

Retirement Comes of Age

Compulsory retirement for mayors at 65? Too old to embark on a career as a firefighter at 30? Age limits seem out of tune with the times – even virtually discriminatory. Yet there is one age limit that most people are happy to hold onto: retirement age. **Ulrich Becker**, Director at the **Max Planck Institute for Social Law and Social Policy** in Munich, studies the characteristics of age-specific regulations and their legal intricacies.

TEXT **MECHTHILD ZIMMERMANN**

No one may be discriminated against on the basis of age – this principle is enshrined in the Charter of Fundamental Rights of the European Union. Although this right is not yet included in Germany's Basic Law, the country's General Act on Equal Treatment expressly specifies age – along with race or ethnic origin, gender, religion or belief, disability and sexual orientation – as a characteristic that must not be used as a basis for discrimination.

However, age differs from all of the other criteria for discrimination in a variety of ways: age discrimination potentially affects all people, as everyone can be classed as old at some stage. What makes it even more difficult is that, “unlike discrimination on the grounds of religion or gender, there are justified reasons for discriminating on the basis of age,” says Ulrich Becker, Director at the Max Planck Institute for Social Law and Social Policy. It's a fact that people's

physical strength and intellectual capacities decline with increasing age. While Becker's Department deals with this topic and the associated phenomena on a normative level, the institute's Social Policy Department carries out empirical studies and investigates the resulting economic impacts.

A LEGAL MINEFIELD

As a lawyer, Ulrich Becker has entered a legal minefield by focusing on the topic of age. He engaged in a comprehensive investigation of this area of the law in Germany by co-editing a book entitled *Recht der Älteren*, which was published in 2013. Whereas “elder law” has long been well established as a separate field of jurisprudence in the US, Becker was entering uncharted waters in Germany. The areas that specifically concern the elderly include the conditions associated with health insurance and nursing care, the question of self-

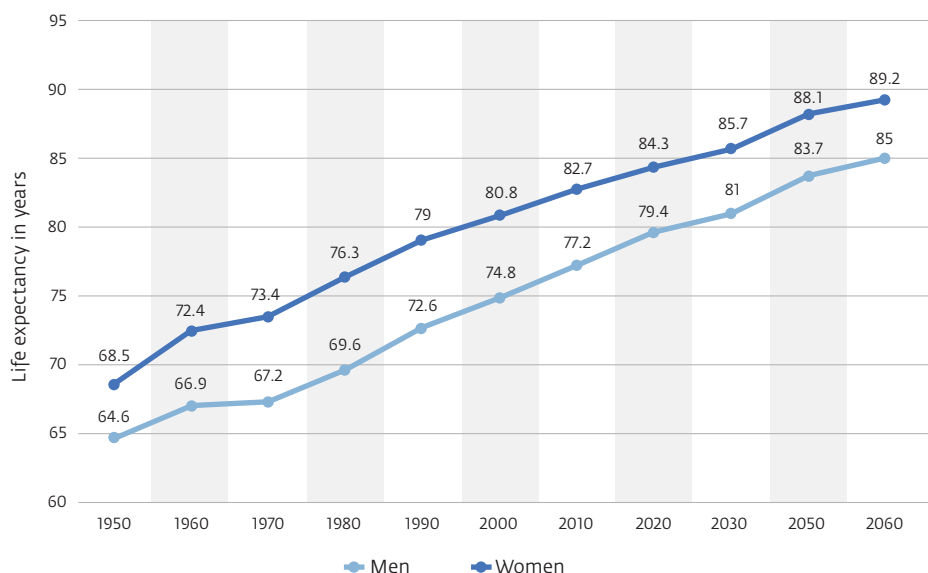
determination and guardianship, inheritance law, and the legal framework for retirement provisions.

The complexity of this topic is demonstrated by the small sub-field of age limits alone. And what makes it even more difficult is that many of the factors that affect the age issue are in flux. Demographic change is creating major challenges for society and politics. The many factors that are transforming our image of the elderly include new insights into aging and the plasticity of the brain, and the knowledge that the differences between individuals in terms of their physical and mental capacities vary even more with advancing age. At the same time, many citizens would like to maintain the habits and entitlements they have grown to enjoy – despite the fact that the circumstances dictated by reality have long since changed.

Wherever we look – be it in the political, business, religious or cultural

The traditional age limit of 65 no longer seems appropriate in a society in which greater value is placed on individual capacity than formal criteria. However, the quest for alternative criteria is proving difficult.





Left: While the life expectancy of women (dark blue) and men (light blue) in Germany continues to rise, the age limits for public office and honorary positions have remained the same for years. People affected by these limits see them as discriminatory.

Right: Ulrich Becker (second from right) discusses the correlations between age, productivity and income with his colleagues Lorena Ossio and Michael Schlegelmilch.

arenas – we can observe people well past retirement age who hold important positions, set trends and assume key responsibilities. The visit of Britain's Queen Elizabeth II (89) to Berlin became a major media event due to, among other things, the large number of events in which she participated. German finance minister Wolfgang Schäuble (72) has for months now been involved in grueling negotiations on the euro with his European colleagues. And Mario Draghi (67) shoulders the responsibility of his role as President of the European Central Bank in an equally self-evident manner.

NEW CONTRACT AT 72

Two years ago, the election of Pope Francis (78) heralded a new era in the Catholic Church, and Daniel Barenboim (72) recently extended his contract as general music director of the Berlin State Opera Unter den Linden until 2022. No one would dream of questioning the abilities of these individuals, much less demand that they retire.

Moreover, numerous age limits have been eliminated in recent years. For example, health insurance compa-

nies in Germany will now extend doctors' licenses to practice medicine past their 68th birthday. And the courts are increasingly vindicating claims pursued by plaintiffs in this regard: pursuant to a judgment of the European Court of Justice, Lufthansa pilots can no longer be forced to retire at 60. The German Federal Administrative Court has also declared that maximum age limits for publicly appointed and sworn experts are inadmissible.

However, age limits still apply in other areas of public life: mayors and district administrators in most of Germany's federal states may not be over 60 to 65 when they run for election. As recently as 2013, the Federal Constitutional Court rejected a complaint against a corresponding regulation in Bavaria, stating that the age limit was appropriate "to guarantee the continuous and effective exercise of office, presumably until the end of its regular term." Jurors at district and regional courts must also conclude their voluntary activities at the age of 70, and the office of public notaries ends by law on the holder's 70th birthday.

So why have age limits at all? Wouldn't it be simpler to abolish all

limits, as is the case in the US? If you ask Ulrich Becker this question, don't expect to get a quick and simple answer. "Age limits fulfill different functions, and it's essential that we realize this," he says. For example, the imposition of minimum age limits is intended to ensure that people meet certain requirements that are entirely in the public interest. Candidates for the office of Federal President must be at least 40 years of age. The same applies to judges at the Federal Constitutional Court.

Similarly, maximum age limits often serve the purpose of protecting third parties or the public: police officers and firefighters have to retire early, as not only does their work make severe physical demands on them, but the safety of citizens is dependent on their willingness and capacity to do this work. The age limit for the acceptance of new applicants in these professions is correspondingly lower. The reason for this is that the investment made in the training and induction of employees must be worthwhile for employers.

Age limits can also protect the people to whom they apply, if it can be assumed that the exercise of a given pro-



fession poses too great a burden on people from a certain age. This is another reason why police officers and firefighters, soldiers and miners are allowed to retire earlier than people in other professions. Such exceptions are expressly provided for in the equality directives and laws.

AN AGING POPULATION IS TESTING THE LIMITS

“All of the regulations governing age limits have one thing in common: they reflect a staircase of life that is familiar to us from previous centuries,” explains Ulrich Becker. “The beginning of life is the time for learning, and parents provide for children at this stage. By mid-life, adults are expected to provide for themselves and to assume responsibility in the family, professional and public arenas. And in old age, when elderly people are no longer able to work, the family takes over again, or – since the late 19th century – the state.”

This division remains valid today in principle. However, life expectancy has increased by more than 60 percent over the past century. Demographers

confirm that, today, the average 70-year-old has the physical and mental capacities a 65-year-old would have had 30 years ago. “With an aging population, age limits generally tend to be too low,” concludes Becker. “We should evaluate and adapt the age limits regularly – something we unfortunately do far too seldom.”

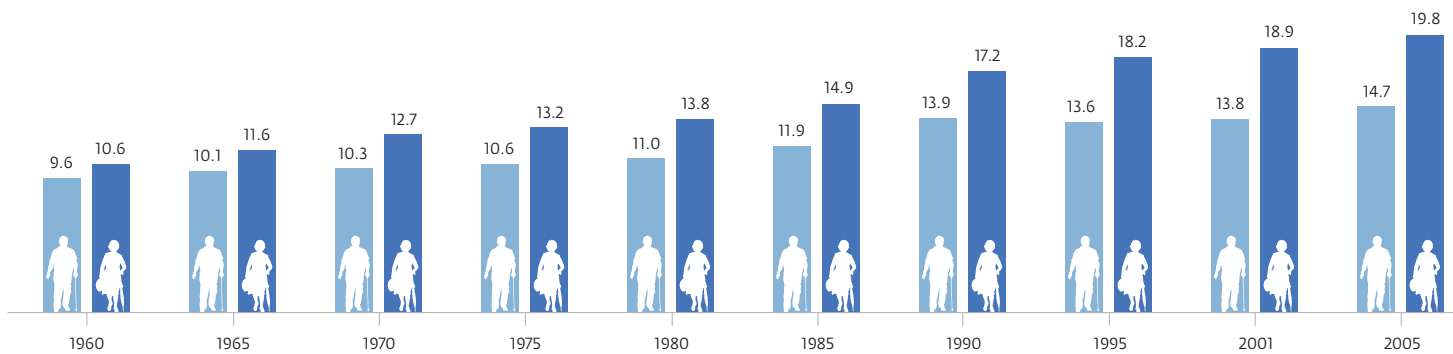
The situation in the area of statutory pension insurance is particularly critical. Pensioners in Germany currently draw their pensions for an average of more than 19 years; in 1960, they drew them for 10 years. Despite this, any reforms aimed at delaying the age at which pension payments begin are extremely unpopular. A survey carried out last year by Infratest Dimap revealed that over half of the German population would like to retire at the age of 63. Just under a third are willing to continue working until the normal retirement age, and only 14 percent can imagine continuing to work beyond the standard retirement age limit.

The degree to which pension rights shape our attitudes toward work is remarkable: while young people who don’t work are accused of living at the expense of the community, once the ef-

fective date for retirement arrives, attitudes change radically. This also has a particular impact on our self-image: prior to retirement, many of us define ourselves through our profession, and draw a considerable share of our sense of self-worth from gainful employment. People don’t change radically after retirement – whether physically, mentally or in terms of character – and yet both retirees and society consider it completely natural that it is no longer necessary to work.

STUDIES DEMONSTRATE THE PRODUCTIVITY OF THE ELDERLY

It’s impossible to find any empirical evidence in support of the argument that older people are less productive than their younger counterparts and, accordingly, from an economic perspective alone, should retire sooner rather than later. Studies have been carried out on this topic at the Munich Center for the Economics of Aging (MEA), the second department of the Max Planck Institute for Social Law and Social Policy, headed by Axel Börsch-Supan. According to the findings of these studies, the performance of teams involving older em-



employees is exactly the same as those composed of younger employees. Moreover, this was observed to be the case both in manufacturing industries and in the service sector.

The argument that older employees should withdraw from professional life so as to remain fit longer is equally untenable from a scientific perspective. On the contrary: early retirees tend to undergo more rapid mental decline than people of the same age who work longer. According to Axel Börsch-Supan, one reason for this could be that the workplace is also an important pillar of social life: even the company of colleagues of whom we're not particularly fond appears to be better than social isolation, as it provides cognitive challenges that keep our minds active and healthy.

So why are we so reluctant to abolish the clear dividing line between working life and retirement? Ulrich Becker attributes this phenomenon to the symbolic function of the retirement age limit. He sees its origin in historical developments: starting in 1891, Germany's first statutory pension insurance provided a disability pension in the case of incapacity to work, and an old-age pension from the age of 70 – for a 60-hour week and just a few days of vacation per year, which was the norm at the time.

"In reality, people were actually unable to work at 70 in those days," says

Becker. In 1916, the age limit was reduced to 65, as was already the case in many other countries. In 1952, the International Labor Organization adopted 65 as a suitable age for retirement – despite the fact that life expectancy had already increased considerably by then.

"With this step, we distanced ourselves from the basic idea that the pension was intended to compensate for the loss of the capacity to work," says Ulrich Becker. "The retirement age was decoupled from the staircase of life." Instead, the age was defined up to which the individual had to provide for him or herself and after which society assumes responsibility. "That's the problem we now face if we raise the limit again in the 21st century," explains Becker. "The pension eligibility age has taken on a life of its own and has established a pattern of behavior in our minds – and we gradually need to let go of this now." It's a difficult parting – particularly because the age-65 limit was never carved in stone.

THE SHIFTING COURSE OF PENSION POLICY

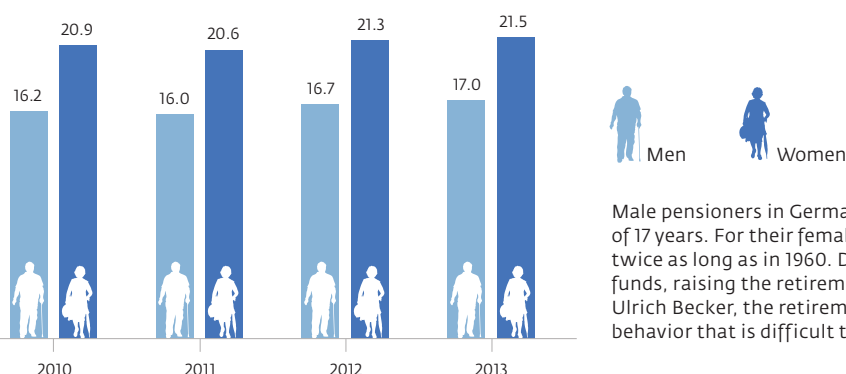
In terms of retirement age, policy has followed a shifting course in recent decades. In the late 1980s, early retirement programs were introduced so that older workers could withdraw from the workforce and free up jobs for younger people. However, such pro-

grams proved largely ineffective in terms of their impact on the labor market, as companies used early retirement as a tool for cutting jobs during economically difficult times.

After the turn of the century, it became increasingly clear that pension insurance was unable to keep pace with demographic change. In 2008, the German government decided on the incremental introduction of a pensionable age of 67. Last year, however, a backwards step was taken with the introduction of pension eligibility for people with many years of insurance contributions, enabling people in at least some age groups to retire at 63.

The idea behind linking the start of retirement with the duration of social insurance contributions could offer an alternative to the traditional age limit. In Becker's view, however, this variant is – at least in its current form – not expedient: "Showing people that they don't have to work until 65, let alone 67, is sending the wrong signal."

Another possibility would be the introduction of individual tests starting at a certain age to ascertain whether specific people are healthy and capable enough to continue practicing their profession. In our individualized society, it would seem entirely fitting to judge people on the basis of, not their age, but their personal constitution. However, Ulrich Becker sees a serious disadvantage in this solution: "This



Male pensioners in Germany today enjoy an average retirement period of 17 years. For their female counterparts, retirement lasts over 21 years – twice as long as in 1960. Despite the corresponding burden on pension funds, raising the retirement age is extremely unpopular. According to Ulrich Becker, the retirement age limit has established a pattern of behavior that is difficult to change.

could be rather unpleasant for some individuals. Imagine you are told that your performance is declining and you're no longer able to do the job you have performed up to now."

Moreover, clear limits guarantee a certain level of predictability and allow for planning – not only in terms of pension insurance, but also for employers, for example. Ulrich Becker also considers this side of the coin: "The issue of retirement age also concerns how we regulate working conditions, namely: When does an employment relationship end? Up to now, the answer was: At the standard retirement age. This is stipulated in many collective wage agreements, for example."

If there were no age limit, employees could end their working lives at any time. However, employers wouldn't be able to make sensible plans and would possibly have to employ people for years who are no longer in full possession of their faculties.

"That's the reason why the age limit can't simply be abolished in Germany, as was done in the US: employers there can dismiss employees easily and quickly. Here in Germany, however, there's very strong protection against dismissal. And this is considered a great asset," says the Max Planck researcher. If we want to flexibly extend working life here in Germany – which would also make sense in Ulrich Becker's view – we would need special regulations so

that those who would like to continue to work would have the option of doing so without complications.

BALANCE BETWEEN WORKING LIFE AND RETIREMENT

Becker wouldn't be in favor of any major changes to dismissal protection. Instead, he can imagine a system involving temporary contracts for older people. This, however, would involve the inclusion of the "age" criterion in the law as a reason for limiting the duration of employment. "Or you could model dismissal protection on the staircase of life," suggests Becker. "That is, make it more difficult to dismiss younger workers than older ones. But as you can see, here, too, it's simply impossible to get around the task of setting an age limit somewhere."

Ulrich Becker's ideas make one thing clear: especially in the area of social law, seemingly simple solutions,

such as the abolition of age limits, are quickly doomed to fail when confronted with reality. Becker advises, in all of the debates, to not lose sight of the most essential aspect: "When someone retires, they should be protected against poverty in old age." The second factor is that, based on demographic change, we now have to provide for ourselves for a longer period. Becker seeks a balance here between the sometimes extreme positions in the pension debate.

"We are currently moving closer to the original intention that pensions secure people's means of subsistence when they are no longer able to work," says the scientist. "But we don't want to go back to a situation where people work until they collapse. We would like people to be able to enjoy their retirement – just not for too long." The trick here is to find a new balance between working life and retirement that meets the needs of the individual. ◀

TO THE POINT

- Due to the rise in life expectancy and the increasing fitness of people between their mid-60s and mid-70s, many of the age limits defined up to now are too low.
- However, raising the retirement age is unpopular because, for many decades, the retirement age limit has marked the point at which it is socially acceptable to no longer work.
- Abolishing traditional age limits and introducing new alternatives is a legally complex process.