 69-75). After the election reform in 1907, voting age was twenty-four, age of candidacy was thirty (Ucakar 353). After WWI, the statute on electing the constituting national assembly separated voting age from civil majority age, which was set at twenty. The main intention was to grant political participation to those who had served in WWI, but there was a contradiction in terms. On the one hand, majority age restricted access to full financial and economic freedom to the age of twenty-four and older. On the other hand, democratic and political participation in state affairs was allowed at twenty years of age (Ucakar 400). Further adjustments followed: In 1929, the voting age was twenty-one, the age of eligibility was twenty-nine (Ucakar 444), in 1949 the voting age was twenty, the age of candidacy was twenty-six (Ucakar 463), and in 1968 the voting age was nineteen, the age of candidacy was twenty-five (Ucakar 486-87). This led again to a discussion of the voting age centering on questions of 'democratization' and political maturity (Ucakar 486). In 1992, the request was fulfilled, and the voting age was lowered to the age of eighteen (BGBl I 2003/90).

Today, the age of majority and military enlistment mark the age of eighteen as a major transition to adulthood. The lowered voting age of sixteen,

however, ends the phase of adolescence by determining participation in major political decision-making. Similarly, adolescence has been legally lowered in terms of marriage, which is closely linked to maturity and adulthood. According to the Austrian Civil Code of 1811, underage minors could not obtain a matrimonial contract without parental consent. In the Ehegesetz of 1938, the age of marriage was twenty-one for men, and sixteen for women. Dispensation was possible, but men needed to be eighteen (Floßmann 86-87). In 1973, marriage age was nineteen, however dispensation was possible for men of eighteen and women of fifteen (§ 1 EheG, BGBl 1973/108). From 2001 on, marriage age was determined at eighteen, regardless of sex. Dispensation is now possible for everyone of sixteen years of age if they seem mature enough and their partners are older than eighteen (§ 1 para 1 EheG). One reason for this reform was the lowering of the age of majority, the other was unequal treatment of men, which no longer could be justified (ErläutRV 296 21. GP).

Adulthood

Transition from adolescence to adulthood is closely connected to professional employment and full access to the labor market. Professions and careers are very influential for determining place and status in society within a life course. This strong influence explains why professional identity takes precedence over private aspects (Weymann 188, 197-98). Consequently, many provisions on age limits are to be found in occupational statutes determining professional education and training as well as career and employment, as for example integration into the labor market. Many occupational provisions ignore the civil age of majority and mainly apply to individuals over eighteen who have already attained all civil law capacities and are considered adults.

Some professional rules lay down special age limits which request a certain age in order to pursue a specific profession. Other professional rules provide supportive measures, as some adults are considered in need of special protection. Yet, a main reason for this support is not an assumed lack of understanding or physical status, but an assumption that this age group is affected by a weak economic position and lacks professional experience.

Concerning unemployment benefits, the qualifying period is usually fifty-two weeks of work. However, for under twenty-five-year-olds, twenty-

six weeks in the last twelve months suffice (§ 14 para 1 ALVG). In terms of older adults, special protective measures apply. Night workers are provided with medical exams every two years, those over fifty are granted one medical exam per year (§ 12b para 1 AZG). So-called ‘social plans’ guarantee readjustment allowances and special severance payment to women over fifty and men over fifty-five, if jobs are terminated (see for example Supreme Court 8 Ob A 139/04-05). The duration of unemployment benefits also increases to twenty weeks from age forty or fifty with an increase to thirty-nine respectively fifty-two weeks with further age (§ 18 para 2 ALVG).

Pension and Retirement

Transition from adulthood to ‘old age’ is mainly characterized by retirement and pension; i.e. withdrawal from the labor market. The original idea of retirement regulations was to provide benefits for people too old or ill to earn their living. In Austria, the standard retirement age is sixty-five for men, and sixty for women. This rule applies to employees, farmers, and the self-employed (§ 253 ASVG, § 121 BSVG, § 130 GSVG).² Physicians (§ 99 Ärztegesetz), judges (§ 99 Richter- und Staatsanwaltschaftsdienstgesetz), members of parliament (§ 27 para 1 Bezügegesetz), and military officers (§ 10 para 1 Wehrgesetz 2001) receive retirement benefits from sixty-five of age onwards, regardless of sex. Special retirement limits are set for state employed professors at age sixty-eight (§ 163 para 5 Beamten-Dienstrechtsgesetz 1979). However, in Austria people usually retire much earlier, women at the age of 56.5 and men at the age of 61.5 on the basis of pension contributions (37.5 years of insurance or thirty-five years of contribution; § 253b ASVG).³ Another reason for early retirement is permanent night-shifts. In such cases, male workers may retire at fifty-seven and female workers at fifty-two (Art 10 para 1 Nachtschwerarbeitsgesetz).

Similar to other phases of life, the word ‘elderly’ comprises many meanings. Legal rules, especially those granting benefits, often associate ‘old age’ with various ages of retirement. Provisions on discount tickets for public transportation refer to the age of sixty-five for men and sixty for women

2 | From 2024 on with completion in 2033, retirement age for women is gradually being increased to sixty-five.

3 | Every three months, age is gradually being increased, for details see Resch 131.

(Anlage 1 Z 9 KfI-Bef Bed). This law is expected to be changed very soon on grounds of being discriminatory. Federal statutes on representation of the elderly in politics and the public define ‘elderly persons’ as women of fifty-five and men of sixty (§ 2 Bundes-Seniorengesetz).

Yet, one can be legally ‘old’ even without being retired. Track and field instructors’ examination boards grant people between forty and fifty, or fifty and sixty ‘old age bonus points’ (Anl 6 BGBl. II 2011/351).

PROVISIONAL RESULTS

Not all phases of life receive equal attention in Austrian law. Whereas many rules exist for the young, with the exception of retirement there are few regulations for the old. Austrian law, however, does work on the assumption of three distinct age groups defined by the transition to the age of majority and retirement: the young (children and adolescents), working adults, and retirees (Ruppert XXXII-XXXIII; Ruppert 145; Kaufmann 122). From a mere constitutional point of view, Ruppert states a dichotomy in a life course, the phase of adolescence with limited rights followed by a phase where everything is possible and allowed. In Austria, no rights once granted can be revoked on the basis of age (Ruppert XXIX). A regular car driver’s license, for example, cannot be revoked at a certain age and there are no medical exams required later in life. So far, no legal provisions exist which can deny certain rights to the elderly, such as medical treatment.

Age limits are fluid and closely linked to the intentions of the law concerning specific regulations, and are based on general schemes rather than individual or intentional abilities (Koziol and Welser 53). This is the reason why there is conformity concerning age limits in the European Union. These age regulations follow the human maturing process by legally reaffirming stereotypes in order to create consistent rules. Yet, there is a common understanding now that these stereotypical assumptions need to comply with principles of equal treatment (Pöschl Altersdiskriminierung und Verfassung, speech on November 24, 2011). Rules based on stereotypical notions increase discomfort on the part of citizens concerning these regulations. Age limits are often criticized because they do not sufficiently consider the gap between individual maturity/ability and chronological age. The young, for example, feel able to do so much more than the law allows, or the elderly are not always in need of financial support for public trans-

portation. One of the few exceptions where individual capacity for rational understanding and not age limits is the basis for rules concerns a child's consent to medical treatment. Generally, individual decision-making is set at the age of fourteen, but even a teenager can decide on medical treatment on his/her own before the age of fourteen, if the physician considers the child mature enough for such a decision (§ 146c ABGB).

In cultural discourse, youth is – as Maierhofer shows – often a metaphor for energy, flexibility and desire, whereas old age often stands for inability, passiveness and helplessness (Maierhofer 85). Even if this applies to cultural and social perceptions, legal contexts are not affected, as phases of childhood and adolescence are seen as life stages requiring special protective regulations.

MINIMUM AND MAXIMUM LIMITS IN LAW

Some provisions lay down minimum age limits. Apart from rules on the age of majority, provisions on minimum age limits mainly regulate occupational provisions and determine access requirements to certain professions. Special physical or psychological abilities and a level of maturity, for example, are required, and the level of maturity and experience vary in different professions. Employees collecting road tolls have to be eighteen (§ 17 BStMG), certain mining employments require an age of twenty-one (§ 331 para 2 Allgemeine Bergpolizeiverordnung). Probation assistants (§ 12 Bewährungshilfegesetz), psychotherapists (§ 10 para 2 Z 2 Psychotherapiegesetz) or proprietors of gas companies (§ 44 para 1 Z 3 lit a Gaswirtschaftsgesetz 2011) have to be at least twenty-four. Cable car engineering requires an age of twenty-five (§ 109 para 1 Bergpolizeiverordnung für die Seilfahrt), and an arbiter must be twenty-eight (§ 9 para 1 Z 1 ZivMediatG). Furthermore, a person can only be elected federal president at the age of thirty-five (Art 60 para 3 B-VG).

Another category of rules that sets maximum age limits are those determining special benefits, such as family support and research scholarships, but also publicly financed in-vitro-fertilization (§ 4 para 4 Z 1 In-vitro-FertilisationsG). Membership to the constitutional court ends at seventy years of age (Art 147 B-VG). Some rules lay down minimum as well as maximum age limits for certain professions; members of the jury must be between twenty-four and sixty-four years old (§ 24 ASGG). However, as

already stated, there are only a few general provisions revoking established rights. Reasons for the rules vary. Whereas minimum age limits are based on assumed lack of life experience and rational understanding, maximum limits argue on the basis of personal deficiencies, which reduce one's ability to work (Ruppert XXXIII). Youth is seen full of capacity and strength, the elderly providing professional life experience and wisdom. Some authors, therefore, refer to old age in legislation and jurisdiction as a 'model of competency' emphasizing the aspect of experience, but at the same time referring to a 'deficit model' associating age with illness and reduced abilities (Ruppert 145).

Today, 'typical' or 'traditional' age limits have to be specifically justified. Special jobs demand certain physical requirements, for example fire fighters. In other areas, it is important to consider age distribution, for example to secure general medical provision despite a great number of retirees.⁴ Higher salaries for older employees are permitted if higher payment is based on professional experience (Marhold 89-90).

AGE, WORK AND VALUE

Supportive measures for (re-)integration of unemployed into the labor market take into account the central role of employment in an individual's biography. Unemployed under the age of twenty-five or over fifty have to participate in special training and educational programs (§ 38a AMSG). The well-known *Marienthal-Studie* 1931-1932 showed the negative consequences of unemployment and led to an understanding of the value of work in terms of self-worth and appreciation, and the destructive forces of unemployment concerning self-confidence and awareness of time. In addition to financial needs, one's position in society is challenged by unemployment (Weymann 191-92). These feelings might also occur at retirement, as capable people have to accept the loss of their professional identity and re-arrange their lives anew. Thus, retirement regulations also determine

4 | ECJ Rs C-229/08, *Colin Wolf*, Slg 2010, I-00000; ECJ Rs C-411/05, *Palacios*, Slg 2007, I-08531; EuGH Rs C-341/08, *Petersen*, Slg 2010, I-00000; ECJ Rs C-45/09, *Rosenblatt*, Slg 2010, I-00000; ECJ Rs C-250/09 ua, *Georgiev*, I-00000; ECJ Rs C-17/05, *Cadman*, Slg 2006, I-9583. See in detail also Rebhahn 173.

social roles and the ‘usefulness’ of individuals in terms of economic effectiveness and distributive justice.

POSITIVE FEATURES OF ‘OLDER’ PERSONS AND THE ELDERLY: LIFE EXPERIENCE AND WISDOM

In Austrian law, ‘old’ or ‘higher’ age is sometimes linked to specific responsibilities based on experience. Normally, such provisions do not lay down an absolute age, but the rules assign, for example, specific rights to the ‘oldest’ person of a group or a board. Many administrative and organizational provisions use this method. If a president is prevented from performing duties in the case of abolition of parliament, the oldest member of parliament takes over the presidency (§ 6 para 2 GOG-NR). In many chambers, such as of the pharmacists, the ‘oldest’ member of the board governs a session till the new president is elected (§ 34 para 1 Apothekerkammergesetz). In the board of lay judges in labor and social insurance matters, the votes are cast according to age, starting with the oldest member of the group (§ 13 para 1 ASGG).

GENDER AND AGE

Some categories of Austrian rules on age not only lay down age limits but combine them with further criteria such as gender. This applies mainly to the current rules on retirement (see above), which still differ between men and women. In 1990, the constitutional court abolished these rules, because women with the double burden of family and work did not profit from earlier retirement (VfSlg 12568/1990). Yet, the provisions are still in existence as constitutional law, despite objections by the European Court of Justice. Starting in 2024, these differences will gradually be adjusted (Melzer-Azodanloo 340).

The reasons for different legal treatment of men and women vary, but they are all of a social nature. At the beginning of the 20th century, according to the ministerial drafts concerning white collar workers insurance rules, a man’s insurance contribution had to finance not only his own, but in case of his death also the widow’s pension. Women’s contributions were only dedicated to the women’s own pensions. Yet, the statute of 1906 did

not adopt the proposal that women would retire five years earlier than men. The discussion continued, and in 1914 women's age of retirement was lowered creating one main problem. Earlier retirement age meant less contribution, less contribution meant lower pensions (Haerendel 139). Another reason for women's earlier pension age, though not explicitly spelled out, was that couples could retire at the same time due to the average age difference in marriage, as examples from Great Britain in 1940 and in Portugal in 1973 show (Haerendel 139). In the 1970s, a third reason was mentioned, women's double burden of family and work (Haerendel 140). Gender age adjustments in terms of retirement were demanded, never aiming at lowering men's, but raising women's (Haerendel 141). Other age provisions concern biological aspects. Public financing of in-vitro-fertilization depends on age limits. Women must be younger than forty, and men younger than fifty (§ 4 In-vitro-Fertilisationsgesetz). Acceptance criteria for physical education teachers differ for men and women (Anlage 6 der VO BGBl. II Nr. 351/2011). Other distinctions – not as obvious – are, for example, that men must be at least thirty, women only twenty-eight when adopting children (§ 180 para 1 ABGB).

CONCLUSIONS

In the 1870s, the psychologist George Beard defined the time between thirty to forty-five years as the ideal age (Hareven 164). Nowadays, ideal age can be defined as a time without any age restrictions and limitations, open access to all sorts of professions and full economic freedom. In this context, antidiscrimination laws are very important. Since 2005, equal treatment rules have explicitly been applied to age (§ 17 Gleichbehandlungsgesetz). In principle, there is no protection of an absolute age or even old age, only of age as such. In Austria, limiting access to certain professions based on age is still allowed, but needs to be justified (Marhold 89-90).

Our overview of Austrian regulations on age confirms that law constructs and influences individual life courses. By granting rights and imposing duties, law assigns social status on the basis of age. Law is also essential for defining age in cultural discourses. For lawmakers, age limits are legal and necessary, as they allow and enable easy and general decisions. Furthermore, most age limits are historically grown and generally

accepted. These regulations contribute to social peace, and are therefore not easily changed (Ruppert XXXII).

Social developments leading to a growing gap between individual maturity (adolescence), physical and mental abilities (retirement), and legal age limits will be the basis for further analysis leading to a reassessment of age limits as constituted by law.

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