John Wrench

Migrants and ethnic minorities at the workplace

The interaction of legal and racial discrimination in the European Union

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Danish Centre for Migration and Ethnic Studies

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Danish Centre for Migration and Ethnic Studies

Danish Centre for Migration and Ethnic Studies was set up in 1995. The new Centre is financed by the Ministry of Research, and its aim is to coordinate and direct research on ethnicity, ethnic relations and migration at a national and international level; to attract competent senior research workers; to act as a centre for the teaching of younger research workers; and to advance the publication of results for public and private partner.

The academic field for which the Danish Centre for Migration and Ethnic Studies will be responsible is the large field of social studies between the research into security policy carried out by the Centre for Peace and Conflict Research at Copenhagen University in relation to questions concerning immigrants and refugees and the legalistically oriented research done by the Danish Centre for Human Rights.

The main research themes are focused on the problems and consequences of integration as they concern Danes and this country's immigrants and refugees, including research into how to prevent ethnic and religious conflict and to ensure ethnic equality on the labour market, in education, in politics and in social life. Relationships with the countries of emigration will also figure prominently in connection with clarifying causes of migration, and with developments in relations between Denmark and the countries of emigration. On a European level, the Centre hopes to be able to carry out a series of comparative studies in future years on such topics as the discrimination and exclusion from which many ethnic and religious minorities suffer. The centre's reports and other publications are published by South Jutland University Press.

Organisationally, the Centre works in close collaboration with corresponding research centres in the Nordic countries and the rest of Europe.

Contents

This paper looks at the two major dimensions of discrimination against migrant workers in the European Union (EU): formal discrimination, by legal or administrative device, which operates according to the legal status of the worker, and informal or racial discrimination, which operates according to skin colour or ethnic background. The paper considers how different groups of workers in turn are affected by these different forms of discrimination, and speculates as to the interactions between these two types of discrimination. The paper concludes with some observations on the sorts of policies necessary to tackle them.[1]

Legal categories of worker in the EU

The working population of the EU can be divided into five main categories in terms of legal status:

1. Citizens living and working within their own country of citizenship.
2. Citizens of an EU member state who work in another country within the Union.
3. Third country nationals who have full rights to residency and work in a member state.
4. Third country nationals who have leave to stay on the basis of a revocable work permit for a fixed period of time.
5. Undocumented or 'illegal' workers.

Group 1. Citizens living and working within their own country of citizenship

These citizens have full rights in law: socio-economic rights (e.g. guaranteed access to the provisions of the welfare state) and political rights (e.g. the right to vote and be eligible to stand in national elections)

Group 2. Citizens of an EU member state who work in another country within the Union (EU denizens)

Citizens of an EU member state have the right to live and work in another member state, and bring in close relatives regardless of their nationality. They can move to find work and reside freely (as long as

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1 Much of the material in this paper is drawn from the report "Preventing Racism at the Workplace: A report on 16 European countries" by John Wrench, published by the European Foundation for the Improvement of Living and Working Conditions/Office for Official Publications of the European Communities, Luxembourg 1996.

they remain employed) within the EU, and can vote and be eligible to stand in local and European parliament elections. They in theory enjoy the same rights as the nationals of the country they have moved to. However, in practice they may find themselves with less rights than nationals of that state, in, for example, being denied equal access to some public sector jobs.

Group 3. Third country nationals who have full rights to residency and work in a member state (non-EU denizens)
As nationals of a non-EU country these workers have almost all the rights of a full citizen, and in some countries they are able to vote in local and regional elections. There are important exceptions to their rights. They may be formally excluded from access to some public sector employment. They do not possess EU citizenship rights - for example, the right to move to another member state. They may only visit another member state for a maximum of three months and have no permanent right to work or reside there.

Group 4. Third country nationals who have leave to stay on the basis of a revocable work permit for a fixed period of time
These are similar in position to those in category 3 but with fewer rights and a weaker position in the labour market. Often category 3 workers began as workers in this category. A permit may be for a few months for a restricted activity or geographical area, or for several years, for any activity or area. Some from this group will over time fall into category 5 of 'illegal' workers when they remain in the country after their permit runs out or they take work in a field not covered by their existing permit.

Group 5. Undocumented or 'illegal' workers
These may range from recent political refugees whose status has not been recognised, to people who have worked in the EU for many years without any legal rights to residence or employment. They may sometimes move into legal employment, perhaps through marriage, by filing an asylum application, or after a government introduces regularisation measures.

The above five categories reflect formal status, and a continuum of rights ranging from full rights and privileges of citizenship in group 1 to relatively few rights in group 5. However, formal citizenship constitutes only one of the major dimensions of status in the EU. Another major dimension also produces a hierarchy of inequality, but informally: this is the criteria of ethnicity and/or skin colour, which identifies a person as a member of a 'visible' minority. Visible minority status cuts across the citizenship divisions listed above and produces

new gradations of inequality. Thus even those people with full and formal citizenship rights can suffer disadvantage in the labour market on the grounds of ethnicity and colour, not to mention national origin or religious affiliation.

This paper looks at the evidence for this sort of discrimination - racial discrimination - in employment, as well as the operation of legal discrimination. The word 'discrimination' is less commonly applied to forms of legal exclusion, being generally reserved for the informal kind. However, in some countries there are barriers of law and of administrative practice which effectively discriminate against the employment of people of migrant origin. The fact that, for example, people who have lived and worked for 15 or more years in a member state, raised children and paid taxes, are still excluded from full membership of and participation in the country by restrictive citizenship laws can be seen as a form of discrimination.

Before going on to examine how workers in different groups are affected differently by discrimination, the paper first looks at the concepts of racism and discrimination in a European context.

Concepts of racism and discrimination in Europe

The international convention whose object is to prevent racism and racial discrimination is the International Convention on the Elimination of All Forms of Racial Discrimination, (ICERD) which was adopted by the UN Assembly on 19 December 1965. The first part of it defines what is meant by racial discrimination:

> 'The term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life' (Banton, 1994: 39).

More narrowly, discrimination in employment can be said to occur when migrants/ethnic minorities are accorded inferior treatment in the labour market or in the workplace relative to nationals/whites, despite being comparably qualified in terms of education, experience or other relevant criteria.

It is argued that there are qualitatively different racisms in different social contexts and historical periods, and according to whether the exclusionary doctrine or practice is directed against culturally or

biologically defined difference (Miles, 1993a). Certainly in Europe there is great variety and complexity both in the ideologies of exclusion and in the groups who are victims of its practical manifestations. Often, racism and discrimination are manifested against non-white formerly colonised peoples, as in the UK. Sometimes racism is expressed as anti-foreigner, rather than, for example, anti-black, hence the frequent use of the terms 'racism and xenophobia' together. In Germany the main issue is seen to be 'discrimination against foreigners'; and the word 'racism' (Rassismus) still tends to be limited in its associations to anti-Semitism and the Nazi ideology (although the word Rassismus is coming to be used in a way closer to the British use of the term 'racism' - Dummett, 1994). Sometimes there can be discrimination in European countries against people with very little - or no - phenotypical difference, as exhibited, for example, in hostility to the Jews in Austria, to southern Italians in the north of Italy, or to gypsies, Romany or Travellers in Spain, Italy or Ireland. It has been argued that the prejudices which came to the surface during the 'head-scarf' issue in France are less 'racist' in a strictly defined sense, but 'anti-Islam'.

Criteria which mark a group for unjustified inequality in treatment may vary in different member states (Rex, 1992). For example, in many countries a visible minority group characterised by a different native language represents a target group for prejudice and for differential treatment. Turks or Moroccans in Germany or the Netherlands constitute groups which are visibly and linguistically different, and sometimes language is used to justify exclusion from jobs or promotion opportunities. However, there are also migrant groups who speak the same language as that in their new country, such as Surinamese in the Netherlands, West Indians in the UK, and Algerians in France, and it is by no means clear that these suffer less discrimination than the others. Furthermore, in Germany there is one recent migrant group who despite not speaking German and being seen to have a different culture, are *not* seen as posing a 'problem'. These are the Aussiedler, the so-called 'ethnic Germans' - populations from Eastern European countries, mainly from Russia and other areas of the former Soviet Union and Poland, whose ancestors left for the East some four to eight hundred years ago. When issues of migration are discussed in Germany, and problems of integration raised, the groups who attract the attention of politicians and social scientists are workers from the former countries of recruitment, and asylum-seekers (Räthzel, 1995).

Another example of a criteria which elicits qualitatively different treatment in different countries is 'blackness'. Whereas in some European countries, such as the UK, some of the worst prejudice is directed at black people, in France the worst form of discrimination is suffered

not as much by black African and Caribbean groups as by North Africans.

It is important that academics continue to develop more sophisticated analytical tools to distinguish the full complexity of the different exclusionary ideologies and racisms which operate in different national, cultural and historical contexts (see Wieviorka, 1991; Miles, 1993b). However, there are similarities between all of these different forms of prejudice and discrimination, and, also common practical and policy implications. For the purposes of this paper the following definition of racism will be assumed:

> 'Racism' will be considered to be the process whereby members of social groups categorise members of other groups as different or inferior on the basis of real or imagined physical or cultural characteristics, and which serves the purpose of legitimating inferior treatment, exclusion or exploitation.

The paper now looks at each of the five groups in turn to see how they are affected by formal legal and administrative discrimination, and informal or racial discrimination.

Group 1. Citizens living and working within their own country of citizenship

As group 1 workers have full social, political and employment rights, the concept of legal discrimination does not apply here. The issue for visible minority members of this group is racial discrimination. Unfortunately, in many European countries there is still a reluctance to acknowledge that racial discrimination operates, and that full citizenship rights for a non-white national do not accord protection against this (Wrench and Solomos, 1993). Unlike legal discrimination, this sort of exclusion is more difficult to recognise - it operates through acts of discrimination at an individual level which collectively build up to ensure that the opportunities of whole groups of people are severely undermined. Sometimes there are open acts of racism which are recognised by those who experience it, but which may be difficult to demonstrate to others. More commonly, it operates quietly and is not even recognised by the victims.

Indirect evidence for discrimination

There are a number of ways that we can gain evidence for the operation of discrimination in the labour market. Some of this evidence is only indirect. For example, in the USA, comparisons of the earnings of black and white men who are equal in terms of education, experience,

and other relevant factors , shows that black men earn about 85-90% of the earnings of their white equals. The gap is assumed to be attributable to discrimination. (Burstein 1992: 906). Similar indirect evidence can be found in European countries. For example, in the Netherlands, after holding constant other variables, such as education, age, sex, occupational level, and region, several researchers have still found a discrepancy in large data sets between the unemployment figures of native Dutch, and those of ethnic minorities (Veenman, 1990; Kloek, 1992; Speller and Willems, 1990). An example from the UK comes from a nationally-representative sample of 28,000 young people who were first eligible to leave school in 1985 and 1986 (Drew et al, 1992). Even after taking account of factors such as attainment and local labour market conditions, young people from ethnic minorities were found to be more likely to experience both higher rates and longer spells of unemployment. In Sweden statistical patterns point to discrimination on the basis of country of origin affecting the success of refugees finding work. After other things are held constant, refugees from Eastern Europe and Latin America are found to do better than refugees from Iran, Iraq, Africa, the Far East and the Middle East (see Soininen and Graham 1995).

Discrimination testing

It is also possible to get *direct* evidence of racial discrimination through discrimination testing, a research method which seems to have been employed first in the UK, and has been adopted by researchers in many other countries. In the Netherlands it is known as "situation testing". In the UK the results of testing carried out in the 1960s influenced public policy and paved the way for the strengthening of the Race Relations Act (Daniel, 1968). The method utilises two or more testers, one belonging to a majority group and the others to minority ethnic groups, all of whom apply for the same jobs. The testers are matched for all the criteria which should be normally taken into account by an employer, such as age, qualifications, experience and schooling. If over a period of repeated testing the applicant from the majority background is systematically preferred to the others, then this points to the operation of discrimination according to ethnic background (see Bovenkerk, 1992).

One example of such testing was commissioned in the UK by the Commission for Racial Equality (CRE) to test labour market discrimination in those jobs for which for 'second generation' young ethnic minority people would be reasonably expected to apply. In the late 1970s researchers acting in the guise of young applicants from ethnic minority backgrounds 'applied' by letter to non-manual jobs advertised in the local paper of one English city (Hubbuck and Carter, 1980). To

each vacancy was sent matched letters of application from three test candidates, one native white, one Afro-Caribbean and one Asian. Where all three candidates were called for an interview, this was seen by the researchers to be 'non-discrimination'. In fact in 48 per cent of the cases the Afro-Caribbean or Asian 'applicant' was refused interview whilst the white applicant was called for interview, whereas in only 6 per cent of the cases did the reverse happen. The researchers concluded that this represented clear evidence of systematic rejection on racial grounds, and that the fact that there was no difference in the success rates between the Afro-Caribbean and Asian candidates supported the view that racial discrimination was based on a general colour prejudice. Fourteen years later the CRE commissioned a repeat of the study in the same town to see if things had changed (Simpson and Stevenson, 1994). One difference from the previous study was that, after a decade of mass unemployment, job prospects were bleak for all the applicants, and in some of the job categories tested, the very low success rate for *an*y candidate created methodological problems. Nevertheless, the test found that, as before, the white applicant's chances of getting an interview were twice as high as those of either the Asian or Afro-Caribbean applicant.

In the Netherlands Bovenkerk and Breunig-van Leeuwen (1978), using this method, had two, equally qualified, applicants respond to the same vacancy. The only difference between the two applicants was their ethnic background; one would be, for example, a Surinamese boy, called Romeo Pengel, and the other was a native Dutch boy, called Piet Doesburg. In over 20% of the applications, the employers gave preference to the native Dutch person. Skilled, as well as unskilled manual work was covered in this experiment. Recently, this research was repeated, on the authority of the International Labour Organisation (ILO) as part of the ILO's ongoing programme "Combating discrimination against (im)migrant workers and ethnic minorities in the world of work". Discrimination was tested against Moroccan and Surinamese applicants, when applying for semi-skilled jobs and when applying for jobs requiring a college education (Bovenkerk et al, 1995). At the lower job level, discrimination was encountered by both ethnic groups, by males as well as females, in one out of three applications. At higher levels, the outcome was less pronounced: in one out of five applications, preference was given to the native Dutch men. No discrimination could be demonstrated against college-educated non-native women. In the private sector, discrimination occurred twice as often as it did in the public sector.

The method of discrimination testing is one of the most important and effective means of demonstrating the existence of the problem area in the face of those who deny that discrimination occurs. Unfortu-

nately, although the method has been used in countries such as Canada and the US, it has still not been widely applied in other EU countries. In some countries - Sweden, for example - the method has been deemed to be in breach of rules guiding research ethics. However, under the ILO programme, similar research has been promoted in a number of other EU countries, including Germany, Spain, Belgium and Denmark. Initial findings show that net discrimination rates of around 35 per cent are not uncommon (see Goldberg et al, 1995; Colectivo IOE, 1996).

Although discrimination testing is effective in demonstrating discrimination at the first stages of the recruitment process, it merely measures the results of the selection process, and offers few clues as to the specific motives and processes behind this rejection. Further research has been able to provide qualitative insights into processes of labour market exclusion.

Qualitative research into discrimination

Qualitative research can give an insight into what lies behind the direct labour market exclusion revealed in discrimination testing. Sometimes such research can discover open prejudice, directly expressed. In the Netherlands, interviews with employers demonstrated prejudices against foreign employees, despite the fact that employers and personnel managers are unlikely to be completely candid and open to researchers about their actions (Gras and Bovenkerk, 1995). Research by Hooghiemstra (1991), demonstrated that 37% of personnel managers say that, in the case of equal qualification, native Dutch are preferred. Van Beek (1993) reported that as many as 80% of personnel managers interviewed gave preference to an applicant with a Dutch background, in the case of equally qualified applicants. Twenty per cent of the interviewees thought a person from an ethnic minority would be completely unacceptable.

Soininen and Graham (1995) described a study of personnel responsible for recruitment in over a hundred companies in the Göteborg region in Sweden, who saw immigrants in terms of negative stereotypes, with clearly discriminatory consequences. Some French employers interviewed by de Rudder et al (1995) systematically refused to recruit persons from North Africa and Africa generally, offering no justification other than, for example, "I already have one black on my site; I don't want two, because then they get difficult to handle". Some employers interviewed in the UK made plain their prejudices, labelling West Indians as 'lethargic', or having a "laissez-faire approach", or "not very mechanical". Pakistani boys had "a lack of technical language ... a lack of mechanical curiosity"; Asians were "weak in mechanical design". One engineering manager said " The West Indians fit in better.

The Asians have funny food. We don't want the whites disturbed by funny practices" (Lee and Wrench, 1983).

More often employers will admit that their actions are determined not by their own prejudices but by the prejudices of others. Hjarnø (1995) describes an interview with the owner of a company in Denmark doing plumbing work. He argued that he was not a racist at a personal level - however, he would not employ immigrants and refugees. The main reason was that some of his customers would object to having a tradesman of foreign origin coming into their house and doing maintenance or other types of work on behalf of his firm. He was convinced he would lose customers if he took on immigrants and refugees, and he felt that in his trade, very few firms would take on foreigners, even as apprentices.

Research done in the UK similarly described employers who would argue that it was not they themselves who were prejudiced, but that they had to take account of the prejudices of others, such as their workforce or their customers. Employers recruiting young people for apprenticeship training described 'No go areas' in their firms, where white workers would refuse to work with a black trainee: these tended to be skilled areas of work, such as craft, toolroom, sheet metal working, maintenance and supervision. A respondent from an Engineering Training Group said "Some firms can't take one - the skilled workers won't have it. The management wants them, but they know they can't force a black in. Never. This is because they can't afford to upset a good toolmaker - this would cost the firm money" (Lee and Wrench, 1983). Officials who assisted school leavers to find work encountered employers who said they didn't want Asian girls for shop assistants because "It's not right for our customers", or that they were a high class store and "It may affect the selling" (Cross et al, 1990).

In France, de Rudder et al (1995) described employers who justify their unwillingness to take on applicants by claiming that the other employees at the plant will not work with foreigners or "coloured" people, that the employment of immigrants "would detract from the firm's image", or that persons whose foreign origin is "visible" cannot be employed in situations where they have to be in contact with the public. Interviews confirmed the existence of practices for eliminating categories of candidates for vacancies, such as psychological tests, statements that the applicant is "over-qualified" for the job in question, and requests for photographs to be supplied where the candidate's name raises doubts about his or her origin.

Informal criteria in recruitment

Sometimes the prejudices of employers are not expressed directly, but can be teased out from certain statements and practices which are

expressed in more socially acceptable ways. Many of these fall under the heading of informal criteria in recruitment and selection decisions. Jenkins (1986), in his UK study of employers' recruitment practices, contrasted the "suitability" of applicants - their educational and technical qualifications, with their "acceptability" - the more informal and subjectively judged characteristics on which recruiters form judgements as to whether someone will 'fit in' to the organisation. In a study of UK companies Jewson and Mason (1991) found that technical qualifications would be regarded as first screening devices, with much importance given to "acceptability" criteria in making the final selections. It is precisely the criteria of "acceptability" where negative racial and ethnic stereotypes come in to play. More recently two UK researchers carried out an extensive survey on company recruiters on what they look for when recruiting graduates (Brown and Scase, 1994). They found that during the present oversupply of graduates, employers emphasise "transferable skills" which in practice turned out to be the subjective characteristics already found amongst privileged graduates from the old prestigious universities. Employers are now applying the criteria to all graduates which used only to be applied to "high flyers" who were being recruited for executive material and leadership. This means that working class and ethnic minority students who have managed, often in adverse circumstances, to gain entry to higher education, and whose academic qualifications would once have been sufficient to get them a professional job, are now denied a place on the career ladder.

There have been some similar research projects carried out in the Netherlands (see Gras and Bovenkerk, 1995). Socially normative criteria, such as the motivation and reliability of the applicant and 'fitting into the team', appear to be more important factors in the selection of personnel, than technically instrumental criteria, such as education and work experience (Verweij, 1991). Over 90% of personnel managers interviewed indicated that 'motivation' is the decisive criterion in the decision about an applicant (Hooghiemstra, 1991). Something similar is described by de Rudder et al (1995), who found evidence that recruitment procedures in France have evolved in the direction of placing more and more emphasis on personal interviews, at the expense of written tests. Employers now take it upon themselves to examine the "personality" of job applicants, their personal opinions and aspects of their lives which have increasingly little to do with their vocational aptitudes (Lyon-Caen, 1992). This change is particularly marked in the civil service, which used to take pride in recruiting staff on the basis of anonymous, "competitive" written examinations.

In Sweden, Soininen and Graham (1995) describe the expansion of new types of job which require communication skills, especially a good command of Swedish, and a high level of education, as well as 'social competence'. They also involve the delegation of responsibility, a stress upon individual initiative and a greater reliance on teamwork. However, some authorities saw this as an understandable justification for not employing immigrants. The Swedish Immigrant Policy Committee Report (SOU 1995) stated that:

> All special treatment on the basis of cultural difference need not be discrimination. In today's companies the demand for social competence is increasing, i.e. the demand that employees, regardless of whether they are Swedes or immigrants, fit into the work culture, function in a team, etc. Knowledge of and familiarity with functioning in a Swedish environment can be assumed to be an important part of such competence. This means that an employer can take account of certain factors when employing [someone] which disqualify cultural difference. It is obvious that the dividing line between justifiable demands for social competence and what is discrimination can be difficult to establish.

Soininen and Graham (1995) find fault with this line of argument, pointing out that similar arguments were employed in earlier years to block the entry of women to male-dominated working places. Today, they argue, the Swedish Law on Equal Opportunity does not allow this kind of "cultural argument" to be used as a barrier to women's participation on the same terms as men, and such arguments should be similarly unjustifiable for immigrants.

Indirect discrimination

Indirect discrimination in employment exists with job requirements or recruitment practices which, although applied equally to all, in practice treat members of one ethnic group more favourably than another. The exclusion resulting from indirect discrimination can be either accidental or intentional. In some countries, as social norms become stronger against open prejudice and racist rejection, discrimination in recruitment becomes more sophisticated and "coded".

Practices which led to indirect discrimination were revealed in a UK study of access to apprenticeships (Lee and Wrench, 1983). For example, many firms relied for recruitment in significant part on the family members of existing employees, and trade unions would often support this policy. Thus, in a largely white workforce, this excluded ethnic minorities. Furthermore, many employers restricted their re-

cruitment to a local catchment area when faced with a large number of applicants. As the largest employers were located in white outer suburbs of cities this excluded ethnic minority applicants from the beginning.

Examples of these factors are found in reports on other European countries. The selective use of 'white' geographical areas for recruitment is a process of indirect discrimination which is also reported in France: job applicants are rejected by banks and insurance companies because of their place of residence, particularly when their homes are in areas with a poor reputation. The municipality of St Denis, as part of an urban regeneration programme, changed a number of address indications in order to remove the stigmatising effect of certain estate names (de Rudder et al, 1995).

As in the UK apprenticeship study, internal recruitment, and recruitment through the family and friends of the company's own personnel, was seen to also lead to indirect discrimination in the Netherlands (Veenman, 1985; Becker and Kempen, 1982; Abell et al., 1985; Bovenkerk, 1986). This has also been reported in Portugal (Carlos and Borges, 1995) and Denmark (Hjarnø, 1995). In Germany 70 companies in Nordrhein Westfalen were asked about their recruitment strategies (Schaub, 1993) and it was found that one reason for the underrepresentation of migrant young people in the modern sectors of industry was the practice of recruiting the children of employees. The recruitment methods most commonly used in Finland are said to be network, informal and internal recruitment. One estimate is that employment agencies in Finland are informed about less than 30 per cent of vacancies. Such practices pre-select ethnic minorities out of the recruitment pool at the beginning of the process (Ekholm and Pitkänen, 1995). In Sweden, the use of family ties, friends and acquaintances accounts for filling 70 per cent of vacancies according to a study by AMS (AMS, 1991; Paulson, 1991). Thus, newly arrived immigrants are at clear disadvantage if their only means of finding work is through the employment services.

De Rudder et al (1995) describe the approach adopted by certain nationalised enterprises in France, where the State is the employer but the activities are economic, rather than purely administrative (e.g. transport). Even where there is no nationality clause, these organisations use a variety of methods to give preference to French nationals in allocating jobs, one of the most effective of which is to give priority to the children of employees already working in the enterprise. One informant stated that 80% of contracts offered by a public transport enterprise in the Paris region under the Emploi Solidarité scheme had been placed in this way. Preference for the children of staff is de-

scribed as an 'unwritten law' in France, widely subscribed to and often encouraged by the trade unions.

Another, more unusual, example of indirect discrimination, described in the Netherlands, concerns the minimum height demand for entry to some occupations (e.g. the armed forces, and the police). Those who are indirectly harmed by these demands are those ethnic minority groups who are, on average, smaller in height than the indigenous population.

With indirect discrimination it is not easy to come to a judgement as to whether its effects are truly inadvertent, or whether the exclusion is intentional. This no doubt varies. With a long-established criterion such as minimum height, the exclusion effect is likely to be unintentional. The demand for minimum language skills is a genuine criterion for many occupations; however, where apparently unnecessary language skills are required for many unskilled jobs, one is more likely to be suspicious. The discriminatory effects of a decision to restrict recruitment to a particular region or catchment area which excludes migrants and ethnic minorities is likely to be quite obvious to a recruiter, and this is far less likely to be 'accidental' in its effects.

The problem with indirect discrimination, even more than direct discrimination, is that it is not visible to the victim. In general, it is very difficult for any one individual to know that they have been unfairly discriminated against when rejected for a job. Interviews with migrants themselves are more likely to reveal a more generalised disillusion. For example, the unemployed son of Algerian migrants to France told a journalist "The French make you feel like a foreigner, especially when you try to find work. They have ways of letting you know you are well down the list." (*Observer* 17 September 1995). In Sweden a survey commissioned by the Ombudsman for Ethnic Discrimination was carried out among approximately 1,000 Africans, Arabs, Latin Americans and Poles to ascertain their subjective experiences of ethnic discrimination in different social spheres, including work. Twenty five per cent of Latin Americans and Poles and 34% of Africans believed that they had been discriminated against on account of their ethnic background when applying for work for which they were qualified during the last five years (Lange, 1995). Commenting on the survey in a press release, the Ombudsman stated:

> Even if [the results] deal with [subjective] experience of discrimination and not actual [verifiable] discrimination I think that these figures ought to give those who contend that ethnic discrimination in the labour market is a marginal problem something to think about. (Press Release 1995, quoted in Soininen and Graham, 1995).

The above examples show some of the ways that employment discrimination according to ethnic background or skin colour operates across Europe, regardless of the formal status of the victim. Thus, for visible minority members of Group 1, whilst legal discrimination is not a problem, informal racial discrimination certainly is.

Group 2. Citizens of an EU member state who work in another country within the Union (EU denizens)

If such discrimination is a problem for the first group - citizens with full rights in their country of citizenship - then it is equally a problem for citizens of an EU member state working in another EU country. If they experience racial discrimination in their country of citizenship, they are no less likely to experience it by crossing a border, over and above any element of xenophobia or dislike of foreigners which is found in the new country. However, there are extra potential problems for visible minorities within this group too. Firstly, the state of legal protection against racial discrimination in employment varies tremendously between different EU member states. In countries such as the UK there is some legal protection and redress for victims of discrimination, whereas in some other countries such protection is absent or in practice non-operational. Thus a black person moving from Britain to take work in a country with weaker legislation and less of a tradition of anti-discrimination policies at an organisational level might find themselves worse off in terms of their personal experience of discrimination. Secondly, in some countries some positions remain effectively closed even to white nationals of other EU countries, despite the inclusion of the concept of "European Citizenship" in the Treaty of Maastricht. Therefore, unlike workers in group 1, those in group 2 are exposed to some formal discrimination.

Legal or administrative discrimination against EU nationals

The problem here is those countries which still in practice restrict the access to at least some of their public sector jobs. In Greece, by law, the overwhelming majority of public sector jobs are reserved for Greek nationals, with no more than a few dozen nationals of other EU countries employed in the broader public sector. In other EU member states such as Belgium and France, exclusion operates by administrative practice rather than at a formal level, so that although in theory EU denizens have equal access to public sector jobs such as teaching,

in practice this is rare. In Luxembourg public sector jobs are barred to other EU citizens One case which recently came to public attention was that of a Spanish national who was refused permission to sit a competitive examination organised by the National Museum of History and Art (Kollwelter, 1995). Accordingly, the European Commission instituted an action against the Luxembourg Government on the grounds that it has not fulfilled its obligations. It made the following pronouncement:

> The Commission of the European Union does not accept this practice, and has therefore instituted an action against the Grand Duchy of Luxembourg. The purpose of this action is to establish that, by making nationality a condition for workers who are nationals of other Member States and are seeking employment as civil servants or as public sector employees in research, teaching, health, land transport, postal services and telecommunications, and water, gas and electricity distribution, the Grand Duchy has reneged on its obligations under the Treaty of Rome.

The above examples are anomalies, in that in theory there should exist free access to employment for any citizen of an EU member state. However, the problems caused by such restrictions remain relatively limited compared to the far greater problems caused for group 2 workers by exclusion rooted in informal racial discrimination, as set out above for group 1 workers. In contrast, formal barriers to opportunities are far more of a problem for the next group of workers, and the next section of the paper looks at the more "normal" legal barriers to employment experience by them.

Group 3. Third country nationals who have full rights to residency and work in a member state (non-EU denizens)

All EU member states except Portugal require migrants from third countries to have a residence and work permit, and in most member states this process has become very restrictive. Official policy within a member state might be to issue permits only in cases where there is no citizen or EU national to do the work. After a certain minimum period of legal residence and work, it is possible for migrants to obtain a less restricted work permit, or remain without a permit at all, and become legally-resident denizens. Denizens are not citizens of the country where they are domiciled. They are foreign citizens with a legal and permanent residence status, enjoying social and economic rights but

(normally) not full political rights (Hammar, 1993). Third country nationals in this group who are members of a visible minority are, of course, exposed to the same processes of racial discrimination as are members of groups 1 and 2. However, unlike those in the other two groups, they do not have full citizenship rights and thus are formally, as well as informally, excluded from many opportunities. Thus group 3 workers, a very high proportion of which are non-white, have their employment opportunities significantly undermined by both informal racial discrimination and formal legal discrimination too.

States often discriminate against immigrants, not only in the immigration process itself but also in the status and privileges given to non-nationals (MacEwen, 1995). Discrimination on grounds of nationality is not considered unlawful in international law, provided it does not deny "a minimum of civilised treatment" which the State is required to extend to non-nationals and there is no infringement of the provisions set out in an international convention. There is no binding international convention which sets out standards to be applied by state signatories over citizenship entitlements. Thus discrimination by nationality is allowed, and varies in different countries (for example, in Germany comprehensive car insurance for Turks is far higher than for Germans - MacEwen, 1995: 4). It is generally accepted that non-nationals need not necessarily enjoy the political rights accorded to nationals and that certain of their rights may be suspended when permission is granted for them to stay in the country (Lochak, 1990).

Legal discrimination against non-EU nationals

There are two main ways in which the rights of group 3 workers are restricted with regard to employment. Firstly, they are restricted in their freedom to find work in other member states. Secondly, they are excluded from certain categories of jobs within the member state in which they live.

Lack of freedom to find work in other member states

The inclusion of European citizenship in the Treaty of Maastricht gave the right to citizens of EU countries to move freely within and between member states in search of employment. However, nationals of non-member countries are excluded from these rights. The principles of free movement laid down in the Schengen agreement ignore third country nationals, even though they may be established, legally-resident workers of long standing. An example of the negative effect of this restriction can be seen with the closure of old industries which formerly employed large numbers of migrants. After redundancy, EU denizens are able to look for new work in neighbouring countries, whereas non-EU denizens do not have that option. The clearest exam-

ple is when the Limbourg coal mines in Campine in Belgium were closed down in 1987/88. This closure affected some 5800 workers, a significant proportion of whom were Italian (13%) and Turkish (10%). Two years after the closure, 82% of Belgian miners had found another job. By contrast, 30% of Italian miners and 83% of Turkish miners were still unemployed. Some 78% of Turkish miners had not worked at all since the closure of the coal mines (Denolf and Martens, 1991). One of the extra disadvantages faced by the Turkish miners in comparison with the other two groups was that they were not free to find work over the borders in neighbouring countries.

Exclusion from some sectors of work

However, there are not only problems for non-EU denizens who wish to cross borders to look for work. There are also restrictions on the jobs they may apply for *within* their country of residence. Non-EU denizens who have full rights to work and residency in a member state can nevertheless be denied equal access to some public sector jobs within that country. In France a large number of jobs - approximately a third of all paid employment - were, until recent constitutional changes took effect, restricted to French nationals. Until 1991, access to civil service jobs was barred to all foreigners. These jobs are now open to EU nationals, except for the police, the armed forces, the judiciary and national administrations exercising sovereign powers of state. Public sector enterprises, such as the gas and electricity utilities (Gaz de France, Electricité de France), the state railways (Société Nationale des Chemins de Fer Français - SNCF), the Paris transport undertaking (Régie Autonome des Transports Parisiens - RATP) etc., apply the rule of excluding foreigners other than EU nationals. Three and half million national and local government jobs and two and a half million jobs in nationalised or similar undertakings are thus closed to foreigners other than EU nationals. The great majority of these jobs do not involve the exercise of any real powers of state. In practice, many foreigners from outside the EU are employed in public service activities - though without enjoying the corresponding status - either under contract (which is the case, for example, of foreign doctors and assistant teachers) or under arrangements with employment associations (particularly in the social services) (de Rudder et al, 1995).

Foreigners are also excluded from a variety of independent professions in France: they may not direct the publication of a periodical or operate an audio-visual communications service, a public place of entertainment or a private detective agency. They may not run an outlet for the sale of alcoholic beverages or tobacco or run a gambling club or casino. They may not engage in security or surveillance activities or supply services for the transport of valuables. They are excluded from

a whole range of occupations connected with transport, insurance, the stock market, fire-arms and munitions.

In the Netherlands public sector employers are allowed to discriminate against non-nationals in a limited number of cases: Dutch nationality is explicitly required for high ranking posts in the judiciary, the military, the police and the diplomatic service, and in positions involving state security (Zegers de Beijl, 1995). In Greece the public sector is not open to foreigners; even in the teaching profession very few foreigners are employed in the state schools. Consequently, almost all of the roughly 26,000 foreigners with work permits are employed in the private sector of the economy. Non-Greek citizens cannot be chairmen of any trade union, federation or labour centre (Fakiolas, 1995). In Portugal foreign nationals are prohibited from taking public office except on the authorisation of the Minister responsible for the sector. In theory the Constitution allows that foreign nationals may exercise public service actions of a predominantly technical nature, i.e. which do not involve the exercise of powers of authority. In reality this only allows EU nationals and others who enjoy equal status such as Brazilians. Foreign nationals remain excluded from competing for entry to the public service, although, in the opinion of some commentators, this is constitutionally dubious. There is also a restriction on the employment of foreign nationals in another way: a company with more than five employees can only employ foreign nationals as long as the level of their Portuguese employees remains at 90%. Since foreign workers tend to be concentrated in certain limited sectors, this provision has encouraged the development of illegal work. The 10% ceiling can be exceeded if justified by reasons of 'public interest' (Carlos and Borges, 1995).

Examples of other, lower level, legal or administrative barriers can be found. In Spain there is clear evidence of discrimination regarding unemployment benefits. In order to be eligible for unemployment benefits from the Social Security, the law requires the worker to prove his willingness and readiness to work. But if an immigrant worker is dismissed and his work permit expires, he becomes ineligible for unemployment benefits, because he does not have a valid work permit and thus isn't "available and ready" to work. The Social Court of the High Court of Justice in September 1992 recognised this contradiction and recommended that foreign residents should be eligible to social benefits through the sole requirement of the residence permit:

> That the person who has worked and has had a work permit is not eligible to unemployment benefits whenever he is dismissed is contradictory. Since the worker and the employer

> have paid the corresponding contributions to those benefits, to be excluded from those social benefits is discriminatory.

Despite this declaration, many courts still follow a stricter line of interpretation, which does not recognise the eligibility for unemployment benefits for those foreign workers who do not have a valid work permit, even if they fulfil other legal requirements (Cachón, 1995). Something similar is reported by Kollwelter (1995). One individual who had been legally working in Luxembourg for 14 years was dismissed in February 1994, his work permit expiring in March of the same year. As it was up to his employer to apply for his permit's renewal, and he no longer had an employer to do this for him, the Employment Department refused to pay him unemployment benefit from March onwards, as he was no longer permitted to work in Luxembourg.

Barriers to naturalisation

The above restrictions are obviously of far greater significance in those countries where naturalisation is not easy. In Germany, with regard to employment, there is legislation which in theory prioritises Germans and EU nationals over other employees (paragraph 19 of the 'Arbeitsförderungsgesetz' - the law concerning the promotion of labour). The "Allgemeine Arbeitserlaubnis" (general work permit) is only issued to a migrant if an employer cannot find employees amongst these prioritised groups (with Turks being prioritised among non-EU members). Exceptions are only possible under certain conditions, e.g. if language knowledge is necessary. The stipulation that no German or EU citizen should be available does not apply if within the last eight years the foreigner has been working in Germany for five years without a break. In this case s/he gets a "special work permit" - (Besondere Arbeitserlaubnis). However, if, for example, the migrant takes a six month break to go abroad in the middle of the five year period, this invalidates it. This permit can also be given to certain groups of foreigners such as family members of Germans (Beauftragte der Bundesregieiung für die Belange der Ausländer, 1994). One problem with this is that young foreigners who were born in Germany still need this work permit for their first job, and even if in practice this is unlikely to be withheld, some critics see this as a symbolic form of exclusion.

In Germany since 1991 it has become easier for certain groups to obtain citizenship and thereby avoid these restrictions. Citizenship is more easily available for young people between 16 and 23 who have been living in Germany for at least eight years, and have attended school for at least six. However, dual citizenship is still in theory not available. Generally speaking, the condition for taking German citi-

zenship is that you give up your own, except in those cases where your original country makes it impossible for you to give up their citizenship. Although in practice many in Germany do hold dual citizenship, a high proportion of those who retained their original citizenship at naturalisation are those of German ethnic origin. In general, in any country where dual citizenship is difficult to attain, the percentage of naturalisation will remain low. In some countries this means that the migrant population remains excluded by the legislation which prioritises the employment of EU nationals.

Whereas the legally-based insecurities described above are certainly problematic for non-EU denizens, there are even greater problems for those third country nationals whose freedom is constrained by the need for a fixed-term work permit. This leads us to consider the fourth group of workers and the particular restrictions they face.

Group 4. Third country nationals who have leave to stay on the basis of a revocable work permit for a fixed period of time

Workers in group 4 are not citizens or denizens of the country where they reside and work. The restrictions that apply to their work mean that informal racial discrimination may in fact be far *less* significant in restricting their opportunities than the formal exclusion they encounter. Probably the best illustration of problems faced by this group of workers is in Austria**,** a country where the legal discrimination operating against migrant workers through national policy is so comprehensive that it overshadows any discrimination which might operate at the informal level. An array of legal instruments establishes substantial legal inequality between foreign nationals and Austrians in the labour market (Gächter, 1995).

For most foreign nationals, access to employment is dependent on some kind of permit being issued by the Public Employment Service over and above the residence permit required for legal residence.[2] Foreign nationals, in order to be an active part of the labour force, require both a residence permit and a labour market permit. There are four different kinds of labour market permits, none of them permanent. Access to the labour market is tightly controlled. The law sets an absolute ceiling to the foreign labour force, (currently nine per cent of

2 Some categories of foreign nationals do not require a labour market permit, the most important being refugees granted asylum for an indefinite period of time, citizens of member countries of the European Economic Area plus (since 1994) their third-country citizen spouses and children under the age of 21.

the total labour force). Ceilings are regularly exhausted, meaning that no new permits can be issued. This leaves many legally-resident people without the possibilty of legal employment. The victims are primarily women returning to the labour market or entering it for the first time after raising a family, young immigrants with less than three years of residence (unless they are Bosnian refugees), and people remaining unemployed after their unemployment benefits have run out. All of these persons hold valid residence permits but remain excluded from legal gainful employment.

Amongst other things, the system leads to unemployment patterns unlike those for migrant workers in other European countries, with foreign nationals in Austria exhibiting *lower* unemployment rates than Austrian wage earners, and with the unemployment rate *increasing* for those with less restrictive work permits. These patterns can be explained by looking at the effects of the legal restrictions in operation. If a third-country national becomes unemployed, he or she will not be entitled to unemployment benefit for the same period of time as for Austrian citizens. Unemployment benefits are cut short, with the most common duration of benefits for third-country nationals being only 30 weeks. Once benefits run out, and no new employment has been found, or if a new Employment Permit has not been granted, and if there are no other sources of income, this leads to the loss of the right to reside in the country, followed by an order to leave. This is enforceable by deportation unless social ties are held to be stronger than the public interest in deportation, and even if deportation is stayed, the right to remain in the country has already been lost. Further residence may be tolerated for the time being but it will be based on a visa that does not permit access to the labour market. There will be no access to legal employment or any kind of legal income (Gächter, 1995).

These two elements of the law, the shortened duration of insurance benefits and the exclusion from legal income it leads to, put serious pressure on foreign nationals. In the first instance they put a time constraint on the unemployed. Regardless of the kind of permit they hold, they are under pressure to find new employment quickly in order to escape the threat of becoming 'illegal'. Thus they have to accept whatever conditions are offered in order not to remain unemployed for too long. The result is the absence of long-term unemployment observed in the statistics, but also a systematic allocation of foreign workers to the worst occupations (Gächter, 1995).

The effects of this legal inequality are compounded by a further legal restriction. Foreign nationals, although not excluded from voting in works council elections, are ineligible to be elected to them. This deprives them of the opportunity to bargain over issues such as wages, working hours, and working conditions. Since foreign and Austrian

workers do not often work side by side but tend to be concentrated in different occupations within one plant which are either spatially or hierarchically segregated, there are sections and strata of the workforce that tend not to be represented.

All this has the effect that foreign workers are not only under pressure to accept jobs with poor working conditions, arbitrary hours and low pay, but they also have to remain compliant within them. Foreign nationals therefore are very attractive to employers as a relatively powerless and highly flexible workforce. Consequently, foreign nationals are a preferred category of employees for unskilled and semi-skilled occupations without customer contact (Gächter, 1995).

Therefore, Austria contrasts with many other European countries where the continued over-representation of migrant workers in inferior employment is explained by the operation of informal practices of direct and indirect discrimination. Austria is a classic example of a country where it is the formal and legal discrimination which is so clearly predominant, and which explains why foreign nationals are systematically overrepresented in the jobs offering the worst conditions (Wimmer, 1986).

Although workers in the EU on temporary permits are legal and therefore in theory have access to the protection of laws on working conditions, in practice this protection is not always easy to draw upon. In Spain, for example, Cachón (1995) argues that many legal immigrants are subjected to similar conditions to those of illegal immigrants: they work with no contract or social security benefits, with lower wages and/or longer working days than allowed by union agreements in that sector. Even if the immigrants are "regular", they are always conditioned by the annual five-year renewal of their work permit, and are therefore in an institutionalised situation of temporary employment and residence which restricts their bargaining power.

The legal constraints and rigidities experienced by group 4 workers means that they can easily be pushed into the status of group 5 workers, in illegal employment. In Italy, for example, there are legal rigidities which force many originally 'legal' immigrants to work illegally. Officially, current regulations do not provide for the possibility of transferring from one type of residence permit to another, even in the event of a change in status. For example, a worker with a residence permit that entitles him to undertake employed work cannot apply for one that entitles him to undertake self-employed work, and vice versa, until the existing permit expires. And even when the current permit does expire, transfer is not automatic. Employers may not take on immigrants who have a "family", "study" or "self-employment" permit. Trade unions in Italy oppose this inflexibility, as workers are less able

to protect themselves from over-exploitation precisely because of their illegal (or, at least, 'semi-legal') position (Campani et al, 1995).

Some restrictions have a particular effect on women migrants. Legislation in many countries ties a migrant domestic worker's presence to her employment function. In cases of extreme exploitation or abuse in her work, she has the choice of tolerating it, leaving formally and suffering immediate deportation to her country of origin (with, in the case of Italy for example, a three year ban on seeking work in Italy again) or moving over into the illegal labour market (Andall, 1996). In the UK, whilst it is no longer possible for non-EU citizens to enter as resident domestic workers, there are special concessions for wealthy individuals to bring in their domestic workers as household members. Their reliance on one employer and the requirement that they leave the country on termination of this relationship renders them liable to extreme exploitation and abuse, and many cases of this have been documented over the last few years in Britain (Anderson 1993). Similarly, if a woman enters an EU country under regulations allowing for family reunion she is bound by immigration laws which render her right of residence dependent upon her husband. There may be a waiting period before legal access to the labour market is allowed, and if the marriage breaks down she is liable to deportation. For these reasons many women migrants find themselves pushed into the illegal labour market (Phizacklea, 1996).

Group 5. Undocumented or 'illegal' workers

The illegal labour market is said to be expanding in countries in the EU, particularly from the eastern borders. For example, agreement has been reached between countries of the EU and four Eastern European neighbours that their nationals no longer need visas to enter relevant member states. Currently, in Germany and Belgium, there is a question of Poles who enter as tourists for short periods and work illegally, and who have the freedom to move (and continue working illegally) in other European countries. (This gives them an advantage compared to migrant workers who are third-country nationals who do not have the freedom to move to other countries - Rea, 1995).

However, the main problem of illegal labour remains in the countries of the south. In Southern EU member states the relative newness of their status as countries of immigration means that they have qualitatively different experiences of discrimination. For those visible minorities in these countries who are citizens and denizens, the problems of racism and discrimination described earlier also apply, (although these issues are less recognised in public debate than in some Northern countries). However, one major difference is that immigration in these countries is characterised by a significant proportion of

undocumented workers, and/or participation in an illegal labour market. The issue of discrimination in this context is different from how the problem is seen in Northern countries. It concerns the super-exploitation of large numbers of migrants, whether undocumented or not, in poor or illegal work, suffering conditions which would not be tolerated by native workers, but which they are not in a position to reject.

In Greece, undocumented foreigners are employed by smaller firms which are mostly family undertakings and can avoid labour inspections and social insurance contributions. A large proportion of building workers are undocumented foreigners, particularly Poles and Albanians, and undocumented foreigners of all nationalities work during the seasonal peaks of activity in picking fruit and doing other seasonal jobs on the land. There is evidence that increasing numbers of undocumented immigrants are also employed in more regular jobs in greenhouses and in animal husbandry, as well as in all kinds of relatively low-status services, especially in catering, tourism, transport, trade and domestic work (Fakiolas, 1995). The undocumented economic immigrants are estimated at over 350,000, about eight to nine per cent of the registered labour force of 4.1m. They are not covered by social insurance, and their pay is about half of the market rate in Greece. Fakiolas (1995) describes them as an 'underclass': they are threatened by deportation and they often face racism at the workplace. However, information on what happens to them at work is difficult to come by.

In Spain, illegal immigrants were estimated to represent 40 - 60% of all immigrant (non-EU) workers at the end of 1993. Illegal immigrants work with no contract or social security benefits and often suffer exploitative working conditions in terms of wages, quality, intensity or duration of their work, practices which violate regulations and Union agreements. Employers in certain sectors prefer to employ such immigrants because of their low cost, pliability and vulnerability. Employers have the advantage of holding absolute power over their employees, since illegal immigrants cannot make formal complaints or take legal action (Cachón, 1995).

A survey of immigrants in domestic service (Marrodán, 1991) carried out with 424 immigrant workers in Madrid and Barcelona in 1990 showed that only 10% had a stable work contract, 10% had a temporary work contract, and 80% did not have any contract at all. Often the immigrants have to pay for their Social Security themselves, as if they were self-employed. The most frequent complaints concerned excessive working hours, delays in payment, and dismissal without pay (Colectivo IOE, 1991). In this sector, it is difficult to document employers' abuses or cases of over-exploitation, because of the vulnerability of these workers: on the one hand, they need to keep the job in

order to have a work permit, and on the other, there are no witnesses to their employers' abuses except for other members of the family.

The working conditions of immigrants in the construction sector in Madrid are very bad, with high risks of injury, no contract or Social Security benefits, below minimum wages, and arbitrary dismissal, sometimes without wages. Some live in temporary accommodation on site and have money for this deducted from their wages. In extreme cases, the situation of some irregular immigrants is said to be close to the characteristics of "slavery" (Cachón, 1995). Although the over-exploitation of immigrant workers is well-known, immigrants themselves rarely report discriminatory practices, particularly when they have no documents. Under these circumstances, it is not surprising that they should even avoid organisations which are trying to help them, such as the unions and other NGOs.

In Italy, data collected by the Ispettorato del Lavoro reveal differences between North and South in the various economic sectors which use illegal labour. In Central and Northern Italy, the industrial sector and the hotel and catering trade have the most 'illegal' workers, whereas in Southern Italy and the islands, there is more undeclared employment in the agricultural sector. In the agricultural sector, particularly in the South, employed work is insecure, temporary and/or seasonal and is rarely covered by trade union protection as regards pay and working conditions. Although at a formal level the sector is covered by the trade unions and there are agreed national and local work contracts, it is difficult for the trade unions to guarantee effective application of these contracts, not only for immigrants but also for indigenous workers. This means that, in practice, pay is much lower than contractually agreed and is paid directly to workers, in cash, often each day (Campani et al, 1995).

In Portugal foreign workers are mainly concentrated in industry, construction and transport, and in service sectors such the cleaning department of the municipal council of Greater Lisbon, and in domestic service. Some of the immigrants from Portuguese-speaking parts of Africa have Portuguese citizenship; many do not, and those who work in unskilled work for below average pay without a contract or social security coverage are unable to challenge their employers over poor working conditions, or to seek work elsewhere. About 50% of ethnic minority workers have no employment contract, with no legal protection, welfare rights, or protection against abuses of safety or working hours. Work accidents are highest in those sectors which employ migrants (Carlos and Borges, 1995).

Thus the legal insecurities of Group 5 workers mean that they suffer the worst form of employment conditions. However, although a large proportion of illegal workers, particularly in the South of Europe, are

non-white, it is not easy in these circumstances to call this *racial* discrimination or to make the distinction between 'racism' and employers' exploitation. They are usually not competing with white workers for the same jobs, and are therefore not being excluded from these jobs because of their colour. Instead they are being recruited because of their low cost and reduced powers of resistance to exploitation.

Discussion

The five categories of worker set out at the beginning of this paper reflect formal status, and a continuum of rights ranging from full rights and privileges of citizenship in category 1 to relatively few rights in category 5. New gradations of inequality are then added to these legal differences in the form of visible minority status. According to the interaction of these formal and informal criteria, workers in the different groups have different experiences of discrimination and exclusion.

In the first two categories, EU citizens living in their own country, and EU citizens working in another EU member state, non-white groups form only a minority. In the next three categories they are more likely to form a majority. In all categories, generally speaking, the non-white workers are likely to suffer disadvantage at least relative to the white members of that legal category. Paradoxically, the relative disadvantage suffered through racial discrimination for workers in categories 1, 2 and to a lesser extent, 3, constitutes a more visible and serious social issue precisely because they have more formal rights. They have justifiable expectations of fair and equal treatment and are more likely to be in positions where they are in competition in the labour market with white workers. An increasing proportion of visible minorities within these categories will have been born and educated in an EU country. Further down the hierarchy, it becomes less easy to demonstrate the extent to which the relative disadvantage in employment experience is a result of racial discrimination, partly because the disadvantage on formal and legal grounds is greater and more obvious, and because workers in these categories are less likely to be competing with white nationals in the same labour market. By the time we get to the category 5 workers in the illegal labour market, it is difficult to separate out the effects of 'racism' from the straightforward exploitation of a relatively powerless group of workers. To talk about racial discrimination in the conventional sense is less appropriate as these workers are often in a different labour market to full citizens. Nevertheless, it is clear that racist beliefs can be drawn upon as an ideology of justification for the exploitation which occurs at this level. Further-

more, there are often differences according to their colour in the circumstances of those engaged in the illegal labour market: Poles working illegally on building sites in Germany or Belgium do not suffer the intensely degrading and exploitative near-slavery conditions of some of the non-European agricultural workers in Spain.

It is clear, then, that the problem of discrimination in the labour market of countries in the EU differs according to which categories its migrant and ethnic minority workers fall in to. In countries of Northern Europe, migrants and ethnic minorities are more likely to be skewed towards the top groups of our five legal categories of worker. Here, migrants are longer established and issues of the 'second generation' are important, with a concern over the unjustified exclusion of migrants and ethnic minorities from employment opportunities by informal discrimination on 'racial' or ethnic grounds, and the related phenomenon of their over-representation in unemployment. In countries of Southern Europe, in contrast, immigrants are likely to be over-represented in the bottom groups. Groups 4 and 5 workers are actively preferred and recruited because they are cheaper, more vulnerable, and more pliable - they are less able to resist over-exploitation in terms of work intensity or working hours. These workers experience a perverse kind of "positive discrimination" in the selection process, and then in work suffer the "negative" discrimination of conditions which indigenous workers would not tolerate.

Policy implications

The implications of the arguments and evidence in this paper are that action must be taken to tackle both the formal legal discrimination and informal racial discrimination which occurs against migrant and ethnic minority workers in the European Union. The action against each needs to be both at the EU level and at individual member state level, as follows:

	Measures against legal discrimination	**Measures against racial discrimination**
EU level	(i) improvement of rights of 3rd country nationals	(i) EU directive on racial discrimination
Member state level	(ii) improvement of citizenship rights	(ii) anti-discrimination laws and 'voluntary' equal opportunities measures

Measures against legal discrimination

(i) EU level: Improvement of the rights of third-country nationals

The first issue is that of the anomalous status of third country nationals in the EU, and the discrimination and disadvantage related to this. "It is difficult ... to justify a two-tier workforce - one with the right to work anywhere in the EC, and the other restricted to a single EC country" (Dummett, 1994). The European Commission's view is that an internal market without frontiers, in which the free movement of persons is ensured, logically implies the free movement of all legally resident third-country nationals for the purpose of engaging in economic activities, and that this objective should be realised progressively. Although there was a commitment to provide for the free movement of all EU residents at the Edinburgh summit in December 1992, there has been little movement to implement this (Mirza, 1995). As a CRE report puts it:

> The distinction between EC nationals and legally resident third-country nationals carries real dangers. As the single market develops there will be more opportunities for jobs, business and cultural activity, but third-country nationals will not be able to move in order to take advantage of them. In fact, the more the Community offers, the greater their disadvantage. The gap between them and their EC national neighbours can only widen unless their legal rights are improved throughout the EC (Dummett 1994).

This paper has given many examples of the ways in which this disadvantage is experienced.

(ii) Member state level: Action on citizenship rights

There are a number of European states where naturalisation is not easy, and this could, and should, be rectified. Nevertheless, it must be realised that, even when naturalisation is made easier, the inclination of migrants to apply for naturalisation remains relatively low, primarily because of the necessity of giving up their citizenship of origin. This is the case, for example, in Germany, where migrants argue for the right to *dual* citizenship. Scholars suggest that after decades in which migrants have been "differentially incorporated" into a nation state they tend to develop strong ethnic structures and an ethnic identity. Therefore, the giving up of the original citizenship might be regarded within ethnic communities as 'an abandonment of national identities'

(Bauböck, 1992). In addition, it appears that many migrants reject the idea of being exclusively German and thus a member of a community which they feel rejects and discriminates against them (Brandt, 1996).

The situation with regard to dual citizenship in Germany is in fact more complicated in reality than it initially seems. The German government's line is that dual or multiple citizenship is something to be avoided and officially discouraged. However, in practice, dual citizenship is tolerated on a large scale. For one thing, dual citizenship emerges "naturally". It has been estimated that the marriages of Germans to "foreigners" between 1950-1990 could produce between one and two million children with potential dual citizenship. In addition to this, the Aussiedler, or ethnic Germans, are allowed to keep their original citizenship when naturalised. Therefore, scholars have argued that the official government opposition to dual citizenship begins to look somewhat selective, not so much based on an issue of principle and international law, but rather reflecting a resistance to the naturalisation of permanently settled migrants (Brandt, 1996).

As long as dual citizenship is formally discouraged the percentage of naturalisation of migrant workers will remain low. This means that the migrant population is not only discriminated against in everyday life, but initially by legislation, which prohibits employers from employing migrants without an EU-nationality, so long as EU-nationals can be found.

The examples quoted in this report of German and Austrian legal and administrative barriers to the equal treatment of migrant workers are perhaps the most visible and extreme examples of a more general point which is applicable to many other countries. Where rules exist which make it difficult for migrants - including 'second generation' migrants - to be regarded as equal in the labour market, then these legal discriminations would need to be removed before other anti-discrimination measures could become fully effective.

Some scholars argue that we may not necessarily have to think in terms of citizenship as such, in the removal of such legal barriers. Layton-Henry (1990: 194) writes:

> Foreign residents who live in a country for longer than a temporary stay gradually become members of their country of residence, and this fact should be recognised, even if most may not want to become naturalised citizens of their new society. We suggest that a new status of denizenship should be granted to them, entitling them to all the rights of citizenship within their country of residence, including the right to participate in national elections. This would give them rights similar to those of dual nationals, who have rights in more than one country.

Forbes and Mead, in their 1992 review of measures to combat discrimination in EU member states, argue that voting rights transform an outsider pressure group into a significant bloc of potential voters, given the way that visible minority groups tend to be concentrated in urban areas, and ensure increased access to the political process. This has the long term effect of altering the agenda of political parties. Thus "the lack of voting and full citizenship rights is a very good indicator of the absence of adequate legislation dealing with racial discrimination".

Measures against informal or racial discrimination

(i) EU level: Directive on racial discrimination

Across EC countries, measures to combat discrimination are variable in their scope and effectiveness, and in some cases hardly exist. Many member states are at quite different stages of developing law and practice to deal with racial discrimination in employment.

> It is clear that protection within individual states against racial discrimination is wholly inadequate and that it will take many years for states to summon the requisite will to introduce measures which are truly effective. In order to realise fully the aim of the Single Market and in order to allow for the free movement of workers .... in pursuit of that aim, legislation at the European level is both desirable and necessary (Mirza, 1995).

The argument has been advanced that the Treaty of Rome and the Single European Act do not confer any competence on the Union in the field of racial or ethnic discrimination. There are therefore pressures for the amendment of the Maastricht Treaty to provide explicitly for Community competence on discrimination against migrants and ethnic minorities, in the same way that it covers sex discrimination. Some people argue that measures against racial discrimination should remain the concern only of individual member states. Others argue that there are good reasons why action at EU level is important. Mirza (1995) concludes:

> It may be argued that legislation at Community level is justified because race discrimination is an issue of a transnational nature and will not be adequately tackled at state level; the lack of Community action combined with the erratic nature of protection against racial discrimination at state level conflicts with the requirements of the Treaty to correct distortions of competition and to strengthen social cohesion; and action at Community level, because of its standardising effect, would prove beneficial to an extent that is not possible if action were taken at member state level.

A committee of experts appointed after the EU Corfu summit in June 1994 produced a report in 1995 recommending the amendment of the Maastricht Treaty to provide explicitly for Community competence on discrimination against migrants and ethnic minorities, in the same way that it covers sex discrimination. It recommends directives and

regulations at Community level to cover issues which include discrimination in employment. An EU directive sets out certain goals which have to be met by a given deadline. Each member state must then pass the necessary laws.

> Protection against discrimination in the member states needs to include elements that are common to the whole Community - so that there is some uniform protection throughout the EC. But complete uniformity would be impossible, given the different legal systems and conditions in the 12 countries. A directive is therefore the ideal instrument laying down a common basis in firm goals to be achieved through legislation but allowing each national government the flexibility to deal with its own particular problems (Dummett, 1994).

The obligations of the Equal Treatment Directive led to every EU country introducing legislation to guarantee equal treatment between men and women in the labour market (Forbes and Mead, 1992). The same should now be done for racial discrimination.

> By its very existence, European sex equality law recognises the need to interfere with the operation of 'free' market forces. It is a major inconsistency in European policy that legal protection is available to address the unequal treatment of women workers, but that parallel provisions are not available for racial and minority ethnic groups. There is no evidence to suggest that the cost advantages to employers from discriminating on grounds of race are any less than for sex discrimination (Sales and Gregory, 1995).

(ii) Member state level: anti-discrimination legislation and voluntary measures

In 1991 a comparative analysis of measures to combat racial discrimination covering the then 12 member countries of the European Union (Forbes and Mead 1992) came down heavily in favour of specific legal measures to combat discrimination. The authors conclude that existing international *conventions* on racial discrimination, such as the ILO Convention 111 on Discrimination in Employment and Occupation, only have substantive effects when they lead to and inform domestic *legislation* on discrimination. International provisions on racial discrimination in employment are not in themselves enough - there must also be domestic legislation. A starting principle of domestic legislation is to make racial discrimination a criminal and /or a civil offence. Although in some countries racial discrimination in employ-

ment is covered by criminal law, many commentators are not convinced that this is the best way of countering it. Whereas racist attacks, harassment and propaganda are threats to public order and these can be dealt with by criminal law, civil proceedings may be more effective for racial discrimination. This is for a number of reasons, including the fact that the standard of proof is less rigorous, and that in civil law the applicant can initiate proceedings, whereas usually only the police initiate criminal proceedings (Banton, 1994).

Banton points to France, where the primary remedy for all kinds of discrimination lies in criminal law. Statistics show that by 1991 the annual number of convictions had risen to 101, almost entirely for offences against public order, namely for incitement to racial hatred, insult, and so on. There were just four convictions for racial discrimination in employment. This "scarcely suggests that criminal remedies are effective in this field." For Banton, the French experience shows that while criminal law can be effective in dealing with racial defamation by the published word, as in the press, it is ineffective in dealing with discrimination in the workplace. (Some other countries rely on *labour* law to combat workplace discrimination; however, this leaves the victim dependent upon support from a trade union.) British experience suggests that remedies in civil law are more effective Forbes and Mead (1992) argue that "Racial discrimination can be a criminal *and* civil offence, thereby opening up two quite different avenues for the aggrieved individual, with important implications for the educative effect of convictions".

However, experience in the United States shows that anti-discrimination legislation is a necessary but not sufficient means of reducing racial discrimination in employment. The effect of such legislation is often that racism becomes more subtle, and that indirect, institutional or unintentional discrimination becomes more important. As two American researchers put it:

> The effects of legal and intentionally discriminatory practices remain long after court decisions and social customs signal the reduction of overt discrimination. Racial oppression and privilege have become institutionalised, embedded in the norms ... and roles ... in a variety of social, economic and political organisations (Chesler and Delgado, 1987).

Therefore, as well as enacting laws against discrimination, member states should encourage a range of social policy initiatives against racism and discrimination at an organisational level, including equal opportunities programmes, codes of practice, positive action, education and information provision, and training. The law can be used not just to

prohibit, but to allow, to encourage and to facilitate. It can provide a stimulus for organisations to undertake 'voluntary' action, such as adopting equal opportunity policies. An equal opportunity policy consists of a set of aims and procedures adopted by an organisation which should be summarised in a public statement and made known to all employees. An equal opportunity policy could include ethnic monitoring of job applicants; equality targets for recruitment and entry to management posts; recruitment initiatives to encourage ethnic minority applicants; training for recruiters and selectors on avoiding racial discrimination; positive action measures to stimulate ethnic minority applications, and procedures against racial harassment.

The illegal labour market

Anti-discrimination law and equal opportunities policies do not touch the large numbers of workers who are outside the formal labour market in highly exploitative illegal work. For people with insecure employment status, including undocumented workers and asylum seekers, anti-discrimination law is almost irrelevant. This partly explains the relative lack of concern with equal opportunities and anti-discrimination measures in countries of Southern Europe. The issue of the illegal labour market is nevertheless related to the issue of anti-discrimination measures for migrants and ethnic minorities in employment. Firstly, illegal work undermines the effects of fair employment practice and anti-discrimination measures in the regular labour market. Secondly, racial discrimination in the regular labour market is one factor which contributes to the entry of ethnic minorities and migrants into the unregulated and illegal labour market. Thirdly, the formal discrimination and legal rigidities in access to employment also add to illegal employment, when, for example, they push people from group 4 status into group 5. Hence the importance of the campaigns by trade unions, such as those in Spain, who are engaged in active campaigns for the regularisation of illegal workers as a step to end the discrimination they suffer.

Conclusion

This paper has described how the different forms of legal and racial discrimination affect different groups of workers in the EU according to their legal status and ethnic background. There are still those who think that the extension of citizenship (or denizenship) rights is all that is needed to ameliorate the disadvantaged situation of migrant workers in Europe. This argument fails to recognise the relevance of racial discrimination to this disadvantage. In general, in societies with egalitar-

ian ideologies and where racism and discrimination are viewed as objectionable, there is a tendency to deny that a problem exists (van Dijk, 1993). It is noticeable that in different European countries there are often different arguments as to why racism is not part of their society. For example, where a country has no history of major colonial oppression of non-white people, this is seen to be the reason for an 'absence of racism' in society. Alternatively, in traditional countries of emigration it is often stated that people are sympathetic to the experiences of migrants and therefore would not be inclined to discriminate against them. This paper has shown that racial discrimination operates routinely in the labour market in different EU countries, and does not have to be carried out by "racists".

At the same time, this paper shows that anti-discrimination measures alone are not enough. There is sometimes a failure to appreciate how broader legal inequalities impinge on and interact with other forms of discrimination. If we are concerned with the reduction of racism and discrimination against ethnic minorities and migrants in Europe, then we must be concerned to tackle both the formal and informal exclusion described in this paper. To tackle one without simultaneously addressing the other would be illogical. In those countries where it is not easy to achieve citizenship, there are employment disadvantages which are unacceptable, particularly when this applies to legally-resident people born in the country of migrant parents. It is difficult to talk about measures against racism and discrimination when a barrier to improving this situation is the legal status of the population of migrant origin. Moreover, an 'open' citizenship policy can also be seen as an important symbolic step, because it recognises the increasing heterogeneity in the country's population and incorporates migrants politically and legally on an equal basis. Lack of full rights is a symbolic form of exclusion which can only add to the alienation of ethnic minority young people who are made to feel that they are not a full member of society.

The interaction of formal, informal and symbolic exclusion will have negative social consequences. When informal barriers of racial discrimination lead to the over-representation of the young descendants of migrants in unemployment, and legal barriers mark them out in the eyes of others as inferior citizens, this in itself can only provide a further stimulus to racist ideologies, reinforcing the idea that there is something 'natural' or deserved about the second-rate employment of second-rate citizens. This will in turn increase the likelihood of future racism and discrimination at the informal level, increasing the alienation of excluded groups, and crystallising inequality still further.

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