

## Ethnic discrimination in the labour market - empirical evidence on a multi-dimensional phenomenon

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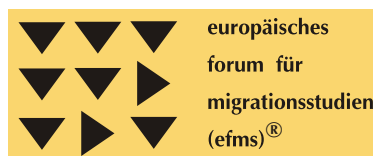
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## efms paper 2009-3

# Ethnic discrimination in the labour market - empirical evidence on a multi-dimensional phenomenon

Mario Peucker

This paper is based on the author's presentation "The working market as one of the main foci of discrimination. Some data for debate" delivered on the 4th Human Rights Meeting "Human Rights and Discrimination: New or Continuous Challenges?" in San Sebastian (Donostia) on 16 April 2008. It was published in Spanish and Basque by Alberdania and the Institute of Human Rights (University Deusto) in 2009.





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# 1 Introduction

Although it is a challenging task to obtain empirical evidence on ethnic discrimination, data and information have been gathered in the recent past that leave no room for doubt that ethnic discrimination continues to create barriers for immigrants and minorities in the employment sector and other social areas – with far-reaching consequences: immigrants are refused one of the basic principles of democratic societies, the equality of chances (Rawls 1971), which hinders their upward mobility and full participation in society. But unequal treatment on the grounds of ethnic origin or race does not only harm those who face discrimination themselves, it also endangers social cohesion and is unanimously considered ineffective and a waste of resources in a meritocratic and competitive economic system.

This paper seeks to shed light upon the mostly concealed phenomenon of ethnic discrimination in the labour market in Europe. It endeavours to give tentative answers to the question of why discriminatory acts and mechanisms in the employment sector persist, although these forms of unequal treatment are politically condemned, legally banned across the EU, morally rejected by most citizens<sup>1</sup> and economically illogical. The first section of the paper will outline definitions and a pragmatic classification seeking to create a common basis of understanding of the complexity and multi-faceted character of ethnic discrimination. The second section will give a snapshot overview of the political perspective of the European Union on ethnic discrimination, specifically in the employment sector. Albeit the EU institutions have been criticising the ongoing lack of reliable and comparable data on the EU level, the social phenomenon of ethnic discrimination is not a *terra incognita*: the third section will present selected research findings and information from various data sources that are suitable for proving the existence of ethnic discrimination without being able to ultimately quantify the extent of the problem. Certain discriminatory patterns and motives, however, can be unravelled when applying such a multi-dimensional analysis approach. The final section will endeavour to present a concluding summary and to identify some 'blind spots' in discrimination research.

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<sup>1</sup> According to the results of the EU-wide opinion poll Eurobarometer, 82 percent of the respondents across Europe opposed ethnic discrimination (EU Commission 2003: 11).



## 2 Reducing complexity – definitions and classification of ethnic discrimination

In 1965, the UN Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which offers in Article 1 a rather broad but widely accepted definition of racial discrimination, which reflects the UN's human rights perspective:

“In this Convention, 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.”

More than four decades later, the general understanding of ethnic discrimination has not changed much. An examination of various definitions used in social and political sciences shows that three elements appear vital: discrimination implies (1), by its very meaning, a differentiation of groups, (2) unfavourable treatment of the members of certain groups and (3) a lack of objectively justified reasons for this unequal treatment. The legal expert Mooney Cotter recently proposed a definition that concisely describes the essence of discrimination: ethnic or racial discrimination includes distinction by race, skin colour, ethnicity or nationality “and classifies people into different groups in which group members receive distinct and typically unequal treatment and rights without rational justification” (Mooney Cotter 2006: 10).

Since the mid 1970s, the European Union has applied a similar understanding in its legal definition of direct discrimination, initially in the context of gender discrimination<sup>2</sup> and later on, with the adoption of the Racial Equality Directive (RED) in 2000, also in the context of ethnic discrimination:

“(D)irect discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin.” (Art. 2 (2a) RED).

With the adoption of the RED, the EU also explicitly introduced the concept of indirect ethnic discrimination:

“(I)ndirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared

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<sup>2</sup> The concept of direct discrimination was first used by EU institutions in the context of gender discrimination in employment in the 1970s (Directive on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; 76/207/EWG).



with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary" (Art. 2 (2b) RED).

In the context of employment, unequal treatment is not considered discriminatory if it is objectively justified by a legitimate aim. Article 4 explicitly allows for a

"difference of treatment which is based on characteristics related to racial or ethnic origin [...] where, by reason of the nature of the particular occupational activities [...] such a characteristic constitutes a genuine and determining occupational requirement, provided the objective is legitimate and the requirement is proportionate".<sup>3</sup>

All these political, scientific and legal definitions offer a general foundation for the understanding of ethnic discrimination. They fail, however, to highlight the multi-faceted character of the phenomenon, which needs to be taken into consideration by researchers, policy-makers and civil society actors when seeking insights into and effective remedies against this multi-dimensional problem. Robert A. Rubinstein, Professor in Anthropology at Syracuse University, recently stated that "if we want to understand the social reality of discrimination, we must start by recognising that we are speaking about a social phenomenon that is complex"; he continues that consequently our theoretical accounts also need to be complex "lest they confound rather than facilitate sound understanding" (Rubinstein 2006: 94).

Discrimination operates usually in disguise, at multiple levels, in various forms ranging from interpersonal interactions and inter-group relations to macro-societal mechanisms; it can be an individual person who discriminates or a certain practice or even a legal provision that results in reinforcing ethnic inequalities; it can happen on purpose – for different reasons – or unintentionally. The list of different types and possible manifestations of discrimination seems almost infinite.

All these different dimensions are covered by the following conceptualisation of labour market discrimination, which constitutes a slightly altered version of the comprehensive classification developed by John Wrench (2007).<sup>4</sup>

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<sup>3</sup> Furthermore, positive action, i.e. actual unequal treatment that aims to prevent or compensate for disadvantages linked to racial or ethnic origin, are explicitly permitted (Art. 5 RED).

<sup>4</sup> Wrench draws upon another classification suggested by Williams (2000), which he adapted to the European context (Wrench 2007: 116).



**Tab. 1 Classification of ethnic discrimination in the labour market**

<b>(A) Interpersonal / direct discrimination</b>	<b>(C) experienced discrimination</b>
(1) Resentment-based discrimination	
(2) Societal discrimination	
(3) Statistical discrimination	
(4) Opportunist discrimination	
<b>(B) Structural discrimination</b>	
(5) Indirect discrimination	
(6) Past-in-present discrimination	
(7) Side-effect discrimination	
(8) Legal discrimination	
(9) Institutional discrimination	

*Based on Wrench's classification (2007: 116-7), slightly amended by re-categorisation of type (4), (8) and (9), the renaming of (1) and the incorporation of the dimension of experienced discrimination (C).*

The dimension of **interpersonal, direct discrimination (A)** refers to a certain discriminatory *behaviour* of an individual person ("perpetrator"), who can, in principle, be held accountable for that behaviour. The person intentionally treats the immigrant or minority member in a less favourable way; the possible reasons for the unequal treatment can be manifold as the following four sub-categories illustrate.

(1) **Resentment-based discrimination** operates as interpersonal behaviour and usually intentionally negative treatment of minority members that is based on the majority member's racist, xenophobic, nativistic or ethno-centric attitudes and stereotypes (see also Heckmann 1992: 146-159). It constitutes the most blatant form of discrimination.

(2) **Societal discrimination** occurs when an employer treats the member of a certain ethnic minority in a discriminatory way, not due to *personal* negative attitudes, but because he or she – falsely or correctly – assumes that other employees or costumers may have prejudices towards that minority group. To avoid anticipated (potential) conflicts or negative economic consequences, the minority member is not recruited or promoted. Wrench also expands the scope of this type of discrimination to the decision-making process of employment agencies: if such an agency knows (or assumes) "that immigrants would not be welcome by a particular employer, they may avoid sending an immigrant to be interviewed for a vacant position" (Wrench 2007: 118).



The neoclassical economic model of ‘taste discrimination’ (Becker 1957) usually refers to one of these two sub-categories of interpersonal discrimination. The employer who has a ‘taste of discrimination’ explicitly prefers to hire non-immigrants and is “willing to pay a price” for this economically ineffective choice (England/Lewin 1989: 240); such behaviour suggests that personal anti-minority resentments are the motives of the unequal treatment (resentment-based discrimination). England and Lewin pointed out that some employers “discriminate in a response to their customers’ or worker’s taste rather because of their own discriminatory taste” (ibid.) (societal discrimination).

(3) **Statistical discrimination** (Arrow 1973) occurs when the individual immigrant or minority group member is assessed – typically in the recruitment process – “on the basis of race (...) group averages on indicators of productivity” (England/Lewin 1989: 240). Due to a lack of information on the individual person’s skills, resources and productivity, the employer’s assessment is guided by a ‘statistical’ assumption of the respective group (Kalter/Granato 2002: 4). Hence the individual applicant is refused the chance of proving his or her *individual* skills and competence. Usually the employer’s motives are primarily economic (e.g. hiring the most productive workforce without spending time on the assessment of the individual applicant) and not rooted in racism or anti-immigrants resentments. However, if the employer’s assumptions are incorrect and reflect negative ethnic stereotypes, statistical discrimination often turns into resentment-based discrimination. But even if these ‘on average’ assessments are confirmed by statistical evidence, the unequal treatment of the individual minority member constitutes ethnic discrimination since the person is not assessed on his/her individual’s skill, but on criteria ascribed to the group (Wrench 2007: 118).

(4) **Opportunist discrimination** is a special form of direct discrimination based not necessarily on racism or prejudice of the employer, but on the knowledge that the “minority ethnic group is in a weak position in society and in the labour market” (Wrench 2007: 120). The minority member is treated in a less favourable, discriminatory way (e.g. lower wages, inferior working conditions) due to his/her more vulnerable position which results from other forms of discrimination or from his/her legal status (e.g. undocumented status, lacking or restricted work permit). Wrench points out that opportunist discrimination does not occur in the recruitment process, but rather in the form of exploiting these vulnerable immigrant workers (ibid.).

The dimension of **structural discrimination (B)** emphasises the discriminatory *effect* of certain mechanisms, practices or provisions, i.e. there is usually not an individual person directly responsible for the discriminatory treatment or outcome. These mechanisms or practices may have been put into place with the explicit aim to exclude certain immigrant or





minority group member, but they can also result in discriminatory effects unintentionally.<sup>5</sup> The following five sub-categories show the broad variety of structural discrimination.

(5) **Indirect discrimination** is a form of structural – intentional or unintentional – discrimination. Apparently neutral, non-discriminatory practices or mechanisms in practice discriminate against certain minority group members (see Art. 2 (2b) RED). The treatment, based on inadequately justified factors other than ethnic origin or race, creates higher or even insurmountable hurdles for certain minorities and consequently generates ethnic inequality (Blank et al 2004: 40). Indirect discrimination occurs, for instance, in the recruitment process when specific skills or qualities are required that are not justified by the job activities (e.g. language skill at a native tongue level for construction workers or an unjustified minimum height restriction) or when an employer recruits new employees solely through the social and family networks of the current workforce (Wrench 2007: 119, see also Arrow 1998: 98).

(6) **Past-in-present discrimination** is a particularly severe type of structural discrimination that "involves apparently neutral present practices whose negative effects derive from prior intentional discrimination practices" (Feagin/Eckberg 1980: 12). Previous discriminatory practices that have been abolished continue to negatively affect the opportunities of immigrants or minority group members and their families – sometimes even in the second or third generation. If minorities used to face discrimination on the labour market and hence occupied primarily disadvantaged employment positions, then the legacy of these practices is likely to affect their own and their descendants' opportunities today (Wrench 2007: 119).

This type of discrimination has been extensively discussed in the United States for several decades – which is not surprising considering that in the U.S. racist segregation policies (abolished only in the 1950s and '60s) have created and reinforced societal structures of ethnic inequality which still persist. The European discourse on ethnic inequalities began only recently to take into consideration the effects of past-in-present discrimination.

(7) **Side-effect discrimination** – another type of structural discrimination – "involves practices in one institutional or organizational area that have an adverse impact because they are linked to intentionally discriminatory practices in another" (Feagin/Eckberg 1980: 13). Due to the interdependence of social spheres, discrimination in housing, for instance, may have negative consequences on, amongst others, the persons' health situation, employment opportunities and his/her children's education. Discrimination patterns in different spheres may therefore mutually reinforce ethnic inequalities. The mechanisms and extent of side-effect discrimination is also severely under-researched in Europe.

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<sup>5</sup> The aforementioned ICERD definition of racial discrimination stressed already in 1965 that discrimination may happen intentionally (following a certain "purpose") or unintentionally (having discriminatory "effects").



(8) **Legal discrimination** or ‘discrimination by law’ refers to unfavourable treatment of non-citizens based on legal provisions.<sup>6</sup> Legal or administrative provisions continue to be in force in many European countries that restrict the access to certain social institutions, including the labour market, for certain immigrant and refugee groups (Waldrauch 2001).<sup>7</sup> These provisions range from the (temporary) legal exclusion of asylum seekers from the labour market to the limited access of non-citizens to public service positions and the legal ban on Muslim headscarves for teachers. Although these provisions may be considered legitimate and therefore in compliance with national and European anti-discrimination laws, they create discriminatory barriers for certain groups of immigrants (Wrench 2007: 120).

(9) **Institutional discrimination** usually describes a complex system of discriminatory structures and mechanisms within an institution which results in reinforcing ethnic inequality. The term is often used in a rather broad, partly vague and (over-)generalised way, which makes it difficult to capture the concrete nature of the phenomenon it refers to. What adds to the inconsistent use of the term is the terminological confusion with others like structural or indirect discrimination or institutional racism – concepts that describe identical or similar mechanisms. Taking these terminological inconsistencies into consideration, Wrench defines institutional discrimination as “practices at the organisational level which have discriminatory outcomes” and which are rooted in a combination of various other forms of individual or structural discriminatory behaviours and mechanisms – intentional or unintentional (Wrench 2007: 122).

The third dimension of ethnic discrimination, **experienced discrimination (C)** or “subjective discrimination” (Olli/Olsen 2006: 16), is a cross-cutting category which may refer to any of the aforementioned types of interpersonal or structural discrimination. This concept applies a different view on the phenomenon of ethnic discrimination – ‘through the eyes of the minority member’ – and emphasises the individual experience of discrimination irrespective of whether “objective discrimination” (ibid.) has actually occurred or not. This subjective perspective must not be neglected since it is primarily the individual *experience* of discrimination – not so much the objective occurrence – that affects the immigrant’s or minority member’s psychological well-being and coping strategies. Experienced discrimination and the previously presented forms of actual discrimination (types 1-9) appear only loosely linked: on the one hand, discrimination often remains hidden and hence unnoticed and ‘un-

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<sup>6</sup> One of the most striking examples of blatantly racist laws is the former apartheid regime in South Africa, abandoned only in the early 1990s.

<sup>7</sup> Waldrauch (2001) conducted a remarkable analysis on the extent of legal discrimination in seven European countries. On the basis of a quantitative equality index, he examined the national legal framework in several areas: residence rights, family reunion, social rights (including social insurance and public welfare), civil and political rights, citizenship and access to employment (e.g. work permit regulations).



experienced', on the other hand, it appears likely that minority members and immigrants sometimes misinterpret a certain behaviour as discriminatory (see also section 4.5).

This classification of discrimination mirrors the complex nature of the phenomenon and illustrates how discriminatory practices and mechanisms operate on different levels. It offers insights that assist policymakers in the EU and the member states in sharpening their political and legal tools to redress ethnic discrimination. Moreover, in the academic field, this classification may encourage new research approaches; already existing research findings can be gathered and assessed more systematically which contributes to drawing a more valid picture of ethnic discrimination in Europe.

The following two chapters will briefly outline the political responses of the EU to (labour market) discrimination (Chapter 3) and subsequently present selected empirical findings from discrimination research and other relevant data sources (Chapter 4).

### **3 At a glance: Combating labour market discrimination on the EU agenda<sup>8</sup>**

In 2007 the EU celebrated the 50<sup>th</sup> anniversary of the Treaty of Rome – the EU's founding document that laid down one of its guiding principles: equal treatment of all Union citizens. Whereas this equality principle has been continuously enhanced since 1957, the political and legal struggle against ethnic discrimination has been largely ignored by the EU institutions for decades (Peucker 2008: 11). After some non-binding and rather symbolic political attempts to lift the issue of ethnic discrimination on the EU agenda in the 1980s<sup>9</sup>, it was only in the 1990s that the EU's struggle against ethnic inequality gained momentum. In 1995 the Parliament and the Council adopted several significant resolutions on ethnic discrimination.<sup>10</sup> In one of these EU documents, the Council addressed the issue of xenophobia and ethnic discrimination in the field of

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<sup>8</sup> The information used in this chapter stems from an analysis of official EU documents and websites; for more information on the EU's struggle against ethnic discrimination and racism, see Peucker 2008.

<sup>9</sup> The EU institutions started to discuss issue of racism and the revival of some fascist parties since the 1980s; however, due to the lack of political power, commitment and a legal basis, these debates were characterised by the unwillingness to move beyond symbolic declarations. The proposal that the Commission submitted to the Council for a resolution on racism (1988) already called upon the Member states to adopt anti-discrimination legislation. These early EU documents on racism – not so much on ethnic discrimination – remained without immediate effect.

<sup>10</sup> EP Resolutions on racism, xenophobia and anti-Semitism (Official Journal C 126, 22.05.1995; Official Journal C 308, 20.11.1995); Resolution of 5 October 1995 on the fight against racism and xenophobia in the fields of employment and social affairs (Official Journal C 296, 10.11.1995); Resolution of the Council on the response of educational systems to the problems of racism and xenophobia (Official Journal C 312, 23.11.1995)



employment (October 1995) and called upon the Member States to enhance their efforts to guarantee “protection for persons against all forms of discrimination on grounds of race, colour, religion or national or ethnic origin” and to fight “all forms of labour market discrimination”.

These resolutions appear to be the point of departure for EU anti-discrimination policies. In 1996 the EU Council adopted a joint action (96/443/JHA) to combat racism and xenophobia, which led to the foundation of the European Monitoring Centre on Racism and Xenophobia (EUMC, based on the EU Council Regulation No. 1035/97) in 1997 – the year that was also declared the European Year against Racism. This European Year exposed the topic of racism and ethnic discrimination more publicly visible and sparked off a broad range of initiatives mainly at a national and local level. This European Year also created a “favourable climate for political progress” (EU Commission 2006: 41) which contributed to several major political initiatives at the EU level, the most important one being the insertion of dedicated anti-discrimination provisions, namely Article 13, into the new EC Treaty – according to Vladimír Špidla, a “quantum leap forward in the fight against discrimination” (ibid.: 32). This Article 13 empowered the Council to “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

With the Treaty of Amsterdam the EU Member States officially agreed on this new policy field, and the issue of (anti-)discrimination continued its way up to the top of the political agenda of the EU – with Article 13 as a solid legal basis that had been missing before. Only one year after the Member States had agreed on the Treaty, the Commission presented an *Action Plan against Racism* (COM (98) 183 final), in which it explicitly called for a “response at European level” to racism and xenophobia. One core strand in the Action Plan is described as “paving the way for legislative initiatives”, i.e. intensifying the development of a common approach to combat racial discrimination through legislative means.

At the EU summit in Tampere (October 1999) the European Council called upon the Member States to “enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia” (Presidency Conclusion No. 18). Moreover, the EU Commission was invited to come forward as soon as possible with proposals implementing Article 13 of the EC Treaty.<sup>11</sup> Only one month later the Commission presented a comprehensive *Communication against discrimination* (COM/99/0564 final) accompanied by several legislative proposals to combat discrimination and, by doing so, delivered the cornerstones of the EU “anti-discrimination package”. In 2000, following this communication, the Council agreed on the *Community Action Programme to combat discrimination* (2001 –

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<sup>11</sup> Document available at: [http://www.europarl.eu.int/summits/tam\\_en.htm](http://www.europarl.eu.int/summits/tam_en.htm)



2006)<sup>12</sup> and on two outstandingly important anti-discrimination directives: the Racial Equality Directive (2000/43/EC), which bans discrimination on the grounds of race or ethnic origin in various social fields, and the Employment Equality Directive (2000/78/EC) banning discrimination on various grounds in particular in the employment sector. These two directives constitute – until today – the most concrete and significant legal steps in the EU-wide struggle against unequal treatment of migrants and ethnic minorities. In 2007 all national governments had introduced – albeit some of them rather reluctantly, belatedly or insufficiently – respective anti-discrimination legislation into their national labour and civil laws or amended already existing anti-discrimination acts.

In the subsequent phase of political consolidation (after 2000), the issue of anti-discrimination lost its prominent position on the political agenda of the EU. Whereas most national governments seemed to approve of this slowed-down development, the European Parliament criticised it (Peucker 2008: 12). In its non-legislative *Resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe*, adopted in June 2005,<sup>13</sup> the Parliament asserted that minority issues had not been prominent enough on the EU agenda. It stated that greater attention was needed through the adoption of legislative measures and the provision of financial support. The Resolution called for a coherent, integrated approach to equality and non-discrimination. However, for the time being, the equality directives passed in 2000 remain the only legally binding EU documents that deal explicitly with the struggle against ethnic discrimination – notwithstanding several more recent EU initiatives such as the *European Year for Equal Opportunity for All* in 2007 “designed to provide a new boost to make equal treatment a reality for everyone in the Union” (EU Commission 2006: 29).

As this brief outline on the emergence of anti-discrimination policies in the EU illustrates, ethnic inequality in the employment sector has been playing an important role in the EU’s anti-discrimination policies since the 1990s. Moreover, issues of labour market inequalities and ethnic discrimination have increasingly occurred on the EU’s agenda in the context of another policy field: the integration and settlement of immigrants. In the EU Commission’s 2003 *Communication on immigration, integration and employment* (COM (2003) 336 final) one chapter is dedicated to “combating discrimination” as a means of promoting integration especially in employment. In November 2004, the European Council adopted the Hague Programme, a Tampere follow-up programme which sets out the EU priorities for the next five years with a view to strengthening the Area of Freedom, Security and Justice. This

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<sup>12</sup> The six year lasting Community Action Programme to promote measures to combat discrimination and unequal treatment (with a budget of almost 100 Mio. EUR) aims at supporting the effective implementation of new EU anti-discrimination legislation on a national level by, among others, exchanging information and good practice in legislation.

<sup>13</sup> EP resolution T6-0228/2005, adopted on 8 June 2005





Hague Programme underscores that issues of anti-discrimination are closely linked to integration policies. In the Council's conclusion on eleven common basic principles of integration policies in the EU, all national ministers of the Interior and Justice agreed on the importance of the "access of immigrants to institutions as well as to public and private goods and services, on a basis equal to national citizens and in a non-discriminatory way".

When the EU started to systematically deal with issues of ethnic discrimination in the 1990s, one crucial shortcoming became obvious very soon: there was a serious lack of reliable and comparable information on discrimination in Europe. For the past ten years, a lot of progress has been made regarding the availability of insightful qualitative and quantitative data, on EU as well as on national level. Nevertheless, this lack of data continues to hamper the development and implementation of more effective anti-discrimination policies and initiatives (Peucker 2008: 15). In November 2006, the EU Commissioner for Employment, Social Affairs and Equal Opportunities, Vladimír Špidla, stated in the foreword to the European Handbook on Equality Data (2007):

"Policies and practices in all areas of life, including political, administrative and business life, should be based on objective and reliable data. No one can afford costly mistakes based on faulty assumptions. This also holds for issues regarding equal treatment. There is more need than ever to have – and to use – equality data. Yet all too often, the required data are lacking. And if the information is available, it is frequently incomplete or difficult to compare across borders. As a consequence, major gaps remain in our knowledge and understanding of discrimination issues." (EU Commission 2007: 3)

These "major gaps (...) in our knowledge and understanding" will never entirely vanish as the exact quantitative extent of ethnic discrimination cannot be uncovered – due to the complexity and the usually hidden character of discrimination. However, we can reduce these knowledge gaps through a multi-faceted and multi-disciplinary approach of approximation (Reuter/Makkonen/Oosi 2004: 26; Olli/Olsen 2006). Employing such a multi-dimensional approach, the following section will present selected data and information from various empirical sources to illustrate what is already known about labour market discrimination of ethnic minorities and immigrants.

## **4 Empirical insight: ethnic discrimination in the labour market**

Although quantitative and qualitative discrimination research studies have not managed to entirely unveil ethnic inequalities in the labour market, they succeeded in empirically proving the existence of ethnic discrimination and in providing insights into the nature of this multi-faceted phenomenon. Taking into consideration other sources, such as victim and attitudes surveys and the analysis of relevant court cases, a more detailed and valid – though barely representative – picture of labour market discrimination can be drawn.



## 4.1 Statistical analysis – valid data on labour market inequality, but no proof of direct discrimination

In most European countries, official statistics on the employment situation of foreigners, foreign born migrants or – rarely – ethnic minorities are available and illustrate that these persons occupy on average disadvantaged positions in the labour market. Although this does not hold for all immigrant groups, immigrants are often more affected by unemployment, tend to be overrepresented in low-paid and less secure jobs with worse working conditions and underrepresented in occupational sectors that are characterised by better payment and working condition and a higher level of professional ‘prestige’. In particular in highly qualified jobs in the service sector and the public services, immigrants are severely underrepresented in many European countries. This persistent disadvantaged position in the labour market may be interpreted as an indicator of the operation of some form of structural discrimination (e.g. indirect, past-in-present or side-effect discrimination) – in particular if these disparities continue to occur for a long time and over more than one generation. However, these statistics may also suggest the operation of direct discrimination, provided these disparities remain when in a statistical analysis all factors of human capital that are relevant to the occupational success (in a discrimination-free situation) are controlled for.

Such a sophisticated statistical analysis approach (usually regression analysis) has been employed by many researchers using national census data or other large datasets. The findings of these statistical studies repeatedly concluded that the disparities between natives and immigrants are not fully explicable by employment-relevant factors (human capital) and that discriminatory practices seem to worsen the employment situation of (some) immigrant groups. The two German social scientists, Kalter and Granato (2001) analysed German micro-census data on the labour market situation of German and non-German employees from, amongst others, Turkey and former Yugoslavia. Controlling for educational qualification, nationality, generation, gender and age, they found that the effects of nationality clearly diminished for the second generation immigrants, but did not vanish completely. The remaining “residual factor” suggests – but does not prove – that direct discrimination deteriorates the employment chance of certain immigrant groups.

In its 2007 Annual Report the Fundamental Rights Agency (FRA; formerly EUMC) presented more recent research findings gained through a similar methodology in other member states. The Swedish Board of Integration, for instance, concluded in its Integration Report (2005) that the different employment rate of natives and foreign-born immigrants cannot be fully explained by factors such as age, level of education, civil status or the duration of residence. Similar research findings on the disparities between immigrant groups and majority population regarding the level of unemployment, job security and income have been reported from France and Belgium (FRA 2007: 46).



Although such statistical research approaches indicate the operation of discriminatory practices, they provide neither empirical proof of discrimination nor insights into these mechanisms of unequal treatment. Different methodological approaches are needed – approaches that enable researchers to move closer to the real life situation in which discrimination is suspected.

## **4.2 Doesn't leave room for interpretation: 'real life' discrimination testing**

Discrimination testing, also known as matched-pair or situation testing, is commonly considered one of the most insightful methodological approaches to detect and measure ethnic discrimination in the labour market. The basic idea of this approach is simple and convincing: under discrimination-free conditions, two persons with the same skills and qualifications should have the same chances when applying for a vacant job position irrespective of their ethnic or immigrant background. Based on this equality assumption, two persons with the same skills and qualifications ("matched") – one of them being a non-immigrant majority member, the other one being (or pretending to be) a member of a immigrant or minority group – apply for the same advertised job vacancy. The response of the gatekeeper (i.e. employer or personnel manager in charge) is then systematically recorded, and the chances of the alleged minority member are analysed in comparison to the chances of the majority member test person.

Applying this quasi-experimental, "real world" testing method, researchers have succeeded in providing empirical and defensible facts on the occurrence of ethnic discrimination in the recruitment process. Since the 1990s, the International Labour Organisation (ILO) has commissioned such discrimination testing projects in Belgium, Denmark, France, Germany, Italy, the Netherlands, Spain and Sweden as well as in Switzerland and the United States (cf. Zegers de Beijl 2000). The results of these testing projects showed that "applicants of migrant origin had to apply four to five times" more often than applicants of national background with equivalent skills, education and experience (Taran 2007: 3). In other words, a "person perceived to be a non-immigrant is given a chance of a job much more frequently than a person perceived to belong to an immigrant minority" (Gächter 2005: 142). The following chart shows some of the findings of testing studies in several European countries:




**Tab. 2 Results from discrimination testing projects in seven European countries**

	Completed cases	A chance for a job was given to ... (per-cent)				Net discrimination*
		<i>Both</i>	<i>National</i>	<i>Migrant</i>	<i>Neither</i>	
Belgium	637	5.8	<b>41.8</b>	<b>8.5</b>	44.0	33
Denmark	231	0.4	<b>24.7</b>	<b>7.8</b>	67.1	17
Germany	333	42.6	<b>9.9</b>	<b>0.0</b>	47.4	10
Italy	621	7.4	<b>39.0</b>	<b>3.9</b>	49.8	35
Netherlands	235	0.0	<b>28.9</b>	<b>1.7</b>	69.4	27
Spain	468	1.9	<b>33.1</b>	<b>3.8</b>	61.1	29
Switzerland	1,369	33.2	<b>14.0</b>	<b>0.4</b>	52.4	14

\* *Net discrimination refers to the difference between the chances for a 'national' applicant and the chances of a 'migrant' applicant to be given the job in question.*

*Source: Gächter 2005: 142*

A recently concluded Swedish research study (not commissioned by the ILO) that applied the same research method of discrimination testing found that applicants with an allegedly Muslim/Arabic background are treated less favourably than native Swedes in the recruitment process. Between May 2005 and February 2006, 1,552 job ads, posted at the homepage of the Swedish Employment Agency, were tested.<sup>14</sup> It was found that "applicants with a Swedish name received fifty percent more callbacks for an interview" (Rooth 2007: 2) and that almost 30 percent of the employers discriminated against the allegedly Arabic (male) applicants (Carlsson & Rooth 2006: 2).<sup>15</sup>

<sup>14</sup> In 1,030 cases neither applicant was invited to a job interview and in the remaining 522 cases at least one of the applicants received an invitation to an interview. In 217 cases only the Swedish-named applicant was invited, in 66 cases only the Arab/Muslim-named applicant (Rooth 2007: 5).

<sup>15</sup> The aforementioned FRA Annual Report presents several recent discrimination testing studies in other European countries (e.g. France, Hungary), which all discovered discriminatory mechanisms in the access to employment (FRA 2007: 58-9).



### 4.3 Let's just ask them: qualitative interviews with gatekeepers

Although discrimination testing methods are among the most suitable instruments for obtaining reliable, statistically relevant and to some extent valid data on discrimination in the access to employment, one important question remains unsolved: *why* do gatekeepers discriminate against certain migrants or minority members? If we want to learn more about the subjective motives of employers and personnel managers, we have to ask them directly. It is not an easy task to elicit statements about their discriminatory decisions and behaviours, but researchers have managed to gain deeper insights by applying a particularly sensitive qualitative research design with in-depth qualitative interviews. This research approach is suitable for obtaining valid data on discrimination, but fails to generate statistically relevant and representative data due to its qualitative methodology.

In 2006, a German research team carried out an empirical study examining, amongst other things, obstacles that Turkish second generation migrants face in the German labour market (Gestring/Janßen/Polat 2006). In addition to quantitative statistical methods, the researchers conducted qualitative interviews with gatekeepers and found that their hiring decisions are not only guided by relevant factors like education, qualification and work experiences of the applicants, but also by certain cultural stereotypes, prejudices and partly xenophobic resentments towards Turkish migrants (ibid.: 162-4). Turkish applicants were often ascribed negative traits and attitudes (not reliable, lower work ethic, not interested in further training). Some of the interviewed gatekeepers considered male Turkish migrants incapable of team work or of working as a salesperson due to their macho attitudes or their lack of "professional humbleness" (ibid.: 164); the majority of the interviewed gatekeepers either explicitly refused to hire Turkish women who wear a Muslim headscarf (hijab) or expressed that they were very sceptical towards employees with headscarves.

The research team found that gatekeepers in the labour market discriminated against Turkish immigrants for different reasons, which can be categorised as follows (ibid.: 165-6):

Personal prejudices, negative stereotypes (in combination with a lack of information about the individual applicant) and resentments towards Turkish immigrants (resentment-based discrimination and statistical discrimination)

Anticipation of negative economic consequences due to their costumers' ethnic prejudices or preferences of non-immigrant employees (societal discrimination)

Anticipation of conflicts within the company between German and Turkish employees (societal and statistical discrimination)

Such qualitative research studies provide indispensable empirical insights into the subjective perspectives and motives of gatekeepers. Although these findings cannot be generalised and



do not allow for any quantitative conclusions on the extent of discrimination in the labour market, they shed new light upon underlying mechanisms of unequal treatment.

#### **4.4 Attitudes surveys: insightful contextual information, but no direct conclusion on discrimination**

In numerous academic publications, discriminatory behaviour is – explicitly or implicitly – described as a manifestation of negative attitudes towards ethnic minorities and immigrants. However, such an assumed causal association between prejudices and discrimination appears valid only for certain types of unequal treatment (i.e. resentment-based discrimination). As a general explanation of discrimination such assumptions are to be rejected since they fail to reflect the complex nature of discrimination. On the one hand, gatekeepers may discriminate against immigrants or ethnic minority members for other reasons, e.g. to avoid conflicts with other employees (societal discrimination); on the other hand, gatekeepers who do have resentments towards immigrants may not display them for economic or social conformity reasons (Heckmann 1992: 125-127).

Nevertheless, surveys on the majority's attitudes towards immigrants and minorities can provide relevant contextual information on the societal climate in which discrimination occurs and on the potential disposition of individuals to discriminate since someone with strong xenophobic resentments seems to be more likely to show discriminatory behaviour.<sup>16</sup>

Numerous attitude surveys on anti-immigrant attitudes have been conducted in various European countries, many of them unveiling anti-immigrant attitudes in the majority population. In March 2005, the EUMC released the report "Majorities' Attitudes Towards Minorities", based on the results of the European Social Survey in 2003 and several rounds of the Eurobarometer survey. The special analysis of these European surveys provided valid and reliable evidence on how widespread anti-immigrant attitudes were in Europe. According to the European Social Survey 2003, for instance, a majority of 58 percent of all respondents in Western and Eastern European societies expressed a "perceived collective ethnic threat" – an attitude which is considered "an explanatory determinant of many exclusionist stances" (Coenders/Lubbers/Scheepers 2005: 7); this category was generated on the basis of items such as:

Do immigrants take jobs away or create new jobs?

Is immigration bad or good for the economy of your country?

Is the cultural life undermined or enriched by immigrants?

Do immigrants make your country worse or better place to live?

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<sup>16</sup> Although there is no direct causal relation between attitudes and action, racist or ethno-centric attitudes and discriminatory behaviour can interact and mutual shape one another (Rubinstein 2006: 97-98).



Furthermore, the survey results showed that one out of five respondents wishes to avoid social interaction with migrants and minorities (ibid.: 6); this category of “favour ethnic distance” was based on items such as “mind if your boss is an immigrant of a different ethnic group as majority”.

Such attitude approaches can be modified in order to enhance their methodological suitability of obtaining relevant contextual information on labour market discrimination. Improvements can be achieved, for instance, through a more narrow definition of the survey sample (e.g. surveys among employers only) and a specific questionnaire design (e.g. items which refer to behaviour) as the following example illustrated. The Danish Ministry of Labour commissioned a survey among 1,200 Danish private sector employers, conducted in 2000, on, amongst others, their hiring preferences; one quarter of the respondents stated “that they would not hire an immigrant or refugees to work in their firm under any circumstances” (Wrench 2005: 67). Such specific attitude surveys provide valuable background information – keeping in mind that even the most blatantly expressed anti-immigrant attitudes must not be confused with the actual behaviour in real life (for a historical examination of the question ‘attitude vs. action’, see: La Piere 1934).

The frequency of such sceptical or negative attitudes towards ethnic minorities among the majority population does not allow for any direct conclusion on the extent of actual discrimination, but it is to be taken into consideration as an indirect factor of unequal treatment. It appears plausible that in a society of widespread anti-immigrant, ethno-centric or xenophobic attitudes ethnic discrimination – resentment-based, statistical or societal – is more likely to occur.

## **4.5 Through the eyes of the minorities: subjective experiences of discrimination**

The previously presented sources of information on ethnic discrimination focussed on the discriminatory act itself or on those who (potentially) treat immigrants less favourably. What must not be neglected when examining the nature of discrimination, is the perspective of those who *experience* discrimination. There are essentially two data sources on this subjective perception of unequal treatment: victim surveys and documentation of complaints. Both sources do not allow for a direct, reliable conclusion on the actual extent of discrimination as they both may underestimate *and* at the same time overestimate the occurrence of discrimination: one the one hand, it appears very likely that immigrants sometimes misinterpret a certain act as discriminatory; on the other hand, discrimination usually operates in disguise and remains concealed and hence unrecognised and unreported. Despite these limitations, quantitative data on these subjective experiences offer insightful information on particularly vulnerable social spheres. Moreover, data on experiences of discrimination are indispensable for specific research studies that examine, for instance, the impact of (experi-



enced) discrimination on the individuals' coping strategies or their psychological well-being.<sup>17</sup>

As data on perceived discrimination are methodologically easier to obtain than data on actual discrimination, numerous surveys on experiences of discrimination in the labour market have been conducted across Europe. In Germany, for instance, the research institute *Zentrum für Türkeistudien* (ZfT), has been carrying out an annual survey among Turkish immigrants since 1999, which contains detailed questions on, amongst other integration related issues, experienced discrimination. According to the results of the latest survey round in 2006, 73 percent of the respondents stated that they had experienced unequal treatment in daily life. The employment sector seems to be a particularly vulnerable social area: 52.7 percent of the interviewed Turkish immigrants expressed that they had been discriminated against when trying to secure employment (Sauer 2007: 140-145).

In the aforementioned 2007 Annual Report the EU Fundamental Rights Agency presented further research findings from other EU countries that highlighted that immigrants and ethnic minorities experience discriminatory barriers in the employment sector. In the Netherlands, a study, commissioned by the Dutch Ministry of Justice, found that approximately 60 percent of a representative sample of job-seekers of Moroccan and Turkish origin stated they had "suffered rejections because of their origin" and one out of four interviewees reported harassment or discrimination in the workplace (FRA 2007: 59-60).

The statistics of complaints related to experienced discrimination in employment is the second major source of information on experienced discrimination. In most European countries specialised anti-discrimination bodies have been set up on a national, regional or local level which collect and process complaints of ethnic discrimination. Although these complaint statistics reflect not only the actual frequency of perceived discrimination, but also – and probably even to a larger extent – the accessibility of respective complaint bodies and the general tendency to report such cases (Wrench 2005: 61), these figures underscore that the labour market is a vulnerable social sphere in which immigrants and minority members continuously make experiences of discrimination. This can be illustrated by statistics from the United Kingdom, known for its effective and accessible anti-discrimination complaint system: in 2003, the Commission for Racial Equality (CRE)<sup>18</sup> received a total of 903 applications for assistance in a case of experienced racial discrimination; 54 percent (i.e. 486) of these applications were related to employment matters (CRE 2004: 19-20). In 2005/06, the

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<sup>17</sup> When examining such socio-psychological effects of unequal treatment (e.g. association between experienced ethnic discrimination and tendencies of re-ethnisation), the subjective perception of discrimination is more relevant than the empirically proven operation of actual discrimination (see, for instance, Skrobanek 2007).

<sup>18</sup> On 1 October 2007, the CRE merged together with the Disability Rights Commission and the Equal Opportunities Commission into the new Equality and Human Rights Commission.



British Advisory, Conciliation and Arbitration Service (ACAS) received 2,521 race discrimination claimants in the employment sector; 1,064 of these cases were settled, 773 withdrawn and 580 reached the Employment Tribunal (Hudson et al. 2007: 16).

## **4.6 Evidence and qualitative insights from the court room: analysis of juridical decisions**

Court rulings constitute a particularly insightful source of detailed information on individual cases of actual discrimination, which contribute to a deeper understanding of the underlying mechanisms of labour market discrimination. This data source is expected to play an increasingly important role in the future of European anti-discrimination research due to the fact that the legal anti-discrimination framework has been significantly enhanced in EU countries since the member states have transposed the Racial Equality Directive.

Rulings from courts all over Europe have provided empirical evidence of the persistent operation of legally unjustified unequal treatment of minorities and immigrants in the labour market, predominately regarding the access to employment (i.e. rejections of applicants) and unfair dismissal. A tentative examination of these judicial verdicts confirms the existence of certain discriminatory mechanisms and motives of gatekeepers, previously uncovered by qualitative research studies (see above); such an examination is, however, largely limited to cases of unlawful discrimination and is barely suitable for providing representative data.

One of the most prominent and insightful court decisions on unequal treatment in Germany (Ref. No. 2 AZR 472/01) dealt with the dismissal of a saleswoman of Turkish origin due to her Muslim headscarf. In October 2002, the German Federal Labour Court overruled previous lower instance decisions and held that the dismissal was unlawful and hence void since it constituted a violation of the constitutional freedom of religion. During the trial, the employer explained his reasoning for the dismissal: he intended to avoid negative economic consequences which he anticipated in case the saleswoman kept wearing her headscarf. This argument was rejected by the court; it pointed out that the employer's economic concerns do not outweigh the employee's freedom of religion (Schieck 2004).

Several court cases on ethnic discrimination regarding the access to the labour market are presented in the FRA Annual Report 2007. In France, a young French woman with dark skin who applied for a job as a hairdresser was rejected by the manager of the salon due to her skin colour. The manager declared to the Employment Inspector, who was sent to investigate the incident, that "she 'felt better' with white employees because it better suited her customers" (FRA 2007: 53). The Court sentenced the manager to pay a fine due to unlawful discrimination. A similar case was reported from Latvia, where an unemployed Roma woman was sent by the State Employment Agency to a vacant job as a salesperson, but was immediately refused the job by the employer. During the subsequent court case, the em-





ployer “argued that the ‘look’ and ‘outfit’ of the applicant did not correspond to the requirements of the shop”. The Court ruled that the rejection of the Roma woman constitutes an act of indirect discrimination on ethnic grounds and sentenced the defendant to pay compensation to the plaintiff (FRA 2007: 52).

## 5 A three-fold conclusion

Based on this preliminary look at selected data sources and research findings, a three-fold conclusion on ethnic discrimination in the labour market can be drawn.

(1) Although the quantitative extent of ethnic discrimination in the labour market remains concealed, there is sufficient empirical evidence to prove that unequal unjustified treatment of minorities and immigrants persists in European societies. In particular discrimination testing projects have contributed to eliminating doubts about the existence of discriminatory barriers for minorities regarding the access to the labour market.

(2) Qualitative research studies and other sources have illuminated the nature of ethnic discrimination by providing valid and empirical insights into various types of discrimination as outlined in the classification in chapter 2. This is particularly true for resentment-based, statistical and societal (direct) discrimination. Through in-depth interviews and the analysis of court cases, for instance, convincing evidence has been gathered that indicates that societal discrimination plays an important role: gatekeepers who discriminate against ethnic minorities in the recruitment process tend to justify their behaviour by referring to their costumers’ negative attitudes towards minorities. The question as to whether this line of argumentation accurately describes their “true” motives or whether it is just used to hide their personal resentments remains unsolved.

Regarding typical patterns of discrimination, it is also worth mentioning that both discrimination testing results and interviews with gatekeepers concluded that direct discrimination appears to be more prevalent in small businesses rather than in large companies and more in the service sector rather than in other sectors, such as construction and industry (Taran 2007: 3; Gestring/Janßen/Polat 2006: 164-5).

(3) Despite these insights into the mechanisms of ethnic discrimination the labour market, the phenomenon of unequal treatment continues to be severely under-researched, with many questions remaining unsolved; this holds true for all forms of unequal treatment and ethnic inequalities, but in particular for structural discrimination. In some European countries, especially in those where anti-discrimination is a fairly new policy field, policymakers and researchers as well as the judicial system seem to struggle to fully grasp the concept of structural discrimination. These countries can learn from other member states where remarkable efforts have been made to uncover mechanisms of direct and indirect discrimination. There are promising developments in some countries: in Sweden, for instance, a recent



research study uncovered the discriminatory effects of social networks in the recruitment process (Segendorf 2005) – a research approach that could be adopted in other European countries to learn more about such practices of indirect discrimination.

Other forms of structural discrimination – chiefly side-effect and past-in-present discrimination – are severely neglected in discrimination research in Europe. As these forms of indirect discrimination are usually hard to come by with legal means and therefore require other political remedies, policymakers and other stakeholders need to develop alternative political and civic mechanisms to redress these hidden forms of inequalities; this can only be accomplished on the basis of reliable and accurate information – which should be provided through new and innovative research studies.

It remains a challenge to gain deeper knowledge on the extent and nature of ethnic discrimination across Europe. But even the most valid and objective insights into the phenomenon of ethnic inequality and discrimination are doomed to remain useless unless they are translated into action. Civil society actors and policymakers on all levels – from the EU institutions to the municipalities – must be (made) aware of the prevalence and diverse occurrences of ethnic discrimination in order to enable them to develop and sharpen their legal and political tools. Therefore, the cooperation of and exchange between research, policymakers and civil society is indispensable for the effective redress of ethnic inequalities.





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