

International Migration Papers

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Labour market discrimination against migrant workers in Spain

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Foreword

The present document has been published by the ILO Migration for Employment Branch. The objectives of the Branch are to contribute: (1) to the evaluation, formulation and application of international migration policies in line with the economic and social objectives of governments and of employers' and workers' organizations, and (2) to increasing equality of opportunity and treatment, and to protecting the rights and dignity of migrant workers and the members of their families. Its means of action are research, technical advisory services and co-operation, as well as activities linked to international labour standards. The Branch also compiles, analyzes and disseminates relevant information to the Members and units of the ILO and other interested parties.

Under its Constitution, the ILO has the duty to protect the "interests of workers when employed in countries other than their own". This has traditionally been done through the drafting, adoption and supervision of international labour standards, and in particular through the Migration for Employment Convention (Revised), 1949 (No. 97), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) together with the Recommendations that accompany them. International legal instruments of this type are designed to influence national legislation and regulations in each country which has ratified the Conventions with a view to changing not only the legislation but also the relevant practice.

The most important aspect of the ILO standards dealing with migrant workers is non-discrimination and equality of opportunity and treatment. Many countries have adhered to this objective in the economic and social field. Some have ratified the ILO Conventions, and have made efforts to fulfill the obligations that derive from them. Consequently it might have been expected that discrimination would have disappeared both from legislation and practice in these countries. Unfortunately, there is still widespread evidence showing that this is not the case in many respects and especially in relation to both public and private enterprise jobs. Furthermore, the same evidence exists in the case of countries which have not ratified ILO conventions.

For this reason, the ILO has launched a series of activities under the generic title of "Combating discrimination against (im)migrant workers and ethnic minorities in the field of work". The objective here is to reduce discrimination against non-nationals and persons of distinct ethnic origin by informing the authorities, workers' and employers' organizations and trainers involved in the prevention of discrimination, on how legislative measures and training activities can be made more effective, on the basis of international comparisons of the impact of these measures and activities. The activities cover four major components: (1) empirically verifying discrimination, (2) researching the degree of effectiveness and pertinence of legal measures designed to combat discrimination; (3) documenting and evaluating anti-discrimination or equality of treatment training and education, and (4) organizing international seminars to discuss the results of the studies carried out.

This working paper presents two studies on discrimination against foreign workers in Spain. In the first part, the Colectivo Ioé studies, on the basis of empirical data, whether or not there is discrimination against Moroccan migrants in hiring procedures. The tests were based on the

methodology put forward by Bovenkerk¹ with a view to standardizing procedures and criteria and thus making them comparable with tests carried out in other countries, although adapted to the characteristics of Spanish migration. In the second part, Rafael Pérez Molina deals with the protection of migrants against discrimination in employment under Spanish legislation, both from the legal and the institutional point of view. If anti-discrimination legislation is to have the desired effect, it is necessary not only to draw up the relevant legal provisions but also to establish the mechanisms needed to put these provisions into practice.

The information contained in this document should be of value in improving migration policy since it is our finding that it is necessary to improve the legal framework and at the same time involve society more directly (in this case, more specifically the public administration and the employment sector) if we are to rectify the discriminatory tendencies that migrants encounter in the field of employment.

I should like to place on record our gratitude to the General Directorate of Migration, the Provincial Government of Andalusia and the Paulino Torras Domènech and Jaume Bofill Foundations for their financial support in the completion of the first part of this document.

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¹ Bovenkerk, F.: *Testing discrimination in natural experiments: A manual for international comparative research on discrimination on the grounds of "race" and ethnic origin* (ILO, Geneva, 1993)

Discrimination against Moroccan

A. workers in access to employment

by Colectivo IOE

Introduction

1. Spain - a new country of immigration

The change that has taken place in Spain starting in the 1970's and 1980's in relation to migratory flows, may be summarized in the much repeated cliché "Spain - once a country of emigration, now a country of immigration" (Colectivo Ioé, 1989). This change has affected, above all, the direction of these flows, and Spain has become a new country of immigration. Nevertheless, it should not be forgotten that, at present, there are still four Spaniards living abroad for each immigrant in Spain: there are 1.6 million emigrants and some 400,000 immigrants. Furthermore, the internal plurality of the immigrant population is enormous (since it is made up of more than 75 nationalities).

The fact that foreign immigration is relatively new and that, in general, little is known about this phenomenon¹, has favoured the development of a situation which, up until quite recently, had not been a matter of interest to public opinion nor was it considered a subject for the intervention of the public authorities. In 1990, the socialist Government, for the first time, put before the Congress of Deputies the basic lines of Spanish policy on foreign immigration²; one of the three basic thrusts of activity gave rise to the "Plan for the social integration of immigrants" (approved in December 1994), in which six objectives laid out clearly the need for public intervention to avoid discrimination and promote social integration³. In short, the administration has reacted - but it has reacted late. Public opinion, however, has been kept informed by the mass media which broadcast information about immigrant populations in Spain, which is to a large extent out of context where it is not just inadequate. From the social point of view, there has been a growing feeling that the country has reached the limit of its ability to accept more foreigners; moreover, some groups with neo-Nazi ideologies have actually carried out the murder of some immigrants. At

¹ The first study on foreign immigration in Spain over the period 1985-1987 was carried out by Colectivo Ioé. See Colectivo Ioé, 1987.

² The three basic lines of approach are: attack the causes of immigration at their source, by means of development cooperation; control migration flows, lay down entry quotas and contingents; and the social integration of immigrants.

³ The six basic objectives are: eliminate any type of unjustified discrimination, in both the exercise of rights and in access to existing services; promote coexistence based on democratic values and tolerant attitudes; guarantee the migrant a lawful and socially stable situation; combat barriers placed in the way of integration; and motivate and involve society as a whole in the fight against racism and xenophobia. See, Directorate General de Migrations, 1995, pp. 9-11.

the same time, we have seen the organization of immigrant support groups, and there has been a widespread social movement against xenophobia and racism.

However, if we stick to the data, it will be seen that the proportion of lawful immigrants has never been significant in relation to the total national population (currently it is around 1 per cent) (Colectivo Ioé, 1994.a); foreign workers account for scarcely 1.5 out of every hundred persons employed in Spain, and the total of all foreign workers amount to scarcely 6 per cent of all Spanish unemployed. On the other and, in contrast to the general stereotype of public opinion, it cannot, in general, be said that foreigners are employed in the worst jobs on the Spanish labour market (Colectivo Ioé, 1993.b). If we group occupational categories together

Table 1.
Foreign workers' occupational status according to region of origin
(30 June 1992)

	High	Medium	Low	Unclassified
Total foreigners	18,6	18,5	61,7	1,2
European Union	32,5	25,7	40,4	1,4
Latin America	26,4	17,8	54,8	1,0
Asia	5,0	20,5	71,5	3,0
Africa	2,7	12,7	84,0	0,6

Source: Our own elaboration of data from the Ministry of Health and Social Security, 1992.¹

¹ The numbers for non-Community foreign workers relate to 31 December 1992 and that for Community workers to 30 June 1992. The combination, prepared by ourselves, is given as the number of foreign workers.

in worker status layers, what we find is that two out of every three are in the bottom layer, and that there are around 20 cent each in the medium and high layers (see Table 1).

However, the situation may vary considerably depending on the origin of the immigrants: European Union nationals are to be found in the high and medium levels (60 per cent), immigrants from Latin America are located in almost equal proportions between the high and medium levels, on the one hand, and in the low level on the other; nevertheless, 71.5 per cent of immigrants from Asia and 84 per cent of those from Africa are to be found in the low level. These and other data show that there is a clear polarization in occupational status, depending on origin¹. Does this situation influence the behaviour of Spanish employers? The present study has looked at this question and has found that there is a tendency for the Spanish employer to discriminate against young Moroccans applying for low-skilled work. The results of this study do not make it possible to state whether or not this behaviour is the same in the other social sectors in Spain. On the basis of other research that has been carried out, we may say that this social behaviour involves a superimposition of logics (the logic of benefit for the undertaking, nationalistic logic, and the logic of cultural difference); the final outcome will be more discrimination or less discrimination depending on the forces at play, (Collectivo Ioé, 1994.b). In its social dimension, the problem is therefore not limited to a single sector.

2. Structure of the report

The present report brings together the results for Spain of the first of the four activities that make up the overall ILO project: **Combating discrimination against (im)migrant workers and ethnic minorities in the world of work**. The objective of this activity in all the countries participating in the project is to compile documentary proof of discrimination at the time of hiring.

In order to facilitate international comparability, this report about Spain presents the results in the same way as in the previously published report on the Netherlands (Bovenkerk, Gras and Ramsoedh, 1995). Moreover, in view of the novelty of this method in relation to the Spanish tradition of social research, we have, in some sections, combined presentation of the results with a detailed technical description of the procedure employed.

The report is made up of four parts. The first is a presentation of the method proposed by the ILO to investigate labour discrimination, and discusses how it is similar to and different from other, earlier research. The second part presents the suitability of the overall proposal to the report on Spain; it contains a justification of the selection of the group of young Moroccan males as a test group, the three geographical regions of analysis (Madrid, Barcelona and Malaga) and the sectors of the labour market analyzed (services, construction and industry). The third part is a description of the technique employed (the "audit test" or "*in situ* verification test") and of the steps taken to put together the teams in the three regions in which the tests were to be applied. The fourth part presents the results of the tests carried out, following step by step the proposed outline for the report on the Netherlands, and concluding with a brief summary laying out the results obtained.

¹ Another study carried out in Catalonia comes to the same conclusion: "The place of origin (African, Moroccan and Asiatic) is what discriminates most in the series of relations we have established to come to a decision on the binomial integration or racism", Solé and Herrera, 1991, p. 216.

We should like to express our thanks to the ILO and in particular to the Migration for Employment Branch coordinator for this project, Mr. Roger Zegers de Beijl, as well as the Spanish Office coordinator for this activity, Mr. Ulpiano San Martín, for the confidence they have displayed in Colectivo Ioé for the implementation of this study, and for their attention during the course of the research. Similarly Colectivo Ioé would like to go on record in its recognition of the commitment and effort made by the young Moroccan and national actors, the supervisors at each of the operational sites in Madrid, Barcelona and Malaga, and to the immigrants' associations, AEME (Association of Moroccan Immigrants in Spain - Asociación de Emigrantes Marroquíes en España) and ATIME (Association of Moroccan Immigrant Workers in Spain - Asociación de Trabajadores Inmigrantes Marroquíes en España) and to the groups "Desenvolupament Comunitari" ("Community Development") in Barcelona and "Málaga Acoge" ("Malaga Offers a Welcome") in Malaga. They have given a warm reception to this initiative and have made possible its implementation, although Colectivo Ioé itself takes full responsibility for any errors that may have occurred. Finally, we trust that the dissemination of the results will help to implement the proposals put forward by the ILO in its statement that: "it is hoped that the project will be, both an incentive, a model and a yardstick to positively promote relations between nationals, migrants and ethnic minorities".

Part I: Methodology for studying labour market discrimination at the time of hiring

The method used to study labour market discrimination was originally designed as a tool for checking compliance with the law. The terms that have been adopted in the Anglo-Saxon environment are "situation testing" or "audit testing", in French "étude comportementale réactionnelle *in situ*", and, in the present ILO project "testing discrimination in natural experiments". The Spanish translation, bringing together the various components of the method, might be "pruebas de actores en situaciones reales" (real situation tests) or, more succinctly, "pruebas de verificación *in situ*" (*in situ* verification tests)¹. The method has been employed as an "audit" of a social situation in order to shed light on the problem of discrimination, and also as a means of evaluating the effectiveness of legislative anti-discrimination measures or the degree to which these are being implemented. In short, this is a method which has been derived from the social sciences, and is being used to help in the legal battle against discrimination.

1. Presentation of the research methodology, origin and traditions

The "*in situ* verification tests" research methodology has been used to bring to light discrimination in many areas of social life, and not just those related to the world of work. It has often been used to study discrimination in the way that persons belonging to ethnic or "racial" minorities are admitted to hotels, banks or service establishments. If we limit ourselves to the use made of this method for studying labour market discrimination and, specifically, discrimination in access to employment, it should be noted that Bovenkerk has referred to two research traditions which have developed independently of each other.

1.1. The English tradition

It is accepted that two English researchers at the Political and Economic Planning (PEP) research office were the first to use the method in 1967. On the basis of their work, a research tradition was established which has exerted influence in the Netherlands, Canada, Australia and France².

The 1968 PEP report (Daniel, 1968) showed the intensity of discrimination within firms against the minorities that had arrived in the United Kingdom after the Second World War. The method used was to send to those undertakings about which complaints of discriminatory behaviour had been received a Hungarian who had been naturalized British, an English citizen from India and a white native Englishman; only 40 tests were carried out and this produced criticisms about the lack of representativity of the results obtained. Joweel and Prescott-Clarke used the same method but, instead of "actors" they sent out "written applications" for white-collar jobs (Joweel and Prescott-Clarke, 1970). Both studies found that there was discrimination against minorities.

¹ We know of no study that has applied this methodology in Spain to obtain an insight into discrimination; this means that until now there has been no label to apply to the method and, we may assume, no knowledge about this method. A technique which is similar for the purposes of this study is the "wrong purchase test"; however, in Spain, its scope is limited to consumer sociology. In this section, we have brought together components from the presentation made by Bovenkerk (1992) and Bovenkerk et al. (1995) to provide the Spanish reader with an insight into this research method.

² The research carried out under this tradition in the above-mentioned countries may be consulted in Bovenkerk (1992), pp. 8 ff and 45 ff.

The second PEP study (McIntosh and Smith, 1974) involved studying two levels of qualification (skilled jobs and non-skilled jobs), using the "actor" method for the former and the "correspondence" method for the latter; it also introduced the gender variable (it was observed that there was more discrimination against black women than against men) and a skills variable (it was found that there was less discrimination in jobs involving a higher level of education). Later research became increasingly more consistent and its area of applicability was extended. The study undertaken by the Policy Studies Institute (the successor to the PEP), under the direction by Brown and Gay in 1985, researched the actual impact of anti-discrimination legislation; other researchers such as Hubbock and Carter have continued this research tradition at Nottingham (Hubbock and Carter, 1980).

1.2. The United States tradition

In the United States, the method became known as "situation testing" or "auditing" and, at the end of the 1970's, groups active in combating discrimination in the **rental of accommodation** to minorities began to use the method in view of the fact that the Court of Justice accepted the results obtained as evidence. The methodology was applied to the **labour market** in the following decade. For example, Newman used the "correspondence test" to check out the effectiveness of positive action programmes against discrimination (Newman, 1978); new variables were introduced, including the size of the undertaking, the stipulation of prior reports, etc. The most striking result was that, in large undertakings, black applicants were better received than white since institutions which were interested in carrying out an equal opportunity programme were devoting considerable efforts to revising their activities; due to this, the behaviour of undertakings in the employment of the black minority population changed considerably.

The lack of contacts between researchers of both traditions (accommodation rental and labour market) was so great that, when the Urban Institute of Washington, in collaboration with the General Accounting Office, studied the labour market to check on discrimination against Hispanic immigrants, the research team led by Cross (1990) **reinvented** the method, although with specific characteristics: This team carried out 360 tests in undertakings located in Chicago and San Diego using Anglo and Hispanic actors who reported on the whole of the hire procedure they underwent (Cross et al. 1990). The methodological interest of this study resides in the fact that the whole hiring procedure was checked out, followed by interviews, and the test was not concluded until the job was offered or refused (in the case of the Anglo test subjects, the test was terminated when an interview was offered or refused).

2. *In situ* verification tests and other methodologies for studying discrimination in employment

In situ verification tests are characterized by the fact that they are a "natural experiment", in line with the ILO project, which means that they are carried out under normal social conditions rather than being set up in a laboratory. For this reason, it is of interest to weigh up the pros and cons of these tests in comparison with other methods of studying discrimination in access to employment¹; a distinction can be made here between those methods which study the **discrimination process** itself and those which instead look at the **effects of discrimination**.

2.1. Studies on the discrimination process

¹ For more information about this, see Bovenkerk, 1992, pp. 4-8.

Depending on the emphasis which is placed on one or other aspect of the process, a distinction may be made between studies on the **agent** which produces the discrimination, the **act** of discrimination or the **victim** which is the object of discrimination; similarly, a distinction may be made between studies on **behaviour** and studies on **mental qualities** which supposedly influence the action (attitudes, prejudices, etc.). In this case, what we are dealing with is the traditional distinction in sociology between "what people say and what people do" or between "actions and feelings"; both aspects are important in a subject such as discrimination which involves unlawful acts and socially unacceptable behaviour.

These considerations show that it is necessary to be cautious in relation to studies based on questionnaires sent to, or interviews of, employers so as to ensure that one does not over-estimate or under-estimate the discrimination. Depending on the social context in which the persons being interviewed are situated, it may be badly looked upon to "admit" that one is a discriminator; in contrast, even when discrimination is admitted as being something "natural", it may be that there is no other solution available than that of employing foreign workers (for example in agriculture).

2.2. Studies on the economic position of minorities

Discrimination against minorities in employment has often been studied by collecting data on the participation of these minorities in the labour market, the presence of minority workers in high positions and a comparison between samples of national workers and minorities. Statistical variations are usually considered to be "*prima facie* evidence" of discrimination even though they do not usually occur as cases of direct but rather indirect discrimination (misinformed, unconscious, etc., in the terminology of the present context). Under such premises, one applies statistical regression analyses so as to identify the relative importance of different variables. The basic drawback to this method is that one cannot obtain any conclusive proof of discrimination until one has identified all the possible relevant variables.

By combining the various approaches adopted in studies on discrimination, one is able to establish a typology of six positions which give rise to various research methodologies (Bovenkerk, 1992):

Study object	Actions	Feelings
Those discriminating	1	2
The discrimination process	3	4
Those discriminated against	5	6

- (1) *Laboratory experiments*. These include role playing exercises (similar to those used for carrying out training in, or ensuring maintenance of, specific capabilities) for "personnel recruiters" or candidates. They have an advantage over other methods, which were claimed to resemble critical situations, but they do not guarantee that these hypothetical situations are in line with the contexts in which cases of discrimination in employment occur.
- (2) *Attitude reports*. These are the most widely used type. Employers or managers are interviewed and subjected to battery tests to identify their stereotypes and prejudices. Using a refined and continuously applied technique, the results obtained leave us without a knowledge of what is actually happening, since there is no automatic link between "attitudes" and "behaviour".

- (3) *Direct observation.* As far as is known, no attempt has been made to apply direct observation to the study of the process of employment because it is not known whether the employer would be prepared to be the subject of observation or whether the test procedure would or would not modify his/her behaviour.
- (4) *Interviews with employers.* Employers are questioned about recruitment practices that they consider discriminatory. On the one hand, we are confronted with the same problem as in type 2 above (confusion between attitudes and behaviour); on the other, the employers' statements may be restricted to a display of what is socially "acceptable".
- (5) *Experience of "being a victim of discrimination".* There are well known cases of novelists or journalists who have passed themselves off as members of a minority so as to get real life experience of discrimination (for example, Wallraff in Germany or, earlier, Griffin in the United States). From the point of view of methodology, experiences of this type are of an exploratory nature, valid as such but subjective: valid because they have made it possible to experience discrimination (unequal treatment) from a personal perspective which allows one to compare both treatments, something which neither Turks nor blacks have been able to do according to the examples referred to (being treated as whites); but also subjective, and impossible to extend to the majority of the population: the situation is a known one and has been denounced by Turks and blacks, but who believes what the minority is saying when it is accusing the majority.
- (6) *Studies on "victimization".* Reports on cases that have suffered discrimination and on the effects that this discrimination has produced often tend to have an "instrumental" orientation so as to get people to give consideration to the subject, and to instigate political measures. The results of these studies combine the experiences of the victims with the feelings that discrimination produces in them, together with the interpretation that they make of what has taken place. The main limit to this method is its lack of representativity and its subjectivity: what one victim will consider to be intense, will not be considered as such by another, it all depends on each persons' reference context.

The method proposed for the present study brings back the quality of **real life observation** of some of the earlier proposals but, at the same time, attempts to overcome the subjective and scarcely systematic vision that these offer, by means of a contrasted procedure. The proposal does also have its own limitations, including that of providing a reply to only one type of question, that related to the measurement of the effects of discrimination at the time of hiring, but without addressing the complete employment process (entrance, conditions of employment and exit from the labour market) and without taking into consideration the feelings experienced by the employer when he/she is deciding whether or not to hire a member of a minority.

On the basis of what has been presented above, the ILO came to the conclusion that the adopted method is the one most suitable for studying whether or not discrimination exists in access to the labour market. Although there may be complications from the technical point of view, as will be seen further on, the results obtained are readily understandable. In addition, in situations such as those that currently exist in Spain where discrimination is beginning to be looked badly upon and may be labeled as "unlawful", it gets cloaked under polite of forms treatment; it then becomes necessary to uncloak it, and the "*in situ* verification test" method has the ability to do this.

3. International research proposal

Studies exist on the discrimination that occurs to members of ethnic minorities in the world of work but these are usually the outcome of research limited to a specific zone or specific minorities; furthermore, these are studies which are based on disparate methodologies and with conceptual frameworks linked to specific institutions or research groups. The methodology developed by the ILO is designed to overcome difficulties of this type and, for this reason, it is based on three fundamental approaches:

- (a) a study **design** which allows **international comparison**;
- (b) a **standardized methodology** that can be applied homogeneously in numerous countries; and
- (c) the gradual construction of a broad **theoretical framework** which offers scope for special interpretations.

3.1. Research variables

The ILO proposal operates with variables grouped into three classes: labour market "demand", "supply" and related general "conditions"; in these classes, each of the variables is dealt with dichotomously, as will be explained below:

3.1.1. Labour market "demand" variables

(a) Size of undertaking:

\$ **Small undertakings** usually have less discrimination because hiring negotiations are simpler, and the relationship between employer and employee, which is wont to be paternalistic, brings about the protection of the latter by the former. The opposite point of view is that small undertakings skirt around legal requirements, and act in an arbitrary manner about discrimination.

\$ **Large undertakings** have much more experience of hiring members of minorities; they are subject to greater pressures to take legal standards into account and are under close scrutiny on the part of the trade unions, non-governmental organizations or anti-discrimination groups; they prefer to comply with legislative standards rather than damage their public image. The opposite opinion is that it is in large undertakings that discrimination is more masked under an appearance of legality.

(b) Public and private sectors:

\$ From the perspective of the **neoclassical economy**, it is claimed that there is less discrimination in the **private sector**, in view of the fact that restricting the opportunities for hiring employees on grounds of ethnic prejudice would put the undertaking at a disadvantage in comparison with undertakings which do not adopt this line. Consequently, discrimination should be greatest in monopoly situations or in sectors which are not directly profit-oriented; these are both conditions which exist in the **public sector**.

\$ From the point of view of **social rights**, it is stated that there is less discrimination in the public sector due to the fact that government institutions are committed to apply anti-discrimination standards, whereas the private undertaking can act with greater "freedom" in the hiring of workers.

3.1.2. "Supply" variables

(a) Ethnic groups:

\$ Discrimination will be greater **against the older and better known minority** due to the fact that it is perceived as a "problem group" which has been there a considerable time and "is aware" that it has not achieved (desired, been able to arrive at, etc.) integration.

\$ The opposite view claims that employers reject among the immigrant groups those for which they do not have contrasting information, i.e., the **new ones**.

(b) Sex/gender and ethnic background:

There will be more discrimination against the **women** in ethnic groups than against men due to the fact that it is supposed that women have lower skill levels and that they will therefore receive offers only for work in low-category jobs.

\$ **Men** in minorities will be discriminated against more than are women from the same groups due to the fact that their upward social mobility might be considered to perturb the social order of the majority.

(c) Employment and skills levels:

\$ The higher the a minority worker's level of qualification, the less he will be discriminated against. Qualification is seen as a sign of assimilation, and a **value** for that person to be treated as an equal.

\$ If a person rises to a higher level of qualification, he loses the specific "place" assigned to the minority, and he competes with nationals on the basis of his comparative advantages; this will be interpreted as a "**threat**" by certain sectors of the majority.

3.1.3. General labour market condition variables

(a) Concentration of immigrants in specific areas:

\$ If the **number of immigrants is small** in a given area, there will be little discrimination against them; they will not be seen as competitors by the majority.

\$ When **high concentrations** of immigrants occur, the discrimination against them will increase because their employment will be considered by the majority as a cause of unemployment.

(b) Economic cycle:

\$ During times when there are few job seekers and there are many jobs on offer, one may expect less discrimination than under opposite conditions. The **restriction or expansion of the labour market**, specific economic sectors and particular qualifications will mean that discrimination will augment or decline.

\$ Only where discrimination is of the "malignant type"¹, will the discrimination against the minority be maintained at an equal level no matter what the economic circumstances.

An **ideal design** should incorporate the seven variables described above, and this would give rise to very extensive studies. The ILO's proposal, in order to permit international comparability, is to maintain, on the one hand, a common minimum for all countries in which the research is to be carried out and, on the other, to allow one or other variables to be selected depending on their relevance to the analysis of the problem in question: does discrimination against immigrants or members of ethnic minorities, as a general phenomenon in industrialized countries, contribute to the creation of social inequality based, amongst others, on ethnic differences?

Part II: Collecting proof of discrimination against Moroccan immigrants in access to employment in Spain

¹ Discrimination of the "malignant" or malicious type is contrasted with "myopic" or misinformed discrimination according to the terminology by Christopher Jenks used in the Bovenkerk proposal. **Malignant discrimination** is based on individual or group prejudices that do not necessarily change even when the information necessary for such a change is available, or in fully assumed racist theories; **myopic discrimination** is seen as the fruit of ignorance, due to a lack of thought, etc. See Bovenkerk (1992), pp. 13-14 and note 18.

The methodology developed by the ILO for the study of discrimination in employment has a general outline and requires adaptation to the situation in each country in which it is applied. We intend to lay out below the general profile planned by the ILO, then to describe specific details and adaptations that we have made for the situation in Spain. Four criteria have been adopted for the common structure:

- (1) study discrimination only at the time a worker is being hired;
- (2) measure discrimination against two immigrant groups: an established group with a large proportion of second generation members; and another group of young males (20-25 years of age) of the first generation;
- (3) focus on two levels of qualification: semi-skilled work for recently arrived first-generation immigrants, and higher-qualified jobs for second generation immigrants, and
- (4) carry out the study in regions with a high immigrant concentration and in sectors of employment with a high labour demand, especially in branches of the service sector and the industrial sector (the agricultural sector is excluded in view of the fact that competition for employment with nationals here centres around unskilled jobs).

This report on Spain covers only the first item in full; the scope of the following two points is restricted and the fourth is being developed and extended. In item 2, the study is limited to a single group of immigrants, namely a group of young first-generation Moroccan males of 20-25 years of age i.e., who had arrived in Spain only a few years previously. On the other hand, as far as the level of qualification referred to under item 3 is concerned, it was decided that the group described under the previous item corresponded to the lower level (semi-skilled) in view of the fact that this group had arrived only recently in Spain, had no specific training and no experience in the Spanish labour market. Under item 4, **three geographical regions** were set up for the application of the actor tests (Madrid, Barcelona and Malaga) together with **three economic sectors** (services, construction and industry). The

General design	Adaptation to Spain
1) Discrimination at the moment of hiring	Idem.
2) Two groups: 1st and 2nd generation	One group of young, first-generation male Moroccans
3) Two levels of qualification: semi-skilled and higher qualifications	One level: semi-skilled
4) One country, two sectors (services, industry)	One country, three geographical regions (Madrid, Barcelona, Malaga) and three sectors (services, construction and industry)

following comparative table shows the differences between the overall design and the Spanish study.

In order to put into context the appropriateness of the selection of the Moroccan group as a test group from amongst the various groups of foreign workers in Spain, as well as the three geographical regions for the application of the actor tests, we have taken into account the presence of foreign immigration on the Spanish labour market, as can be seen in the following chapter.

1. The Spanish labour market and foreign immigration

1.1. Development of the labour market in Spain

The past 20 years have seen three major economic cycles during which the occupational structure of the country has undergone change.

(A) *The period 1975-1984*

A recessionary cycle coinciding with an international crisis of the model of accumulation prevailing in the developed countries since the post-World War II era. In Spain, this cycle was characterized by the confluence of two processes: the institution of a new political order, based on a democratic constitution which guarantees civil liberties, and the crisis and reconversion of the socio-economic order. The new democratic framework made it possible to develop in-depth the instruments of social protection (unemployment, health benefits, old-age and other pensions, social services, etc.) which helped to contain the process of deterioration in the labour market.

In the economic sphere, there was a major destruction of jobs (a total of 2.6 million jobs were lost) which gave rise to the appearance of **structural unemployment** which, since 1982, has not fallen below 2 million workers (the unemployment rate rose from 2.8 per cent to 21.7 per cent from the beginning to the end of this period). Furthermore, the country also underwent a **redimensioning of the work force structure**: the loss of jobs was extensive in three economic sectors (1 million in agriculture, for the most part small holders; 880,000 in industry; and 428,000 in the construction sector); nevertheless, 350,000 jobs were created in the service sector. As a result of this process, at the end of the period, 50.7 per cent of the persons employed in Spain were working in the service sector, 24.3 per cent in industry, 17.6 per cent in agriculture and 7.4 per cent in the construction sector.

As a product of the crisis, which came to sum up certain features of the national economic structure, we witnessed the powerful development of an underground economy sub-sector which, according to a study commissioned by the Ministry of the Economy and Finance, at the end of 1985, had involved some three million employed persons, and was having a particular impact in agriculture, the hotel industry and the less-skilled branches of the services, and was affecting in particular women and young persons (Secretaría de Estado de Economía, 1988, pp. 117-118). Under the joint heading of informal or underground economy, there came together a variety of processes which made up no homogeneous logic. It was not a completely new phenomenon, since it contains traditional forms of survival; however, its significance and current scope cannot be understood outside the context of the economic structure. What we have here is not outcrops of "backwardness which have never been overcome", nor a "parallel" circuit; rather they are forms which are dependent on, and in some cases promoted by, the formal economy.

During these years, **emigration to foreign countries declined** and over half a million immigrants returned to Spain, the majority from other European countries. **Internal migration slowed down** in parallel with the increase in unemployment in the cities and the expansion of social protection systems (pensions, agricultural subsidies, etc.). In addition to this, the birth rate fell at an accelerating pace and is now at the lowest level in the European Community. In parallel with this, Spain recorded, during this period, the onset of an immigration of workers from abroad.

(B) The period 1985-1990

During this six year period, Spain underwent major economic growth, accompanied by a significant opening of the economy towards other countries (integration into the EEC in 1986, inflow of foreign capital, etc.). There was also an appreciable pick-up in employment, generated to a large extent by direct state action (public administrations) or indirect actions (investment in public works). Nearly all the jobs lost during the previous nine years were recovered: a total of 2.3 million jobs were created, the majority in services (1.7 million); there was also growth in construction (485,000) and industry (404,000), whereas agricultural employment continued to fall (521,000). At the end of this period of expansion, agricultural employment accounted for scarcely 10.5 per cent of the labour force in work, whereas the service sector employed 55.4 per cent.

In spite of the increase in the number of people employed, unemployment fell by only 445,000 persons due to the rise in the size of the working population (to a large extent women). Several features of these years of growth clearly demonstrated the structural limits of the Spanish economy:

- (1) at no point did it prove possible to regain the 1974 employment level (13,220,000 jobs);
- (2) the unemployment rate continued above 16 per cent, and the number of unemployed did not fall below 2.4 million;
- (3) the unemployed population became fragmented, and was divided up between the occasional short-term unemployed and groups faced with social exclusion, such as the long-term unemployed (the proportion of unemployed who have been out of a job for

Table 2. Trends in employment and unemployment in Spain (1975-1984) (in thousands)

Year	Population of working age	No. of active persons	Rate of active persons	No. of employed	Rate of employment	No. of unemployed	Rate of unemployment
1974	25.756	13.627	52,9	13.222	97,0	405	3,0
1975	26.091	13.511	51,8	13.000	96,2	511	3,8
1976	26.453	13.362	50,5	12.761	95,5	601	4,5
1977	26.827	13.522	50,4	12.755	94,3	766	5,7
1978	27.326	13.640	49,9	12.604	92,4	1.035	7,6
1979	27.440	13.577	49,5	12.308	90,7	1.268	9,3
1980	26.521	12.860	48,5	11.240	87,4	1.620	12,6
1981	26.765	12.919	48,3	10.931	84,6	1.988	15,4
1982	27.115	13.101	48,3	10.866	82,9	2.235	17,1
1983	27.398	13.210	48,2	10.776	81,6	2.434	18,4
1984	27.709	13.228	47,7	10.359	78,3	2.869	21,7

Source: Ministry of Labour and Social Security, 1974-1984 and *Boletín de Estadísticas Laborales*, 1974-1984.

Table 3. Trends in employment and unemployment in Spain (1985-1990) (in thousands)

Year	Population of working age	No. of active persons	Rate of active persons	No. of employed	Rate of employment	No. of unemployed	Rate of unemployment
1985	28.036	13.346	47,6	10.412	78,0	2.934	22,0
1986	28.908	13.781	47,7	10.820	78,5	2.961	21,5
1987	29.307	14.298	48,8	11.355	79,4	2.942	20,6
1988	29.764	14.621	49,1	11.773	80,5	2.848	19,5
1989	30.173	14.819	49,1	12.258	82,7	2.561	17,3
1990	30.496	15.044	49,3	12.620	83,9	2.424	16,1

Source: Ministry of Labour and Social Security, and *Boletín de Estadísticas Laborales*, 1992.

two or more years rose from 30 per cent to 40 per cent; in addition there was also a rise in the size of the group which had not found a first job).

Furthermore, the growth in employment occurred, to a large extent, in new ways, with the backing of legislative reforms on labour relations: an increasingly large number of the new jobs were in the form of **temporary employment** - contrary to the ideal model of socially acceptable employment, and this led to severe social and labour tensions. This type of employment involved more than 2.5 million employees, almost a third of the total, and increased to a size which was unknown in the other economies of the European Union. The branches of the economy with the largest percentages of temporary workers are, leaving aside agriculture, the building industry (57.2

per cent), hygiene and cleaning services (49.2 per cent), personal and domestic workers (46.7 per cent), catering and hotel industry (46.1 per

Table 4. Trends in employment and unemployment in Spain (1991-1994) (in thousands)

Year	Population of working age	No. of active persons	Rate of active persons	No. of employed	Rate of employment	No. of unemployed	Rate of unemployment
1991	30.586	15.125	49,5	12.559	83,0	2.566	17,0
1992	30.931	15.193	49,1	12.145	79,9	3.047	20,1
1993	31.374	15.405	49,1	11.723	76,1	3.682	23,9
1994	31.500	15.457	49,1	11.756	76,1	3.745	24,2

Source: Own table based on Active Population Survey, third quarter, 1994 and *Boletín de Estadísticas Laborales*, 1992.

cent), the footwear and clothing industry (38.5 per cent) and teaching and research (38.4 per cent) (Ministry of Labour and Social Security, 1993).

It was during these years that foreign worker immigration "took off"; this immigration was, to a large extent, irregular from the administrative point of view and, for this reason, these workers became incorporated more readily into the underground economy. Economic immigrants from abroad were frequently to be found in the sectors mentioned above.

(C) The period 1991-1994

In 1991, expansion came to an end and a new recessionary cycle began; even though signs of an economic recovery were detected in 1994. Whatever the case, it cannot as yet be stated that the labour market trends have been reversed. Over this four year period, 800,000 jobs were lost, and unemployment rose by 1 million; at the end of 1994, there were, according to the Survey of the Active Population, 3.7 million unemployed (24.2 per cent of the active population).

The largest loss of jobs has taken place in industry (-518,000), followed by agriculture (-227,000) and construction (-194,000); the service sector has managed to create just 16,000 jobs after having marked up a fall-back during 1992 and 1993, a situation which had not previously been seen. The outcome of these changes has been a large increase in the percentage of the total active population employed in the service sector (59.9 per cent), at the expense of industry (20.8 per cent) and agriculture (9.4 per cent), whereas the figures for the construction sector (9.1 per cent) are little different from those for 1975.

The start of this period coincided with the introduction of a process of regularization of foreign workers, as a result of which some 100,000 persons obtained work permits. At the same time, the Government established a policy of regulating migration flows, and the concrete outcome of this was the establishment of an annual "quota" of immigrant workers. The legal (and, as a spin-off, social) stability that these measures were intended to achieve has been undermined by the employment crisis and the recession which has hit many of the sectors of the economy in which a large percentage of foreign workers are concentrated.

2. Characteristics of foreign labour in Spain

2.1. Quantification and relative size

It is not possible, on the basis of the available statistical sources, to develop a detailed picture of the historical trends in foreign labour in the Spanish economy. The most recent censuses and population patterns underestimate the number of foreign residents and workers (López de Lera, 1991 and Colectivo Ioé, 1993.a); for its part, it was not until 1987 that the Ministry of Labour started offering "stock" statistics of labour permits and, up until 1992 - when the results of the latest process of regularization of foreigners in 1991 had been incorporated into the statistics - there was no adequate approximation of the real size of the labour market. However, in view of these limitations, the result is a "snap shot" of the situation as it stood at the end of 1992, based as it is on the number of lawful foreign immigrants.

The "stock" of labour permits, as at 31 December 1992, amounts to 139,421 foreign workers; if we add to these the European Community citizens who were in possession of a work permit for employment by a third party as at 31 December 1991¹ (46,468), **the total figure for lawful foreign workers was almost 186,000 persons**. By comparing this figure with the total number of employed persons in the final quarter of 1992 (12.1 million), we can see that, **for every 100 employed persons in the Spanish economy, only 1.5 are of foreign nationality**. As far as the number (3.05 million) of persons currently unemployed is concerned, the total number of labour permits awarded to foreigners amounts to scarcely 6 per cent of this figure. On the basis of this first approximation, it may be concluded that the phenomenon is not one of massive proportions and, consequently, is not having any appreciable impact on the country's economic structure. Nevertheless, this statement may be modified somewhat if we refer to specific economic areas and branches of activity.

2.2. Diversity of origin

The foreign labour population is characterized by both its limited size and its pronounced internal heterogeneity (both in relation to national origin and demographic characteristics), and this is reflected in specific forms of labour market insertion (economic sector, branch of activity, occupational status or geographical area of residence).

If we look at the two major geographical areas from which the immigrants came, classified by the position of the countries of origin in the international economic order, we may categorize foreign workers as coming from the "first" or "third" world². Using this classification, it will be seen that some 70 per cent come from the less-developed countries; nevertheless, nearly a third are nationals of countries in the "North". If we employed a sociological instead of a legal criterion, we would classify Portuguese immigrants as coming from the "South"; however, even if this is done, we still find that 24 per cent of the foreign workers come from "rich" countries. Obviously, it is not possible to equate the national origin of an immigrant with a specific social position: not all the workers coming from the "South" are low-cost, unskilled labour, neither are all those coming from the "North" technicians or company executives. Nevertheless, it seems important to highlight this diversity of origins, especially as, since 1992, the majority of the quota from the "North" has disappeared from statistical controls; this will, of course, tend to accentuate this group's "lack of visibility" in the future.

If we classify foreign workers by regional blocks of origin (see Table 5), we can see that two regions, the Maghreb and the European Union, supply more than half the lawful workers (55 per cent), and only three others exceed the 5 per cent mark: South America, the Far-East and non-Maghreb Africa.

The internal variety of the foreign population becomes even more clear when one analyzes the country of origin. Among the ten countries which have provided more than 5,000 workers, six are from the "South" and four from the European Union. However, only Morocco stands out from the rest since it accounts for 28 per cent of all foreign workers (52,501); a variety of countries are located around the 5 per cent level (10,000 workers): Portugal, Argentina and the United Kingdom; followed by Germany (8,600), the Philippines, Peru and France (somewhat more than 6,000); and,

¹ Self-employed persons do not need to apply for a work permit. Consequently, the figure we give for Community workers is a minimum one to which should be added an unknown quantity of self-employed persons.

² Under "first world", we include the countries of the European Union, the EFTA, North America, Japan and Oceania; the remainder which includes both the so-called "second" and "third" worlds (Latin America, Asia excluding Japan, Africa and Eastern Europe) are grouped together under "third world".

finally, China and the Dominican Republic have supplied somewhat more than 5,000 workers each. These ten immigrant colonies account for two thirds of all foreign workers; the remaining 33 per cent represent a range of over a hundred nationalities.

2.3. Characteristics of lawful Moroccan workers

Out of the total of 52,501 Moroccan workers in Spain holding a valid work permit in 1992, 75 per cent were males (44,809); of these, 32,609 were doing jobs which are not connected to the primary sector (agriculture, livestock farming, fishing, etc.). From the geographic point of view, these Moroccan workers are not homogeneously distributed throughout Spanish territory. On the contrary, the data in Table 6 show a marked concentration in two provinces: Barcelona and Madrid group together 51.8 per cent of this population and 54 per cent of the males under 25 years of age. Behind them, come the other two Catalan provinces (Gerona and Tarragona) followed by Malaga, Andalucia, the archipelagoes (the Canary and Balearic islands) and part of the Mediterranean coast (Murcia and Alicante). This distribution is also to be seen from map No. 1.

Table 7 shows the breakdown by age groups: 17.4 per cent are in the age range (20-25 years of age) which has been proposed for the general research methodology for all countries. Furthermore, at the end of 1992, some 6,000 Moroccan workers were aged 25 years or under. If we analyze the characteristics of this population, this will allow us to adjust the design of the field work.

3. Justification of the locations and sectors selected for the actor tests

The geographical localities in which there is a significant presence of young Moroccans males are Madrid, Catalonia, the Mediterranean coast and both archipelagoes. The selection of **Barcelona and Madrid for carrying out the field work is an obvious one**. The advisability of choosing a third area merits considerable reflection. On the one hand, it should be pointed

Table 5. Origin of foreign workers by regional blocks, 1992

Origin	%
Maghreb	29,9
European Community	25,0
South America	16,2
Far East	9,2
Rest of Africa	6,0
Central America	4,4
Eastern Europe	3,1
EFTA	2,1
North America	1,9
Near East	1,0
Japan	0,7

Source: Our own elaboration using data from the Ministry of Labour and Social Security, 1992.

Table 6. Non-agricultural Moroccan workers (males), Province of residence (in %), 1992

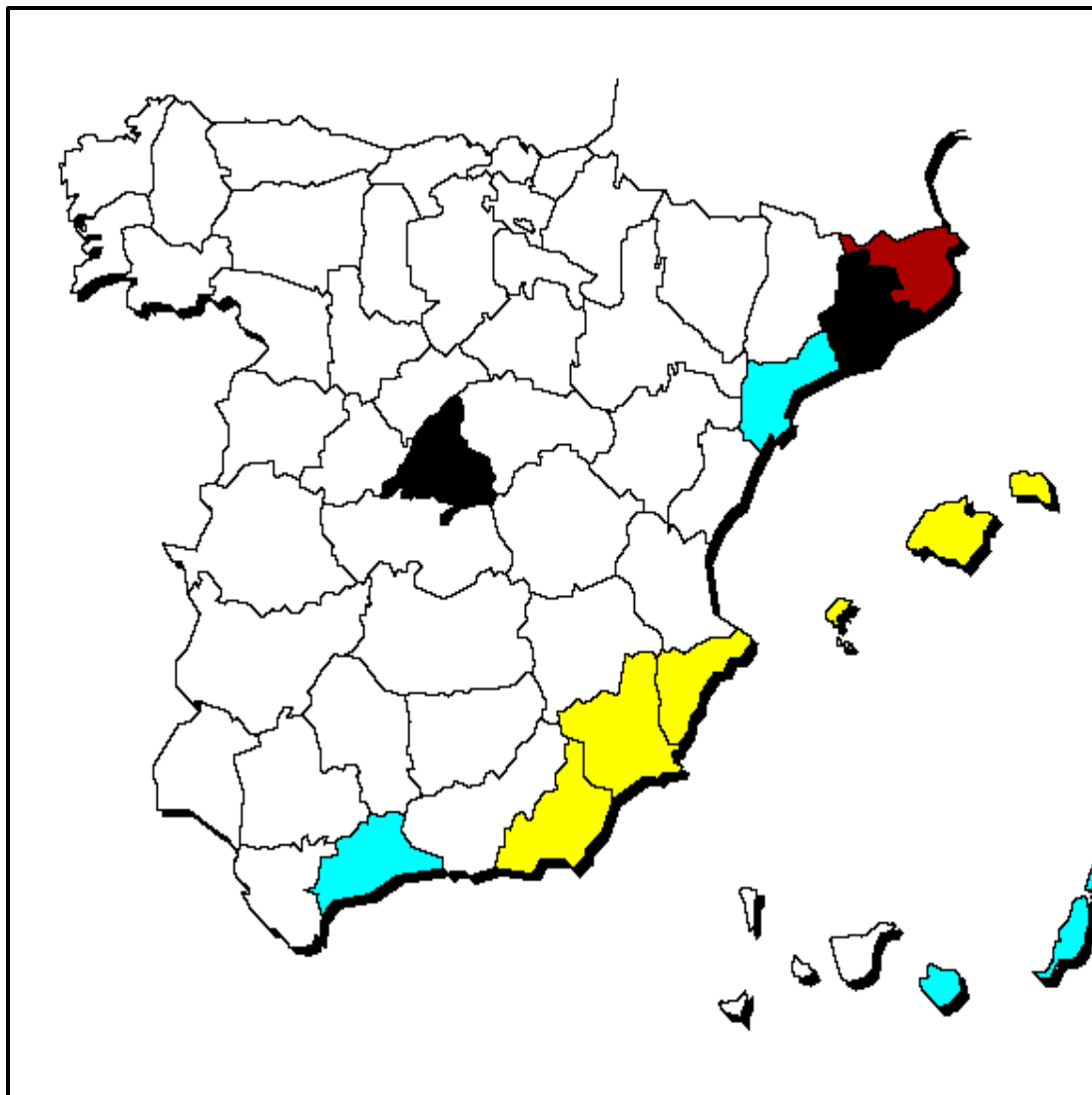
	Total	<25 years of age
Barcelona	27,0	26,4
Madrid	24,8	28,0
Gerona	9,2	8,3
Tarragona	3,8	4,4
Malaga	3,7	2,3
Las Palmas	3,0	3,2
Balearics	2,9	2,0
Murcia	2,4	2,3
Alicante	2,2	2,3
Remainder	21,0	20,8
Total	(32.609)	(6.152)

Source: Our own elaboration using data from the Ministry of Labour and Social Security, 1992.

out that the presence of Moroccan workers in the remaining provinces (in the non-agricultural sectors) is quite insignificant in relation to their total employment, and this might have an effect on employer behaviour in hiring practices: employers would probably have little experience of labour relations with foreigners, and the images and prejudices they have about this labour supply would be lacking an empirical base. Second, it does not seem advisable to select Gerona and Tarragona, in spite of their quantitative significance, in view of their closeness - and not just geographical closeness - to Barcelona. Furthermore, the specific circumstances of the Balearic and Canary islands (island environment, relatively isolated from the rest of the Spanish labour market) make these areas a special case and perhaps scarcely representative of the work force dynamics which exist in the remainder of the country.

In view of this combination of circumstances, our inclination has been for the Province of **Malaga**, where the employment structure, centred as it is on the tourism sector, offers a specific profile, clearly differentiated from that of Madrid and Barcelona. Table 8 shows the breakdown by economic sectors of the Moroccan males of less than 25 years of age, in each of the three above-mentioned provinces, and the total for the whole of Spain. It will be seen that, as far as the average profile of the country is concerned, it is **industrial employment**

Map 1. Geographical distribution of Moroccan workers in Spain (excluding the agricultural sector) Males under 25 years of ages



Keys:

Black	+10%
Dark grey	5-10%
Medium grey	3-5%
Light grey	—3%

Table 7. Non-agricultural Moroccan workers (males), age structure, 1992

	Number	%
Less than 20 years	559	1,7
From 20 to 24 years	5.593	17,2
From 25 to 29 years	8.488	26,0
From 30 to 34 years	6.545	20,1
From 35 to 39 years	4.558	14,0
From 40 to 49 years	4.349	13,6
50 years and more	1.982	6,1
Age not determined	535	1,6
Total	32.609	100,0

Source: Ministry of Labour, prepared with our own 1992 data.

Table 8. Moroccan males of less than 25 years of age (broken down by economic sector and province)

Province	Industry	Construction	Services	Total
Barcelona	26,9	36,1	37,0	(1.625)
Madrid	11,0	46,4	42,6	(1.723)
Malaga	6,4	5,7	87,9	(141)
SPAIN	17,7	34,3	48,1	(6.152)

Source: Ministry of Labour and Social Security, 31 December 1992, our own elaboration.

Table 9. Proposed number of usable tests to be carried out (broken down by economic sector and geographical region of analysis)

Unit	Industry	Construction	Services	Total
Barcelona	30-35	20-25	20-25	75
Madrid	—	35-45	35-40	75
Malaga	—	—	25	25
TOTAL	30-35	55-70	75-90	175

which is more important in **Barcelona**, the **construction sector** in **Madrid**, and **services** in **Malaga**. If we analyze the actual employment situation in these three sectors by branch of activity, we will see that only in Barcelona is there an industrial branch of significant size (10 per cent) in the total of employed Moroccans: that of the textile/ready-made clothing/leather sector. Among the services, those that stand out are the retail trade, hotels/catering (17 per cent in Malaga, 15 per cent in Madrid, 11 per cent in Barcelona) and domestic services (21 per cent in Malaga, 9 per cent in Madrid, 6 per cent in Barcelona). As far as construction is concerned, this sector is of conspicuous importance in Madrid (46 per cent) and Barcelona (36 per cent).

The research design proposed for Spain was derived from data summarized above and accentuated in the sample the weight of the sector with the greatest presence in each geo-

Table 10. Usable tests in each geographical region broken down by sector (actual sample and proposed sample)

	Total	Services	Construction	Industry
Madrid	248(100) (55,4)	185(74,5) (68,2)	63(25,5) (54,5)	(0,0) (0,0)
Barcelona	107(100) (38,0)	38(33,3) (21,0)	27(31,0) (45,5)	42(35,7) (100)
Malaga	30(100) (6,6)	30(100) (10,8)	(0,0) (0,0)	(0,0) (0,0)
Actual	385	253	90	42
Proposed	175	75-90	55-70	30-35

graphical region (see Table 9). In this way, in **Madrid**, priority was given to the construction and **service sector**, in **Barcelona** to **industry, services** and **construction**, and in **Malaga** to the **hotel/catering branch**. Moreover, the areas in which employment offers were to be searched for was extended to the public and private sectors (without excluding possible mixed undertakings); for the purposes of the study, undertakings were classified as being in one of three sizes: small, with less than 10 workers; medium with between 10 and 99 workers, and large, with more than 100 workers.

As is stipulated in Part III, 3.2, the size of the sample should be at least 170 cases so as to ensure that the results obtained owe nothing to chance. In implementing the research, this figure was exceeded to such a degree that, as may be seen from Table 10, the geographical region of Madrid and the service sector have acquired a value of independent samples in their own right.

Part III. Description of the technique applied: *in situ* verification tests

As we have already pointed out, the proposed technique of "audit testing" or "*in situ* verification testing" for the study of worker discrimination at the time of hiring is based on the "natural experiments" tradition in sociological methodology; i.e., technical applications in real life situations. Specifically, the scenario under consideration involves a person with the decision-making power to allocate a job, which he himself is putting on offer, to persons offer, to persons applying for this job. Two actors with similar qualifications and appearance make up a team of applicants for this job, and they pursue exactly the same procedure with the same employer in order to obtain the job which is on offer. The job offers may be identified by any means (newspaper advertisements, public or private placement agencies, informal networks, announcements at the work premises themselves, etc.); the applicant approaches the employer either through the entrance of the works premises, by making a telephone call or by making a written application for the job.

The general principle which shapes the whole procedure is that the applicants have to follow the normal practices of the area in obtaining a job. As far as the applicants are concerned, the task was to put together a team of two people, one of whom belonged to the selected immigrant group, with the other being a national; they were required to embody, to an equal

degree, all the characteristics relevant to the decision that the employer would be required to take in order to select one or the other. The sole difference would be the candidate's national or ethnic origin, so that the preference given to one or other of them may be attributed to this variable.

1. Preparing the "actors" and "situations" for study

1.1. Selecting the "actors"

The basic criterion for selecting the actors was that of having the conventional appearance of a semi-skilled job applicant. The task was to put together teams of two actors who were able to present themselves as semi-skilled job applicants, and have a high chance of obtaining the job. Appearance was judged with regard to the above-mentioned conventional type and in the mutual relationship between the two components of the team, i.e., external similarities such as weight, height, way of dressing, etc., and similarity in relational capabilities, ability to improvise, etc. Moreover, each actor, for his part, had to be "credible" as being someone from the environment of national or Moroccan young persons aged between 20 and 25 years. Finally, each actor, looked at independently, had to be interchangeable, so that the team of two actors had not always to be made up of the same individuals. The essential condition which was imposed on the actors was their time availability for this work (full day), as a counterpart they received a two-month, full-time employment contract.

Although the unit of analysis is Spain, three geographical regions (Madrid, Barcelona and Malaga) were designated for the application of the tests. Each of the three has its own particularities, such as language. In Catalonia (Barcelona), the language spoken is different from that spoken by the majority of people in Spain and, in the two other geographical regions, the Castilian Spanish spoken has a marked accent which indicates the origin of the speaker. In addition, in the case of Barcelona, there are very few Moroccan immigrants who can speak fluent Catalan. This situation made it necessary to deal with the difficulty of the same team of actors undertaking all the tests in the three geographical regions, and consequently specific teams were set up for each one of the three regions in question. The Moroccan colony in Spain, for its part, has characteristics which were taken into account when the actors were being selected: one of these characteristics is the diversity of origin which is expressed by different languages, family networks and diverse origins, etc. Since prior knowledge had been obtained about the colony, it was possible to make due allowance for this internal composition when the time came to look for suitable candidates.

In looking for and selecting the candidates, two principles were applied:

- (a) make use of established networks:
 - When working with the Moroccan colony, it was possible to count on the help of mediators from the colony's own associations and informal networks (AEME, ATIME, CITES, Bayt Al Taquafa, and "Málaga Acoge") who put forward candidates from which to select;
 - In the case of young nationals, use was made of the networks of the persons responsible for the field work in each geographical region: Colectivo Ioé in Madrid, Desenvolupament Comunitari in Barcelona, and "Málaga Acoge" in the Province of Malaga;
- (b) obtain the help of experts in the selection of the candidates (adequate profile) and for carrying out the legal formalities in drawing up the work contract with these persons for the test period.

Once the candidates had been picked, they filled out a standard form which served as the basis for the first personal interview with each of them. Following this, a pre-selection procedure was carried out so as to put together the group of candidates who would receive specific training. The

resultant characteristics of the candidates were as follows: for the nationals, student or young unemployed person, with medium or higher education (in one case, the candidate had actually been trained as a professional actor); for the Moroccans, unemployed, with experience of working in Spain, and student in Morocco with experience in casual work. In Barcelona, the importance of being bilingual decided us to select a Moroccan who was fully fluent in the Catalan language (a second-generation Moroccan), and a second Moroccan who spoke Catalan but could not write it (this is the most common situation amongst Moroccan immigrants).

The teams of actors were constituted independently in each of the three regions. In the case of Barcelona and Madrid, candidates were auditioned until three pairs of national and Moroccan actors were selected; two of these began carrying out tests in each region, and the third remained in reserve. In Malaga, since the number of tests was smaller, two pairs of actors were selected, and one of these commenced the tests. In both Barcelona and Malaga, it proved necessary to have recourse to one of the reserve actors; in the first case, this was a national, and in the second case, a Moroccan. In each of the three areas, there were two team supervisors who had been specially trained; in Malaga, one of these was a Moroccan.

1.2. Preparing the teams and local operating bases

In each of the three areas, work was started on preparing the team by training the team supervisors and preparing the local operations base (premises, telephone line, telephone with hands-free operation and facilities for recording conversations, files for writing and archiving the case results, etc.). The supervisors began their training in July 1994 by reading up the basic documents of the ILO project and the research manual (Bovenkerk, 1992). The supervisors were the final resource in the search for candidates.

Once the candidates had been selected, they were given specific preparation before starting their work. The training was carried out in accordance with the method proposed by the ILO (Bovenkerk, 1992, pp. 20-21):

- \$ In the first session, a presentation was made of the general ILO project "Combating discrimination against (im)migrant workers and ethnic minorities in the world of work", the four activities that it contains and, more specifically, the first of these activities, in relation to which the candidates were to carry out their operations;
- \$ The second session was devoted to adapting the candidates' biographies to the required semi-skilled job application situations: age, professional qualifications, education or additional skills, real or fictitious experience, etc. The criterion employed was to achieve maximum coherence between the various aspects (for example, declared age and claimed years of experience, and date of end of studies, etc.). Altogether, subsequent experience made it necessary to change certain aspects so as not to lose job offers; in this way, it proved possible to apply for jobs which required considerable experience and placed the real age at the lower limit (20 years), using arguments such as "I am the son of a specialist in this area and have learned the trade in my father's own workshop", etc. In addition, it was necessary to lay down other details such as the candidate's name (to clearly specify the Moroccan or national origin), address (depending on the zone in which the work was on offer), telephone number so that employers could make contact without interfering in the candidate's family life, etc.;
- \$ Sessions three and four were devoted to preparation for the search for job offers and, subsequently, to training in self-presentation. Both sessions were run on the basis of group dynamics. Selection of semi-skilled job offers was made through actual newspaper advertising, with arguments being made about suitability and team preparation of the pertinent curricula for both actors. Using a simulations approach, telephone calls were made applying for the job that had been advertised, first one candidate and then the other; at the other end of the telephone line, the trainer replied and raised all foreseeable difficulties so as to stimulate the candidate's ability to improvise. A basic script was developed for the telephone call, and this was adapted to match the job offer. The conversations were recorded on a tape recorder and were subsequently analyzed and commented on by all the candidates, the supervisors and the trainer, who pointed out the strong and weak points. The interview was worked on in the same way by means of simulated training; this was done in the

presence of the other candidates, the supervisor and the trainer who, subsequently, pointed out which aspects had been successful and which areas of self-presentation needed to be rectified. In this way, each team was trained to work as a group and to follow the same procedure as the team member who was the first to make a call or undergo an interview; and

§ The last two sessions were devoted to strengthening the whole process. During these sessions, the candidates and supervisors took the initiative on each point, making real test calls, making adjustments to the curricula of the team members, searching out real undertakings and job offers to test the experiment, etc. In order to ensure a uniform check of each case or test, a "case summary file" was made up in which was entered the number of the case, data about the undertaking, the work being offered, and the result of the telephone call; a second file, the "interview summary sheet", recorded details of the results of each interview and the characteristics of the undertaking (whether it has other immigrant employees, etc.) and of the zone in which the undertaking was located. The first file was filled in by the supervisor together with the actors at the time of the telephone call; the second was completed by the actors at the end of the interview and, then, finalized with the supervisor.

1.3. Selecting the situations for the tests

As has already been indicated, in each geographical region in which the tests were to be carried out, a sector or sectors were selected for application of the tests: in **Malaga**, the hotel/catering branch; in **Madrid**, services and construction; and in **Barcelona**, services, construction and industry. In order to ensure that a uniform procedure was followed, in each of the selected geographical regions, work was carried out on classifying the "branch of activity" (National Classification of Economic Activities, 1974), "occupation or profession" (schedules in the National Classification of Occupations, 1979) and "courses followed" and "level of education"¹. In another context, to find a solution to the question as to whether the term "semi-skilled" referred to the worker or to the job, it was decided that this was something which related to the job applicant (curriculum, qualifications, etc.).

In principle, the search for job vacancies was targeted at all types of work: temporary or long-term, full-time or part-time, etc., provided the candidate was to be employed in a wage-earning capacity. Two types of difficulty were encountered: on the one hand, there were the recent operations in Spain of intermediary placement agencies which, more than offering actual employment, are searching to build up an extensive data base of possible candidates to use as and when the need arises; on the other hand, there was the considerable number of offers of employment as commission-earning salesmen which, beneath an apparent employment relationship, conceal work as a self-employed person. Once the intermediary agencies had been identified, their employment offers were rejected systematically, and only the first one was retained so that it could be added to the number of usable cases in the sample, together with the behaviours recorded; offers for work as a self-employed salesmen were all rejected on the grounds that they did not meet the minimum requirements for the tests.

1.4. Searching for job offers

The search for job offers was carried out in three ways:

- (a) **informal channels**: usually through personal contacts (friends, acquaintances, ethnic networks, etc.);

¹ These classifications are those used by the National Statistics Institute in drawing up its own basic labour statistics.

- (b) **spontaneous presentation:** turn up at the factory, establishment or work site gate and ask for work (whether or not there is any explicit demand), and
- (c) **formal channels:** through a variety of intermediaries, such as newspaper advertisements and other communication media, governmental employment agencies (INEM in Spain) or private employment agencies (only recently established in Spain, with an operating approach which is still open to discussion).

Several studies on the search for and access to employment in Spain have brought to light important factors concerning the significance of the various channels (formal and informal) (Requena, 1991). In general, there is a discrepancy between the search channels and the channels of access to employment; the search for a job is made more by formal channels whereas access is achieved by informal channels. Nevertheless, we should like to add, there are sectors of the labour market in which job search and access to employment take place through formal routes (for example, employment by means of a competition or examination) or informal routes (for example unskilled jobs in the construction industry and highly qualified employment or posts of confidence in the services). As far as the social networks which establish informal channels are concerned, they tend to build up a structure which is in parallel with official arrangements through which jobs are allocated in a individualistic way (specific work for specific individuals). The informal channels show themselves to be more effective for obtaining work in periods of the economic cycle which are unfavourable to employment (lots of job seekers and few job offers). Nevertheless, the effectiveness of the informal channels declines as the level of qualification demanded by the job increases, except at the highest levels or for jobs of special confidentiality. According to studies carried out in other countries, these same channels may also lead to discrimination, even though of an indirect type, against specific ethnic minorities.

From what has been said above, it is possible to explain the following tendencies in the Spanish labour market:

- (a) the distance that exists between job search through formal channels (in particular through newspaper advertisements) and the ineffectiveness of these channels in getting hired. In our case, a total of 552 valid job offers of this type were identified but these led to only 26 hirings. Without taking these circumstances into account, the method applied devoted considerable effort, with relative success, to the search for job offers; however, it achieved minimal results in obtaining access to employment, and does not reflect the true situation of labour market dynamics in Spain;
- (b) the effectiveness of informal channels (in relation to hirings in particular, but also, in certain segments of the labour market, to the identification of job offers) can scarcely be put to profit in the procedure employed: there is no publicity for such offers nor is there any opportunity for the two actors to present themselves simultaneously;
- (c) as has been seen in this study, the formal channels are scarcely suited to the search for low-skilled jobs and jobs in the less than formal sectors (such as the construction industry), where it is the informal networks which predominate. It has also been seen that, in the construction industry and in low-skilled jobs, the dynamics of hiring do not fit in with the sequence of job identification/application/interview; instead the interview is replaced by immediate placement on the work site, which takes the place of an aptitude test, and
- (d) the method used presupposes that the two groups of actors tested, nationals and immigrants, move in the labour market with the same dynamics. Nevertheless, according to a study carried out by ourselves in the construction sector in Madrid, on the basis of two similar samples, the one national and the other Moroccan, we found that both groups usually use informal networks to identify and obtain employment; however, whereas 48 percent of

nationals have recourse to family and friends networks, the Moroccans nearly always (81 per cent) have to resort to going directly to the undertaking or work site (an approach used by 32 per cent of the nationals (Colectivo Ioé, 1995)). Since they do not have their own (family or ethnic) networks for getting work, the Moroccans go straight to the undertaking. From the employers' point of view, the more comprehensive explanation may be that of Centi who makes a distinction between three ideal types of work force mobilization networks: Moroccans come together in spontaneous or "deterritorialized" networks and are hired for jobs with no opportunity for promotion (they do not enter into the undertaking's internal network), accessing employment without the undertaking having approached them (i.e., without taking into account its usual relational networks). The other types of networks are: the "territorialized" or specific network, where the undertaking uses existing social networks to attract employees, and these employees have the possibility of being promoted on the basis of experience and seniority; and the "reterritorialising" or general network, when the undertaking opens its own recruitment area without circumscribing that of the relational networks, and the opportunities for internal promotion are regulated by tests which recognize merit (Centi, 1988, pp. 43-66).

To summarize, it may be said that some of the various channels for identifying job offers have proved ineffective (signing up on the INEM unemployment lists) whilst others have proved unsuitable for the proposed method ("personal contact" or "ethnic group networks" since they did not offer the possibility for the two candidates to present themselves simultaneously). From those that remain, use was made in the majority of cases of the channel provided by advertisements in the media: the "jobs available - jobs wanted" columns of general and local newspapers, magazines specializing in job offers (*Segunda Mano*, *Mercat de Treball*, etc.) and local radio and TV programmes. When these channels had been exhausted, we turned to organizations suitable for our search (such as *Fomento del Trabajo*, in Barcelona; youth information organizations; associations for solidarity with immigrants, etc.). As a last resort, we resorted to personally scouring specific areas to identify personal job advertisements: newsagents, notice boards in supermarkets, the windows of shops and bars, etc. The final result was that we fully filled the quotas we had set for each geographical region and, in the cases of Madrid and the service sector, we managed to reach a sufficiently high number for these to have their own independent statistical validity.

In this search for job offers, the propositions allocated to the selected sectors of work were respected for each geographical region. Nevertheless, the breakdown of undertakings by type on the basis of size (large, medium, small) and ownership (private, public, mixed) was left to chance on the supposition that in the total sample of usable cases, we would obtain a balanced representation in the job offers. Generally speaking, the results that were obtained with respect to type of undertaking, broken down by size (large, medium, small) and ownership (private, public, mixed) can be seen from section 4.2.3. Proportionally speaking, small undertakings offered two out of every three jobs, medium-sized undertakings more than a quarter whilst large undertakings did not manage to provide even one out of 11¹; from another point of view, virtually all of the offers came from private undertakings, and there were only four offers from public and two from mixed enterprises.

¹ According to the results of the study already quoted for Catalonia, 94 per cent of the workers interviewed worked or had worked in undertakings with less than ten workers and three out of every four, in firms with less than five workers. See Solé and Herrera, 1991, p. 37.

2. Test application procedure

2.1. Formal test application procedure

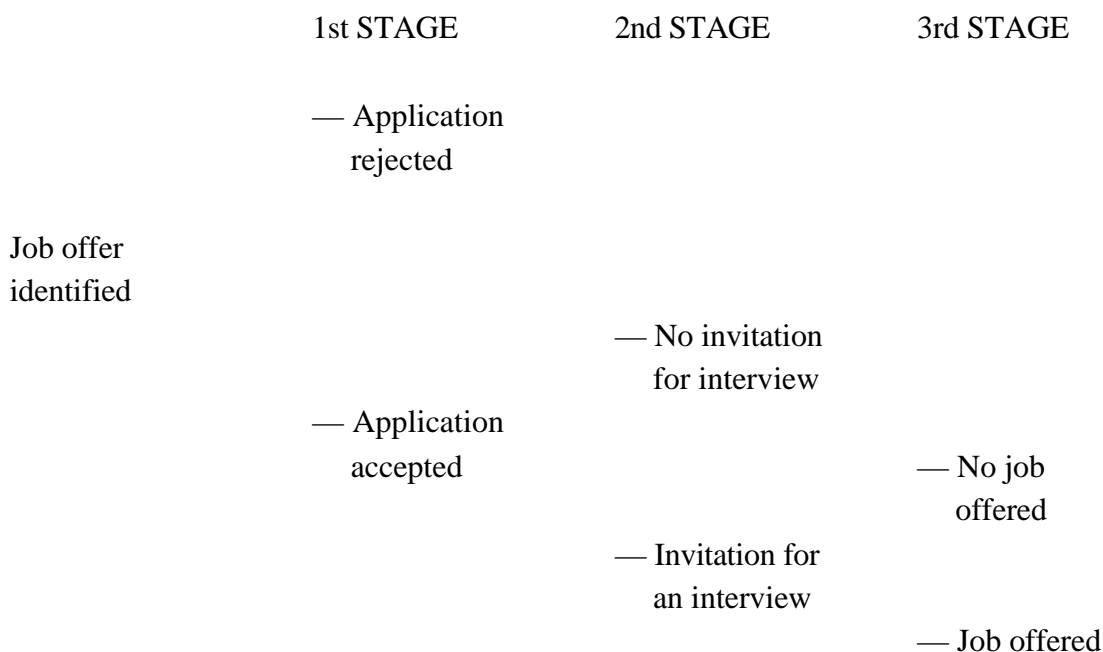
The adopted procedure specifies three stages (see Diagram 1) in which one of the two members of each team can be "accepted or rejected" as the result of being preferred or not to the other member of the team. At this point, the procedure comes to an end; a measure of discrimination or inequality of treatment would have been obtained in one or other of the three stages.

Once the job offer had been identified, the **first stage** of the procedure began. The two actors from a team made a telephone call applying for the job and indicating their willingness to attend an interview to demonstrate their suitability for the employment in question. The interval between telephone calls was about ten minutes and, for each new application, the order in which the actors telephoned in was changed so as to avoid any possibility that a preference for the first caller would benefit one of the two applicants.

It was required that, in the telephone call, it should be made clear through the applicant's accent, name and statement of nationality that the person in question was a young Moroccan or a national. The reply offered a variety of clear possibilities:

- (a) the two applications are rejected (the job has just been given to someone else; neither of the two applicants are suitable for the job);
- (b) the two applications are accepted (both were suitable, but in some cases they were placed on the waiting list together with a number of other applicants and "will be contacted"; in other cases, both of the candidates were invited for an interview, in which event they moved on to the second stage);
- (c) only one of the applications is accepted, either that of the national or that of the immigrant.

Diagram 1. Stages in the test application procedure



In situations (a) and (c), the procedure comes to an end for both actors. In situation (a), what we have are "valid but deficient cases", i.e., valid for the total sample but inadequate for the measurement of discrimination. In situation (c), what we have is inequality of treatment (acceptance or rejection) favourable or unfavourable to each of the actors. The rest of the cases favourable to each actor gives us, for the first stage, the level of net discrimination against the actor who has received less acceptances.

The cases that come under situation (b) above then move on to the **second stage**, and this leads us to a point in which:

- (a) neither of the two has been invited for an interview;
- (b) both of them have been invited for an interview, and they go on to the third stage;
- (c) only one of them has been invited for an interview, and
- (d) they are requested to send in a *curriculum vitae* and subsequently a reply will be given, etc. however, nothing happens.

In situations (a), (c) and (d), the procedure is over for both of the actors. In the same way as in the previous stage, the rest of the cases in favour of one or other of the actors will give the level of "net discrimination" against the one less favoured in the second stage. If we add up the cases of net discrimination for both stages, we obtain the "net cumulative discrimination".

The **third stage** applies to cases that come under situation (b) of the second stage. The result here may be that the two actors who have been summoned for an interview:

- (a) do not go for the interview (a request is made for tests that cannot be carried out, the job is located at a distance of over 100 kilometres from the operations base, etc.);
- (b) both of them go for the interview but neither is given the job;
- (c) both of them go for the interview and both are offered a job, and
- (d) both of them go for the interview but only one gets a job.

2.2. Incidents in the third stage

The first two stages took place during the telephone call in which the candidate applied for the job that had been identified. In spite of the difficulties involved in this telephone conversation, in which the employer subjects the candidate to a brief interview, the training given to the teams and the constant support from the supervisors resulted in a situation in which, in no instance, did the employer have any suspicion about the applicants. During all stages, including the third one, which involves a "face-to-face" relation with the employer, on no occasion were any doubts raised about the integrity of the curriculum vitae which was presented or about the undertakings in which it was stated that the candidate had worked (although in one case, there were compromising situations since the employer knew somebody in the undertaking in question).

The problem of the third stage, as far as the adopted procedure is concerned, is that it proved impossible to carry out about half the interviews that were obtained (see Table 11, proportion similar to that encountered in the study in the Netherlands). On the one hand, requests for tests that would demonstrate the suitability of the applicant's skills for the job cancelled out a large part of the effort that had been made until then; nevertheless, other circumstances such as the distance of the job from the place of application, the overlapping of interviews, failure to locate the premises,

or finding that the premises were closed at the appointed time, etc., might be overcome by expanding the resources of the research team.

On the other hand, the way in which certain less-formal sectors of employment operate stretches to the limit the capacity of the method to function in them. When a job vacancy has been identified and the employer contacted, the next step is the employers' response: "Come in and start work", jumping over the request for a selection interview and preventing the second applicant from presenting himself.

3. Measurement of discrimination and statistical estimates

3.1. Measurement of discrimination at the time of hiring

The outlined procedure is a measure of the discrimination observed at the time of hiring. It is intended to collect cases substantiating unfavourable treatment against one of the two actors under equal conditions for the job being offered and to demonstrate that such cases show systematic behaviour on the part of employers. Consequently, it is assumed that many of the employers' decisions taken for or against the migrant group would contrast with other similar decisions taken about the national, with all of them entering into a chance-attributable margin which cannot be attributed to discriminatory behaviour. For example, to verify whether a response given to the second actor to phone up, is due to the fact that the acceptance of the one who phoned in first means that the employer considers that the job has already been allocated, makes it necessary for another actor or the supervisor to make a third call. Consequently, when it was the immigrant who had been rejected, it was a national who then phoned in, or *vice versa*; if the job was still on offer, this was considered to be evidence of discrimination.

The measurement of discrimination offered by the procedure is simple: when there is **acceptance or rejection** of one of the two actors, and not of the other. This situation, in any of the three stages of the procedure, is labeled as being **strong evidence of discrimination**. Nevertheless, in some cases, the result of the procedure does not result in evidence of this type, i.e., when there is no unfavourable treatment and both actors arrive at the same point in the procedure. Both of them may obtain employment, but are both of them offered the same job or under the same conditions? Another example is the interview, whether this occurs over the telephone or at the place of work: one of the actors is given an extensive explanation of the characteristics of the job on offer, questions are asked about his suitability and he is treated courteously, whereas the other finds that difficulties are placed in his way and that he is sent off a few minutes later without his candidature having been taken seriously. These situations do not produce inequality in the formal procedure but inequality does exist in actual practice; the evidence of discrimination is less strong than in the first situation.

We then have cases of **unequal treatment** (acceptance/refusal) and cases of **treatment which although apparently equal is, in reality, unequal**. Both aspects will be dealt with in the statistical results. The first result, which provides strong evidence of discrimination, is unequal treatment and offers an indication of a "minimum proportion of discrimination"; if we add to this the results of the second type of inequality of treatment, which involves less strong evidence of discrimination, i.e. treatment which is apparently equal but which is, in reality, unequal, we obtain an indication of the "maximum proportion of discrimination" (see Part IV, 1.5).

3.2. Statistical estimates

The ILO methodology is based on a statistical premise which makes it possible to establish beforehand a "minimum index of discrimination" in order to reject the null hypothesis of no discrimination: if the results are below the index that has been established, there is no verification of discrimination¹. The required minimum depends on the size of the sample (number of usable tests= N) and the level of significance that has been laid down.

Every research proposal is calculated on the basis of certain expectations. Specifically, the current methodology lays down two assumptions. First, that the job applications made by the two groups of actors will be rejected in 50 per cent of cases; in the remainder of cases, one or both of the applications will be accepted. The two together make up the **total sample of observations**, but the second 50 per cent makes up the sample of **usable cases for the measurement of discrimination**. The second assumption lays down that it is necessary to obtain a difference of 15 per cent of inequality of treatment between the two groups of actors (nationals and immigrants) in order to consider that discrimination exists. This 15 per cent difference is the **minimum proportion**, below which it is accepted that discrimination cannot be verified statistically; at a 5 per cent significance level, this minimum makes it possible to set aside the null hypothesis. Under these conditions, the size of the sample of usable tests should be at least 170, on the basis of the following equation:

$$\text{Square root of } N = 1.96 \sigma / .15 \sigma$$

(N = the number of usable tests; **1.96** the value "z" assuming a 5 per cent significance level in the normal distribution; and **sigma** the standard unit of normal distribution).

The net discrimination index varies depending on the value of N , i.e., on the size of the sample. When the sample size increases and more than 170 usable observations are made, the net discrimination index decreases; what also decreases then is the minimum required for rejecting the null hypotheses at the same 5 per cent significance level. And the same may be said for the converse: when the sample size is lower than 170 cases, the minimum discrimination index rises. In the case of Spain, the number of observations carried out in the total sample is 552; however, the sample of **usable cases is 385**, and consequently the net minimum discrimination index or "critical discrimination rate" to reject the nil hypothesis of non-discrimination is less than 15 per cent. The calculation of this "critical discrimination rate" is made using the following formula, employed in numerous international studies:

$$\text{Square root of } N = 1.96 \sigma / CR \sigma$$

(**CR** is the "Critical Rate"; N the number of usable tests carried out; **sigma** the standard unit of normal distribution and **1.96** the value "z" assuming a 5 per cent significance level for the normal distribution).

For this reason, in our case, the critical discrimination rate (the figure that must be exceeded in order to set aside the null hypothesis of non-discrimination) is 10 per cent. In addition to the general sample for Spain, we may also consider as sub-samples the three geographical regions in which the tests have been carried out, and the various economic sectors; in each case, there is a specific number of tests so that the critical discrimination rate varies in the same proportion: 12.4 per cent in Madrid, 18.9 per cent in Barcelona and 35.8 per cent in Malaga (see Part IV, 2.1).

3.3. Internal validity test

¹ For more information on this section, see Bovenkerk et al. (1995), pp. 12-14 and Bovenkerk, 1992, pp. 30-33.

The soundness of the proposed procedure is based on the preparation of the actors so as to ensure that their performance in the job application matches as much as possible the same pattern. A statistical procedure is employed to determine whether, in a systematic manner, a given actor in different teams or a given team in different stages of the application obtains a higher success or failure rate than the others. If we presume that the two teams of actors, i.e., two national actors that we will call A and B, and two Moroccan actors, C and D, carry out the same number of tests out of a total of 100, and that they make changes between themselves to form two combinations, we obtain the following table:

a. <i>Combination of actors</i>		b. <i>Theoretical results</i>		c. <i>Actual results</i>	
AC	BC	25	25	10	30
AD	BD	25	25	30	30

The theoretical or expected result is that all of them will operate at an equal level and will obtain the same outcome; however, if in an empirical situation, a deviation should occur (in the example given, team AC has obtained ten successes whereas all the other combinations have obtained 30), this poor result will be attributed to the team in question. The statistical approach selected to verify this situation is the χ^2 test which makes it possible to determine whether the frequencies obtained empirically differ significantly from those that are expected under a certain combination of theoretical assumptions. The greater the differences between the observed results and the expected results, the greater will be the χ^2 value; only when all the results are equal will the χ^2 be equal to zero, and the distribution normal. It is interesting to know whether the discrepancy between the results will have a given probability of occurring by chance; if it is greater than we are prepared to accept, we will be in a position to reject the null hypothesis of absence of difference. In a table of 2×2 , as was used in the example, there is only one degree of freedom (if one is known, the other value is given) and for a 0.05 level of significance, the χ^2 value is 3.84. In the proposed example, the χ^2 result is 12, i.e., it considerably exceeds the value of 3.84, and this deviation is attributable to the results obtained by team AC which brought in nine of the 12 points. In Part IV, 1.6, the results of this statistical approach for the tests in Spain are presented and the congruity of this approach is discussed.

Part IV. Results

The "audit testing" was carried out in Spain between the months of September 1994 and January 1995 in a staggered fashion: work was started in Madrid in September and concluded in November; in Barcelona, it was carried out between October and December and, in Malaga, from mid October 1994 to the end of January 1995. In the case of Malaga, it proved necessary to prolong

the test period due to the sector that had been selected; this was done so as to benefit from the peak that occurs in this town during the Christmas and year-end period.

During the five months of testing, a total of 552 **valid tests** were carried out, i.e., cases in which job offers were identified by some means of publicity, and contact was made by the two actors which formed the team; in those cases in which contact was made by only one actor or no actor at all (due to an error in locating the establishment, because it was impossible to wait for the employers' call, etc.), the case was considered invalid. Out of the 552 valid cases, 385 were **usable** for calculating discrimination against one of the actors who carried out the tests: the national or Moroccan actor. The 167 remaining cases are the tests carried out in which neither of the two applicants in a given team was accepted because the job was already given to somebody else or for another reason (these were considered **valid but defective**, in view of the fact that they were not usable in the above-mentioned meaning).

1. Results of the sample for Spain as a whole

This section brings together the results for the sample for Spain as a whole; given below is an analysis broken down by the three geographical regions (Madrid, Barcelona and Malaga) and by the sectors considered (services, construction and industry). In presenting the results for the sample as a whole, we deal first with the cases of inequality of treatment in each of the three stages of the test procedure (see Table 12). It is necessary to consider the net discrimination that was found as the proportion or minimum rate of the discrimination against the group of actors affected. Thereafter, we present the results of the so-called treatment which is apparently equal but in reality different (Table 13) and, finally, the combination of both treatments will be found in Table 14. It is necessary to consider the net discrimination reflected in Table 14 as the proportion or maximum rate of discrimination.

1.1. Inequality of treatment

1.1.1. Results of the first stage: "telephone application"

In the first stage (see Table 11), there were 269 cases of **equality of treatment** (1.1.2, (a) "both applications accepted"), (69.8 per cent of all the usable cases), in which both actors were briefly interviewed over the telephone, whereas there were fewer cases of **inequality of treatment**: 116 cases, 30,2 per cent of the usable tests. In these cases, the Moroccan actor was given preference over the national actor on 10 occasions (1.1.2, (c)), whereas preference was given to the national actor over the Moroccan actor on 106 occasions (1.1.2, (b)). This indicated that, to this extent, the Moroccan actor was given **unequal and worse treatment** in comparison with his team companion.

The **inequality of treatment** is the result of acceptance or rejection in the telephone interview. In the course of the examples that follows, it was possible to observe a gradation which ranged from direct and explicit rejection ("not for foreigners", "only for Spaniards"), through the imposition of stricter requirements for the immigrant than for the national, up to "kid glove" answers, but always with the same rejection results. Nevertheless, the most common responses, especially in the service sector, were those of a standard type: "the job

is already filled", "the person in charge is not there", "we will call you back"). Let us look at some examples:

(a) Explicit rejection

Case 87, Barcelona**First telephone call (national actor)**

\$ Employer: Technical service, what can I do for you.

\$ National: Hello, good day. Look, I am calling about the advertisement that you have put in "Primerama".

\$ E.: Yes.

\$ N.: That you need an electrical equipment technician. I was four years with Corberó.

Table 11. Results of the *in situ* verification tests, Spain

First stage	
<i>Telephone calls</i>	
1.1. Valid cases (total sample)	552
1.1.1. Neither applicant accepted (valid but defective)	167
1.1.2. Usable cases	385
a) Both applications accepted	269
b) Only the national accepted	106
c) Only the Moroccan accepted	10
First stage: Net discrimination (b-c)	96
Net discrimination (%)	24,9
Second stage	
<i>Invitation for an interview (in the telephone conversation)</i>	
2.1. Neither actor invited	94
2.2. Both actors invited	112
2.3. Only the national invited	35
2.4. Only the Moroccan invited	5
2.5. Cases pending	23
Second stage: Net discrimination (2.3-2.4)	30
Net discrimination (%)	7,8
Cumulative discrimination (1st+2nd stage)	126
Cumulative discrimination (%)	32,7
Third stage	
<i>Job offers (in the interview)</i>	
3.1. Interviews for both actors	112
3.1.1. Not carried out (proof requested, etc.)	61
3.1.2. Interviews pending	0
3.1.3. Interviews carried out	51
a) Job not offered	25
b) Job offered only to the national	14
c) Job offered only to the Moroccan	3
d) Job offered to both actors	9
Third stage: Net discrimination (b-c)	11
Net discriminaci3n (%)	2,9
Cumulative discrimination (1st+2nd+3rd stage)	137
Cumulative discriminaci3n (%)	35,6
Critical discrimination rate	10,0

- \$ E.: You were with Corberó for four years, and you know how to do washing machines and all that?
- \$ N.: Yes. I have repaired washing machines, heaters, refrigerators. Everything.
- \$ E.: Have you got a car?
- \$ N.: Yes, I have got an Express.
- \$ E.: Good, what is your name?
- \$ N.: My name is Salvador ...
- \$ E.: Just a moment. So then, you have experience with all types of washing machine and more. So then, let's see, you need to call by; its more or less noon.
- \$ N.: When do you want me to call by?
- \$ E.: Let's see, come tomorrow, let's say at 10 o'clock.
- \$ N.: Tomorrow?
- \$ E.: Yes, yes, you'll come then?
- \$ N.: Yes, great.
- \$ E.: Right, until 10 o'clock tomorrow, we'll be expecting you, OK?
- \$ N.: Yes and what's the firm's name?
- \$ E.: It's called XX.
- \$ N.: And what was I going to say, is it very big, how many workers do you have here, what's the firm like?
- \$ N.: The boss will explain that here; everything.
- \$ A.: And what are the wages for all this, and the hours ...
- \$ E.: They'll explain all that to you here, OK? See you soon!
- \$ A.: OK, Tomorrow at 10 o'clock! See you!

Second call (Moroccan actor)

- \$ Immigrant: Good day!
- \$ Employer: Hello, good day!
- \$ I.: I am calling about the advertisement that appeared in the "Primerama" today. My name is Mohamed, I am Moroccan.
- \$ E.: Yes, but ..., you see, **at the moment now we need only Spanish people.**
- \$ I.: Yes, but **I do have Spanish nationality.**
- \$ E.: **Spanish!, yes, yes, but it's still no, the boss wouldn't allow me.**
- \$ I.: O.K.
- \$ E.: Im sorry, you see?
- \$ I.: Bye.
- \$ E.: Bye.

Case 198, Madrid

First call (Moroccan actor)

- \$ Employer: Hello, Good day!
- \$ Immigrant: Good day, Mr. XX?, is that right?.
- \$ E.: Yes, who is speaking?
- \$ I.: It's about the advert that I'm calling ...
- \$ E.: Oh yes. How old are you?
- \$ I.: I'm twenty-three.
- \$ E.: **Are you Spanish?**

\$ I.: **No, I'm Moroccan.**

\$ E.: Moroccan. **Have you got your work permit?**

\$ I.: **Yes, I have.**

\$ E.: Yes, then let me see, **what I can do is to give you an appointment for an interview.**

\$ I.: OK, that's all right.

\$ E.: Excuse me, **one moment** (he leaves the phone to talk to someone). Listen ...

\$ I.: What's that?

\$ E.: **You do have Spanish nationality?**

\$ I.: **No, I'm Moroccan.**

\$ E.: I see, **But you haven't got Spanish nationality?**

\$ I.: **No.**

\$ E.: **Then, I'm sorry.**

\$ I.: **Why?**

\$ E.: **We can't take you on, it's the rules, I've been told to tell you.**

\$ I.: It's the firm's rules?

\$ E.: Yes.

\$ I.: Then that's a bit unusual.

\$ E.: But I've been told to tell you, that's why I asked. The thing is **they ask for Spanish nationality, the fact is it's an insurance company.**

\$ I.: I have worked for a number of insurances, with Ocaso, Sanitas, I worked for various insurances and they didn't have that condition.

\$ E.: **I'm sorry, truly. Good-bye.**

\$ I.: So long.

Second call: (Spanish actor)

\$ Employer: Hello, good day!

\$ National: Good day! I have called for the advert about the agent, that you put out.

\$ E.: What was I going to say, I can book you for an interview so that you can come and talk with Mr. XX, how's that?

\$ N.: Good.

\$ E.: What's happening that doesn't convince you?

\$ N.: Well ...; here they don't give it to you straight, so ...

\$ E.: I see, this is a service company, insurance to be precise, we need people for a variety of jobs.

\$ N.: All right!

\$ E.: Have an interview with Mr. XX, it's to see what type of job you're qualified for.

\$ N.: All right, Very good!

\$ E.: So your interested then?

\$ N.: Yes, yes.

\$ E.: Then you'll come by on Wednesday the 5th at 11 am?

\$ N.: Yes.

\$ E.: OK?, Tell me your name.

\$ N.: My name is Juan del Olmo.

\$ E.: Juan del Olmo. How old are you, Juan?

\$ N.: Twenty-five.

\$ E.: Telephone number?

\$ N.: xxxxxxxxxxxx.

\$ E.: That's in the López de Hoyos area, is that right?

\$ N.: Yes.
 \$ E.: That*s where I live.
 \$ N.: So, you live there?
 \$ E.: Yes.
 \$ N.: I see, me too!
 \$ E.: So, all right, come to XX Road, it*s at street level. All right, you don*t know the road do you?
 \$ N.: No.
 \$ E.: Do you know where Conde de Casal is?
 \$ N.: Yes.
 \$ E.: Will you be coming by underground?
 \$ N.: Yes, I could take the underground.
 \$ E.: If you come by underground to Conde de Casal you get out and you have two exits, one of them is XX Road.
 \$ N.: Yes I see.
 \$ E.: All right, that*s all then, Juan.
 \$ N.: Just a moment, can you tell me what the firm*s name is, the thing is I*m looking..., then if you call me or something.
 \$ E.: The name is XX.
 \$ N.: Good. In any case, the 5th at 11 am, all right, until then.

(b) Higher requirements for the Moroccan actor

Case 73, Barcelona

First call (Moroccan actor)

\$ Employer: Good day!
 \$ Immigrant: Hello, good day! My name is Mohamed, I*m calling about the advertisement in "Primerama".
 \$ E.: OK, tell me where you live
 \$ I.: I live in Barcelona.
 \$ E.: Do you know Santa Coloma and Badalona?
 \$ I.: Yes.
 \$ E.: Do you?
 \$ I.: Santa Coloma, yes.
 \$ E.: And, Badalona?
 \$ I.: Badalona, no.
 \$ E.: How old are you?
 \$ I.: I*m 24.
 \$ E.: ~~Santa Coloma, Santo Cristó and Sant Adrián, no please? This Badalona because...~~
 \$ I.: Yes.
 \$ E.: **If you don*t know Santa Coloma well, you*re no good to me!**
 \$ I.: I see
 \$ E.: Good day, Good-bye!
 \$ I.: So long.

Second call (national actor)

\$ Employer: Good day, what can I do for you!
 \$ National: Hello, good day! I am calling about the announcement in the "Primerama".

\$ E.: Are you a pizza boy?
 \$ N.: Yes, I'm a pizza boy.
 \$ E.: So come by this evening from 7 o'clock on. What's your name?
 \$ N.: Salvador.
 \$ E.: But you're a pizza boy, right?
 \$ N.: Yes, yes, a pizza boy.
 \$ E.: Come to XX Road in Badalona, it's a restaurant.
 \$ N.: Good, XX, restaurant. This evening from 7 o'clock on, right?
 \$ E.: Yes, we are open as from 7 o'clock. OK?
 \$ N.: Very well.

(c) "Kid glove" refusal

Case 9, Malaga

First call (national actor)

\$ Employer: What can I do for you?
 \$ National: Good day, I'm calling about the advertisement for a waiter/delivery man.
 \$ E.: How old are you?
 \$ N.: Twenty-one.
 \$ E.: Have you got a motor bike?
 \$ N.: Yes I have a scooter and experience as a waiter.
 \$ E.: Where did you work before?
 \$ N.: For a pizza delivery firm.
 \$ E.: Will you give me your name and telephone number?
 \$ N.: Francisco Javier XX and my telephone number is xx.
 \$ E.: What do they call you Francisco or Javier?
 \$ N.: Paco.
 \$ E.: All right, Paco, come at 16.30 to XX road, to the XX restaurant .
 \$ N.: And what's the pay?
 \$ E.: I prefer to tell you that face to face, not over the telephone.
 \$ N.: Agreed, until this evening then.

Second call (Moroccan actor)

\$ Employer: What can I do for you!
 \$ Immigrant: I am calling about your announcement for a waiter and delivery man.
 \$ E.: Have you got a motorbike?
 \$ I.: Yes, I've got a motorbike.
 \$ E.: How old are you?
 \$ I.: I'm 21. I'm Moroccan and my name is Jacal.
 \$ E.: (He can be heard talking with someone else and replies). **The boss says that the job is already filled, we have taken on someone else! I don't know.**
 \$ I.: You have already taken someone on.
 \$ E.: Yes, you see **I'm not the boss**, that's why I asked and he says he already has someone.
 \$ I.: All right!
 \$ E.: **I'm sorry, I just work here.**

\$ I.: All right, I understand!

\$ E.: Good-bye!

Case 13, Madrid

First call (Moroccan actor)

\$ Immigrant: Good day!

\$ Employer: Good day!

\$ I.: **I'm a property salesman, with experience and I'm Moroccan**, I have five years experience in this type of selling.

\$ E.: **Look, the fact is that we already have a full team.**

\$ I.: Oh.

\$ E.: We're already full.

\$ I.: And there is no opening?

\$ E.: No, we've already got all we need, we have already taken on six people. Thanks, I'm sorry.

\$ I.: Listen, What's the name of your estate agency?

\$ E.: XX.

\$ I.: Right.

\$ E.: See you, Thanks.

Second call (national actor)

\$ National: Good day!

\$ Employer: Good day!

\$ N.: Look, **I'm an experienced property salesman**, I've worked in different places and, well, I see that you have put an ad in the paper.

\$ E.: **Can you phone back in five minutes time.**

\$ N.: In five minutes?

\$ E.: Yes. Right, I'll be waiting for you to call.

(calls back)

\$ National: Good day, look I just called, and you told me to call back in five minutes.

\$ Employer: Yes, tell me your name.

\$ N.: All right, my name is Jorge.

\$ E.: And what about being a salesman?

\$ N.: Yes, you see I've got quite some experience in this field.

\$ E.: **Could you drop in here tomorrow morning?**

\$ N.: Yes, of course.

\$ E.: What time can you come?

\$ N.: Then, yes.

\$ E.: So **come and see us here**. Give me your 'phone number.

\$ N.: All right, it's, xxxxx.

\$ E.: Our address is XX Road, 55, 4.º D, flight I. OK?

\$ N.: An what is your name?

\$ E.: XX.

\$ N.: Very well, OK, see you, thanks.

The net discrimination against one of the actors in the team is obtained by subtracting from the results of the one that was given preference the results of the other. In this series of tests, in 106 cases the preference was given to the national actor and in ten cases to the Moroccan actor, the

difference between 106 and ten accounts for 24.9 per cent of all the usable cases. In the terms of this procedure, this means that in **one out of four telephone applications for a vacant job that had been identified, the Moroccan actor was prevented from going on to the next stage**, indicating that the national actor was considered a good candidate to fill the job on offer. In view of the equality of conditions between the two actors, the refusal observed was on the grounds of an indication of the applicant's origin (family name or accent in speaking), which was identified by the employer as being foreign. For these 116 cases who were subject to inequality of treatment in the telephone interview, the procedure came to an end.

1.1.2. Results of the second stage: "invitation for an interview"

Out of the 269 cases of equal treatment in the first stage (the two actors were interviewed briefly by telephone), in 112 cases, the two actors were then invited to go for an interview (2.2) and thus went forward to the third stage of the procedure laid down. Out of the remaining 157 cases, in 94 neither of the actors was invited to go for an interview with the employer (2.1), they were simply put off (a telephone number was left but the call was never returned, etc.). Another 23 cases were left "pending" in this second stage (2.5) since the employer requested them to send in a *curriculum vitae* or certificates about their former jobs and they had not followed this up by the time that the test period had come to an end¹.

The results of this second stage were obtained during the telephone call. The most common replies may be summarized in three groups: (a) the Moroccan actor was put off ("later on") or given excuses ("will phone again") whereas the national was given an appointment for an immediate interview; (b) information was taken about both candidates and it was left that they would be summoned to an interview, but only the national was called up; and (c) the Moroccan was also given an invitation to attend an interview, after he had insisted; however, before the interview took place, it was cancelled or it was found that the firm's address was incorrect. Let us look at some examples:

(a) Excuses made to the Moroccan actor, invitation to the national:

Case 49, Barcelona

On two occasions, the Moroccan actor was put off by the telephone respondent saying that he was not the person responsible for taking information: "please phone back in two hours"; immediately afterwards, the national actor called with different names and straight away got through to the person responsible for the case.

(b) In cases "pending" confirmation, only the national was given an invitation:

Case 11, Barcelona

During the first call, information was taken about both of the actors, and the firm said it would contact them for an interview at a later date. After around a fortnight, both actors received a telephone call: the immigrant was told that the job was already taken; the national was offered a job with the firm but at another site.

¹ In the application of "audit testing" in Spain, when the employer requested that a *curriculum vitae* or references of previous experience be sent in, these were submitted. The network of relations established in the three geographical areas made it possible to provide the necessary papers for this occasion and also for the interviews carried out during the third stage.

(c) The Moroccan actor was also invited to attend the interview but it was cancelled later on:

Case 53, Barcelona

First call (Moroccan actor)

\$ Employer: Yes, what can I do for you?

\$ Immigrant: Hello, good day!

\$ E.: Yes?

\$ I.: I am calling about the advertisement that you put today*s issue of "El Sol", that you need a bookbinding machine operator.

\$ E.: Right, just a moment please.

\$ I.: OK.

\$ E.: Are you there.

\$ I.: Yes, what is it.

\$ E.: I am passing you over to the person who deals with this.

\$ I.: OK.

\$ E.: What can I do for you.

\$ I.: Hello, good day!

\$ E.: Hello, good day!

\$ I.: My name is Mohamed and I am calling about the job ad in today*s "El Sol".

\$ E.: Yes, we need a Tren Kolbus version 36 operator.

\$ I.: Right, I know how to operate this machine.

\$ E.: You know how to operate it?

\$ I.: Yes, I was working in Castellón, for a printer.

\$ E.: Good come by and see us, and we will give you an **interview**.

\$ I.: All right, at what time?

\$ E.: Note it down: XX Road, aisle L, XX industrial area, in San Andrés de la Barca.

\$ I.: OK, and what will you give me, an interview or a test?

\$ E.: We will have an interview and then, when we have finished, a test.

\$ I.: All right.

\$ E.: What*s your name?

\$ I.: My name is Mohamed.

\$ E.: Mohamed?

\$ I.: Yes I am Moroccan.

\$ E.: **Are your papers in order?**

\$ I.: Yes everything is in order.

\$ E.: Do you know the machine well?

\$ I.: Yes I know how to operate the machine, I have worked on it.

\$ E.: Do you know how to take measurements?

\$ I.: Yes.

\$ E.: Good, Mohamed ... ?

\$ I.: Mohamed XX. looking forward to it.

\$ E.: All right, just let me know when your coming.

\$ I.: All right. But when should I come?

\$ E.: When you want to.

\$ I.: Good, tomorrow.

\$ E.: Tomorrow?

\$ I.: Yes, in the afternoon.

\$ E.: Good, as from 4.30.

\$ I.: Whom should I ask for?
 \$ E.: Ask for the man in charge.
 \$ I.: All right, see you tomorrow. Thanks.
 \$ E.: Good-bye.

Second call (national actor)

\$ National: Hello, good day!
 \$ Employer: Good day!
 \$ N.: Look, I'm calling about the advert in "El Sol" for a bookbinding machine operator
 \$ E.: Yes, a Kolbus.
 \$ N.: Yes a Tren Kolbus, I saw that the job was being advertised I've been working on this machine for three years and I know it well.
 \$ E.: You know it?
 \$ N.: Yes.
 \$ E.: Then you should come around here and have an interview ... what did you say your name was?).
 \$ N.: Guillem.
 \$ E.: Telephone?
 \$ N.: Listen, my telephone number is xxxxxxxx.
 \$ E.: Good, note down the address I'm giving you and come by for an interview.
 \$ N.: All right, what's the address
 \$ E.: Look, it's XX Road, aisle L, XX estate in Sant Andrés de la Barca.
 \$ N.: OK. What time should I call by?
 \$ E.: Any time you like, what suits you?
 \$ N.: All right for tomorrow afternoon? Or this afternoon would be all right or tomorrow morning as well?
 \$ E.: Whatever suits you, but if its in the afternoon make it after 4.30.
 \$ N.: Very good, Thanks, Good day.

The following day, the employer called the Moroccan actor to tell him that he should not come to the arranged interview because the job had already been taken. In contrast, however, the employer did not call the national actor to cancel the interview.

During this second stage, there were 40 cases of **unequal treatment**, in which, on 35 occasions, preference was given to the national actor over the Moroccan actor (2.3) and on five occasions, the converse occurred: preference was given to the Moroccan actor (2.4). **The net discrimination or the difference between the cases of preference for one actor rather than the other is of 30 against the Moroccan actor (7.8 per cent of all the usable cases). The cumulative discrimination for these first two stages is 126 against the Moroccan actor (96+30), 32.7 per cent of all the usable cases.** In this second stage, discrimination fell to a third in comparison with the first stage.

1.1.3. Results of the third stage: "job offers" in the interviews

The selected methodology lays down that when the two actors are invited to an interview, both attend and each one attempts to obtain the job on offer, placing the employer in a position in which he is required to select between two applicants with identical experience and qualifications for the job on offer. As has already been explained earlier, during this third stage, specific difficulties

occurred which, on 61 occasions, made it impossible for the interview to take place (3.1.1), in comparison with a total of 112 interviews granted to the two invited actors (3.1). The most tricky situation developed when the employer required the interviewee to carry out *in situ* a test for a speciality for which neither one nor the other of the actors had the required skills; on other occasions, the interview required travel of over 100 kilometres and, in some cases, two interviews planned for a single actor coincided in time and it was necessary for him to select the sector which was most suitable for the progress of the study.

The interviews carried out took on different features depending on the actors. In some cases, an actor went through a very short interview, virtually no more than a formality, whereas the employer was clearly interested in the other candidate; however, in other cases, what took place was a series of interviews, in the form of a selection process, in combination with other candidates not related to the team. Finally, in the case of construction sector job applications or where there was no prior telephone call (the application was made directly at the site entrance) or there was no formal interview, if there was work to be done, the applicant was asked to start work, and this was used as a selection test.

A total of 51 interviews were carried out (3.1.3), somewhat less than a half (45.5 per cent) of the interview invitations obtained. In 25 cases, neither actor received a job offer (3.1.3, (a)) and in 26 others, a job was offered: 9 cases of a job offered to both actors (3.1.3, (d)), 14 of a job offered only to the national worker (3.1.3, (b)) and three of a job offered only to the Moroccan (3.1.3, (c)). On the basis of these results, the net discrimination against the Moroccan in this third stage is 11 cases (14-3), 2.9 per cent of the total number of usable cases, and the cumulative discrimination over the three stages of the procedure used is 137 cases (96+30+11), 35.6 per cent of the total number of usable cases.

1.2. Overall "unequal treatment" results

The total number of cases of net discrimination detected against the Moroccan actor in the three stages of the procedure carried out was 137. This amounts to 35.6 per cent of the total number of usable cases (see Table 12). According to the procedure used, this means that, in more than a third of the usable tests, the national actor progressed farther than the Moroccan actor and in this way achieved greater opportunities of obtaining the job on offer. **From the statistical point of view, the 35.6 per cent of cumulative net discrimination in the three stages is three-and-a-half times higher than the 10.0 per cent that is the critical rate required to reject the null hypothesis with a 5 per cent significance level. From the results obtained, it may be concluded that there is a significant discrimination against the group of young, semi-skilled, male Moroccans at the time of hiring when compared with young nationals with similar characteristics.**

1.3. Interpretation of the results

The procedure that was used gives us two types of results. The first is the **net cumulative discrimination**, as has already been mentioned, from which it can be seen that in at least 35.6 per cent of the usable cases, the national actor is given preference over the Moroccan actor and can progress farther in the procedure used for obtaining employment.

The second includes the cases in which neither actor was invited to an interview (2.1), in which both were invited but neither was offered a job (3.1.3, (a)), and in which both were invited but the interview did not take place (3.1.1). In this large group of 180 (94+25+61) cases, it did not prove possible to determine any *de facto* discrimination. Nevertheless, this does not mean that this

discrimination should be dismissed in view of the fact that the employers only had to make a selection by giving preference to one actor over the other, since the procedure was then interrupted. If the behaviour of employers in practice is along the lines previously recorded, we might expect that discrimination would occur in the same proportion in this series of cases. Consequently, it may be considered that the incidence of

Table 12. Usable tests in which the results showed inequality of treatment

First stage	
• In favour of the national	106
• In favour of the Moroccan	10
— Net discrimination against the Moroccan actor	96
— Discrimination in %	24,9%
Second stage	
• In favour of the national	35
• In favour of the Moroccan	5
— Net discrimination against the Moroccan actor	30
— Discrimination in %	7,8%
— Cumulative discrimination (1 + 2)	32,7%
Third stage	
• In favour of the national	14
• In favour of the Moroccan	3
— Net discrimination against the Moroccan actor	11
— Discrimination in %	2,9%
— Cumulative discrimination (1 + 2 + 3)	35,6%

cases of inequality of treatment is, in absolute numbers, greater than what was empirically documented.

On the other hand, the results of the first type, i.e., **net discrimination**, may easily be misinterpreted. If, in 35.6 per cent of the usable cases it was found that there was net discrimination against the Moroccan actor, it might erroneously be concluded that, in the remaining cases (64.2 per cent), there was no discrimination or that in this remainder, the Moroccan actor would have obtained the job. This type of reasoning is not adapted to the procedure used. It is necessary to bear in mind that we are dealing with a **measure of discrimination** during an established process, not with the result of the sum of one-hundred. It may validly be concluded that out of the 385 usable tests, in 18 cases (10+5 + 3), the Moroccan actor was given preference over the national actor, in comparison with 137 cases in which he was clearly placed behind the national actor. Consequently it is not the same to answer the question as to "on how many occasions in the 385 applications that were made, was it found that there existed discrimination against the Moroccan actor" as to know "how many jobs was the Moroccan actor offered in the 385 applications that he made".

In order to be able to reply to this last question, it is necessary to clarify in how many cases did the identified vacant jobs result in an offer of employment. To achieve this, the method proposed by the ILO stipulates that the following sequence should be pursued:

- (a) The direct way of answering this question would be to know how many jobs were obtained by the actors out of the total number of identified and usable offers of vacancies. However, this is not possible in view of the fact that some of the invitations for interviews were not followed up (since they called for tests which were not feasible or, simply, because only one of the actors was invited and the process came to an end at that point);
- (b) nevertheless, it is possible to calculate the number of invitations for interviews. It is also known just how important it is to obtain an interview in order to get a job; the actor who achieves the most interviews will have more opportunities of getting employment. If we place ourselves at the outcome of the third stage of the procedure, we may approximately infer the opportunities that the national and Moroccan actors have of getting a job. Consequently, since we know the total number of interviews achieved by the actors, we will be able to calculate the number of jobs that might have been offered to each one of them. This is, then, an estimated calculation procedure and not the one that took place during the process that was employed. Let us carry out this calculation in order to provide a foundation for our estimate.

§ In the **first stage** of the process, the actors applying for jobs received three types of reply: (a) both of them were refused the job; (b) they were both interviewed briefly over the telephone and were both accepted, or (c) there followed a situation of **inequality of treatment**: one actor was preferred over the other (either only the national was accepted or only the Moroccan), in which case the procedure was concluded for both of them. Table 12 shows the results of this stage. It can be seen here that category 1.1.2, (b) "only the national accepted" includes 106 cases. In none of these was the Moroccan actor accepted but neither, in any of them, did the national actor automatically receive an invitation for an interview. Up until now, these cases have been considered as **inequality of treatment** and have not been broken down for analysis. However, it is necessary to do so if one wishes to determine how many invitations for interviews the actors could have obtained. The breakdown of the 106 cases is as follows: in 80, the national actor received an invitation for an interview and, in 26, he did not. On the other hand, the category "only the Moroccan

accepted", contains ten cases out of which seven are invitations for an interview and three are not.

§ If we look at the results of the **second stage**, in 112 cases both of the actors were invited for an interview, in another 35 only the national was invited and in five cases only the Moroccan was invited.

Once we have broken down these cases in the first two stages of the procedure, we obtain a total of 227 cases (80+112+35) in which the national actor was able to obtain an interview (58.9 per cent of all the usable cases), whereas the Moroccan actor obtained a total of 124 (7+112+5), 32.2 per cent of all the usable cases. In short, the **national actor received virtually twice as many invitations for interviews as the Moroccan actor during the first two stages.**

§ The **third stage** of the testing shows that, of the 51 interviews carried out by both actors (3.1.3), the national obtained a job in 25 cases (3.1.3, (b)=14 and 3.1.3, (d)=9) or 49.02 per cent of the outcome; and the Moroccan in 12 cases (3.1.3, (c)=3 and 3.1.3, (d)=9) or 23.53 per cent of the outcome.

If we apply this proportion to the interviews that were obtained but were not carried out in the first two stages, we may estimate that the national actor would have obtained a further 111 job offers (49.02 per cent of the outcome out of 227 estimated invitations for interviews) and the Moroccan a further 29 (23.53 of the outcome out of 124). In absolute numbers, the national actor could have obtained 136 (111+25) jobs during the whole of the process, and the Moroccan 41 (29+12). This means that, for each job obtained by the immigrant, the national actor would have obtained 3.2.

The calculation that has just been carried out makes it possible to provide grounds for an estimation which goes far beyond the recorded results of net discrimination against one of the actors in the procedure employed (either in the "minimum proportion" or "maximum proportion" version, as will be explained below). This estimate is useful in that it provides a further indication of the actual situation of the group of young, semi-skilled male Moroccans when they access the Spanish labour market.

1.4. Treatment which is apparently equal but in reality different

In the procedure employed, it is considered that there was equality of treatment when both actors in the same team arrived at the end of the process in the same stage and with the same result. Nevertheless, we do find cases, either in the first stage (1.1.1 "neither applicant accepted"), in the second stage (2.1 "neither actor invited", 2.5 "cases pending") or in the third stage (3.1. "interviews not carried out" and 3.1.2 "interviews pending") which we consider to represent equality of treatment as far as the employed procedure is concerned, but which, in reality, contain differences.

We are now at a level different from that which is measured by the method employed, i.e., according to the procedure, the result is not one of the acceptance or rejection of one of the actors; rather what has been observed is **differences of treatment**, such as reserves when the time comes to accept references from previous employers, resistance to accepting the immigrant's legal status, better treatment at the interview, etc. When we place ourselves at this level, what counts is the subjective perception of the actor himself and the research team, even though based on the interpretation of the data observed. For this reason, even though there are enough cases with a supposed difference of treatment in the three stages, once they have been reviewed by the teams, we can pick out 15 cases (5 in Madrid, 3 in Barcelona and 7 in Malaga) of **treatment which is apparently equal but in reality different** (see Table 13).

In these 15 cases, according to the procedure applied, the Moroccan actor received treatment equal to that of the national; however, on 14 occasions it was possible to observe real differences in treatment, i.e., less acceptance; in only one case did we observe that the difference went against the national actor.

1.5. Maximum proportion of discrimination

If we add together the cases of **inequality of treatment** (see Table 12) and those of **treatment which is apparently equal but in reality different** (Table 13) against the Moroccan actor (106+35+14+14) and against the national (10+5+3+1), and then subtract the one from the other, we obtain the maximum cumulative net discrimination against the Moroccan actor: 150 cases (169-19), which amount to 38.96 per cent of the total of usable cases. This result is the maximum net cumulative proportion of discrimination (see Table 14).

1.6. Results of the chi² test

Application of the chi² test, as presented in Part III, 3.3, makes it possible to determine whether incidences which have been obtained empirically differ significantly or not from those which would be expected under a certain combination of theoretical assumptions. In Madrid and Barcelona, since the work was done with two teams of actors (A, B nationals and C, D Moroccans) which were interchanged with each other, we get four combinations (AC, AD, BC and BD); since, in addition, they were changed twice over time, we obtain results for Phase 1, Phase 2 and the total. In Malaga, we started with team AC alone; the replacement of the Moroccan actor at the end of the testing made it possible to set up a team AD. Table 15 shows the results of the chi² in the three geographical regions in which the tests were carried out.

The results obtained from the chi² test gave values which were greater than expected (3.84) in Madrid (6.28) and Malaga (7.5); in Barcelona the figure was lower (3.50). The results

Table 13. Cases of treatment which is apparently equal but in reality different

• Usable cases out of the total sample	385
• Treatment which is apparently equal but in reality different (favours the national)	14
• Treatment which is apparently equal but in reality different (favours the Moroccan)	1
— Net discrimination against the Moroccan actor	13
— Net discrimination in %	3,37%

Table 14. Maximum proportion of discrimination

• Usable cases	385
• Equal treatment ¹	197
• Treatment which is apparently equal but in reality different (favours the Moroccan)	1
• Treatment which is apparently equal but in reality different (favours the national)	14
• Unequal treatment, in favour of the national actor	155
• Unequal treatment, in favour of the Moroccan actor	18
— Net cumulative discrimination against the Moroccan actor	150
— Net cumulative discrimination against the Moroccan actor in %	38,96%

¹ This number is obtained by adding together all the cases of equal treatment: 212 (2.1=94 + 2.5=23 + 3.1.1=61 + 3.1.3 a)=25 + 3.1.3 d)=9) and subtracting those of treatment which is apparently equal but in reality different, which makes 15; 212-15=197.

from the first two regions show that we can put aside the null hypothesis (that there is no relation whatsoever between the geographical region and the behaviour of the employers).

From the statistical point of view, what is recommended is to use the χ^2 test in certain specific situations. The first situation is when the total number of observations is greater than 50 and the theoretical values are not lower than 5.¹ In the case of Spain, it was not possible to use all the samples combined together, since the tests were carried out by different teams in each geographical region. As far as the individual geographical regions are concerned (see Table 15), Barcelona has around 50 observations of discrimination (53) and Malaga has far below the minimum (15), however, in the case of Madrid which has 69 observations, it would be possible to carry out of the test relatively comfortably. As far as the theoretical threshold value is concerned, we have values below 5 in all three geographical regions: teams AC and BD in the second phase in Madrid, teams BC, BD and AC in the second phase in Barcelona and team AD in Malaga.

Table 15. Results of the χ^2 test, by geographical regions

	Madrid						Barcelona			Malaga			
	Phase 1		Phase 2		Total		Phase 1		Phase 2	Total		Sole phase	
a) Usable tests for each team and phase													
	A	B	A	B	A	B	A	B	A	B	A	B	A
C	39	38	12	42	51	80	20	16	10	8	30	24	24
D	27	33	40	17	67	50	17	16	11	9	28	25	6
b) Number of cases of discrimination expected in theory													
	A	B	A	B	A	B	A	B	A	B	A	B	A
C	9,7	9,4	3,0	10,4	15,2	23,9	9,9	7,9	5,0	4,0	14,9	11,9	5,5
D	6,7	8,2	9,9	4,2	20,0	14,9	8,4	7,9	5,4	4,5	13,9	12,4	2,0
c) Number of cases of discrimination obtained empirically													
	A	B	A	B	A	B	A	B	A	B	A	B	A
C	15	5	10	7	20	17	11	12	5	2	16	14	11
D	13	10	9	0	23	9	2	12	6	3	8	15	4
χ^2	11,3		22		6,2		9,2		1,5	3,5		7,5	

¹ See Bugada, 1974, pp. 217-218.

When some of the theoretically expected frequencies fall below 10, it is recommended to make a Yates correction or continuity correction¹ (this is a matter of adding 0.5 to or subtracting 0.5 from the observed frequencies) with a view to reducing the size of the χ^2 . If this is done for the three geographical regions, this reduces the χ^2 value for Madrid from 6.28 to 5.18 and that for Barcelona from 3.50 to 3.04 whilst the figure for Malaga remains unchanged (7.5). These figures are very similar to the previous ones, except in the case of Madrid where the discrepancy is reduced by 1.1 points, although it still exceeds by 1.34 the permissible value for not discarding the null hypothesis.

On the other hand, if the χ^2 test is employed to measure the difference in intensity between the team results, it will be seen, for example, that in Barcelona the BC team in the second phase and the AD team in the total have lower than expected results (2 instead of 4 and 8 instead of 13.9). These cases were reviewed systematically one by one but no technical reason was found for this result; nevertheless, since the same actor did not put in a second appearance in any of the cases, we can deduce that the identified divergence is not imputable to any one of the actors.

From the point of view of labour market dynamics, what we are really confronted with are various sub-samples of employers in each one of the geographical regions of Madrid and Barcelona since testing was carried out in two or three sectors of employment respectively. As was explained in Part II, 1.4, certain sectors do not behave in the same way as others. On the other hand, if an attempt is made to standardize the sample in each geographical region, then one loses the social significance of the result; however, subdivision into sub-samples leaves us without an adequate numerical base for the application of the χ^2 test. Neither does it seem advisable to consider a sector of employment where observations are made in different geographical regions as a sub-sample of the items we are dealing with, due to the fact that the tests were made using different teams.

In brief, from our point of view, application of this statistical indicator does not provide significant advantages; on the contrary, it is subject to serious doubts.

2. Specific results

Up until now, we presented the results of testing only for Spain as a whole; however, the test design presented by Colectivo Ioé looks at other aspects of interest: what we have is a single sample but made up of three different geographical regions (Madrid, Barcelona and Malaga). In all these three regions, we carried out tests in the service sector, in Madrid and Barcelona we added the construction sector, and, in addition, in Barcelona we also carried out tests in the industrial sector. Consequently, we can make a break-down of the results for each of these three geographical regions; furthermore, for Madrid and Barcelona, we can look at separate sections of the labour market in which tests were carried out. In the same way, we can examine the combined result of the service sector in the three geographical regions or the combined result of the construction sector in Madrid and Barcelona.

The interest offered by these break-downs is clear; however, it should always be borne in mind that not all the sub-samples carry the same weight and, consequently, the same statistical reliability.

¹ See Blalock, 1966, pp. 245-246.

As has already been mentioned above, only the combined service sector samples and the sub-sample for Madrid bring together the 170 tests needed for the sample size to match up to the requirements. Table 16 gives a summary of the areas in which we can break down the results, together with the corresponding critical discrimination rate and discrimination indices in the three stages of the procedure. Presenting all these results could be burdensome, and consequently we have decided to make only a brief comment pointing out the most significant differences between the geographical regions and the sectors of the labour market compared with the corresponding total result.

2.1. Results by geographical regions of testing

In the three geographical regions (Madrid, Barcelona and Malaga) in which the tests were carried out, the number initially proposed for these tests has - in general terms - been doubled (see Table 17), and this has further increased the value of the sample. In this context, Madrid and the service sector are particularly prominent.

A notable finding in the three geographical regions is that the cumulative net discrimination against the Moroccan actor was higher than the value of the critical discrimination rate (see Table 18). Nevertheless, in none of these three regions did one come near to equaling the large difference between the critical discrimination rate and the cumulative discrimination value found for Spain as a whole (more than three-and-a-half times). Barcelona, with 2.5 times the required critical rate is the region in which the greatest difference was seen. Malaga with 1.39 times has the lowest difference. Madrid has an intermediate value of 2.2 times. If we take into account the value of the maximum proportion of discrimination and not only the

Table 16. Results by geographical regions and sectors of the economy

	Geographical regions				Economic sectors			Economic sectors/Geographical regions					
	Madrid	Barce- lona	Malaga	Total	Servi- ces	Constru- ction	Indus- try	Madrid		Barcelona			Malaga
								Servi- ces	Constru- ction	Indus- try	Constru- ction	Servi- ces	Hotels/cater- ing
First stage													
Telephone calls													
1.1. Valid cases (total sample)	306	210	36	552	334	143	75	228	78	75	65	70	36
1.1.1. Neither applicant accepted (valid but defective)	58	103	6	167	81	53	33	43	15	33	38	32	6
1.1.2. Usable cases (in favour of)	248	107	30	385	253	90	42	185	63	42	27	38	30
<i>a)</i> Both applications accepted	201	48	20	269	180	68	21	145	56	21	12	15	20
<i>b)</i> Only the national accepted	42	55	9	106	69	17	20	37	5	20	12	23	9
<i>c)</i> Only the Moroccan accepted	5	4	1	10	4	5	1	3	2	1	3	0	1
First stage Net discrimination (b-c)	37	51	8	96	65	12	19	34	3	19	9	23	8
Net discrimination (%)	14,9	47,7	26,7	24,9	25,7	13,3	45,2	18,4	4,8	45,2	33,3	60,5	26,7
Second stage													
Invitation for interview	201	48	20	269	180	68	21	145	56	21	12	15	20
2.1. Neither actor invited	72	18	4	94	52	33	9	47	25	9	8	1	4
2.2. Both actors invited	76	30	6	112	78	22	12	58	18	12	4	14	6
2.3. Only the national invited	29	0	6	35	28	7	0	22	7	0	0	0	6
2.4. Only the Moroccan invited	5	0	0	5	1	4	0	1	4	0	0	0	0
2.5. Cases pending, second stage	19	0	4	23	21	2	0	17	2	0	0	0	4
Second stage Net discrimination (2.3-2.4)	24	0	6	30	27	3	0	21	3	0	0	0	6
Net discrimination (%)	9,7	0,0	13,3	7,8	10,7	3,3	0,0	11,4	4,8	0,0	0,0	0,0	13,3
Cumulative discrimination (1st+2nd stage)	61	51	14	126	92	15	19	55	6	19	9	23	14
Cumulative discrimination (%)	24,6	47,7	46,7	32,7	36,4	16,7	45,2	29,7	9,5	45,2	33,3	60,5	46,7
Third stage													
Job offers (during interviews)													
3.1. Interviews for both actors	76	30	6	112	78	22	12	58	18	12	4	14	6
3.1.1. Not carried out (required tests, etc.)	41	15	5	61	46	8	7	34	7	7	1	7	5
3.1.2. Interviews pending	0	0	0	0	0	0	0	0	0	0	0	0	0
3.1.3. Interviews carried out	35	15	1	51	32	14	5	24	11	5	3	7	1
<i>a)</i> No job offered	17	8	0	25	13	8	4	10	7	4	1	3	0
<i>b)</i> Job offered only to the national	9	4	1	14	13	1	0	9	0	0	1	3	1
<i>c)</i> Job offered only to the Moroccan	1	2	0	3	2	0	1	1	0	1	0	1	0
<i>d)</i> Jobs offered to both actors	8	1	0	9	4	5	0	4	4	0	1	0	0
Third stage Net discrimination (b-c)	8	2	1	11	11	1	-1	8	0	-1	1	2	1
Net discrimination (%)	3,2	1,9	3,3	2,9	4,3	1,1	-2,4	4,3	0,0	-2,4	3,7	5,3	3,3
Cumulative discrimination (1st+2nd+3rd stage)	69	53	15	137	103	16	18	63	6	18	10	25	15
Cumulative discrimination (%)	27,8	49,5	50,0	35,6	40,7	17,8	42,9	34,1	9,5	42,9	37,0	65,8	50,0
Critical discrimination rate	12,4	18,9	35,8	10,0	12,3	20,7	30,2	14,4	24,7	30,2	37,7	31,8	35,8

minimum figure, the difference observed increases somewhat more in Malaga and somewhat less in Barcelona, but without upsetting the previous result.

It may therefore be concluded that, in Spain as a whole and in each one of the geographical regions selected, the study has shown that, at the time of hiring, employers display inequality of treatment behaviour towards the group of young male Moroccans.

2.2. Results by sectors of the labour market

The three sectors of employment in which the tests were carried out each have a different representation in the overall sample, as is explained in Part II, 3. The **service sector** was looked at in the three geographical regions and accounts for 65.7 per cent of the total; the **construction sector** was considered in Madrid and Barcelona, and accounted for virtually a quarter of the total (23.3 per cent); whereas the **industrial sector**, considered only in Barcelona, accounts for one in every 11 of the tests carried out.

Quite remarkable differences in the cumulative discrimination results were seen in the behaviours of each of these three sectors when compared with the critical discrimination rate. The results obtained lead to the assumption of an empirical finding of **statistically significant discrimination in the services and industrial sectors; however, the same tendency was not found in the construction sector** (see Table 19).

§ In the **service sector**, the figure was 3.3 times the critical discrimination rate, and it may therefore be concluded that discrimination against young, semi-skilled male Moroccans is very high throughout Spain in comparison with that for similar nationals; no marked differences were seen in discrimination intensity between Madrid (2.3 times the critical rate) and Barcelona (2.0), although discrimination intensity was lower in Malaga (up to 1.39 times).

§ Tests in the **industrial sector** were carried out only in Barcelona, and the cumulative discrimination was found to be nearly one-and-a-half (1.42) times that of the critical rate. Consequently it may be stated that discrimination was found in this segment of the labour market in Barcelona, but that its intensity was only half that of the discrimination observed in the service sector in Spain and lower than that observed in Barcelona (2 times the critical rate).

§ The **construction sector** revealed a surprising result in comparison with the two other sectors, since the trend here was just the opposite. It is the only sector of the labour market where cumulative discrimination (17.8 per cent of usable cases) did not surpass the critical discrimination rate (20.7 per cent); in Madrid, the figure was a third of this rate. In this case, it is not possible to discard the null hypothesis, and consequently one cannot conclude that the observed discrimination constitutes a significant trend. The behaviour in this sector may, in our opinion, be attributable to the intrinsic dynamics of this segment of the labour market which, at the level we currently stand at, is less in line with a formal model than that of the other sectors.

2.3. Characteristics of the undertaking offering employment

In accordance with the proposed methodology, the search for job offers was targeted at a diversified segment of undertakings, taking into account two of their characteristics: size and ownership.

Table 17. Usable tests in each geographical region

	Total	Services	Construction	Industry
Madrid	248	185	63	—
Barcelona	107	38	27	42
Malaga	30	30	—	—
Total realized	385	253	90	42
Proposed	175	75-90	55-70	30-35

Table 18. Minimum and maximum proportions of discrimination, by geographical regions (Madrid, Barcelona, Malaga)

	Spain %	Madrid %	Barcelona %	Malaga %
Minimum	35,6	27,8	49,5	50,0
Maximum	38,9	29,8	52,3	70,0
Critical discrimination rate	10,0	12,4	18,9	35,8

Table 19. Critical discrimination rate, by sectors of employment

	Services			Construction		Industry
Critical discrimination rate	12,3			20,7		30,2
Cumulative discrimination in %	40,7			17,8		42,9
	Services			Construction		Industry
	Madrid	Barcelona	Malaga	Madrid	Barcelona	Barcelona
Critical discrimination rate	14,4	31,8	35,8	24,7	37,7	30,2
Discrimination in %	34,1	65,8	50,0	9,5	37,0	42,9

As far as **size** was concerned, it was possible to establish three groups: undertakings with 100 or more employees (**large**), with less than ten employees (**small**) and the band between 10 and 99 employees (**medium-sized**). There is a difficulty in determining the size of the undertaking offering jobs. Is the undertaking a branch of a large company? Does it have a number of operating centres or only the premises which were contacted? The general practice applied in the study was to consider the undertaking as being the work premises in which were being undertaken the activities for which the job offer had been made, and to determine the size of the undertaking accordingly. The results of the tests in Spain and in the three geographical regions may be seen from Table 20.

Table 20. Tests carried out, broken down by size of undertaking (in %)

	Large	Medium	Small	Total
Madrid	6,3	16,3	77,4	100
Barcelona	10,1	46,1	43,8	100
Malaga	16,6	36,2	47,2	100
TOTAL	8,4	28,9	62,7	100

Table 21. Tests carried out, broken down by ownership of undertaking (in %)

	Private	Public	Mixta	Total
Madrid	302	4	—	306
Barcelona	209	--	1	210
Malaga	35	--	1	36
TOTAL	546	4	2	552

Small undertakings held a dominant position in the tests carried out in Spain, and accounted for around two-thirds of the total (62.7 per cent). Their significance was even greater in Madrid (more than three-quarters). It was lower in Barcelona, where the number of medium-sized undertakings was greater than that of small undertakings. **Medium-sized undertakings** accounted for between a third and a quarter of the total. However, in Barcelona they accounted for a higher proportion (nearly one half: 46.1 per cent). In Madrid they accounted for a smaller proportion (16.3 per cent). **Large undertakings** did not account for a large sector of the sample (8.4 per cent). Malaga was an exception although, even here, large undertakings continued to form a minority segment (16.6 per cent).

We did not determine whether these results were in line with Spain's structure of undertakings as a whole. The method we used in our search for low-skilled jobs did not come within the procedures employed by large undertakings. This may have brought about an over-representation of small undertakings. In this respect, it is useful to point to the results of the study carried out in Catalonia by Solé and Herrera (1991), which corroborated the finding that African and Adriatic immigrants in their majority (94 per cent) work in undertakings with less than ten employees.

The **ownership** of the undertaking (private, public or mixed) is the second characteristic taken into consideration. The initial design had indicated that there were few mixed undertakings in Spain, and that job offers from public undertakings did not conform to the method proposed for this study (jobs in public undertakings are usually awarded on the basis of competition/examination). In general, the results obtained confirm these forecasts (see Table 21). In practice, there are very few public and mixed undertakings in the sample; undertakings in private ownership account for 98.9 per cent of the total.

3. Conclusions

The general conclusion to be drawn from the methodological procedure used in Spain is that young, semi-skilled male Moroccans who are looking for work suffer from a marked intensity of discrimination at the moment of hiring, when compared with a similar group of young male nationals. The statistical results obtained in this study were 3.5 times higher than the critical

discrimination rate laid down as the minimum threshold for the studies carried out. The direct significance of this conclusion is that, in at least one out of every three job applications, the group of young Moroccans receives treatment which is worse than that received by the similar group of nationals.

The results of this **inequality of treatment** suffered by the group of immigrant Moroccans was encountered in all three stages of testing. However, it was more prominent in the first stage (brief telephone interview), and it was here that 70 per cent of all the discrimination was recorded. This **first stage** of the job application process acted as a filter for the group of young, semi-skilled Moroccans. Those that were rejected during the telephone conversation did not have the opportunity to present their actual qualifications and their suitability for the job for which they were applying, whereas the young nationals did have the possibility to do so. The response given most often to the Moroccan applicant was: "the job is already taken". However, when the national actor subsequently made the second telephone call and applied for the job, he was offered an interview. The real significance of the results obtained **in the first stage** is that, **in one out of every four cases, the group of young Moroccans was bypassed by the employer** and did not had the opportunity of access to the job being applied for, even though the members of the group are actually qualified for the job in question.

In the second stage, the net discrimination against the group of young Moroccans is 7.8 per cent of the usable cases, and in the third stage it is 2.9 per cent. **The net cumulative discrimination against Moroccan immigrants in the three stages is 35.5 per cent of the usable cases, which is 3.5 times higher than the 10 per cent that the critical discrimination rate lays down as the minimum threshold required to confirm statistically the existence of discrimination.**

In the overall sample for **Spain**, when we add together the percentages of net cumulative discrimination for "inequality of treatment" (35.6 per cent) and "treatment which is apparently equal but in reality different" (3.3 per cent), it can be seen that, in at least 38.9 per cent of the tests carried out, there was some form of unfavourable treatment towards the group of male Moroccan youths. By **geographical region**, the highest level of discrimination was to be seen in Barcelona, followed by Madrid, and the lowest was in Malaga. As far as **sectors of the labour market** are concerned, it was found that, in the construction sector, it is not possible to discard the null hypothesis either by sector or for the geographical regions in which the tests were applied (Madrid and Barcelona), i.e., no statistical proof was found of the existence of discrimination at the established level. Nevertheless, the service sector and industry exceeded the critical discrimination rate to a large degree; the rates recorded were significantly higher in services, and especially in Madrid.

The statistical results obtained from the procedure employed also make it possible to establish an estimate as to the proportion of interviews that would be achieved by each group of young people out of the total number of job applications made. What happened was that the group of young nationals obtained interviews in 58.9 per cent of the applications made, whereas the Moroccan group obtained interviews in 32.2 per cent of these applications. This means that there were almost twice as many successes in the group of nationals and, consequently, twice fewer for the Moroccan group. The true significance of the above result is in accord with the fact that the interview is, in most cases, the essential stepping stone towards obtaining a job. Furthermore, according to the results obtained, the success of the interview or the attainment of the job is, also, twice as high for the group of nationals (49.02 per cent of success and 23.5 per cent, respectively). In absolute

numbers, in view of the number of interviews actually obtained and the estimated number of interviews, the group of nationals would have obtained 136 jobs and the immigrant group 42 jobs (see Part IV, 1.3); this means that, for each job offered to the immigrant group, 3.2 jobs were offered to the group of young nationals.

The high proportion of discrimination against the group of young, semi-skilled Moroccan migrants at the time of hiring, that has been statistically demonstrated in this study, is a major obstacle to their likelihood of obtaining a job. To summarize, the situation with which young, semi-skilled Moroccan males are faced at the time of being hired for a job in the Spanish labour market is significantly more difficult than that encountered by young nationals of similar characteristics.

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Discrimination against immigrant

B.

**workers in access to employment
in Spain: From worthless paper
to effective legislation**

by R. Pérez Molina

1. Introduction

The present study is intended to achieve two objectives: the first is to describe Spain's current legal framework on the discrimination to which immigrants or ethnic minorities may be subject in employment, as well as the public institutions involved in this area; and, secondly to assess the effectiveness of all this legal and administrative superstructure.

In view of these objectives, the study has been divided into two parts: the one descriptive, with a presentation of the legislation and the administrative bodies responsible for promoting and safeguarding equality of opportunities between national and foreign workers; and the other analytical, with an attempt being made to verify whether, in actual fact, these legal mechanisms fulfill the objective they have been set, i.e., whether the protection and anti-discriminatory protection given to these groups is effective.

Finally, a number of suggestions are made with a view to optimizing efficiency in the fight for equality of opportunities and the eradication of discrimination.

In order to take a look at Spanish anti-discrimination legislation concerning immigrant workers and ethnic minorities, it is necessary to place in context, at least briefly, the situation of migrants in Spain. In this way, it will be possible to understand both the apparent legal vacuum which exists in the national legislation in relation to discrimination based on difference in "nationality" (lack of specifically anti-discriminatory laws for these groups), and, on the other hand, the large number of international treaties and conventions which promote equality of treatment for migrant workers (United Nations, ILO, Council of Europe, bilateral treaties, etc.) that have been signed by Spain.

By tradition, Spain has been a manpower exporting country, and this finds its expression in the numerous legislative texts and standards which have as their objective the defence of the rights of the emigrant. This protective approach to emigration is to be found textually in the Spanish Constitution of 1978, where in Article 42 it is stated that, "the State shall provide for the safeguard of the economic and social rights of Spanish workers abroad and shall orient its policy towards their return".

Starting out from the 1970's and 80's, with the political and economic changes which took place in Spain, the country gradually began changing its emigration trend, and began to become a country which was also receiving foreign manpower (Izquierdo, 1994; OECD, 1993). The outcome of this change in trend was that in 1990, the Spanish Government - at the request of the Congress of Deputies - drew up a report on the main lines of Spanish policy in which, amongst other matters, there was a discussion of establishing channels for the promotion and social integration of immigrants. A significant demonstration of Spain's change-over from being a manpower exporting country to being also an importing country can be seen in the actual change in the name of the administrative body responsible for migration; it ceased to be called the Spanish Immigration Institute and now goes under the name of the General Directorate of Migration.

As will be seen, in many cases, it is the international legislation signed by Spain in the years of extensive emigration that has had the greatest impact in the field of combating discrimination and the establishment of rights aimed at the new phenomenon of immigrants.

Spanish legislation offers four distinct levels of recognition for the rights of foreigners, and these may be summarized as follows: (a) the rights which belong to each individual due to the very fact of his existence; (b) rights which are recognized for both Spaniards and foreigners; (c) rights which raise doubts as to whether they do or do not affect foreigners and for which the interpretation of the courts is necessary; and (d) rights which belong to only those who have Spanish nationality.

As far as the internal legislation is concerned, the basic texts of the anti-discrimination legislative framework are, on the one hand, the Constitution which lays down in Article 1.1 that Spanish legal order is based, *inter alia*, on the concept of equality. On the other, there is a series of standards, either of a general nature, such as Act 7/85 concerning the rights and freedoms of foreigners in Spain, or of a specifically labour character such as Act 8/80 of the Labour Code and the Act on social order infractions and sanctions. These apply, without exclusion based on origin or membership of an ethnic minority, to all workers exposed to discrimination at work, and are based on the principles of equality of treatment in rights and duties.

It may be useful at this point in the introduction to explain that, in order to avoid possible problems of terminology, this study will use the term "racial discrimination" in the manner in which it is defined in the International Convention on the Elimination of all Forms of Racial Discrimination (CERD). Spain is a signatory to this Convention which stipulates in Article 1 that "the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." This definition applies to ethnic minorities within the country, such as gypsies, but excludes any allusion to discrimination based on nationality different to that of the country in which the person lives and works.

2. Anti-discrimination legislation

Spanish legislation has a three-tier structure. The highest-ranking level of legal reference is the Constitution, and it is from this that the whole superstructure of Spanish legislation is derived. Next comes the international legislation which has been signed by Spain, and which usually has the value of guidelines (Article 10.2 of the Spanish Constitution) and may be referred to in complaints and petitions on the subject of racial discrimination. In addition, there are also international standards which, once they have been ratified, become an integral part of the country's domestic legislation (Articles 92 to 96 of the Spanish Constitution), as applies in the case of the laws of the European Union and ILO Conventions. Finally, the

national legislation which makes reference to equality of treatment between nationals and foreigners is to be found scattered in the articles of a variety of laws, ranging from the Penal and Civil Codes to social legislation. The two acts which are most closely related to discrimination in employment are Act 8/80, the Labour Code, and Act 7/85 concerning the rights and freedoms of foreigners in Spain.

Apart from the international conventions and agreements signed by Spain, there is no specific act which combats discrimination against foreign workers or ethnic minorities in the field of employment. What do exist, however, are specific aspects laid out in various items of legislation which have an impact on employment discrimination against these groups.

It is necessary to point out, right from the very start, a basic difference between the two target groups for this study. This derives from the Constitution itself: on the one hand, there is no ground for doubt concerning the protection and legal equality of national ethnic minorities, since Article 14 states that it is not possible to claim before the law any discrimination "on the grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance", and this will obviously include any person with Spanish nationality no matter what his or her ethnic or national origin; on the other hand, certain differences of treatment between Spaniards and foreigners are laid down (Segarra, 1991, p. 63), often motivated by the lack of precision in the terminology employed. One of these clear differences in treatment is to be found in the case of access to employment (Article 35.1). Decision 107/84 of the Constitutional Court stipulates this categorically in the statement that "there is no treaty or law which lays down equality of treatment between nationals and foreigners in access to employment" (Mulas, 1986, p. 279). Subsequently, we will see that although the Labour Code does not recognize equality in access to employment, it does guarantee equality once the worker has been hired.

3. International legislation in Spanish law

In Spain, international legislation has three levels of impact, depending on whether we are dealing with universal standards which consequently apply to every migrant. This is the case with those coming from organizations belonging to the United Nations system, and especially, in the case in question, those from the International Labour Organization and the International Convention on the Elimination of All Forms of Racial Discrimination. At a slightly more restricted scale, we have the legislation of the European Union and, finally, bilateral agreements on migration signed between Spain and other countries with which it has historical or cultural ties, or which have traditionally been the host countries of Spanish emigrants. As far as immigrants are concerned, all this relates in practice to the existence of three different levels of treatment, depending on whether the person in question is a national of a country in the European Union, a national of a country with which Spain has reciprocity agreements or a national of a third country.

3.1. Universal legislation

Throughout the whole of the United Nations system, the only agreements that have been directly incorporated into the domestic Spanish legislation are the Conventions of the International Labour Organization (ILO) that Spain has ratified. Although Spain has ratified only two Conventions directly affecting discrimination against migrant workers [Convention (No. 97), 1949] and against ethnic minorities (Convention (No. 111), 1958), this does not mean that, in the majority of the other

ILO Conventions ratified, there is no defence of equality of treatment, since as Valticos says "international labour conventions are applicable to foreigners when they contain no express provision to the contrary" (Valticos, 1977, p. 444).

ILO Convention No. 97 concerning Migration for Employment (Revised), 1949¹

The whole of this Convention is relevant, but we may pick out in particular Article 6, since it calls for application to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of matters that are subject to the control of administrative authorities, such as remuneration, vocational training, holidays with pay, trade union membership, accommodation, social security and the use of the public employment service.

The above-mentioned article stipulates, *inter alia*, the inadmissibility of discrimination on the grounds of race or nationality, "Each member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race ... to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals".

ILO Convention No. 111 concerning Discrimination (Employment and Occupation), 1958

²

This Convention centres on national workers, including, obviously, those who belong to ethnic minorities. It is also valuable because it defines concepts such as: discrimination, employment and occupation.

Universal Declaration of Human Rights

This Declaration is explicitly mentioned in the Spanish Constitution (Article 10.2) as a direct source of interpretation for all the standards that are related to fundamental rights. The most significant Articles in connection with our theme are Article 2, in which it is laid down that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, "such as race, colour ... national or social origin", and Article 23 which is centred on the individual's employment rights: equality in the right to work, to just and favourable conditions of work and to the right to equal pay for equal work.

International Convention on the Elimination of All Forms of Racial Discrimination

¹ (CERD)

This is certainly the International Convention which focuses most closely on the subject and, as was stated in the introduction, it also lays out a definition for the term "racial discrimination". This is no small matter since, throughout Spanish legislation, we encounter problems of terminology related to discrimination, starting with the Constitution itself in which appears the term race but not nationality. In this context, what may be enlightening is the reply given by the representative of Spain in the Report of the 36th Meeting of the Committee for the Elimination of Racial Discrimination when he said literally: "the term 'race' which is to be found in the Constitution includes all ethnic groups, and there can be no discrimination based on this criterion (le terme

¹ Ratified by Spain on 23.6.67 (BOE, 7.7.67)

² Ratified by Spain on 26.10.67 (BOE, 4.12.68)

¹ Ratified by Spain on 23.4.69. (BOE, 17.5.69)

"race" que figurait dans la Constitution incluait toutes les ethnies et il ne pouvait y avoir de discrimination fondée sur ce critère)" (CERD, *Documents Officiels*: 36th session, 1981, p. 31).

In another context, an item which is also of considerable importance is paragraph 2 of Article 1, according to which, discrimination against foreigners falls outside the scope of this Convention if there is no unlawful racial act: "This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens". Furthermore, this Convention defines the concept of "positive action" towards groups which require special protection (Article 1, paragraph 4).

The specific subject of discrimination in employment is referred to in Article 5 (e) (i) when it is stated that States Parties undertake to prohibit and to eliminate racial discrimination in particular in (amongst other rights) "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 and to just and favourable remuneration".

In addition, this document makes reference to reparation or satisfaction due to the victims of racial discrimination (Article 6).

It is important to take note of Article 14 which lays down for a State Party the possibility of declaring that it "recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration".

Spain does not recognize this competence (Commission of the European Communities, 1992, p. 33); however, this does not mean that the Convention does not have any specific weight and any decisive influence when proceedings are taken against discriminatory behaviour. On the contrary, as may be deduced from certain declarations made by the Committee examining the reports submitted by Spain to the CERD: "Members have taken note of the information contained in the Report according to which the provisions of the Convention were a source of reference for the interpretation of matters of racial discrimination and equality of rights by the Spanish judiciary" ("Des membres ont pris note des renseignements contenus dans le rapport selon lesquels les dispositions de la Convention étaient une source de références pour l'interprétation des questions de discrimination raciale et d'égalité de droits par la magistrature espagnole" (CERD, *Documents Officiels*: 40th session, 1985, p. 132).

In addition to these Conventions, there is a series of pacts and agreements based on the concepts of human rights in the Universal Declaration which defend equality of treatment for migrants and ethnic minorities. All of them contain an obligation to eliminate racial discrimination, both de facto and de jure, and to defend equality of treatment between different communities which are cohabiting in the State Party. The documents of this type that have been signed by Spain are the following:

International Covenant on Civil and Political Rights¹

This Covenant focuses on equality of political rights for minorities. The contents of Article 20.2 are of particular significance since it is stated that "Any statement of national, racial or religious hatred which constitutes an incitation to discrimination ... shall be prohibited by law". For national ethnic minorities, the item of major importance is Article 25 as a whole and in particular paragraph (c) stating that they have access to: "... on general terms of equality, to the public services of their country".

International Covenant on Economic, Social and Cultural Rights²

In this Covenant there are certain articles (such as No. 7) which deal in particular with the recognition of every human being's right to equality in employment: conditions of work, pay, training, opportunity, etc.

As far as the Council of Europe is concerned, Spain has ratified standards which, although they do not have the legal force of those from the European Union, also refer to non-discriminatory treatment of migrants and ethnic minorities, taking into account that the term migrant worker denotes only subjects of Member Countries. Specifically, the **European Social Charter³** states that all workers have the right to equality in working conditions (Part I, paragraph 2) and refers in particular to conditions of employment, pay, trade union membership and accommodation (Article 19.4). All this is complemented by equality of treatment in taxes and contributions (paragraph 5), family reunification (paragraph 6) and equality of treatment in legal proceedings (paragraph 7).

In addition, the Council of Europe has drawn up a **Convention on the Legal Status of Migrant Workers⁴** which calls for "treatment no less favourable than that enjoyed by the national workers of the host State" with respect to working conditions (Article 16), social security (Article 18) and, which is of great importance, to the complaints that migrants may place before the courts and the administrative authorities (Article 26). In the same way as the European Social Charter⁵ this Convention applies only to nationals of signatory countries and not to all nationals of all the countries of the Council of Europe (Article 1.1).

3.2. European Union legislation

Under the **Treaty of Rome** (as amended by the Treaty of Maastricht), the European Union's regulations and decisions have precedence over national legislation (Gisti, 1994, p. 41). This being said, it should be emphasized that the European Union does not have an established policy on third-world country workers who live and work in any of the States that make up the Union, neither are there standards under Community law which provide them with assistance, with the exception of those established as part of cooperation agreements with third countries (Ramos, 1993, pp. 11 and 12). Moreover, we are talking here of legal measures which involve and assist the free movement of workers who are nationals of one of the member states. In this context, a key text is that of

¹ Ratified by Spain on 27.4.77 (BOE, 30.4.77).

² Ratified by Spain on 27.4.77 (BOE, 30.4.77).

³ Ratified by Spain on 29.4.80 (BOE, 26.6.80).

⁴ Ratified by Spain on 6.5.80 (BOE, 18.6.83).

⁵ Countries which on 18 October 1961 signed the European Social Charter:
Austria, Belgium, Cyprus, Switzerland, Denmark, Spain, France, Germany, Greece, Iceland, Ireland, Italy,
Luxembourg, the Netherlands, Norway, Sweden, Turkey and the United Kingdom.

Article 48.2 of the constituent Treaty of the European Economic Community where it is stated that: "The free movement (of workers) supposes the abolition of all discrimination on the grounds of nationality between workers of Member States, with respect to employment, pay and other conditions of employment".

Regulation No. 1612/68, concerning the free movement of workers is the one that focuses the most on the situation of workers from Community countries who are working in Spain, and which complements the above-mentioned Article 48 of the Constituent Treaty. In general, the whole of chapters I and II, "access to employment" and "exercise of employment and equality of treatment" (Articles 1 to 9) are relevant here. These recognize the rights related to the work and employment of nationals of Member States of the European Union, which go far beyond what is normally recognized for immigrants from third countries, even where there are bilateral agreements on equality of treatment. The objective is to place the Community immigrant on the same footing as the national worker with a view to ensuring that freedom of movement and establishment throughout the area of the Community are real in practice. Consequently, in actual fact, this Regulation carries much more weight than national laws which are intended to protect or provide precedence to exclusively national workers.

Another item of interest is **Regulation 1281/70** which grants rights to workers to establish themselves on the territory of a Member State after having pursued employment there.

Although as we have seen, all these measures promote only labour mobility and equality between Member States of the European Union, agreements have also been signed with third party countries, which have an effect on the treatment of migrants from these countries, as is the case, for example, with Moroccans. Under Articles 40 and 41 of the cooperation agreement between the European Community and the Kingdom of Morocco¹, "Any discrimination based on nationality between workers of the Community and those of Moroccan nationality, with respect to conditions of work and pay, as well as in the field of social security, must be eliminated" (*Migration News Sheet*, September 1994, p. 1).

4. National legislation

There is no Spanish act which deals specifically with racial discrimination; instead there are provisions on this matter which are scattered throughout numerous articles in very different pieces of legislation ranging from the Constitution to the Civil Code. The two acts which most directly affect discrimination in the employment of migrants are, on the one hand, Act 8/80, the Labour Code, which regulates employment activity, and on the other, Act 7/85 which deals with the rights and freedoms of foreigners in Spain.

4.1. The Constitution

¹ Signed on 27.4.76

There are constitutional provisions which refer to the approach that the legislator should take, and others which are organic or of direct application, i.e., which may be invoked by persons before the Courts.

The concept of equality is one of the basic principles on which the Constitution is founded, and it therefore serves as a guiding principle for legislative procedure and for the public authorities (Articles 1 and 9.2). In this respect it also recognizes the predominant role played by the Universal Declaration of Human Rights and the international treaties signed by Spain when the time comes to interpret standards which affect the dignity and rights of the individual.

The text of the Constitution contains some ambiguous terminology since, at times, it uses concepts such as "individuals", which do not make it possible to distinguish clearly whether what is being laid down applies solely to Spaniards or whether it also relates to other persons who are located in the country.

Among the constitutional articles which relate to discrimination, some mention solely equality of treatment amongst Spaniards, such as for example Article 139, in which recognition is given to the equality of rights and obligations of Spaniards in any part of the State. This is an important matter since it provides defence against possible inequalities of treatment that might appear in relation to the political and administrative make-up of the Autonomous Communities to be found in the Spanish State (internal migration) or to ethnic minority groups such as gypsies.

In direct connection with employment, the Constitution is clear in recognizing the right to work only for Spaniards, as is laid down in Article 35. The final statement in this Article, namely, "without there being in any case, the possibility of discrimination on grounds of sex", is interesting since it provides eloquent protection against cases of discrimination in employment on the grounds of sex; however, it is not clear about any other type of discrimination in employment that might occur.

Other anti-discriminatory articles in the Constitution seem to apply to both nationals and foreigners. This occurs for example where a guarantee is given for the right to honour, privacy and personal image - all of which are important factors for separate cultural and national groups (Article 80.1). In addition, the right to legal protection and defence applies to "all persons ... so that, under no circumstances, can anybody be without defence" (Article 24); this means that legal protection covers even unlawful immigrants, and goes even farther if we interpret this right to justice in the way that it is considered in certain international standards and, in particular, the Universal Declaration of Human Rights (Articles 6 and 7) as mentioned above. Nevertheless, it seems that only a foreigner whose situation is lawful will benefit from effective legal protection and defence since, according to Manjón, "although recognized as a person before the law with the attendant rights, effective enjoyment thereof is subject to an individual authorization which makes his situation regular and his residence in the territory in which he resides legal" (Manjón, 1991, p. 146).

Another factor which is connected to the world of work is the assistance offered by the social security system. In principle, from a reading of Article 41, one might conclude that this applies only to Spaniards since it employs the term citizens. However, Olarte is of the opinion that, on the basis of the contents of the various international agreements on this subject signed by Spain, the term

citizens should be interpreted here in the wide sense, and go beyond the restrictive concept of subject or national (Olarde, 1993, pp. 551-553).

Article 13.1 is of importance since it states that "foreigners shall enjoy in Spain the public freedoms that are guaranteed by the present chapter (referring here to fundamental rights and duties) in the terms that are laid down by treaties and the law". Subsequently we shall see how this is shaped in Act 7/85 on the rights and freedoms of foreigners in Spain and in the decrees and regulations that derive from it, and in particular the Royal Decree 1119/86 and Royal Decree 1099/86. This article 13.1 has been the subject of considerable polemic and interpretations due to the importance attached to the meaning of "terms that are laid down by treaties and the law". Consequently we shall see that it is the judgments of the Constitutional Court which, to a large extent, guide matters on this point:

Article 13 does not mean that foreigners enjoy only those rights and freedoms which are laid down by treaties and laws. Rather, it means, that the content of what may be enjoyed may be tempered by what is stipulated by international treaties and Spanish national law. (Constitutional Court);¹

or also:

The Constitution does not stipulate that foreigners shall enjoy, in Spain, the freedoms granted to them by treaties and the law; instead, it is the freedoms that 'are guaranteed by this present chapter ..'; The result is that the rights and freedoms recognized as applying to foreigners end up by becoming constitutional rights ... however, all of them without exception are rights of legal configuration as far as their content is concerned. This configuration may refrain from taking into consideration as relevant information in motivating exercise of the right, the nationality or citizenship of the person in question. The outcome of this is to produce total equality between Spaniards and foreigners, as does in fact effectively occur with those rights which belong to the person as such and not to the person as a citizen ... and those that are irrevocable for the guarantee of human dignity, which according to Article 10 form the basis of Spanish public order. Rights such as the right to life, to privacy, etc., apply to foreigners as a constitutional enactment, and there can be no possible inequality of treatment on their account in comparison with Spaniards. (Constitutional Court)²

This judgment recognizes that there is no constitutional principle of equality which would, as a general rule, place foreigners on the same footing as Spaniards. De la Mata goes as far as to say that the Constitution allows the legislator "to apply the principle of discrimination - not just formally, but also materially - on the grounds nationality" (De la Mata, 1995, p. 37).

Although Article 149 is not directly related to discrimination, it would seem useful to draw attention to it here since it points to the exclusive competence of the State in matters of nationality, immigration, emigration, citizenship and the right to asylum. It does not prevent the Autonomous Communities from being able to legislate on these matters in their area of influence, as is specified under Article 150.1.

4.2. Standards with an impact on employment

Act 8/80, Labour Code

¹ Judgement 481/85 of the Constitutional Court, Room 2, Date: 30.9.85.

² Judgement 107/84 of the Constitutional Court. Room 2. Date: 23.11.84.

By constitutional mandate (Article 35.2), the most important legal text in the area of employment is Act 8/80, the Labour Code (BOE, 14.3.80), since it applies to all gainfully employed workers without discrimination, differentiation or exclusion on the grounds of whether they are nationals or foreigners (in a lawful situation), as is specified in its scope of application (Article 1). The only groups that may be explicitly excluded from application of the Labour Code are public servants, the administrative councillors of undertakings, persons who are involved in mercantile operations, and persons who work in a family undertaking and who do not have the status of a gainfully employed person. One of the clearest pieces of evidence that the Labour Code does not discriminate between national workers and immigrant workers may be the actual absence of any specific mention of the latter group. The term 'foreigner' appears in only two articles and even then it is always to indicate a right of equality with the national workers. In the first case, reference is made to the possibility that foreigners in an unlawful situation (under Act 7/85) may be hired (Article 7.c), and in the second, they are placed on an even footing with national workers in their right to elect and be elected in any electoral processes carried out within the undertaking (Article 69).

The Labour Code has been widely amended (Act 11/94); however the modifications that have been made do not affect the discrimination in employment to which immigrant workers may be subject. Throughout the whole of Act 8/80, there is a scattering of specific points which have anti-discriminatory connotations. For example, Article 3, which deals with the regulation of labour relations, states that "under no circumstances, may the worker be subjected to conditions which are less favourable than those stipulated by legal provisions and collective agreements"; and the following Article lays down the right of not being discriminated against "in access to employment or once employed" for various reasons, among which are enumerated race and language within the Spanish State (Article 4). These aspects are related to certain ILO Conventions: No. 97 (1949); No. 111 (1958) and No. 156 (1981).

However, there is no doubt that the most important article and the one which is directly related to the subject of this study is Article 17. This makes reference to the rights and duties that derive from the contract of employment, and paragraph 1 of this Article stipulates as follows:

Shall be considered null and void any provisions of regulations, clauses of collective agreements, individual pacts and unilateral decisions on the part of the employer which contain unfavourable discrimination on the grounds of age or which contain favourable or adverse discrimination in employment, in the matter of wages, hours of work and other conditions of employment, for reasons of sex, origin, marital status, race, social condition ... and language within the Spanish State.

Although this paragraph does not stipulate the term "nationality", it is understood that it also applies to foreign workers both in the spirit of the Code and for the fact that ILO Convention No. 97, which has been ratified by Spain and consequently integrated into its national legislation, stipulates the phrase "without discrimination in respect of nationality" (Article 6.1 already referred to) (see ILO, 1988).

Act 7/85 on the rights and freedoms of foreigners in Spain, also known as the Foreigners Act, was passed to fulfill the constitutional requirement (Article 13) of laying down provisions to regulate the situation of foreign residents. The introduction to the Act talks of the concern about offering foreigners a "maximum quota of rights and freedoms, the exercise of which would, in practice, place them on an equal footing with Spaniards themselves". It also claims to "promote the integration of foreigners into Spanish society ". The law lays out the form and conditions for

obtaining the various work permits which allow foreigners to reside and work lawfully in Spain, the restriction being that there are no Spanish workers unemployed in the same sector or office in which the foreign worker who is applying for a permit, is to work. Some of the conditions that are laid down for the granting of work permits may be considered discriminatory since they create differences of treatment based on the preference given to certain nationalities or cultures, and in particular Hispanic Americans, Portuguese, Filipinos, Andorrans, citizens of Equatorial Guinea and Sephardim ; this applies both to the obtaining and renewal of work permits (Article 18. 3), and for exemption from the costs that these involve (Article 23). The Ombudsman has laid before the Constitutional Court the unconstitutional nature of various Articles in this Act, claiming that they violate the principles of equality of rights and freedoms of foreigners. This Court has recognized this in part (BOE, 3.7.85).

The adhesion of Spain to the European Communities, and consequently to the agreements on the free movement of workers who are nationals of countries in the Community, established a new category of immigrants which modified the legal status of the foreigner of Community origin. This was specifically regulated by **Royal Decree 766/92** which repealed Royal Decree 1099/86. All this brought about new differences of treatment although these are not so much in relation to rights in employment, since these are the same for all lawful immigrants, except at the time of being hired, since the Community Directives speak of equality in and for employment (it is useful here to note Regulations 1612/68 and 1251/70). The problem stems, for example, from the need to obtain a work permit and the conditions for obtaining such a permit as laid down in Act 7/85. These requirements apply exclusively to immigrants from outside the Community. In contrast, workers of Community origin require only a residence card which is free of charge and automatically renewable in the majority of cases.

Royal Decree 1119/86¹ approves the application order for Act 7 / 85 on foreigners and contains a number of the articles relating to non-discrimination in employment. It states that "wages and other conditions of employment for foreigners authorized to work in Spain for a third Party may not under any circumstances be lower than those laid down by the applicable standards on Spanish territory or stipulated in collective agreements for Spanish workers in the field of activity, category and locality in question" (Article 32). Consequently, the labour office shall be required to refuse a category A work permit (such a permit is for seasonal, cyclical or temporary work and is not renewable) and a category B work permit (valid for a specified occupation, activity or area of work, its duration of validity cannot be longer than that of the employment contract, and renewable on an annual basis) whenever "the conditions laid down in the contract which accompanies the application for the permit in question are less favourable than those stipulated by the standards in force for the same activity, category and locality" (Article 37.4 b).

This Royal Decree contains features which are discriminatory. They bring about inequalities of treatment in the award of certain residence/work permits depending on the origin of the immigrant (in particular Articles 39.2 and 39.3). Royal Decree 1119/86 gives the Labour Inspectorate responsibility for supervising the legal provisions that apply to foreign workers (Article 78).

Royal Legislative Decree 521/90 approves the text drawn up by the Labour Procedure Act. This Royal Legislative Decree contains two provisions related to discrimination. On the one hand, it renders null and void any dismissal which is based on "any of the grounds of discrimination laid down in the Constitution and in the law, or the violation of the worker's basic rights and public

¹ BOE, 12.6.86

freedoms" (Article 108.2); on the other hand, it states that the termination of the contract of employment shall be null and void if "it is discriminatory or contrary to the worker's basic rights and public freedoms" (Article 122.c). Even though these two articles are positive to the extent that they protect the worker from dismissal based on discrimination, their application in practice, however, may not be quite so positive for the immigrant worker. What may happen is that it produces an effect contrary to that which was intended - namely, that of combating discrimination - by the immigrant losing his job (it being declared null and void). This may even endanger his lawful status since, without a legal employment contract, he will not be able to retain his residence/work permit.

Up until now, we have focused on the legal framework for wage-earning immigrants or, using the terminology of the Labour Code, "persons working for a third party". As far as foreigners who are working as self-employed persons in Spain are concerned, the legislation does not stipulate specific working conditions; however, these persons are also the subject of discrimination depending on whether or not they are nationals of the European Union. They are affected in the same way by the requirement to possess the combined residence and work permit (Article 13.1 of Act 7/85). They are also subject to the various schedules mentioned in Article 18.3 concerning preferences when obtaining the work permit. In the case of foreign workers who are self-employed, and who wish to set up a commercial business, it is obviously not the presence of unemployed Spanish workers which can restrict the award or not of a work permit for self-employment, rather it is the "Degree of saturation in the locality" (Article 1.3 sections a and b of Royal Decree 1884/78).

As far as freedom of association is concerned, Spanish legislation recognizes this right and makes no distinction between national and foreign workers. In this, it follows the concept of equality of workers which derives from the Labour Code and from international standards, and in particular those of the International Labour Office. In this context, **Act 11/85 concerning freedom of association** is quite clear when it states that "all workers are free to become members of a trade union to promote and defend their economic and social interests" (Article 1). These stipulations are in line with those of ILO Convention No. 97 (1949), Article 6 a ii.

There is considerable ambiguity in the area of labour standards. Although the starting point for the situation is that the right to work is recognized only specifically for Spaniards (Article 35 of the Constitution), it is clear that the laws in question have a high level of social content, and that they also apply to lawful immigrants who are working in the country. **Act 51/80, the Basic Employment Act**, states that "The basic principles of employee hiring policy shall be equality of opportunity and treatment in employment, and that it shall not be possible to lay down any distinction, exclusion or preference based on the grounds of race ... national origin or social origin" (Article 38.2). The fact that specific mention is made of matters related to employee hirings will have a positive impact on immigrants who are nationals of countries in the European Union, or on Spanish ethnic minorities; however it will not impact positively on immigrants from other countries even though the use of the term "national origin" is ambiguous. Nevertheless, in the setting of employment standards, the most controversial item is that of unemployment benefit. There are contradictions between the labour legislation and the legislation on foreigners which may be considered as definitely discriminatory towards immigrants who have paid contributions to cover this contingency, since they depend on the possession of a work permit. For example, Act 31/84 on employment protection specifies the reasons for which this benefit may be terminated. However,

this Act speaks only of refusal of or a negative unfounded response to an offer of employment; at no point is any explicit reference made to the continuing validity of work permits.

Act 10/94 on urgent measures for the promotion of employment stipulates that private employment agencies "should guarantee, in their field of activity, the principle of equality in access to employment and they are not permitted to institute discrimination based on grounds of race ... origin, etc." (Article 1.2).

Among the aspects related to equality of treatment in employment, there are also the principles which are laid down in **Act 7/89 on labour procedure principles**. This Act looks at the matter of legal aid for all "workers, public social security scheme beneficiaries and those who have insufficient resources to enter into litigation" (ninth principle). It also addresses the subject of reversing the burden of proof in the procedures to be followed in cases of discrimination on the grounds of sex; such an approach would also be very usefully applied in cases in which there is an accusation of discrimination in employment on the grounds of race.

4.3. Social security provisions

One of the situations in which immigrants have legal equality with national workers is in the social security scheme to which they are both required to pay contributions. However, what is sometimes not quite as clear in practice is whether this equality in duties (the need to pay contributions) also applies in the area of rights (access to benefits).

Resolution of 15/4/68, develops on what is laid down in ILO Convention No. 97, confirming equality between Spanish workers and "immigrant workers who are lawfully on Spanish territory, without discrimination on grounds of nationality, race, ... etc., without prejudice to the contents of international conventions or agreements for the preservation of acquired rights and rights in the process of acquisition" (paragraph 1.a). This is a situation which exists in spite of the fact that the amended text of the **General Social Security Act**¹ continues to institute discrimination in the equal footing of some immigrants in comparison with others, on the basis of their cultural origins or their nationality (Article 7).

As far as workers from Member States of the European Union are concerned, the applicable standards are to be found in the Council of the European Communities Regulations Nos. 1408/71 and 574/72.

4.4. Public law

In addition to the specific labour legislation, there are also general laws which contain articles applying to discrimination against immigrants. As an example, we will here take a look at what appears in the **Civil Code** which states that "in Spain, foreigners shall enjoy the same civil rights as Spaniards except where provisions to the contrary are laid down in special laws and in treaties" (Article 27); this is in accordance with Article 13.1 of the Constitution. If we look at the procedure

¹ Approved by Royal Legislative Decree 1/94.

for acquiring Spanish nationality or dual nationality, we will once again see that there is discrimination between migrants based on the duration of residence in Spain stipulated for the acquisition of this nationality. Article 22 lays down a period of ten years except in the case of "nationals of Hispanic American countries, Andorra, the Philippines, Equatorial Guinea, Portugal or Sephardim for whom their respective situations shall apply". Recent data show that "the percentage of Hispanic Americans to whom Spanish nationality is granted is, in some cases, as high as 52 per cent of the number granted each year ... an average of 12,000 to 15,000 each year" (Aragón, 1994, p. 16).

The **Penal Code** also contains a number of articles which punish discrimination and racism. For example, Article 165 lays down a penalty of imprisonment and a fine of 10,000 to one million pesetas for any person working in a public service who refuses a benefit to anyone who has a right thereto, on the grounds of his belonging to a certain ethnic group or race. This article is related to Article 194 which disbars from employment in a public authority or as a public servant anyone who prevents a person from exercising civil rights recognized by the law, as well as anyone who "by making use of machinations or malicious procedures, imposes on the workers in his service conditions of work or social security which are prejudicial to the rights that are recognized by the law or by trade union collective agreements" (Article 499 bis).

Also of considerable importance is article 173.4 which declares unlawful any association which "promotes or incites to racial discrimination". Nevertheless, there is no reference to reparation to compensate for any damage suffered by the victims of racist action, as is common in other legislations and which is, moreover, specified in Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) which Spain has signed and ratified "... as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination". Here too, it is possible to appreciate the lack of specific anti-discrimination legislation.

It is important to point out that, currently, racist or discriminatory acts are not considered to be aggravating circumstances in a crime; however, according to declarations made by the Minister of Justice to the media, it seems that the new Penal Code will contain measures that reinforce the combat against discrimination and racism. This is an item which figures in the Twelfth Report that Spain submitted to the Committee for the Elimination of All Forms of Racial Discrimination: "the draft Penal Code, which is currently under discussion by Parliament (1992), lays down racial discrimination as an aggravating circumstance in crimes against persons" (Twelfth Report submitted by Spain at the 43rd session of the CERD Committee, 1993, item 5, p. 2).

Although there is no standard which sets a figure for the reparation of damage or prejudice caused by discriminatory action, there is still the possibility of receiving compensation in the presence of a misdoing or crime. This is reflected in various articles of the Civil Code, the Penal Code and the Royal Decree promulgating the Act on criminal indictment in which it is stated that "every crime or misdeed shall give rise to penal action for the punishment of the guilty party, and there may also be civil proceedings for restitution of the items in question, reparation of damage and compensation for prejudice caused by the punishable event" (Article 100). With respect to responsibility in a crime, including discrimination, there are clear references in the Civil Code (Article 1902) and in the Penal Code (Articles 19, 101 and 104). Article 1902 of the Civil Code stipulates that "he who, by commission or omission causes injury to another, shall in the event of guilt or negligence, make reparation for the damage that has been caused".

4.5. Infractions and sanctions

Act 8/88 on social order infractions and sanctions (BOE, 15.4.89) brings together various types of conduct "contrary to social order" in matters of employment, social security, migration, immigration and work by foreigners. It also specifies the types of misdeed and the corresponding sanctions that derive from non-implementation of labour legislation. Act 8/88 cancels Article 57 of the Labour Code (labour infractions by the employer). It also stipulates that the Labour Inspectorate is the administrative body responsible for instituting punitive administrative procedures (Article 1.2).

Chapter V is devoted specifically to migrants and, curiously, the only infractions on the part of the employer that are considered are those related to the unlawful hiring of immigrants (Article 35.1); there is no mention of action on the part of the employer who imposes inequality of treatment in employment against foreign workers. It is possible to deduce from this that the other types of misdeeds committed at work, including for example those that introduce discrimination in conditions of work on the grounds of nationality or membership of a social or ethnic group form part of the misdeeds and infractions that are breaches of the rights recognized for all workers, as is defined by the concept of labour infraction: "actions or omissions on the part of employers, which are contrary to the law, regulations and standard-setting clauses in collective agreements on labour matters, occupational safety and health, and which are categorized and sanctioned under the present Act" (Article 5). This equal standing between lawful immigrants and Spanish workers from the point of view of sanctions for non-application of labour legislation is already to be found in Article 12 of Decree 1860/75 mentioned below.

There are three levels of sanctions: light, severe and very severe, depending on the duty which has been infringed and the item of law affected. Amongst those most closely connected with our study, is the one which characterizes as a severe infraction "unilateral modification by the employer of the substantive conditions of work in such a way that they do not conform to what is laid down by the Labour Code" (Article 7, paragraph 49) or "creating conditions of work which are less favourable than those recognized by the law or laid down by collective agreement, and acts and omissions which were contrary to the workers' rights" (Article 7, paragraph 9).

More severe infractions and ones which are more focused on the act of discrimination are described in Article 8.12 as "unilateral decisions on the part of the employer which involve unfavourable discrimination on the grounds of age or which involve favourable or adverse discrimination in relation to wages, hours of work, training, promotion and other conditions of work, for reasons of sex ... race ... and language within the Spanish State". Furthermore, article 28.2 refers to "drawing up conditions by means of publicity, dissemination of job offers or any other means, in such a way as to constitute favourable or adverse discrimination in access to employment on the grounds of sex or race".

Types of sanctions

Article 37 refers to a gradation of sanctions "which may be set out in minimum, medium or maximum grades". Paragraphs 3 and 4 of this Article specify the amounts of the fines for the severe and very severe misdeeds.

The administrative procedure for imposing sanctions for infraction of social laws is laid down in Decree 1860/75 (BOE, 12.8.75). Although this Decree has since been amended and updated, it still maintains in force its Article 12 which deals with infractions involving the non-application of the provisions regulating the employment, working conditions and establishment of foreign workers in Spain.

Act 11/94 amends certain articles of Act 8/88. Although there are no significant changes in the substance of what has been described above, it does bring under the heading of severe infractions those which establish "by means of publicity, broadcasting or any other means, conditions which discriminate for or against access to employment on the grounds of race, sex, age, marital status, religion, political opinion, trades union membership, origin, social condition and language within the State (Article 28.2)."

5. Protection in discrimination disputes

The protection and defence of the rights of foreign workers in Spain is laid down by a complex and varied legal framework, whether international or national. The starting point is that every individual has the right to legal protection (Article 24 of the Spanish Constitution) and, consequently, there must be mechanisms and institutions that make this possible.

First and foremost it should be borne in mind that, in general, immigrants are not personally able to place their complaints before the various international institutions and tribunals which oversee the implementation of international agreements and conventions ratified by Spain on an individual basis. Instead, they have to do this through legal representatives, such as for example, their trade unions. The most suitable institution for the submission of complaints on labour discrimination matters would be the International Labour Organization, should it be considered that it is one of the items dealt with in Conventions No. 97 (1949) or No. 111 (1958) which has been violated. The Committee for the Elimination of All Forms of Racial Discrimination has an "indirect" supervisory function (States Party are required to submit to this Committee reports on their policies, measures and application of anti-discriminatory legislation). However, Spain has not ratified Article 14 of this Convention which makes it possible for complaints, including petitions from individuals, to be placed before the Committee should it be considered that any of the Articles of this Convention have not been implemented.

Within the European Union, it is the Court of Justice of the European Communities which is the ultimate body for the adjudication of disputes on matters of discrimination against migrant workers. Clearly it is not the workers themselves who can directly submit their petition to the Court of Justice; instead, it is national courts which make the submission where there is doubt as to the interpretation which should be given to the Community social standard. It is therefore the "task of the worker to establish reasonable doubt so that the national court calls on the Court of Justice of the European Communities to give its clarification" (Rojas, 1992. p. 170).

As we have already seen with respect to legislation, there are in Spain a variety of bodies and institutions that act as internal mechanisms for overseeing the rights of immigrants. It is these which, to a greater or lesser degree, have the function of supervising the effective and real implementation of anti-discrimination standards for ethnic minorities and immigrants. What does

not exist, however, is an official institution which has as its actual task the responsibility of informing interested parties, overseeing the application of anti-discrimination legislation or promoting equality of treatment of the target groups for our study, similar to those that exist for example in Belgium, the Netherlands, the United Kingdom, Sweden, Canada or the United States (Raskin, 1993; Rutherglen, 1994; Zegers de Beijl, 1992). Whatever the case, however, immigrants may have recourse to the courts no matter which branch of the system is involved (Penal, Civil, Administrative or Labour) "without any distinction being laid down on the basis of nationality" (Polo, 1994, p. 374). They may also make an appeal on constitutional grounds to the Constitutional Court once they have exhausted the lower legal stages.

In Spain, subjects related to foreigners fall within the bailiwick of four ministries: Foreign Affairs, Labour, Social Affairs and the Interior. Furthermore, it is necessary to add to this the Ministry of Justice since we are dealing with the legal suppression of discrimination. This structure, rather than guaranteeing clear State activity in the defence of ethnic minorities and immigrants, does instead scatter the State's activities, whilst remaining effective and efficient. In order to bring unity to the various official institutions responsible for matters relating to foreigners, the Interministerial Commission for Foreigners has been set up.

We may now mention the official institutions and bodies which oversee the rights and freedoms of foreigners in general: the Constitutional Court, the Attorney-General, the Courts of Justice and the Ombudsman. Then there are others which focus their activities on the defence of these groups specifically in the world of work: the Labour Inspectorate, and to a lesser extent, the Provincial Labour Directorates and the Directorate General of Migration.

5.1. Framework of foreign nationality

The Constitutional Court is the competent body to which all persons, including foreigners, may submit an appeal for protection if they consider that any of their rights or liberties as granted by the Constitution have been violated (Article 162 1b of the Spanish Constitution). Appropriate action can also be taken here by the State Attorney-General when he is in the process of "promoting the action of justice in the defence of legality, citizens' rights and the interests of the public supervised by the law, either as a function of his office or after having been petitioned by interested parties" (Article 1, Act 50/81). This means that he can receive accusations and place them before the judicial authority (Article 5). Furthermore, he has the power, through an annual report, to put forward to the Government "reforms appropriate for achieving greater efficiency in the judicial system" (Article 9).

If discrimination takes place on the part of the public administration, by commission or omission, any person whatsoever, be he an individual or corporate body (including an unlawful immigrant) may address a petition to the Ombudsman. It is interesting to note the fact that "neither nationality ... nor the legal incapacity of the subject" (Article 10, Act 3/81) are impediments for putting forward a petition, free of charge, to the Ombudsman. Should the Ombudsman consider it appropriate, he will initiate an investigation to clarify the facts. The competence of the Ombudsman includes supervision of the administration's activities and the formulation of proposals for rectifying any irregularities it is presumed that the Administration may have committed. Furthermore he has the ability to institute, by nature of his office, proceedings against those who may be perpetrating irregularities.

5.2. Framework of employment

As far as the specific supervision of non-discrimination in the world of work is concerned, it will be the Labour Inspectorate that acts as the technical arm of the administration with responsibility for the effective implementation of labour legislation (Act 39/62). Under Article 11 of this Act, the Inspectorate has the possibility of acting on its own initiative or in response to an accusation.

Decree 2122/71 stipulates that the Labour Inspectorate is required to pursue the application of the law under the "regime of employment, labour and the establishment of foreigners in Spain" (Article 2, III, paragraph 12). It should be noted for the record that Royal Decree 1119/86 also entrusts the Inspectorate with the same role.

Very close and complementary to the work of the Inspectorate are the tasks carried out by the Provincial Labour Directorates. Royal Decree 1801/81 entrusts to these Directorates the supervision and control of migration movements and any other questions related to the matter of employment and social promotion, including the prevention and sanctioning of fraudulent activities in the hiring and employment of workers (Articles 13 and 19).

The General Directorate of Migration, which is the administrative body most directly involved in questions of migration, does not have any clear and direct function in the supervision of immigrants in relation to suspected labour discrimination. However, its work does focus particularly on the implementation of an "active immigration policy ... and the design and application of programmes for social promotion and integration targeted at the immigrant community" (Royal Decree 1458/91). Nevertheless, it has the possibility of drawing up and proposing changes in the legislation applying to immigrants since it has responsibilities aimed at the promotion and social integration of immigrants in collaboration with other institutions in the Administration. It is here that the General Directorate of Migration derives its weight and importance: promoting activities and programmes which encourage equality of treatment between national and foreign workers.

However, in many cases, the most direct and effective protection of immigrants and ethnic minorities is carried out by the trade unions and other non-governmental organizations which, since they have close contacts with these groups, provide guidance and advice concerning petitions which may be made on the subject of discrimination.

6. Evaluating the effectiveness of the legislative and institutional framework

Is the existing legislative and institutional framework really effective in protecting the migrant from racial discrimination in employment, or does it have deficiencies and problems which undermine its action?

6.1. Legislative framework

The Spanish anti-discrimination legislation may be accused, at least, of being passive. Although there certainly are provisions which can protect workers from racial discrimination in employment, it is no less true that these are little used in practice by the groups in question. It is necessary to start out from the finding that "the Constitution offers the possibility of legitimately introducing differences in treatment not only between nationals and foreigners but also between foreigners themselves. This is based on kinship relations with nationals, on responsibility and office, and on the actual nationality that is put forward" (Santos, 1993, p. 105).

It is also necessary to make a distinction between two differentiated groups of standards in the legal and labour status of foreigners: the foreigner's legal situation before he was integrated into the labour market, and the legal status applied to him once this integration has taken place (Olarte, 1993). This is because it is the employment contract which is the "factor from which originates total equality in labour relations" (Cardona, 1990, p. 1169).

On paper, Spanish labour law is not discriminatory in the case of immigrants who are working lawfully in the country. This is because the various labour laws and standards, starting with the most important, the Labour Code, do not discriminate between workers on the grounds of their national origin or of their membership of different ethnic groups. Furthermore, there are standards which sanction the various circumstances in which situations of inequality of treatment in employment may occur. However, the existence of all these standards does not guarantee that, in reality, there are no cases of discrimination in employment and in access to employment (see Part A) and, less still, that these will be punished.

In order to focus on the subject of discrimination against immigrants in employment in the Spanish legislation, it is necessary to take into account two key circumstances: (1) labour discrimination against foreigners is not classified - "professed" - as a crime; (2) the discriminatory and controlling nature of general legislation on foreigners.

The first item is of major significance: since labour discrimination on the grounds of nationality is not classified as a crime, there is really no possibility of taking legal proceedings for discrimination in employment based on this factor. All that can be done is to start proceedings for non-application of labour legislation which dilutes the legal impact in this type of case.

There are a number of reasons why there is no specific anti-discrimination legislation. These reasons include, first and foremost, two which have a historical basis: (a) the country's as yet limited democratic tradition which, little by little, is being bolstered by a legal corpus which is more in line with the defence of human rights as has been promulgated by the 1978 Constitution; and, in particular, (b) the recent change that has turned Spain from a country of emigration into a country of immigration. Second, there are reasons based on socio-economic factors. The country is moving away from a situation in which the resident foreigner was complementary or had little impact on the labour market, to a situation of labour competition. Before the process of regularizing the situation of unlawful immigrants was launched, around 60 per cent of the regular foreign population was inactive (Aragón Bombín and Chozas Pedrero, 1993, p. 183), with high income levels - or retired - meaning that this foreign population was not competing on the labour market, or rather just the opposite. As far as the origin of this population is concerned, at least up until 1985, the date on which the first of the two regularization campaigns was launched, the majority were nationals of member countries of the European Union (OECD, 1993 and Ministry of the

Interior, 1992), and this seemed to a factor in avoiding the development of social and labour discrimination.

As far as the second point is concerned, it can be seen that the main problem in the legislation on foreigners is that it deals more with quasi-police aspects and legal requirements that have to be met by foreigners, than with laying down rights and promoting measures to achieve integration. "there is no migration policy, i.e., a global plan which has an integrated view of all the aspects of the migration phenomenon. In fact, there is scarcely an incoherent, let alone coherent, outline of such a policy. What we have available so far is a few standards dealing with foreigners which, as such, emphasize the purely control and administrative aspects and which are characterized by precarity and instability, and probably have a dissuasive objective" (Santos, 1993. p. 31). Professor Segarra even goes as far as to speak of "contradictions between the preamble and the articles" of Act 7/85 and adds that "the discretionary may often become the arbitrary in the hands of any person who either is or believes himself to be invested with public authority" (Segarra y Trias, 1991, pp. 101-102). Cristina Polo states that "the concern to recognize the maximum amount of rights and liberties for foreigners is far distant from the real effects produced in their legal situation" (Polo, 1994, p. 76). For this reason, the Plan for the Social Integration of Immigrants, approved in December 1994, is an important step forwards. It aims to correct the extremely marked controlling approach to migrants that is to be found in Spanish laws on foreigners.

It is possible to summarize the problems and shortcomings of Spanish legislation in the following points.

(1) Differentiation in treatment

First, there is a difference in the treatment given to national workers and foreign workers in access to employment, which is of constitutional origin. The essence of this is to be seen in judgement 107/84 of the Constitutional Court in which it is stated that "there is neither treaty nor law which lays down equality of treatment between nationals and foreigners in access to employment". It may seem that this aspect forms part of international standards such as ILO Convention No. 97 (1949). However, there is no mention in this Convention of a right of access to employment under equal conditions with a national. Equality in titularization and exercise of labour rights is acquired once the worker has been hired. As far as Olarte is concerned, this may "introduce a legal exception to the constitutional principle of equality" (Article 13 and Article 14 of the Constitution) (Olarte, 1993, pp. 548-549).

Some authors, such as González-Sancho, are of the opinion that the fact of including the nationality clause, in both national and international standards, supposes discrimination *per se*, because it contributes to reducing rights and obligations for which contributions have been paid - reference is made here specifically to the social security legislation - on the simple grounds of nationality (González-Sancho, 1993. p. 169).

There are also differences in treatment within the regulations on foreigners themselves. These are due, for example, to discrimination between immigrants when their residence/work permits are being awarded or renewed. There are two aspects which should be noted in this respect. First, there is the different status of workers who are nationals of Member States of the European Union; these workers require no work permit, only a residence card which is free of charge and automatically renewable, as is stipulated in Royal Decree 766/92 (see p.68). Second, there are the

preferences which have been established for certain nationals of countries with which Spain has historical and cultural ties. Act 7/85 and Decree 1119/96 specify certain preferences in relation to work permits. For example, the legal residence time required in order to obtain a five-year permit is two years of residence for Hispanic American immigrants, Portuguese, Filipinos, Andorrans, citizens of Equatorial Guinea or Sephardim and eight years of legal residence and ownership of a work permit over the 12 months immediately preceding the application, for all other immigrants (Article 39.2.b and 39.3). Another discrimination based on the regulations for work permits is that only immigrants who hold a five-year permit can benefit from the subsidies provided by employment promotion programmes.

The discrimination that is produced by all these differences between immigrants on grounds of their origin has been demonstrated during the recent immigrant regularization procedures. For example, in the last two regularizations, no less than 73 per cent of the permits granted were of type B (one-year duration). In the opinion of Aragón Bombín¹, "this may be explained by the large size of the Moroccan population which has not been able to benefit from the special treatment given to the Hispanic Americans who, after having been residents for two years, can obtain a class C (5-years duration) permit"(Aragón, 1994, p. 16).

On the other hand, Act 7/85 also imposes discrimination when residence/work permits are being awarded, depending on whether the applicant is a wage-earner or a self-employed person. The latter encounter fewer obstacles in obtaining documents which certify their legal status; this is attributable to various reasons. One of these, which is very important in practice, is that the applicant is not dependent on a third person, namely the employer who would have to certify that there is a contract of employment and that the employers' contributions have been paid to the social security. Instead, it is the self-employed person himself who has to certify that he is in possession of the necessary documentation and authorizations required for obtaining the permit, and this he does using the same procedures as those employed by Spaniards who are self-employed (Article 17.3).

Due, perhaps, to the lack of user-friendliness and the complexity of the whole work-permit regulatory system, Professor Ojeda Aviles states that "all these regulations about work permits are nothing if not discriminatory since they infringe Article 17 of the Labour Code, and it is only the foreign worker who is compelled to obtain a residence permit" (Ojeda, 1984, p. 229). Furthermore, the need for a work permit brings about other differences in treatment between national and foreign workers. This can be seen from the judgment given by the Central Labour Court explaining that the foreign worker is not able to obtain fixed-term contracts or contracts of indefinite duration since "such a contract depends on the existence of a permit of a duration that is in line with the length of the contract" (Central Labour Court, Judgment 15.6.88). Polo talks of indirect discrimination when the contract is terminated due to the fact that the labour permit has run out. This is not covered by the established regulations for cases of dismissal since it is not the outcome of a unilateral decision on the part of the employer (Polo, 1994, p. 148).

(2) Imprecise terminology

One of the main problems here is the imprecise terminology that is to be found in the legislation. This shows its itself in two ways: (a) vagueness about the groups which are affected by anti-

¹ Director General of Emigration

discriminatory standards; and (b) lack of precision about discrimination on the grounds of "nationality".

As far as the former lack of precision is concerned, there is the difficulty of defining the term "foreigner"; this is because there is a lack of uniformity in the use of the phrase "legal status of foreigner" (Polo, 1994, p. 41). The use in the legislation of terms such as "race" or "origin" are ambiguous and obscure depending on whether or not they apply to foreigners in general, to certain groups of non-nationals, or exclusively to Spanish citizens of different races or ethnic groups. The Constitution speaks of citizens, persons and foreigners, and the laws in which reference is made to the various situations of migrants in relation to equality of treatment, speak of race, social origin, etc. However, in no case do they use the term "other nationality" and this gives rise to major doubts concerning the application of many of these anti-discriminatory articles to immigrants (Polo, 1994, pp. 54 and 108). The Labour Code seems to be more clear in this respect since it says textually that "this Act shall apply to workers who voluntarily offer their paid services to a third party and within the organization and under the direction of another physical or legal person, termed employer" (Article 1.1). In the same way as other authors (Polo, 1994, pp. 78, 80, 82, 146 and 181), we understand that the term worker here covers everyone who has a wage-earning relationship, without entering into any distinction as to whether the worker is a national or an immigrant.

As far as the other terminological imprecision is concerned, it is widely accepted, especially in the Labour Code, that a person may submit a petition for having been discriminated against on the grounds of age, sex or marital status; however, he cannot do so on grounds of nationality. It would be necessary to strengthen the civil and social legislation which would sanction specifically and precisely discriminatory attitudes on the grounds that a person is of a specific nationality and would deem racism to be an aggravating circumstance in a crime.

It is also understandable that punitive legislation focuses on controlling and avoiding fraud on the part of employers in the bureaucratic and legal aspects of the employment of immigrants. These may include fraudulent hirings, tax fraud or the non-implementation of social standards (occupational safety and health, trade union rights, etc.). Sanctions may also be characterized by different types of discrimination (sex, age, etc.); however, nowhere does there appear to be a punitive concept concerning discrimination aimed directly at immigrants in employment and in access to employment.

(3) Discretion and lack of coordination in the setting of standards

Reference has already been made to certain problems of difference in treatment due to overlaps and contradictions (Moya, 1993) that are to be found between some standards relating to foreigners and others relating to labour affairs. Other authors speak of the discretion exercised by the administration with the legislation on foreigners constantly having recourse to non-specific legal concepts, which brings "total insecurity to being a foreigner" (Adroher, 1992, p. 584).

The most flagrant cases occur in the area of unemployment benefits which, according to *ad-hoc* legislation, are dependent on the continuing validity of the labour permit. The conflicts with the national employment institute (INEM) on aspects related to the cover of unemployment benefits and to the registration of immigrants who are unemployed as job seekers, leads to casuistry that is paradigmatic of the type of problems that are raised by the dispersion of standards and the diversity of competence of the administration in relation to the legal and employment status of immigrants.

The general legislation on foreigners in which are laid down the standards concerning residence/labour permits, does not specify any hypothesis in relation to the labour permit running out/being renewed during a period in which the immigrant is unemployed; this is fundamental in interpreting labour legislation on this subject. Unemployment benefits for foreign workers are dependent on the continuing validity of the labour permit which certifies the worker's fitness for employment. This is a fundamental premise for receiving benefits (Article 17 of the Basic Employment Act and Article 1.1 of Act 31/84 on Unemployment Protection). Here we are confronted with manifest discrimination, since the immigrant loses a right which belongs to him because he was paying contributions whilst he was working, i.e., which comes under labour legislation, and he loses this right as a result of provisions which fall specifically within the legislation on foreigners. A judgment by the Central Labour Court (19.12.84) states that "once a person has started to receive a benefit, this benefit must continue, independently of other circumstances, for a time which depends on the corresponding time of employment during which contributions were being paid". In this context, Olarte puts forward an example of this lack of legal precision in citing a judgment by the Upper Court of Justice of the Balearic Islands (13.2.91) in which it was decided to limit the unemployment benefit to an immigrant who had paid contributions for this contingency and who, nevertheless, found himself denied this benefit since his work permit had run out (Olarte, 1993, p. 569). In the opinion of González Ortega, "Protection is provided not for the lack of employment but for the loss of work and employment immediately prior to this situation" (González, 1985, p. 232).

We may conclude on this point by turning to the clear and incisive opinion of Sofia Olarte when she says at "the high level of legal imprecision raises numerous problems when the legislation has to be put into practice. Consequently it may be said that, on the one hand, appearances are maintained (we do not in fact find a single legal reference which excludes foreign workers from the unemployment protection system) yet at the same time, the various standard-setting components come together in such a way that the degree of imprecision is the maximum possible. This brings about a despicable number of litigations which contrast with the ignorance of this matter on the part of labour legislation which, perhaps, did not consider both immigration trends and emigration trends" (Olarte, 1993, p. 569).

(4) Apprehension about making accusations

During the implementation of this study, we found confirmation of the difficulty that exists in localizing petitions on labour discrimination submitted by immigrants. This makes it difficult to appreciate with precision the size of the problem and the real effectiveness of the measures adopted on this matter. Nobody will make use of a legitimate right if the price to pay might be too high. Consequently, it seems clear that the immigrant worker does not submit petitions about discrimination since he fears the employment reprisals which might be brought about by him demanding the equality of treatment that social legislation offers. The most significant evidence of the fact that legal anti-discriminatory measures are of little validity as far as their real and symbolic impact is concerned, is the small number of the petitions that have actually been submitted.

Calderón Fochs, in his report on racial discrimination in employment in Spain, states "the issue of discrimination towards immigrants of another race or ethnic origin in labour relations does not often come up before the courts" and "it is therefore practically impossible to follow up on jurisprudence in the subject" (Calderón, 1994, p. 130).

The origin of the apprehension experienced about submitting petitions has its origins in a legislation on foreigners which makes the immigrant dependent on the employer for obtaining and maintaining his situation of legality for residence and employment. This "vital" dependence on a third party - the employer - is the most important difference in status that exists in comparison with workers who are nationals. The fact is that the bureaucratic and legal processes involved in obtaining and renewing permits mean that the foreign worker depends on the employer since it is necessary to provide documentary proof of the worker's situation by means of certificates that only the employer can provide (work certificate and certificate of employers' contributions to social security, for example). Consequently, what develops is a relationship of dependence which may easily bring about a relationship of submission in which the immigrant accepts discriminatory conditions of work.

As far as Spanish workers are concerned, reporting the employer for not having carried out the requirements of a labour standard might mean, at the worst, dismissal; however, these workers would continue to enjoy all their social rights, including for example their unemployment benefits, as guaranteed by their nationality. However, for immigrants, dismissal may mean that they lose everything. Even if the accusation that was made resulted in the employer being found guilty, this would almost inevitably result in the worker being dismissed with the possible repercussion of him losing the legal status that his residence and work permit confer on him (if he has "papers") and, subsequently, being expelled from the country. Consequently, with or without papers, there is no *de facto* equality between nationals and immigrants. In view of the fact that workers are confronted with pressure of this type, it is logical that there have been virtually no accusations made about discrimination in employment. Furthermore, there is an additional practical difficulty which is that of demonstrating that an act of discrimination has actually taken place. This would mean that the worker would have to be the actual victim to demonstrate that he had been discriminated against; and this is not always easy. First there is the actual nature of the discrimination that occurs and second the difficulty of finding witnesses since they themselves may also be the subject of employment reprisals.

When it comes to immigrants making use of international legislation that offers them protection against possible discrimination in employment, we once again found very few formal documented reports, either in the reports on the application of ILO Convention No. 97 (1949) nor in the reports relating to ILO Convention No. 111 (1988). All we found was a few reports on unlawful immigrants, for example, in sea food harvesting zones, although these are very vague and imprecise. If immigrants do not know about or do not use the internal procedures for reporting, it is even more difficult to think that they could use those procedures that are offered to them by international agreements. In this context, the trade unions have a very important role to play since immigrants are not able to make petitions individually to the ILO.

The legislative panorama of the European Union in relation to immigrants from third countries is scarcely any better since the measures taken so far are closer to matters of discrimination and exclusion based on economic and police factors than to those which are directed towards equality of treatment, which are in fact excluded from the protection offered by Community law (Ramos, 1993).

It seems clear that the number of petitions about inequality in treatment or directly about discrimination in employment and in access to employment is in no way related to the manifestly

discriminatory situation to be found in both Spain (see part A) and other European countries (Zegers de Beijl, 1992), in spite of the measures of legal protection that exist.

From all that has been said, we can state alongside Oscar López that "what we have in general is a labour scenario which is substantially to the disadvantage of the foreign community in comparison with the situations, laws and standards which govern the conditions of employment and the rights to work for nationals" (López, 1992, p. 38).

To conclude, we might say that the rapidly growing number of immigrants, together with the difficult situation on the Spanish labour market, raises problems of discrimination which make it necessary to review the real effectiveness of the policy on foreigners and the anti-discriminatory social legislation. Cristina Polo speaks of the inadequacy of legal standards as a mechanism for guaranteeing workers their rights since this makes it necessary for them to have recourse to the social courts if they are to obtain effective guardianship of these rights (Polo, 1994, p. 85). Consequently, the highest administrative body for migration matters, the Interministerial Commission for Foreigners has approved "a study of whether the legal instruments, the legal framework and, in particular, the regulations and the Act on Foreigners form the most suitable framework for achieving or facilitating the integration of immigrants" (Aragón, 1994, p. 21).

6.2. Institutional framework

Who really has the capabilities and capacity to supervise the effective implementation of the various existing legal measures or to propose new measures to provide solutions to problems that may arise, and how should this be done?

Spain is lacking an administrative body to take on the promotion and protection of the rights of immigrants and ethnic minorities. As matters now stand, the dissemination of legal resources and the distribution of the various relevant functions amongst a variety of bodies within the administration results in both overlaps and in gaps which need to be filled. What is happening is that each one of these bodies is being entrusted with different facets of the same problem, and in some cases without precise limits. Royal Decree 511/92 (BOE, 4/6/92) has set up the Interministerial Commission for Foreigners which brings together the various Ministries involved in the subject of immigration. Amongst its functions this organization has the possibility of proposing changes in the legislation related to anti-discrimination should it consider that there are inequalities of treatment between national and foreign workers which are manifest and which are not given protection by the current legislation. In addition, it has another, no less important, function which is to "promote the effective application of the civil, economic and social rights which are laid down for foreigners in Spanish legislation"(Article 3 f).

Although the Ombudsman has an established interest in the problem of immigrants (Defensor del Pueblo, 1994), his scope of action is restricted exclusively to submitting petitions and to reporting on discriminatory acts carried out in any institution or by any person in the administration. He does not, however, have the ability to amend the legislation or to impose sanctions for acts that have been committed. He can only recommend changes, for example that an Act should be declared to be unconstitutional.

The functions that have been assigned to the General Directorate of Migration (Ministry of Social Affairs) do not include the power to propose amendments to legal texts or the implementation of measures which would optimize the defence of equality of treatment in employment and in access to employment between migrants and national workers. Neither does it have the direct power of supervision and control of the legality of immigrants' employment.

Royal Decree 5121/91 (BOE, 26/10/91) on the establishment, competence and operation of the Foreign Community Offices has included among their activities "submitting to the competent bodies appropriate proposals for motions concerning any type of government sanctions in relation to the foreign community". We understand by this that the subjects in question will be related to the processing of permits and visas¹, i.e., related to Act 7/85 and not to conditions of employment, which would impinge on labour legislation. This once again underlines the tendency of the legislator to move towards controlling immigrants and not towards providing equality between lawful foreign workers and national workers.

The organization which is really in a position to operate in the area which is of concern to us, is the Labour Inspectorate. This is the body that the administration has made responsible for supervising the application of labour legislation and, consequently, for combating any discrimination which may occur against immigrants at work. Nevertheless, the activities of the Labour Inspectorate seem inadequate and, perhaps, insufficient to combat these discriminatory situations. However, the Inspectorate is required to carry out its work either through complaints - and we have already commented on the difficulties faced by the victims of discrimination in submitting this type of complaint - or through its own offices.

The little activity that the Inspectorate has in combating labour discrimination against migrants is mentioned in the Report of the Ombudsman for the year 1993, in which it is stated that "the Labour Inspectorate is building up its activities in controlling and sanctioning irregular hirings and sub-standard conditions of work" (Carta de España, No. 485, p. 17). In addition, nearly every time that the Inspectorate operates in the field of immigration, it is to detect illegalities in relation to clandestine workers, which often takes the form of activities against unlawful immigrant workers. Lidia Santos adds that, moreover, the pressure on employers responsible for unlawful employment is "minute" (Santos, 1993, p. 116).

In the contacts we made with the Labour Inspectorate in carrying out this study, the Inspectorate admitted not only the small number of complaints that occur but also that activities aimed at discriminatory action against immigrants and members of ethnic minorities are collected together in a sort of hotchpotch informatively entitled "other discriminations", for which the causes of the discrimination are not specified. Following the changes that were made in the structure of the information system of the General Directorate of the Inspectorate in 1994, the Inspectorate informed us that "it is following without effect to identify under the heading "Discrimination against other workers" the causes behind these incidents - excluding those of age, sex or inadequacy - although it has not abandoned the idea of considering a future modification to the information system in this direction" (letter from the Deputy Director of the Social Security Inspectorate, 19.8.94).

¹ See in this context: Art. 3, paragraphs A and B of Royal Decree 1521/91.

All this only goes to show a certain degree of indifference to the protection of lawful immigrants on the part of official institutions, and it also demonstrates the lack of reflection on their part in adapting to new circumstances, such as for example, the increasingly large number of immigrants. A tangible example of how far they are behind in bringing themselves up to date both formally and in standard-setting in relation to the integration of foreigners into the Spanish Social Security system can be seen from the fact that in the documentation for registering with (or being discharged from) the Social Security system, there are no data related either to nationality or to place of birth. How should one interpret this gap? Is it a lack of interest in knowing how many foreigners have been registered or discharged, or a total lack of discrimination in the system?

In view of all the above, we can state that there is a real distrust of the institutions, and especially of the police and the judicial system which consider that a national has precedence over a foreigner (López, 1992). Out of 20 submissions made by immigrants to the social courts between 1976 and 1994, only 23 per cent were favourably received. Specifically, as far as cases involving dismissal are concerned, during the same period, only 20 out of 121 were given judgments that were favourable to the immigrants (Cachón, 1994, p. 27). This may indicate a lack of modern legislative thinking in the face of the migration problem, although it is not possible to measure the effectiveness of the protection given by the social courts only on the basis of the percentage of judgments that were favourable to immigrants.

Beyond the institutions of the administration, the trade unions are, by their very nature, the social organizations which have the closest contact with immigrants. Consequently, they are the "natural" and direct channels for defending foreign workers against cases of discrimination. We should like to reiterate that the trade union is the necessary intermediary for submitting complaints to the ILO. The two most representative Spanish trade unions have specialized centres for helping foreign workers. Further to this, these workers need to be members of the trade union branch which corresponds to their occupation.

During oral statements (for the production of this report) made by UGT and CC.OO trade unionists on the occurrence of working and wage conditions which are discriminatory to migrants, it became apparent that discrimination on grounds of race is present in the working environment, but that it is not usually reported due to the fear of reprisals which might be brought about by the complaint itself, as has already been mentioned. For example, one can read in a report on the socio-professional profile of immigration in Spain drawn up by the UGT that "when they were offered the opportunity of reporting the situation to the trade union (non-implementation of the contract conditions for a group of Moroccans in Huelva), their silence bore witness to their apprehension of losing their jobs, where their responses were not clearly and explicitly negative" (López, 1992, p. 36). However, at the moment, the trade unions are not very effective either as organizations for channeling the defence of the immigrant since they come up against a number of problems which limit their effectiveness. The fear experienced by the immigrant in reporting discrimination, which has already been widely commented above, may not just result in a trade unionist losing his job, but it may also make him avoid trade union militancy for fear of getting the reputation of being a "problem person" or trouble-maker within the undertaking.

6.3. Integration policy

In addition to what has been said above, one can see a lack of social policies which favour equality of treatment and which, consequently, open the way to integration into the host society. For

example, the vocational training courses specifically prepared for migrants - which are included in the Vocational Training and Insertion Plan and in the Order of 9/1/91 - are extremely small in number in comparison with those for other groups (Ombudsman, 1994, p.22), as may be appreciated from the 1992 Memorandum of the General Director of Migration (General Directorate of Migration, 1993). Furthermore, the short period of validity of residence/work permits does not promote any possible integration of the immigrant into the host society. Moreover, it prevents family reunification and discriminates against him in employment since he does not acquire concepts such as that of seniority, which are not only of economic significance but are also a direct factor in the actual vocational qualification of the worker.

Plan for the Social Integration of Immigrants

In December 1994, the Council of Ministers approved the "Plan for the Social Integration of Immigrants" which forms part of the recent Spanish immigration policy. Following on activities aimed at controlling and regularizing immigration - legislation on foreign communities, regularization campaigns, establishment of migration quotas, etc. - we are now beginning to see the appearance of the first attempts to address the more social aspects of the migration phenomenon. A clear demonstration of this is the change in the structure and the administrative dependence of the General Directorate of Migration (moving from the Ministry of Labour and Social Security to the Ministry of Social Affairs).

The plan puts forward a series of measures to facilitate social and labour integration of immigrants under conditions which are more advantageous than those in existence until now. In addition to measures of a general nature, including the participation of foreigners in municipal elections where reciprocity exists, or giving women a legal status independent of their husbands, there are also others which relate specifically to the social and employment arena. For example, the extension of labour permits to five years, access to employment programmes promoted by the public authorities or the encouragement of collective bargaining in sectors in which the majority of workers are foreigners.

As far as the introduction of new legal measures or the amendment of existing measures relating to discriminatory treatment are concerned, the Plan states that "it is necessary to enforce legal measures against anyone who carries out, justifies or tolerates behaviour or attitudes of this type" (Ministry of Social Affairs, 1994). However, the Plan is no more than a declaration of intentions, a framework of action, since it does not lay down a time scale for its application nor does it specify which will be the institutions responsible for implementing these measures. What stands out the most is that it shows the Administration's concern for the migration problem beyond the mere policies of control, and demonstrates an interest in establishing more targeted legal measures aimed at combating discrimination against migrants and in favour of their practical integration under equality of conditions, opportunities and treatment.

We may summarize in saying that the main difficulty in avoiding acts of discrimination against migrants and ethnic minorities in the world of work is to be found in problems related to the lack or incorrect operation of mechanisms responsible for informing about and ensuring the implementation of existing legislation. And this is not just the lack of specific legal measures, although this is definite and real. The significant lack of complaints seems to be the outcome not of the absence of discrimination towards these groups but rather, and above all, of difficulties and misgivings about the real possibility of protection that the application of the legislation offers them.

Rights can be appreciated only if it is possible to exercise them. Consequently, it would seem appropriate to conclude with the following words by Peces Barba which illustrate the current stage of development in this matter, "if a basic right cannot be affirmed, and its protection is only professed, it may be said that it does not exist"(Peces Barba, 1980, p. 168).

7. Conclusions

7.1. The situation in Spain

Although the latest surveys carried out - in January 1995 - by the Sociological Research Centre seem to show that, at least on paper, there is a less and less xenophobic attitude on the part of Spanish citizens (El País, 1995), there is evidence to show an increase in incipient racist sentiments in Spain (Banton, 1994 and 1995; Solé 1995). The presence of increasing numbers of foreign workers may give rise to situations of discrimination and racism. These may show themselves particularly in labour relations since, although Spain has not reached the immigration figures found in other countries which by tradition are recipients of migrants, there are circumstances which seem to favour the presence and spread of attitudes of discrimination against migrants. These may be: the rapid rise in the number of foreign residents, which grew from 250,000 in 1989 to 400,000 in 1992 (SOPEMI, 1993, p. 91); the localized presence of larger groups of immigrants in specific areas of the country (Aragón Bombín, 1994); the problems that the Spanish labour market is passing through since Spain has the highest numbers of unemployed amongst the countries of the European Union; and, we should not forget, the absence of cultural guidelines which favour integration.

Acts of discrimination, and not only those in the world of work, are linked directly to socio-economic factors (low level of purchasing power or actual poverty) and to the number of foreigners or ethnic minorities existing in the country, as seems to be shown by the data taken from the surveys carried out on this subject by the Sociological Research Centre or by the Research Centre on Social Conditions (CIRES, 1994, p. 94). These show how the group which suffers the greatest discrimination is of national origin, namely gypsies, followed by North Africans (from the Maghreb) who form the largest and most rapidly growing group of non-European immigrants.

Frequently, people look for so-called cultural reasons - cultural shock, lack of adjustment, etc. - on which to base theories which justify the existence of discrimination. However, the prime cause for the existence of acts of discrimination against and abuse of migrant workers is to be found in the lack of legal and institutional protection provided for these communities.

7.2. Anti-discrimination legislation and institutions

It is widely accepted that laws are always trailing behind society and the problems that it faces. The racist assassination of the Dominican immigrant Lucrecia Martínez in 1992 seems to have instigated greater interest amongst both the institutions and Spanish society about the problems of racism and discrimination that are suffered by foreign workers.

Spain has elements which, for various reasons, can improve legal and institutional action on discrimination against immigrants and ethnic minorities in employment:

- (a) it has a legislative framework based on equality and respect for minorities;
- (b) labour legislation is based on anti-discrimination principles;
- (c) there is political will to prevent discrimination, which has come together in the Plan for the Social Integration of Migrants; and
- (d) the trade unions are showing an interest in attacking the problem of discrimination against migrants.

However, there are also currently major deficiencies at the legislative and institutional level which countenance, or at least do not avoid with the necessary rigour, the perpetration of acts of discrimination against the communities that have been researched in this study. These problems may be summarized as follows:

- (a) lack of a specific anti-discrimination legislation, including discrimination on the grounds of nationality, as well as a shortage of mechanisms necessary for sanctioning practices of this type;
- (b) dispersion of the legislation which contains anti-discrimination aspects, and this is the reason why the relevant provisions are little known, especially amongst those most directly affected;
- (c) the terminology employed in legal instruments relating to foreigners is confusing, and this gives rise to differences in interpretation and a degree of discretionary behaviour in the application of such instruments;
- (d) the legislation raises problems of discrimination since it lays down differences of treatment and status for different groups of foreigners, depending on whether they are nationals of a country in the European Union, a country with which there are historical and cultural ties, or a third country;
- (e) the legislation on foreign communities focuses, in particular, on the control of foreigners - this does not facilitate their integration, and is a source of misgivings and apprehension for them;
- (f) the administrative institutions responsible for supervising the implementation of anti-discrimination legislation and, in particular in the field of employment, the Labour Inspectorate, demonstrate a low level of effectiveness in guaranteeing real protection of migrants in the area of concern to us;
- (g) the absence of effective channels for reporting discrimination in employment;
- (h) the failure by Spain to declare its recognition of the provisions of Article 14 of the CERD under which it is possible for individuals to submit communications claiming that they are victims of racial discrimination. In this context, it is interesting to note Resolution 90/C 157/01 adopted on 29 May 1990 by the Council of the European Communities (Official Journal of the European Communities, 1990) in which it is stated that it "would be desirable for those States who have not done so to recognize Article 14 of the CERD" (Item 2.b.);
- (i) the weak role of the trade unions as channels for complaints.

All the shortcomings that have just been listed above are sources of mistrust among the immigrant community towards the host society, and they also prevent recognition of the deficiencies in the legal system of protection for migrants and ethnic minorities, thus weakening the process of integration at its roots.

8. Suggestions in the form of an epilogue

We all know that if a country has an adequate legal framework, and administrative and judiciary mechanisms which operate correctly, it has the effective foundations for preventing discrimination. However, we also realize that the laws, by themselves, do not guarantee the disappearance of discrimination since it is a factor with deep cultural roots which needs to be attacked from very different approaches. Consequently, to conclude this study, we should like to make a number of suggestions, some of which have already been put forward in the previous pages, with a view to helping improve or augment the effectiveness of measures which already exist:

- (1) Creation of a set of standards which are specifically anti-discriminatory, in which racial discrimination appears as a crime and as an aggravating factor in crimes. It seems necessary that there should be a more active and positive focus of legislation towards foreigners which is designed not just as a means of control, but which has a clearly egalitarian vocation. For example, it might go along the same lines as the legal measures taken against discrimination in employment on grounds of sex where it is accepted that there should be a reversal of the burden of proof in cases of sexual harassment. There is also a need to recognize Article 14 of the CERD so as to allow individuals to submit petitions to an international institution.
- (2) Creation of a body within the administration responsible for supervising, informing about and enforcing the implementation of anti-discrimination measures. Just a few lines above, reference was made to the difficulties that the migrant might expect to experience in making an accusation about an act of discrimination since not only does he have to make the accusation but he also has to prove it, with the subsequent pressures and reprisals in employment that the employer may exert against him and against his colleagues at work.

In addition to promoting information about, and the follow-up and enforcement of anti-discrimination measures and to advising, protecting and guiding immigrants, this new administrative body could be responsible for channeling discrimination petitions through the courts. Furthermore, it could organise training courses on the subject for persons who work directly with immigrants or who are involved in the Justice or Interior Affairs Administration, and in this way follow the example of similar institutions that already exist in a number of countries such as the United Kingdom and the Netherlands.

One model which might be used as an example of what could be done by the institutions responsible for the employment and social integration of immigrants working in Spain is the Woman's Institute. This Institute has carried out campaigns to promote equality of treatment in employment for women. It submits accusations about and follows up cases of discrimination on the ground of sex. Furthermore, in addition to supporting accusations made by the victims themselves, it specifically follows up the legislation so as to bring to light and nip in the bud any development of discrimination against women that might occur. Finally, the Institute carries out promotion activities, accompanied in many cases by positive action programmes, to ensure that the integration of women into the labour market is as effective as possible.

- (3) Legal measures which promote positive action programmes to counteract the weight of a culture which tends to create exclusions. This might be done, for example, by providing access to political rights (voting rights in municipal elections) and, of course, to social rights

such as attending vocational training courses. Such courses can provide the immigrant with the skills he needs to carry out jobs which are not just "the left-overs", and to pursue his own professional career on terms of equality with national workers.

- (4) Anti-discrimination campaigns amongst the general population, and in primary and secondary schools, and campaigns to provide information to social workers and public service employees; currently, a campaign of this type is being run in the public administration by the Ministry of Social Affairs and the Comisiones Obreras trade union.
- (5) Promote social and employment integration through support and encouragement of family reunification and by extending the duration of validity of residence/work permits. The objective here is to stabilize the situation of migrants and their families within a framework of legal calm which will help create a deeper knowledge of the social and cultural aspects of the host society.

In this context, the recent transfer of the General Directorate of Migration from the Ministry of Labour and Social Security to the Ministry of Social Affairs may have the effect of strengthening this effort of integration. This is at least what the Director General of Migration seems to think when he states "the objective or the main thrust here should be to give priority to the integration of immigrants. The key to understanding the significance of the transfer of the General Directorate of Migration from the Ministry of Labour to the Ministry of Social Affairs is as follows: to abandon viewing the foreign worker just as a worker and to approach from a global perspective all of his problems together" (Aragón, 1994, p. 19). Fortunately, many of these aspects that have been brought together in the Plan for the Social Integration of Immigrants.

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