

INTERNATIONAL MIGRATION PAPERS

91

Legal prohibitions against employment discrimination available to migrant workers employed in Europe:

**A review of international instruments and
national law in four selected countries**

Marilyn O'Rourke



INTERNATIONAL MIGRATION PROGRAMME

INTERNATIONAL LABOUR OFFICE GENEVA

Copyright © International Labour Organization 2008
First published 2008

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to the ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: pubdroit@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered in the United Kingdom with the Copyright Licensing Agency, 90 Tottenham Court Road, London W1T 4LP [Fax: (+44) (0)20 7631 5500; email: cla@cla.co.uk], in the United States with the Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923 [Fax: (+1) (978) 750 4470; email: info@copyright.com] or in other countries with associated Reproduction Rights Organizations, may make photocopies in accordance with the licences issued to them for this purpose.

ILO Cataloguing in Publication Data

Marylin O'Rourke.

Legal prohibitions against employment discrimination available to migrant workers employed in Europe: A review of international instruments and national law in four selected countries; International Labour Office.- Geneva: ILO, 2008, 78 pages

ISBN 978-92-2-121181-5 (print version)

ISBN 978-92-2-121182-2(web pdf)

© International Labour Office

Discrimination/International Instruments/National Laws/France/Italy/Sweden/United Kingdom

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address, or by email: pubvente@ilo.org

Visit our website: www.ilo.org/publns

Printed in Switzerland

TABLE OF CONTENTS

I. INTRODUCTION	5
II. INTERNATIONAL LAW	9
A. United Nations	9
1. Universal Declaration of Human Rights	9
2. International Covenant on Economic, Social and Cultural Rights	10
3. International Covenant on Civil and Political Rights	11
4. International Convention on the Elimination of All Forms of Racial Discrimination	11
5. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	12
B. International Labour Organization	13
1. ILO Conventions	13
2. Discrimination (Employment and Occupation) Convention	14
3. Migration for Employment Convention	15
4. Migrant Workers (Supplementary Provisions) Convention	16
III. EUROPEAN LAW	17
1. Background	17
2. Convention for the Protection of Human Rights and Fundamental Freedoms	18
3. Background regarding Non-binding action against discrimination taken by the European Union prior to its issuance of directives	19
4. Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin	20
5. Council Directive 2000/78/EC establishing a national framework for equal treatment in employment and occupation	23
IV. NATIONAL LAW	25
A. Italy	25
1. Constitutional Provisions	25
2. Legislation.....	26
a. Workers' Act of 1970	26
b. Act No. 286 of 1998 regulating immigration and the legal condition of foreigners	27

c. Legislative Decrees No. 215 and 216	28
B. Sweden	30
1. Constitutional Provisions	30
2. Legislation	30
a. Prohibition of Discrimination Act	30
b. Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief Act	32
C. United Kingdom	33
1. Background	33
2. Legislation	34
a. The Race Relations Act	35
b. Race Relations (Northern Ireland) Orders	36
c. Employment Equality (Religion or Belief) Regulations 2003	36
d. Fair Employment and Treatment (Northern Ireland) Order 1998 and Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003	37
D. France	38
1. Constitutional Provisions	38
2. Legislation	38
V. AN OVERVIEW AND COMPARISION	41
VI. SUMMARY AND CONCLUSIONS	44
INTERNATIONAL INSTRUMENTS AND NATIONAL LAWS.....	46
References.....	50
Annexes.....	53

PREFACE

Policies on labour migration include measures of different types and pursue the realization of a number of objectives. In countries of destination, some policy measures are aimed at governing and managing flows with a view to adjusting the number and skill profiles of incoming migrant workers to the needs of labour markets. They may also be intended at facilitating or controlling the flows of family members reuniting with migrant workers already present in countries of destination. Policy measures may be meant to provoke flows in the opposite direction, in the sense of encouraging return migration to countries of origin.

But migration policies of destination countries also pursue objectives with respect of the governance and management of their stocks of migrant workers and members of their families. When labour migration matures and there are large numbers of resident migrants, their integration in labour markets and societies becomes a prime concern. Social cohesion is a fundamental value of democratic countries that they are keen to preserve. Policy measures of different types are aimed at ensuring the integration of migrant workers and their families. They essentially pertain to the labour market, education and other social policy areas.

However, the point of departure for all integration policies lies in combating discrimination against migrant workers and in ensuring their equality of treatment with native workers. Equality and non-discrimination are fundamental principles of democratic policies aimed at guaranteeing their social cohesion. Thus, the route to social cohesion through integration begins with measures for equality and non-discrimination.

Equality and non-discrimination have both moral and functional values. It is an ethical principle to treat all human beings equally, without discrimination, in their work and lives. But equality and non-discrimination also ensure that societies are not segmented and do not function at varying speeds and according to different rules.

Different rules for the same societies privileging natives over migrants would end up in one of two consequences or in both at the same time. More costly, natives would see their living and working conditions undermined. Equality of treatment is the most effective protection for native workers. Segmentation and different rules would also prevent migrants from developing their full potentials and deprive countries of destination from contributions they can make to their economies and societies. Threats to natives' working and living conditions and the sense of injustice among migrants can lead to frictions, which can endanger stability and civil peace. Equality and non-discrimination enable societies to draw the most and the best from their populations, national and migrant, present in their territories.

Given the above considerations, the ILO International Migration Programme has wished to undertake research on provisions on non-discrimination against migrant workers and their families in the legal systems of a number of European countries. These provisions include obligations under the three-tiered systems of Member States of the European

Union: the international level, the European Community level and the national level. The international level includes instruments adopted under the United Nations aegis and the ILO's international labour conventions.

The research has borne on two old and two new immigration countries: France and the United Kingdom, on the one hand, Sweden and Italy, on the other.

The ILO International Migration Programme wishes to thank Ms. Marilyn O'Rourke for undertaking the thorough research, which is now published in the International Migration Papers series. It hopes to thus be serving international cooperation by facilitating the exchange of experiences among ILO constituents. The examples of the four European countries may also inspire policy makers in other members of the Organization and be adapted for their purposes. The comparative perspective adopted by the paper can also be useful to the same members of the EU, since it sheds light on similarities and differences, despite the common Community framework. Finally, researchers may find it helpful in their efforts to lay the conceptual groundwork for the development of policies on non-discrimination, equality and the integration of migrant workers and their families.

Ibrahim Awad
Director
International Migration Programme

I. INTRODUCTION

Apart from the many difficulties surrounding the experience of living and working in a country other than their own, migrant workers often experience discrimination in employment because they are not nationals of the countries in which they work and are different in other ways related to their minority status as non-nationals (non-citizens). Discrimination begins at the recruitment, or hiring, stage. Once migrant workers have found work, they are often confronted by other forms of discrimination, such as in their pay, terms and conditions of work, and promotion opportunities. And they not only have difficulty in finding a job, but may have trouble keeping it. They may be hired at times of labour shortages, but then are the first to be dismissed when the employer has less work.

This paper will look at the question of what legal recourse migrant workers may have when they have been subjected to discrimination in work and employment, including access to employment in the first place. It will review laws and instruments that are potentially applicable to migrant workers employed in Europe who have been victims of employment discrimination. Because citizens of the European Union have equal employment rights in any other European Union country in which they work by international agreement (see Section III.A below), the discussion will focus on the rights of migrant workers from third, or non-European Union countries.

The term “employment discrimination” will apply here to conduct taking place during the experience of recruitment and hire of the migrant worker, the work and employment experience once the migrant worker has begun work, and termination of the migrant worker’s employment—but *only* applies to the experience that takes place in the destination country, that is, after the migrant has arrived in the destination country. Thus, while it does not cover the training, recruitment, and hiring processes that take place in the migrant’s home country, it does cover those that take place in the destination country. Also covered are some events that take place after the migrant worker has lost employment while he or she is still in the destination country. For example, if a layoff or redundancy decision results in a migrant worker and others losing their jobs, and if the migrant worker is still in the country and available for work when business picks up again, the employer’s decision of which workers to recall to work when business picks up is an event which is covered. Thus, the specific protections against discrimination that will be reviewed in the laws and instruments below are only those which apply to conduct taking place in the destination country, but sometimes include conduct taking place before recruitment and selection (before hire) and after termination of employment, depending on the particular situation.

Inasmuch as the discussion will be confined to conduct taking place in the destination country, it does not delve into immigration law, or the decision of countries on the admission and stay of foreign nationals and foreign workers, a sphere recognized as within the sovereign right of states to develop their own migration policies. However, if a migrant has entered the country and has the legal right to work or has *actually* worked, any legal right to be free from discrimination which exists will be included within the

discussion below. As will be seen, even those migrants in irregular status, once they have actually worked in countries not their own, are sometimes protected from discrimination with regard to certain aspects of work and employment.¹

Discrimination in employment concerns treating individuals differently--not because of their qualifications and capabilities or lack of such for the work in question--but because of certain, external characteristics not relevant to the ability to perform that work. The question of concern here is the reason why migrant workers may experience employment discrimination, that is, what external characteristics most often motivate employers' differential treatment of them. This is the question of what it is about them that is different from nationals, and, more specifically, whether they have any legal recourse when they are treated less favourably than other workers because of those differences. Whether a particular migrant worker has any legal recourse depends on whether he or she fits within a category that a law-making body has decided is a legally prohibited, discriminatory ground on which an employer may not make an employment decision.

How are migrant workers most often different? They are, of course, by definition different than the majority of other workers in the country simply because they are not nationals. However, the admission of foreign nationals for the purpose of work is considered a question left up to sovereign states, and discrimination on the ground of nationality is often not included as a prohibited ground of discrimination in employment law, although there are exceptions in some countries, as shown below. For this reason, it is usually necessary for migrant workers to turn to other, specified prohibited bases of discrimination under which they may fall for legal protection from discrimination--bases available to national workers as well. Indeed, it may be those other bases which motivate employers' discriminatory conduct just as much or more than non-nationality. For example, an employer may discriminate against individuals of a particular race in hiring, whether they are non-nationals or citizens of the country. Both non-nationals and nationals are victims of his discrimination. Likewise, in hiring only those of the race he prefers, he may not care whether they are nationals or non-nationals. While the reason for the discrimination is not migrant status, a migrant worker of the race discriminated against may use race as a basis for a discrimination claim, as may the national worker discriminated against on racial grounds.

The most basic protection for any human being is on the ground of human rights. As for migrant status, there are a few instruments which require equal treatment of migrant workers in certain respects based on their status as migrants, and there are some other

¹ The law regarding migrant workers' rights to earn and transfer social security benefits is not covered in this paper. For information on the complex, technical body of laws and regulations on this subject applicable to migrant workers employed in Europe, see, for example, <http://eurlex.europa.eu/en/report/0520.htm> (Section 05.20.40.20); and the following ILO Conventions—Equality of Treatment (Accident Compensation) Convention (No. 19) and Recommendation No. 25, 1925; Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48); Equality of Treatment (Social Security) Convention, 1962 (No. 118); Maintenance of Social Security Rights Convention (No. 157) and Recommendation No. 167, adopted respectively in 1982 and 1983, <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C019>; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C048>; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C118>; <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C157>.

instruments and laws which protect them against discrimination on the basis of their nationality. However, in most of the legal prohibitions against employment discrimination reviewed below, discrimination on the basis of migrant status or non-nationality status is not covered, and, in fact, may be expressly exempted. This does not mean that migrant workers or non-nationals are not entitled to put forth claims of employment discrimination. It means that migrant workers who have experienced employment discrimination may only have recourse by turning to *other* grounds of relevance to their situation. These other grounds most often are national origin, ethnic origin, race, colour, religion, and language.

With the exception of nationality, which is a clear, “either-or” status based on a state’s legally conferring citizenship on an individual or not, other grounds in employment discrimination law are not easily defined and, in fact, are often left undefined in the language of the instruments and legislation themselves. Moreover, they are certainly not consistently defined, as will be seen below. While nationality refers to one’s status as a citizen or non-citizen of the country, national origin is a concept that may apply to both citizens and non-citizens alike. It generally refers to foreign ancestry or foreign birth. Ethnic origin normally refers to a set of characteristics, or belonging to a group which is different from the dominant society by virtue of characteristics such as race, religion, language, culture, or other things. With regard to race, the consensus today is that separate human races cannot be distinguished, so employment discrimination law leaves it up to the individual to identify his or her race.² In fact, all of these terms—national origin, ethnic origin, race, and colour—are generally left to the self-identification of the alleged victim of discrimination in employment discrimination claims. That is, it is for the victim to identify his or her race, national origin, ethnic origin, or colour and show that he or she has been discriminated against because of a difference from others with a different race, national origin, ethnic origin, or colour who are similarly situated.

Moreover, some of the above terms are used interchangeably. For example, sometimes the term national origin is included within the definition of race or some other ground. And sometimes it is the reverse; that is, the term race is included within national origin. Many different variations exist in the law and crisscross each other, as will be seen below. Thus, it is probably more sensible to simply recognize that the employment discrimination laws discussed below cover race, national origin, ethnic origin, and colour in some form or another.

It should also be recognized that migrant workers may experience employment discrimination for multiple reasons, or multiple, prohibited grounds. There can be a blurring of the boundaries between some of the grounds. For example, in some instances, as noted, ethnic group is defined to include groups which also share a religion. In some

² For example, in Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 2000, it is stated that the European Union rejects theories which attempt to determine the existence of separate human races; race is not defined in the Directive, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:EN:HTML>. See also International Labour Law, N. Valticos and G. von Potobsky, 2d ed., 1995, p. 120.

cases, those of a particular religion are predominantly from one racial or ethnic group.³ Language is usually tied to national or ethnic origin. Further, it is important to note that many different situations may exist. There are situations where migrant workers may even be more similar to some national workers at their place of employment who are members of their same minority group than they are to some other migrant workers. But even if some national workers are also receiving discriminatory treatment, that does not preclude the migrant worker from receiving legal protection. The national worker and the migrant worker may have the same legal claim.

The laws and instruments discussed below will be those international instruments, treaties, and laws which apply to Europe, and the constitutional and statutory provisions relevant to employment discrimination for four selected countries. Two of the countries, Italy and Sweden, are more recently experiencing the employment of migrant workers in greater numbers, while the United Kingdom and France have had a longer history of the employment of migrant workers in large numbers. International instruments are reviewed first. The next topic is European legal requirements, including two important European Council Directives pertaining to employment discrimination, which have recently resulted in significant legal changes across the European Union and which are sure to result in greater advances in protection for workers in the future as the law further develops in each country. Then, significant legal provisions in the four selected countries contained in both their constitutions and legislation will be presented. After the presentation of the international instruments and laws and national constitutional and legislative provisions, tables are provided to show important aspects of them in nutshell form, which should be useful for understanding at a glance what each provides and for more easily comparing them. A comparative discussion of the information summarized in the tables is presented, and finally a summary and conclusions.

In many cases, the instruments, constitutions, and legislation provide protection against discrimination on additional grounds than those discussed above, such as sex, disability, or age. To avoid unnecessary confusion, it was considered better not to mention those other grounds at all here. This is not to say, of course, that a migrant worker may not suffer from employment discrimination on those other grounds and be entitled to legal recourse. It is only to say that they are normally of no or little relevance to migrant worker status, in contrast to the grounds of nationality, national origin, ethnic origin, race, colour, religion, and language.⁴

³ Religion and Belief Discrimination in Employment – the EU law, Lucy Vickers, 2006, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/07relbel_en.pdf, pp. 34-35.

⁴ A discussion of case law is not included in this paper, as it is too voluminous and complex for the purpose at hand. With regard to references cited, they are, for the most part, direct links to the instruments, constitutions, and legislation discussed. The only exception is in the case of legislation for Italy and France, which was not available in English translations. Sources used for the latter were country reports on discrimination law from national experts in this area.

II. INTERNATIONAL LAW

A. United Nations

Three instruments together comprise the International Bill of Human Rights⁵--the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. All contain provisions addressing discrimination and employment of potential relevance to migrant workers. The Universal Declaration of Human Rights sets forth general principles or standards of human rights. The Covenants, in contrast, are legally binding on those States which have accepted them by ratification or accession.⁶

1. Universal Declaration of Human Rights

Very early in its history, the General Assembly of the United Nations sought to provide the right of the individual to be free from discrimination, including discrimination in employment, when it established basic rights for “human beings” in the Universal Declaration of Human Rights, 1948.⁷ With the adoption of the Declaration, the General Assembly proclaimed it “as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.”

The rights and freedoms set forth in the Universal Declaration are held by *all* persons, “without distinction of any kind, such as race, colour ... language, religion ... national ... origin ... ” (Article 2). Moreover, Article 7 provides that, “All are equal before the law and are entitled without any discrimination to equal protection of the law[; All] are entitled to equal protection against any discrimination in violation of this Declaration...” Articles 23 through 25 address the area of employment, including the “right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment,” the right “without any discrimination ... to equal pay for equal work,” the right to “just and favourable remuneration...” and the right “to form and to join trade unions” (Article 23). Article 24 addresses the right to rest and leisure, including “reasonable limitation of working hours and periodic holidays with pay.” With regard to the issue of limitations in the application of the Declaration, persons are subject only to “such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society” (Article 29(1)).

⁵ Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>.

⁶ Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>.

⁷ <http://www.unhchr.ch/udhr/lang/eng.htm> .

The Universal Declaration of Human Rights is truly universal in scope, as it applies to every member of the human family in every part of the world, regardless of whether or not states have formally accepted its principles.⁸ Article 8 states that everyone has the right to an “effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” If domestic remedies have been exhausted or it appears that they would be ineffective or unreasonably prolonged, a complaint can be filed with the United Nations Human Rights Council to address consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms occurring in any part of the world and under any circumstances. It can be filed by a person or group of persons claiming to be victims or by any person or group on their behalf claiming to have direct and reliable knowledge of the violations of human rights.⁹

2. International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights¹⁰ entered into force nearly three decades later, in 1976, after having been adopted in 1966. The Covenant requires States parties to take steps to achieve the rights contained in it by “all appropriate means, including particularly the adoption of legislative measures” (Article 2(1)). It speaks of rights for “all members of the human family” and for “everyone.” Ratifying states “undertake to guarantee that the rights contained therein will be exercised “without discrimination of any kind as to race, colour ... language, religion ... national ... origin ... ” (Article 2(2)). Article 4 permits states to make limitations “compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” Developing countries “may determine to what extent they would guarantee the economic rights recognized ... to non-nationals” (Article 2(3)).

Included in economic rights is the “right to work,” the full realization of which includes “technical and vocational guidance and training programmes” (Article 6). “Just and favourable conditions of work” are provided for in Article 7, which includes remuneration providing all workers, as a minimum, with “fair wages and equal remuneration for work of equal value without distinction of any kind...” Article 7 further provides for “safe and healthy working conditions; ... equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; ... rest, leisure and reasonable limitation of working hours and periodic holidays with pay” and “remuneration for public holidays.” The right of everyone to form trade unions, to join the trade union of his or her choice, and to strike are also provided (Article 8).

Remedies for violations of rights contained in the International Covenant on Economic, Social and Cultural Rights are left up to States which have accepted it by ratification or

⁸ Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>.

⁹ Human Rights Council Complaint Procedure, <http://www2.ohchr.org/english/bodies/chr/complaints.htm>

¹⁰ <http://www2.ohchr.org/english/law/cescr.htm>.

accession.¹¹ They must take steps to adopt legislative measures to achieve the rights provided. By virtue of the Covenant's applying to everyone, national legislation must give migrant workers (subject to possible exceptions) the listed employment rights, or at least not exclude them from those rights. The implementation of the Covenant is monitored by the Committee on Economic, Social and Cultural Rights, which reviews regular reports submitted by states. It does not consider individual complaints.¹²

3. International Covenant on Civil and Political Rights

The second Covenant which forms part of the International Bill of Human Rights was also adopted in 1966 and entered into effect in 1976. It addresses discrimination on several bases potentially applicable to migrants, but provides only one right in the area of employment. The International Covenant on Civil and Political Rights¹³ requires ratifying States to "take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized" (Article 2(2)). The Covenant speaks of "all members of the human family" and "all individuals." States must respect and ensure the rights contained in the Covenant to "all individuals within its territory and subject to its jurisdiction" ... "without distinction of any kind, such as race, colour ..., language, religion ..., national ... origin" (Article 2(1)). Article 26 provides that all persons are "equal before the law and are entitled without any discrimination to the equal protection of the law." It further states that the law "shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination ..." Thus, there appears to be no limitation or exemption which could exclude migrant workers (Article 2(1)).

The only right related to employment contained in the Covenant is the right "to form and join trade unions" (Article 22(1)). Remedies are addressed in Article 2(3), which states that they must be effective and enforced. The Human Rights Committee monitors implementation of the Covenant by reviewing regular reports submitted by States.¹⁴ There is an Optional Protocol by which States can agree to the Committee's considering communications received by individual victims.¹⁵

4. International Convention on the Elimination of All Forms of Racial Discrimination

Even before the above two Covenants came into effect, a Convention devoted solely to the elimination of one form of discrimination potentially relevant to migrant workers—discrimination on the basis of race—came into effect. The International Convention on the Elimination of All Forms of Racial Discrimination¹⁶ entered into force in 1969. By

¹¹ Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights.
<http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>.

¹² <http://www2.ohchr.org/english/bodies/cescr>.

¹³ <http://www2.ohchr.org/english/law/ccpr.htm>.

¹⁴ Human Rights Committee, <http://www2.ohchr.org/english/bodies/hrc/index.htm>; Human Rights Bodies – Complaints Procedures, <http://www.ohchr.org/english/bodies/petitions/index.htm>.

¹⁵ <http://www2.ohchr.org/english/law/ccpr-one.htm>.

¹⁶ <http://www2.ohchr.org/english/law/cerd.htm>.

becoming party to this Convention, States agree to “review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists,” as well as to “prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization” (Article 2(c), (d)).

Racial discrimination is defined as “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” (Article I(1)). The Convention does “not apply to distinctions, exclusions, restrictions or preferences made by a State Party ... between citizens and non-citizens” (Article I(2)). It also may not be interpreted as “affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization,” so long as such provisions do not discriminate against a particular nationality (Article I(3)).

With regard to discrimination in the area of employment, everyone is guaranteed the right to “equality before the law,” including with regard to the rights to “work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration” and to the right to “form and join trade unions” (Article 5(e)(i), (ii)). As to remedies, ratifying States must assure to “everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions ... as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered” as a result of discrimination (Article 6). Article 8 of the Convention established the Committee on the Elimination of Racial Discrimination, which monitors implementation of the Convention by reviewing regular reports submitted by States parties. For those States which have also recognized the competence of the Committee to consider communications from individuals, the Committee can review claims made by individuals or groups that they have been victims of a violation by the State (Article 14).

5. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The General Assembly of the United Nations has more recently devoted an entire Convention to the protection of migrant workers. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹⁷ entered into force in 2003. This Convention covers the entire migration process and addresses many areas of protection for migrant workers and their families. In addition to issues related to employment, it includes provisions on human rights, the freedom to leave any state and return to the state of origin, slavery and forced labour, freedom of religion and expression, privacy, liberty and security of person, protection against violence, arbitrary arrest or detention, criminal charges and proceedings, confiscation of

¹⁷ <http://www2.ohchr.org/english/law/cmw.htm>.

identity documents, expulsion, medical care, the education of migrant workers' children, family reunification, transfer of earnings, recruitment, and other issues. Although the Convention provides a broad array of protections for migrant workers, nothing in it affects the right of States party to establish the criteria governing the admission of migrant workers into their territories (Article 79).

Equality of treatment is addressed in several Articles. Article 7 requires that the rights in the Convention be provided to all migrant workers "without distinction of any kind, such as to ... race, colour, language, religion or conviction, ... national, ethnic ... origin, nationality..." Significantly, with regard to certain areas of employment, the Convention requires equality of treatment on the same basis as nationals for migrant workers in both irregular and regular status. Article 25 grants *all* migrant workers treatment "not less favourable than that which applies to nationals" in respect of remuneration, other conditions of work, which are listed as overtime, hours of work, weekly rest, holidays with pay, safety, health, termination, and any other conditions of work which are covered by those terms according to national law and practice; other terms of employment, which are listed as minimum age, restriction on home work and any other matters which are considered a term of employment according to national law and practice. It is further stipulated that workers may not be deprived of any of these rights and employers may not be relieved of their obligations because a worker is in irregular status (Article 25.3). Although not included in the right to treatment not less favourable than that which applies to nationals, all migrant workers have the right to join and seek the aid of trade unions (Article 26).

Migrant workers in regular status have the additional rights to equality of treatment with nationals in relation to vocational guidance and placement services and vocational training and retraining (Article 43(b),(c)). They are granted equality of treatment with regard to protection against dismissal, unemployment benefits, access to public work schemes intended to combat unemployment, and access to alternative employment in the event of loss of work or termination (Article 54). Some other rights may be limited based on migrant status. While migrant workers in regular status have a right to freely choose their "remunerated activity," States parties have the option to restrict access to limited categories of employment, functions, services or activities where necessary in the interests of the State and provided for by national legislation, or in accordance with legislation concerning recognition of occupational qualifications acquired outside the territory (Article 52.2). Further, if their permission to work is limited in time, a State party may require lawful residence for a period of time not to exceed two years before they may freely choose their employment (Article 52.3(a)). A State party may also, pursuant to legislation or bilateral or multilateral agreements, limit access by migrant workers to employment to give priority to nationals, but only for a certain period of time prescribed in legislation not to exceed five years (Article 52.3(b)).

Other provisions relevant to employment discrimination applicable to migrant workers in regular status are contained in Articles 55 and 70. Article 55 states that, "Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment

with nationals of the State of employment in the exercise of that remunerated activity.” And Article 70 requires States parties to take measures not less favourable than those applied to nationals to ensure that working conditions of migrant workers in a regular situation are in keeping with the “standards of fitness, safety, health and principles of human dignity.”

Finally, with regard to remedies, they are to be “effective” and enforced when granted (Article 83). The Convention established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 72), which reviews regular reports submitted by States parties to the Convention. It does not at this time consider individual complaints.¹⁸

B. International Labour Organization

1. ILO Conventions

Many protections for migrant workers are contained in ILO Conventions, which, because they protect workers, generally apply to *all* workers. Thus, unless otherwise stated, all ILO Conventions apply to migrant workers, and there cannot be discrimination against them because they are not nationals of the countries in which they work.¹⁹ Migrant workers are therefore covered by the 1998 ILO Declaration of Fundamental Principles and Rights at Work and its Follow-up,²⁰ which are reflected in the eight fundamental ILO Conventions: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);²¹ Right to Organise and Collective Bargaining Convention, 1949 (No. 98);²² Forced Labour Convention, 1930 (No. 29);²³ Abolition of Forced Labour Convention, 1957 (No. 105);²⁴ Equal Remuneration Convention, 1951 (No. 100);²⁵ Discrimination (Employment and Occupation) Convention, 1958 (No. 111);²⁶ Minimum Age Convention, 1973 (No. 138);²⁷ Worst Forms of Child Labour Convention, 1999 (No. 182).²⁸ Some Conventions make it clear that there are no exclusions for *any* kind of worker. Thus, for example, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) applies to “workers ... without distinction whatsoever” (Article 2). The Occupational Safety and Health Convention, 1981 (No.

¹⁸ <http://www2.ohchr.org/english/bodies/cmw/>

¹⁹ Most ILO Conventions are silent on their applicability to migrant workers. However, their general terms (such as “workers ... without distinction whatsoever” or “all persons employed”), their preparatory work, or their purpose indicate that they should be applied to migrant workers. With the exception of those few Conventions whose terms indicate the intention to exclude migrant workers, the great majority are of general application and do not allow limitations based on the nationality of workers. International Labour Law, N. Valticos and G. von Potobsky, 2d ed., 1995, pp. 249-250.

²⁰ <http://www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE> .

²¹ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087> .

²² <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C98> .

²³ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C29> .

²⁴ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105> .

²⁵ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100> .

²⁶ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111> .

²⁷ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138> .

²⁸ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182> .

155)²⁹ applies to “all workers” (Article 2.1). The Safety and Health in Construction Convention, 1988 (No. 167)³⁰ defines worker as “any person” engaged in construction (Article 2(d)). Other Conventions cover migrant workers by virtue of the fact that they do not contain any specific exclusions for them.

By ratifying an ILO Convention, states commit themselves to applying it to national law and practice and submitting reports to the ILO at regular intervals for review. Complaints may be filed against a member State for not complying with a ratified Convention. Those entitled to file complaints are another member State which ratified the same Convention, a delegate to the International Labour Conference, or the Governing Body in its own capacity. The ILO may conduct an investigation and make recommendations on measures to be taken to address problems it discovers during the investigation. In some countries, ratified ILO Conventions, as other ratified international treaties, apply automatically at the national level, and courts may use the international labour standards contained in them to decide cases on which national law is inadequate or silent.³¹

There is a fundamental ILO Convention on the subject of discrimination in employment and occupation which directs Member States to promote equality of opportunity and treatment. There are also two Conventions which pertain specifically to migrant workers--the Migration for Employment Convention (Revised) and the Migrant Workers (Supplementary Provisions) Convention.

2. Discrimination (Employment and Occupation) Convention

The Convention concerning Discrimination in Respect of Employment and Occupation, which may be cited as Discrimination (Employment and Occupation) Convention, 1958 (No. 111),³² is potentially applicable to some migrant workers who have been victims of discrimination in employment. It defines discrimination as “any distinction, exclusion or preference made on the basis of race, colour ..., religion ... national extraction ... which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation” (Article 1(a)).³³ Discrimination against an ethnic group is generally considered racial discrimination within the terms of the Convention, as is discrimination against those belonging to linguistic communities, or minorities whose identity is based on religious or cultural characteristics.³⁴ National extraction normally refers to distinctions made between nationals of a country and is thus similar to the term

²⁹ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C155> .

³⁰ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C167> .

³¹ Complaints, <http://www.ilo.org/public/english/standards/norm/applying/complaints.htm>; How ILS are used, <http://www.ilo.org/public/english/standards/norm/introduction/used.htm>.

³² <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111> .

³³ National extraction is also included as a basis of discrimination, but it is not relevant here, because it refers to distinctions between citizens of the same country. International labour standards, A global approach, M. Humblet et al, 2002, <http://www.ilo.org/public/english/standards/norm/download/resources/sglobale.pdf>, pp. 66, 124.

³⁴ International labour standards, A global approach, M. Humblet et al, 2002, <http://www.ilo.org/public/english/standards/norm/download/resources/globale.pdf>.

national origin; it does not refer to nationality. Thus, the Convention covers discrimination against nationals (and migrant workers) on the ground of foreign ancestry or foreign birth, but not on the ground of non-nationality.³⁵

Employment and occupation are defined as including access to vocational training, access to employment and to particular occupations, and terms and conditions of employment (Article 1(b)3). The Convention requires ratifying States to pursue a national policy, including by enacting legislation, promoting equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination (Articles 2 and 3(b)). This is a general duty in the area of employment and occupation; more specific provisions are not contained in the Convention.

3. Migration for Employment Convention (Revised)

The first international Convention devoted to migrant workers relevant here is the Convention concerning Migration for Employment (Revised 1949), which may be cited as the Migration for Employment Convention (Revised), 1949 (No. 97).³⁶ It addresses issues particular to migrant workers, such as those involved in their departure, journey, and reception, and transfer of their earnings. There are two Annexes which address recruitment, placing, and conditions of labour.³⁷ The Convention defines a “migrant for employment” as a “person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment” (Article 11.1). Thus, migrant workers in irregular status are not covered by this Convention.³⁸ Those in regular status, however, must not be treated in a discriminatory manner, as compared to nationals.

Ratifying States must “undertake to apply, without discrimination in respect of nationality, race, religion ... to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals” with respect to certain matters if they are regulated by law or regulations or subject to the control of administrative authorities (Article 6.1). Those matters are remuneration, hours of work, overtime, paid holidays, restrictions on home work, minimum age for employment, apprenticeship and training, women’s and young persons’ work, and membership of trade unions and enjoyment of the benefits of collective bargaining (Article 6.1(a)). Absent from this list is the right to employment itself; i.e., hire and termination are not included. Treatment no less favourable means that there may be treatment of migrant workers which, although not absolutely identical, is equivalent in its effects to that enjoyed by nationals.³⁹

³⁵ International Labour Law, N. Valticos and G. von Potobsky, 2d ed., 1995, pp. 120, 250.

³⁶ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C097> .

³⁷ There is also a third Annex on the subject of the importation of migrant workers’ personal effects, tools and equipment.

³⁸ Also specifically excluded are frontier workers, members of the liberal professions and artists who enter for a short-term, and seamen (Art. 11(2)).

³⁹ International labour standards, A global approach, M. Humblet et al, 2002, <http://www.ilo.org/public/english/standards/norm/download/resources/globale.pdf>, p. 148.

The accompanying Recommendation concerning Migration for Employment (Revised 1949), (No. 86),⁴⁰ which also applies only to those in regular status, focuses on issues such as assistance to migrant workers, recruitment and placement. It states, for example, that migrants authorized to reside in the territory should “as far as possible be admitted to employment in the same conditions as nationals” (Para. 16.1). A model agreement on Equality of Treatment addresses a variety of matters, including equality of treatment with regard to admission to schools, apprenticeship and vocational or technical training, but only if that does not prejudice nationals. Article 18 provides for equal access to trades and occupations to the extent permitted under national laws and regulations.

4. Migrant Workers (Supplementary Provisions) Convention

The Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, which may be cited as Migrant Workers (Supplementary Provisions) Convention (No. 143),⁴¹ was adopted in 1975 expressly to supplement the Migration for Employment Convention (Revised) and the Discrimination (Employment and Occupation) Convention. The focus of this Convention is migrations in abusive conditions and equality of opportunity and treatment. It is noted in the Preamble to the Convention that the term “discrimination” in the Discrimination (Employment and Occupation) Convention does not “mandatorily” include distinctions on the basis of nationality. It is also noted that further standards are desirable to promote equality of opportunity and treatment of migrant workers.

With regard to human rights, ratifying States undertake in Article 1 to “respect the basic human rights of all migrant workers.” The Convention addresses the need to suppress clandestine movements of migrants and their illegal employment by taking action against their organisers and employers, but nevertheless requires States to provide some rights to those migrant workers who are in irregular status. They are to receive equality of treatment for rights arising out of their *past* employment as regards remuneration, social security and other benefits (Article 9.1). Those in regular status are granted the right to equality of opportunity and treatment with respect to employment and occupation, social security, trade union and cultural rights and individual and collective freedoms (Article 10). With regard to working conditions for those who perform the same activity, whatever might be the particular conditions of their employment, “all” migrant workers are guaranteed equality of treatment (Article 12(g)).

The accompanying Migrant Workers Recommendation, 1975 (R 151)⁴² goes further in the right to equality of opportunity and treatment by stating that migrant workers in regular status should enjoy “effective” equality with nationals in the areas of access to vocational guidance and placement services, vocational training, employment of their own choice, advancement, security of employment, the provision of alternative employment, relief work and retraining, remuneration for work of equal value, conditions of work, including hours, rest periods, paid holidays, occupational safety and health,

⁴⁰ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R086> .

⁴¹ www.ilo.org/ilolex/cgi-lex/convde.pl?C14 .

⁴² www.ilo.org/ilolex/cgi-lex/convde.pl?R151 .

social security, welfare and benefits provided in connection with employment, membership in and exercise of trade union rights (Para. 2). Those in irregular status are entitled to equality of treatment arising out of past, as well as present, employment as regards not only remuneration, social security and other benefits, as granted by Convention 143, but also as regards trade union membership (Para. 8.3). Finally, migrant workers who have been terminated from employment and who appeal their terminations, under such procedures as are available, are entitled, on the same terms as national workers, to reinstatement, compensation for loss of wages or other payment, or to access to a new job, if it has been determined that their termination was not justified. If not reinstated, the worker is to be allowed sufficient time to find alternative employment. (Para. 32.)

III. EUROPEAN LAW

A. Background

The Treaty on the European Union⁴³ provides in Article 6.2 that the Union “shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms.” The Treaty gives the European Council the authority to “take appropriate action to combat discrimination based on ... racial or ethnic origin, religion ...” (Article 13.1).

For the purposes of rights related to employment, a migrant worker who is a citizen of the European Union is, for the most part, considered the same as a national of the country in which he or she works. The Treaty Establishing the European Community⁴⁴ provides for the free movement of workers who are citizens of Member States (Title III, Chapter 1). This freedom of movement entails the “abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment” (Title III, Chapter 1, Article 39.2). Other than public service employment and possible limitations justified on grounds of public policy, public security or public health, workers from any Member State have the same employment rights as nationals (Title III, Chapter 1, Article 39.3). The European Council has the authority to issue directives or make regulations setting out the measures required for Member States to bring about freedom of movement for workers (Title III, Chapter 1, Article 40). Because the citizens of any European Union country are entitled to the same rights as nationals when they work in any other European Union country, the discussion below concerns the protection against employment discrimination afforded to third country nationals, or workers who are citizens of a country other than one which is a member of the European Union.⁴⁵

⁴³ <http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/ce321/ce32120061229en00010331.pdf>.

⁴⁴ <http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/ce321/ce32120061229en00010331.pdf>.

⁴⁵ The Social Charter, also known as the Charter of the Fundamental Rights of Workers, will not be covered here, as it is not a binding instrument at this time, but a political instrument containing moral rather than legal obligations. It was incorporated into the draft European Constitution, which failed to be ratified. http://ec.europa.eu/justice_home/fsj/rights/charter/fsj_rights_charter_en.htm.; http://europa.eu/scadplus/glossary/social_charter_en.htm.

B. Convention for the Protection of Human Rights and Fundamental Freedoms

The Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, as amended,⁴⁶ an instrument of the Council of Europe, has been ratified by all Member States.⁴⁷ It contains an obligation to respect human rights in Article 1. States parties agree to “secure to everyone within their jurisdiction” certain rights and freedoms. The Convention grants to everyone within the jurisdiction of a Member State the rights and freedoms set forth “without discrimination on any ground such as ...race, colour, language, religion ..., national ... origin, association with a national minority ... ” (Article 14). Every worker within the jurisdiction has the right to form and join trade unions for the protection of the worker’s interests (Article 11). As to remedy, those persons whose rights have been violated are entitled to an effective remedy before a national authority. The Convention establishes the European Court of Human Rights (Article 19), which may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by a Member State (Article 34). The Court may only deal with the issue after all national remedies have been exhausted (Article 35).

C. Background regarding Non-binding action against discrimination taken by the European Union prior to its issuance of directives

Although the European Union has not issued any binding instruments devoted solely to migrant workers (with the exception of social security), in 1976, the European Council devoted a Resolution to improving the circumstances of migrant workers and members of their families, including third country nationals. Council Resolution on an action program for migrant workers and members of their families,⁴⁸ among other things, encourages equality for workers who are nationals of third countries and are legally resident in the Member State with regard to living and working conditions, wages and economic rights. It also states that, while sanctions should be laid down to repress trafficking and abuses linked with illegal immigration, the rights of workers relating to work “they have carried out” (i.e., past employment) should be safeguarded without prejudice to other consequences of the unlawful nature of their residence and employment (Section 5(b)).

On various occasions, the European Union has expressed the need to take steps towards preventing or eliminating discrimination against certain groups by the issuance of non-binding instruments. For example, the Declaration against racism and xenophobia,⁴⁹ issued in 1986 by the European Parliament, the European Council, the representatives of the Member States, and the European Commission, recognized the existence and growth of xenophobic attitudes, movements and acts of violence, which are often directed against immigrants. Specifically mentioning the positive contribution of workers from both other

⁴⁶ <http://conventions.coe.int/Treaty/en/Treaties/html/005.htm> .

⁴⁷ <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG> .

⁴⁸ [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31976Y0214\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31976Y0214(01):EN:NOT) .

⁴⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41986X0625:EN:NOT> .

Member States and third countries, it expressed condemnation of intolerance, hostility and use of force against persons on the basis of racial, religious, cultural, social or national differences and stressed the need to ensure that all acts or forms of discrimination are prevented or curbed.

Later, in 1995, the European Council and representatives of the Member States issued a Resolution on the fight against racism and xenophobia in the fields of employment and social affairs.⁵⁰ This Resolution condemned “racism, xenophobia and anti-semitism ... and religious intolerance,” particularly in employment and social affairs. It called upon States to make progress toward guaranteeing protection against all forms of discrimination on the basis of race, colour, religion or national or ethnic origin, promoting employment and vocational training as means of integrating persons “legally resident” in Member States, and fighting labour discrimination against legally resident workers.

Not until 2000, however, did the European Union issue any binding instruments regarding forms of discrimination relevant to migrant workers. Since then, more recognition has been given to the need to eliminate all forms of discrimination. Thus, for example, the year 2007 has been designated the “European Year of Equal Opportunities for All” by Decision of the European Parliament and European Council in order to raise awareness of the right to equality and non-discrimination.⁵¹

In 2000, two significant Council Directives were issued on discrimination, both of which are of potential relevance to migrant workers. One pertains to many areas of life, including employment and working life, and covers two grounds of discrimination. The second pertains only to employment and occupation and covers different grounds of discrimination than the other one. With the issuance of these Directives, all Member States were for the first time required to implement laws prohibiting certain forms of discrimination.

The Directives are binding on Member States as to the results to be achieved, but leave the choice of the form and method adopted to the States to enact within the framework of their own legal systems. Those States which had existing discrimination legislation were required to adapt it, if necessary, to ensure it was in conformity with the norms laid down in the two Directives. And States which did not have legislation were required, of course, to enact legislation conforming to the Directives. Those measures were to be taken by 2003, so that at this time, all States must have legislation in place. If a State has not enacted conforming legislation by the required date of implementation or has incompletely transposed the requirements of the Directives,⁵² individuals of that State

⁵⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41995X1110:EN:NOT>.

⁵¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006D077:EN:NOT>. See also Council Decision on Guidelines for the employment policies of the Member States, issued in 2005, which includes recognition of the need to combat discrimination. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:205:0021:01:EN:HTML>.

⁵² The question of whether the legislation of the various Member States is in conformity with all the provisions of the Directives is not an issue taken up in this paper.

are entitled to directly invoke the Directives before their national courts.⁵³ The issuance of these two Directives is undoubtedly the most important advance forward in Europe in the implementation of legislation prohibiting employment discrimination on bases of possible relevance to migrant workers.

D. Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

The first Directive designed to combat discrimination of potential relevance to migrant workers who have been victims of employment discrimination is Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.⁵⁴ Member States were required to implement its provisions by July 19, 2003. The purpose of the Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin and to put the principle of equal treatment into effect in Member States (Article 1). Race is not defined in the Directive. Recital 6 of the Directive states that the “European Union rejects theories which attempt to determine the existence of separate human races” and that the use of the term “racial origin” does “not imply an acceptance of such theories.” The Directive provides for equal treatment not only in employment, but in a number of other areas, such as healthcare, education, and housing, in both the private and public sectors (Article 3).

There are important exceptions relevant to migrant workers. Recital 13 of the Directive specifies that the prohibition against discrimination “should also apply to nationals of third countries, but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and occupation.” Article 3.2 states that the Directive “does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.” Thus, while the Directive “applies” to migrant workers (third country nationals), the principle of equal treatment does not cover differences based on nationality. By applying to migrant workers, they are covered as to discrimination based on their racial or ethnic origin only.

In other words, a migrant worker is entitled to put forth a claim of discrimination based on racial or ethnic origin, but not based on nationality. Thus, for example, a migrant worker from Senegal who is treated less favourably than a migrant worker from the Philippines is entitled to put forth a claim of discrimination on the basis of racial or ethnic origin. Because these workers are both non-nationals, the difference in their treatment could not have been based on nationality. However, a migrant worker from Senegal who is treated less favourably than a national of the same race whose ethnic origin is Senegalese would not have a claim. Here, the two workers have the same racial and

⁵³ http://eur-lex.europa.eu/en/droit_communaute/droit_communaute.htm.

⁵⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:EN:HTML>.

ethnic origin, leaving nationality as the only basis for discrimination, which is not covered by the Directive.

But if both the migrant worker from Senegal and the national whose ethnic origin is Senegalese are treated less favourably than workers of a different racial and ethnic origin—whether they are nationals or migrant workers—they would both have a claim. In that case, there would be a showing of unequal treatment on the basis of racial or ethnic origin. It follows that a migrant worker who is treated less favourably than a national worker of a different race or ethnic origin is entitled to put forth a claim of discrimination. He or she must show that the less favourable treatment was because of the difference in racial or ethnic origin and not nationality. If the worker cannot do so, the claim would fail, since unequal treatment on the basis of nationality is not covered. In fact, the Directive allows for unequal treatment on the basis of nationality, as will be seen below, for example, regarding access to employment and occupation.

Article 3 of the Directive on Scope requires equality of treatment in employment and working conditions, including dismissals and pay, as well as membership of and involvement in an organisation of workers ... or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations” (Article 3.1(c) and (d)). Article 3.1(a) and (b) provide additional rights in relation to “conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion” (Article 3.1(a)). It also applies in relation to “access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience” (Article 3.1(b)). Thus, a migrant worker may have a claim that he or she was treated less favourably on the basis of racial or ethnic origin on any of these grounds.

The Directive prohibits direct or indirect discrimination (Article 2.1). Direct discrimination is defined as occurring “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” (Article 2.2(a)). Indirect discrimination, on the other hand, is defined as occurring “where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons,” unless “objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary” (Article 2.2(b)).⁵⁵

There is a narrow exception in Article 4 to the principle of equal treatment for “genuine and determining occupational requirements.” A difference of treatment is permissible based on a characteristic related to racial or ethnic origin where, “by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is

⁵⁵ Where it has been established that there are facts from which it may be presumed that there has been direct or indirect discrimination, the burden of proof then shifts to the employer to prove that there has been no breach of the principle of equal treatment (Article 8).

proportionate.” As Recital 18 states, this can be justified only in “very limited circumstances.”⁵⁶

Specifically defined as a form of discrimination is “harassment.” This is defined as occurring “when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment” (Article 2.3). However, the concept of harassment may be defined by Member States in accordance with their national laws and practice. Retaliation must also be prohibited. Article 9, entitled Victimisation, requires States to include in their national legal systems measures necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the equal treatment principle.

A significant provision included in the Directive is the requirement that Member States have a body or bodies to enforce the principles of equal treatment and assist victims of discrimination in pursuing their claims. Article 13 requires that a body or bodies be designated to promote equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. They must have the authority to provide independent assistance to victims of discrimination in pursuing their complaints and perform other independent functions in the area of racial or ethnic origin discrimination.

On the question of remedies or “sanctions,” Member States are free to set them, as long as they are “effective, proportionate and dissuasive” (Article 15 and Recital 26). They must take all measures necessary to ensure that the sanctions are applied. These sanctions may comprise the payment of compensation to the victim of discrimination. There is no requirement in the Directive that the discriminatory conduct be “undone,” or that the individual discriminated against be placed in the position he or she would have been in absent the discrimination, such as for example, hired for a job discriminatorily denied. The Directive requires States to ensure that associations, organisations or other legal entities which have a legitimate interest in ensuring its compliance may participate in any procedure, on behalf or in support of the worker, with his or her approval. This provision is a significant one for migrant workers, who are often not in a position of being able to do so on their own for a variety of reasons, including lack of funds and language skills.

E. Council Directive 2000/78/EC establishing a national framework for equal treatment in employment and occupation

Just a few months after the Directive on racial and ethnic origin went into effect, a second equal treatment Directive of possible relevance to migrant workers went into effect. Council Directive 2000/78/EC establishes a national framework for equal treatment in employment and occupation⁵⁷ and required Member States to implement its provisions by

⁵⁶ For example, it might be a genuine and determining occupational requirement to hire an actor with dark skin to play Othello.

⁵⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:EN:HTML>.

December 2, 2003. This Directive applies only to employment and occupation, but with respect to that area, is quite similar in form to the above. The only basis for a discrimination claim potentially relevant to migrant workers provided is religion or belief. While the Directive applies to third country nationals, who may allege discrimination based on religion or belief, it likewise does not cover discrimination based on nationality (Article 3.2 and Recital 12). As Recital 12 of the Directive states, the “prohibition of discrimination should also apply to nationals of third countries but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and occupation.”

The Directive similarly requires equal treatment of workers, prohibits direct and indirect discrimination, and prohibits harassment. It contains similar scope provisions (i.e., employment and working conditions, including dismissals and pay, membership and involvement in workers’ organizations), which apply to all workers. It similarly provides rights regarding access to employment and occupation, promotion, and vocational training. Thus, a migrant worker may have a claim that he or she was treated less favourably on the basis of racial or ethnic origin on any of these grounds. The Directive similarly requires the prohibition of retaliation or “victimisation” and specifies in the context of employment that Member States must take the necessary measures to protect employees against dismissal or other adverse treatment by the employer because they complained about discrimination (Article 11).

An exception for a genuine and determining occupational requirement is allowed in limited circumstances if the objective is legitimate and the requirement proportionate (Article 4.1 and Recital 23). Beyond this, in the case of “occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief,” a difference of treatment based on a worker’s religion or belief does not constitute discrimination under the Directive where, because of the nature of these activities or context in which they are carried out, the worker’s religion or belief constitutes a “genuine, legitimate and justified occupational requirement” (Article 4.2). Thus, churches and other such organizations based on a religion or belief may require their workers to “act in good faith and with loyalty to the organisation’s ethos” (Article 4.2).

Member States are permitted to set remedies or sanctions, so long as they are effective, proportionate and dissuasive and are applied. The remedy may comprise the payment of compensation (Article 17). Finally, this Directive similarly follows the Directive on racial or ethnic origin in that it requires States to ensure that associations, organisations or other legal entities which have a legitimate interest in ensuring its compliance may participate in any procedure, on behalf or in support of the worker, with the worker’s approval.

IV. NATIONAL LAW IN ITALY, SWEDEN, THE UNITED KINGDOM, AND FRANCE

A summary of important constitutional provisions and legislation requiring equality of treatment potentially relevant to migrant workers who have experienced discrimination in employment is provided below for four, selected European countries. The first two, Italy and Sweden, have relatively recently begun experiencing the employment of migrant workers in greater numbers, while the second two, the United Kingdom and France, have had a longer history of employing large numbers of migrant workers. The two Council Directives discussed above have, of course, necessitated changes in the legislation of all four of these countries and will certainly necessitate additional changes in the future. Case law related to these recent changes is only beginning to develop.

Before beginning the review of national law, it will be informative to take a look at ratifications of the international instruments discussed above by the four countries. All of them have ratified the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the ILO Discrimination (Employment and Occupation) Convention, No. 111, and the Convention for the Protection of Human Rights and Fundamental Freedoms.⁵⁸ There are fewer ratifications of the three migrant worker Conventions, however. The Migration for Employment Convention (Revised), C. 97, has been ratified by France, Italy, and the United Kingdom, and the Migrant Workers (Supplementary Provisions) Convention, No. 143, has been ratified by Italy and Sweden.⁵⁹ None of the four countries has ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.⁶⁰

A. Italy

1. Constitutional Provisions

With regard to human rights, the Italian Constitution of 1948⁶¹ states in Article 2 that the “republic recognizes and guarantees the inviolable human rights, be it as an individual or in social groups expressing their personality, and it ensures the performance of the unalterable duty to political, economic, and social solidarity.” Article 3 states that all citizens have “equal social status and are equal before the law, without regard to their ... race, language, religion ...” Further, it is the duty of the government to “remove all economic and social obstacles that, by limiting the freedom and equality of citizens,

⁵⁸ <http://www2.ohchr.org/english/bodies/ratification/3.htm>;
<http://www2.ohchr.org/english/bodies/ratification/4.htm>;
<http://www2.ohchr.org/english/bodies/ratification/2.htm>; <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C111>;
<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG>.

⁵⁹ <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C097>; <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C143>.

⁶⁰ <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty24.asp>.

⁶¹ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Italy, A. Simoni, 2007, www.servat.unibe.ch/law/icl/it000000.html;
http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/itrep07_en.pdf, p.6-8.

prevent full individual development and the participation of all workers in the political, economic, and social organization of the country” (Article 3). Thus, while all persons are guaranteed human rights, the constitutional right to equality is granted to citizens (nationals) only.

Constitutional provisions on religion are more complex. Although freedom of religion is guaranteed in Articles 3 and 19, there are other provisions remaining in the Constitution related to the Catholic Church, which effectively retain some aspects of its special role with the state, particularly as compared with some other religions. The Constitution sets forth in Article 7 that the relationship between the state and the Catholic Church is regulated by Lateran pacts (the Lateran Treaty with the Holy See of 1929).⁶² Article 8 states that other religions are equally free before the law, but regulates their relationship with the state and requires them to enter into agreements with it. Not all religions have such agreements, however. Some which do have agreements have not had them transposed into legislation approved by the parliament, while others have. Thus, there remain some differences in legal status as to religions, which could affect the interpretation of legislation in the area of discrimination.⁶³

2. Legislation

Prior to the implementation by Italy of European Council Directives 2000/43/EC on racial or ethnic origin discrimination and 2000/78/EC on the general framework for equal treatment, Italian law prohibiting discrimination in employment was covered by the 1970 Workers Act and by Act No. 286 of 1998 regulating immigration and the legal conditions of foreigners.⁶⁴ These Acts remain in effect, alongside the new legislation enacted to comply with the Directives.⁶⁵ Italian law on discrimination does not contain definitions of terms such as race, national or ethnic origin, or religion.⁶⁶

a. Workers’ Act of 1970

Discrimination on the grounds of religion, race, and language is prohibited by the Workers’ Act of 1970, Act of 20 May 1970, No. 300. Discriminatory acts on these bases

⁶² Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Italy, A. Simoni, 2007, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/itrep07_en.pdf, pp. 7-8.

⁶³ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Italy, A. Simoni, 2007, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/itrep07_en.pdf, pp. 7-8.

⁶⁴ Anti-discrimination Legislation in EU Member States, Italy, A. Simoni and G. Boni, 2002, http://eumc.europa.eu/eumc/material/pub/Art13/ART13_Italy_en.pdf, p. 10.

⁶⁵ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Italy, A. Simoni, 2007, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/itrep07_en.pdf, pp. 2-3, 9. It should be noted that this paper does not delve into the issue of whether legislative changes made by the four countries under review in response to the Directives may or may not be in conformity with them.

⁶⁶ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Italy, A. Simoni, 2007, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/itrep07_en.pdf, pp. 9-10.

have no legal validity. Acts covered include recruitment, career, transfers, disciplinary sanctions, and any other form of prejudice to the worker. Thus, long before the Directives were implemented, it was illegal to discriminate against a worker on these grounds in dismissals, assignment of qualifications or duties, transfers, discipline, or other harm. A dismissal on such grounds is void, which in the Italian legal system, allows both the award of damages and an order to “reintegrate” or reinstate the worker to his or her employment. The Act additionally contains provisions against agreements “aimed at discrimination” on grounds of race, language or religion, which are null and void. Workers and trade unions are entitled to initiate legal proceedings against employers.⁶⁷ In short, this Act prohibits discriminatory acts from the hiring stage, during employment, and including dismissal, with remedies that may include reversing the discriminatory conduct by placing the individual discriminated against in the position he or she would have been in absent the discrimination.

b. Act No. 286 of 1998 regulating immigration and the legal condition of foreigners

Prohibitions against employment discrimination are also contained in Act No. 286 of 1998 regulating immigration and the legal condition of foreigners.⁶⁸ Although generally devoted to the legal condition of non-nationals, it applies to Italian nationals as well and grants them the same protections. The Act defines unlawful discrimination as any “behaviour which directly or indirectly causes differentiation, exclusion, restriction or preference based on race, colour, ancestry, national or ethnic origin, religious belief or practice, having the aim or effect of destroying or hindering the recognition or exercise – under equal conditions – of fundamental human rights in the ... economic ... field ...”⁶⁹ Thus, although this law concerns the subject of immigration and foreigners, it provides a prohibition against discrimination in employment on bases relevant to migrant workers which might normally be expected to be contained in an employment or labour code.

Specifically included in a list of activities that constitute discrimination are refusing to provide work to a foreign national legally residing in Italy based on any of the above grounds and preventing, through action or omission, a foreign national legally residing in Italy from carrying out an economic activity. Significantly, the Act prohibits discrimination based on nationality and thereby goes further than the Directives.⁷⁰ It is

⁶⁷ Anti-discrimination Legislation in EU Member States, A. Simoni and G. Boni, 2002, http://www.ec.europa.eu/employment_social/fundamental_rights/pdf/aneval/legit.pdf, pp. 10-11, 24; Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Italy, A. Simoni, 2007, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/itrep07_en.pdf, pp. 9; Developing Anti-Discrimination Law in Europe, The 25 EU Member States compared, M. Bell, I. Chopin and F. Palmer, 2006, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/06compan_en.pdf, p. 113.

⁶⁸ Anti-discrimination Legislation in EU Member States, A. Simoni and G. Boni, 2002, http://www.ec.europa.eu/employment_social/fundamental_rights/pdf/aneval/legit.pdf, p. 10.

⁶⁹ Anti-discrimination Legislation in EU Member States, A. Simoni and G. Boni, 2002, http://www.ec.europa.eu/employment_social/fundamental_rights/pdf/aneval/legit.pdf, p. 12.

⁷⁰ Anti-discrimination Legislation in EU Member States, A. Simoni and G. Boni, 2002, http://www.ec.europa.eu/employment_social/fundamental_rights/pdf/aneval/legit.pdf, pp. 10, 12, 16.

unlawful to take *any* kind of action that discriminates, even indirectly, against a worker because of his or her race, ethnic or linguistic group, religious belief or citizenship (nationality). The latter provision is connected to the anti-discrimination provisions contained in the Workers' Act. Working conditions and vocational guidance and training are included in the list as well. Even though a list is contained in the Act, it is not exhaustive, and other forms of discrimination not listed would fall under the broad terms of the prohibition against discrimination.⁷¹ This Act provides very broad protections in prohibiting any kind of discriminatory act and in including discriminatory acts beginning from vocational training and hiring decisions. And, as noted, prohibiting employment discrimination on the basis of nationality is a significant legal protection for migrant workers.

With regard to remedies, the victim of discrimination can obtain monetary damages for actual losses, and can additionally obtain damages for non-pecuniary losses and can seek an order of interruption of the discriminatory activity and any other measure needed to remove its effects. He or she can file an application with simple wording without an attorney in the court where he or she resides. Hearing procedures must avoid unnecessary formalities.⁷² Thus, the remedies provided are extensive as well, allowing for orders to reverse the discriminatory conduct and its effects.

c. Legislative Decrees No. 215 and 216

In 2003, Italy enacted two Decrees in order to comply with the Council Directives on discrimination, both of which basically follow their wording.⁷³ As noted above, they coexist with the other legislation described. Legislative Decree No. 215 of 9 July 2003, as amended, follows Directive 2000/43 on racial equality. Legislative Decree No. 216 of 9 July 2003, as amended, follows the general framework Directive 2000/78.⁷⁴ Thus, like the Directive on racial equality, Legislative Decree No. 215 prohibits discrimination on the basis of racial or ethnic origin. Legislative Decree No. 216 transposes the general framework Directive on employment and occupation, which contains the prohibition of discrimination on the grounds of religion or belief. Both Decrees—as the Directives—expressly exclude nationality as one of the grounds of discrimination. They are therefore inconsistent with the 1998 Immigration Act prohibiting discrimination on that basis, which was expressly left in force, and leave the state of the law somewhat confused at

⁷¹ Anti-discrimination Legislation in EU Member States, A. Simoni and G. Boni, 2002, http://www.ec.europa.eu/employment_social/fundamental_rights/pdf/aneval/legit.pdf, pp. 12, 15.

⁷² Anti-discrimination Legislation in EU Member States, A. Simoni and G. Boni, 2002, http://www.ec.europa.eu/employment_social/fundamental_rights/pdf/aneval/legit.pdf, pp. 17-18, 25.

⁷³ Developing Anti-Discrimination Law in Europe, The 25 EU Member States compared, M. Bell, I. Chopin and F. Palmer, 2006,

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/06compan_en.pdf, 13; Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Italy, A. Simoni, 2007, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/itrep07_en.pdf, p. 3.

⁷⁴ Legislative Decree No. 256 of 2 August 2004 corrected some mistakes contained in the Decrees, which had been enacted shortly before the deadline for implementation. http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/itrep07_en.pdf, pp. 3, 14.

this time.⁷⁵ The fact that the Decrees were enacted only ten days before the implementation deadline for EU Member States of the first of the two Directives most likely has some relation to this state of affairs.

Similar to the Directives, the Decrees require equality of treatment and prohibit direct and indirect discrimination and harassment. They both prohibit discrimination in public and private employment in access to employment, self-employment or occupation, including selection criteria and recruitment conditions, employment and working conditions, including promotions, dismissals and pay, access to all types and all levels of vocational guidance, training and retraining, including practical work experience, and membership of and involvement in organisations of workers or other organisations whose members carry on a particular profession, including the benefits they provide. Victimisation is only mentioned as an element to take into account when assessing damages, rather than defined as a prohibited act itself.⁷⁶

Procedures and remedies are the same as those of the 1998 Immigration Act—the person alleging discrimination in employment can apply directly to a local judge (labour judge) to seek an order of interruption of the discriminatory activity and damages. With regard to whether an organisation may take a case on behalf of an individual or group of persons alleging discrimination, the legislation prohibiting racial and ethnic discrimination only permits associations active in the discrimination field which have been approved by the Ministries of Labour/Welfare and Equal Opportunities and trade unions to do so. With regard to claims of religious discrimination, apparently only trade unions are permitted to represent an individual or group making a claim of discrimination.⁷⁷ The required specialized body that was set up is the National Office of Racial Discrimination. It covers only race and ethnic origin and not religion, however. Also, while it can assist claimants with litigation, it has no authority to litigate on their behalf.⁷⁸

Considering all the relevant Italian legislative provisions together shows a legal framework that is quite extensive in its prohibitions against discrimination on all major bases relevant to migrant workers and in all or virtually all aspects of employment, from hiring decisions, to on-the-job experiences and through termination. Moreover, remedies appear to be designed not just to provide some monetary compensation for discriminatory conduct, but for actual “undoing” of that conduct to place the victim of discrimination in the position in which he or she would have been absent the employer’s discrimination.

⁷⁵ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Italy, A. Simoni, 2007,

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/itrep07_en.pdf, pp. 16, 19, 23-24.

⁷⁶ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Italy, A. Simoni, 2007,

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/itrep07_en.pdf, pp. 4, 18-20, 35.

⁷⁷ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Italy, A. Simoni, 2007,

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/itrep07_en.pdf, pp. 33-36.

⁷⁸ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Italy, A. Simoni, 2007,

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/itrep07_en.pdf, pp. 36-38.

An additional feature is the emphasis on simple procedures that individual victims can access themselves.

B. Sweden

1. Constitutional Provisions

With regard to human rights, the Swedish Constitution, as set forth in the 1975 Instrument of Government,⁷⁹ refers to the European Convention for the Protection of Human Rights and Fundamental Freedoms and states that no act of law or other provision may be adopted which contravenes Sweden's undertakings under it (Chapter 2, Article 23). The Convention has thereby been incorporated into national legislation.

Explicit constitutional provisions regarding discrimination are contained in Chapter 1, Basic principles of the form of government, which states that public institutions shall combat discrimination against "persons" on grounds of "... colour, national or ethnic origin, linguistic or religious affiliation..." (Chapter 1, Article 2). Non-nationals are expressly protected from discrimination by an Article devoted to "foreign nationals within the Realm." They are "equated with" Swedish citizens in respect of protection against unfavourable treatment on grounds of race, colour or ethnic origin ..." (Chapter 2, Article 22). Religion is not included within this list, although foreign nationals are granted freedom of worship in Article 22.10.1. In addition, foreign nationals are equated with Swedish citizens in respect of the right to trade or practice a profession, unless otherwise specifically provided by law (Chapter 2, Article 22).

2. Legislation

There are currently two Acts in effect in Sweden that may be applicable to discrimination suffered by migrant workers. In this case, the laws will be easier to understand if the most recent one is discussed first.

a. Prohibition of Discrimination Act

Sweden enacted the Prohibition of Discrimination Act (2003:307)⁸⁰ in 2003 to comply with both Council Directives 2000/43/EC on racial or ethnic origin discrimination and 2000/78/EC on the general framework for equal treatment.⁸¹ The Act, like the general framework Directive, applies to both employment and other areas. Of potential relevance to migrant workers are the grounds of ethnic origin, religion or other belief (Section 1). The Act defines ethnic origin as the condition of belonging to a group of persons who have the same national or ethnic origin, race or skin colour (Section 4.1). Five other acts

⁷⁹ www.riksdagen.se/templates/R_PageExtended_6309.aspx; Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Sweden, Ann Numhauser-Henning, 2007, www.ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/svrep07_en.pdf, pp. 21-22.

⁸⁰ www.sweden.gov.se/content/1/c6/03/07/73/c6e1d81e.pdf

⁸¹ www.sweden.gov.se/content/1/c6/01/62/50/739d8295.pdf

and one penal code provision prohibiting discrimination that are also currently in effect are noted in the Act itself. One of those is of potential relevance to migrant workers, the Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief discussed in the next section.⁸²

Direct and indirect discrimination are defined along the lines of the two European Council Directives (Section 3). Direct discrimination is defined as being treated less favourably than another individual in a comparable situation, if that is associated with ethnic origin, religion or other belief (Section 3.1). Indirect discrimination is defined as disadvantage to an individual by the application of provisions, criteria or practices that are apparently neutral but in practice particularly disadvantage individuals of a certain ethnic origin, religion or other belief if it cannot be justified by legitimate objectives and the means are appropriate and necessary for achieving these objectives (Section 3.2). Harassment, or conduct that violates a person's dignity and that is associated with ethnic origin, religion or other belief, is defined as discrimination, as in the Directives (Section 3.3). With regard to the burden of proof for a discrimination claim, if the person who claims discrimination demonstrates circumstances that give reason to presume that such took place, the employer shall show that discrimination or victimisation has not occurred in order to prevent a finding of discrimination (Section 21).

The Act prohibits discrimination against both employees and those persons seeking employment (Section 5). It prohibits discrimination in public and private job placement services or by other parties and in connection with other measures included in labour market policy activities (Section 5.1, 5.2). It additionally prohibits discrimination in connection with qualification, certification, authorization, registration, approval or similar arrangements needed or important to engage in a particular occupation (Section 7). Discrimination in connection with employees' organisations (trade unions) or occupational organisations, or the benefits provided by them, is prohibited (Section 8). Victimisation, i.e., retaliation or reprisal for reporting or drawing attention to discrimination or taking part in an investigation into discrimination, is prohibited as well (Section 14).⁸³

With regard to remedies, the employee or job seeker being discriminated against may be awarded damages for the violation (Sections 16, 17). This limitation of remedies is significant, as the Act contains no provision for the issuance of an order undoing the discriminatory conduct and placing the victim in the position he or she would have been in if there had been no discrimination. Compliance with the Act is to be supervised by the Ombudsman against Ethnic Discrimination, who shall first attempt to induce the parties covered by the Act's prohibitions to voluntarily comply (Section 19). If that is not successful, an action may be taken in civil court by the Ombudsman, with the consent of

⁸² This is not to say, of course, that the other Acts do not cover migrant workers, inasmuch as they may be victims of prohibited discrimination on other grounds, such as sex or handicap. It is only that they are not relevant for the purposes of this paper.

⁸³ The latter would apparently cover anyone who participated in an investigation, that is, not only the person complaining of discrimination, but, for example, anyone who provided evidence on his or her behalf.

the alleged victim, by the alleged victim him or herself, or by a trade union (Sections 20, 22). However, if the case is lost, the costs must be borne by the losing party (that is, the Ombudsman, union, or individual). This latter provision is certainly a disincentive to bringing a claim, particularly for an individual. Anyone considering a claim, whether the Ombudsman, a union, or the alleged victim, must weigh the very real possibility of losing the claim and having to pay legal costs. Thus, while the Act seems to prohibit virtually all aspects of discriminatory conduct affecting hire, employment, and termination of employment, there is a real question as to whether the limited remedy provided and the requirement to pay costs if a civil court action is lost, in effect, do a great deal to nullify those apparent protections.

b. Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief Act

As noted, one of the five acts listed in the Prohibition of Discrimination Act as also being in effect is the Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief Act (1999:130).⁸⁴ The Act only covers matters concerning work, conditions of employment and other conditions of work, together with development opportunities at work (Section 1). Both job applicants and employees are protected from discrimination (Sections 8-11). Ethnic background is defined as belonging to a group of people who have the same race, colour, national or ethnic origin or religious belief (Section 3). Employers have a duty not only to refrain from discrimination, but also to take active measures to promote ethnic diversity in working life, to ensure that the work situation is appropriate for all employees irrespective of ethnic background, to prevent and stop ethnic harassment or reprisals, and to work to ensure that persons with various ethnic backgrounds are given the opportunity to apply for vacant positions (Sections 4-7).

The definition of direct discrimination is, for the most part, the same as that contained in the Prohibition of Discrimination Act. Thus, with regard to direct discrimination, an employer may not disfavour a job applicant or employee by treating him or her less favourably than another person with a different ethnic background in a similar situation, unless the employer demonstrates that such is not connected to ethnic background. There is an additional provision, which is not in the Prohibition of Discrimination Act described above, allowing the employer to justify the treatment as having regard to such ideological or other special interests manifestly more important than the interest to prevent discrimination (Section 8.) With regard to indirect discrimination, an employer may not disfavour a job applicant or employee by applying a facially neutral provision, which in practice disfavours persons of a particular ethnic background, unless its purpose can be justified for reasonable reasons and the measure is appropriate and necessary in order to achieve the purpose (Section 9).

The scope of the prohibitions against discrimination is broad. They apply to decisions on an employment issue, selection of job applicants for employment interviews or other

⁸⁴ www.sweden.gov.se/content/1/c6/01/99/57/b98945ab.pdf. This full title is taken from The Prohibition of Discrimination Act (Section 2).

measures taken during the employment process (i.e., hiring process), promotion decisions and selection of employees for training for promotion, pay or other terms of employment, the management and distribution of work, and termination, summary dismissals, layoffs, or other “significant” measures against employees (Section 10). The employer may not subject an employee to reprisals on the grounds that he or she has reported it for ethnic discrimination (Section 12). The employer is also required to investigate and prevent ethnic harassment by other employees (Section 13).

Significantly, the Act grants a right to information to the employee who feels that he or she may have been discriminated against. An applicant who was not hired or an employee who was not promoted or selected for training for promotion is entitled to obtain written information from the employer about the training, professional experience and other qualifications of the person selected for the job or training (Section 11).

The Act’s remedial provisions are for the most part similar to those contained in the Prohibition of Discrimination Act--damages (Sections 16-19), with a couple of important exceptions. Contract provisions which prescribe or permit discrimination are invalid. Also, if an employer discriminates in “giving notice terminating a contract or implementing another such legal act,” that act shall be declared invalid if the employee requests (Sections 14, 15). Supervision of compliance of the Act is similarly the responsibility of the Ombudsman Against Ethnic Discrimination (Sections 21, 22). A complaint may be filed by a union or by the Ombudsman, but in the latter case, only if the union does not file a complaint, and complaints must be filed in the Labour Court, rather than civil court (Sections 37, 38). The person himself or herself may also bring an action, but in that case it must come before a district court (Sections 36 and 43).⁸⁵ As with the Prohibition of Discrimination Act, costs must be paid by the party who filed the complaint--the alleged victim of discrimination or Ombudsman or union taking the claim on her or his behalf,⁸⁶ a real disincentive to the pursuit of a claim.

C. United Kingdom

1. Background

The United Kingdom does not have a constitution that regulates the relationship between the state and its citizens. There is not one supreme law which provides principles such as those of equality or non-discrimination that can be used by persons residing within its jurisdiction. Instead, some rights for individuals have developed in the case law over the centuries, which are discernable only by tracing the development of principles through an extensive body of common law. With regard to discrimination, while there are some restrictions on government acts set forth in regulations or legislation, a principle of

⁸⁵ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Sweden, 2007, A. Numhauser-Henning, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/svrep07_en.pdf, p. 49.

⁸⁶ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Sweden, 2007, A. Numhauser-Henning, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/svrep07_en.pdf.

equality or non-discrimination pertaining to private action does not seem to exist. In the private sector, the general principle is freedom of contract. In short, those who have been discriminated against do not have a source of constitutional law to turn to, but can only rely on whatever specific legislation prohibiting discrimination is available.⁸⁷

Workers in the United Kingdom who believe they have suffered from discrimination therefore have recourse only in legislation regarding equality and the prohibition of discrimination and the large body of case law that has developed from it over the last three or four decades. There is currently a complex array of law in this area set out in many different places--in Acts of Parliament, regulations, orders, and elsewhere--which is viewed, even by the government itself, as needing major revision to bring coherence, clarity, and consistency to those affected by the law.⁸⁸ Consequently, a Discrimination Law Review was launched in 2005 in preparation for the creation of a clearer and more streamlined legislative framework on discrimination. In June 2007, the government issued a consultation paper based on the Review, "A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain," setting forth its proposals for a Single Equality Bill for Great Britain and calling for comments on the proposals. Comments were to be submitted by September 2007, and it is expected that new, comprehensive legislation will be forthcoming.⁸⁹ A process of review of the regulatory situation with regard to discrimination is likewise taking place in Northern Ireland.⁹⁰

Since it is not possible to delve into all the complexities of current legislation, and since it is expected to be significantly changed in the near future in any event, the following description of current legislation will be a broad overview. It will focus on the four major pieces of law regulating the area of discrimination in employment.

2. Legislation

⁸⁷ Country Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, United Kingdom, 2007, C. O'Cinneide,

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/ukrep07_en.pdf, pp. 12-14;

Developing Anti-Discrimination Law in Europe, The 25 EU Member States Compared, M. Bell, I. Chopin and F. Palmer, November 2006,

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/06compan_en.pdf, p. 116.

⁸⁸ Country Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, United Kingdom, 2007, C. O'Cinneide,

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/ukrep07_en.pdf, pp. 87-88;

Discrimination Law Review, A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain, June 2007,

<http://www.communities.gov.uk/publications/communities/frameworkforfairnesssummary>, pp. 11-12; A

Framework for Fairness: Proposals for a Single Equality Bill for Great Britain – A Consultation Paper,

<http://www.communities.gov.uk/publications/communities/frameworkforfairnesssummary>.

⁸⁹ Discrimination Law Review, A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain, June 2007,

<http://www.communities.gov.uk/publications/communities/frameworkforfairnesssummary>, pp. 11-12; A

Framework for Fairness: Proposals for a Single Equality Bill for Great Britain – A Consultation Paper,

<http://www.communities.gov.uk/publications/communities/frameworkforfairnesssummary>

⁹⁰ Country Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, United Kingdom, 2007, C. O'Cinneide,

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/ukrep07_en.pdf, pp. 87-88.

a. The Race Relations Act

The most important early piece of legislation in the field of employment discrimination is the Race Relations Act 1976 (c. 74), which was amended in 2003 and 2006, in part to comply with Council Directive 2000/43/EC on racial or ethnic origin.⁹¹ The Act applies to England, Wales, and Scotland. It prohibits employment discrimination on the grounds of colour, race, nationality or ethnic or national origin, all of which are included within the concept of “racial grounds” (Part I.3(1)). Nationality is defined as including citizenship, so that it is unlawful to discriminate against a worker because he or she is a non-national or non-citizen—that is, because he or she is a migrant worker (Part X.78). This inclusion of nationality as a ground of discrimination is significant, for migrant workers need not turn to other grounds in a discrimination claim to hopefully find some other ground which best “fits,” when their migrant status was the real reason for the discrimination.⁹² The reason could, of course, be based on multiple grounds—migrant status, race, *and* colour, for example—and all of those grounds could be alleged in a complaint.

The Act covers employers, organisations of workers or any other organisations whose members carry on a particular profession or trade, authorities or bodies which can confer an authorization or qualification for a profession or trade, employment agencies, and partnerships in certain circumstances (Part II). With regard to victimisation, it is unlawful discrimination for an employer to treat a person less favourably because the person has made a claim of discrimination or participated in a proceeding (Part I.2). Harassment, or unwanted conduct violating one’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment on the basis of race, is unlawful (Part I.3A).

It is unlawful for employers to discriminate in hiring decisions and terms of employment offered, in promotion, transfer or training, or any other benefits, facilities or services, by dismissal or any other detriment (Part II.4.) With regard to organizations of workers or professional or trade organisations, prohibited acts include discrimination in admission to membership, access to benefits, facilities or services, or any other detriment (Part II.11). Authorities which confer authorizations or qualifications for a particular profession or trade are prohibited from discriminating against applicants and individuals needing or holding such authorization or qualifications (Part II.12). It is unlawful to discriminate with regard to training (Part II. 13). Employment agencies are prohibited from discriminating in providing services (Part II.14).

The Commission for Racial Equality is the specialized body set up to combat discrimination. It accepts complaints, conducts investigations, and assists in legal

91

<http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=Race+Relations+&Year=1976&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavForm=0&activeTextDocId=2059995&PageNumber=1&SortAlpha=0> .

⁹² There are some exceptions to the Act regarding immigration functions that are not related to hire or employment, but rather concern entry and stay (Part III.19D).

representation in courts or the employment tribunal. There will be some changes by 2009, when the Commission must be merged within and replaced by a new Commission for Equality and Human Rights.⁹³

With regard to enforcement procedures, complaints may be filed in an employment tribunal by an individual (Part VIII.54). The only organization which can participate in proceedings is the Commission for Racial Equality.⁹⁴ The tribunal may award damages and make a recommendation that the respondent take a particular action. If, without reasonable justification, the respondent fails to comply with a recommendation and if the tribunal believes it is just and equitable, it may increase the compensation award (Part VIII.56). Damages may also be granted for injury to feelings (Part VIII.56-57). The tribunal does not have the authority to require any action other than a monetary award, such as reinstatement or promotion to a position discriminatorily denied. However, collective agreements which have terms found to be discriminatory are subject to having those terms voided. Discriminatory rules made by an employer or an organisation under the jurisdiction of the Act may be voided as well. (Part X.72).

b. Race Relations (Northern Ireland) Orders

Similar legislation applies in Northern Ireland, the Race Relations (Northern Ireland) Order 1997,⁹⁵ as amended by Race Relations Order (Amendment) Regulations (Northern Ireland) 2003,⁹⁶ which was issued to comply with the Council Directive on racial or ethnic origin. The Orders essentially track the Race Relations Act covering England, Scotland, and Wales just described, with the exception that the definition of racial grounds includes an additional ground--having origins within the Irish Traveller community (Part I.5). The specialized body to combat discrimination is the Equality Commission for Northern Ireland, which covers both race and religion.⁹⁷

c. Employment Equality (Religion or Belief) Regulations 2003

In England, Scotland, and Wales, the Employment Equality (Religion or Belief) Regulations 2003⁹⁸ govern discrimination on the basis of religion. The Regulations were enacted to comply with Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. According to the Regulations, unlawful discrimination takes place when a person discriminates against another person

⁹³ Country Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, United Kingdom, 2007, C. O'Cinneide, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/ukrep07_en.pdf, pp. 81-82.

⁹⁴ Country Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, United Kingdom, 2007, C. O'Cinneide, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/ukrep07_en.pdf, p. 76.

⁹⁵ <http://www.opsi.gov.uk/si/si1997/70869--a.htm>.

⁹⁶ <http://www.opsi.gov.uk/Sr/sr2003/20030341.htm>.

⁹⁷ Country Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, United Kingdom, 2007, C. O'Cinneide, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/ukrep07_en.pdf, p. 82.

⁹⁸ <http://www.opsi.gov.uk/si/si2003/20031660.htm>

by treating the person less favourably than another, applying a provision, criterion or practice equally, which results in putting those of another religion at a particular disadvantage and which is not shown to be a proportionate means of achieving a legitimate claim. To show discrimination, there must be a comparison of the person alleging discrimination against another person in a similar circumstance who has not been discriminated against. (Part I.3)). Victimisation, or retaliation for making or participating in a discrimination claim, is prohibited (Part I.4.) Harassment, that is, violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment, is prohibited (Part I.5).

Employers are prohibited from discriminating against applicants in hiring decisions or terms of employment offered, promotion, transfer, training, or any other benefit, dismissal, or any other detriment (Part II.6(1, 2)). Harassment of employees is forbidden (Part II.6(3)). A narrow exception from the Regulations' requirements is permitted for a genuine occupational requirement based on religion or belief (Part II.7). Discrimination by trade organisations, qualifications bodies, providers of vocational training, and employment agencies is also prohibited. Trade organisations may not discriminate in admission, benefits, membership terms, or any other detriment (Part II.15). Qualifications bodies may not discriminate in the terms on which professional or trade qualifications are conferred, in the granting of applications, withdrawing qualifications, or by harassing a person (Part II.16). Providers of vocational training may not discriminate in providing access to or in training, (Part II.17). Employment agencies may not discriminate in their provision of services (Part II.18).

As to enforcement and remedies, a complaint may be presented to an employment tribunal, but associations or organizations are not permitted to participate in the proceedings (Part V.28). There are similar provisions in the Regulations for damages as those contained in the laws regarding race discrimination (Part V.30). Thus, the tribunal does not have the authority to require any action other than a monetary award. For example, it cannot order that a victim of discrimination be hired, provided the professional qualifications discriminatorily denied, or reinstated to the job he or she lost because of discrimination. It can only "recommend" action practicable to obviate or reduce the adverse effect on the complainant.

d. Fair Employment and Treatment (Northern Ireland) Order 1998 and Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003

The law applicable to Northern Ireland is contained in the Fair Employment and Treatment (Northern Ireland) Order 1998,⁹⁹ as amended by the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003, which was enacted to conform the law to the general framework Directive.¹⁰⁰ Similar provisions are contained in these two Orders as are contained in the Regulations covering England, Scotland and Wales described above.

⁹⁹ <http://www.opsi.gov.uk/si/si1998/98316202.htm>.

¹⁰⁰ <http://www.opsi.gov.uk/sr/sr2003/20030520.htm>.

As stated earlier, employment discrimination law in Great Britain is complex, inconsistent, and expected to change in the near future. It goes further towards recognizing discrimination against migrant workers by including nationality as a prohibited grounds of discrimination. It also covers virtually all important aspects of employment and access to employment, such as qualification, hire, on-the-job terms and opportunities, and termination of employment. However, the question arises as to whether these features are sufficient in view of the very limited remedies available for a discrimination claim. Damages are an insufficient remedy, for example, for a migrant worker discriminatorily denied authorization to engage in professional activity for which he or she is qualified because the qualifying body refused to grant the necessary qualification, for a worker denied hire, or for a worker terminated from his or her job. Even if a court or tribunal determines that there was unlawful discrimination, this individual is still out of work. In the case of migrant workers, being out of work can lead to loss of authorization to remain in the country. The upcoming changes in the law will hopefully address the inadequate remedies provided.

D. France

1. Constitutional Provisions

Constitutional principles of equality and human rights have three sources in France—the 1789 Declaration of the Rights of Man and the Citizen,¹⁰¹ the Constitution of 1946,¹⁰² and the Constitution of 1958.¹⁰³ The Constitution of 1958 incorporated within it by reference the preamble of the Constitution of 1946 and the 1789 Declaration. Today’s rights originally stem from the Declaration, which states that people are “born and remain free and equal in rights” and that “social distinctions may be based only on considerations of the common good” (Article first). The law “must be the same for all, whether it protects or punishes” (Article 6). The preamble to the 1946 Constitution, incorporated into the Constitution of 1958, provides that “each human being, without distinction of race, religion or creed, possesses sacred and inalienable rights.” Everyone has the “duty to work and the right to employment” and may not “suffer prejudice in his work or employment by virtue of his origins, opinions or beliefs.” Equality on the basis of race and religion are mentioned in the context of the overseas territories of France; “France shall form with its overseas peoples a Union founded upon equal rights and duties, without distinction of race or religion.” With regard to rights in the Constitution of 1958, Article 1 states that France “shall ensure the equality of all citizens before the law, without distinction of origin, race or religion” and “shall respect all beliefs.”

2. Legislation

¹⁰¹ http://www.elysee.fr/elysee/anglais/the_institutions/founding_texts/the_declaration_of_the_human_rights/the_declaration_of_the_human_rights.20240.html.

¹⁰² http://www.elysee.fr/elysee/anglais/the_institutions/founding_texts/preamble_to_the_27th_of_october_1946_constitution.20243.html.

¹⁰³ <http://www.assemblee-nationale.fr/english8ab.asp>.

Because of constitutional restrictions, French law in the area of discrimination is unable to use the concept of distinctions based on belonging to a people, a minority, or a group. The law is based on a universalistic conception of equality focused on the individual. Thus, for legal purposes, groups defined by different beliefs or allegiances, or even by their common race, do not exist.¹⁰⁴ Moreover, outlining the statutory law in the area of employment discrimination is difficult, because it is scattered throughout various bodies of law, with various courts having jurisdiction. Some is contained in the Labour Code, some in the Penal Code, some in the Civil Code, some in administrative law pertaining to civil servants, and elsewhere. Enforcement jurisdiction is split among the labour courts, penal courts, civil courts, and administrative courts, and a claimant can in some cases even choose between courts for the same alleged violation.¹⁰⁵ To avoid an overly complex explanation of French law in this area, the prohibitions against employment discrimination and the protections afforded employees will be discussed by topic, rather than by specific legislation, as has been done for the most part for the other countries reviewed.

The Labour Code, Penal Code, the law relating to the rights and obligations of civil servants, civil law regulating contracts, and the Law creating the High Authority against Discrimination and for Equality all contain provisions prohibiting different forms of employment discrimination.¹⁰⁶ As in the case of Italy, Sweden, and the United Kingdom, amendments have been made in the last few years as a result of the Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and the Council Directive establishing a general framework for equal treatment in employment and occupation.

The prohibited grounds of discrimination potentially relevant to migrant workers include race, religion, and origin. Origin basically amounts to ethnic or racial origin. Nationality is sometimes included in a specific list of grounds on which discrimination is prohibited, but the various sources of law are not consistent in this area. For example, the Labour Code states that any salaried employee can become a member of a trade union of his or her choice, regardless of nationality.¹⁰⁷ There are extensive exceptions to this provision, however, as will be discussed below.

Employees in the private and public sector—that is, salaried employees—are protected against discrimination. However, the extent of their protection varies, depending on

¹⁰⁴ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, France, S. Latraverse, 2007, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/frrep07_en.pdf, p. 4.

¹⁰⁵ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, France, S. Latraverse, 2007, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/frrep07_en.pdf, pp. 2, 59-60.

¹⁰⁶ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, France, S. Latraverse, 2007, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/frrep07_en.pdf, pp. 16, 33, 66-67).

¹⁰⁷ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, France, S. Latraverse, 2007, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/frrep07_en.pdf, p. 36, LC Art. L. 122-45.

whether the Labour Code, administrative law, or Penal Code applies to their situation. The Labour Code covers hiring, pay, promotion, transfer, qualification, classification, working conditions, renewal of contract (dismissals), and redeployment. It prohibits discriminatory provisions in workplace rules and collective bargaining agreements. The Penal Code, on the other hand, prohibits discrimination in hiring, vocational apprenticeship and training, discipline, and dismissal of employees. But as noted above, there are many jobs which are legally closed to non-nationals. Trade unions and all other organisations must abide by Penal Code provisions prohibiting discrimination in access to services. Discrimination in vocational training and guidance is prohibited by various laws. Administrative law prohibits discrimination in access to employment and forbids distinctions between civil servants based on religion, race, or origin. French law provides protection against harassment, which requires a showing of repeated acts. There is also some protection against victimisation, or retaliation, but employees are only protected against discipline or dismissal and not other forms of retaliation for making claims of discrimination. In contrast to the above provisions for salaried workers, non-salaried workers, in contrast, must rely upon general principles of contractual and civil liability for their claims of discrimination.¹⁰⁸

Despite these anti-discrimination provisions, French law contains contradictory legal provisions which *require* discrimination in access to many professions and jobs by conditioning them upon French or EU citizenship. In other words, discrimination is written into the law by specifically prohibiting non-nationals from working in certain jobs and professions. Discrimination against non-nationals is thus required, regardless of their qualifications. These kinds of discriminatory laws originated in the 1800's, and in 1927 even the employment of naturalized citizens was prohibited in many jobs. The list of professions and jobs currently forbidden to non-citizens is extensive—about 7000 named jobs. In fact, it is estimated that today close to one third of salaried jobs are forbidden to non-nationals. While changes have been made in recent years in response to criticism of the extent and incoherence of these discriminatory laws, a great deal remains to be changed. It, indeed, seems impossible to justify closing off so many employment opportunities to those who are not French, particularly when these lists of prohibited jobs inexplicably include such things as tobacco store manager and coiffeur supervisor.¹⁰⁹

In June 2005, the High Authority against Discrimination and for Equality began operation; it has the authority to investigate individual and collective complaints. If there is a possible criminal offense, it may refer the matter to the prosecutor for prosecution in the Penal Courts. It may also provide its observations on cases being litigated in the

¹⁰⁸ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, France, S. Latraverse, 2007, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/frrep07_en.pdf, pp. 3, 5, 27, 33-37, 64.

¹⁰⁹ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, France, S. Latraverse, 2007, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/frrep07_en.pdf, pp. 32, 45-46; L'Observatoire de l'integration des refugies statutaires, November 2007.

penal, civil and administrative courts as an “auxiliary of Justice.” In the case of a criminal offense, intent to discriminate against the victim must be shown.¹¹⁰

As would be expected from such an array of different laws applying to different kinds of workers and situations, available remedies for discrimination depend on the workers’ status and situation as well. Salaried employees may be granted monetary damages, reinstatement to their jobs if they were terminated, back pay, and modification of working status, i.e., reconstitution of career. Their cases are handled by the Labour Courts. Civil service employees may seek annulment of the decision and damages in administrative proceedings. Non-salaried employees are at a disadvantage in comparison, as they may only seek damages in the civil courts. As noted, in some cases, criminal penalties may be sought. The High Authority against Discrimination and for Equality has recently been given the power to propose criminal punishment.¹¹¹

France, in short, has a variety of laws and provisions prohibiting discrimination against job applicants and employees that cannot easily be summarized, but could apply to some discriminatory treatment experienced by migrant workers, that is, if they are not prohibited from employment in the specific job they wish in the first place. Prohibitions and remedies vary depending on the status and situation of the alleged victims of discrimination. The extensive legal requirements of discrimination against non-nationals constitute a great barrier to migrant workers, because it completely closes them off from access to employment in many jobs. The law does not merely fail to protect them from discrimination in these instances, but actually requires discrimination against them.

V. AN OVERVIEW AND COMPARISON

An attempt has been made to present a brief and clear outline of employment discrimination law available to migrant workers in Europe and in the four selected countries. Nevertheless, because this paper has reviewed numerous instruments and laws, a rather large volume of information has been presented. Some selected information drawn out from this review is therefore summarized below in a form which should make it easier to compare and understand the differences between the various instruments and laws. Table 1 presented in Annex 1 shows in nutshell form the bases upon which a claim of discrimination may be made for the different instruments and laws, and for national origin, ethnic origin, race, and colour, shows how their definitions sometimes overlap and/or are incorporated within each other. This table also shows in the last column the exceptions or limitations in coverage that are permitted in some instruments and laws. Table 2, presented in Annex 2 briefly states the employment conditions covered by the prohibition against discrimination for each instrument and law.

¹¹⁰ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, France, S. Latraverse, 2007, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/frrep07_en.pdf, pp. 66-67.

¹¹¹ Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, France, S. Latraverse, 2007, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/frrep07_en.pdf, pp. 64-67.

It also states the remedies available to those who have shown that they have been unlawfully discriminated against.

The table 1 presented in Annex 1 shows that of the instruments and laws reviewed, human rights are most often addressed in international law, including the Convention for the Protection of Human Rights and Fundamental Freedoms, which Italy, Sweden, the United Kingdom, and France have ratified. Human rights are also expressly covered in the Constitutions of Italy and Sweden. With regard to equality and non-discrimination in employment for migrant workers as compared to national workers, certain rights are provided in the three international conventions on migrant workers, that is, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the two ILO migrant worker Conventions. Provisions pertaining to discrimination on the basis of nationality are contained in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ILO Convention No. 97, immigration legislation in Italy, and race discrimination legislation in the United Kingdom.

As discussed in the Introduction, the terms national origin, ethnic origin, race, and colour are variously defined, sometimes used interchangeably, or incorporated within each other in various ways. All but one of the international instruments reviewed, as well as Council Directive 2000/43/EC on racial or ethnic origin, the Italian and Swedish Constitutions, and legislation in the four countries, cover the grounds variously labeled national origin, ethnic origin, race, and/or colour. The international instrument which is an exception to this is the Migrant Workers (Supplementary Provisions) Convention, No. 143. Religion is likewise covered by the same instruments and laws, except for the International Convention on the Elimination of All Forms of Racial Discrimination, ILO Convention No. 143, and in the case of the Council Directives, it is 2000/78/EC which covers discrimination on the basis of religion. Language as an enumerated basis of discrimination is less often covered. It is contained in the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention for the Protection of Human Rights and Fundamental Freedoms, and in the Constitution of Italy and some of its statutes.

As shown, many of the instruments and laws do not contain provisions limiting coverage related to the delineated bases of discrimination. Those which cover migrant status or nationality address the issue of regular and irregular status and are more likely to restrict coverage to workers in regular status, except that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the ILO Migrant Workers (Supplementary Provisions) Convention, No. 143 provide some rights for those in irregular status as well. As explained in detail above, the two Council Directives specifically exclude coverage of discrimination on the basis of nationality. The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights permit some limitations if needed for promoting the general welfare of society.

Table 2 presented in Annex 2 shows, in general, that in descending from international instruments to European instruments to national law, more employment conditions are covered. Thus, the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ILO Migration for Employment Convention (Revised) (No. 97), and ILO Migrant Workers (Supplementary Provisions) Convention (No. 143) do not cover all forms of discrimination in the entire spectrum of employment, that is, from training and hire, through employment, and termination of employment, but are more limited. The International Convention on the Elimination of All Forms of Racial Discrimination and the ILO Discrimination (Employment and Occupation) Convention (No. 111) appear more inclusive.

At the European level, the two Council Directives cover access to employment, training, treatment during employment, and termination of employment. On the subject of employment, the Convention for the Protection of Human Rights and Fundamental Freedoms only addresses the right to form and join trade unions. Legislation in Italy and the United Kingdom covers the range of employment from training and hire, through employment, and termination of employment. Sweden's employment discrimination laws contain broad coverage as well, although the coverage of training may be more limited. Finally, in France, generalizations are more difficult to make, because there are various prohibitions against employment discrimination scattered throughout different codes and applying to different classifications of workers, with some of them covering more employment conditions than others. And, as discussed, in France a large number of non-nationals, or migrant workers, are completely precluded by law from employment in certain professions and occupations.

With regard to remedies, those international instruments that address the subject speak of "effective" or "effective and enforced" remedies. These are the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and Convention for the Protection of Human Rights and Fundamental Freedoms. The two Council Directives require effective, proportionate, and dissuasive remedies to be determined by Member States. They state that this may include the payment of compensation, but do not require remedies intended to reverse the discriminatory conduct and place the victim of employment in the position he or she would have been in absent the discrimination.

As for the four countries reviewed, Sweden and the United Kingdom have the most limited remedial provisions in their employment discrimination legislation. Remedies in those countries are basically limited to damages, except that in Sweden a discriminatory notice terminating a contract can be invalidated. The law in France, again, depends on the type of worker and situation, with possible remedies being damages and sometimes

annulment of the discriminatory decision. Italian law is the most generous of the four in its remedial provisions, not only providing for damages, but for voiding of discriminatory conduct as well, including, for example, reinstating terminated workers.

It should be pointed out that this paper has not delved into whether the instruments and laws are effective *in practice*—that is, whether too many employment conditions have been excluded, whether remedies are sufficient and effective, whether the laws are practically accessible to those discriminated against, whether procedures are too cumbersome or slow, or whether there are other deficiencies.¹¹² While those issues are certainly worthy of study, they concern a topic pertinent to non-migrant workers as well. The focus here, in contrast, has been to review the existing instruments and laws which can be used by migrant workers in Europe.

VI. SUMMARY AND CONCLUSIONS

Several broad conclusions that can be made from this review of laws and instruments of potential relevance to migrant workers employed in Europe who have experienced employment discrimination will be noted here. This has largely turned out to be a review of employment law that would “best fit” the situation of a migrant worker who has experienced discrimination in employment and work, because the vast majority of discrimination law does not include nationality as a ground of unlawful discrimination.

As shown, there are a few international instruments—the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the ILO Migration for Employment (Revised) Convention, and the ILO Migrant Workers (Supplementary Provisions) Convention—that protect workers from discrimination based on their status as migrants. While these provide an array of protections, they provide

¹¹² The ILO Committee of Experts on the Application of Conventions and Recommendations periodically reports on some of these issues as part of its supervisory function of reviewing compliance with the Discrimination (Employment and Occupation) Convention, No. 111 by those states which have ratified it. As they have all ratified Convention 111, there are reports for Italy, Sweden, the United Kingdom, and France. See, for example, CEACR: Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Italy (ratification: 1963) Submitted: 2007, <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=19846&chapter=9&query=Italy%40ref&highlight=&querytype=bool&context=0>; CEACR: Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Sweden (ratification: 1962) Submitted: 2006, <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=18289&chapter=9&query=Sweden%40ref&highlight=&querytype=bool&context=0>; CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) United Kingdom (ratification: 1999) Published 2007, <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=9334&chapter=6&query=%28United+Kingdom%29%40ref&highlight=&querytype=bool&context=0>; CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) France (ratification: 1981) Published 2006, <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=8645&chapter=6&query=France%40ref&highlight=&querytype=bool&context=0>; CEACR.

fewer in practice, because the majority of states which have ratified them are those which send migrant workers, not those which employ them.¹¹³ Thus, these Conventions have not been as influential in the states where migrant workers are more often working and are most in need of protection. However, it is noteworthy that even in this small selection of four European countries for review, there are countries which provide protection, or instances in which a country provides protection in selected areas, against discrimination in employment on the basis of nationality, at least for those in regular status.

Another observation that can be made is that some international instruments specifically protect migrant workers from discrimination for work that they have already done, whether they are in regular status or not. For example, some instruments provide for equality in pay between migrant workers and national workers performing the same work. On the other hand, equality of treatment in recruitment and hire and in retention of a job (termination, layoff) is more likely to be lacking for migrant workers, or in the European Union, migrant workers from third countries. And while migrants in regular status are more often awarded equal rights, even those in regular status do not always have equal rights in these areas as compared to nationals.

In practice, the international instruments are used to address discriminatory employment conditions affecting large groups of migrant workers--in other words, gross, systemic discriminatory practices handled at national and international levels. National law provides more in the way of redress for employer's discriminatory conduct affecting individual migrant workers. This is why the new European Council Directives are so important. They are the most significant laws that have begun to effectuate change in national legislation in Europe, both modification and strengthening of existing law and the enactment of entirely new law in Member States. Continued important legislative developments on the national level based on the Directives can be expected in the future, as well as case law developments based on the resulting national legislation. Important case law development can be expected in the European Court of First Instance and Court of Justice as well.

Nevertheless, this review has shown that in most instances, international and European instruments and legislation containing provisions on employment discrimination have a gap in protection against discrimination on that basis most directly applicable to migrant workers--nationality. Even though many countries are in need of migrant workers and even when they have expressly accepted these non-nationals to work in their territories, it is often *not in their legal systems* to treat migrant workers who have been granted the legal right to work less favourably than national workers.

¹¹³ <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty24.asp>; <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C0097>; <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C143>; International labour standards, A global approach, M. Humblet et al (2002), <http://www.ilo.org/public/english/standards/norm/download/resources/globale.pdf>, pp. 125, 136.

INTERNATIONAL INSTRUMENTS AND NATIONAL LAWS

International

International Covenant on Civil and Political Rights (1966).
www.ohchr.org/english/law/ccpr.htm.

International Covenant on Economic, Social and Cultural Rights (1966).
www.ohchr.org/english/law/cesr.htm.

International Convention on the Elimination of All Forms of Racial Discrimination (1969).
<http://www.ohchr.org/english/law/cerd.htm>.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).
<http://www.ohchr.org/english/law/cmw.htm>.

Universal Declaration of Human Rights (1948).
<http://www.unhchr.ch/udhr/lang/eng.htm>.

International Labour Organization

Abolition of Forced Labour Convention, 1957 (No. 105).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105>.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111>.

Equal Remuneration Convention, 1951 (No. 100).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100>.

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C019>.

Equality of Treatment (Social Security) Convention, 1962 (No. 118).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C019>.

Forced Labour Convention, 1930 (No. 29).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C29>.

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087>.

ILO Declaration of Fundamental Principles and Rights at Work and its Follow-up (1998).
http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=DECLARATIONTEXT.

Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C048>.

Maintenance of Social Security Rights Convention, 1982 (No. 157).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C157>.

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).
www.ilo.org/ilolex/cgi-lex/convde.pl?C143.

Migration for Employment Convention (Revised), 1949 (No. 97).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C097>.

Minimum Age Convention, 1973 (No. 138).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>.

Occupational Safety and Health Convention, 1981 (No. 155).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C155>.

Recommendation concerning Migration for Employment (Revised), 1949 (No. 86).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?R086>.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C98>.

Safety and Health in Construction Convention, 1988 (No. 167).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C167>.

Worst Forms of Child Labour Convention, 1999 (No. 182).
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>.

European

Convention for the Protection of Human Rights and Fundamental Freedoms (1950).
<http://conventions.coe.int/Treaty/en/Treaties/html/005.htm>.

Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:EN:HTML>.

Council Directive 2000/78/EC establishing a national framework for equal treatment in employment and occupation.
<http://eur-lex.europa.eu/lexUriServ/LexUriServ.do?uri=CELEX:32000L0078:EN:HTML>.

Treaty on the European Union.
<http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/ce321/ce32120061229en00010331.pdf>.

National

Italy

Act. No. 286 of 1998 regulating immigration and the legal condition of foreigners (no reference in English).

Constitution of 1948.
www.servat.unibe.ch/law/icl/it00000_.html

Legislative Decree No. 215 (2003) (no reference in English).

Legislative Decree No. 216 (2003) (no reference in English).

Workers' Act of 1970 (no reference in English).

Sweden

Instrument of Government (1975).
www.riksdagen.se/templates/R_PageExtended__6309.aspx

Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or Other Belief Act.
Sweden.gov.se/content/1/c6/01/99/57/b98945ab.pdf

Prohibition of Discrimination Act.
www.sweden.gov.se/content/1/c6/03/07/73/c6e1d81e.pdf

United Kingdom

Employment Equality (Religion or Belief) Regulations 2003.
<http://www.opsi.gov.uk/si/si2003/20031660.htm>

Fair Employment and Treatment (Northern Ireland) Order 1998.
<http://www.opsi.gov.uk/si/si1998/98316202.htm>

Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003.

[Http://www.opsi.gov.uk/sr/sr2003/20030520.htm](http://www.opsi.gov.uk/sr/sr2003/20030520.htm).

The Race Relations Act 1976.

<http://www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&title=Race+Relations+Act&Year=1976&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&SortAlpha=0&TYPE+QS&PageNumber=1&Navfrom=0&activeTextDocId=205995&parentActiveTextDocId=2059995&showAllAttributes=0&hideCommentary=0&showProsp=0&suppressWarning=1>.

Race Relations (Northern Ireland) Order 1997.

<http://www.opsi.gov.uk/si/si1997/70869--a.htm>.

Race Relations Order (Amendment) Regulations (Northern Ireland) 2003.

<http://www.opsi.gov.uk/Sr/sr2003/20030341.htm>.

France

Constitution, 1946.

http://www.elysee.fr/elysee/anglais/the_institutions/founding_texts/preamble_to_the_27th_of_october_1946_constitution.20243.html

Constitution, 1958.

<http://www.assemblee-nationale.fr/english/8ab.asp>

Declaration of the Rights of Man and the Citizen, 1789.

http://www.elysee.fr/elysee/anglais/the_institutions/founding_texts/the_declaration_of_the_human_rights/the_declaration_of_the_human_rights.20240.html

REFERENCES

A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain – A Consultation Paper.

<http://www.communities.gov.uk/index.asp?id=1511211>.

Bell, M., I. Chopin and F. Palmer (2006). *Developing Anti-Discrimination Law in Europe, The 25 EU Member States compared*.

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/06compan_en.pdf.

CEACR: Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Italy (ratification: 1963) Submitted: 2007

<http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=19846&chapter=9&query=Italy%40ref&highlight=&querytype=bool&context=0>

CEACR: Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Sweden (ratification: 1962) Submitted: 2006,

<http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=18289&chapter=9&query=Sweden%40ref&highlight=&querytype=bool&context=0>

Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) United Kingdom (ratification: 1999) Published 2007,

<http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=9334&chapter=6&query=%28United+Kingdom%29%40ref&highlight=&querytype=bool&context=0>

CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) France (ratification: 1981) Published 2006,

<http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=8645&chapter=6&query=France%40ref&highlight=&querytype=bool&context=0>.

Complaints.

<http://www.ilo.org/public/english/standards/norm/applying/complaints.htm>.

Council Decision on Guidelines for the employment policies of the Member States (2005).

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:205:0021:01:EN:HTML>.

Declaration against racism and xenophobia (1986).

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41986X0625:EN:NOT>.

Discrimination Law Review, A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain, (June 2007).
www.communities.gov.uk/pub/244/AFrameworkForFairnessConsultation_id1511244.pdf

European Council Resolution on an action program for migrant workers and members of their families (1976).
[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31976Y0214\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31976Y0214(01):EN:NOT).

European Council Resolution on the fight against racism and xenophobia in the fields of employment and social affairs (1995).
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41995X1110:EN:NOT>.

Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights.
<http://ohchr.org/english/about/publications/docs/fs2.htm>.

How ILS are used.
<http://www.ilo.org/public/english/standards/norm/introduction/used.htm>.

Human Rights Bodies – Complaints Procedures.
<http://www.ohchr.org/english/bodies/petitions/index.htm>.

Human Rights Committee.
<http://www.ohchr.org/english/bodies/hrc/index.htm>.

Human Rights Council Complaint Procedure.
<http://ohchr.org/english/bodies/chr/complaints.htm>.

Humblet, M. et al (2002). *International labour standards, A global approach*.
<http://www.ilo.org/public/english/standards/norm/download/resources/globale.pdf>.

Latraverse, S. (2007). *Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, France*.

L'Observatoire de l'integration des refugies statutaires (November 2007).

Numhauser-Henning, A. (2007). *Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Sweden*.
http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/svrep07_en.pdf.

O'Cinneide, C. (2007). *Country Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, United Kingdom*.
http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/ukrep07_en.pdf.

Simoni, A. (2007). *Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report, Italy*.

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/itrep07_en.pdf.

Simoni, A. and G. Boni (2002). *Anti-discrimination Legislation in EU Member States, A comparison of national anti-discrimination legislation on the grounds of racial or ethnic origin, religion or belief with the Council Directives, Italy*.

http://eumc.europa.eu/eumc/material/pub/Art13/ART13_Italy_en.pdf.

Valticos, N. and G. von Potobsky (1995). *International Labour Law*, 2d ed.

Vickers, L. (2006). *Religion and Belief Discrimination in Employment – the EU law*.

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/07relbel_en.pdf.

Annex 1:

**TABLE 1. POSSIBLE BASES FOR AN EMPLOYMENT
DISCRIMINATION CLAIM AVAILABLE TO MIGRANT WORKERS**

BASIS FOR CLAIM	DEFINITION	PERMISSIBLE LIMITATION
HUMAN RIGHT International Universal Declaration of Human Rights, 1948		Only those “determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of society.”
International Covenant on Economic, Social and Cultural Rights, 1966		Limitations “compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” Developing countries “may determine to what extent they would guarantee the economic rights recognized ... to non-nationals.”
International Covenant on Civil and Political Rights, 1966		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990		Does not affect states’ rights to establish criteria governing the admission of migrant workers; covers both irregular and regular migrant workers, but regular migrant workers have more rights (see table on Employment Conditions Covered and Remedies Available)
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		Covers those lawfully in the territory; covers irregular migrant workers with respect to past employment
European The Convention for the Protection of Human Rights and Fundamental Freedoms, 1950		
National Italy Constitution of 1948		
Sweden Constitution (Instrument of Government, 1975)		

MIGRANT International International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990		Does not affect states' rights to establish criteria governing the admission of migrant workers; covers both irregular and regular migrant workers, but regular migrant workers have more rights (see table on Employment Conditions Covered and Remedies Available)
ILO Migration for Employment Convention (Revised), 1949 (No. 97)		Only covers those lawfully in the territory
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		Covers those lawfully in the territory; covers irregular migrant workers with respect to past employment
NATIONALITY International International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990		Does not affect states' rights to establish criteria governing the admission of migrant workers; covers both irregular and regular migrant workers, but regular migrant workers have more rights (see table on Employment Conditions Covered and Remedies Available)
ILO Migration for Employment Convention (Revised), 1949 (No. 97)		Only covers those lawfully in the territory
National Italy Act regulating immigration and the legal condition of foreigners, 1998		Only covers those lawfully in the territory
United Kingdom Race Relations Act, 1976, amended 2003, 2006 (England, Scotland, and Wales)		
Race Relations (Northern Ireland) Orders, 1997, amended 2003		
NATIONAL ORIGIN International Universal Declaration of Human Rights, 1948		Only those "determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of society."

International Covenant on Economic, Social and Cultural Rights, 1966		Limitations “compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” Developing countries “may determine to what extent they would guarantee the economic rights recognized ... to non-nationals.”
International Covenant on Civil and Political Rights, 1966		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990		Does not affect states’ rights to establish criteria governing the admission of migrant workers; covers both irregular and regular migrant workers, but regular migrant workers have more rights (see table on Employment Conditions Covered and Remedies Available)
International Convention on the Elimination of All Forms of Racial Discrimination, 1969	National origin is included within race.	Inapplicable to distinctions, exclusions, restrictions or preferences between citizens and non-citizens; may not be interpreted as affecting the legal provisions concerning nationality, citizenship or naturalization if no discrimination against a particular nationality results
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	(The term used is “national extraction”)	
European The Convention for the Protection of Human Rights and Fundamental Freedoms, 1950		
National Italy Act regulating immigration and the legal condition of foreigners, 1998		Only covers those legally in the territory
Sweden Prohibition of Discrimination Act, 2003	National origin is included within ethnic origin	
Sweden Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief Act, 1999	National origin is included within ethnic background.	
United Kingdom Race Relations Act, 1976, amended 2003, 2006 (England, Scotland, and	National origin is	

Wales)	included within race.	
United Kingdom Race Relations (Northern Ireland) Orders, 1997, amended 2003	National origin is included within race.	
ETHNIC ORIGIN International International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990		Does not affect states' rights to establish criteria governing the admission of migrant workers; covers both irregular and regular migrant workers, but regular migrant workers have more rights (see table on Employment Conditions Covered and Remedies Available)
International Convention on the Elimination of All Forms of Racial Discrimination, 1969	Ethnic origin is included within race.	Inapplicable to distinctions, exclusions, restrictions or preferences between citizens and non-citizens; may not be interpreted as affecting the legal provisions concerning nationality, citizenship or naturalization if no discrimination against a particular nationality results
European Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 2000		Inapplicable to differences of treatment based on nationality
National Italy Act regulating immigration and the legal condition of foreigners, 1998		Only covers those lawfully in the territory
Italy Legislative Decree No. 215, 2003		Despite coverage of nationality in the Act regulating immigration and the legal condition of foreigners, follows Council Directive 2000/43/EC
Sweden Constitution (Instrument of Government, 1975)		
Sweden Prohibition of Discrimination Act, 2003	Ethnic origin includes national or ethnic origin, race or skin colour.	

Sweden Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief Act, 1999	Ethnic background includes race, colour, national or ethnic origin or religious belief.	
United Kingdom Race Relations Act, 1976, amended 2003, 2006 (England, Scotland, and Wales)	Ethnic origin is included within race.	
United Kingdom Race Relations (Northern Ireland) Orders, 1997, amended 2003	Ethnic origin is included within race.	
France Constitution		
France Various provisions contained in the Labour Code, the law relating to the rights and obligations of civil servants, civil law regulating contracts, the Law creating the High Authority against Discrimination and for equality, and the Penal Code		An extensive list of professions and jobs cannot be held by non-nationals
RACE International Universal Declaration of Human Rights, 1948		Only those “determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of society.”
International Covenant on Economic, Social and Cultural Rights, 1966		Limitations “compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” Developing countries “may determine to what extent they would guarantee the economic rights recognized ... to non-nationals.”
International Covenant on Civil and Political Rights, 1966		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990		Does not affect states’ rights to establish criteria governing the admission of migrant workers; covers both irregular and regular migrant workers, but regular migrant workers have more rights (see table on Employment Conditions Covered and Remedies Available)

International Convention on the Elimination of All Forms of Racial Discrimination, 1969	Race includes race, colour, national or ethnic origin.	Inapplicable to distinctions, exclusions, restrictions or preferences between citizens and non-citizens; may not be interpreted as affecting the legal provisions concerning nationality, citizenship or naturalization if no discrimination against a particular nationality results
ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	Race may refer to linguistic communities or minorities whose identity is based on religious or cultural characteristics. Discrimination against an ethnic group is generally considered racial discrimination within the terms of the Convention. ¹¹⁴	
ILO Migration for Employment Convention (Revised), 1949 (No. 97)		Only covers those lawfully in the territory
European The Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.		
Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 2000.		Inapplicable to differences of treatment based on nationality
National Italy Constitution of 1948		
Italy Workers' Act of 1970		
Italy Act regulating immigration and the legal condition of foreigners, 1998		Only covers those legally in the territory

¹¹⁴ International labour standards, A global approach, <http://www.ilo.org/public/english/standards/norm/download/resources/globale.pdf>.

Italy Legislative Decree No. 215, 1998		Despite coverage of nationality in the Act regulating immigration and the legal condition of foreigners, follows Council Directive 2000/43/EC
Sweden Constitution (Instrument of Government Act, 1975)		
Sweden Prohibition of Discrimination Act, 2003	Race is included within ethnic origin.	
Sweden Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief Act, 1999	Race is included within ethnic background.	
United Kingdom Race Relations Act, 1976, amended 2003, 2006 (England, Scotland, and Wales)	Race includes race, colour, nationality, and ethnic or national origin.	
United Kingdom Race Relations (Northern Ireland) Orders, 1997, amended 2003	Race includes race, colour, nationality, ethnic or national origin, and the Irish Traveller community.	
France Constitution		
France Various provisions contained in the Labour Code, the law relating to the rights and obligations of civil servants, civil law regulating contracts, the Law creating the High Authority against Discrimination and for equality, and the Penal Code		An extensive list of professions and jobs cannot be held by non-nationals

COLOUR International Universal Declaration of Human Rights, 1948		Only those “determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of society.”
International Covenant on Economic, Social and Cultural Rights, 1966		Limitations “compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” Developing countries “may determine to what extent they would guarantee the economic rights recognized ... to non-nationals.”
International Covenant on Civil and Political Rights, 1966		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990		Does not affect states’ rights to establish criteria governing the admission of migrant workers; covers both irregular and regular migrant workers, but regular migrant workers have more rights (see table on Employment Conditions Covered and Remedies Available)
International Convention on the Elimination of All Forms of Racial Discrimination, 1969	Colour is included within race.	Inapplicable to distinctions, exclusions, restrictions or preferences between citizens and non-citizens; may not be interpreted as affecting the legal provisions concerning nationality, citizenship or naturalization if no discrimination against a particular nationality results
ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)		
European The Convention for the Protection of Human Rights and Fundamental Freedoms, 1950		
National Italy Act regulating immigration and the legal condition of foreigners, 1998		Only covers those legally in the territory
Sweden Constitution (Instrument of Government, 1975)		
Sweden Prohibition of Discrimination Act, 2003	Colour is included within ethnic origin.	

Sweden Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief Act, 1999	Colour is included within ethnic background.	
United Kingdom Race Relations Act, 1976, amended 2003, 2006 (England, Scotland, and Wales)	Colour is included within race.	
United Kingdom Race Relations (Northern Ireland) Orders, 1997, amended 2003	Colour is included within race.	
RELIGION International Universal Declaration of Human Rights, 1948		Only those “determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of society.”
International Covenant on Economic, Social and Cultural Rights, 1966		Limitations “compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” Developing countries “may determine to what extent they would guarantee the economic rights recognized ... to non-nationals.”
International Covenant on Civil and Political Rights, 1966		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990		Does not affect states’ rights to establish criteria governing the admission of migrant workers; covers both irregular and regular migrant workers, but regular migrant workers have more rights (see table on Employment Conditions Covered and Remedies Available)
ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)		
ILO Migration for Employment Convention (Revised), 1949 (No. 97)		Only covers those lawfully in the territory
European The Convention for the Protection of Human Rights and Fundamental Freedoms, 1950		
Council Directive 2000/78/EC establishing a national framework for equal treatment in employment and occupation, 2000		Inapplicable to differences of treatment based on nationality

National Italy Constitution of 1948		
Italy Workers' Act of 1970		
Italy Act regulating immigration and the legal condition of foreigners, 1998		Only covers those legally in the territory
Italy Legislative Decree No. 216, 2003		Despite coverage of nationality in the Act regulating immigration and the legal condition of foreigners, follows Council Directive 2000/43/EC
Sweden Prohibition of Discrimination Act, 2003		
Sweden Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief Act, 1999		
United Kingdom Employment Equality (Religion or Belief) Regulations 2003 (England, Scotland, and Wales)		
United Kingdom Fair Employment and Treatment (Northern Ireland) Order 1998 and Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland), 2003		
France Constitution		
France Various provisions contained in the Labour Code, the law relating to the rights and obligations of civil servants, civil law regulating contracts, the Law creating the High Authority against Discrimination and for equality, and the Penal Code		An extensive list of professions and jobs cannot be held by non-nationals
LANGUAGE International Universal Declaration of Human Rights, 1948		Only those "determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of society."

International Covenant on Economic, Social and Cultural Rights, 1966		Limitations “compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” Developing countries “may determine to what extent they would guarantee the economic rights recognized ... to non-nationals.”
International Covenant on Civil and Political Rights, 1966		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990		Does not affect states’ rights to establish criteria governing the admission of migrant workers; covers both irregular and regular migrant workers, but regular migrant workers have more rights (see table on Employment Conditions Covered and Remedies Available)
European The Convention for the Protection of Human Rights and Fundamental Freedoms, 1950		
National Italy Constitution of 1948		
Italy Workers’ Act of 1970		
Italy Act regulating immigration and the legal condition of foreigners, 1998		Only covers those legally in the territory

Annex 2

TABLE 2. EMPLOYMENT CONDITIONS COVERED AND REMEDIES AVAILABLE

INSTRUMENT	EMPLOYMENT CONDITIONS COVERED	REMEDIES AVAILABLE
INTERNATIONAL Universal Declaration of Human Rights, 1948	right to work, free choice of employment, just and favourable conditions of work, protection against unemployment, equal pay, just and favourable remuneration, form and join trade unions, reasonable limitation of working hours, periodic paid holidays	effective remedy by the competent national tribunals
International Covenant on Economic, Social and Cultural Rights, 1966	right to work, technical and vocational training; just and favourable conditions of work, in particular, remuneration, fair wages and equal remuneration for work of equal value, safe and healthy working conditions, promotion, rest, leisure, reasonable limitation of working hours, periodic paid holidays, form and join trade unions, strike	not addressed
International Covenant on Civil and Political Rights, 1966	form and join trade unions	effective and enforced remedy
International Convention on the Elimination of All Forms of Racial Discrimination, 1969	right to work, free choice of employment, just and favourable conditions of work, protection against unemployment, equal pay for equal work, just and favourable remuneration, form and join trade unions	effective remedies, including just and adequate reparation or satisfaction for any damage suffered
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990	for all migrant workers: remuneration, other conditions of work--overtime, hours of work, weekly rest, paid holidays, safety, health, termination, any other conditions of work covered by those terms according to national law and practice; other terms of employment--minimum age, restriction on home work and any other matters considered a term of employment according to national law and practice, trade union activity for regular migrant workers, in addition to above:	effective and enforced remedy

	vocational guidance and placement services, vocational training and retraining, protection against dismissal, unemployment benefits, access to public work schemes intended to combat unemployment, access to alternative employment after loss of work or termination; freedom to choose employment (with some possible restrictions)	
ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	vocational training, access to employment and particular occupations, terms and conditions of employment	not addressed
ILO Migration for Employment Convention (Revised), 1949 (No. 97)	remuneration, hours of work, overtime, paid holidays, restrictions on home work, minimum age for employment, apprenticeship and training, women's and young persons' work, trade union membership and enjoyment of the benefits of collective bargaining	not addressed
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	for irregular migrant workers—working conditions, rights arising out of past employment as regards remuneration, benefits for regular migrant workers—equality of opportunity and treatment in employment and occupation, working conditions, trade union and cultural rights, individual and collective freedoms	not addressed
EUROPEAN The Convention for the Protection of Human Rights and Fundamental Freedoms, 1950	form and join trade unions	effective remedy
Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 2000	access to employment and working conditions, including dismissals and pay, vocational training, trade union or professional organisation activity, harassment, victimization (retaliation) for complaining about unequal treatment	effective, proportionate and dissuasive remedies, to be determined by Member States, which may include the payment of compensation
Council Directive 2000/78/EC establishing a national framework for equal treatment in employment and occupation, 2000	access to employment and working conditions, including dismissals and pay, vocational training, trade union or professional organisation activity, harassment, victimization (retaliation) for	effective, proportionate and dissuasive remedies, to be determined by Member States, which may include the payment of compensation

	complaining about unequal treatment	
NATIONAL Italy Workers' Act of 1970	recruitment, career, transfers, disciplinary sanctions, dismissal, and any other form of prejudice to the worker	damages, reintegration or reinstatement of dismissed workers, voiding of discriminatory agreements
Act regulating immigration and the legal condition of foreigners, 1998	for persons in regular status: refusing to provide work (hire), preventing person from carrying out economic activity, working conditions, vocational guidance and training, any discriminatory action	damages, reintegration or reinstatement of dismissed worker, voiding of discriminatory actions, interruption of discriminatory activity and any other measures needed to remove the effects
Legislative Decree No. 215, 2003	access to employment and working conditions, including selection and recruitment, promotion, dismissals and pay, trade union or professional organisation activity, harassment, vocational training	same as Act regulating immigration and the legal condition of foreigners, 1998
Legislative Decree No. 216, 2003	access to employment and working conditions, including dismissals and pay, trade union or professional organisation activity, harassment, victimization (retaliation) for complaining about unequal treatment	same as Act regulating immigration and the legal condition of foreigners, 1998
Sweden Constitution	right to trade or practice a profession	
Prohibition of Discrimination Act, 2003	discrimination by job placement services or others; discrimination in labour market policy activities, in connection with qualification, certification, authorization, registration, approval or similar arrangements necessary to work in a particular occupation; less favourable treatment of employees, or disadvantage by application of apparently neutral provisions, criteria or practices; discrimination by employees' organizations (trade unions) or occupational organizations; harassment, including by other employees; victimisation or reprisal for reporting discrimination	Damages
Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief Act, 1999	hiring decisions, including selection of applicants for job interviews or other measures during the hiring process; promotion, including selection of	Damages; invalidation of contract provisions which prescribe or permit discrimination; invalidation of discriminatory notice terminating a contract or

	employees for training for promotion; pay or other terms of employment, management and distribution of work; termination, summary dismissals, layoffs, other “significant” measures against employees; harassment, reprisal for reporting discrimination	implementing another such legal act
United Kingdom Race Relations Act, 1976, amended 2003, 2006 (England, Scotland, and Wales) and Race Relations (Northern Ireland) Orders, 1997, amended 2003	hiring or refusal or failure to hire, terms of employment offered; terms of employment of employees, promotion, transfer or training opportunities, any other benefits, facilities or services, dismissal, any other detriment, harassment, victimisation; trade or professional organization membership or any terms related to it; discrimination by authorities or bodies conferring authorizations or qualifications needed for a particular profession or trade; access to and terms of training; employment agencies’ provision of services	Damages; damages also possible for injury to feelings
Employment Equality (Religion or Belief) Regulations 2003 (England, Scotland, and Wales) and Fair Employment and Treatment (Northern Ireland) Order 1998 and Fair employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003	hire or refusal or failure to hire, terms of employment offered; terms of employment of employees, promotion, transfer or training opportunities, any other benefits, facilities or services, dismissal, any other detriment, harassment, victimisation; trade or professional organization membership or any terms related to it; conduct by authorities or bodies conferring authorizations or qualifications needed for a particular profession or trade; access to and terms of training; employment agencies’ provision of services	Damages; damages also possible for injury to feelings

France Various provisions contained in the Labour Code, the law relating to the rights and obligations of civil servants, civil law regulating contracts, the Law creating the High Authority against Discrimination and for Equality, and the Penal Code	depending on the situation and statute applicable: hire, pay, promotion, transfer, qualification, classification, working conditions, discipline, renewal of contract (dismissals), redeployment, workplace rules, collective bargaining agreements, trade union membership, vocational apprenticeship and training; however, migrant workers are prohibited from employment in many occupations and professions	depending on the situation and statute applicable: damages, reinstatement to position, annulment of discriminatory decision, criminal penalties
--	---	--

**International Migration Papers
Cahiers de migrations internationales
Estudios sobre Migraciones Internacionales**

1. *Adjustments to Labour Shortages and Foreign Workers in the Republic of Korea.* M.I. Abella; Y.B. Park; W.R. Böhning, 1995
2. *Consumption and Investments from Migrants' Remittances in the South Pacific.* Richard P.C. Brown, 1995
3. *Training Abroad: German and Japanese schemes for workers from transition economies or developing countries.* Christiane Kuptsch; Nana Oishi, 1995
4. *Discrimination against Migrant Workers and Ethnic Minorities in Access to Employment in the Netherlands.* F. Bovenkerk; M.J.I. Gras; D. Ramsoedh, with the assistance of M. Dankoor and A. Havelaar, 1995
5. *Orderly International Migration of Workers and Incentives to Stay: Options for emigration countries.* M.I. Abella; K.J. Lönnroth, 1995
6. *From Outlawing Discrimination to Promoting Equality: Canada's experience with anti-discrimination legislation.* C. Ventura, 1995
- 7E. *Labour Market Discrimination against Foreign Workers in Germany.* A. Goldberg; D. Mourinho; U. Kulke, 1996
- 7G. *Arbeitsmarkt-Diskriminierung gegenüber ausländischen Arbeitnehmern in Deutschland.* A. Goldberg; D. Mourinho; U. Kulke, 1995
- 8E. *The Integration of Migrant Workers in the Labour Market: Policies and their impact.* W.R. Böhning; R. Zegers de Beijl, 1995
- 8F. *L'intégration des travailleurs migrants sur le marché du travail: Les politiques et leur impact.* W.R. Böhning; R. Zegers de Beijl, 1996
- 9E. *Labour Market Discrimination Against Migrant Workers in Spain.* Colectivo IOE: M.A. de Prada; W. Actis; C. Pereda, y R. Pérez Molina, 1996
- 9S. *La discriminación laboral a los trabajadores inmigrantes en España.* Colectivo IOE: M.A. de Prada; W. Actis; C. Pereda, y R. Pérez Molina, 1995
10. *The Jobs and Effects of Migrant Workers in Northern America: Three essays.* J. Samuel; P.L. Martin; J.E. Taylor, 1995
11. *The Jobs and Effects of Migrant Workers in Italy: Three essays.* L. Frey; R. Livraghi; A. Venturini; A. Righi; L. Tronti, 1996
12. *Discrimination against Racial/Ethnic Minorities in Access to Employment in the United States: Empirical findings from situation testing.* M. Bendick, Jr., 1996

13. *Employer des travailleurs étrangers: Manuel sur les politiques et les procédures plus particulièrement applicables aux pays à bas ou moyen revenus.* W.R. Böhning, 1996
14. *Protecting (Im)migrants and Ethnic Minorities from Discrimination in Employment: Finnish and Swedish experiences.* K. Vuori, with the assistance of R. Zegers de Beijl, 1996
- 15E. *Migration from the Maghreb and Migration Pressures: Current situation and future prospects.* D. Giubilaro, 1997
- 15F. *Les migrations en provenance du Maghreb et la pression migratoire: Situation actuelle et prévisions.* D. Giubilaro, 1997
16. *The Documentation and Evaluation of Anti-discrimination Training Activities in the Netherlands.* J.P. Abell; A.E. Havelaar; M.M. Dankoor, 1997
17. *Global Nations: The impact of globalization on international migration.* P. Stalker, 1997
18. *Anti-discrimination Training Activities in Finland.* K. Vuori, 1997
19. *Emigration Pressures and Structural change: Case study of the Philippines.* A. Saith, 1997
20. *Emigration Pressures and Structural change: Case study of Indonesia.* D. Nayyar, 1997
21. *The Evaluation of Anti-discrimination Training Activities in the United Kingdom.* P. Taylor; D. Powell; J. Wrench, 1997
22. *Pratiques de formations antidiscriminatoires en Belgique.* F. Castelain-Kinet; S. Bouquin; H. Delagrangé; T. Denutte, 1998
- 23E. *Discrimination in Access to Employment on Grounds of Foreign Origin: The case of Belgium.* P. Arriijn; S. Feld; A. Nayer, 1998
- 23F. *La discrimination à l'accès à l'emploi en raison de l'origine étrangère : le cas de la Belgique.* P. Arriijn; S. Feld; A. Nayer, 1998
24. *Labour Immigration and Integration in Low- and Middle-income Countries: Towards an evaluation of the effectiveness of migration policies.* J. Doornik, 1998
25. *Protecting Migrants and Ethnic Minorities from Discrimination in Employment: the Danish experience.* N.-E. Hansen, I. McClure, 1998
26. *Illegal Migration and Employment in Russia.* Eugene Krassinets, 1998
27. *The Effectiveness of Integration Policies towards Immigrants and their Descendants in France, Germany and the Netherlands.* Jeroen Doornik, 1998
28. *Approche juridique de la discrimination à l'accès à l'emploi en Belgique en raison de l'origine étrangère.* B. Smeesters, sous la direction de A. Nayer, 1999

29. *The Documentation and Evaluation of Anti-discrimination Training in the United States.* M. Bendick, Jr., M.L. Egan, S. Lofhjelm, 1999
30. *Illegal Labour Migration and Employment in Hungary.* J. Juhász with contributions from M. Cosmeanu; I. Ramond; J. Gmitra, A. Bácskai, 1999
31. *Foreign Labour in Lithuania: Immigration, employment and illegal work.* A. Sipaviciene, in cooperation with V. Kanopiene, 1999
32. *Legal and Illegal Labour Migration in the Czech Republic: Background and current trends.* Milada Horáková, 2000
33. *Migrant Labour: An annotated bibliography.* R. Chen; M. Madamba, 2000
34. *Settlement and Integration Policies towards Immigrants and their Descendants in Sweden.* Charles Westin, 2000
35. *United States Policies on Admission of Professional and Technical Workers: Objectives and outcomes.* Philip Martin, Richard Chen and Mark Madamba, 2000
36. *Employer Sanctions: French, German and US experiences.* Philip Martin and Mark Miller, 2000
37. *Quotas d'immigration : l'expérience Suisse.* Etienne Piguet et Hans Mahnig, 2000
38. *The Effectiveness of Employment Equality Policies in Relation to Immigrants and Ethnic Minorities in the UK.* John Wrench and Tariq Modood, 2001
39. *The Ambiguities of Emigration: Bulgaria since 1988.* August Gächter, 2002
40. *Migration for the Benefit of All: Towards a new paradigm for migrant labour.* Eric Weinstein, 2001
41. *Migrants in Irregular Employment in the Mediterranean Countries of the European Union.* Emilio Reynieri, 2001
42. *From Temporary Guests to Permanent Settlers? A review of the German experience.* Heinz Werner, 2001
43. *From Brain Exchange to Brain Gain: Policy implications for the UK of recent trends in skilled migration from developing countries.* Allan Findlay, 2002
44. *Migration of Highly Skilled Persons from Developing Countries: Impact and policy responses.* B. Lindsay Lowell and Allan Findlay, 2002
- 44F. *L'émigration de personnes hautement qualifiées de pays en développement : impact et réponses politiques – Rapport de synthèse.* B. Lindsay Lowell et Allan Findlay, 2003
45. *Policy Responses to the International Mobility of Skilled Labour.* B. Lindsay Lowell, 2002

46. *Some Developmental Effects of the International Migration of Highly Skilled Persons.* B. Lindsay Lowell, 2002
47. *Women Migrant Domestic Workers in Bahrain.* Sabika al-Najjar, 2002
48. *Women Migrant Domestic Workers in Lebanon.* Ray Jureidini, 2002
49. *Skilled Labour Migration from Developing Countries: Study on India.* Binod Khadria, 2002
50. *Skilled Labour Migration from Developing Countries: Study on the Caribbean Region.* Elizabeth Thomas-Hope, 2002
51. *Skilled Labour Migration from Developing Countries: Study on the Philippines.* Florian A. Alburo and Danilo I. Abella, 2002
52. *Skilled Labour Migration from Developing Countries: Study on South and Southern Africa.* Haroon Borat, Jean-Baptiste Meyer and Cecil Mlatsheni, 2002
53. *Situación de los trabajadores migrantes en América Central.* Abelardo Morales Gamboa, 2002
- 54F. *L'immigration irrégulière subsaharienne à travers et vers le Maroc.* Lucile Barros, Mehdi Lahlou, Claire Escoffier, Pablo Pumares, Paolo Ruspini, 2002
- 54S. *La inmigración irregular subsahariana a través y hacia Marruecos.* Lucile Barros, Mehdi Lahlou, Claire Escoffier, Pablo Pumares, Paolo Ruspini, 2002
55. *Skilled Labour Migration from Developing Countries: Annotated bibliography.* Allan M. Findlay and Emma Stewart, 2002
56. *Skilled Labour Migration from Developing Countries: Annotated bibliography on economic analysis, impact and policy issues.* B. Lindsay Lowell, 2002
57. *Asian Labour Migration: Issues and challenges in an era of globalization.* Piyasiri Wickramasekara, 2002
58. *Skilled Labour Migration from Developing Countries: Study on Argentina and Uruguay.* Adela Pellegrino, 2002
- 58S. *Migración de mano de obra calificada desde Argentina y Uruguay.* Adela Pellegrino, 2003
59. *Remesas de mexicanos en el exterior y su vinculación con el desarrollo económico, social y cultural de sus comunidades de origen.* Mario López Espinosa, 2002
60. *Migraciones laborales en América del Sur: La comunidad andina.* Ponciano Torales, M. Estela González y Nora Pérez Vichich, 2003
61. *Economic Integration in the Caribbean: The development towards a common labour market.* Deike Fuchs and Thomas Straubhaar, 2003

- 62F. *Enjeux et défis de la migration de travail ouest-africaine*. A.S. Fall, 2003
63. *Migraciones laborales en Sudamérica: el Mercosur ampliado*. Ezequiel Texidó, Gladys Baer, Nora Pérez Vichich, Ana María Santestevan, Charles P. Gomes, 2003
64. *Empowering Filipino Migrant Workers: Policy issues and challenges*. Rene E. Ofreneo and Isabelo A. Samonte, 2004
65. *Acuerdos bilaterales sobre migración de mano de obra: Modo de empleo*. Eduardo Geronimi, 2004
66. *Acuerdos bilaterales sobre migración de mano de obra: Estudio de casos*. Eduardo Geronimi, Lorenzo Cachón y Ezequiel Texidó, 2004
67. *Labour Market Discrimination against Migrant Workers in Italy*. E. Allasino, E. Reyneri, A. Venturini, G. Zincone, 2004
- 67I. *La discriminazione dei lavoratori immigrati nel mercato del lavoro in Italia*. E. Allasino, E. Reyneri, A. Venturini, G. Zincone, 2004
68. *Challenging Discrimination in Employment: A summary of research and a typology of measures*. P. Taran, R. Zegers de Beijl and I. McClure, 2004
69. *Labour Market Effects of Immigration: An Empirical Analysis Based on Italian Data*. A. Venturini and C. Villosio, 2004
70. *Admisión, contratación y protección de trabajadores migrantes: Panorama de la legislación y la práctica nacionales de Argentina, Bolivia, Brasil, Chile, Colombia, Ecuador, España, Perú, Portugal y Uruguay*. E. Geronimi, 2004
- 72E. *Migration Management and Development Policies: Maximising the benefits of International Migration in West Africa*. Savina Ammassari, 2006
- 72F. *Gestion des migrations et politiques de développement : optimiser les bénéfices de la migration internationale en Afrique de l'Ouest*. Savina Ammassari 2004
73. *Migration Prospects after the 2004 Enlargement of the European Union*. Gloria Moreno-Fontes Chammartin and Fernando Cantú-Bazaldúa, 2005
74. *Identification of Potential for Increasing Employment and Productive Investment in Albania, Moldova and Ukraine Based on Remittances*. Gloria Moreno-Fontes Chammartin and Fernando Cantú-Bazaldúa, 2005
75. *Rights of Migrant Workers in Asia: Any light at the end of the tunnel?* Piyasiri Wickramasekara, 2006
- 76E. *Systems of Statistical Information on Migrant Workers in Central Maghreb*. Musette Mohamed Saïb, and Belghazi Saad , Boubakri Hassan, Hammouda Nacer Eddine, 2006
- 76F. *Les systèmes d'informations statistiques sur les travailleurs migrants au Maghreb Central*. Musette Mohamed Saïb, et Belghazi Saad , Boubakri Hassan, Hammouda Nacer Eddine, 2006

- 77E. *Report on Legislation Concerning International Migration in Central Maghreb.* Mohamed Saïb Musette, and Monia Benjemia, Khadija Elmadmad, Azzouz Kerdoun, 2006
- 77F. *Rapport sur les législations relatives à la migration internationale au Maghreb Central.* Musette Mohamed Saïb, et Monia Benjemia, Khadija Elmadmad, Azzouz Kerdoun, 2006
- 78E. *Summary Report on Migration and Development in Central Maghreb.* Mohamed Saïb Musette, and Youssef Alouane, Mohamed Khachani, Hocine Labdelaoui, 2006
- 78F. *Rapport sur les migrations et le développement au Maghreb Central.* Musette Mohamed Saïb, et Youssef Alouane, Mohamed Khachani, Hocine Labdelaoui, 2006
- 79E. *Labour Migration Statistics in West Africa.* Hamidou Ba, and Babacar Ndione, 2006
- 79F. *Les statistiques des travailleurs migrants en Afrique de l'Ouest.* Hamidou Ba, et Babacar Ndione, 2006
- 80E. *Legislation Relevant to Migrant Workers in West Africa.* Hamidou Ba, and Abdoulaye Fall, 2006
- 80F. *Législations relatives aux travailleurs migrants en Afrique de l'Ouest.* Hamidou Ba, et Abdoulaye Fall, 2006
81. *A Study of Labour Migration Data and Statistics in East Africa.* Joseph M. Shitundu, 2006
82. *Migration Legislation in East Africa.* Flora Mndeme Musonda, 2006
83. *The Migration-Development Nexus in East Africa.* Humphrey P.B. Moshi, 2006
- 84E. *The Challenge of Labour Migration Flows Between West Africa and the Maghreb.* Aderanti Adepoju, 2006.
- 84F. *Les défis liés aux flux migratoire pour le travail entre l'Afrique de l'Ouest et de la Maghreb.* Aderanti Adepoju, 2006.
- 85F. *Les Discriminations à raison de « l'origine » dans les embauches en France : Une enquête nationale par tests de discrimination selon la méthode du BIT.* Eric Cediey et Fabrice Foroni, 2007
- 85E. *Discrimination in Access to Employment on Grounds of Foreign Origin in France: A National Survey of Discrimination Based on the Testing Methodology of the ILO.* Eric Cediey and Fabrice Foroni, 2007
- 86E. *Discrimination in Employment against Second-generation Swedes of Immigrant Origin.* Karin Attström, 2007.
- 86Sw. *Diskriminering av födda i Sverige men med invandrarbakgrund vad det gäller möjligheten att komma in på arbetsmarknaden.* Karin Attström, 2007.

- 87E *Discrimination in Employment against immigrants in Denmark: A situation testing survey.* 2007
- 88 *Touchstones. Indicators: Assessing Integration.* Giovanna Zincone, Tiziana Caponio and Rossella Carastro (FIERI), 2008
- 89 *Towards Effective Temporary Workers Programmes: Issues and challenges in industrial countries.* Philip Martin 2008
- 90 *Migration and Irregular Work in Austria: Results of a Delphi-Study.* Michael Jandl, Christina Hollomey, Ana Stepien 2008

PERSPECTIVES ON LABOUR MIGRATION

1. Getting at the Roots: Stopping Exploitation of Migrant Workers by Organized Crime
Patrick Taran and Gloria Moreno-Fontes Chammartin, 2003
2. Aspectos jurídicos del tráfico y la trata de trabajadores migrantes
Eduardo Geronimi, 2002
- 2 F. Aspects juridiques du trafic et de la traite de travailleurs migrants
Eduardo Geronimi, 2003
3. Globalization, Labour and Migration: Protection is Paramount
Patrick Taran and Eduardo Geronimi, 2003
- 3 S. Globalización y migraciones laborales: importancia de la protección
Patrick Taran y Eduardo Geronimi, 2003
- 3 F. Globalisation et migrations de main-d'oeuvre : Importance de la protection
Patrick Taran et Eduardo Geronimi, 2003
- 5 F. Options politiques de réponse à la migration des compétences : rétention, retour et circulation
Piyasiri Wickramasekara, 2003
- 5 E. Policy responses to skilled migration: Retention, return and circulation
Piyasiri Wickramasekara, 2003
- 5 S. Respuestas de política a las migraciones calificadas: Retención, retorno y circulación
Piyasiri Wickramasekara, 2005
6. Temporary foreign worker programmes: policies, adverse consequences and the need to make them work
Martin Ruhs, 2003
7. Protección y asistencia a las víctimas de trata
Eduardo Geronimi, 2003