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MIGRANTS, ETHNIC MINORITIES AND THE LABOUR MARKET  
Integration and Exclusion in Europe

# Migrants, Ethnic Minorities and the Labour Market Integration and Exclusion in Europe

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# Contents

## List of Tables and Figures

## Preface

## Notes on the Contributors

1	Introduction: Discrimination and Diversity <i>Andrea Rea, John Wrench and Nouria Ouali</i>	1
1	Internal Processes	
2	Young Migrants in the Belgian Labour Market: Integration, Discrimination and Exclusion <i>Nouria Ouali and Andrea Rea</i>	21
3	Workers of Migrant Origin in Germany: Forms of Discrimination in the Labour Market and at the Workplace <i>Nora Rätzzel</i>	35
4	From School to the Labour Market in Britain: the Qualitative Exposure of Structures of Exclusion <i>John Wrench, Edgar Hassan and Tarek Qureshi</i>	54
5	Foreigners and Immigrants in the French Labour Market: Structural Inequality and Discrimination <i>François Vourc'h, Veronique De Rudder and Maryse Tripier</i>	72
6	Migrants and Ethnic Minorities in the Netherlands: Discrimination in Access to Employment <i>Mitzi Gras and Frank Bovenkerk</i>	93
7	The Labour Market for Immigrant Women in Sweden: Marginalised Women in Low-valued Jobs <i>Wuolko Knocke</i>	108
8	Young People of Foreign Origin Born in Switzerland: Between Invisibility and Diversity <i>Francesca Poglià Miletì</i>	132

<b>II New Flows</b>	
9	Seasonal Work in Italy: Flexibility and Regularisation <i>Giovanna Campani and Francesco Carchedi</i>
10	Immigrants in Spain: From Institutional Discrimination to Labour Market Segmentation <i>Lorenzo Cachón</i>
11	Refugee Care in Sweden: the Problems of Unemployment and anti-Discrimination policies <i>Maritta Soiminen</i>
<b>III Responses and Implications</b>	
12	Migratory Movements: the Position, the Outlook Charting a Theory and Practice for Trade Unions <i>Albert Martens</i>
13	Employers and anti-Discrimination Measures in Europe: Good Practice and Bad Faith <i>John Wrench</i>
	<i>Bibliography</i>
	<i>Subject Index</i>
	<i>Name Index</i>

## List of Tables and Figures

Table 3.1	Number and percentage of migrant population in the workforce (Germany, 1993)	38
Table 3.2	Distribution of migrant population in different sectors of employment (West Germany)	39
Table 3.3	Job levels and professions	41
Table 7.1	Relative activity rates for women by age and citizenship, 1981	114
Table 7.2	Unemployment by age and citizenship	118
Table 7.3	Relative unemployment figures by citizenship	118
Table 7.4	The ten most common occupations among foreign-born and Swedish women	120
Table 10.1	Origin of legal foreign residents in Spain (1983 and 1993)	176
Table 10.2	Estimated number of non-EU immigrant workers for the three segments proposed (1993)	188
Table 10.3	The 15 branches of productive activities with a larger relative number of non-EU, 'settled' and 'precarious' immigrant workers	190
Figure 12.1	Overview of union strategies and their appearance in time	226

## Preface

The genesis of this book lies in the European Union's COST (A2) Migration initiative. Most of the contributors to this volume are specialists in the field of migration and the labour market in Europe who were brought together as members of the network 'The Labour Market, Ethnic Minorities and Citizenship' (1994-95), which operated under this particular EU initiative.

An edited volume of international papers, many of which were first written in languages other than English, takes time to process, and we are aware that some of the detail in a few of the papers in this volume may have been superseded by, for example, developments in legislation since they were first collected together. Nevertheless, we feel that the broad principles and conclusions which characterise this discussion remain as valid as they ever were.

The editors would like to thank the Danish Centre for Migration and Ethnic Studies for the allocation of time and resources which made it possible for this volume to be produced. Grateful thanks are also due to Sheila Kirby of Esbjerg and Jacqueline Cliquet of the Université Libre de Bruxelles.

John Wrench, Andrea Rea, Nouria Ouali

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**Véronique De Rudder** is a CNRS researcher attached to URMIS (Unité de Recherche: Migrations et Société). She has recently researched and published on the subject of immigrants in the French labour market for

For us, the main issue seems to be of a different nature. It lies in the increasingly problematic ambiguity of this 'French model'.

#### OFFICIAL FRENCH STATISTICAL SOURCES AND THEIR LIMITATIONS

Laws in France forbid the recording or taking into consideration of ethnic or 'racial' categories, in order to prevent discrimination between citizens, who are declared equal in front of the *État de droit*. From this point of view, French law provides a textbook model of a socio-national integration political project and this project is partly a success in the sense that social and political life is not permanently constrained through such categorisation.

This equality principle, nevertheless, takes on a rather formal character. Despite a certain number of legislative precautions,<sup>1</sup> this interdiction is regularly evaded. In fact, many administrations' practices fall far short of ignoring origin or of being 'colour-blind' as the rule of 'common law' would want them to be. Barely legal and hidden classifications are made, not only by private sector firms or by individuals, but also by quasi-public institutions or corporations (Simon 1993). In other words, this principle rebounds on those whom it is supposed to protect, when officially illegitimate classifications in reality permeate institutional actions and daily life.

The standard and long-used practice in French official statistics is to make a distinction between foreigners and the French. If this dichotomy is based upon a simple criterion, its definition is, in fact, far from being as straightforward and exclusive as its apparent 'legal purity' would make it appear.

- Within the French category, statistics distinguish between those who are native French and those having acquired French nationality: French by acquisition.<sup>2</sup>
- Within the foreigner category, statistics register their nationality and then creates groups that variously cover geographical, cultural or political entities.

Some official statistical publications regularly make a distinction between 'European Union immigrants' and 'outside EU immigrants'. Others (survey institutes, media, and so on) make a distinction between 'non-European immigrants' and those coming from European countries, the former group being considered 'more immigrant'. Only very recently has there begun

## 5 Foreigners and Immigrants in the French Labour Market: Structural Inequality and Discrimination

### Francois Your'h, Véronique De Rudder and Maryse Tripier

All international comparative studies are rendered questionable by the heterogeneity of the nomenclatures upon which national census, enumerations and indicators are based. Socio-economic or professional activity categories, for instance, generally present methodological problems for the comparative analysis of employment issues. These difficulties are also often theoretical and epistemological in nature. Such is the case, particularly for immigrant populations and their descendants on the one hand, and for cultural or so-called 'racial' minorities on the other hand. One of the characteristics of French official statistics is the almost total elimination of any 'ethnic' or 'racial' classification: the gathering of such data is virtually prohibited by law and analyses concerning these populations are extremely difficult to undertake. Consequently, international comparisons are almost impossible. The press, the body politic and the man in the street refer to these populations using terms that have widely varying definitions and which often reveal themselves as contradictory, mixing together judicial and geographical, linguistic and religious concepts. These issues nevertheless give rise to highly controversial debates that are much more political in nature than a detached scientific approach.

It is difficult, and not necessarily relevant, to analyse the realities of a society using categories inherited from different historical and social contexts. One cannot wish that ethnic and *a fortiori* 'racial' categories were adopted in French official statistics, and perhaps in census research as well, just because it would offer data 'comparable' to those of other countries. (In fact, how could we be sure that they would in reality – and not just formally – be comparable?) But neither can it simply be rejected in the name of 'French exceptionalism' and the 'republican model' with which it claims kinship.

a redefinition of terms used in statistics (Tribalat 1989). Two official surveys – the 1990 census and an *Institut National d'Etudes Démographiques* survey entitled 'Geographic mobility and social integration' (Tribalat and Simon 1993) – have used the category 'immigrant' as well as that of 'foreigner', defining it as 'foreigner' or 'French-by-acquisition', born outside Metropolitan France.<sup>3</sup>

Thus, it is by crossing a certain number of criteria, such as place of birth or nationality of parents, that these new distinctions enable the subdivision of French or foreigners into different categories: originating from the DOM-TOM (that is, French departments and territories outside the EU), from the European Union, from North Africa. These categories only imperfectly answer the researchers' needs but do offer a few indications on the socio-economic evolution of populations who have come to France since the 1960s and who are currently called 'immigrants'.<sup>4</sup>

The distinction between being French and foreign in practice becomes more inadequate every day. Many authors stress the fact that due to the lack of reliable quantitative data in France on the evolution of foreign populations and particularly due to the lack of longitudinal statistics,<sup>5</sup> there is no really reliable general overview (Tribalat 1991). The statistics record the effects of the Nationality Code which gives 'second-generation' immigrants French nationality. It is thus impossible to 'follow' the evolution of populations of foreign origin inside the different sectors of social life (for example, employment, housing, social and political participation) since they 'disappear', statistically, as soon as they become French and especially as soon as the children of foreigners become 'native French'.<sup>6</sup> Michèle Tribalat (1991) estimates that '80 per cent of the children and grand-children of foreigners having come to France within the last hundred years are French since their birth', which corresponds to an extremely important demographic contribution:

'On January 1st 1986, there were just under 4 million immigrants of foreign origin living in France and almost 30 per cent of them are of French nationality. Their children are five millions, amongst which 80,000 are still foreigners. Their grand-children are between 4.4 and 5.3 millions and are all French. All in all, 14 million people are either immigrants or children or grand-children of immigrants and amongst them more than ten million are already French.

Regular updated surveys reveal an inter-generational upward social mobility: 'The majority of the immigrants' children born in France become employers or managers' (Borkowski 1990).<sup>7</sup> This social mobility does not, however, compensate for the development of 'blocked' opportunities, or

the aggravation of already difficult socio-economic conditions (leaving school before graduation or without training, unemployment, and so on). But these facts also concern a large part of the population whose French origin goes back many generations. Here again, comparison is strongly impeded because of the way in which data are recorded.

This same weakness in the statistical sources makes it difficult to observe and analyse processes, and particularly that of discrimination phenomena. Concerning this subject, we are almost reduced to collecting 'anecdotes' such as they are reported by those directly concerned, gathered by anti-racist or immigrants' associations, mentioned by the media. Lawsuits involving discrimination during job interviews or at work are scarce and too insufficient to constitute an adequate source of information and data. What is more, as we shall see, the subject of ethnic or 'racial' discrimination is itself, in fact, in France, almost taboo.

## GENERAL DATA

### Immigration and Naturalisation

The relative percentages of foreigners and French by acquisition within the entire population have not really varied since 1946. Between 1946 and 1990 the entire population increased by 42.17 per cent. Native French people make up 83.5 per cent of this increase, French by acquisition make up 5.7 per cent, and foreigners 11.2 per cent. The number of French nationality acquisitions has considerably increased during the last inter-census period (1982–90). The number of foreigners, conversely, has fallen for the first time since 1946. These evolutions can be explained by the fact that many foreigners have been living in France for a very long time and that the rules and regulations regulating the entry and residence of foreigners have been modified, especially those concerning natives of non-European Union countries.

According to S. Hessel, the net immigration rate in the general population increase is 14.4 per cent (Commissariat Général au Plan, 1988).

### Structural Modifications of Immigration

Since the 1950s, and particularly since the 1970s, the number of foreigners coming from European countries has been decreasing. This is due mostly to an important decrease in the number of foreigners coming from countries belonging to the European Union. Conversely, the number of foreigners

coming from other parts of the world has increased. For example, the numbers of those originating from North Africa have regularly increased during the two previous inter-census periods, but remained stable since 1982, at about 38 per cent. New immigrations, some of which directly related to wider political events (Vietnam, Cambodia) have appeared. Others originate, at least partly, from restrictions imposed by their traditional host countries. Thus, the natives of Asian countries have increased by a total of 135,000, with more than half of them represented by Turks.

#### EMPLOYMENT AND UNEMPLOYMENT

The reduction from 12 to 9 per cent between 1975 and 1990 on the part of foreigners amongst the totality of workers stands in the context of a global diminution in the jobs of unskilled workers but also in the transfer, by subcontracting, of these jobs to the tertiary sector.

Foreigners are less and less numerous in industry (—25 per cent compared to —9 per cent for the whole of industrial workers) and with more and more in the tertiary sector (+22 per cent as against +16 per cent). After having been workers in the large industrial firms where employment is stable and the division of labour very advanced, foreigners are becoming the labour force on which small artisan entrepreneurs, businesses and services depend. (Echardour and Maurin 1993)

In these firms employees do not have necessarily better qualifications, a higher status or better conditions than workers in the industrial sector.

Almost absent from public service (5.8 per cent against 23.2 per cent for French born) and from jobs with the highest level of security, foreigners are over-represented in the categories 'temporary employment' (7.8 per cent against 5.7 per cent) and 'private sector salaried, permanent' (76.4 per cent against 56 per cent for French born). They are, therefore, more vulnerable to the effects of economic fluctuations.

Upward mobility does exist however and foreigners in management practising liberal or intermediate professions were proportionately more numerous in 1990 than they were in 1982. However, they only represent, respectively, 3.7 per cent and 3.2 per cent of those active in these jobs. As for the increase in self-employment and independent work (about 4 per cent of active employees at the last census) these cover a variety of situations but a number of observers emphasise that 'setting up your own business' frequently represents a strategy for avoiding unemployment without any guarantee of success.

A number of sectors in which a large number of foreigners work are in decline or have less need than before for unskilled work. But it is in the sectors where labour conditions are the hardest, less 'modern' (and thus the most exposed to restructuring) that foreigners find it easier to find a job (for example, in construction work and mining). This labour force also interests the sectors where short-term profit imperatives are strong and dependent on the hazards of the overall economic situation (for example, consumer goods, trade). The sectors where foreigners work are in fact those where the unemployment rate is the highest, where there is a rapid turnover of staff, and where workers occupy the least senior positions.

Statistical data cannot measure the role played by the informal and underground economy and, thus, irregular employment, which although affecting foreigners and non-foreigners alike, nevertheless employs a great number of the foreign population.

#### A Higher Proportion of the Unemployed

Between 1980 and 1992 the unemployment rate rose from 6 per cent to 10 per cent. For foreigners it grew from 9 per cent to nearly 19 per cent.

It is twice as high for that of French people (9.5 per cent) with differences between nationalities being more pronounced. (Marchand 1991)

This unemployment is particularly likely to affect those who come from countries outside the European Union, with the exception of the Portuguese. Thus the rate of unemployment for North Africans is triple that for French people (28 per cent for Moroccans, 29 per cent for Algerians, 34 per cent for Tunisians). Youth unemployment is also higher for foreigners than for French people. Globally, 'the displacement of unskilled work in favour of the SME of services and commerce is the origin not only of the increase in insecurity of young foreigners but also of the difficulties in redeploying the older workers from the industrial sector' (Marchand 1991). Thus, the duration of unemployment has on average increased by seven months between 1980 and 1992 for foreigners compared to an increase of four months for French people.

#### BEING A FOREIGNER, IN FRANCE, IS A HANDICAP

Behind problems particular to immigrants<sup>8</sup> there probably is the handicap of having discovered France and the French language recently. It is estimated that about one immigrant out of three doesn't speak French

correctly. But this doesn't explain everything: the Portuguese, who've immigrated more recently and who do not speak French any better, have less difficulties than Algerians. Other factors come into play, such as the vitality of each community. Among Portuguese workers, the female activity rate is very strong and many of the construction workers create their own businesses: these are all assets that help overcome the industrial decline and the threat of unemployment. The particular case of Portuguese workers may also reveal a different policy of the employers who consider them as a culturally closer European workforce: in the industry sector, for instance, the promotion from unskilled to skilled worker is four times more frequent among the Portuguese than among North Africans. The latter seem to have more problems integrating into the firm. (Maunin 1991)

As can be seen, the reasons used to explain the inferior situation of foreigners, and particularly of certain categories in the job market, are many, but none directly falls under ethnic or 'racial' discrimination. The reasons for this 'handicap' experienced by foreign populations in employment are first sought in the 'characteristics' of the groups themselves: low qualifications, difficulty in adapting, poor command of the French language. The differences between foreign population groups are also taken into consideration as consequences of their 'particularities': some 'seem to have more difficulty to integrate into the firm', while others 'show real dynamism'.

Finally, when neither of these two explanations seems sufficient, one can always call upon the famous '*cultural proximity*' that is supposed to reduce the 'distance' between a non-French-speaking Portuguese farmer and a chief executive and to increase that which separates this same chief executive from a French-speaking Algerian worker.

This last explanation deserves a closer look. In France, 'cultural proximity' is considered a relatively objective, rational or at least reasonable basis for an employer's choice. If 'in industry, for example, the promotion from unskilled to skilled worker is four times more frequent among Portuguese workers than among North Africans', this is probably, as E. Maunin writes, because employers adopt a 'different policy towards European manpower'. There is a name for this 'different policy', based upon a supposed 'cultural distance': discrimination. Using this so-called 'cultural distance' is an ideological trick: it 'objectivises' a stereotype and legitimises the practice. Used in a scientific article, whether the author is aware of it or not, and whether he has been censored or has censored himself, it appears as a justification. The explanation by discrimination is thus generally avoided. It could, nevertheless, offer less ambiguous, less tortuous

and a less ideologically oriented means to understand the facts. For if the data are few and incomplete, as we have already stressed, they are not completely non-existent and they could be further investigated. Amongst the groups of workers who, in 1981, had no qualifications, 6 per cent had become qualified workers, 6.5 per cent employees and 3.5 per cent technicians or managers in 1989. For North Africans, these proportions are significantly less: 3.5 per cent had acquired a vocational qualification, 3.5 per cent become employees and 2 per cent technicians or managers. Because of insufficient data concerning the situation of 'immigrants' in the labour market, in jobs and inside the firm, we started a qualitative investigation using, on the one hand, the press, and on the other hand, interviews with various informants (employers' organisations, trade unionists, recruiting agency staff, representatives of anti-racist and solidarity associations, government departments, tribunals and lawyers). The following elements concerning discrimination are taken from this investigation.<sup>9</sup>

#### EMPLOYMENT DISCRIMINATION, COLLECTIVE AND SOCIAL RIGHTS

During the last decade or so, almost every aspect of foreigners' life in France has been subjected to restrictive legal measures in response to the will to control frontiers and to check unauthorised immigration. Whereas the general evolution of French (and European) legislation tends more and more to assimilate foreigners into the host community through the granting of various rights, the subordination of these rights to the legality of the foreigner's residence in the country creates numerous restrictions. This is the reason why we have seen the reappearance of short-term visas, the creation of 'on-the-spot' illegal immigrants - foreigners who before were legitimately settled in France (children and husbands/wives of foreigners, parents of French children), the suppression or reduction of certain acquired rights, the limitation of family re-groupings, the control of 'mixed' marriages and the possibility for public authority to oppose them, the reduction of social and health protection, the drastic limitation on the right to sanctuary, the extension of administrative custody and of estrangement. Most of these measures are officially applied to illegal residents or in cases of threats to law and order, but they also concern their dependants and, because they make the 'regular' situation more and more precarious, they, in fact, threaten all foreigners. (GISTI 1993)

There also exists a series of laws against racism and discrimination that have been progressively applied since 1972.<sup>11</sup> However, discrimination



remains, the origins of which are legal, just as there remains a whole series of illegal discriminatory practices that are either not sanctioned — or only moderately so — because they are not recognised as such.

### Employment

Foreigners' access to employment is subject to an administrative police regime which compels them to obtain residence permits that allow them to work. The 10-year permit equals an authorisation to work. Those who possess a permit are accorded the same treatment as French people and they have the same degree of access to private sector jobs. Obtaining this permit is easier for EU nationals.

Since 1975, the rule laid down by decree is to oppose 'the present and future possibility of employment in professional areas requested by foreigners' to each and every authorised demand for a salaried job, whether it is a first request to settle on French territory or a request to change status (as for students or shopkeepers, for instance).

Legally, the access to a certain number of jobs is limited or forbidden for foreigners. Until 1991, civil service jobs were prohibited to all foreigners.<sup>12</sup> They are now open to EU nationals, except for the police force, the army, the magistrature or central government, which all involve exercising state authority. State enterprises (Electricité et Gaz de France, Société Nationale des Chemins de fer Français, Régie Autonome des Transports Parisiens) apply this same exclusion principle. Three and a half million public servant jobs and 2.5 million quasi-public jobs are thus denied to non-EU nationals. Most of them do not involve any particular public power prerogative. In fact, many non-EU nationals take part in public utility services and are at the same time excluded from the corresponding status, either through contracts (assistant professors and foreign doctors, for instance) or through the use of employing associations (particularly in welfare departments).

Many freelance professions (such as head of communication agencies, of entertainment businesses, tobacconists or landlords of public houses and professions are also closed off to non-EU nationals. Health professionals are even submitted to the double imperative of both nationality and French diplomas.<sup>13</sup>

To these discriminations brought about by law, one can add illegal discrimination. This is not investigated. As we shall see it is, in fact, so difficult to prove that the victims and their defenders are discouraged from taking out lawsuits.

During these last few years, a certain number of court judgments have, nevertheless, enabled already old measures that make provisions for

sanctions against discriminatory job offers, included in the Penal Code and the 1972 law against racism, to be finally applied. Breaching the law in this matter is rarely punished when the offender is a public service. The directors of the ANPE (French National Employment Office) (a public utility service) who allow discriminatory job offers to be published or posted in their agencies are condemned only in exceptional cases, even if they are legally responsible.

Discriminatory types of job refusals are often mentioned as common practice,<sup>14</sup> by victims as well as by trade unions or anti-racist associations. Any type of action in this matter is very difficult. The employer has a right to hire whomever he chooses as long as he does not do so according to criteria prohibited by law. But since he is not compelled to defend his choice, it is easy for him to escape any accusation. Two types of freedom thus come to oppose each other: the employer's right to hire whomever he wants without having to justify his choice and the individuals', whose rights to equal treatment are also enshrined in law (Ray 1990). Of course, the bad overall economic situation makes it easy for employers to operate in this way.

In the case of a refusal to recruit someone based upon the number of foreigners already employed, tribunal judgments are contradictory. One employer lost his case because it was his job to organise work in such a way that antagonisms could be avoided, while another employer was discharged on the basis that his decision was not inspired by racist or xenophobic motives. Here again, where public administration is concerned, impunity seems to be the rule. As the MRAP (Mouvement contre le Racisme et pour l'Amitié entre les Peuples) stresses, 'it seems that when summoning bearers of public authority one is often confronted by the dilution of responsibilities inside the administration'.

Unequal wages, when applying rules concerning minimum wages or extra hours, access to promotion and to professional training, discriminatory granting of bonus payments (merit awards, output bonuses, and so on)<sup>15</sup> between foreigners and indigenous French workers can sometimes be seen in statistics, where such statistics exist. They prove the existence of what some American authors term 'institutional racism', a phenomenon that is totally ignored in France.

### Collective and Social Rights

Foreign workers now have the same rights as French workers as far as trade union rights and representation inside the company is concerned (1972, 1975 and 1982 laws). However, there remain discriminations,

particularly legal ones, in terms of access to some equal-representative or consular institutions and to professional councils.

Although they are eligible to vote for the Conciliation Boards (made up of employers and workers, these boards having jurisdiction over industrial disputes) foreigners cannot themselves be elected to them. They are excluded from commercial courts, chambers of commerce and industry, and from chambers of agriculture, as well as mediation and conciliation offices. They are not allowed to hold office on either Regional or National technical committees for the prevention of industrial injuries. When it is known that, statistically, foreigners occupy particularly hazardous jobs, it is hard to understand such an exclusion, which dates back to 1946.

It is well known that participating in trade union activities or using one's right to strike is riskier for foreigners, for those who are French by acquisition and for 'coloured' French people, than for the French ancestry - the so-called French 'de souche'. Once again, the proof of this discrimination is often hard to demonstrate. This is why actions more often cite other breaches of law and do not mention - or only secondarily so - the discriminatory character of the incriminating evidence.

The benefits derived from various rights as a wage-earner are often hard to obtain for 'immigrants' (foreigners, French of foreign origin, 'coloured' French). This is particularly true in the case of housing obtained through the 'Employers' 1 per cent' (the contribution made by firms with more than 50 employees to social housing, giving firms control over a certain amount of 'reserved' housing).

As far as social rights are concerned, the equal wage principle has slowly asserted its presence and is explicitly stated in most international conventions relating to the protection of migrant workers and their families. The main discrimination still in judicial existence is a consequence of regulations that concern a foreigner's stay in the country. Children of foreigners who were not born in France, or who did not enter France on a regular family reunification basis, do not have the right to receive family allowances (even if they are of French nationality). Today, the payment of social security benefits (health insurance, maternity allowances, disablement and whole-life insurances, housing allowances, and so on) is generally subordinated to the legality of the stay, not only of the direct beneficiary, but also of any indirect beneficiaries. A great many of these dispositions seen in contradiction with international treaties signed by France.<sup>16</sup>

Another source of legal discrimination can be found in the enforcement of the territoriality principle. Family allowances are fully paid only for children living in France. For children left behind in the country of origin,

they are paid according to a less generous scale based upon bilateral conventions and, furthermore, cease to be paid in the event of unemployment or early retirement. It is impossible to settle one's retirement pension from abroad and just as impossible to export disablement and industrial injury pensions. The Conseil Constitutionnel has refused to grant any constitutional weight to this territoriality principle. In cases such as those mentioned above, the enforcement of this principle, nevertheless, leads to the erosion of workers' rights acquired through years of working and paying contributions.

Because there are no reciprocal agreements with their country of origin, various solidarity allowances were for a long time refused to foreigners (for example, the complementary allowance from the Fonds National de Solidarité which 'tops up' incomes lower than the legal minimum for pensioners, disabled adults' allowances, mothers' allowances and so on).<sup>17</sup> These exclusions were declared unconstitutional by the Conseil Constitutionnel, and abolished by a new law passed in June 1998.

Within the bounds of legal and illegal discrimination are differences generated by public administrations regarding public utility services or public programmes as set out in law. The discretionary power which the administration possesses *de facto* in this general framework is more often than not supported by the courts that rule on the misuse of power and fraud than on the equality principle (Lochak 1987). The Conseil d'État and the Administrative Courts have, nevertheless, condemned municipal by-laws which tend to reserve for French people only, the benefit of social allowances created by local authorities (for example, education parental allowance, unemployed workers' allowances, and so on).

#### WORKPLACE RACISM AND DISCRIMINATION: A HIDDEN REALITY

##### The Syllogism of Company Rationality

Why do you want employers to introduce inside the company, management elements that are foreign to its vocation as producer, that is to say elements which are not linked to economic or financial profitability?

This excerpt from an interview is a perfect example of the way in which job discrimination is treated in France: through denial. As we have already said, the first reflex is to deny racism, or at least to treat it as unimportant. One of the essential arguments rests upon the so-called 'rationality' of the

worlds of labour and companies which are ruled by abstract regulations and principles: ability, duty specialisation and seniority. This is, in fact, how the French public office presents itself, *as by right* reserved for native French people and subject to a multitude of bureaucratic rules, behind which, the practice of the state as an employer disappears as it evades its own rules by way of subcontracting. The non-racist character of the world of labour is thus 'proved' by an argument that takes the form of a syllogism: a company lives in a world of rationality, racism isn't rational, therefore they are incompatible.

What is more, private or public enterprises and administrations, just like all major organisations, function on a structural 'opaqueness' that is erected as a management principle. This opaqueness is all the stronger since it rests upon the legal interdiction – a translation of the Republican ethic inside the field of employment – to categorise French people by ways other than sex, qualifications, professional status, and so on. This opaqueness is only slightly tempered by the legal obligation to present statistics concerning foreigners. On top of all this one can add the difficulties for trade unions, even for work inspectors, who, like researchers, have a legal entitlement to access to workers' biographical data. The company, in fact, considers itself a private place.

If the existence of discrimination, when applying for a job, is more or less acknowledged, what happens within the company remains largely unknown. It seems particularly difficult to prove discriminatory practices concerning job conditions, wages, career development and promotion and laying off workers. Most of the people we interviewed, whatever their status or position, had little information on what happens inside the firm. The discrimination cases which have attracted most attention from trade unions and work inspectors have been, and still are, those against trade union leaders.

Since, despite a few 'atypical cases', there is no real discrimination inside the firm, it becomes easy to prove that it is the so-called 'victims' who invent them. This is what one is led to believe by employment agency staff in charge of unskilled workers. They said: 'It is the foreign workers themselves who are the most worried: "Did you tell him I was African?" They're afraid they're going to be rejected. And when they are rejected, they reassure themselves by thinking it is due to the colour of their skin. In fact, when they are not chosen, it's because they're not suitable.'

In fact, external to anti-racist and solidarity associations, the methods used to analyse labour market processes exclude racism and discrimination. It is as if there were *isolated* cases only, cases that are condemnable – and sometimes even actually condemned – but which are seen to result from

acts that are reduced to individual behaviour, described as 'stupid' or 'clumsy' and considered merely as anecdotes.

One can thus readily understand that before even considering procedures that would enable the identification of racist acts, and to measure their effects in terms of their importance within a firm, one is confronted by a pure and simple non-acknowledgement, which completes the trail of denial over racist practices. This denial arises from the firm's culture as well as from the national culture. This universalising culture is not challenged by workers' unions, by employers' federations nor by anti-racist associations. The universalism of the class vision of some thus comes to oppose the liberal universalism of the others, in a common ideological field where 'pluralist' and, *a fortiori* 'communitarian' references are absent.

#### Avoiding 'Undesirable Elements'

Practically all those we spoke to mentioned the efforts made by some employers not to recruit certain candidates, and particularly those of North African and African origins. The pretexes vary according to professional sectors and the jobs to be filled. Some employers refuse systematically, whatever kind of job is being offered, for no other reason than the fear of being unable to 'control' these persons should they form a group. Others refuse on the pretext of 'non-acceptance' of foreigners or 'coloured' people by other employees inside the firm, and others still use the pretence that the idea of recruiting immigrants would 'discredit the firm's corporate image'. Finally, one of the main arguments is based upon the so-called impossibility of allowing the public or clients contact with 'coloured people' or with people whose foreign origins are 'visible'. Training course refusals are also frequent and based upon the same reason.

There are more subtle preventative strategies for avoiding 'undesirable' candidates. Some public utility services or employers, for instance, ask for identity photographs thus completing the sifting process which started with surnames. The use of coded formulas inscribed on job offers intended for intermediate agencies (for example, the famous 'B.B.R.',<sup>18</sup> the '01' notice) is a practice probably already abandoned for others by these agencies, which collude in these *a priori* elimination processes. Also, banks and insurance companies refuse applications on the grounds of place of residence when those places have been widely stigmatised. A Paris suburban town authority, taking the opportunity to benefit from a major urban renewal scheme, has even started to change the names of some areas in order to avoid the 'repulsion effect' of certain, infamous, housing estates.

The preferential recruiting procedure that favours the children of employees in many large public services, means that job offers are already filled when they are publicly advertised. One of our informants told us that in the Paris Region 80 per cent of the Contrats Emploi-Solidarité<sup>19</sup> (government-sponsored contracts for the unemployed, which includes professional training) for a public transportation enterprise had been offered in that way. In certain public institutions, half of the employees have at least one family member also working there. The concentration of a large number of people of common geographical origin (Auvergnats, Corsicans, West Indians or Bretons) reveals the existence of what is delicately called 'informal recruiting networks' (Bovier 1989; Giraud and Marie 1990). These practices constitute an obstacle to recruiting people who, although French, have no access to restricted or informal information. In fact, their parents, as foreigners, could not be recruited because of the nationality clause. This preferential recruiting practice also exists in the private sector, where it is a tradition and where it sometimes works as a consensual, unwritten law and, often, is backed by trade unions.<sup>20</sup> Thus the current situation differs according to whether or not firms employed many immigrants, say, 15 or 20 years ago. Unfortunately, the firms that did are in decline (the car industry and building and public works companies, for instance) and they do not recruit many new employees.

One can also consider as discriminatory the preferential recruitment of foreigners or people whose appearance or 'cultural' characteristics makes it possible to employ them in unfavourable conditions. This is what happened during the 1960s, today being perpetuated through the illegal work offered to 'illegal immigrants'. The employer's 'practical sense' also shows itself in the recruitment of young people available from the pool of North African immigrants, where it is thought that they correspond to the firm's public image, and in their exclusion, where they are considered not to. The issue then is that of their job conditions.

### The Deprofessionalisation of Recruitment Procedures

Generally, recruitment procedures have evolved over time and give a growing emphasis on interviews, where enquiries are made about 'personality', personal opinions and certain aspects of the applicants' lives which have less and less to do with professional qualifications. All this takes place at the expense of written tests (Lyon-Caen 1991). Multiple ways are used to guarantee to the employer the freedom to recruit according to apparently objective and legitimate criteria: psychological or graphological tests, claiming an applicant is over-qualified, questions about hobbies,

leisure-time, and so on. These changes also affect public offices which used to boast they recruited on the grounds of written and anonymous 'examinations'.<sup>21</sup>

### THE HAZARDS OF DEFENDING DISCRIMINATION VICTIMS: HOW CAN ONE FIGHT SOMETHING THAT DOES NOT EXIST?

All the evidence confirms the following facts: it is difficult to be informed about racism and discrimination within the firm, and to have it established and qualified as such, in order to bring a court action. The fight against racism faces many difficulties which can be detailed as follows: victims do not speak out; trade unions or anti-racist intermediaries are not always present nor able to defend the victims; the choice of methods is a complex task: a legal fight is largely inefficient and can sometimes even be dangerous for the victims.

### Victims Do Not Speak Out or are Not 'Heard'

Racist remarks at work, an atmosphere where 'questionable' jokes are frequent, common use of stereotypes by employers, managerial staff or work colleagues (who can also belong to minority groups) are common features. But the perception of the racist character of these interactions is not at all uniform. There is little consensus on the definition of what is considered 'racist' and even less consensus about how to appraise the seriousness of racist remarks and the degree of their 'banality'. In France, one is far from the 'political correctness' era, and there is not even a 'code of good behaviour'. On the contrary, ordinary verbal racism – which is regarded as posing no real threat – is very commonly tolerated and indulged (in fact, as with 'ordinary' sexist remarks). This is why those who make racist remarks – and, often, those who are victims of these remarks – do not always recognise that an offence has been made.

This also explains why victims of racism think they are not 'heard', psychologically speaking, that is to say: no one can imagine and understand their suffering, and that the prejudice they endure is underestimated. They are, in fact, twice aggrieved: they are victims of racial discrimination on the one hand and, on the other, of a general suspicion about the reality of the facts they report. They are believed to be readily prone to exaggeration, even 'paranoia'. The experience of discrimination is thus both disputed and acknowledged as attributable to personality and even psychological problems.

The 'euphemisation' of racism by these effects and consequences is extremely perverse, not only because it weighs heavily on the victims, but also because it contributes to the devaluing of all persons or groups which are 'ethnised' or 'racialised', or even encourages the act to happen. Some victims even come to the point where they accuse those who bring them into contact with firms of placing them in humiliating situations: 'Why did you send me over to so-and-so? You knew he didn't want Arabs.' Others practise avoidance strategies, and can anticipate when to escape from potential direct confrontation with racism, suspicion and rejection. More generally, one can say that ethnic or 'racial' discrimination has not acquired, in the general view, a sufficiently illegitimate status for victims to feel authorised to act, to publicise their situation and to hope that support structures can be set in place. Legal action is thus even more hindered.

#### Discrimination that Cannot be Proved Does not Exist! (Lochak 1988)

There is a fundamental gap between law texts and the possible conditions that could lead to their enforcement. French law, in this respect, is governed by the 'presumption of innocence' principle. The plaintiff is thus obliged to prove ethnic or 'racial' discrimination has taken place. Furthermore, because structural or institutional racism is not acknowledged as such, and because of the existence of indirect discrimination, he or she must prove discriminatory intent.

French trade unions, the only mass organisations present in all companies of a certain size, are not really equipped to take out civil actions in discrimination cases. Trade unionists themselves are steeped in a general atmosphere of 'euphemisation' of racism. Those willing to act admit they are afraid of not being backed by all the employees. According to them, it is mostly the growing precariousness of jobs and the fear of unemployment which bring victims to accept humiliating conditions, as a justification for escaping their responsibilities. Because they have not changed their status, they are unable to bring a civil action in court. Thus only the victims are entitled to act with, at best, the help of anti-racist organisations external to the firm. Finally, they consider that the legal action framework does not offer sufficient guarantees for an efficient defence.

It is a fact that the problem of providing proof more or less paralyzes them. The pressures placed on witnesses dissuade them from testifying; the 'group cultures', which themselves are not exempt from xenophobia, make it very difficult, both for the victim and for potential defenders, to

gather sufficient evidence to bring a case to court. Finally, proving that someone is deprived of normal career development because of 'ethnic' origin demands a protocol (which only the work inspector can establish) that facilitates the collection of evidence that other workers, comparable in all respects except racial origin, have experienced more favourable career development. Who is going to approach the work inspector and ask him to undertake this task?

Doing so means that one expects a legal type of follow-up to an eventual official report. In fact, it turns out that suing an employer or his representatives for discrimination is a very serious procedure. If successful, the discriminatory act may be redressed (where a person who was dismissed must be reinstated). However, it is more often the case that the employer will be asked to pay damages.<sup>22</sup> Where prosecutions result in failure, the employer can sue the victim for libel. This is why those we spoke to say they prefer to organise the victims' defence along more 'classical', more certain and, *de facto*, more efficient lines.<sup>23</sup> One work inspector even told us that in the case of a mass dismissal of 'African' unionists, he based his plea on articles of the Labour Code relating to the protection of trade unionists without even mentioning racial discrimination, which he himself thought was blatant.

An efficient workers' defence thus tends to discourage resorting to legal remedies against discrimination and thereby colludes in the perpetuation of the ignorance of such situations and in the non-acknowledgement of racist motives. The Presidency of the Paris Conciliation Board has stated that, never, amongst the 17,000 cases brought to court every year, has the accusation of racism been presented. They added – despite the existence of article L 122-45 of the Work Code – that should it happen, 'we would not want to hear it and we would send these people back to common law courts'. It seems that an evolution in thinking by conciliation boards is possible on this issue, as has been recently shown by the sentence passed on an employer, stating that the plaintiff was the victim 'of a certain discrimination due to his Cameroonian origin' (GISTI 1994).

As for the Central Offices of the Paris Work Inspection, they declare that having never studied this issue they are unable to make any contribution. How is it that well-known institutions that specialise in labour law and disputes between employees and employers know nothing or almost nothing? It is simply because, as we have already stressed, racial or racist discrimination is by no means their major preoccupation. Even worse, it seems that suing on these grounds runs the risk of taking plaintiffs down a cul-de-sac, and of depriving them of the benefit – if one can call it a 'benefit' – of a more efficient and safer line of defence.

In France, racism and racial discrimination are not primary arguments, nor even secondary ones. Most of the time they are not even mentioned: 'discrimination on racial grounds is often not even mentioned by the plaintiff who is certain he won't be able to bring proof of the discriminatory foundation' (GISSTI 1994).

Occultation and 'euphemisation' of ethnic or 'racial' discrimination, in France, build a 'wall of silence' which is further consolidated 'for the good cause' by some of those who, in France, are amongst the best defenders of immigrants and equal rights. The equality principle itself now comes to 'shelter' racist practices, the condemnation of which remains purely on the basis of 'principle'.

Those we talked to nevertheless seemed more aware of the discrimination problem than was the case a few years ago. This is probably due to the fact that this discrimination does not only affect foreigners but, more and more, people with French nationality. Its racist character can thus no longer be denied. For a large number of people acting in the labour market, the refusal to recruit people who have lived in France for a long time or were born in France, appears as an obstacle to integration and as one of the main threats to the 'virtues' of the French 'assimilation model'.

There is thus, today, an urgency, felt in varying degrees by militants and other social actors, to bring these practices into the light. Research in this matter can bring to the surface precious pieces of information as to the extent, the ways and the processes of discrimination. But there needs to be a political will to encourage such work. And, as we have tried to show, it is as if the simple fact of 'recognising' discrimination presents, in itself, a major risk of social and political destabilisation.

*Translated by Jean Duriau*

## NOTES

1. 1985 Loi Informatique, Fichiers et Libertés' creating the 'Commission Informatique et Libertés' holding extensive powers to investigate, control and accuse.
2. Amongst the first group counted, not only the descendants of French parents but also all those who were born on French territory benefit - under certain conditions - from the rule of the double *jus soli*. The second group fall under different procedures including that of naturalisation.
3. According to the 1990 census, there were 4.1 million people amongst whom 1.3 million are French and 2.8 million foreigners. This definition

includes - although they are neither foreigners nor French by acquisition - native French born in the Départements et Territoires d'Outre-Mer (in particular, the West Indies).

4. It is interesting to note that 'immigré' has no translation in English. The word 'immigrant' also exists in French, but is very seldom used. It seems that in English, or at least in the American use of the word, 'immigrant' is someone whose intention is to settle inside the nation. True or not, this is not the presumed intention of the term 'immigré' when used in France.

5. 'Immigration' statistics are those, already mentioned, provided by the Ministère de l'Intérieur, that are, on the one hand, the flow (number of foreigners entering France) and, on the other hand, the amount (number of valid residence permits).

6. 'Over a long period of time (since 1971), the proportion of foreigners amongst wage-earners tends to decrease ... whereas the immigrant population represents a more and more important part of the Ile-de-France Region population ... This can be explained by the fact that the children of immigrants disappear from statistics once they reach 18 years of age since they then become French' (Martinielli 1990).

7. A subtitle the author introduces states: 'neither the social mobility of immigrants nor that of their children correspond to pre-conceived ideas. An important part of the first generation and especially of the second generation, has managed to reach a "higher" social position than that of their parents.'

8. Foreigners, here, in fact.
9. For more information see De Rudder, Tripier and Youre'h, 1994.

10. See 1986 and 1993 so-called 'Lois Pasqua'.

11. Besides the major reference texts (Déclaration des Droits de l'Homme 1789, Déclaration Universelle des Droits de l'Homme 1948, Préambule to the 1946 Constitution, and article 2 of the 1958 Constitution), there is a 1972 law against racism, completed in 1990 and a law against discrimination introducing new articles in the Penal Code and the Labour Code.

12. Except for scientific and technical establishments as well as higher education establishments since 1983 and 1984.

13. For more details concerning these interdictions to exercise freelance or liberal professions, see Lochak (1991). The recruiting of foreign doctors in public health hospitals under highly discriminatory conditions has been the subject of many disputes (De Rudder, Tripier and Youre'h 1994).

14. Irregular residence in France is a legitimate reason to refuse employment. 'The "equal pay for equal work" principle forbids the employer to pay, differently, women and men, foreigners and natives ... but does not forbid him to differentiate wages according to each individual's merits and output or to grant bonuses that jurisprudence recognizes as lawful' (Lochak 1987).

15. Rome Treaty; OIT Convention No. 118 which speaks of 'usual residence' and defines the principle of 'lack of residence administrative condition' in matters related to social security; Cooperation Agreement between the EU and Algeria, Tunisia, Morocco and Turkey assimilating, in matters of social benefits, all those who have these nationalities with those who hold EU Member State nationalities and thus to natives of these countries; Lomé Convention; European Social Charter; Children's Rights Convention.
- 16.

17. In this last case, the nationality condition concerns not only the mother, but also the children, since this allowance is only given out to French mothers of French children.
18. 'Do you know the BBR? Behind these letters hides the code word 'Blau, Blanc, Rouge' (Blue, White and Red) which, far from indicating the Republican flag, indicates that the employer seeking a temporary collaboration wishes to recruit a White, preferably French 'de souche' person' (K. Yanguana 1992).
19. C.E.S.: Part-time work contracts reserved for those unemployed for more than a year, partly sponsored by the state.
20. In a large car factory of the Sochaux region, an announcement that the firm was offering jobs to 600 young people led an FO trade union representative to demand a priority for (1) children of staff, and (2) people originating from the region, on the basis that 'they have a Sochaux heart and it's good for the region' (*France-Info*, Saturday 11 May 1994).
21. Which, probably, historically favoured the recruitment of women of whom there are many in the civil service.
22. There is a jurisprudential opposition to reintegration (GISTI, 1993). As J.J. Dupeyrou observes: 'In practice, a racist dismissal can happen without the victim obtaining reinstatement. At best, this person will be able to obtain damages based upon the abusive nature of the dismissal.'

## 6 Migrants and Ethnic Minorities in the Netherlands: Discrimination in Access to Employment

Mitzi Gras and Frank Bovenkerk

### INTRODUCTION

Under Dutch law, it is illegal to discriminate on grounds of race. Article 1 of Dutch Constitution states, 'All persons in the Netherlands shall be treated equally, in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex, or any other ground whatsoever, shall not be permitted.' However, formal equality in the law does not always mean equality in practice. A clear example of racial discrimination is shown below:

A newspaper advertises a vacancy for an experienced waiter to work in a restaurant. Mustafa El Mansouri, a young man of Moroccan descent, decides to apply for this job. He is an experienced waiter, of the required age and possesses the necessary certificates. He also speaks fluent Dutch. He telephones the employer but is told that the vacancy has already been filled and that he is too late. Five minutes later, Jan de Wit telephones the employer and applies for the same job. He is the same age as Mustafa and is also an experienced waiter. The employer informs him that the vacancy is still open and invites him for an interview.

In 1978 Bovenkerk and Breunig-Van Leeuwen demonstrated that despite the illegality of discrimination in employment it was widespread in the Netherlands. Bovenkerk and Breunig-Van Leeuwen used the experimental technique of 'situation testing', which had previously been applied in the United Kingdom to measure the incidence of racial discrimination in the British labour market. The principle of the method is as follows: two equally qualified applicants apply almost simultaneously for the same advertised job vacancy. Both applicants have the same age, work experience and education and differ only in one respect; one applicant is white and native while the other is black or has an identifiable foreign background. The extent to which one applicant is treated more favourably than his or her paired