

AGE DISCRIMINATION IN EMPLOYMENT ; WITNESS & ANALYSIS

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Before we start, I think we need a short foreword, so that we can agree on the issues we shall talk about.

The matter in question is "age discrimination in employment".

About employment : when discussing employment what we mean is that we are talking about the situation of wage-earners (which I shall commonly call "employees"), excluding independent workers.

About age : age discrimination can be defined by rejecting someone on account of their age, whatever this age may be. You might be unwanted in the same way because you are supposed to be too old or, the opposite, too young...

Are we sure that younger people are unwanted only because of insufficient experience ?

Though I mostly worked on age discrimination against older people, I cannot help finding more and more similarities between this kind of prejudice and that of younger people.

However these lecture series are focused on "seniors", so will this be my subject today. Of course the situation I shall describe is the one I know in France.

INTRODUCTION

Philippe Bataille wrote (in *Racism at work*, La Découverte, Paris, 1997) : "A social legitimacy of discriminating practices exists, stronger than law. This allows victory of collective images and ideology."

Age discrimination in employment hits separately thousands of employees, whereas it is only based on collective images. Here lies, besides, the reason why this practice is definitely a social crime, a professional waste and a rational nonsense.

Since human beings are therefore disqualified for non-objective reasons, I choose to begin this talk with a deliberately subjective approach : "How do senior workers find out that age discrimination does exist ?"

We shall then have a look at a few statistical elements, pointing out that French statistics are at the same time rather scarce and inappropriate (which does not help to grapple with this question - or allows to keep it confused...).

A third part will be dedicated to companies' trends and recruiters' attitudes, as further evidences of age discrimination. This will lead us to identify the true obstacles to senior employment

A question will then be asked : "Can legal option be more than an illusion ?"

As a conclusion, I would like to show (by some symmetry with my introduction) how mass solutions which are usually put forward are paradoxically individual. How, then, could we overcome this global unfairness ?

1) "HOW DO SENIOR EMPLOYEES FIND OUT THAT AGE DISCRIMINATION DOES EXIST ?"

should I add : "*What does it mean, to be considered as a "senior" employee ?*"

Let us begin with an example.

Two years ago, I was quite astounded, when I read this message, wrote by a man on an web discussion : "*I became a senior at 51, as a result of an economical redundancy*". This sentence stays in my mind as the first of a collection of hundreds of other testimonies I have read and have heard since.

Though it may look like a kind of slip, this account sounds to me as a very acute picture of three fundamentals :

- he discovered a special category, which he had never heard of before ;
- he found himself both categorised and locked in this group ;
- this was some extra - and an unexpected - result of his redundancy.

This leads us to ask two questions :

- From what signs can we measure that we have been classified as a senior employee ?
- At what age do we enter this special "senior" category ?

1.1) Indicators (watch out ! we are now leaving subjectivity...)

One strong sign is the age mentioned in job announcements. This forbidden practice is still a common French habit, though it has fluctuated through time, as a result of actions I shall explain further.

Investigating job announcements, you can commonly read excerpts like "28 to 35" (80 % of the announcements), or "*under 40*", or (a true best score !) "*32-36 - maximum 30-40*".

As a variation, you can also find : "*with a 5 to 7 years experience at most ...*".

Even public recruitment includes such prohibited age mentions. French railroad public company, SNCF, by example, cannot hire anybody over 40, same as the public electric company EdF or both assemblies of the French parliament, and so on...

Many French public companies actually go much further than legal offences ; age discrimination criterions are written in their very statutes.

Among things you can read are some amazing replies from recruiters. For example, a woman I met was just given back her application form, on which her birth date had been framed and added by an exclamation mark !

What you can hear is considerably worse!

Going further in your job research, you may have the opportunity to hear recruiters (when they answer) giving you incredible comments.

These remarks may seem rather soft, as “*well, the boss is 30 ; what do you think about that ?*”, or “*you are definitely too experienced for this job*” or “*when do you plan to retire ?*”

You may believe that I am not relating objective evidences of age discrimination ; but don't you think that such insinuations demonstrate real unfairness ? Do you think all these questions could have been asked of younger candidates ?

Anyhow, age discrimination is perfectly well established when you are told (as I was myself, giving you here a word-for-word translation) : “*the recruitment committee decided to eliminate all the applicants who were over 45*”. May I reiterate : that man (who was 65, by the way) did actually use the word “eliminate” (and not simply “remove”) ; he didn't say that they got rid of applications, but of applicants themselves.

1.2) “Seniority” age in employment

Former French prime minister Jean-Pierre Raffarin himself admitted that “*France has become, within the last 20 years, a country with a single generation at work*”.

What French politicians commonly call “*career-ending anticipation*” had been a rule in France for at least 30 years. This was supposed to help to solve the problem of younger unemployment. It never came to any result, but early retirements became a kind of a custom. This is why 55 is commonly looked as a regular working-limit for wage-earners.

A law was passed in 1986, called “*Delalande amendment*” after the name of its instigator. Its purpose was to protect employees over 50, creating taxes (not that high, actually) payable by companies who made them redundant.

It had immediate adverse effects :

- heads of human resources fired employees before their crucial 50th birthday (I am part of those) ;
- they also closed employment doors to candidates near and above 50.

Moreover, this law is not really effective, as companies paid a total amount of taxes of about 500 millions € in 2005, attesting they did send a lot of “over 50” away.

Successive “*amendments to the amendment*” smoothed this law : since 1992, no tax is owed as a result of redundancy of an employee, since he (or she) was at least 50 when hired. More : since 2003, this limit has been lowered to 45.

Nevertheless, probably because no real communication efforts were displayed on that matter, companies go on claiming they just cannot hire “seniors” : a perfect excuse.

So, in spite of gradual removal of state assistance for early retirement, what I call “*employment deadline*” is now set at 50 (since 1986), and keeps decreasing for about 5 years, with a particular acceleration during the past 2 years.

It is now usual in France to be pushed out at round 50 ; at least, professional promotion is seldom thinkable from 45. I shall illustrate later on how companies' human investment shrinks from 40.

As for those who, for various reasons, find themselves looking again for a job, success depends on the professional area. We may consider, for example, that industrial employment (at all levels) is banned from between 45 and 50, commercial jobs from between 40 and 45.

Some professions are closed from less than 40, such as data processing or communication. Only a few areas remain open to older employees, like health professions or some unusual highly specialised jobs.

Whenever this sticky second part of professional life begins, everyone agrees on the fact that it is much harder to find a new job after 50 at most. As an example, I can tell you about the Australian private company INGEUS, which has worked for the French public employment service since august 2004 ; they collect 4300 € when they place any job-seeker, but up to 6000 € if this job-seeker is more than 50 (40 % more ; is his a special jackpot for such an impossible task ?).

We used to say “*quinquas*” (meaning fifties) to talk about employees over 50. Since “*quadras*” (forties) are now also concerned about employment troubles, the word “senior” is now generally used, though it can be easily confused with “senior citizen”. Another misunderstanding might exist with “senior” in the meaning of “higher position”. There would be a lot to say about this...

2) STATISTICAL ELEMENTS

2.1) *Only a few statistics are available*

French statistics may be regarded, on this matter, as deficient and heterogeneous.

All French public services involved in employment statistics use 3 classes : 16 to 24, 25 to 49, 50 to 64.

You can immediately understand that, if the situation of employees over 50 can be rather easily analysed, it is quite impossible to have an idea of what happens between 40 and 50.

The “50 to 64 class” is sometimes divided into “50-54”, “55-59” and “60-64”. This explains why some statistics refer to “over 50” and some others to “over 55”.

2.2) *statistics show low rates of “senior” employment*

With regard to senior employment, French politicians, constantly followed by all our media, always quote the same number : “*barely more than 37 % of French workers over 55 have a job*”.

In my point of view, this is a very bad methodology to ask that question !

What does it mean “over 55” ? Till death ? Till age of retirement ? By this, do we have to interpret that people retire at 60 or 65 (at this moment, nobody can really answer this in France) ?

Even for the few who understand that we are supposed to talk about people between 50 and 64, how impressive can this number be ?

Actually, as I mentioned before, French commonly look 55 as a regular working-limit for wage-earners. Consequently, who would be surprised by that number ? (even if it does mean that 63 % are unemployed).

I say that this one and only number we constantly hear, even if its seems to be alarming, prevents us from measuring the real problem of senior under-employment. As we know that unemployment problem appears from 40, appropriate numbers would certainly be much

more disquieting.

I worked with (on) numbers given by INSEE (national institute for statistics), Ministry of Labour and Employment, UNEDIC (in charge of unemployment benefits) and ANPE (national agency for employment).

I determined that unemployed over 50 stand at more than 1 million. As the minister of Labour and Employment himself counts 4 millions unemployed, you can see that 25 % of total French unemployment is made of people over 50.

I can understand how politicians could be much more embarrassed by this number.

May I add 4 other numbers :

- 550 000 are unemployed for more than 2 years ;
- only 38 % of employees are still in work when they retire.
- Employees between 50 and 54 represent only 2.7 % of annual recruitment ;
- Between 55 and 59 , this rate falls down to 1 %

2.3) discrimination-proving statistics

You may object that these statistics do not demonstrate discrimination.

You should be right ! At this time, nothing prevents us from thinking, after all, that seniors are less employed simply because they don't want to be at work; or some other reason.

This is why I need to give you a few other numbers :

- More than a quarter of economical redundancies concern people over 50 ;
- One employer out of 2 asserts that he would not recruit someone over 50, even if he has difficulties in finding suitable applicants ;
- Among 150 heads of human resources who were asked by the well-know CEGOS (private consulting and training company) in 2004 : “*are you going to recruit employees over 50 ?*”, 77 % answered “*no*” ;
- Comparing job announcements published in 2001 in France, Great Britain and Spain, a study shows that age is only mentioned in France and Spain. Though illegal in France, these mentions appear twice more than in Spain ; and besides, they refer to the “28-40” bracket at a rate of 95 %. I shall present other numbers, as glaring evidences of age discrimination, when I further describe recruiting methods.

3) COMPANIES' TRENDS (*watch out ! we are back to subjectivity...*)

I can declare – and demonstrate – that French firms do not stake on “seniors”, would rather get rid of them, and do not want to hire any.

3.1) French companies do not pay much interest to their “senior” employees

Age discrimination presumes firstly that somebody thinks that the employee he consider is

too old. What does it mean at work ?

What follows can help us to understand what's wrong with subjective look to age ; it is part of an INSEE's study called "*Companies facing ageing work forces*" (2003).

"How we perceive older employees changes with age of the heads of human resources : 60 % of the officials questioned think that an employee is old from 55 ; 30 % talk of ageing from 50 and 10 % as soon as 45. But among the officials under 30 there are many who consider we are old from 45, which may denote that the younger an official is, the more he will tend to doubt an elder employee's abilities."

Subjectivity, subjectivity...

A very interesting study was published in December 2004 by TNS Sofress and ESC Paris (Commercial high school). I just want to highlight you two parts of this work.

- Managers were asked : "At what age, according to you personally, are people treated the best in your firm ?" Answers :
 - under 30 : 11 %
 - from 30 to 40 : 65 %
 - 41 to 45 : 10 %
 - 46 to 50 : 3 %
 - 51 to 55 : 1 %
 - 55 to 60 and over 60 : 0 %

- Heads of human resources were asked "What are your main levels to motivate each age-class, according to its particular expectations ?" Answers :
 - professional promotion : a good level from 30 to 40 : 70 %
a good level from 41 to 50 : 38 %
a good level over 50 : 11 %
 - training, abilities promotion : a good level under 30 : 51 %
a good level from 30 to 40 : 45 %
a good level from 41 to 50 and over : 22 %

3.2) French companies show how reluctant they are at engaging « seniors »

I already explained that at least half of companies' leaders do not intend to hire employees over 50.

I should add that, according to a CEGOS survey (March 2004), 48 % of heads of human resources plan to take advantage of coming massive retirements of baby-boomers by reducing work force. 73 % of managers share the same vision.

"In many recruiting offices, curriculums from applicants over 50 are not even considered" said Yannick Moreau, chairwoman of the French Council for Retirement Trend, same as Régis Manarolo, chairman of Munci (computer scientists French association) : *"Talking about data processing, it's no more youngism, but nearly eugenism. The average age is 37*

and most of job announcements don't ask for more than a 10-years experience. It is well known : as soon as an employer reads "40" on a curriculum, he stops there and throw it into the basket."

French discrimination observatory belongs to "La Sorbonne" university. Its leader, Jean-François Amadieu, led a very interesting survey in March 2005. The matter was, using a "testing" method, to compare how firms react to different kinds of applications. 258 job offers were answered by 7 curriculum each ; Amadieu's team measured the positive answers for each class, which meant recruitment interviews. Classes were :

1. "standard" : man, French surname - first name, white, lives in Paris, normal look ;
2. woman, French surname - first name, white, lives in Paris, normal look ;
3. man, French surname - first name, white, normal look, lives in a bad-known suburb ;
4. man, French surname - first name, white, lives in Paris, disfavoured face ;
5. man, French surname - first name, white, lives in Paris, normal look, 50 years old ;
6. man, white, lives in Paris, normal look, Arabian surname - first name ;
7. man, French surname - first name, white, lives in Paris, normal look, slightly handicapped.

Results of this survey are meaningful : our 50 years old applicants comes in the last position, with five time less positive answers than the standard applicant !

Although investigators specified: *"We didn't send any application form in reply to announcements mentioning, quite illegally, age criterions. So our 50 years old applicants' odds are actually much lower than it looks."*

So few positive answers do not mean, moreover, that seniors get more negative answers ; they almost receive none, and that's all !

Do you still have any doubts about the reality of age discrimination ?

For my part, I applied more than 2000 times ; I got 20 positive answers, leading to 28 interviews. On the other hand, I didn't receive more than 400 negative replies, most of them being automatic ones.

By the way, did you notice that most internet job-boards inscription forms include a date of birth field ? Isn't it a perfect tool, sparing recruiters wasted time in considering seniors' applications more than useful ? You have to know, however, that this is not seen as illegal in France.

3.3) Which reason do recruiters put forward ?

"Who ever wants to drown his dog says it's rabid" wrote La Fontaine. So do companies and recruiters behave with seniors.

3.3.1) The main motive they put forward is seniors' supposed cost.

Recruiters regularly say that seniors are too expensive. Also I'm afraid they include in this supposed high cost the taxes they would have to pay if they have to make them redundant (which is largely untrue, as we saw earlier), I do not take this idea as correct.

I usually ask a few questions :

- where is the difference between someone 50 and someone 35, for example, when they both are paid the same SMIC (legal minimum wages) ?

- A recruiter told me once *“when my client sees that he can afford two 25 years old employees for the price of one who is 50, he no longer hesitates”*. Who can be more stupid ? Why doesn't he employ 3, 16 years old ?
- who sets the wages ; employee or employer ? Actually, 7 unemployed managers out of 10 assert that they would agree with a wages drop.

I think we touch here the very true meaning of “too expensive”. The unemployed who agree with a wages drop (as I did myself, up to a rate of 35 %) are not more hired than others. What do recruiters answer ? *“This job will not be good enough for you”*. If you go on scrapping, they will finally admit they think that you probably will not be satisfied of such a low rate of wages. What do they talk about, then ? Certainly not about what you cost, but actually about what you are worth !

Here is the true problem with seniors' cost : it is not a matter of price, but a question of value. But nowadays, employees seem to be more considered through cost that trough profits they might create.

Could that mean that this motive is just an easy-to-grab excuse ; aren't seniors rejected for deeper motives ?

3.3.2) Seniors abilities are supposed to be reduced because of age

Another class of motives is composed by assertions like :

- *“seniors skills are obsolete” ;*
- *“seniors cannot get accustomed to modern techniques nor to new working modes” ;*
- *“the more they grow old, the less they can produce”*

May I simply ask :

- *“who the devil developed technologies we use today ?”*
- *“As senior professional lives developed through economical and social crisis, added with considerable technological jumps, didn't they demonstrate, on the contrary, increased flexibility skills ?”*

May I also notice that :

- 89 % of heads of human resources consider seniors as “as productive” or even “more productive” (as shown in the TNS – ESCP survey I have already mentioned) ;
- A study of ANACT (French agency for work setting improvement) in 2003 definitely dismissed that idea of ageing of learning skills ;
- We may commonly observe that seniors stay well-considered when the matter is jobs where the work-force is scarce, such as health professions (average age of French surgeons is 57 !). Did you notice that captains of the new Airbus A380 trials were both 58 ! Do these jobs use old technologies ?
- Taking it to an extreme, are ordinary skills be eroded by age, isn't experience an ability in itself, which would progressively replace what might have been lost ? If learning skills decreased, wouldn't teaching skills increase, in the way they have always been used at work, anyway .

Nevertheless, there are no more comments about seniors when they agree to be... unpaid. One more question to be drug ?

3.4) What are the true reasons of age discrimination ?

I think it still doesn't work ; none of the motives regularly given can resist to even a short analysis. Truth has to be somewhere else.

I would firstly like to recall that, for 30 years, 55 is commonly looked as a regular working-limit for wage-earners. Nothing is as stupid as a routine, but nothing is stronger. It really costs to say it, but I think senior seldom work in France just because people seldom have seen seniors at work (except seniors themselves !).

Secondly, we have to keep in mind that the unemployment rate remains high (whatever you may read) ; recruitment are therefore mainly based on very narrow selections. When you consider that you need, before all, to eliminate a maximum of applicants (remember this sympathetic guy I told you about...), any criterion may be a perfect tool !

In this way age seems to be favourite (and I repeat : against older and younger as well), partly because, though morally wrong, this discrimination criterion has been considered as illegal in France only since 2001 !

Thirdly, our whole society has been plunged for a long time in a compulsive veneration of youth. Directly or not, seniors may be largely guilty in that matter.

Fourthly, I feel that certain employers seem to be embarrassed ; I'm not far from thinking that experience might be looked as disturbing, in the way that they consider seniors as less easy to handle.

Fifthly, the good financial health of present senior citizens, as well as their early retirement, keep up a complete confusion with the condition of people who are now in their fifties. I'm not far from thinking that a recruiter who consider the application of a person like me says to himself : *"this guy does not need to work !"*

And finally I add (without going further on this matter) that age discrimination would probably not be that high in France if politicians (on their whole) really wanted to stop it.

4) "CAN LEGAL OPTION BE MORE THAN AN ILLUSION ?"

As astounding as it may appear, eliminating someone from a recruitment process on account of his age is illegal in France since only the end of 2001. French parliament, however, didn't really take this decision itself ; it was actually the result of an European directive. Anyway, debates lasted more than a year before this law was passed.

A second part of this law (still as a consequence of European decision) was what is called "to reverse the charge of evidence". Before this law, an applicant who considered himself as discriminated by a company (for any of the current motives) had to bring objective evidence ; since this law, he just has to bring objective facts which allow a presumption that there is a discrimination. Politicians of the right (on opposition, at that time) screamed that companies could be threatened by what they called "legal insecurity".

Anyway, risks were not really that high ; it is still up to the applicant to denounce supposed unfairness, which means he (or she) has to move forward unprotected : some kind of a professional suicide, indeed.

This is why no legal proceedings were started, at least not for three an a half years.

Until seven unemployed, men and women, from 42 to 57, decided to break this kind of "law of silence", on the 25th of March 2005. I am one of them.

Each of us made a complaint against several companies he had accused for age discrimination, by the way of illegal references to age criteria in employment announcements.

We sent a total of 70 complaints, at the same time to the proper court and to the brand new “High authority for struggle against discriminations and for equality”. This structure, created on the 3rd of March 2005, gave advice in August : the absolute illegality of these announcements has been corroborated and the court has been asked to investigate.

Each of us were interviewed by French police at the end of 2005. We have no further information as of now.

Is it worth using this legal option ?

Should our reasons be to earn money, certainly not ! Sums may reach 225 000 € for each complain ; it means that we are talking about a total amount of more than 15 million € But I must specify that, according to the French law, all these amounts would be for the benefit only of French State ; nothing would be given back to plaintiffs.

Should we be simple enough to believe that this option could eradicate age discrimination, certainly not, yet again.

We only want total withdrawal of age criterions in job announcements, just as the law requires. However, we certainly do not believe that this will stop age discrimination, having no doubt about what might occur anyway inside of closed dark offices.

Besides, since that time, age criterions quickly disappeared, immediately replaced with experience length (rather short, of course...).

So ; little hopes ? Not that much, I agree. But we considered that it had to be done :

1. because leaving the only law against discrimination unused would have been an acceptation of discrimination itself ;
2. because we consider, right or wrong, that there is no other tool at this time to fight discrimination. Nevertheless, this action gave us many opportunities to explain seniors' state on radios, TVs and newspapers ;
3. because, in a certain way, we think that this fight will last a long time, and it's a perfect reason to begin as soon as possible. Probably not for us, but for the next generation, anyway.

CONCLUSION

Before ending, I would like to have a few words about solutions commonly put forward in France. Don't worry, I don't intend to examine each one.

- The universal and immediate answer to French unemployed is “*Create your on job !*”. Talking about seniors, everyone in France thinks it as being obvious : “*nobody wants you as a wage-earner, so be an independent worker !*”. As an alternative, unemployed managers are advised to be consultants.
- Another “good idea” is to test non-classical ways of being a wage-earner : temporary work, of course, but also time-share work, wage-carrying.
- Our Minister of labour and Employment, on his part, is convinced that this solution passes by services to citizens (pretending he doesn't know that most of these jobs are more than part-time ones).

- Training is also shown as a good way to find a replacement job.
- Expatriation, at least, is almost recommended.

I repeat that I don't want to argue on these matters. My purpose is only to point out that all these solutions are individual, facing a collective problem. Guess what's wrong ?

I therefore have to mention that the French government is preparing at the present time a new special work contract, which would be devoted to employees over 57 ; the matter is to offer them an 18 months contract, which is renewable once. The purpose is to help older employees to finish contributing to their pensions. Some kind of a "Last employ contract", symmetric to the new - and very contested - "First employ contract".

And I conclude... Age discrimination does exist in France, at a really high and worrying level. This unfairness strikes so severely that many employees are shot to social death nearly in the middle of their professional life.

I'm afraid that age discrimination would be a strong sign of the coming death of age-earning system as we know it today.

We have to keep in mind that such an arbitrary ban against older employees could not work without a broad lack of interest among French public opinion.

Solving this unfairness is perhaps a matter of time ; unfortunately, time is not part of seniors' assets...