The Fight Against Discrimination and Access to Justice. A Path to Integration

María José AÑÓN
Universitat de València, España

Abstract
This article explores the hypothesis that migrant integration policy can be improved through the development of standards and antidiscrimination policies. It examines the principle of nondiscrimination, particularly in terms of racial or ethnic origin, as a path to integration. From this perspective, it identifies how instances of discrimination place immigrants in disadvantageous situations. It proposes keys for interpreting social patterns of discrimination. Finally, it reflects on how access to justice can be a means to achieve protection against discrimination. The study identifies this as a guarantee based on a theory of justice that assigns priority to the principle of equal participation.

Keywords: 1. integration, 2. anti-discrimination law, 3. migrants' rights in Spain, 4. racism, 5. access to justice.

La lucha contra la discriminación y el acceso a la justicia. Un camino hacia la integración

Resumen
El artículo explora la hipótesis de acuerdo con la cual las políticas de integración de las personas migrantes pueden mejorar a través del desarrollo de normas y políticas antidiscriminatorias. Examina el principio de no discriminación, especialmente por razón de origen racial o étnico, como vía hacia la integración. Desde esta perspectiva, identifica los supuestos de discriminación que permiten entender las situaciones de desventaja que afectan a la población inmigrante. Propone argumentos sobre las claves interpretativas de los patrones sociales de discriminación. Finalmente, reflexiona sobre el acceso a la justicia como vía de protección frente a la discriminación. El trabajo identifica esta garantía como un principio basado en una teoria de la de justicia que asigna una prioridad valorativa al principio de participación en condiciones de igualdad.

Palabras clave: 1. integración, 2. derecho antidiscriminatorio, 3. derechos de los extranjeros en España, 4. racismo, 5. acceso a la justicia.

Introduction: Integration through Nondiscrimination[1]

From a legal point of view, the whole concept of integration underlies the idea of equality in rights, entitlement, and the exercise of rights. This paper aims to show the possibilities of using antidiscrimination law to achieve migrant integration, and to clarify, from a perspective of access to justice, under which conditions this should occur. The reasoning and measures this perspective relies on may have purposes of recognition and redistribution effects. In this regard, a certain theoretical and practical priority should be given to redistributive policies since they underpin conditions for effective equality. This hypothesis, considered the most appropriate to address discriminatory processes and social and institutional patterns of discrimination, does not, however, disregard the paradoxes raised by political and legislative proposals both in the area of antidiscrimination law (Fredman, 2011:109) and also migration law.

The European Union has undergone major developments in two aspects related to the contents of this article: on the one hand, equality directives, and on the other, attention to, and measurement of, integration in the different countries of Europe. In this regard and as part of the European justice, freedom and security plan (2010-2014), the *Migrant Integration Policy Index* (Mipex) came about, and it has become a reference guide, the aim of which is to collect and provide information to evaluate, compare, and improve integration policy. The report is based on the hypothesis that showing the higher levels of integration achieved by some states through the identification of achievements and obstacles in key areas may improve integration objectives in the other states (Huddleston and Niessen, 2011:5). The areas include: labor market mobility, family reunion, political participation, long-term residence, access to nationality, antidiscrimination, and education.

[1] This work was carried out within the framework of the project DER2013-48248R financed by the Ministerio de Economía y Competitividad as a part of a National Plan I+D+i and Project GVPROMETEOII2014-078 of Valencian Regional Government.

However, this context still leads to certain paradoxical approaches. The first paradox is characterized by a two-sided regulatory approach to regular and irregular, or undocumented, immigration (Añón, 2013a:17–25). First is the regular immigration channeled through the framework of mainly soft law recognition of integration and antidiscrimination measures. Second is the regulation synthesized in the European Directive on standards and procedures in member states for returning illegally staying third-country nationals, adopted in 2008 by the European Parliament, better known as the "Return Directive" and which was soon labeled the "Directive of Shame."

The second paradox arises from the contradictions found within the legal instruments of migration policies, particularly those that still fulfill an important function in the social construction of reality and which do so today with underlying currents of racism and xenophobia, but with new features. We are thus faced with a "differentialist" racism that continues to call for discriminatory treatment on the pretext of different cultural identity/-ies, but which gives rise to a construct of foreigners as impossible to integrate or incompatible (De Lucas and Añón, 2013:43). In the laws governing immigration and asylum in recipient countries of population displacements, one may speak of an "institutionalization" of racism and xenophobia. The social construct of the immigrant—particularly irregular immigrants, and above all irregular women ones—and its consequences in terms of denial or curtailment of rights (marriage, family unit, minors), is an improper transposition of any legal logic of assumptions and analogy. The ethnic marker, as Castel (2007:11–14) argues, is not taken into account in order to invalidate it or to cancel out its relevance as a disadvantage, but to drive the "nail of discrimination" even farther in. Difference as a trait thus becomes an indelible defect that strengthens inequality and has ramifications for exclusion and social cohesion. Hence, the assertion that the fight against racism and xenophobia has not lost its raison d'être; rather, it has to undergo a transformation and must be addressed as a product of social and ethnic conflict (Castel, 2007, 2010).

The need to combine integration and antidiscrimination measures seems clear (Guiraudon, 2009:527–549). In general, as Esteve states, "[T]he authorities are reluctant to address issues of discrimination, their policies refer to integration rather than to 'nondiscrimination' and it is difficult to accept that the best integration is precisely that which guarantees nondiscrimination" (2012:26). This is a conclusion that has been reached in various fields. The *Migrant Integration Policy Index* (Mipex) makes it clear that integration policy improves significantly and consistently when countries advance their policies on discrimination and equality (Huddleston and Niessen, 2011:10).

Europe is immersed in debate. On one hand, its self-proclaimed *European Agenda for the Integration of Third-Country Nationals 2011*, which states, "Europe needs a positive attitude towards diversity and strong guaranties for fundamental rights and equal treatment, building on the mutual respect of different cultures and traditions," a proposal aimed at increasing the economic, social, cultural, and political participation of migrants and which places emphasis on local action. And, on the other hand, state immigration policies characterized by new elements that create obstacles for labor migration and integration, as they now require the acquisition of minimum qualifications before starting the migration process, whereas in the past this was offered in the host country upon arrival. Labor migration has become something much more complicated and arduous in many European countries, and is even a matter of public order and state security (Bijl and Verweij, 2012:11).

The underlying logic of integration, as a two-way process by which the recipient society has to give immigrants the opportunity to occupy a place in it, is changing and all the weight has now shifted to immigrants being able to fulfill their duties; in this way a conception of integration as the basis of positive social inclusion has come to be identified with a mechanism of control (Solanes, 2009, 2013:14, 32–33). Today in the European Union there is a range of data indicative of the need for a policy shift particularly, but not exclusively, in the labor market. From these data, Bijl and Verweij (2012:15) underline the predominantly low employment levels among immigrants, especially immigrant women, growing

levels of employment for the highly skilled, greater risk of social exclusion, great differences in educational outcomes and certain public, mainly local, commitments with regard to failures in integrating the immigrant population.

I shall examine the thesis according to which nondiscrimination towards foreigners is the indisputable path to integration. Integration crucial for both welfare and social stability and for economic development, because inequality and exclusion, as the 2013 *Human Development Report* asserts, are injustices that undermine fundamental human freedoms (PNUD, 2013:34-38). The discrimination that more directly affects immigrants is discrimination on racial or ethnic grounds. From the point of view of principles it is undoubtedly relevant that the European Court of Human Rights (ECHR) held that "no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures" (ECHR, 2009b).

The European Regulatory Framework: Equality Directives and the European Convention on Human Rights

The struggle against discrimination and the promotion of equality have evolved significantly in various areas in the European Union. At the policy level, the directives, to which I refer below, have particular value as do, from a broader perspective, the transformation that they have wrought in fundamental rights, the adoption of the *Lisbon Treaty* incorporating the Charter of Fundamental Rights, and the accession of the EU to the European Convention on Human Rights and the significance of this in the jurisdiction of both the ECHR and the Court of Justice of the European Union. Significant from the institutional point of view is the creation of the European Union Agency for Fundamental Rights or the specific state equality bodies that have led to an exponential increase in knowledge about the phenomenon of discrimination, through studies, reports, and increasingly refined statistical databases.

In 2000, the two most important tools in the field of antidiscrimination in the EU were approved (On the gestation of equality directives in the context of the action program to combat discrimination for the period 2001–2006 (Cachón 2009:191, Howard 2005:468–486). They were Council Directive 2000/43/EC of June 29, 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC of November 27, 2000, establishing a general framework for equal treatment in employment and occupation. The purpose of both directives, adopted under Article 13 of the TEC, is that member states develop their own antidiscrimination law based on specially protected characteristics and the areas of discrimination that the directives regulate. If Article 13 of the TEC, as Cachón writes (2009:193), was a step forward compared with the previous treaty, these directives represent a remarkable transformation of the legal instruments in the fight for equality throughout the European Union. The directives were a milestone since, before the EU legislation of 2000, only six EU countries had specific racism laws.[2]

The abovementioned directives introduced the concept of discrimination into European law, and the distinction between various forms of discrimination: direct, indirect, and harassment. Directive 2000/43 against racial or ethnic discrimination includes within the scope of its application both the public and private sectors in the areas of employment, vocational training, working conditions, participation in trade unions or business organizations, protection and social security, health care, social services, education, and access to public goods and services, including housing. This has a strong labor perspective (Bell, 2008:80). It also incorporates provisions that

[2] Both directives were transposed into Spanish law in Chapter iii of Law 62/2003 of December 30 on fiscal, economic, and social measures and Organic Law 3/2007 on the effective equality of women and men. Moreover, Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law has been transposed by amending certain articles of the Spanish penal code to establish aggravating circumstances of crimes and special hate crimes and discrimination. But the general opinion is that there has not been a proper transposition of the directives into Spanish law (Rey Martínez and Giménez Glück, 2010:26), that it was minimal and perhaps even incomplete.

protect against the infringement of rights on grounds of racial or ethnic discrimination, such as obligations that states must fulfill in various spheres. From the institutional point of view, the directive establishes the obligation to create an independent national body with competencies in the promotion of equality, which should then become a key player in the fight against discrimination. From the point of view of protection, principles of protection and compensation for infringements are incorporated, such as administrative and judicial procedures, the legal standing of associations, the principle of indemnity or protection from retaliation, the remedial principle of nullity of all acts that cause discrimination, the principle of reversal of burden of proof in all areas, except in the area of criminal law, and the establishment of "effective, proportionate, and dissuasive" sanctions.

The provisions of the directives are applicable to all persons who are currently in a member state of the European Union regardless of their country of origin, and in each of the states the enjoyment of fundamental rights without discrimination must prevail, without this being made dependent on nationality, citizenship, or residence. However, Council Directive 2000/43/EC contains an exclusion clause based on nationality which, notwithstanding, suffers from ambiguity and will probably require a jurisprudential pronouncement, as Esteve indicates (2012:29). "This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals [...] and to any treatment which arises from the legal status of the third-country nationals" (Article 3.2). This provision was incorporated into Spanish law in the seventh additional provision establishing a similar regulation regarding migrant law.

The approach to the "racial and ethnic origin" characteristic differs depending on whether we consider the European directives or the European Convention on Human Rights. Council Directive 2000/43/EC of June 29, 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin expressly excludes nationality from the concept of

race or ethnic origin, neither is it defined, while the convention refers to nationality or national origin as a specific characteristic. European Union law has evolved in such a way that nationality has been regulated in the context of legislation on the free movement of persons. However, the European Court of Human Rights case law has generally adopted a broad interpretation of "racial discrimination," which places nationality alongside ethnic origin. The interpretation criteria of the convention may also be a hermeneutical grounding of EU equality directives, as well as of other EU instruments such as the council definition of racism and xenophobia that includes reference to race, colour, religion, descent or national or ethnic origin. Furthermore, the European Commission against Racism and Intolerance (ECRI) of the Council of Europe has also adopted a broad approach to the definition of "racial discrimination," including language, color and descent as protected characteristics, although they are not expressly set forth (ECRI 2003:5). The Committee on the Elimination of Racial Discrimination considers that, if no justification exists to the contrary, the determination of whether or not a person is a member of a racial or ethnic group "shall be based upon self-identification by the individual concerned" (CERD, 1990). The ECHR considered, in the Timishev case, that "ethnicity and race are related and overlapping concepts. Whereas the notion of race is rooted in the idea of biological classification of human beings into subspecies according to morphological features such as skin color or facial characteristics, ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds" (ECHR, 2005).

With regard to nationality or national origin, the laws of both the European Union and the ECHR underline the idea of legal bond between a person and a State (ECRI, 2003:6). Although the European Convention on Human Rights provides greater protection in this regard, it recognizes that the absence of this bond signifies an absence of objective connections with the state. This consideration prevents the victims from claiming that they are in

a situation comparable to that of a citizen of that state. The ECHR considers that the closer the objective factors connecting a person to a particular state, the lower the probability that different treatment on grounds of nationality will be justified. In this regard, and taking all the possible nuances into account, it may be said that the European Convention on Human Rights imposes on all member states of the Council of Europe the duty to guarantee the rights enshrined in the Convention to all persons under their jurisdiction, including those that do not possess the nationality of the state in question. The court has, on various occasions, reviewed the connection between persons and the state in relation to situations of discrimination in access to social benefits. In the case of Gaygusuz v. Austria (ECHR,1996), the ECHR found that the applicant, a Turkish national who had worked in Austria, was in a situation similar or comparable to that of Austrian nationals, as he was a permanent resident and had paid his contributions to the unemployment insurance fund. The conclusion thus reached was that the absence of a reciprocal social security agreement between Austria and Turkey cannot justify different treatment.

The ECHR has, moreover, affirmed the right of access to justice for all persons under the jurisdiction of a state. In the case of Anakomba Yula v. Belgium, (ECHR, 2009a), the applicant, a Congolese citizen unlawfully resident in Belgium, applied to renew her residence permit, which had expired shortly after she had given birth. She also applied for legal aid as she lacked the means to file a paternity suit. She was denied legal assistance because it was only provided to citizens. The ECHR found that the applicant's right to a fair trial had been violated (Article 6.1 of the convention) and that this was due to her nationality. The court held that there is no justification for the state to differentiate between those who have a residence permit and those who do not, in a situation in which significant aspects of family life were at stake, a very tight deadline had been given to establish paternity and the applicant had begun the process of renewing her residence permit.

Studies by Spain commissioned by the Council for the Promotion of Equal Treatment and Non-Discrimination Against Persons on the Grounds of Racial or Ethnic Origin (2010:39–47) confirm the fact that discrimination against people on the grounds of their racial or ethnic origin is still present in our societies, and that it is not diminishing, but becoming increasingly evident. These studies provide ample information on the following: group profiles, areas of discrimination, opinions of the host society, and the response to acts of discrimination.

The profiles show that in Spain the population groups that experience the greatest number of acts of discrimination are the Roma population and immigrants and, among the latter group, those from North Africa. The Roma community in Spain is the group that is subjected the most to intolerance and rejection by the majority population.

Looking now at the areas where instances of discrimination have occurred most often, these are—in individual cases—access to goods and services, treatment by law enforcement agencies, and employment. Cases of collective discrimination occur primarily in employment, media, and access to goods and services.

This is compounded by considerable disparities in levels of awareness and perceptions of discrimination; notable in this respect is the fact that around 70 percent of people indicated that they had not, in the first instance, felt discriminated against personally, but when questioned about specific situations they acknowledged that they had experienced them. Opinion polls assume that there is no discrimination in a society such as Spain (Cea, 2011:215). Yet a combination of multivariate analytical techniques show, in keeping with Cea de Arcona's analysis, that the rejection of immigration as measured in surveys is mainly externalized in opinions like the following: the denial of social rights and citizenship to immigrants; to a notable degree, voting rights, naturalization and family reunification; the tacit rejection of living with immigrants; the desire to toughen up immigration

policy and opposition to the regularization of economic migrants and the admission of political refugees; the stereotypical negative image of immigration, which associates it with an increase in crime and worsening working conditions; denial of the existence of discrimination on the grounds of racial or ethnic origin, blaming immigrants for shrinking public resources and job opportunities and flocking to the banner of national over foreign (in access to health care, education, the labor market); lukewarm penalization of racism and acceptance of political parties with a xenophobic ideology; playing down acts of violence against immigrants; fear of immigrants settling; taking a position against family reunification policies.

Another important factor is the limited response to discrimination. Complaints are only filed by about four percent of people who consider themselves victims of discrimination. The study by the Council for the Promotion of Equal Treatment and Non-Discrimination Against Persons on the Grounds of Racial or Ethnic Origin found that many people who are victims of unfavorable treatment are either unaware of it or simply do not assert their rights by reporting these incidents (2010:39–53, 141–148). There are many reasons for this, but it is very likely that one of them is the lack of trust that these people have in the effectiveness of justice. The low figures for individuals who have experienced discrimination filing a complaint coincide with data from the EU-MIDIS report (FRA, 2009:34–57), which studies the results of a survey, conducted in 2009, of 23 500 EU citizens who belonged to racial or ethnic minorities or were immigrants. The report concluded that 82 percent of those who said that they had been discriminated against in the previous twelve months had not reported the incident, and 64 percent had not done so because they were convinced that their complaint would not change anything. Over a third of respondents had felt personally discriminated against in the previous 12 months. Twelve percent of respondents claimed to have been the victim of a crime they perceived to be motivated by racial discrimination; discrimination when looking for work and at work was the area of greatest discrimination.

Yet there is little awareness of the importance of combating racism and racial discrimination; hence the weak institutional response to this issue. Proof of this is the inadequate structure for collecting data on the implementation of the new European framework, as well as on the number of complaints, the results achieved, and the reparation or compensation awarded. In Spain, weak points include insufficient data on acts of racism and racial discrimination (ECRI, 2013:5–7). Transposition of European antidiscrimination law has not been optimal in Spain, although it can lay claim to notable institutional aspects such as the creation of the Council for the Promotion of Equal Treatment and Non-Discrimination Against Persons on the Grounds of Racial or Ethnic Origin[3] and the prosecutor's special hate crimes and discrimination service.

An Overview of Discriminatory Acts

Antidiscrimination regulations concerning immigration and nationality are basically contained within Articles 3 and 23 of LOEX (*Aliens Act*) implementing regulation ratified by Royal Decree 557/2011, and Articles 314, 510, 511, 512 and 515.5 of the Criminal Code, which define the various offenses related to discrimination (Parlamento Español, 2000, 2011, 2015).

This section examines some of the acts that may be classified as discriminatory in migration law, and which give counterfactual proof to the notion that Spain is not a country where racism and discrimination based on ethnic origin occur. Article 23 of LOEX refers to "discriminatory acts" in Chapter IV, on antidiscrimination measures. The provisions of Article 23.1 are based on Article 1.1 of the International Convention on the Elimination of all Forms of Racial Discrimination, stating: "For the purposes of this Law, discrimination is any act which, directly or indirectly, entails distinction, exclusion, restriction or preference against a foreigner on the grounds of race, colour, descent, national or ethnic origin, convic-

[3] This Council has changed its name on 16 September 2014 to Council for the Elimination of Racial or Ethnic Discrimination.

tions and religious practices, and which has the purpose or effect of nullifying or impairing the recognition or enjoyment, on an equal footing, of human rights and fundamental freedoms in the political, economic, social and cultural spheres." (Parlamento Español, 2000, 2011, 2015).

This legislation therefore introduces a concept of discrimination in line with international human rights standards, as well as the fundamental distinction between direct and indirect discrimination. There are some aspects that differ from the directive which, in any case, should be interpreted in such a way that they favor rights and are in accordance with Protocol No. 12, which requires objective and reasonable justification of any difference in treatment (Council of Europe, 2000). It also stipulates that no one may be discriminated against by a public authority, which has an obligation to guarantee nondiscrimination, may not discriminate in the exercise of discretionary power, and may not discriminate by act or omission.

The second paragraph of Article 23 LOEX raises more problems, as it describes what constitute acts of discrimination. This description, considering its scope, is inaccurate and wrong, and has certain points in common with general alien law: legal uncertainty, presumption of illegality, disregard for the rights of foreigners, and exceptionality (De Lucas, 2012:15). To focus on the grounds for an act of discrimination, Rubio (2006:626) points out that there is discrimination in Spanish law when a right or particular freedom as established by law is denied to a foreigner or a restrictive interpretation of the content of their rights is made. Acts of discrimination are those that directly or indirectly entail distinction, exclusion, restriction, or preference against a foreigner on the grounds of their race, color, descent, national or ethnic origin, convictions, and religious practices. But this legislation should be linked to Article 14 of the Spanish Constitution (Parlamento Español, 1978) in such a way that the list of discriminated characteristics should also protect those listed therein. The purpose or effect of discriminatory acts is the impairment of the recognition or enjoyment, on an equal footing, of human rights and fundamental freedoms. The distinction between purpose and effect refers to intentionality in the dis-

crimination, which may be both desired (purpose) and without intentionality (effect or result), and which essentially coincides with direct and indirect forms of discrimination (Añón, 2014:118–124).

In relation to the acts defined in the law as discriminatory, brief reference may be made to the following:

1) Those acts committed by the authorities or a public official or staff of a public service who, in the exercise of their duties, by act or omission, perpetrate any act of discrimination prohibited by law against a foreigner exclusively because that person is a foreigner or belongs to a particular race, religion, ethnicity, or nationality.

Article 23.2 establishes that the perpetrator is a public official, authority, or employee in the performance of their duties, by act or omission, and the area in which such behavior has to be perpetrated is within a public service. In this regard the identification of people by their physical features of ethnic traits is a particularly sensitive area because this identification may constitute a violation of the principle of equality and stigmatize demographic groups or consider them potential criminals and/or *illegal* immigrants (García Añón, 2013b:185-186).

Undoubtedly, detention centers for migrants in Spain continue to be an enabling environment for such acts. These are spaces where people are denied their rights and find themselves in situations of helplessness and mistreatment. The *Report on Detention Centres for Migrants in Spain. Current System and Future Proposals*, drawn up by the CGAE (Spanish Bar Council) Law Commission in April 2012, underlines the fact (pp. 20–26) that the rules governing the detention centers do not fully guarantee the rights and freedoms of migrants subject to removal proceedings, especially in regard to legal aid. At present, comprehensive and systematic regulation is lacking because, among other reasons, the law does not specify the legal status of aliens pending repatriation. They therefore find themselves in a legal position wherein their rights are restricted more than the inmates of penitentiary institutions, when being held in a

migrant detention center is only a temporary restriction of their freedom of movement. In general terms, human rights violations occur in detention centers, as do arbitrary administrative acts. This, together with the lack of a real and effective judicial review, violates the rights of those who are detained therein, as highlighted in the 2009 CEAR (Spanish Commission for Refugee Aid) Report, and confirmed by the aforementioned 2012 CGAE Report. There is also a risk of discrimination against irregular immigrants, when identified or arrested prior to entry into an immigrant detention center (García Añón, 2013a).

Moreover, there are many potential cases of discrimination in the processing of authorizations necessary to reside, work, and certify ties with the host society, or in the enjoyment of rights when, for example, the migrant is prevented from voting in their country of origin when this right is withheld or their right of assembly is restricted or impeded, a child is refused access to compulsory education, or nationality becomes a criterion for access to transport, meal, or book subsidies.

2) Acts that impose more stringent conditions on migrants than on Spanish nationals, or that are intended to withhold public goods or services from the migrant, simply because of their migrant status or because they belong to a particular race, religion, ethnicity, or nationality. In this case, consideration is given to discrimination against immigrants by individuals. Situations such as abusive pricing, poor service or absence thereof, denial of access, the requirement of more stringent conditions than for nationals, a lack of respect or recognition, moral contempt, degrading treatment, or moral harm.

The common purpose of these first two aspects—according to Rubio (2006:634)—is to prevent both the government and individuals from perpetrating acts that encourage xenophobia and racism against a migrant on the grounds of social and economic security.

3) Acts that unlawfully impose more stringent conditions than those that correspond to Spanish nationals, or that restrict or limit access to work, housing, education, vocational training,

welfare and social services, as well as any other right recognized by law, to the migrant who is lawfully in Spain, simply because of their migrant condition or because they belong to a particular race, religion, ethnicity, or nationality.

This section is distinguished by the fact that it refers to areas that are essential to social integration and respect for the dignity of migrants—areas such as work, housing, education, welfare, and social services. But, as may be seen from a simple reading of the text, only documented or regular migrants are entitled to protection against discrimination.

In the case of recognition of permits for paid employment (Article 38.1 LOEX 2000) and the approval of the annual quota, there is an initial limit because in both cases the national employment situation has to be taken into account, with the exceptions that are set out in Article 40. At the same time, the courts do not permit Spanish unemployment levels to be used as an argument to justify the refusal of permits to immigrants (Parlamento Español, 2000).

The employment of migrant workers in Spain is governed by the international treaties, the Spanish Constitution of 1978, the Spanish Immigration Law (LOEX) (Parlamento Español, 2000), and the Workers' Statute (Parlamento Español, 1978, 1995, 2000). None of the regulations require or support a company limiting the number of migrant or non-EU workers providing their services to the company at any given time. Even Article 10 LOEX allows migrants with work and residence permits to access employment, on an equal footing with nationals of EU member states, as public administration employees without limits or quotas on the number of those who may provide their services to the public administration at any given time.

Foreigners in Spain may work, in paid employment or self-employed, as long as they have the corresponding residence and work permits and undertake gainful activity in accordance with Spanish legislation. Given these conditions, the courts consider that denial of access on the grounds of origin or nationality and lower wages for the same work constitute discrimination.

Discrimination in access to housing and to housing benefits (Parlamento Español, 2000): In Spain this takes form especially in the terms of lease agreements, which are often abusive, and even in the refusal to lease properties to foreigners from certain sectors or groups, claiming that they have been rejected by the resident associations or that they devalue the property (Vicente, 2009:129–157).

Discrimination in access to education and vocational training: Cases primarily involve segregation in schools and obstacles to accessing certain schools (García Cívico, 2013:35–62). In any case, the right to vocational training is only recognized for foreigners who are resident in Spain. This therefore excludes a demographic group that undoubtedly needs this type of training in particular as a way to build their capacities to meet the demands of the market and as a means of integration into the labor market.

Access to welfare and social services: These are the services referred to in LOEX Articles 12 and 14. The first problem is that there is no catalogue of general and basic, or of specific, social services and benefits. The latter article distinguishes between recognition of the right to basic social services and benefits for all foreigners, regardless of their administrative status (Parlamento Español, 2000) and the right of foreign residents to social services and benefits, both general and basic and specific, subject to the same conditions as Spanish nationals. In any case, foreigners with disabilities under the age of 18, who have their habitual residence in Spain, are entitled to receive special treatment, services, and care as required by their physical or mental state (Parlamento Español, 2000).

A foreigner may be discriminated against if the services or benefits are denied to them because they are a foreigner, if priority is given to nationals without objective justification, or if their needs are assessed differently (Rubio, 2006:642–643). In the context of integration programs specifically aimed at immigrants, discriminatory acts may also occur in relation to groups of immigrants when one group is rejected, repudiated,

or denigrated by another. Difficulties also arise from a lack of information and advice on services and the corresponding administrative authority.

Regarding health care (Parlamento Español, 2000) and recognition of the right of access to it for foreigners registered in the municipality in which they usually reside, a regressive legislative amendment has been introduced that recognizes this right only to foreign residents: Royal Decree-Law 16/2012, of April 20 (Parlamento Español, 2012a), on urgent measures to guarantee the sustainability of the National Health System and improve the quality and safety of its services, and its implementing regulations, the Royal Decree-Law 1192/2012 of August 3, on the status of insured persons and beneficiaries for the purpose of receiving publicly funded health care in Spain through the National Health Service. This new regulation, adopted by the Spanish government, and which came into force on September 1, 2012, changed the entitlement to the right to health in that it introduced considerable changes in access to public health care. Some of the provisions of the aforementioned royal decree-law have been challenged as unconstitutional, including Article 3, which precisely defines the persons who are entitled to health care. Among the arguments for its unconstitutionality are the principle of equality and the prohibition of discrimination, because of the exclusion of public health care to non-regular migrants (Solanes, 2014:133–136).

4) Those acts that, through act or omission, prevent economic activity being lawfully undertaken by an alien residing legally in Spain, only because they are a migrant or belong to a particular race, religion, ethnicity, or nationality.

5) Finally, any treatment arising from the application of criteria that harm workers because of their status as migrants or members of a particular race, religion, ethnicity, or nationality, constitutes indirect discrimination. Indirect discrimination is an apparently neutral standard or measure affecting certain assets that has a detrimental effect on a particular group protected by an antidiscrimination clause, and without there being suf-

ficient constitutional justification to construe it as a limit to the right in question (Giménez, 2004:289). Indirect discrimination is also called discrimination of impact as opposed to direct discrimination that is discrimination in treatment, because, ultimately, it entails assessing the different impact that a legal difference in treatment (supposedly neutral, i.e., not due to specially protected characteristics) causes to members of the protected group in comparison with the majority. In order to assess the unequal impact it is necessary to use statistical data.

Discrimination and Access to Justice: An Approach from the Right to Effective Access to Justice

The starting point is the hypothesis according to which integration policies improve when antidiscrimination laws and policies are developed. In this field, framed by antidiscrimination law, the right of access to justice and associated rights are essential. The *Migrant Integration Policy Index* (Huddleston and Niessen, 2011:24) establishes parameters for assessing the development of nondiscrimination policies, outlining the achievements of the strongest and weakest countries.[4] But the report also shows the average country is characterized by some traits. In most areas, discrimination on the grounds of race, ethnicity, or religion is prohibited. But other categories such as nationality are not circumscribed and are not afforded the same protection. When a victim seeks redress they may benefit from financial aid, an interpreter, and reversal of the burden of proof. NGOs dedicated to the promotion of equality do not have sufficient legal capacity to represent victims or to lead collective action. There are few equality bodies with full legal capacity and the independence necessary

[4] The Mipex III Report, for 2011, ranks the states as follows. Countries where victims are best protected: Canada and, in Europe, UK, Sweden, Belgium, and France. These are states where, in general, the laws being introduced are easier to enforce. Other countries such as Portugal, Romania, Bulgaria, and Hungary are starting to apply newer equality and nondiscrimination legislation. The Baltic states, Malta, and Austria have only met minimum standards required by the EU. Poland and Switzerland are well below required standards. Finally countries such as the Czech Republic, Germany, Denmark, and Spain exceed minimum standards by adopting broader protection mechanisms but are still ineffective because their equality policies are weak.

to provide assistance to victims. The main weakness is the equality policies, and this inadequacy, linked to dwindling funds, may have a very negative impact on access to justice in many countries (Huddleston and Niessen 2011:24).

Ensuring access to effective justice in cases of discrimination may be considered a justice response in the sense proposed by Fraser (2003:83). A response that surpasses both the limits of a simple economics-based view and the weaknesses of a culturalist perspective that states that maldistribution may be remedied through recognition. It is a response that can embrace the demands of cross-cutting redress and transformative redistribution on a limited scale. Transformative redistribution comes about through measures designed to increase and/or redistribute income intended to strengthen the capacity to avoid harm associated with status, from an approach that promotes the right to social welfare above assistance programs that stigmatize their beneficiaries. This transformative remedy to maldistribution has the potential to reduce misrecognition, and is especially useful in combating racism. Cross-redressing also includes measures associated with recognition, by way of greater respect for groups that are socially spurned due to subordinate status, e.g., overcoming discrimination in access to housing, credit, and employment. In these cases, recognition may help because they are situations where distributional issues are linked to status subordination. As is well known, Fraser (2003:40, 42) posited a bivalent conception of justice that does not attempt to synthesize recognition and distribution, but that speaks of two perspectives, two mutually irreducible dimensions of justice that would nevertheless coincide in a key criterion of justice: parity of participation. This is a criterion of justice that has two conditions. One is related to the distribution of goods that ensure the independence and voice of all participants, precluding those social arrangements that institutionalize deprivation, exploitation, or great disparities in wealth that keep some people from interacting as equals. The second condition precludes the institutional schemata that systematically depreciate certain categories of people and therefore rejects institutionalized social and cultural patterns that deny certain people participant status.

In this regard, the right to free legal aid may be a step towards social justice in terms of access to justice, as an expression of the parity of participation. There are clearly different parameters and levels of development of the legal aid. First of all, effective access to justice comprises a range of situations or possibilities admitted by legal systems: citizens' knowledge of their rights and the means to exercise them; access per se through some kind of institutionalization of free legal aid for those without the means to take legal action; the availability of a justice system capable of delivering a correct decision on the merits of the case within a reasonable time period; and the possibility of completing proceedings in full, so that the outcome ultimately depends on the legal merits of each part of the process, and in sum that it has satisfied the regulatory principle of "equality of arms" (Capelletti and Garth,1996:20).

Let us consider how important it is for potential litigants in this area of law to be aware of their rights, the violation of said rights, and the possibility of finding redress through the courts (Gloppen, 2006:46). Often, those whose rights have been severely violated lack this knowledge. The first barrier is therefore overcome by recognizing that there is a legally enforceable right, followed by the degree of knowledge and information required to file a complaint. However, these obstacles, according to Cappelletti and Garth, have more or less impact depending on other aspects, such as the parties, institutions, and actions involved.

The difficulties gaining access to justice that affect large sectors of the population, especially vulnerable groups (Gloppen, 2006:45), are related in particular to financial problems, but also to other variables such as lack of information, corruption of the justice system, the formalism that surrounds the judicial institution, the fear and mistrust it generates, delays owing to its decision-making system and other—even geographical—barriers that stand between citizens and judges. The greatest obstacles include temporal restrictions on access and on the proceedings,[5] the issues of active

[5] Article 6.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states that justice should be made available within a "reasonable time." This requirement is interpreted to mean that justice that is not available within a reasonable time is justice that is inaccessible for many people (Council of Europe, 1950).

and passive legal standing, costs and court fees,[6] the complexity of the legislation and the formalities and structure of the judicial system, substantive and procedural law. Gargarella refers to it as a "situation of opportunity" defined through the formal or "systemic" barriers and the informal barriers of the search for justice or redress through the judicial system (Gargarella, 2006:120). So there are various impediments that are significant enough to condition the right of access to justice. However, the focus shall be on those that are particularly relevant to antidiscrimination protection and among these, on those related to knowledge of rights and the means to exercise them.

Legal aid as a right to give effect to the access to justice raises a number of core issues that must be addressed, particularly in regard to combat discrimination by individuals such as third-country nationals in Spain.

First, it requires a reflection on the consideration law in itself, to strengthen the idea of the right to free legal aid as a fundamental social right, as a justice guarantee not only individually, but also as a constitutional value and a key component of the rule of law (Añón, 2013b:292). This also includes deepening the necessary relationship among the right to free legal aid and other fundamental rights such as equality, the right to effective judicial protection, and the right to legal assistance.

Access to justice has two central dimensions that characterize it as a social and a fundamental right. Cappelletti and Garth (1996:10–13), in their now classic analysis, noted that access has the potential to bring to bear two basic objectives of the legal system by which people may assert their rights and resolve disputes within the state. These are equality of opportunity and quality of outcome. The system must be equally accessible to all and should result in outcomes that are individually and socially just. Therefore, on the one hand, and in a broad sense, this is understood to guarantee real and effective equality in accessing state institutions, bodies or powers that generate, implement or interpret laws and set

[6] The thesis that one of the main obstacles that stand between the citizen and justice is economic is not recent; on the contrary, it is present in the first rudimentary forms of organizing and administering justice (Fanlo, 2004:217–218).

standards, including those that—according to Birgin and Kohen (2006:20)—have a particular impact on social welfare. Hence their centrality in a democratic society (Gloppen, 2006:37). Moreover, access to justice includes the means, particularly those of a procedural nature, which are adopted in order that people may resolve their disputes and protect their rights in the courts of justice and, in general terms, before the corresponding institutions.

Concurrently, this also means keeping legal aid as a public service, as part of a fundamental right—the right to effective judicial protection—publicly funded. This is the last defense of those most disadvantaged, the most vulnerable groups such as immigrants in Spain. This is an increasingly more needed right, while there are an increasing number of people with incomes below a sufficient level to litigate.

Effective judicial protection is interpreted both by those different laws that have regulated the legal status of aliens in Spain, and the Constitutional Court as a fundamental right equally entitled for nationals and aliens. Thus, the right to free legal aid and legal assistance is considered an essential right, needed as a universal human right. The judgment of the Spanish Constitutional Court 95/2003 is critical at this point acknowledging that aliens settled in Spain are entitled to free legal aid regardless of their legal status. Following the Judgment 236/2007, it expressly recognizes a profound relationship to international human rights and fundamental rights in its legal basis (Tribunal Constitucional Español, 2003, 2007).

The determination of this institution in Spain, however, has even more critical aspects according to the reform of free legal aid legislation, which is pending approval. Indeed, the Draft Bill on Free Legal Aid of February 24, 2014, maintains the recognition of the right to Spanish, EU nationals, and aliens who are settled in Spain, having to prove all of them the lack of financial resources to litigate (Article 2). This reform introduces higher requirements in terms of access, in income levels (Article 3), and in the content, which now, however, reaches all jurisdictions, and those cases in which legal assistance is mandatory. The legal reform has been criticized by the General Council of Spanish Lawyers because, ultimately, it introduces difficulties in access to justice and un-

dermines the rights of citizens in general, not just immigrants (Parlamento Español, 2014).

A second core issue of legal aid is the importance that legal advice deserves as an essential element for success in legal proceedings and before administrative and judicial institutions, as many institutions supporting the most vulnerable groups submitted (FRA 2012:50).[7] The main barrier to the access to justice for many people is to count on appropriate legal advice, by legal advice services in bar associations, to guide citizens, and to clearly explain to them the sustainability of the claim. In this sense, the legal ways of obtaining legal aid and advice are essential, as well as the attempt to use technical language to improve the understanding of the legal situation, options among procedures, and their possible consequences.

The survey and report by the European Union Agency for Fundamental Rights in eight EU states confirms this hypothesis by examining the availability, quality, and accessibility of legal advice and assistance. It distinguishes between the points of view of complainants, lawyers, and other intermediaries and equality bodies (FRA, 2011:47–54, 2012:49–50).

There is a general recognition of the difficulties of procuring the services of lawyers specialized in discrimination cases and affordable quality advice. The complainants particularly value systems in which this advice is provided for free or through insurance. In this environment it is understood that initial advice and assistance include: explanation of the regulations contained within legal texts on equality (national and EU directives); the form and procedure of filing a lawsuit or complaint; its content; the identification of lawsuit or complaint alternatives; possible outcomes; subsequent steps in the procedure; and information on mediation or other alternative forms of dispute resolution. This advice helps complainants to clarify their goals and how to approach the case. Explanations of legal terminology and the system of access to justice as well as a professional description of the risks and prospects for the proceedings are especially appreciated at this early stage (FRA, 2012:50)

[7] In particular, as García Añón (2013b:174) and Rey (2014:303) highlight, it can be said that anti-discrimination law by racial reasons in Spain are neither known by citizens, nor legal professionals, and for this reason is scarcely applied.

A broad analysis of this area leads to the conclusion that there are a number of indicators that promote the knowledge of rights and the availability and accessibility of information. Conversely, when these indicators are absent or inadequate, there are major repercussions in the area that was initially highlighted: low levels of awareness about situations of discrimination and a lack of response or complaint (FRA 2012:53). This is undoubtedly influenced by the political reluctance to combat discrimination and to place racial and ethnic discrimination on the political agenda, and the political permissiveness regarding expressions of animosity towards certain population groups. The approach of the media to groups at risk of discrimination is not always constructive, and this is compounded by the lack of resources available to the equality bodies and other entities to promote a culture of fundamental rights.

Basic conditions include the availability and accessibility of legal assistance at all stages of the processes in each legal system; certainly, the complexity of the processes and the technical nature of the language do not facilitate these conditions. This includes: independent institutions specialized in antidiscrimination; the development of communication strategies on these rights within the framework of equality legislation and on the existence, nature, and tasks of each body and complaint submission guidelines; and the development of good practice guides to promote equality and combat discrimination. It also includes: specialized training for lawyers and the quality of relationships that they develop as advisers to the complainants; the qualifications of the professionals who provide advice and support as well as the competencies developed and incorporated into their legal knowledge, in order that they may engage with experiences of discrimination across a variety of people or interdisciplinary teams; and the exchange of information, training, and references between organizations that provide advice and support to victims of discrimination. Other relevant aspects are the personal, moral, and emotional support of victims by equality bodies and other intermediary institutions. The development of cooperation and support networks for specialized knowledge by media professionals, social partners, and politicians, who should have at least some basic working knowledge of antidiscrimination

law. Finally, the development of networks by organizations in the field of human rights to identify the practical needs of individual complainants and how best to respond to them.

The aforementioned barriers or obstacles are interrelated, and it will be difficult to introduce reforms that are effective and that affect only one of the aspects involved; this is a situation analogous to that of the advantages and opportunities. Moreover, the obstacles have a greater or lesser influence depending on the conditions and the manner in which they are addressed. Their effects are more negative in situations in which the complainant is isolated or acting individually, where individuals do not have sufficient resources to litigate, the complaints are minor, the advisers and lawyers have no specialized knowledge, there is no case law in the higher courts, or no victim support institutions. Conversely, those with greater access to advice and information, who undertake the litigation and make use of all legal resources and existing networks in their own interest, are at an advantage. Turning barriers into opportunities undoubtedly requires framing the right of access to justice as a measure of cross-redressing and transformative redistribution. A measure aimed at strengthening the capacity of people to avoid the negative consequences associated with their status and increasing respect for socially neglected groups, thus helping to provide support networks that maximize the possibility of claiming a right and make it effective. This leads to a framework characterized by elements such as that residents of a state have the means to combat discrimination and benefit from the same opportunities. Residents may file a case in court on any form of discrimination, racism, and incitements to hatred. These forms of discrimination are prohibited in all areas of public and private life: employment, education, housing, and social protection. The victims are able to access justice because there are institutionalized mechanisms for this, as well as independent bodies and NGOs that take part in the process. The courts have a wide range of measures and sanctions at their disposal to prevent, deter, and correct discrimination. The state also adopts positive duties and actions that encourage the creation and implementation of antidiscrimination policies in other institutions.

References

AÑÓN, María José, 2013a, "Immigration and Integration: Keys to a Debate. A Point of View from Spain," *International Journal of Humanities and Social Science*, Vol. 3, No. 21, pp. 17–27.

AÑÓN, María José, 2013b, "El acceso a la justicia de las personas migrantes: la asistencia jurídica gratuita," in J. de Lucas and M.J. Añón, eds., *Integración, inmigración y derechos: a la búsqueda de indicadores,* Barcelona, Icaria, pp. 287–318.

AÑÓN, María José, 2014, "The Antidiscrimination principle and the determination of Disadvantage," *The Age of Human Rights Journal*, No. 2, June, pp. 109–128.

BELL, Mark, 2008, *Racism and Equality in the European Union*, Oxford, UK, Oxford University Press.

BIJL, Rob, and Arjen Verweij, eds., 2012, *Measuring and monitoring immigrant integration in Europe,* The Hague, Netherlands, The Netherlands Institute for Social Research.

BIRGIN, Haydeée, and Natalia KOHEN, comps., 2006, *Acceso a la justicia como garantía de igualdad. Instituciones, actores y experiencias comparadas,* Buenos Aires, Biblos.

CACHÓN, Lorenzo, 2009, "Discriminación e instituciones públicas (en España)," in Gorka Urrutia, ed., *Derechos humanos y discriminación. ¿Nuevos o continuos retos?* Gipuzkoa, Spain, Instituto de derechos humanos Pedro Arrupe, pp. 187–219.

CAPELLETTI, Mauro, and Bryant GARTH, 1996, *El acceso a la justicia,* Mexico City, Fondo de Cultura Económica.

CASTEL, Robert, 2007, *La discrimination negative: Citoyens ou indigènes?*, Paris, Seuil,

CASTEL, Robert, 2010, *El ascenso de las incertidumbres. Trabajo, protecciones y estatuto del individuo*, Buenos Aires, Fondo de Cultura Económica.

CEA D'ANCONA, María Ángeles, 2011, "Racismo, xenofobia y conflicto: Un análisis de la situación en España," in M. J. Añón and Á. Solanes Corella, eds., *Construyendo sociedades multiculturales: espacio público y derechos*, Valencia, Spain, Tirant Lo Blanch, pp. 212–249.

COMISIÓN ESPAÑOLA DE AYUDA AL REFUGIADO (CEAR), 2009, *Situación de los centros de internamiento para extranjeros en España*, Spain, Comisión Española de Ayuda al Refugiado (Series Informes CEAR No. 2), in <http://oppenheimer.mcgill.ca/IMG/pdf/CEAR.pdf>, accessed on November 15, 2014

CONSEJO GENERAL DE LA ABOGACÍA ESPAÑOLA (CGAE), 2012, "Centros de Internamiento de Extranjeros en España: régimen vigente y propuestas de futuro," Madrid, Comisión Jurídica del CGAE, April, in <http://www.abogacia.es/wp-content/uploads/2012/04/informe_cies.pdf,> accessed on November 18, 2014.

CONSEJO PARA LA PROMOCIÓN DE LA IGUALDAD DE TRATO Y NO DISCRIMINACIÓN DE LAS PERSONAS POR EL ORIGEN ÉTNICO O RACIAL, 2010, *Informe anual sobre la situación de la discriminación y la aplicación del principio de igualdad de trato por origen racial o étnico en España*, Spain, Ministerio de Sanidad, Política Social e Igualdad, in <http://www.msssi.gob.es/ssi/igualdadOportunidades/docs/2010_Informe_Anual_Consejoigualdad_Accesible.pdf>, accessed on October 20, 2014.

COUNCIL OF THE EUROPEAN UNION, 2000, *Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*, Official Journal, Belgium, Council of the European Union.

COUNCIL OF THE EUROPEAN UNION, 2000, *Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*, Official Journal, Belgium, Council of the European Union.

COUNCIL OF EUROPE, 1950, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, Council of Europe.

COUNCIL OF EUROPE, 2000, *Protocol 12 to the European Convention on Human Rights and Fundamental Freedoms*, Rome, Council of Europe.

DE LUCAS, Javier, 2012, "Sobre los fundamentos de la igualdad y del reconocimiento. Un análisis crítico de las condiciones de las políticas europeas de integración ante la inmigración," in Javier de Lucas, Anna Quiñones Escámez, Patricia Campelo, Amaia

Izaola, and Imanol Zubero, *Inmigración e integración en la UE. Dos retos para el siglo XXI*, Bilbao, Eurobask, pp. 11–91.

DE LUCAS, Javier, and Añón, María José, 2013, "Sobre el proceso de globalización de la xenofobia y el racismo institucionales," *Sistema*, No. 229, pp. 41–56.

ESTEVE, Francina, 2012, "La normativa europea contra la discriminación y el racismo. Su desarrollo y aplicación en España, Italia y Francia," in José García Añón and Mario Ruiz Sanz, eds., *Discriminación racial y étnica balance de la aplicación y eficacia de las garantías normativas*, Valencia, Spain, Tirant Lo Blanch, pp. 25–57.

EUROPEAN COMISSION AGAINST RACISM AND INTOLERANCE (ECRI), 2003, *General Policy Recommendation N°7 on national legislation to combat racism and racial discrimination*, in <http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n7/ecri03-8%20recommendation%20nr%207.pdf>, accessed on July 8, 2014.

EUROPEAN COMISSION AGAINST RACISM AND INTOLERANCE (ECRI), 2013, *Conclusions on the Implementation of the Recommendations in Respect of Spain Subject to Interim Follow-Up*, in <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Spain/ESP-CBC-IV-2011-004-ENG.pdf>, accessed on September 20, 2014.

EUROPEAN COURT OF HUMAN RIGHTS (ECHR), 1996, *Case Gaygusuz v. Austria*, No. 17371/90, September 16.

EUROPEAN COURT OF HUMAN RIGHTS (ECHR), 2009a, *Case Anakomba Yula v. Belgium*, No. 45413/07, March 10.

EUROPEAN COURT OF HUMAN RIGHTS (ECHR), 2009b, *Case Sejdić and Finci v. Bosnia and Herzegovina,* No. 27996/06 and 34836/06, December 22.

EUROPEAN COURT OF HUMAN RIGHTS (ECHR), 2005, *Case Timishev v. Russia* No. 55762/00 and 55974/00, December 13.

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA), 2009, *EU-MIDIS, European Union minorities and discrimination survey, Main Results Report,* in <http://fra.europa.eu/en/publication/2012/eu-midis-main-results-report>, accessed on September 10, 2014.

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA), 2011, *Access to Justice in Europe: An Overview of Challenges and Opportunities*, Luxembourg, Publications Office of the European Union.

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA), 2012, *Access to Justice in Cases of Discrimination in the EU. Steps to Further Equality*, Luxembourg, Publications Office of the European Union.

FANLO CORTÉS, Isabel, 2004, "La prima 'porta'. Riflessioni sull'accesso alle Corti da parte dei non abbienti," *Materiali per una storia della cultura giuridica,* Vol. XXXIV, No. 1, June, pp. 217–237.

FRASER, Nancy, 2003, "Social justice in the Age of Identity Politics: Redistribution, Recognition, and Participation," in Nancy Fraser and Axel Honneth, *Redistribution or Recognition? A Political-Philosophical Exchange*, London, New York, Verso, pp. 7–109.

FREDMAN, Sandra, 2011, *Discrimination Law,* Oxford, UK, Clarendon Press.

GARCÍA AÑÓN, José, 2012, "Discriminación, exclusión social y conflicto en sociedades multiculturales: La identificación por el perfil étnico," in José García Añón and Mario Ruiz Sanz, eds., *Discriminación racial y étnica balance de la aplicación y eficacia de las garantías normativas*, Valencia, Spain, Tirant Lo Blanch, pp. 281–316.

GARCÍA AÑÓN, José, 2013a, *Informe sobre el trato a los inmigrantes en situación administrativa irregular, al ser identificados o detenidos previamente a su ingreso en un CIE*, Legal Clinic Law School, University of Valencia, February 2013.

GARCÍA AÑÓN, José, 2013b, "Indicadores de garantía de la igualdad frente a la discriminación racial y étnica en el Estado español," in Javier de Lucas and María José Añón, eds., *Integración y derechos: a la búsqueda de indicadores,* Barcelona, Icaria, pp. 149–200.

GARCÍA CÍVICO, Jesús, 2013, "Indicadores de integración social del inmigrante: el derecho a la educación," in Javier de Lucas and María José Añón, eds., *Integración y derechos: A la búsqueda de indicadores,* Barcelona, Icaria, pp. 35–64.

GARGARELLA, Roberto, 2006, "Protesta social y parcialidad judicial," in Haydée Birgin and Beatriz Cohen, eds., *Acceso a la justicia como garantía de igualdad. Instituciones, actores y experiencias comparadas,* Buenos Aires, Biblos, pp. 109–128.

GHERARDI, Natalia, 2006, "Notas sobre el acceso a la justicia y servicios jurídicos gratuitos en experiencias comparadas: ¿Un espacio de asistencia posible para las mujeres?," in Haydée Birgin and Beatriz Cohen, eds., *Acceso a la justicia como garantía de igualdad: Instituciones, actores y experiencias comparadas,* Buenos Aires, Biblos, pp. 129–176.

GIMÉNEZ GLÜCK, David, 2004, *Juicio de igualdad y Tribunal Constitucional,* Barcelona, Bosch.

GLOPPEN, Siri, 2006, "Courts and Social Transformation: An Analytical Framework," in Roberto Gargarela, Pilar Domingo, and Theunis Roux, eds., *Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor?,* Hampshire, Burlington, US, Ashgate, pp. 35–59.

GUIRAUDON, Virginia, 2009, "Equality in the Making: Implementing European Non-Discrimination Law," *Citizenship Studies,* No. 5, October, pp. 527–549.

HOWARD, Erica, 2005, "Anti Race Discrimination Measures in Europe: An Attack on Two Fronts," *European Law Journal,* Vol. 11, No. 4, pp. 468–486, in <http://www.msssi.gob.es/ssi/igualdadOportunidades/docs/2011_conclusiones_retos_clave_conferencia_consejo_vfacc.pdf>, accesed on october 20, 2014

HUDDLESTON, Thomas, and Jan NIESSEN, 2011, *Migrant Integration Policy Index III*, Brussels, The British Council and Migration Policy Group, in <http://www.mipex.eu/sites/default/files/downloads/migrant_integration_policy_index_mipexiii_2011.pdf>, accessed on May 15, 2014.

PARLAMENTO ESPAÑOL, 1978, *Constitución española*, Spain, Parlamento Español.

PARLAMENTO ESPAÑOL, 1995, *Real Decreto Legislativo 1/1995, de 24 de marzo, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores*, in Boletín Oficial del Estado, Spain.

PARLAMENTO ESPAÑOL, 2000, *Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, (LOEX)*, in *Boletín Oficial del Estado*, Spain, January 12.

PARLAMENTO ESPAÑOL, 2003, *Ley 62/2003, de 30 de diciembre, de medidas fiscales, administrativas y del orden social*, in *Boletín Oficial del Estado*, Spain, December 30.

PARLAMENTO ESPAÑOL, 2007, *Ley Orgánica 3/2007, de 22 de marzo, para la igualdad efectiva de mujeres y hombres,* in *Boletín Oficial del Estado*, Spain, March 23.

PARLAMENTO ESPAÑOL, 2011, *Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009*, in *Boletín Oficial del Estado*, Spain, April 30.

PARLAMENTO ESPAÑOL, 2012a*, Real Decreto Ley 16/2012, de medidas urgentes para garantizar la sostenibilidad del Sistema Nacional de Salud y mejorar la calidad y seguridad de sus prestaciones*, in *Boletín Oficial del Estado*, Spain, April 24.

PARLAMENTO ESPAÑOL, 2012b, *Real Decreto1192/2012, de 3 de agosto que regula la condición de asegurado y beneficiario a efectos de la asistencia sanitaria española con cargo a fondos públicos*, in *Boletín Oficial del Estado*, Spain, August 4.

PARLAMENTO ESPAÑOL, 2014, *Proyecto de Ley de Asistencia jurídica Gratuita, de 7 de marzo Boletin Oficial Cortes españolas*, in *Boletín Oficial del Estado*, Spain, in <http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-84-1.PDF>, accessed May 10, 2014.

PARLAMENTO ESPAÑOL, 2015, *Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*, in *Boletín Oficial del Estado*, Spain, March 31.

REY MARTÍNEZ, Fernando, 2014, "El principio de igualdad en el contexto de la crisis del Estado social: diez problemas actuales," in Miguel Ángel Presno, ed., *La metamorfosis del Estado y del derecho,* Asturias, Spain, Junta General del Principado de Asturias, pp. 289–312 (Fundamentos No. 8).

REY, Fernando, and GIMENEZ GLÜCK, David, 2010, *Por la diversidad, contra la discriminación la igualdad de trato en España: Hechos, garantías, perspectivas*, Madrid, Fundación Ideas.

RUBIO, Ana, 2006, "De las medidas antidiscriminatorias," in Carlos Esplugues and Carmen Azcárraga, eds., *Comentarios a la Ley de Extranjería*, Valencia, Tirant Lo Blanch, pp. 613–652.

SOLANES, Ángeles, 2009, "¿Integrando por ley?: De los contratos europeos al compromiso de la Ley autonómica valenciana 15/2008," *Revista de Derecho migratorio y extranjería,* No. 20, pp. 47–75.

SOLANES, Ángeles, 2013, "Indicadores para la integración de los inmigrantes desde las directrices europeas," in Javier de Lucas and María José Añón, eds., *Integración y derechos: A la búsqueda de indicadores,* Barcelona, Icaria, pp. 11–34.

SOLANES, Ángeles, 2014, "La salud como derecho en España: reformas en un contexto de crisis económica," *Derechos y libertades,* No. 31, Época II, pp. 127–162.

TRIBUNAL CONSTITUCIONAL ESPAÑOL, 2003, *Sentencia STC 95/2003, de 22 de mayo*, Spain, Tribunal Constitucional Español.

TRIBUNAL CONSTITUCIONAL ESPAÑOL, 2007, *Sentencia STC 236/2007, de 7 de noviembre*, Spain, Tribunal Constitucional Español.

UNITED NATIONS DEVELOPMENT PROGRAMME (PNUD), 2013, *Human Development Report 2013. The Rise of the South: Human Progress in a Diverse World*, New York, United Nations Development Programme.

UNITED NATIONS, COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD), 1990, *General Recommendation VIII on the Interpretation and application of Article 1, paragraphs 1 and 4 of the convention*, *Document A/45/18*, New York, United Nations.

VAN DIJK, Peter; Fried VAN HOOF, Arjen VAN RIJN, and LEO ZWAAK, 2006, "Right to a fair and public hearing," in *Theory and Practice of the European Convention on Human Rights*, Antwerpen, Belgium, Oxford, UK, Intersentia, pp. 511–650.

VICENTE, Trinidad L., 2009, "La vivienda ¿un derecho humano o un factor de exclusión para la población inmigrante?," in Gorka Urrutia, ed., *Derechos humanos y discriminación: ¿Nuevos o continuos retos?*, Gipuzkoa, Spain, Instituto de derechos humanos Pedro Arrupe/Diputación Foral de Gipuzkoa, pp. 129–157.

Date of receipt: October 6, 2014.
Date of acceptance: May 12, 2015.