These laws comply, to a large extent, with the EU Directives, as they criminalise racially discriminatory behaviour, both in the context of occupation and employment and the areas covered by the Race Directive 2000/43/EC, and they provide for the right of victims of discrimination to seek compensation and safeguards against victimization in case of reporting discrimination as well as for positive action measures, which have never been used up to now[5] . Even though these laws include provisions and tools for combating racial discrimination, their implementation in Cyprus is still seriously lacking.

Further, in view of the migration system, the highly restrictive and discriminatory structural setup and administrative practices, TC migrant workers are by default discriminated against as they are in law and in practice excluded from the Employment Equality Directive. The basic labour right to change jobs or employers is restricted to very exceptional circumstances and then only at the administration's absolute discretion. They are also excluded from other basic labour rights such as unemployment benefit and pension, even when they fulfil the time requirement of the Social Insurance Fund[6]. Cyprus governments have repeatedly failed to conclude bilateral agreements with any of the countries of origin of migrants to facilitate transfer of their pension rights when they return home. The following policy statement of the Labour Department encapsulates the essence of the migration system, while at the same time it blatantly attempts to refute the discriminatory regime of employment and residence of TC migrants. "*The signing of Bilateral Agreements as regards employment does not constitute part of the main policy of the Cyprus Government. In fact, there is a special system functioning in Cyprus, which makes possible the employment of labour from any country of the world though priority is given to EU citizens. This system safeguards the protection of the foreigner's working in Cyprus, and guarantees conditions of equal treatment according to Cyprus international obligations."*[7]

In addition, right from the beginning of migration, the employment market has been segmented and segregated both horizontally and vertically. Although TCN are permitted to work in many sectors, they can do so only as unskilled labourers. Currently, as a result of the economic crisis and the further

[5] The only area the state has ever used positive action measures up to now is in relation to discrimination on grounds of disability.

[6] For example, many migrant domestic workers who have resided in Cyprus for 10 or 15+ years.

[7] Labour Department, Ministry of Labour, Welfare and Social Insurance, http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/dmlbilateral_en/dmlbilateral_en?OpenDocument

tightening of the restrictive migration policies, they are in effect confined to private household activities and agriculture, animal farming, fishing and forestry. According to the Labour Force Survey 2015[8], out of a total of 18.050 people employed in household activities (domestic work), 17.357 or 96.12% were TC migrants, in their overwhelming majority (96%-97%) women, while in the agricultural/ animal farming, forestry and fishing sector, the percentage of TC migrants was 14.61%. In the construction industry, which is one of the hardest hit by the economic crisis and used to employ many TCN, their percentage has now fallen to below 6%.

Inclusion of migrant workers and protection against discrimination

It must be stated from the outset that collective agreements in Cyprus very are by and large very limited in relation to combating and/or promoting anti-discrimination at work, on any ground[9].

On the contrary, most collective agreements contain in verbatim many discriminatory provisions of the employment contract for migrants, such as for example that the employer *"Shall deduct from the Employee's monthly salary the trade union's subscription as provided by the relevant Collective Agreement. The Employer shall distribute the amount of the subscriptions deducted equally between the trade unions."*[10] In other words, TC migrants are not even asked which trade union they prefer to belong to or whether they want to belong to any union at all. An exception of this general trend is found in the collective agreement in the Old People's Homes sector, which states that *"for non-Cypriot employees, there shall be deducted 1% and paid to the Trade Union of his/her choice. If he/she does*

---

[8] Cyprus Statistical Service (CYSTAT), *Labour Force Survey 2015,* 08/07/2016. Available at http://www.mof.gov.cy/mof/cystat/statistics.nsf/labour_31main_en/labour_31main_en?OpenForm&sub=1&sel=2

[9] See for example, Yannakourou, M. and Soumeli, E., *The evolving structure of collective bargaining in Europe 1990-2014, National Report – Greece and Cyprus*, available at http://adapt.it/adapt-indice-a-z/wp-content/uploads/2014/08/matina_yannakourou.pdf; Papadopoulou, A., *Gender Equality and Collective Agreements* (in Greek), June 2018, available at http://c-adm.eige.europa.eu/gender-mainstreaming/resources/cyprus/i-isotita-gynaikon-andron-stis-syllogikes-symvaseis-ergasias; Papadopoulou, A. and Soumeli, E., *Gender equality lacking in collective agreements,* Eurofound, available at https://www.eurofound.europa.eu/ga/observatories/eurwork/articles/gender-equality-lacking-in-collective-agreements

[10] Department of Labour Relations, *Collective Agreements – Electronic Registry,* available at http://www.mlsi.gov.cy/mlsi/dlr/dlr.nsf/page11_gr/page11_gr?OpenDocument; *Employment contracts*, available at http://www.cyprus.gov.cy/portal/portal.nsf/gwp.getGroup?OpenForm&access=0&SectionId=citizen&CategoryId=Εργασία%20και%20Απασχόληση&SelectionId=Συμβάσεις%20και%20σ

not indicate his/her choice, the amount will be paid pro rata to the Trade Unions signing this agreement."

Another notable exception, notwithstanding its somewhat limited scope, is the following anti-discrimination clause in the collective agreement in the construction industry: *"Trade union action, religion, race and political beliefs shall not constitute grounds for dismissal and shall not justify discrimination against employees."*

Third-country migrant workers are included in collective agreements and are, therefore, supposed to enjoy the same rights as Cypriots and other EU citizens. Nevertheless, they are subject to discriminatory terms and conditions of work that are prescribed and regulated by the migration system and policies as well as the employment contract. Examples of these are: Limited period of employment, termination of employment for reasons not applied to Cypriots and other EU citizens and, consequently, termination of their residence and employment permits and deportation. Among others they have their employment terminated if *"found guilty by any court for consumption of alcoholic drinks* […] *or gambling, […] or absent from work for more than one month due to illness, not attributed to accident*".[11]

The position of two categories of migrants, domestic workers and those working in agriculture and animal farming, who currently make up the majority of TC migrants, is far worse, as attested to by the different employment contracts.[12] To begin with, both categories have fixed salaries which are far below the minimum wage[13] (€309 net/€460 gross and €374 net/€455 for domestic workers and farm labourers, respectively). It is noted that domestic workers' salary was the first to be cut, in June 2013, after the bailout and the imposition of salary cuts across the whole economy. They are also

[11] *General Contract of Employment*, available at http://www.cyprus.gov.cy/portal/portal.nsf/gwp.getGroup?OpenForm&access=0&SectionId=citizen&CategoryId=Εργασία%20και%20Απασχόληση&SelectionId=Συμβάσεις%20και%20σ

[12] *Contract of Employment [for domestic workers]; Sector of Agriculture and Animal Farming – Contract of Employment.* Available at http://www.cyprus.gov.cy/portal/portal.nsf/gwp.getGroup?OpenForm&access=0&SectionId=citizen&CategoryId=Εργασία%20και%20Απασχόληση&SelectionId=Συμβάσεις%20και%20σ

[13] The minimum monthly wage, regulated by decree of the Council of Ministers and currently set at €870, is meant for especially vulnerable unskilled or semi-skilled workers. Unsurprisingly, migrant domestic workers and farm labourers are not included in the occupations covered by the minimum wage.

discriminated against in terms of the number of public holidays they are entitled to: 9 and 10 days for domestic workers and farm workers, respectively, compared to 15-16 days for employees in all other sectors. Domestic workers are also discriminated against as they are not entitled to any overtime, irrespective of the much longer hours most of them are made to work than the 42 hours provided in their contract, nor are they entitled to 13th salary, which is a widespread labour right in Cyprus.

It is also important that they are barred from joining trade unions as, according to their contract, *"[the employee] Shall not engage, contribute or in any way, directly or indirectly take part in any political action or activity during the course of his*[14] *stay in Cyprus".* Over and above, it must be pointed out that domestic workers are also subject to multiple discrimination on the ground of gender and in addition to migration status, ethnicity, race, religion or any form of diversity. As women, working and living in the confines of the private homes of their employers, which are exempted form labour inspection and protection, vulnerable to the whims and absolute control of the employer, many of them are subjected to extreme violations of their labour and human rights, including threats and withholding of their passports and other personal documents, psychological and physical violence, including sexual harassment and rape.

TCN migrants are exempted from access to the public health care system and welfare benefits. For medical care, they are obliged to take on medical insurance through private insurance companies, which in the majority of cases is inadequate and does not cover serious illnesses and costly treatments. The Pap test, for example, is provided free of charge to all women in Cyprus except TCN migrant women. The insurance premium is paid equally by the employer and the employee.

EU migrants, refugees and asylum seekers are supposed to have free access to the public health care system. However, the present government has amended the laws providing access to health care[15], thereby limiting these groups' access. As refugees are very often unemployed, these policies have had a direct negative impact on their right to free health care. In addition, in this area too, there are many problems of discriminatory and humiliating treatment by medical and paramedical staff.

[14] As yet another form of discrimination is the sexist language of the contract, treating the male as the universal, with all pronouns used in the male form, while the overwhelming majority of domestic workers are women.

[15] Ministry of Health, *Revision of Healthcare Scheme in Public Hospitals from 1/8/2013*. Available at http://www.moh.gov.cy/moh/moh.nsf/page93_en/page93_en?openDocument

3.2.2. Greece

In general terms, Greece's policies in the field of combating discrimination and promoting equal treatment (apart from the gender equality policies that until then held the dominant position) are inaugurated by the adoption of Law 3304/2005, which incorporated into Greek legislation 3304/2005, though which the main European Directives on discrimination were incorporated into Greek law: the Racial Equality Directive and the Employment Equality Directive. With this law:

- Definitions of basic forms of discrimination (direct and indirect discrimination, harassment) are defined and introduced in Greek legislation.
- A protective grid is formed for victims of discrimination, given that the burden of proof is now transferred to the accused. In other words, the victim is not required to prove to the court that they have been discriminated against in their work, but the accused must prove their innocence.
- New bodies (e.g. the Equality Commission of the Ministry of Justice) are established and the scope of intervention of existing bodies [Ombudsperson, Labour Inspectorate (APPE)] is widened;
- Finally, particular attention is paid to social dialogue (through the Economic and Social Committee) as well as to cooperation with non-governmental organizations.

It seems, however, "since the adoption of Law 3304/2005, there has been no comprehensive anti-discrimination strategy in Greece. Political interventions have been limited to legislative amendments, mainly concerning immigration as well as interventions co-funded by the European Union. For the development of an integrated strategy, it is necessary to incorporate the principle of "non-discrimination main streaming" in all policies (Balouros and Chrysakis, 2012: 140).

In any case, however, the Ombudsperson's interventions are considered as positive. Contrary to the other two institutions promoting equal treatment in the public administration, the ombudsperson has been established as a credible and effective institution in the public consciousness and the number of victims discriminating against it is large. The publication of the annual reports by the Ombudsperson and the Economic and Social Committee and the Commission on Human Rights are aimed at systematically identifying discrimination in all fields (including employment and employment). As a positive step towards greater awareness, the cooperation between non-governmental organizations

and the office of the Ombudsperson as well as the Economic and Social Committee can also be considered.

The question of course is whether there are the prerequisites for ensuring the principle of equal treatment in the current economic situation and in light of the developments in the Greek labour market or not and whether, on the other hand, the guarantee of equal treatment is a priority amidst the rising unemployment rates and the changes that happen in labour relations. There is a concern that any conquests in the field of equal treatment will be "lost" during the economic crisis, a concern expressed also by the Ombudsperson in a recent report (2014).

The Greek institutional framework on anti-discrimination

The protection against discrimination and promoting equal treatment in Greece is mainly a result of the incorporation of the relevant European Directives.

Of course, in the Greek Constitution there are a number of articles that protect social and individual rights (protection of human dignity, principle of equality, freedom of religious conscience, right to work and equal pay for work of equal value, marriage, motherhood, childhood, disability, vol. n.) and which are governed by the principle of equal treatment. They, are articles of a generic nature and in the absence of a specific institutional framework to combat discrimination, individuals and vulnerable groups were not to effectively protected.

This legal vacuum has been covered by Law 3304/2005, which transposes into Greek legislation the two basic European directives on anti-discrimination: the directive on racial equality and the Directive on Employment Equality. After Law 3304/2005, the institutional framework for equal treatment is not anymore limited to very general constitutional provisions, rather it refers to very specific forms and types of discrimination (on the basis of racial or ethnic origin, age, disability, sexual orientation, religious or other beliefs).

The provisions of this law seek to combat the phenomena of both direct and indirect discrimination, provide special self-protection against harassment and against instructions to discriminate.

As a law which basically encompasses the provisions of both directives, the principle of equal treatment covers several areas : (a) conditions of access to employment and work; (b) access to all types and levels of vocational guidance, vocational training and retraining, including the acquisition of practical work experience; (c) working conditions and working conditions ; (d)membership and participation in an organization of workers or employers, or any organization whose members

practice a particular profession, including the benefits granted by such organizations; (e) social protection, including social security and health care; (f) social benefits; (g) education; (h) access to goods and services available to the public and to the provision thereof, including housing.

This legislation excludes cases in which different treatment on grounds of nationality is provided for, without prejudice to the provisions governing the entry and residence of third-country nationals concerning their legal status, and so on. On the merits, in the case of discrimination based on ethnic origin, anti-discrimination policies coexist with the regulations governing the immigration policies of the country and the provisions concerning the status of residence, work, and so on of third country nationals. The exclusion of nationality from the grounds of discrimination in which Law 3304/2005 refers allows for direct or indirect discrimination practices against migrants, precisely on the basis of their nationality.

Given that the aim of both European directives was, among other things, the formation of specialized institutions at national level to combat discrimination, this law establishes a protective panels C, with emphasis given to the mediating role of specific public bodies, the involvement of civil society, as well as the strengthening of the institutionalized social dialogue. More specifically, this law promotes the principle of equal treatment in three bodies: the Ombudsperson, the Labour Inspectorate (SEPE) and the Equal Treatment Committee of the Ministry of Justice. At the same time, emphasis is placed on the role of the Economic and Social Committee (ESC) as well as of non-governmental organizations active in the fight against discrimination.

However, as noted in the Ombudsperson's Report: "In the normal regulatory practice of the Greek state institutions, the text of incorporation adds little to the already existing regulatory framework of the two Community Directives. This however, is transferred practically unchanged almost the weight of specialization of these institutional innovations in the national promoters and national regulations implementing bodies".

The role of the Ombudsperson

On the basis of Law 3304/2005, the office of the Ombudsperson promotes the principle of equal treatment and intervenes in cases where this principle is violated by public services, while the following legislation significantly enhances his role. According to this law, among the responsibilities of the Ombudsperson is to protect and promote the interests of the child and to promote the principle of equal treatment of all persons without discrimination based on racial or ethnic origin, religion or other beliefs, age, disability or sexual orientation. Its competence does not include matters relating to

the administrative status of public service personnel except in cases where the Ombudsperson acts as promoter of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, age, disability or sexual orientation. Moreover, the office of the Ombudsperson, in addition to its mediating role in individual cases of complaints, acquires a broader investigative and mediatory role, conducting research, publishing special reports on the implementation and promotion of equal treatment and raising awareness among the administration and the state authorities in regards to equal treatment.

In addition to Law 3488/2006, which incorporates into Greek law the European Directive 2002/73 / EC 2002 on the application of the principle of equal treatment as regards the access to employment, vocational training and promotion of working conditions, the amendment of Law 3896/2010, extends the role of the Ombudspersons to issues of equal treatment of men and women in the field of employment in both the public and the private sector (in co-operation with the SEA).

Law 3996/2011 (on the reform of the Labour Inspectors' Corps, Social Security Regulations and other provisions) extends even further the responsibilities of the Ombudsperson (in relation to the previous law 3304/2005) in monitoring the equal treatment of disabled persons and HIV positive persons; providing advice to employers and workers on the conditions of equal treatment; and ensuring that employers make all reasonable adjustments and take all appropriate measures to ensure disabled persons' access and retention to work as well as their participation in vocational training.

However, since its very first Equal Treatment Report (in 2005), the independent authority highlights the problems in the implementation of the legislation partly due to the different perceptions of the three bodies promoting equal treatment and non-institutionalization possibilities provided by the law. As pointed out in the Special Report of the Ombudsperson for 2010, the division of anti-discrimination competences into three bodies (Ombudsperson, SEPE, Equal Treatment Committee), two of which are not independent, hinders the comprehensive monitoring of discrimination in the Greek labour market and the coordination of actions on promoting and implementing the principle of equal treatment. On the other hand, however, the independent authority finds that often the intervention is not limited under Law 3304/2005, given that on the basis of its founding law (Law 3094/2003), the Labour Inspection has a wider role for the protection of individual rights and it can intervene in cases of discrimination not covered by N.3304/ 2005 and provide greater protection to people facing discrimination (Ombudsperson, 2005).

The Body of Labour Inspection and labour market discrimination

The Labour Inspection, which operates in the field of employment and work, intervening in cases of violations of the principle of equal treatment against natural and legal persons of private law, whereas any complaint filed to the local Departments of Labour Inspection. If the principle is violated, the Labour Inspection acts as a mediator between employer and employee in order to find a compromise, and it has the power to impose a fine on the employer. In addition, the APR can publish reports and make recommendations in relation to anti-discrimination.

In addition to Law 3488/2006 (which incorporates into Greek law the EU Directive 2002/73 / EC 2002 on the application of the principle of equal treatment as regards access to employment, vocational training and promotion working conditions), amended by the Law 3896/2010, the territorial labour inspectors receive complaints regarding discrimination and immediately inform the Ombudsperson accordingly.

Law 3996/2011 (Reforming the Labour Inspectors' Corps, Social Security Regulations and other provisions) extends the responsibilities of the SEA, which is now required to monitor compliance with the equal treatment of persons with disabilities, including HIV positive, provides advice to employers and workers on the conditions of equal treatment and ensures that employers make all reasonable adjustments by taking all appropriate, where appropriate, in particular to ensure access to and the stay of people with disabilities at work and their participation in vocational training.

In practice, however, as repeatedly pointed out in the ECC's annual reports for the application of the principle of equal treatment, the APA "fails" to draw up and submit a report on discrimination in the labour market. The SEA - according to the ESC - attributes the absence of a reference in relation to the application of equal treatment to its annual activity reports in the complete absence of complaints. However, according to the ESC, this failure to report relevant data from the SEA is related to both inadequate information (in terms of APRs) of citizens regarding their rights and complaints, as well as inadequate recording and repression of the phenomena of unequal treatment in the workplace (ESC, 2009).

Other institutional initiatives promoting inclusive policies

The Equal Treatment Commission is one of the bodies responsible for implementing and monitoring the principle of equal treatment. This Commission, under Law 3304/2005, is attached to the Ministry of Justice and is composed of the Secretary General of the Ministry of Justice as Chairman, four

members and two alternates. The Commission shall be constituted by decision of the Minister of Justice. Members of the Commission shall be persons with a high level of scientific training or professional experience, particularly in areas relevant to the Commission's mission. The term of office of members is three years.

The Equal Treatment Committee intervenes in cases of breach of the principle of equal treatment where it is violated by legal and natural persons under private law, especially in matters of social protection, social benefits, education, provision of goods or services and housing. Its responsibilities are as follows: (a) supervise reconciliation in the event of a complaint of breach of the principle of equal treatment; (b) make a finding if the conciliation action fails. If the offense is suspected, the report shall be forwarded to the Prosecutor of the Criminal Court; (c) to express an opinion, of its own motion or at the request of the Minister of Justice or authority, within the competence of which violates the principle of equal treatment in the interpretation of the provisions of this Law; (d) to draw up reports on the implementation and promotion of the principle of equal treatment. These powers are exercised by the Commission through an examination and investigation (witnesses' examination, the ability to request information and documents from each authority). Its role can therefore be considered advisory, audit and advisory (ESC, 2009).

In practice, however, as pointed out in the ESC Report: "... the Equal Treatment Commission acknowledges that it has so far received very few complaints and the work it has been performing since the day of its establishment is nil. The obvious reason is the confusion or even ignorance of the public concerned about its role and its effectiveness. Stakeholders know and trust, for example, the Ombudsperson, who, as an institution, is well-established in their conscience, but are unable to understand the role of the Equal Treatment Commission" (ESC, 2009: 17).

The assessment of competent bodies to promote the principle of equal treatment regarding discrimination in the Greek labour market

A key source of information on discrimination in Greece is the cases taken up by the Ombudsperson and are presented in its annual reports from 2005 onwards. In relation to discrimination at work, the following are observed (Ombudsman, 2010 & 2012):

Age discrimination occurs with a high frequency, and often abusive, recruitment procedures. In recent years, complaints have been reduced, which is probably due to the suspension of recruitment and appointments to the public and the wider public sector and the consequent limitation of the issuing of notices where the introduction of an age limit was the usual subject of referral to the Ombudsman. In general, however, in the cases examined by the independent authority it was found that age discrimination is linked to features such as health, fitness and endurance, availability or adaptability. Therefore, the exclusion of older people from the relevant personnel selection procedures is based on the general belief that these people do not have, for example, physical fitness and endurance, or that they are not so available and adaptable to younger people.

Complaints about discrimination on the grounds of disability at work and employment have been declining for the past two years (after 2010 where there were several). This reduction, according to the Ombudsman, is not so much related to an improvement in the attitude of companies and public services towards disabled workers but more to the inadequate information of these people regarding their rights and the possibilities for termination.

Complaints about discrimination on grounds of sexual orientation (and not just at work) are almost non-existent, which also applies to discrimination on the grounds of religious or other beliefs. According to the Ombudsman, the absence of complaints about discrimination on the grounds of sexual orientation does not mean that these discriminations do not exist. On the contrary, it reveals the intense hesitation of the victims of this form of discrimination to reveal sensitive issues of their personal and social life and to bear the costs (professional, psychological, etc.) that any complaint may entail (the Ombudsman Citizen, 2010).

In terms of gender discrimination, there is a worsening of inequalities at the expense of women in the midst of economic crisis. According to the 2012 Ombudsman's Report on "Gender and Labour Relations", although the crisis affects workers as a whole, there are differences in treatment of both genders, at the expense of women, even during pregnancy and maternity. This is also confirmed by the infringement cases reported by the SEA in the field of equality between men and women. And in this case most complaints were related to pregnancy and maternity stages of working women.

3.2.3. Italy

The EU Racial Equality Directive 2000/43/EK and the Employment Equality Directive 2000/78/EK were incorporated into Italian law by Legislative Decree no. 215 "Implementation of Directive 2000/43/EC on equal treatment between persons regardless of race or ethnic origin" and by Legislative Decree no. 216 "Implementation of Directive 2000/78/EC on equal treatment in employment and occupation", both dated July 9, 2003. The two Decrees establish the following areas of application of equal treatment: a) access to employment, both autonomous and dependent, including selection criteria and recruitment conditions; b) employment and working conditions, including career development, remuneration and conditions of layoffs; c) access to all types and levels of guidance and vocational training, improvement training and retraining, including work placement; d) membership of and activities within workers' organizations, employers' organizations or other professional organizations and benefits provided by such organizations. To these areas, Legislative Decree no. 216 adds others: e) social protection, including social security; f) health care; g) social benefits; h) education; i) access to goods and services, including housing. Both the Decrees define the protection of individuals from discrimination, both direct and indirect, and define discrimination as also harassment and all behaviors violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating and offensive climate. They also indicate the ways in which the person victim of discrimination, or bodies and organizations that have received proxy to act by the victims, can file a charge with the authorities.

Decree no. 215 also states that the Presidency of the Council of Ministers - Department for Equal Opportunities has established a register of associations and bodies that carry out activities to combat discrimination and promote equal treatment, indicating the ways in which institutions and associations can enroll on this register. It also explains, in Article 7 of that Decree, the institution, again at the Prime Minister's Office - Department for Equal Opportunities, of the Bureau Against Racial Discrimination, UNAR (National Office against Racial Discrimination), also indicating its tasks. Legislative Decree no. 216, however, by transposing the European Directive 2000/78/EC also amends Article 15 of Law no. 300, May 20, 1970 "Statute of workers' rights", defining as invalid the acts that discriminate against the employee, not on the grounds of their gender – an issue already mentioned in the Act of 1970 – but also the presence of disability, age, sexual orientation or political beliefs.

A further amendment to this article was then made in 2012: on the basis of this change now void are also acts aimed at discriminating on the basis of religious affiliation, race or language. Both the Legislative Decrees, however, affirm the need not to conflict with Law no. 286/1998, "Consolidated Law of the measures governing immigration and the status of alien", then modified in 2002 by Law

no. 189 "Amendments to legislation on immigration and asylum". The Summary Report of the activities carried out by the Commission of the Italian Chamber of Deputies points out that, unlike other European countries, Italy has chosen not to merge the two directives, but to issue two distinct legislative decrees. This choice has been criticized because some say that it has led to "a series of protection disparities between those discriminated against because of race and ethnicity, and persons discriminated against because of religion, belief, disability, age and sexual orientation". In order to eliminate discrimination and to implement the principle of equal treatment, limited to the difference between men and women to access employment, training and professional promotion and working conditions, in 2005 also issued was Legislative Decree no. 145 of May 30, 2005, on the transposition of Directive 2002/73/EC of the European Parliament and Council. This Legislative Decree encoded the concepts of sexual harassment and harassment on grounds of gender in the workplace, and indicated the ways in which to act against such actions.

Although only the Decree no. 215 explicitly indicates the issue of race and ethnicity in the title, while the Decree no. 216 mentions the ethnicity, changing the “Statute of Workers' rights”, it seems clear that most of the recommendations of equal treatment in the workplace are aimed at all workers, if regularly living in Italy. However, despite the presence of specific legislation on non-discrimination, it is possible to indicate at least two critical points. The first is the difficulty of acting against discrimination based on race, ethnic, or nationality in both the private and the public sphere. In fact, in the private sector in particular, the nature of the Italian economy based on small and medium enterprises, or on domestic work, makes it harder to monitor situations of discrimination. Even more complicated, and almost impossible, is monitoring situations of discrimination in undeclared work. In particular, this monitoring activity should be carried out by UNAR, which through the National Network of Anti-discrimination Centers (NEAR) should detect cases of discrimination occurring throughout the country, though not only in the workplace.

The second issue, now partly resolved, concerns the lack of access to employment in public sector positions by non-Italian citizens. Cases of discrimination in relation to access to employment opportunities and training based on citizenship have occurred in the healthcare area, transport, and in access to the civil service for young people. In the health sector there have been episodes where people of foreign origin employed on temporary employment contracts have been denied the opportunity to participate in recruitment procedures for open-ended contracts. Similarly, in 2009 the Public Transport Company of Milan prevented, by applying a regulation of 1931, a Moroccan citizen resident for years in Italy from presenting his curriculum to participate in a call for recruitment. The fight against these discriminations has been carried out mainly by unions and third sector

organizations, which have succeeded, through lawsuits, to ensure that the difference in employment conditions - in this case access to work - on the basis of nationality is regarded as discriminatory, allowing the hiring of persons unjustly excluded from recruitment processes. Also thanks to the pressure exerted by unions and the third sector, with Law no. 97/2013, in the transposition of Directive 2004/38/EC on the right of movement and residence of EU citizens and their family members, the possibility of access to jobs in the public administration (except military roles) was finally extended to citizens of third countries with a long-term residence permit.

Aspects of the labour market that promote the inclusion of migrant workers and their protection against discrimination

Although foreign workers have been in the Italian business and economic environment for a long time, rarely have CCNLs (National Collective Labour Agreements) introduced specific measures concerning the inclusion and protection of migrants against discrimination. Otherwise, it is possible that such indications may be included in a plant-level bargaining. This kind of bargaining, according to the unions' agreement of June 28, 2011, may derogate on certain aspects of the provisions contained in the national agreements. These exceptions are limited to certain industries and only for the issues of services, schedules and organization of work (Lai 2011). The lack of specific indications is mainly due to the fact that, because of the high occupational segregation of foreign workers, few sectors are involved in the protection of specific interests of this category of workers (Ambrosini, De Luca, Pozzi 2016).

Furthermore, little attention is paid to some specific needs of immigrants, like the possibility to obtain longer holidays, have prayer spaces, attend Italian language courses. And still, limited is the attention to the fight against discrimination in the workplace. Agreements focus mainly on more general issues such as wages, working hours, staff support, etc., thus avoiding the discontent and clashes with the Italian workers. Analysis carried out on CCNLs by Ambrosini, De Luca Pozzi (2016) shows that, in general, the sectors with the highest presence of foreign workers are those which have included in the National Agreement rules in favor of immigrants, though they are often conceived as cross-cutting rules applicable to all workers. An example of these rules is the possibility to accumulate holidays over several years, present in the 2007 CCNL for domestic workers, the 2010 CCNL for the cleaning industry and also of the hairdressing, aesthetics, tattooing and piercing craft companies, the 2014 CCNL for the tourism and commerce, the 2010-2013 CCNL for the natural stone industry, in the 2013 CCNL for metalworkers, in the 2010-2012 CCNL for bakery workers, and the 2012 CCNL for the food Industry.

Only in the 2013 contract for the employees of trade, distribution and services is there an explicit reference to foreign workers.

In the same CCNL, as well as in that of transport, goods and logistics of 2011, also expressly included is the possibility to "promote initiatives aimed at integration, equal opportunities, and training" because of the increasing presence of foreign citizens in the sector. Another example of measures aimed in particular at the inclusion of immigrants is the option to choose a day off different from Sunday in the case of other religious faiths: this aspect is covered by the CCNL for domestic workers.

Another aspect that should facilitate the inclusion of immigrants is the inclusion of rules in the CCNL for cleaning, integrated and multi-services and in the CCNL for agricultural labourers, which provide the possibility for immigrant workers to use the hours of right to study and to attend literacy courses. The CCNL for construction companies even foresees that companies may send their foreign workers to FORMEDIL (National Institution for education and training in the construction industry) in order to be adequately trained; while the 2010-2013 CCNL of wood industries specifies the need for language training for immigrant workers. Interesting is the provision of the 2010 CCNL for cooperatives and agricultural consortiums which states the parties' commitment to "solving the problems of social integration (housing, transport, etc.) of non-EU workers in compliance with immigration laws".

Hence analysis of the national collective bargaining agreements shows that almost all employment sectors tend to insert norms to promote the integration of immigrants into work, although these norms are directed to all workers and are not specific for immigrants. Nevertheless, what seems to be lacking in these documents is specific protection against discrimination. However, once again, the anti-discrimination issue is pursued almost exclusively by trade unions, also through individual disputes, especially in the public sector, not in the private one, as we will discuss later. In general, the protection against discrimination in the workplace is equal to that given to local workers, via the current legislation, as indicated in the previous point. In fact, there is no specific protection for immigrants. As regards welfare policies supporting the protection of migrant workers and their families it should be noted that, in this case, there are no standards or specific actions. Migrant workers and their families, in general, may take advantage of welfare policies - family allowances, housing assignment, etc.

They are also eligible for income support in the form of unemployment benefits or access to the Wages Guarantee Fund in case of company crisis, where they are provided. For immigrants, access to these policies is the same as for native workers, on the condition that they have a valid residence permit either temporary or long-term. In some local environments, immigrants have been excluded from

access to certain welfare policies – i.e. the baby bonus – (Ambrosini 2013b): these discriminations are resolved through lawsuits against local governments which have discriminated against immigrants.

3.2.4. France

The European Racial Equality Directive (2000/43 /EK) and the European Equal Opportunities Directive (2000/78 /EK) have been transposed into French national law (as in the other 14 EU members at the time-Europe of 15 members) from July 2003 to 2008 (over a five-year period) with the aim of prohibiting 'any discrimination based on race and ethnic origin' within the French law framework. In France, these laws were drafted on the basis of several texts transposing them, as well as the setting up of an independent administrative authority called the High Authority for Combating Discrimination and Equality (HALDE) in 2005. As far as the Directive 2000/43 / EC is concerned , the concerned French Laws are: N°2001-1066 on the fight against discrimination, N°2002-73 on social modernization, N°2005-843 on the transposition on the Community law to the civil service and N°2008 -496. All these laws concern various provisions for adapting to Community law in the field of combating discrimination in French law.

The High Authority for Combating Discrimination and Equality (HALDE) was set up to comply with the requirements of the Racial Equality Directive 2000/43 / EC as no effective arrangements were implemented at the time in France. This High Authority deals with racial discrimination but also with all other types of prohibited discrimination in France. In addition to the field of employment and work, it includes the following topics: access to housing, administration, education, recreation and health... (reference: Borrillo (Daniel) & Chappe (Vincent-Arnaud), 2011)). Since 2014, the last ground of discrimination added concerns the place of residence (habitat). As an independent organization, the HALDE cannot receive orders from a third party. In addition to being repressive, it is at the origin of campaigns of prevention and information among the population. At its initiative, in 2007, Houses of Justice and Law were created with the aim of welcoming and informing potential victims of discrimination. Indeed, the HALDE was included in the later Defender of Rights (together with other public entities meant to defend human rights). This new public entity generally is meant to defend the rights and freedoms of any French citizen or person living in France.
The National Inter-professional Agreement (ANI), adopted in 2006 by trade unions and employers, focuses on the legal framework of non-discrimination as far as the ethnic criteria are concerned. The French State, on the basis of this agreement, wishes to encourage social partners to take up the ethnic dimension of inequalities.

Corporate Social Responsibility (CSR) is a strategy recognized by the European Union and the ISO 26000 standard, which promotes respect for human rights and promotes diversity. It is promoted by companies in general and also aims to foster sustainable development and the respect of the environment. There is no law that obliges companies to adopt CSR strategies. However, the States encourage them to become more socially responsible. To this end, CSR advocates an improvement in the living and working conditions of employees, both ethically and socially, with wage increases and equal treatment for all employees.

Another authority intervenes in the fight against discrimination and promotion of diversity, the High Council for Integration (HCI), created in 1989. It is allowed to "give its opinion and make any useful proposal, on request of the Prime Minister on all matters relating to the integration of foreign residents "(official definition). The objective of the HCI is to support associations to promote the integration of migrant. The HCI also advocates and defends neutrality of religions within the company (the so-called “laïcité” which is a Republican principle in France). A decision of the European Court of Justice in March 2017 reinforced this obligation of religious neutrality and respect for the Secularity in enterprises.

3.2.5. Denmark

Since 1996 Denmark has had a law against discrimination on the labour market. The law states that an enterprise is not allowed to discriminate its employees on the grounds of:

1) race, 2) ethnicity, 3) skin-color 3) religious beliefs 4) sexuality 5) national or social background 6) political beliefs, 7) age and/or 8) handicap.

This counts for both direct and indirect discrimination. The prohibition against discrimination applies to the recruitment, during the employment and at the dismissal (Ministry of Employment, a). Besides this the Danish law against discrimination based on ethnicity was introduced in 1971. The law of Ethnic Equal Treatment states that discrimination based on ethnicity or race is not allowed. This applies to multiple areas, e.g. all public places and all public and private enterprises (Retsinformationen, 2012, §1 §2 & Danmarks radio, 2001b) Furthermore, in 1969, Denmark signed the UN’s international convention on the elimination of all forms of racial discrimination.

The Danish laws against discrimination are in line with the current international laws on the topic and complies with both above-mentioned directives (CRS kompasset).

Since Denmark already had pre-existing non-discrimination frameworks the implementation of the directives has been modest (European Union Agency for Fundamental Rights, 2012). Actually the directive was in large part considered rather unnecessary by The Danish Local Government (KL) and the Danish Construction Association due to the already existing laws on the topic. In addition, the directive and laws were not viewed as being equality promoting as the business oriented reason; many employers introduced more inclusive policies within their organisation, due to larger migration flows. Beside this, multiple employers questioned the effectiveness of a law. Some arguing that laws only send a signal and contain symbolic value but do not actually change people's behaviour (European Union Agency for Fundamental Rights, 2010).

The implementation of the law did not result in the development of new training programs in diversity management, since the new laws were just included in the regular and pre-existing education and training. Some employers follow up the directive. The Confederation of Danish Employers (DA), the Danish Local Government (KL) and the trade union LO, cooperated and supported a joint 'integration-jobs' program (European Union Agency for Fundamental Rights, 2010). Both DA and LO are also involved in more recent initiatives to promote the inclusion of migrant on the labour market e.g. the so called three-part-agreement containing the development of the later-mentioned integration program IGU (see question 4.) (Gormsen, 2016).

There have also been negative debates of the directives. They have given rise to concerns about how the unskilled Danish workers might experience being deselected in favor of the migrants or refugees, thus making employment based on something else than the most qualified applicant. In line with this concern, a representative for the Confederation of Danish Employers (DA) have stated that employers and enterprises should only focus on the most qualified applicant (European Union Agency for Fundamental Rights, 2010).

The Danish Board of Equal Treatment was established in 2009. This Board deals with complaints of discrimination in employment based on gender, race, color, religion/belief, political opinion, sexual orientation, age, disability, national origin, social origin and ethnic origin. The board also handles cases of discrimination based upon gender, race or ethnicity outside the Labour Market (Ankestyrelsen, 2014).

In Denmark, one is protected against discrimination both regarding access to employment, education and all public areas but there have been debates concerning discrimination in the welfare system, in particular the introduced “integration-benefit.”

The integration benefit was introduced in September 2015 and meant that citizens, who had not been resident in Denmark in 7 out of the last 8 years, would receive reduced benefits. This means that refugees and their families receive a lower benefit than Danes (Udlændinge- og integrationsministeriet, 2017 & Ritzau, 2016). This integration-benefit has been criticized by both the UN, the Institute for Human Rights, the Danish Refugee Council and the Red Cross for not living up to the UN’s Convention for Refugees (Just & Jensen, 2015). Beside this, the government tried to introduce a new law in 2014 differentiating the demands for working permit based on the person’s nationality thus judging some citizen of particular countries as being less suited for integration than others. This too has been criticized for not being in line with the law against discrimination and international conventions (Amnesty International, 2014).

TOPIC NO 4: THE CONTRIBUTION OF SOCIAL PARTNERS TO ISSUES OF DIVERSITY AND ANTI-DISCRIMINATION IN THE EUROPEAN AND INTERNATIONAL CONTEXT

PURPOSE

The purpose of this module is to inform and raise awareness of the initiatives taken by European social partners, to combat discrimination at work, and to enhance potentials for action and intervention in the future.

KEYWORDS

Social dialogue: *Refers to institutionalized or less formal dialogue and cooperation practices between social partners, other representative socio- occupational organizations and possibly the State.*

European social partners: *Those are organizations recognized as representatives by the Maastricht Treaty and participate in the social dialogue.*

Framework agreements: *These are agreements signed between supranational trade unions and employers' organizations, as well as, multinational corporations. They are less binding than collective agreements.*

EXPECTED RESULTS

Upon completion of the study of the fourth section, participants should be able to:

- ✓ Distinguish between the role and the strategies of European social partners, the EESC, the ETUC, the ITUC and other trade unions in the European and international spheres
- ✓ Compare various actions and initiatives by European social partners.
- ✓ Reflect on the role that social partners can play at national, European and international level in the field of combating discrimination at work.