THE TRANSPOSITION AND IMPLEMENTATION OF THE EU EQUALITY DIRECTIVES IN MALTA

by

Ava Marie Stone

A Thesis
Submitted to the
Graduate Faculty
of
George Mason University
in Partial Fulfillment of
The Requirements for the Degrees
of
Master of Science
Conflict Analysis and Resolution
Master of Arts
Conflict Resolution and Mediterranean Security

Committee:

_____ Chair of Committee

_____

_____

_____ Graduate Program Director

_____ Dean, Jimmy and Rosalynn Carter School for Peace and Conflict Resolution

Date: _____ Fall Semester 2020
George Mason University
Fairfax, VA

The Transposition and Implementation of the EU Equality Directives in Malta

A thesis submitted in partial fulfilment of the requirements for the degrees of Master of Science at George Mason University and Master of Arts at the University of Malta

by

Ava Marie Stone
Bachelor of the Arts
Virginia Commonwealth University, 2013

Committee Chair: Susan Hirsch, Professor
Conflict Resolution and Anthropology

Fall Semester 2020
George Mason University
Fairfax, Virginia

DEDICATION

This is dedicated to anyone who looks around and see what others avoid or cannot. Have the courage to probe the ugly truths in society because the answers can bring you peace.

ACKNOWLEDGEMENTS

I would like to thank my husband who made this final step possible. My mom who supported me while I had to sacrifice a great deal of time to focus on the research. I would also like to thank my supervisor, Dr. Susan Hirsch for her persistent guidance throughout the process. I would also like to thank my program coordinator, Thanos Agastias, for working with me to brainstorm and think through my constantly changing thought process to focus on this specific topic.

TABLE OF CONTENTS

LIST OF FIGURES

LIST OF ABBREVIATIONS

Fundamental Rights Agency…**FRA**
European Community**EC**
National Commission for the Promotion of Equality**NCPE**
Department for Industrial & Employment Relations**DIER**
European Union**EU**
Partit Nazzjonlista or the Nationalist Party in Malta**PN**
Partit Laburista or the Labor Party in Malta**PL**
United Kingdom.....UK

LIST OF TERMS

The following are several terms that will be used throughout this thesis when discussing the Race Equality Directive. The following provides a definition for each term and it contextualization, if appropriate:

Direct Discrimination
Direct discrimination will generally be 'taken to occur when one person is treated less favorable than another is, has been or would have been traced in a comparable situation on ground of' whatever 'forbidden ground' is central to the directive in question.

Enforcement
The directives each acknowledge the fact that enforcement of equality law is challenging. As such, the Racial Equality Directive and the General Framework Directive (Article 8) requires that member states provide for a shift of the burden-of-proof upon a substantiated claim of discrimination. Meaning, upon transposition, all member states should practice the process of justice concerning discrimination cases in way that does not require victims of discrimination to provide evidence that discrimination occurred. Instead, the Directives are setting the norm that it is assumed that certain groups experience discrimination. Article 7 of the Racial Equality Directive and of the General Framework Directive both oblige Member States to provide access to judicial procedures and, where appropriate, conciliation procedures, for those who consider themselves wronged by a failure to apply the principle of equal treatment. Individual enforcement of equality legislation has proven to be a slow process. All directives encourage Member States to ensure the 'associations, organizations or other entities which have…a legitimate interest in ensuring that equality law is complied with, may engage either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement' of equality law. The directives also require Member States to take adequate measures to promote social dialogue between the two sides of industries with a view to foster equality, in particular encouraging collective agreements (Article 11 Racial Equality Directive, Article 13 General Framework Directive). They also oblige member states to engage in dialogue with non-governmental organizations (Article 12 Racial Equality Directive, Article 14 General Framework Directive).

Equal Treatment
All three directives define equal treatment as the absence of discrimination on grounds of the specific characteristics addressed by the directives, respectively. In the newer

directives, the definition of equal treatment explicitly refers to the directive as a whole. In contrast, to the gender Equality {Reform}, there is little room to broaden the interpretation of what is considered equal.

Harassment

According to the new directives, harassment 'shall be deemed to be discrimination (…) when an unwanted conduct related to {specific 'forbidden ground(s)' covered by the directive} with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Racial and ethnic and other harassment may be defined 'in accordance with the national law and practices of the Member States' (Article 3 paragraph 4 of the Race Equality Directive and Framework Directive, respectively). This allows for different national definitions to hinder the of European standard in harassment cases.

Indirect Discrimination

The newer directives are based on the definition of indirect discrimination in the Burden of Proof Directive and the European Court of Justice's case law on the matter. In the directive, indirect discrimination 'shall exist where an apparently neutral provision, criterion or practice disadvantages a substantially higher proportion of the members of one sex unless that provision, criterion or practice is appropriate and necessary and can be justified by objective factors unrelated to sex'. In cases related to gender, statistics were needed to prove that conditions adversely affect the minority group in the court of law. Referring to national discrimination, statistics are not required to prove there is a certain criterion in place which mean it is accepted that conditions intrinsically affect migrants more. The Race Equality Directive entails a slightly altered definition: 'indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other person, unless the provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Although statistics can still play a positive role in indirect discrimination cases, there is now discretion for courts and legislators to infer particular disadvantage from common knowledge or qualitative rather than quantitative sociological studies to prove the situation of minorities and/or women. This may be due to the influence of the consultation and lobbying efforts of the Starting Line Group[1], a coalition of non-governmental organizations that were mainly pro-migrant and anti-racism organizations. Proponents of the Anglo-Dutch model, the policy model the Equality Directives are modeled on, would support assumptions regarding race and racism as social constructs and therefore should be confronted.

Immigration/Immigrant

[1] The Starting Line group was a coalition of anti-discrimination, anti-racism and pro-migrant NGOs.

In EU context, the action by which a person from a non-EU country establishes his or her usual residence in the territory of an EU country for a period that is, or is expected to be, at least twelve months

Migrants
The Organization on Migration defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. IOM concerns itself with migrants and migration-related issues and, in agreement with relevant States, with migrants who are in need of international migration services.

Positive Action
All directives on equal treatment of persons allow for positive action. In the context of this study, positive action is the ability for member states to expand on the mandates of the directives on non-discrimination. Both the Racial Equality Directive and the Employment Directive allow for 'measures to prevent or compensate for disadvantages linked to ethnic or racial origin' or the other grounds referred to in the framework directive.

Third Country Nationals
Within the context of this paper, third country nationals or 'TCNs' are those who are citizens of a country that is outside of the European Union. They do not have legal citizenship within the any of the EU member states.

ABSTRACT

THE TRANSPOSITION AND IMPLEMENTATION OF THE EU EQUALITY DIRECTIVES IN MALTA

Ava Stone, M.S., M.A.

George Mason University and the University of Malta, 2021

Thesis Chair: Dr. Susan Hirsch

This thesis discusses the significance and impact of the EU Race Directive. The author examines the transposition and implementation of the EU Race Directive in Malta due to its shifting demographics and increasing diversity. In the process of researching and writing this thesis, the author conducted a literature search on scholarship focusing on the Race Directive and reviews research on the transposition of the EU Equality Framework and Race Directive in EU member states. The author uncovered a variety of factors that have affected the transposition process and implementation. Transposition studies have showed that a member states transposition process and implementation of the directive can be determined by its history. Examining the national context can also be used to develop an understanding of domestic legal culture, national identity and citizenship, all which determine how well the directive is implemented. The author argues that in the case of Malta, the aforementioned determinants for successful implementation can be found in the colonial history under British Rule.

CHAPTER ONE: INTRODUCTION

The European Commission has deemed the transposition of the directives a success in all 28 (soon to be 27 with the exit of Britain) member states**.** Although the 2014 report revealed that each member state has brought national legislation in line with the directives, the review of national experiences has highlighted that an array of member states still face challenges in alleviating instances of discrimination. Each member state has its own set of challenges to ensure there is access to justice, knowledge of rights and effective streams of law to ensure justice should the case of discrimination occur. Since the adoption and implementation of the EU Equality Directives[2] (see appendix a and b), scholars have analyzed the development of policy and legislation at the member state level in order to make conclusions on the success of transposition, the effect implementation has had on the social and instructional culture of a member state and to understand what social principles are being adopted. When the European Community (EC) unanimously agreed on the Race Directive, it was the first time the EC incorporated the principles of anti-discrimination in the social sphere. As a result, member states have been prompted to confront historical influences that dictate the institutional approach to

[2] Dir 2000/78/EC of 27 November, 2000 [2000] OJ L 303/16 and Dir 2000/43/EC of 29 June 2000, [2000] OJ L 180/22.

discrimination. The Race Directive does not only cause tension at the member state level, it has begun to ask EU institutions to begin making judicial decisions regarding race, ethnicity and discrimination. The analysis at the member state and EU level has highlighted a number of areas that the EU has not clearly defined, whilst national studies on this issue continue to support the notion that at both levels, implementation needs to be improved. The question remains, where is improvement needed? The examination of the Race Directive has become even more important given current tensions across EU countries on the integration of immigrants and migrants. Public opinion surveys have provided proof that the rise in Xenophobia and acts of racial and ethnically based violence is an issue that goes unaddressed. Despite the existence of the new Equality framework, the EC needs to continue evaluating policies and legislation in place that can assist in combating this reality.

The diverse response to the directives not only reflects the diversity within the EU but confronts the disparate social contexts that fall under the auspice of the EC and its values. Looking at the unique transposition of the directives and the legal approach in which governments take to enforce and draft anti-discrimination legislation can help inform the nature of discrimination in each member state. Assuming that race and ethnicity are facets of identity that are constructed in the public space, historical considerations can help indicate why and how discrimination occurs in each member state. This information can enhance the ability for EU countries to combat its issues with discrimination.

This study explores the transposition of the EU Equality Directives with a particular focus on the Race Equality Directive in Malta. It was inspired by the findings of previous studies focused on the transposition of the directives in the national context across Europe. A dearth of previous transposition studies focusses on the implications of the past (historical events) to understand the future trends on how member states will begin to approach anti-discrimination. Since the Race Directive signified a tipping point at the supranational level, it became a focus of study to see if this would result in a 'Europeanization' of member states by adopting the principles that the Equality Framework is rooted in. Malta is unique because it was colonized by Britain and therefore spared some of the social implications that its Mediterranean counterparts experienced during World War II. As such, Malta has a congenial relationship with its colonizer, Britain. Its colonial history is not only unique to other former colonies, but may have impacted governance on the island. This study aims to understand how a unique historical context, an influence the success of the transposition of the directive that has a set of values attached to it that may or may not be present in the nation. In the case of Malta, its historical context may have an impact on national identity and governance which is the case in other member states. The Equality Framework may have underestimated the influence that factors like national identity and governance may have on the successful implementation of the directives.

In accordance with similar studies, this study will examine how the new Equality framework was transposed, the national context it was transposed in, the implementation of the directives, and the current state of discrimination in regard to the Race Directive in

Malta. After considering the transposition process and current developments, the study will then assess the historical context of Malta and the implications it might have had on the transposition and implementation process. As such, this thesis answers two questions:

What is the national context in which Malta transposed the EU Equality Framework?

To what extent does the colonial history of Malta influence the transposition and implementation process of the Race Directive?

Why This Study?

Despite the existence of the Race Directive and the signing of the Treaty of Amsterdam discrimination is widespread and increasing According to the Special Eurobarometer 437 on discrimination, discrimination on the grounds of ethnic origin continues to be regarded as the most widespread form of discrimination in the EU (64%), and it is more likely to be seen as widespread than was the case in 2012 (+8 percentage points). Europeans and non-EU citizens have little knowledge of their rights when falling victim to discrimination. According to the EU-MIDIS survey by the Fundamental Rights Agency (FRA) in 2010, only 25% of respondents said they were aware of anti-discrimination legislation. Although member states have worked to improve implementation efforts, the public opinion observed the perceived rise of racism and xenophobia due to migration and terrorism. The results for EU-MIDIS II have not been published in time for this study. Since 2010, the work of civil society and the equality bodies has improved the awareness of anti-discrimination. In a 2015 Eurobarometer on discrimination. 45% of respondents said they would know their rights should they fall

victim to discrimination or harassment; this reflected an increase since the 2012 Eurobarometer survey.

Given the state of discrimination in Europe, a question of great magnitude is how effective is the Race Directive in addressing the realities of race and discrimination in Europe? During the time this study was proposed, I was studying and living in Malta. As exhibited in the literature reviews; studies connecting historical, colonial, and legal analysis have been conducted to help explain the effectiveness and transposition of anti-discrimination legislation and policy in these countries. Malta is a new EU member state having joined in 2004. Although its population has been homogenous, due to its accession and recent increase in migrants from Africa it is at the forefront of major change. The integration challenges facing the Maltese government at present and in the future are quite similar to those of France and Britain in the past. Malta as a new member state, has the opportunity to address the challenges of increased integration and a multi-cultural society by learning from the criticisms and racial realities reflected in older and larger EU member states. By developing a clear analysis of how a directive is transposed and implemented within the domestic context of Malta can inform on how to adjust policies at the national level and provide feedback on how the language at the supranational level has influenced the transposition process. This study begins with a literature review examining the discussions surrounding the scholarship that has been done on the new Equality Framework concerning the Race Directive. The literature available on this subject is divided into two categories, research and analysis focusing on the supranational context and legislation of the Race Directive itself and transposition

studies that examine the directive at the national context. The former category considers theoretical models concerning race and anti-discrimination practices, the latter group considers transposition in a variety of perspectives that consider its success, its implications at the national level and the subject of Europeanization. Following the literature review, a chapter will provide a layout of the methodology and methodological considerations of this study. The remainder of this thesis will present the findings on the transposition and implementation process in Malta and the colonial history of Malta as a crown colony of Britain. The thesis will end with an assessment of the data and recommendations for future studies.

This study begins with a literature review examining the discussions surrounding the scholarship that has been done on the new Equality Framework concerning the Race Directive. The literature available on this subject is divided into two categories, research and analysis focusing on the supranational context and legislation of the Race Directive itself and transposition studies that examine the directive at the national context. The former category considers theoretical models concerning race and anti-discrimination practices, the latter group considers transposition in a variety of perspectives that consider its success, its implications at the national level and the subject of Europeanization. Following the literature review, a chapter will provide a layout of the methodology and methodological considerations of this study. The remainder of this thesis will present the findings on the transposition and implementation process in Malta and the colonial history of Malta as a crown colony of Britain. The thesis will end with an assessment of the data and recommendations for future studies.

CHAPTER TWO: LITERATURE REVIEW

This chapter explores the research areas, theories, practical models and transposition studies that have been put forward by academics on the EU Equality Framework with a specific focus on the Race Directive. The review of literature begins with a supranational analysis of the Race Directive discussing the debate which grapples with the principles driving equality and anti-discrimination policy throughout the EU. It then delves into the theoretical discussions regarding the legal and policy critiques regarding the Race Directive. The following sections focus on the literature that examines the national contexts in relation to the directive discussed in the framework of the theories and models mentioned. The last two sections focus on the role of civil society in the transposition of the Equality Directives and the growing significance of the Equality Bodies.

Section I: Background

In June 2000, the EU adopted a new package of anti-discrimination law and policy. The first strand, Council Directive 2000/43 (The Race Equality Directive) prohibited discrimination on the grounds of racial or ethnic origin, both within the labor market and in other important aspects of social life such as housing, healthcare and education[3](appendix a). The second, Council Directive 2000/78 (The Employment Equality Directive) prohibits discrimination on the grounds of religion or belief,

[3] Dir 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L 180/22. See appendix 1.

disability, age and sexual orientation in employment and vocational training[4]. All EU member states were required to develop and implement legislation that corresponded to the Equality Directives. In addition, countries were expected to develop a national body that would be dedicated to provide access to justice to marginalized groups. These bodies are responsible for the annual reporting of discrimination within each country. The directives prohibit various forms of discrimination such as: direct and indirect discrimination, harassment, instruction to discrimination and victimization. As such, all 28 member states are required to transpose these directives and provide sanctions and remedies to address discrimination. As of 2014, all member states have transposed the directives and are in the process of gaining experience in their application. The European Court of Justice has also developed its own interpretation of the Directives through its case-law.

The member states are required to set up a body or bodies that are tasked with proving independent assistance to victims of discrimination and conducting independent reporting and surveys. However, this obligation is only outlined in the Race Directive. It should be noted for clarity throughout this thesis, that the Equality Directives separate race and ethnic origin (the Race Directive) from the provision protecting individuals from discrimination on the ground of gender, religion, age and/or disability. Although the mandate to create an Equality Body is only outlined under the provision of the Race Directive, the majority of member states include all grounds of discrimination to be

[4] Dir 2000/78/EC of 27 November 2000 implementing general framework for equal treatment in employment and occupation [2000] OJ L 303/16. See appendix 2.

covered by the Equality Body's remit. The Race Directive is the only directive within the Equality framework that includes employment, goods and services as sectors in which discrimination is prohibited. This inclusion of goods and services was a groundbreaking development in EU policy. The second set of directives, the Employment Directives includes and separates other grounds of discrimination but does not protect these forms of identity from exclusion in access to goods and services.

Member states are allowed and encouraged to go beyond the standards set in the directives, for instance, by addressing discrimination on the grounds of religion or belief, disability, age and sexual orientation as something to be upheld beyond employment. Many old member states had pre-existing structures in place such as polices, bodies and/or legislation, to combat discrimination. Countries such as Britain and France, with post-colonial immigrant populations, developed legislation with a different approach to the framework in which policy is formed (Geddes and Guiradon 2004).

Member states are not limited to the minimum standards outlined in the directives. For instance, although the directives mandate that an institution (Equality Body) must undertake promotion, awareness raising efforts and facilitate access to justice in cases of discrimination they are not the only body that can deal with the matter. In fact, prior to the establishment of the directives, discrimination was typically dealt with as an issue of labor law and employment (Schiek 2002). As result, prior to the transposition of the directives, issues of discrimination in employment would be treated through labor bodies. A number of EU countries have created more than one official Equality Body in

some instances the body is given great power and authority than mandated in the directives[5] (Ammer, Crowley, Liegl et al. 2010).

Section II: The Directives and Contextual Development

Historically, EU non-discrimination law has two contradictory approaches to equality; an economic liberal perspective, non-discrimination as a principle of law secures free market access. Also, a human rights perspective, non-discrimination is not limited to a technical perspective but should be instituted to sustain an inclusive society (Schiek 2002).

The European countries involved in the evolution of the development of an organization intended to foster economic and security cooperation in Europe were motivated to promote a free and liberal market and with that, freedom of mobility. The actors that supported idea of a genuine free market understood that discrimination hindered the possibility to live up to the concept of international mobility. As such, discrimination was determined, by EU law, to be an issue handled in terms of employment. the legal guarantee of free movement has been seen as the starting point to develop legal solutions against such discrimination. Economic principles that drive EU anti-discrimination policy begin with the concern over freedom of movement and discrimination on the ground of nationality (EU-nationality). The prohibition to discriminate on the ground of nationality is embodied in Article 12 EC as well as in the fundamental freedoms (Tyson 2001). A secondary concern for discrimination was on the

[5] The UK, Malta,Greece, Italy, Ireland, Norway, Portugal, Slovenia, Spain, Austria, Belgium, Denmark, Estonia, and Finland.

ground of gender equality in the workplace, addressed in Article 141 EC, embodying the principle of equal pay for work of equal value, irrespective of sex. The European Court of Justice recognized that the provision regarding gender had a human rights quality and proclaimed equal access for women in all forms of employment is a principle of European Community law (Schiek 2002).

The creation of the directives, indicated a shift toward the human rights principles embedded in EU law. the Race Directive has strengthened EU legislation on discrimination and has encouraged the strengthening of legislation and 'positive action' in member states. The occurrence of discrimination would no longer be limited to an issue of employment but has now become a social issue. Now that discrimination is assumed to be an issue of social inclusion there is potential for a multilateral approach to combat discrimination on the basis of race and ethnic origin. The directives were considered to be by many optimists as a starting point for norms to potentially develop concerning a Europe wide approach to race.

The language of the directives is careful not to go beyond the mandate of Article 13 EC of the Amsterdam Treaty (see appendix c). The new directives' aim is to construct a framework for combatting discrimination on the grounds specific to each directive. This means that the directives are clear in compartmentalizing grounds for discrimination rather than holding each ground to equal value. As mentioned before, the Race Directive is unique by protecting race and ethnicity within the remit of access to goods services, while the second directive only covers employment. Ultimately, the goal of the EC was to

instill the value of equal treatment in each member state rather than take up a formal legal concept (Schiek 2002).

EU directives on discrimination reference international human rights law throughout the provisions. Both the Race Equality Directive and the Gender Equality Directive[6] cites the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (see appendix d) as well as the UN Convention on the Elimination of all Forms of Racial Discrimination (CERD) (see appendix e); In contrast, the Employment Directive[7] does not refer to the UN CERD, but still cites the UN CEDAW. In the future, all provisions will be interpreted in the light of CEDAW, whereas the Race Equality Directive and the Gender Equality Directive are to be read in accordance with CERD, in the future this will help with the proactive and consistent interpretation of the European community's anti-discrimination law.

Section III: Critical Analysis of the Race Directive and The EU Equality Framework

Following the signing of the directives, academics began exploring the legal context, social theory, and potential implications of the groundbreaking Race Directive. EC law had previously addressed the issue of discrimination on the basis of nationality and gender. Therefore, the segment on employment wasn't as particularly as novel as the introduction of the Race Directive. Literature that examines the directive often questions its effectiveness while acknowledging that it is the first directive of its kind and a

[6] Council Directive 2004/113/EC
[7] Council Directive 2000/78/EC

milestone in equality policy for the EU. However, the Race Directive falls short of the expectations of legal scholars who would otherwise have liked to see it meet the needs of modern realities.

Mason argued that legal measures that are adopted to combat discrimination should be understood as involving the complex relationship between the normative systems of selection criteria (a job selection process, a landlord ability to choose a tenant etc..) and different ethnic groups (Mason 2010). Mason assumes that the law's function is to regulate how selection criteria reflects the results of daily processes, and to ensure that daily processes do not continuously disadvantage members of particular groups. In his analysis of the legal significance of the Race Directive, he finds that there are conflicting notions and normative formulation of both equality and discrimination (McCrudden, 2003, Schiek 2002). He creates a theoretical model of operation for race discrimination law that considers three normative structures: law, selection criteria and culture. The law seeks to regulate how the second system, the selection criteria interacts with the third, culture. The cultural normative structure asserts that members of different cultural groups' actions and choices are given meaning by their set of values – their culture. Also, that one's opportunities in life are determined by the selection criteria that operates in the power-yielding aspects of society. For example, the process of employment or university admission hold a selection criterion that may be at odds with a culture's value system to a greater degree than those of others that will place certain groups at a disadvantage (Mason 2010). In that same light, race is a societal construct, the value a group has in society is often dictated by the society and not internally (Grigolo, Herann and Möshel

2011). A society is capable of prescribing certain characteristics, stereotypes and value one cultural group over another. This normative systems formula, the Tirpartite Normative Systems Formula, was used to assess the Race Directive. He found that the directive does little to address the underlying causes of discrimination concluding that the legislation ultimately will have to lead to further development of anti-discrimination measure by other actors. This supports Hepple's statement that the 21st century experiences far more complexities in race relations than the realities that the Anglo-Dutch model was originally meant to address (Hepple 2004). These arguments prove evident when examining the portion of literature that investigates the Race Diirective within national contexts. Mason focused on how the Race Directive failed to set up normative structures that are appropriate for addressing the complex issues that characterize race discrimination in present day life. The point of failure lies in the compromising language in the Race Directive reflective of contradicting national philosophies. Mason acknowledges that the EC seemingly used ambiguous language with the intent to delegate more concise interpretation over time through case law with the European Court of Justice and litigation at the national level (Mason 2010).

While Mason makes the argument that the Race directive is hollow and lacking, Einwalter questioned whether or not the Race Directive was inclusive enough. Einwalter explores this question of effective inclusivity by comparing the language of the directives with the concepts that influenced its conception. Einwalter cites the influence of World War II on international law regarding racial discrimination. Since that period, racial discrimination has been prohibited in international treaties, regional instruments on

human rights protections and general state practice (Einwalter 2008). However, in comparison to language in legal instruments prohibiting racial discrimination, the Race Directive is lacking critical language and concise definitions of both forms of discrimination and what it means to be a racial or ethnic minority. The UN has defined racial discrimination as the 'distinction, restriction, exclusion on race, color, descent and national or ethnic origin[8]. Einwalter and other scholars on the subject have noted that the ambiguity of the language in the Race Directive has left the potential for member states to accept disparate assumptions in cases of racial and ethnic discrimination. While studies have searched for a European anti-discrimination model, national contexts have proved this has not happened. The unconcise definition of race and ethnicity and ambiguous definition of discrimination will lead to more concise legal assumptions to be made through jurisprudence by the European Court of Justice or through litigation at the national level.

McCrudden identified three models of equality in relation to enforcement and remedies. The Individual Justice Model; The Group Justice Model; and the Participative Model (McCrudden 2003). The individual justice model ensures fairness for the individual by granting civil remedy to a single victim of discrimination which has succeeded in a court case. The group justice model aims to improve the position of a specific group, for example, class actions combined with a strategic public interest litigation or through pressure for change through public procurement. The participative model aims for greater participation of dis-advantaged groups through tools like equality

8

and mainstreaming (McCrudden 2003). He concludes that the Race Directive is mostly based on the individual justice model. Scholars criticize the strength of the individual justice model as a weak approach to anti-discrimination law. This is because it does not have any long term implications or influence over societal norms. It merely seeks to create remedies for individuals. In studies examining anti-discrimination law in countries that understood racial discrimination to be a criminal offense, in practice would barely result in justice for the victim through court proceedings. Criminal proceedings often required the individual to prove discrimination (Burden of Proof).

Hepple, in response to McCrudden's model, stated that the Race Directive should be reframed to from a process that promotes individual justice to a framework that promotes participative justice, in light of the social realities that are present in the 21st century. This highlights the scholarship that criticizes the Equality Directives for separating identities of marginalization from each other rather than conveying that individuals are capable of being discriminated against on multiple grounds. Furthermore, individual justice does not help shape public attitudes and does nothing to promote the concept of equality, therefore, it does not eradicate the occurrence of discrimination that exists in the present. Hepple compared the language in the EU Convention of Human Rights to the Race Directive and concluded that both are incapable of addressing racial and or ethnic' disadvantages. He supplements his arguments by exploring the legal and political developments concerning the Roma.

Einwalter concluded her analysis by stating in agreement with Hepple that racial discrimination in Europe is a multi-faceted problem. Depending on the national context,

an individual can experience discrimination for a multitude of reasons and by compartmentalizing race and ethnicity separately from gender and religion, the directives have indirectly created a 'hierarchy of equality' (Grigolu, Hermanin and Möschel 2011 and La Huerta 2009). Therefore, legislation should attempt to find a way to regulate complex realities without artificially compartmentalizing interconnected concepts. Scholars who focus on the directives and those who study the transposition in a national context agree that the language and structure does not adequately address the complexities of discrimination. This type of scholarship might be taken further as studies seem to have to choose to focus on language of the law, integration and immigration, or the Race Directive and its transposition. This group concludes that that current framework is unable to consider complexities of identity that should be considered in cases of discrimination that occur in reality and is weakening the implementation process in the national context.

Grigolo, Hermanin and Möschel assert that European countries have adopted a position towards 'ethno-racial discrimination – attempting to fight 'racism without races'. They compare the United States with a number of European cases in regard to how race and ethnicity are treated in legislation, jurisprudence and policies from the supranational to the local levels (within the EU). They see a number of consequences in how legislation is operationalized in both contexts. They cite the realties observed in the US and cases regarding Roma across the EU and apply Critical Race Theory as a reason the current approaches are in effective (Grigolu, Hermanin and Möschel 2011). Möschel advocates for the creation of a European critical race theory (Möschel 2009). Critical race theory,

similar to the Tirpartite Normative Systems Formula, assumes the races is a social construct that the Anglo-Dutch model has ignored. Critical race theory in the United States is meant to address the use of affirmative action and other policies adopted to combat race discrimination in the United States after the civil rights movement. As a human construct, race constitutes an integral part of a whole social fabric that includes genders and class relations. The meaning systems surrounding race change quickly rather than slowly, races are constructed relationally, against one another, rather than in isolation. (Lopez 2004).

Section IV: Anti-Discrimination Models, Moving Toward a Convergence?

Before the signing of the treaty of Amsterdam, policies intended to protect racial and ethnic minorities had been a national and local issue (Geddes and Guiradon 2002). Scholars in this subject look at two contending policy models for integration and anti-discrimination in Europe, the Anglo-Dutch model and the color-blind model. The Anglo-Dutch model refers to the type of legislation and policy in place in the Netherlands, the United Kingdom and the United States which acknowledges the occurrences of discrimination in employment and access to goods and services experienced by ethnic and racial minorities rooted in the historical context of slavery (primarily the U.S.) and immigration. Scholars have criticized the Anglo-Dutch model as it is practiced. Although it is conceived to address the historical legacy of colonialism and slavery, in practice it has a tendency to assume that racism is not systemic and only occurs in isolated incidents by individuals or groups (Geddes and Guiradon 2004). This may occur because the government that adopts the model is publicly acknowledging race and racism. By doing

so, it fails to recognize that racism can be structural and does not allow for institutional examination of racism because it assumes it cannot cause acts of discrimination since it has (the government) adopted this model.

The color-blind model is deeply rooted in the national institutions of countries with old immigration histories such as France and Germany (Guiradon 2009). In contrast to the Anglo-Dutch model, the color-blind model used in Germany and France eradicated racial and ethnic differences from its legal and institutional language. This is primarily a result of the rise of the Nazi regime and its use of racial and ethnic profiling against citizens. Literature on the subject does not shy away from considering the implications of the Nazi past in the old member states (Guiradon and Geddes 2005, Bell 2008). Germany and France both have policies that indirectly sought to address acts of discrimination that were primarily focused on acts of hate speech and hate crimes. The Gayssot law to fight racism (See appendix F), was focused on stripping individuals convicted of racist crimes of their civic rights. France, promoted the role of antiracist association as *civil parties* in the fight against racism (Guiradon 2002). Proponents of this model criticized the policies implemented in the UK and the US as resulting in further exclusion of minorities and immigrants (Kastoryano 1996, Guiradon 200, Wacquant 1992). The French approach is resolved to 'ignore' race. As a result, the state does not count, categorize inhabitants by racial and/ or ethnic groups and does not collect or gather information on race and/or ethnicity in the national census. The 1978 law "informatique et libertes"[9] outlaws the

[9] According to the law of Data Protection of January 6th,
1978, you have the right to access, rectify, modify and delete all data concerning you.

storage of data on racial and ethnic origins without the express consent of the individual and the formal approval of a national commission. The UK and the US both collect this type of data. The sensitivity and sever reluctance of governments who have adopted this model are a major challenge for scholars wishing to examine the effect the Race Directives has at the national level. In both Italy and France race is eliminated from normative practice and is substituted by milder terms such as ethnic belonging or ethnicity – racism- was narrowly defined (Grigolu, Herann and Möschel 2011). Balibor argues that in countries in which this model was practiced that the Race Directive has failed to reverse the paradox of 'racism without races'.

The Race Directive was not the first move by the EC to collectively decide on legislation that would address the discrimination of individuals on the basis of race and ethnic origin. Article 13 of the 1997 Amsterdam treaty[10] included a new provision that called for measures to combat discrimination, including based on race and national origin. Issues of discrimination were rooted in domestic policies that targeted specific communities in European countries that were a result of colonialism (incorporating migrants from former colonies) and migration (foreign workers). The signing of the treaty of Amsterdam followed by the Race Directive led scholars to question whether these were symbolic indicators of members of the EC taking steps toward a common model on anti-discrimination and integration.

Joppke argued that beginning in the middle of the 1990s, Western Europe began to move away from distinct national models of 'civic integration' for newcomers and anti-discrimination for settled immigrants and their descendants in European countries with old immigrant populations and toward converging models. By convergence, he noticed the adoption of the Race Directive signaled that member states were going to embrace the Anglo-Dutch model and it would merge with pre-existing national frameworks. He tested his theory of convergence by presenting a case comparison on the Netherlands, France and Germany. He found that although there was a shift in policies concerning civic integration (access to housing and employment) in the three countries, that the domestic approach to anti-discrimination remained distinguishable and still deeply rooted in institutional practices. His multi-state case study revealed that institutions had varying philosophies towards its ethnic and racial minorities and how to integrate them into the mainstream.

The question of a convergence toward a common model also leads to the question: How influential is the EC and European policy when it comes to shaping domestic policy? Can changes at the supranational level directly result in changing deep rooted institutional practices? Geddes and Guiradon noticed a shift in domestic policies concerning integration and anti-discrimination in France and Britain that they referred to as the 'post-1997 context'. They were intrigued by the new policy framework introduced in France by the Jospin government that set discrimination as a governmental priority. They sought to explain the extent of the EC's influence over European countries by examining France and Britain because of their two contradicting approaches to the

integration and anti-discrimination. They compared archival research and conducted interviews with both French and British government officials and European institutions on policy changes from the mid-1990s leading up to the Race Directive. At the end of their examination their primary conclusion was that "politics matter". They prescribed change at the national levels due to a shift in the political climate, in each country respectively, that allowed for a rise in power of more liberal-minded groups and the decline of right-wing discourse. EU membership was also a significant factor because at the European level national partisan politics and public scrutiny have less influence and allowed for more focus on technical legal issues. This differed from the atmosphere of in domestic politics which are heavily swayed by media and public opinion (Guiradon 2001). They also prescribed the unanimous agreement of EU members on the race directive due to a timely opportunity – multiple factors were at play that allowed for the EC to agree on a supranational policy.

Bell examined the question of a European policy convergence on anti-discrimination by comparing and contrasting the two contending models that are used in France and Germany and how the new Equality framework was transposed in the context of those pre-existing models. He was primarily intrigued by the swift enactment of the Race Directive by the old EU countries because despite their differing approaches to integration and ant-discrimination, the member states unanimously agreed in a record amount of time. He found that despite the fact that the directives are heavily influenced by the Anglo-Dutch model, that multiple national contexts reveal that there seems to be a

divergence on *how* countries go about transposing and implementing equality legislation. the Anglo-Dutch model and the color-blind model.

De Witte argued that the transposition of the Equality Directives has given rise to a hybrid legal regime which combines legal rights with softer mechanisms of governance. He conducted a comparative study on the institutionalization of the directives and found that the mandatory creation of an Equality Body tasked with the promotion of equal treatment had now become a common mechanism all over Europe. What he found interesting is that the use of institutions with the sole purpose to promote equality that worked within a legal power or with governments was a characteristic that was only found in countries implementing the Anglo-Dutch model prior to the transposition of the directives.

In this area, scholars have concluded that despite a supranational policy there is not a movement towards a common model on anti-discrimination and integration. Although its principles seem to be rooted in the Anglo-Dutch model, the directives are ambiguous enough to allow for individual member states to make individual interpretations on the legislation. To that end, many scholars that have set out to discover whether or not Europe is headed toward a common policy model have concluded that the Equality Directives leave too much interpretation up to member states (to be discussed in future sections). To support De Wittes theory regarding the emergence of a hybrid legal regime that will combat discrimination, it seems that these scholars have all agreed that future impact and progression of the Equality Framework is highly dependent on the national Equality Bodies and NGOs. If there is an emergence of a common model as a

result of the directives, it would be the growing power of a government affiliated body vested with the responsibility to promote principles of inclusion and raise awareness on anti-discrimination law.

Section V: Europeanization, Transposition and Implementation

The transposition of the directives has resulted in unique mobilization at the national level. The question of a common model has developed into a discussion on whether or not this is possible depending on national contexts. Therefore, an academic discussion has developed from examining the possible emergence of a European model to a question of Europeanization[11]. The transposition process refers to the national government's translation of external legal commitments into domestic laws and policies (Underal 1998). In the EU context, transposition refers to the domestic process of adaptation of a policy and/or organizational component to the binding pressures of European integration (Falhrer et al. 2008). Transposition studies have served to answer several questions; what factors affect transposition at the national level? What causes a delay in transposition? and What factors have assisted in the implementation of the Directives? Transposition studies have managed to divide the types of member states into groups considering the historical trajectory of a country as a determinant for the aforementioned questions.

As a whole, transposition of the directives fit into the sphere of Europeanization studies. Researchers are interested to see the what influence that supranational policies

[11] Conceived as the process of institutional and policy adaptation, and as a (re)statement of national identity on the other.

and philosophies have had on the existing national institutions within the EU. There are different ways of conceptualizing Europeanization. Ladrech says that it is ‘an incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making’ (Ladrech 1994). Colino, provided an overview of literature on Europeanization identifying four broad categories: Communitarization (a competence shift from the national to the EU level), Eurostandardization (a convergence of policy in a particular sector), Euroadaptation (an adaptive response by national institutions and actors to European initiatives, and Euroentropy (institutional convergence in terms of governance systems and institutional designs. A good deal of studies on member states transposing EU policy grapple with these categories. Gehring approached the subject of transposition with a ‘goodness of fit’ theory. He determined whether or not the fit between EU policy and a country’s institutions were a good match. After determining the degree of fit, he found that EU law would always overrule existing national law. His study concluded that examining the institutional approach to transposing the directives best explained the divergent outcomes that were observed during the initial years of transposition of the Equality Framework. His findings pointed to a vast divergence in the way member states’ approach citizenship and naturalization laws. The subject of divergence is the key to understanding the significance to transposition studies at the national level. Earlier in this chapter, both the Anglo-Dutch model and the color blind model to anti-discrimination were discussed. It has been established that the directives were based on the Anglo-Dutch model which inevitably caused a tension for the

institutions of old EU member states that adopted the color-blind model. Bell questioned whether or not this would lead to a common model across EU countries. By examining two old member states, France and Germany, he concluded that even two member states with similar institutional models towards non-discrimination had very different responses to the directives. This means that although the countries could be grouped by model or historical trajectory that there are still unique factors which cause for each member state to have a distinct transposition and implementation process.

Shortly after the accession of the 2004 EU enlargement group, many studies on the implementation and transposition of EU policy in individual countries had mainly focused on the institutional and political factors influencing transposition rather than the sociological and historical dynamics that comprise the domestic context (Hart and Lapp 2009 and Pridham 2009). Wolfson and Bell put forward the argument that in order to understand the role that the Race Directive has in promoting equality, that it is necessary to inquire the deeper and sometimes hidden social attitudes on the national level. When looking at race and ethnicity in the context of old Europe, questions of immigration, colonialism, religion and orientalism become even more relevant (Grigolu, Herann and Möschel 2011).

There are two prevailing trends on how scholars have categorized member states in the context of the transposition of the Equality Directives: Old member states[12], and

[12] Members of the EU before the 2004 enlargement

new member states[13] or old immigrant countries[14] and new immigrant countries[15]. The old and new immigrant categories are used to understand the national context that must interpret the language of the Race Directive (race and ethnic origin). Categorizing states by old and new only serves a purpose when understanding mechanisms used by the EU to encourage member states to transpose policies. Guiradon explored the divergence of transposition between old and new member states. The new member states are the group of countries that were on the verge of EU accession that had to adopt the directives as a condition for membership. The old member states negotiated the drafting of the directives and agreed on them unanimously. The notion that new member states were 'forced' to adopt the Equality Framework without consultation has resulted in academic interest on how this effected its transposition, but also the Europeanisation of the new member states. Within the literature exploring the old member states, scholars have focused on the motivations for the EC to rapidly adopt the Equality Framework and the tension that exists between the Race Directive and the existing legislation in each old member state. The Old and New categorical studies provide insights on the politics rather than insights on the change the Race Directive had in the domestic context.

The members of the EC that were affected by a Nazi past are hyper sensitive to language that references race in a legal context. The legacy of the Nazi occupation is positively related to the adoption of the color-blind model. In the case of Austria, there was significant resistance by the new right-wing regime to adopt language that mentioned

[13]Members that joined after the 2004 expansion
[14] Countries that have communities as a result of foreign worker agreement and colonialism
[15] Countries that have no history of colonialism and little visible presence of migrant workers

race and ethnic origin when transposing the Race Directive. Instead of adopting the term 'race' the regime had opted to prohibit discrimination on the grounds of ethnic origin in its legislation (Gehring 2005). In both France and Germany, the injection of language concerning race and ethnic origin was a direct contradiction to the color-blind model both governments had adopted as an attempt to prevent the prejudices of the past from occurring again While there are old and new member states that were affected by Nazi occupation, more of the new member states have relatively homogenous populations. The color-blind model had more implications for old immigrant countries like France and Germany. In old immigrant countries, race and ethnic minorities can often refer to visible groups of migrants and immigrants that are associated with a colonial history or foreign workers therefore it is easier for governments to consider the language of the Race Directive than governments with more homogenous populations.

The experience of countries that joined the EU after or during the 2004 expansion is distinguishable from that of the older members for several reasons. The new member states in Eastern Europe highlighted up a new element to consider, a post- Soviet legacy. The Europeanization of Eastern Europe has been characterized as a process in which the accession and integration of countries was realized through the transfer of legal and institutional practices and values embodying liberal democratic norms to the domestic contexts of candidate countries (Schimielfering and Sedelmercer 2005, Graziano and Vink 2006, Wolfson 2010). Wolfson focused on the post-Soviet legacy that influenced the national contexts of new member states. His findings suggested that the directives did not consider the social attitudes and norms that were present in countries recovering from

Soviet occupation. Post-communist societies were facing an economic crisis in combination with a fragile national identity which had populist and xenophobic tendencies. Wolfson explored these factors and their potential for undermining EU legislation. He concluded the post-communist members of the new member state category, had not experienced complete Europeanization, but rather a superficial adoption of policies that have no real reflection of those societies. To support his theory regarding post-Soviet members of the EU, he examined the case of Lithuania. The Soviet Union's incorporation of Eastern European countries resulted in a continues sensitivity to question of national identity, post-independence (Brubaker 1996). Citizenship was granted to all inhabitants at the moment of independence irrespective of national or ethnic origin. As such, the ethnic and racial minorities in Lithuania, Jews, Roma, Tartars and the Russian speaking population, are less visible and are no more than a fraction of the total population. Wolfson argues that the inclusivity of it citizenship policy is problematic in that it lends too much social trust in others, and does not allow for the monitoring of structural discrimination. This also seems to be the case in Estonia and Latvia. It is difficult to estimate the extent of various forms of discrimination in these societies because the ability to track and monitor systemic discrimination is more challenging thanks to the inclusive citizenship policies. In addition, these states have a small number visible incoming migrants that skew the likelihood of quantifying the occurrence of discrimination in comparison to the total population. Countries like Lithuania, Latvia Slovakia, Slovenia, and Estonia consider ethnic and racial minorities to be groups of

Roma[16], or marginalized populations of Poles. There is a tendency for the new member states to place more emphasis on the current debates involved national identity and citizenship since they are still recovering from the occupation and these countries automatically granted citizenship to all inhabitants who were there the day they received independence. In these cases, the ambiguity and race and ethnicity left in the Race Directive has been problematic for governments to understand. These same countries have lower levels of migrants and visible immigrants than the older member states.

In addition to social context and history, findings of transposition studies have indicated that present domestic factors have significant effects on the transposition and implementation process: legal culture, type of Equality Body and mobilization culture (Farell 2011). In addition, most countries had some form of anti-discrimination legislation that existed prior to the transposition of the directives that were weakened or came into conflict with the new mandatory set of laws (Aimirauz and Guiradon 2010). For example, Italy considered nationality as ground for discrimination prior to the transposition of the Equality Directives, and in this respect the law extended to Third Country Nationals.

The countries that were members of the 2004 enlargement had to meet a plethora of mandatory requirements to gain membership or in other words were subject to 'conditionality" of membership. De Witte referred to the conditionality faced by the 12 new member states[17] as a 'coercive policy transfer'. A different perspective taken on by

[16]Roma exist all over Europe but discrimination against this group is more poignant in these countries.
[17] EU-A10: Cyrpus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

transposition literature focuses on how long it takes for member states to completely transpose the directives and what factors cause and/or mitigate delays. There are a small number of studies that use these countries to look at mechanisms used by the EU to help transpose EU policy. These studies focus on actors at the policy level and don't consider the historic context or take sociological considerations into account. In this case, Europeanization is considered only at the policy level. For example, an interesting study on the transposition of the directives in Austria revealed political resistance to the directives. Austria was one of the slowest countries to fully transpose the directives, the political regime had resisted the wording of race and ethnicity. Racism in the Austrian context pointed directly to hate speech and hate crimes in an anti-Semitic tone. Krizsan, inquired what crucial factors that determine enforcement of the transposition of the Directives. Krizsan noted that transposition literature focuses on the conditionality linked to the directives required for membership but rarely examined the tools used by the EU to influence the full transposition of the directives. As a result, Krizsan identified mechanisms through which the EU influenced equality policy. Dimitrova and Rhinard, attempted to quantify the likelihood that a member state would willingly or reluctantly transpose the EU Directives by measuring the length of time several member states took to completely transpose the Equality Directives in combination with a qualitative analysis of the national contexts. This was the only study which attempted to use a quantitative approach.

A link between non-discrimination policies and citizenship policies has emerged from the literature focusing on transposition at the national level. Researchers have

discovered a weakness at the national level when implementing the Race Directive concerning groups who are not EU citizens and who are at the most at risk of discrimination in access to good and servers and employment. In addition, findings have highlighted that those who are stateless not only experience both direct and indirect discrimination, but also face major obstacles in access to justice when those instances occur. Literature on transposition across the EU has shown that not only is there a gap where the directives are concerned, but also that national legislation can discriminate against TCNs (Sitarapoulos 2004). This observation is not limited to transposition at the national level but also proves to be evident upon further examination of EU discrimination policies. Nationality has been left out of the Equality Framework and few directives address the rights of non-EU citizens. Multiple national examinations have revealed that TCNs have not only not benefited from the Race Directive in practice, but in some cases are discriminated against in national legislation (Germany, Italy, France and Malta). In practice this is not only problematic but in specific national scenarios this does not allow for the directives to be successfully implemented. Many racial and ethnic minorities happen to be TCNs who experience discrimination in employment at entry and on the job. In addition, discrimination has been reported EU-wide when it comes to accessing adequate housing and social services (ENAR 2014 Shadow Report). Although the directives have been a tipping point in establishing a direct policy that encourages member states to adopt legislation that protects ethnic and racial minorities, it does little for the reality of those who could benefit from it the most. This became most evident in the case of Roma throughout EU countries, particularly in Southeastern Europe. The

Roma as a result of culture, lifestyle and centuries of social exclusion have difficulties establishing citizenship and are virtually a stateless population. In response, the EU supplemented anti-discrimination directives to help facilitate a response to the social and structural discrimination they face. This same consideration is often linked back to the case of France in regard to its colonial past, the experience of immigrants and the meaning of citizenship.

The study of transposing the Race Directive has also fit into the realm of Citizenship studies. Researchers in this space are interested in the Europeanization of national governance, and the influence on international politics of diversity and their capacity to alter national 'philosophies' of integration (Guiradon 2009). Guiradon concluded that supranational law has been able to stir up and reframe national debates on integration in some of the old immigration countries i.e., France and Germany. Guiradon argues that by examining non-discrimination law at the national level (new immigrant countries), it will be possible to observe how supranational policy interacts with national approaches especially in this domain where there is little experience with integrating immigrants across the EU. Gehring discusses individual national approaches on integration by exploring the citizenship and naturalization processes of France and Germany. He argues that national institutions with regard to nationality, belonging and citizenship, strongly shape national identity and the place racial minorities have in society. For example, in Germany racial minorities continue to be outside of the political community and the majority continues to see problems that are objectively viewed as racism as foreigner's issues' (Gehring 2005). The Turkish community in urban areas in

Germany is noticeably absent from political participation and are virtually segregated in specific areas from the rest of the population. In France, an individual does not have to possess 'the blood of the nation', but one must adopt oneself to the standards of the country in the public space – one must become French (Gehring 2005). This is another example of the tension between the French ideal and the reality of social interactions in France.

The Case of France

In France, in addition to assuming a historically color-blind approach to anti-discrimination, it is assumed that it is the citizen's responsibility to project and adopt the French identity. This has brought up the debate on whether or not identity in the public space is a social construction and projected onto individuals or if it is solely up to the individual to self-identify (Bruce-Jones 2008). Studies concerning identity in France have examined this question in the context of discrimination, religious affiliation and most recently in the realm of employment and religious freedom.

In 2004, a controversial case concerning the tradition of the veil (or hijab) in the public space became a widely discussed topic in the media (Thomas 2006). Scholars who payed special attention to the legality of a citizens' right to wear the veil in public noted arguments for and against an individual's right to wear it in schools. In France, it is illegal for a child under the age of 18 to choose a religious tradition. Those who argued against the veil in public schools cited the philosophy rooted in French citizenship. By wearing a religious symbol such as the veil in public an individual is communicating to the public that they are something 'other' than French. Those who argued for the

individual right to wear the veil cited the ability for French citizens to wear necklaces that have a cross on them implying there is a pluralist assumption when it comes to French law and identity. Proponents against the veil argue that by wearing something that is not considered French an individual has the potential to communicate an identity as an 'other' to society. Bowen argues that aside from the case of the veil and the questions it highlights about identity and French citizenship, that identity is a social construct and that there are examples that occur on a daily basis which suggest that society decides whether or not an individual is an 'other' or if they are French (Bowne 2010). For example, many studies have considered the meaning of French citizenship for second and third generation immigrants (the children of immigrants who are born in France). Studies have documented the experience of this population and others considered to be minorities in France by looking at their relationship with the Law and in employment (Beaman 2015). Several studies have tested the interview rates of minorities (ethnic/racial and second and third generation immigrants) against that of job seekers who are not - Both groups are French citizens. Duplicated resumes were sent out to employers with slight changes in names which might indicate different ethnic or religious affiliations. A study conducted by Stanford University[18] shows a positive relationship between subtle indicators of race/ethnic origin and rate in which an interview is likely to be extended. Studies such as the one mentioned imply that there is an issue of discrimination in employment in France and that society projects certain assumption based on indicators which are beyond a

[18] http://www.pnas.org/content/107/52/22384.full.pdf

person's control, therefore assuming the race/ethnic origin is a social construction (Adida, Laitin and Valfort 2010).

Results of Transposition Studies

The literature available on the transposition of the directives on individual member states show that authors agree that there is much room for improvement in the implementation of the directives. The majority of the research explores whether or not transposition in each country was a success. While examining the transposition of the directives to find evidence of 'Europeanization, others have focused on the gaps and tensions that are observed in the practice of the newly institutionalized directives to understand how they can be improved. In regard to the subject of Europeanization, it has been included in the flow of the academic discussion that in the context of the Race Directive, that the EC has influenced national procedures but has not yet resulted in deep social changes at the local level (Bell 2008). It seems that in the immediate period following transposition many scholars were skeptical on the outlook of the Equality Bodies that were institutionalized and the overall implementation of the directives. Most of the studies on national transposition were conducted at least five years before the publication of this paper. Considering up to date reports provided on Equinet, it seems that many countries have improved a great deal since the time these studies were conducted. In regard to this study, this is affirmative for both Malta. Another interesting finding is that all have emphasized the important roles of civil society and the mandatory Equality Bodies that were institutionalized following transposition.

Section VI: Role of Civil Society and Equality Bodies

The directives require that an Equality Body has at least three functions: Providing independent assistance to victims, conducting surveys, and publishing reports including recommendations. An equality body must be structured, led and resourced in such a way that all three functions can be implemented independently. The equality body has to be able to implement these functions if it is to be effective it its mandate. In order for an equality body to be successful it must have adequate staff and financial resources produce outcomes from the three functions it is tasked with carrying out. There is a slight overlap with studies concerning the role of civil society in policy making and legal implantation and the Directives. There is no question on the important role that civil society played at the EU level in the establishment of the Equality Directives. Scholars have documented the lobbying efforts of the Starting Line Group and actors in Brussels that were significant figures in the negotiations of the directives (De Witte 2012). Since its transposition all member states have institutionalized mandatory Equality Bodies which are responsible for the promotion and service of providing access to justice in cases of discrimination.

As mentioned before, the success and progress observed in individual member states in the realm of equality has been attributed to the establishment of these bodies and the work of civil society. Many researchers have stated that progress and more effective legislation is dependent on the work of these bodies and civil society (Guiradon 2009, Sitarapoulous 2010, Freedman 2001, Bell 2000). Freedman argued that tasking an entity to promote equality law was the most innovative provision of the Race Directive. The

progress that has been made in most countries in drafting effective legislation and promoting awareness of anti-discrimination law has been done by the Equality Bodies in partnership with NGOs.

Only one study, independent of the EC, has been attempted on evaluating and assessing the Equality Bodies. In 2010, the Human European Consultancy and the Ludwig Boltzmann Institute of Human Rights published a study surveying thirty Equality Bodies by surveying members (Ammer, Crowley, Liegl et. Al 2010). The study measured the level of independence, power, resources and functions of these bodies. It must be noted that since this study, many countries have made significant changes in the organizational structure of their equality bodies and have expanded their powers. The study was able to identify two types of Equality Bodies: Tribunal-type bodies and Promotional-type bodies. The first is granted a great deal of independence from central government and has legal powers invested in it. The latter is closely associated with the central government and primarily serves as an awareness raising body that conducts research and delivers information on discrimination and individual rights. In 2010, the findings showed that the members of both types of bodies would like to do more in regard to their mandate, however, funding has been a major issue. In addition, bodies have found it difficult to remain independent of political influences. Bell argues that to an extent, Equality Bodies will never be completely independent of government due to the fact that their powers are vested in national legislation and their functions rely on government and EU funding (Bell 2008).

The formation of Equinet, a network of non-governmental organizations and Equality Bodies in Europe, has become a space for the exchange of best practices in terms of approaching anti-discrimination across Europe. The network produces timely publications on projects occurring in member states and also studies that provide useful data and information to be used by its members. Membership to Equinet is not mandatory, however, in this study and examination of others focusing on the transposition at the national level have indicated that Equinet has proven to be a significant asset in mobilizing efforts and generating partnerships. Equinet membership has also become a forum for Equality Bodies and NGOs to collaborate on EU-funded projects targeted toward anti-discrimination efforts.

Section VI: Conclusion of Literature Review

There is a rich amount of literature about the EU Equality Directives, policy models on antidiscrimination and integration, and the subject of race, ethnicity and discrimination. There is a plethora of research which sheds lights on the weight of national contexts and how well the directives 'fit'. It is clear by the disparate historical contexts affecting the meaning of race and ethnicity across member states that specific language is needed at the EU level to assist in closing the gaps at the national level. From the scholarship and information available it seems that the success of the directives has depended greatly on the role of civil society in Brussels and in individual member states to help governments develop effective legislation in each national context. A more complex topic which prevails across nation states are the rights of citizens and identity. National contexts show a variety of approaches to citizenship in terms of who has the

right to citizenship and what it means to be a citizen. These policies are the foundation of the tension that has occurred when transposing the directives at the national level. The aforementioned trends in national contexts can be explained by and are deeply rooted in the history of the country. More studies may be able to help inform on how a legal language that is needed to clearly define race, ethnicity and minorities in countries that share a post-soviet history or post-colonial history. These types of histories may find trends in immigration, minority groups and characteristics but also help governments strategize anti-discrimination policies with the consideration of historic identity.

At the root of this research is the intention to evaluate the directives and how its transposition can be effective. The literature indicates that assumptions need to be made at the EU level regarding race, ethnicity and minorities and clearly defined. In the absence of clear definitions of these terms and extensive forms of discrimination, the EU has failed to adopt theoretical assumptions that can help fill the gaps that are occurring at the national level. The legal skeptics (Brown 2007, Mason 2010), have implied that the EC has left these assumptions to be made in the European Court of Justice. It is not known if this is a formal policy or decision on the part of the EU. If it is, it will take a great deal of time for a common assumption to be made due to the obstacles that are in place to take cases of discrimination to court.

There are two great challenges facing the literature available on this topic. The first is that discrimination on the grounds of race and ethnic origin is difficult to prove, even after removing the burden of proof in court. Therefore, it is difficult to effectively measure the occurrence of discrimination as confirmed by law. The second, is that many

governments are extremely sensitive to the idea of collecting information on ethnicity and race within countries (De Schutter and Ringellem 2008). Therefore, quantitative research to measure the effectiveness of the Race Directive and discrimination is very difficult to conduct. How can a scholar ask if the legislation is effective if it is virtually impossible to know the results? At this time, the best data available regarding the experience of ethnic and racial minorities is that which has been made available by opinion surveys on public perception of discrimination. Kahanec and Zimmermann, have led the way in generating data that focuses on identifying gaps of employment for minorities across the EU (Kahanec and Zimmerman 2010). This is a private initiative and not conducted by the EU or national governments.

The literature available is very focused on the larger and older EU member states such as France, the UK and Germany. For obvious reasons the information available providing historical insights that help form opinions on citizenship and identity make these countries attractive subjects. It would be interesting to see more literature that takes the same interest in the newer member states, particularly in Eastern Europe, or countries where race and ethnic realities are less visible and more complex. From what literature that does exist on the newer member states such as Lithuania, Latvia and Estonia, there is data out there that points to a conflict between what government officials report on discrimination in domestic affairs and what European public opinion surveys have revealed. Given the conflicting reports, more literature regarding the implementation and practice of anti-discrimination should occur. It seems many have posited the transposition of the Equality Directives in newer member states as an attempt to determine if the

transfer of EU social values had manifested in member states that faced ‘conditionality’ terms to gain membership into the EU. This type of approach focused more on the political and policy processes and actors rather than the issue of discrimination and society.

Except for France, many have neglected to look at the role national identity, citizenship and the relationship between society and government play in determining how transposition occurs. Many of these studies naturally brought up national policies and context surrounding national identity and citizenship, however the trend seems to be more significant than it has been treated by scholars of transposition studies. For instance, while there were studies that considered post-Soviet influences on national identity and historical context, it did not lead to a consideration on what this sort of history would have on the trust and legitimacy between citizens and the state. If citizens and the states have a bad relationship and legal culture is bureaucratic and considered invaluable, then the implementation and the effect of the directives are limited. These are factors that have yet to be considered in national studies.

CHAPTER THREE: METHODOLOGY

This study is designed to be an empirical analysis of domestic factors that explain the case of Malta and its transposition process and implementation of the EU Equality Directives. The goal of the project was to gain a better understanding of what occurs at the national level that may help or hinder the implementation process. If the existence of equality legislation should lead to equal treatment of persons what occurs at that national level to limit equality? After directly observing the present social climate in Malta, this is not the case. By making an inquiry about the transposition and implementation process, initial information gathering quickly began to reveal that pre-existing factors at the domestic level and historical context provided a number of answers regarding the process in which anti-discrimination legislation is being implemented. As the study progressed, I predicted that the transposition and implementation process in Malta would be influenced by the colonial history of the country.

Section I: Case Selection

In studies focused on the transposition and implementation of the directives in other European countries, the findings points to historical influences that have shaped the national context. The influences of the past can determine what is challenging about the Race Directive for a certain country, along with current factors like legal culture, civil society and demographics. In the information gathering phase of this project a dearth of data regarding citizenship, national identity, race and integration linked to the Race Directives led to an interest in the colonial history's influence on current factors in a

country. If data could be discovered by looking at the colonial history of France and how its history impacted its implementation and transposition of the Race Directive, it would be interesting to see the same type of analysis on a country with a different colonial history like Malta in comparison. Eventually, it was decided that Malta and France were so different that a single case analysis on Malta would be the best choice.

Malta made an ideal choice for several additional factors: Malta's small demographic and national language (English) made access to consultants and legal documents far easier in comparison to the equal treatment that would be needed to focus on France. Secondly, if the colonial context is to be treated as a key factor in this study, aligning the similarities between Malta and a colonizer state in that respect would have been difficult. Malta was colonized by both France and the UK, however the present legal culture is heavily influenced by its British past. Colonialism is a factor in the case of France due to its immigration flows from former colonies and the identity and citizenship questions that did not influence the present arose due to these immigrants and the second and third generations. Colonialism in Malta had little impact on the current demographic changes, although it could be argued that it might influence sentiments towards inhabitants considered to be outsiders. In that same respect, colonialism influences the national context regarding identity, citizenship and legal culture, topics which will be discussed in the findings of this thesis. Although it can be said that colonialism is a definite factor to be examined, the type of influence it has had on the transposition and implementation process in both countries involved different theoretical considerations. Finally, the shift of focus was ultimately due to the lack of information available on the

newly structured French Equality Body, Le Défenseur Des Droits. Despite multiple attempts to get in touch with a representative from the body, the same methodology used to examine Malta became difficult and challenging to apply in the same way to France. Given the variety of literature focused on the transposition of the Directives on specific countries, the specific focus on Malta provides a unique inquiry into factors that seem to surpass the categorization of countries before it. Malta's remote location and unique historical context and identity provides a look at a national context that was spared the influence of a Nazi past and a Soviet occupation. To that end, the increased presence of immigrants and migrants changed the mix of factors that should be considered and puts forward topics that are mentioned in similar studies – citizenship, national identity, and nationality.

From 2005 to 2011 the presence of foreigners increased in Malta by 65% (National Statistics Office Malta 2011 Report). Malta if not the most, is one of the most densely populated countries in the EU, in 2013 the population density was at 1,346 p/km. From the period 2011 to 2014[19] the total population grew on average by 1% each year (Figure 1). Over half of the percentage of growth was due to non-Maltese nationals.

[19] The last published national statistics on population.

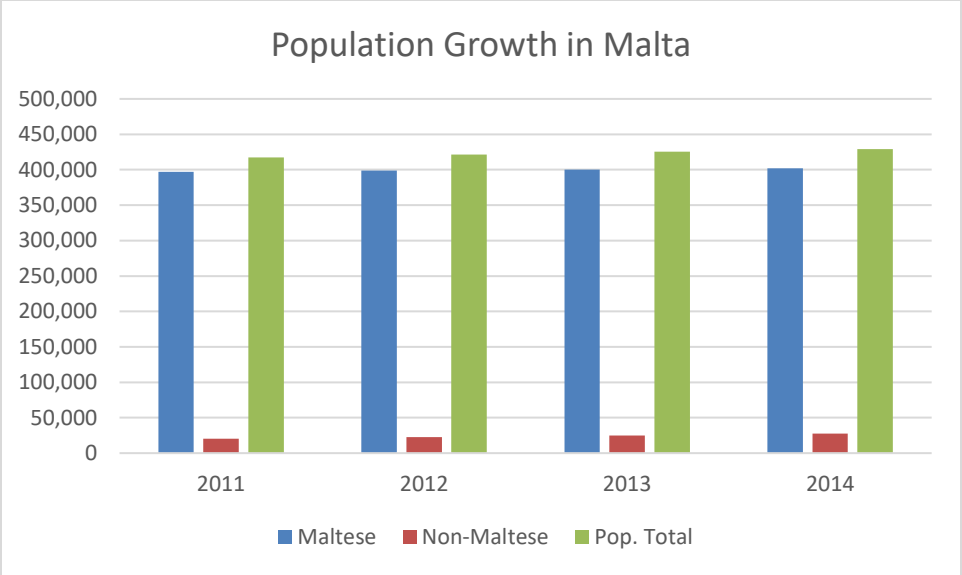

Figure 1[20]. Population Growth in Malta 2011-2014. Statistics are based on publication from the National Statistics Office in Malta.

The focus on Malta became a case study that examined multiple segments that analyze the transposition and implementation of the EU Equality Directives in Malta. First, I should note that the inquiry is meant to focus on the Race Directive, however, the Equality Directives as a whole were adopted as a package, therefore, it is necessary at times to discuss the entire Equality Framework.

Section II: Data Collection

This project required two segments of data collections. The first required an in-depth look at the transposition and implementation of the Equality Directives, specifically the Race Directives in the national context of Malta. The second segment required a straightforward review of the colonial history of Malta, this history needed to be linked to

[20] Statistics are based on publications from the National Statistics Office in Malta.

the current discussions regarding Maltese national identity, governance and legal culture. The two segments two segments of research will result in an analysis explaining transposition and implementation in Malta and how it can be improved and what else needs to be considered.

The first step to develop an understanding of how the directives were transposed was to look at the institutionalization of the directives in the form of the equality body. I initially reached out to a representative of the body to gain an understanding of the bodies priorities and structure. I then conducted an audit of each annual report published by the body from its establishment to the most recent published report for 2015. The audit provided a guide on how the NCPE expanded and restructured over time. The evolution of the NCPE reflects a linear timeline in which legislation changed that led to the expansion of the body's remit. The reports provided an official narrative, illustrating the external and internal factors that led to amended legislation, expanding the bodies powers. In addition, the narrative and project descriptions helped me to determine what the body considered a priority. Most importantly, the NCPE's projects concerning the Race Directive and its national remit was helpful to develop an understanding of the concept of race and ethnic origin is in the Maltese context. I was able to make further considerations regarding the power and function of the NCPE with comparisons from studies on other bodies observed during the literature review phase of this project as well as the findings of a study conducted in 2010 on Equality Bodies (Ammer, Crowley et al. 2010). An body that deals with discrimination in the employment sector was examined but this was considered to be in the category of anti-discrimination legislation in practice

in Malta. The choice to separate the two was made because the body existed before the transposition of the Equality Directives and is not functions as a national equality body.

The next step in the research was to gather information regarding the practice of anti-discrimination legislation after the transposition of the Equality Directives – Or in other words the implementation process. This aspect of the research relied heavily on secondary sources such as; pre-existing reports on discrimination focused on specific sectors by local human rights and anti-discrimination organizations and local academics who have recently contributed to the study of discrimination in Malta. Although anti-discrimination legislation is made publicly available, it is not clear that cases of discrimination on the grounds of race and ethnic origin in employment do not fall under the remit of the NCPE, in practice. Instead, these cases are referred to the Industrial and Employment Tribunal. To that end, this segment was approached as a puzzle that needed to place disparate pieces of information together to form a coherent picture of how the Race Directive is implemented. It served to fill the gaps between what was transposed and how anti-discrimination law is implemented, and to explain the mobilization culture that has helped progress equality in Malta.

The last piece of the case study was to explore the historical context of Malta. The first two steps had to be conducted and completed before this step was conceived. As stated before, the initial proposal of this project was to support the hypothesis that colonial history may be a factor to consider in how the Equality Directives are transposed. However, after the second phase of research, the hypothesis was slightly altered. I predicted that colonialism had an influence on the transposition and

implementation of the directives, however, the influence was beyond a legacy of demographics and identity. I predict:

The colonization of Malta is a factor in implementation and transposition of the directives that contribute to a legacy of identity, political and legal culture.

I researched the history of Malta's experience as a crown colony of Britain in conjunction with studies regarding anthropology and national identity in Malta. It no did not seem feasible to compare Malta with France. A single case study on Malta that focuses on the colonial influence will contribute to the portion of transposition literature that grapples with the link between the Equality Directives, national identity and citizenship. In reference to the literature review, there was interest in the deeper social contexts regarding national identity and citizenship that could explore the legal and political culture and how this in relation to the aforementioned subjects affects transposition and implementation. I will link what was found in the colonial history to the discussion on Maltese identity and legal culture.

Section III: Project Implications and Considerations

This study is a single-country case analysis with an empirical approach. The study is able to provide in-depth detail and insight on the qualitative data available on the discussion regarding the transposition and implementation of the directive within the Maltese context. Findings presented in later chapters can be used to explain theories that have been discussed regarding the Race Directive. This study recognizes s the ambiguity that comes with case study work (Gerring 2004). However, in the realm of the academic subjects that overlap looking at transposition of EU policy and the Race Directive

(Europeanization, Citizenship, National Identity), it seems appropriate to provide a study that contributes information to the debate and criticisms surrounding the Race Directive. Malta has been an overlooked subject for many studies concerning the humanities and political science within the EU. This study is a cohesive package that can help continue its use in future multi-unit studies.

Section IV: Project Limitations

A singly or multiple country analysis can be conducted using Malta by providing qualitative data using a survey to gain an understanding of how public servants, members of Maltese civil society, legal practitioners and minorities experience anti-discrimination law in practice in post-Race Directive in Malta. A study comparing the human experience in combination with the data collected in this study would provide a thorough presentation of the domestic dynamics. With more time and consideration, this study could have been supplemented with the aforementioned proposal. Considering previous studies on transposition in member states, this study does not attempt to quantify the length of time it took for Malta to completely transpose the Equality Directives, examine political resistance, or the role of civil society in mobilizing the directives. However, those are also factors that are worth consideration when examining the transposition of the directives. Due to time restrictions and limitations, this study does not consider the first-hand experience of ethnic and racial minorities who are Maltese citizens, immigrants or TCNS. In the future, an in-depth and official examination on the experience of those who are most at risk of discrimination in Malta, as revealed in this study, can help identify the gaps between justice and the human experience. Secondary sources that

interview minority groups in Malta are available and were consulted throughout this project and helped inform the analysis. It would be helpful if surveys continued to attempt to measure the progress made by the efforts of civil society and the Equality Body. Finally, limitations to this study are due to the lack of quantitative data available about ethnic and racial minorities in Malta. This study considered qualitative surveys regarding minorities, statistics made available about the labor market, and the most recent statistics made available on demographics. The most recent demographics published by the Maltese government were for the 2014. Upon analysis, it seems that the methodology doesn't seem to account for foreigners that live in Malta without long-term residence documents. With that being said, according to information provided by the Eurostat, Malta is likely to experience administrative and clerical errors when delivering data and has not provided national statistics for 2015. The lack of statistics makes it hard to quantify the increasing rate of foreign inhabitants on the island (immigrants, migrants and TCNs). Quantifying the affect that immigration is having on national demographics would be helpful to explain the national context as well.

CHAPTER FOUR: TRANSPOSING AND IMPLEMENTATING THE EU EQUALITY DIRECTIVES IN MALTA

This chapter will first give an overview of the topic of race, ethnicity and discrimination within the domestic context of Malta. Following the discussion of recent public opinion surveys, I will then explore how Malta has institutionalized the Race Directive by focusing on the Equality Body that covers the remit of race and ethnicity as directed in the provisions of the Equality Directives. The next section will specifically focus on other aspects of anti-discrimination law that concern the Race Directive in the employment sector and in practice. There are two entities which handle complaints of discrimination on the grounds of race and ethnic origin, however, only the National Commission for the Promotion of Equality (NCPE) is an official Equality Body. The chapter will conclude with a discussion and analysis of the findings. Throughout the presentation of my findings, I will highlight areas of weakness concerning the directives and anti-discrimination legislation in the case of Malta.

The goal of this chapter is to present the state of anti-discrimination law and policy in Malta as a result of the directives within the context of preventing discrimination against persons on the grounds of race and ethnic origin. By exploring Malta's colonial history, its transposition of the Race Directive and how anti-discrimination law is now implemented the following data presentation will provide insights on how the policy can be improved or strengthened in this particular member state.

Section I: Ethnicity, Race and Discrimination in Malta

Ethnicity and race in Malta is a controversial subject, particularly since the rise in irregular migration and illegal immigration to the island. Ethnicity and race in Malta is still an area in need of further research. Some demographic summaries such as the CIA World Fact Book list ethnicity in Malta as a member of the Mediterranean group, linking Maltese to the Carthaginian and Phoenician origins. Modern connections are linked to Sicily. Widely, there is no reference to other ethnic influences and/or groups, some of which are owed to Malta's colonial history and to more recent migration trends. There is limited research available on the communities of Arabs, Indian, or Sub-Saharan African inhabitants. There are second, third, and fourth generations – who have resided in Malta and who are Maltese citizens.

The 2012 Eurobarometer on discrimination found that 53% of the Maltese respondents thought that discrimination on the basis of ethnic origin was widespread. In 2015, this number increased to 71%. This compares to (In 2012) 54% for LGBT, 23% for gender and 51% for gender identity. In 2012, 43% noted that given equivalent qualifications, one's ethnic origin would place an individual at a disadvantage while 50% associated a rise in discrimination with the economic crisis. On a positive note, in 2015, 82% of respondents stated they would like it if school lessons and material included information about diversity in terms of ethnic origin. Despite the mechanisms in place via the equality body's complaint system, 36% of respondents stated they would prefer to report cases of discrimination to the police; 15% stated they would report it to an equal opportunity organization (NCPE).

A variety of actors in Malta, including NGOs, governmental organizations and regional and international bodies, have raised concerns about widespread discrimination in the labor market. The EU MIDIS Research, published in 2009, showed that 42% of African immigrants in Malta had reportedly experienced discrimination while looking for a job in the 12 months immediately preceding the start of the survey. The respondents believed the discrimination was due to their ethnic/immigrant background. In the same survey, 27% of respondents reported unfair treatment at their workplace on the basis of their ethnicity or ethnic background. There is no evidence that the situation has improved since the EU MIDIS Research was carried out. There is a follow up MIDIS project that was finalized in 2015. The results have not been published.

In December 2015, Malta ratified Protocol 12 of the European Convention on Human Rights. This Protocol extends the Convention's non-discrimination Article to a right in itself, thus guaranteeing protection from discrimination from any public authority. This Protocol entered into force on the 1st of April, 2016.

In March 2014, the European Network Against Racism (ENAR) published its shadow report about discrimination against ethnic and religious minorities in EU member states[21]. Malta's report[22] is based on data gathered by institutions, academics, the Parliamentary Secretary for Research, and NGOs in the past years, as well as on a number of interviews conducted with migrants residing in Malta. ENAR states that migrant workers face discrimination both in accessing employment and within employment. Discrimination

[21] http://www.enar-eu.org/IMG/pdf/shadowreport2012-13_final-3.pdf
[22] http://www.enar-eu.org/IMG/pdf/malta_fact_sheet_briefing_final.pdf

was determined to be perpetuated by a number of factors such as: stereotyping of migrant workers, difficulties in acquiring employment licenses, and lack of recognition of foreign qualifications. Within employment, reported discrimination included failure to pay wages and benefits and failure to abide by health and safety regulations. It appears that many of the concerns conveyed by the report are still present.

In addition to the findings of the ENAR report, a number of cases involving the exploitation of migrant workers came to light in 2014. To facilitate and encourage the reporting of discriminatory incidents and to address the problem of under-reporting, the People for Change Foundation launched the Report Racism Malta project in November 2014. It consists of a mechanism for communicating incidents of racial discrimination, provides an avenue for reporting incidents and offers guidance where cases may be taken forward and remedies accessed. In 2010, the NCPE published a study specific to Malta to develop an understanding of what factors would deter an individual from reporting instances of discrimination on all grounds of discrimination[23].The study took a group of individuals and relied on 101 qualitative interviews to identify reasons why individuals who were victims of discrimination failed to report the incident. The portion of the study focused on underreporting in those who experienced discrimination on the grounds of race and ethnic origin were people who identified themselves as Sub-Saharan and Northern Africans, Central and Eastern Europeans, Roma and South Americans. The survey found that reasons for these groups to be discouraged from reporting were: fear of

[23]http://ncpe.gov.mt/en/Documents/Our_Publications_and_Resources/Research/VS_2009/underreporting.pdf

intimidation from perpetrators if reported, concern about negative consequences/contrary to the individuals interests – such as not receive good service in the future, did not know how to go about reporting discrimination/where to report, nothing would happen/change by reporting discrimination, too trivial/not worth reporting it – it's normal, inconvenience/too much bureaucracy, and language difficulties. According to the report, in Malta per se on 18% of the Africans interviewed has officially reported incidents of discrimination. No complaints were filed when respondent felt discriminated against by educational personnel or in relation to housing. Reporting incidents of discrimination by public service personnel had the highest number of complaints filed amongst African respondents (32%).

Section II: Institutionalizing the Equality Directives

In direct response to the EU Equality Directives, Malta established two equality bodies, the NCPE and the National Commission for Persons with Disabilities (NCPD). The NCPD has always been a separate entity from the NCPE, which at this time is still expanding in terms of staff and thematic jurisdiction. The NCPD is solely responsible for the promotion, awareness and information sharing process for disability rights. In Malta this is a rather big issue, in 2014 the Times of Malta reported that out of 4,805 attempts by the Employment and Training Corporation to find a job for disable people, only 23 were successfully placed[24]. In the context of this study, the remainder of this section will focus on the structure, power and competency of the NCPE.

[24] http://www.timesofmalta.com/articles/view/20140330/local/Malta-reluctant-to-hire-people-with-disabilities.512718

Since 2004, the organizational structure of the NCPE has remained virtually the same. It is still under the jurisdiction of the Ministry of Social Dialogue, Consumer Affairs and Civil Liberties. The internal staff structure has been adjusted multiple times since 2004. Since its institutionalization, there has been a Commissioner and commission members who preside over the body which is led by an Executive Director. Staffing needs have increased as the body's remit has expanded since its inception. In the past few years, the Secretary position went from being under the Executive Director position to now under the newly added positions of, Legal Advisor, Manager and Accountant.

The Maltese equality body is primarily a Promotion-type body, a body that is concerned with promoting awareness of rights to victims of discrimination, conducting research for the use of generating public information regarding inequality, training and providing a service to those who wish to seek justice when discrimination has occurred (Ammer, Crowley et al. 2010). The NCPE, at present, not only falls within the umbrella of a government ministry, but its commission is made up of representatives of government. To further its integration under the governments jurisdiction, NCPE's work also centers on having constant contact with the individual ministries regarding issues which derive from its remit. This is achieved through the Ministries' Equality Committees. Each Committee consists of officers from different departments within each ministry who work together as a point of reference for employees to ensure that equality is mainstreamed in all workings of the ministry.

In a 2010 cross-national study of EU equality bodies conducted by the Human European Consultancy and the Ludwig Boltzmann Institute of Human Rights[25]; researchers learned that some countries have a human rights institution that adheres to the Paris Principles alongside national Equality Bodies. The Paris Principles are a source of normative standards for national human rights institutions and help to establish minimum requirements for their effective function. However, the Paris Principles are not binding under international law. Malta made strides to expand the remit of the NCPE to become a human rights institutions that adheres to the standards of the Paris Principles. In 2015, the NCPE established a new Human Rights and Integration Commission led by Director Silvan Agius. following a three step consultation which saw the publication of a white paper, Towards a Robust Human Rights & Equality Framework[26], multiple public consultations and drafting of an Equality Bill and the Human Rights and Equality Commission Bill. The 2015 Budget allocated resources for the creation of a Directorate for Integration which would have focused on the inclusion of different groups in society. The Bills have been finalized, but have not been signed. There has been no reporting on any movement regarding the two bills. The political atmosphere is sensitive to the subject of integrating foreigners, specifically, more visible migrants from sub-Saharan Africa.

The NCPE was established in 2004, to fulfill the conditions the EU put in place for the new member's states to gain membership. Upon its initial remit did not include race and ethnic discrimination, therefore, it was originally called the National

[25] http://bim.lbg.ac.at/sites/files/bim/Final%20Synthesis%20Report.pdf

[26] https://socialdialogue.gov.mt/en/Public_Consultations/MSDC/Documents/2015%20HREC%20Final/Consultation%20Document%20-%20(EN).pdf

Commission for the Promotion of Equality for Men and Women. The body was established as per chapter 456-Equality for Men and Women Act[27]. It had its remit widened to include 'Equal Treatment of Person's Order under Legal Notice 85 in 2007. According to its first annual report, the initial strategy of the NCPE was planned to focus on the issues of gender that constrain and disadvantage men or women in Malta. The NCPE's approach was to work toward eliminating discrimination against men and women, to send the message that the right of equality is a fundamental right of 'every citizen' (NCPE 2004).

The National Commission for the Promotion of Equality for Men and Women was headed by Commissioner, Dr. Janet Mifsud and six members. In its annual report FY2005, it recognized its need to act beyond the legislation that provides a framework for its mandate. It also recognized that the Maltese government, at that point, was committed to "reach a balanced participation of women and men' in decision-making position in the public and private sector. The body made an attempt to work on both gender equality and 'in promoting anti-discrimination and diversity" (NCPE 2005). To mark its new approach, in 2005, the body changed its name to the National Commission for the Promotion of Equality.

The NCPE's remit was further strengthened in August 2008 with the introduction of Legal Notice 181 'Access to Goods and Services and their Supply Regulations', which transposed the provisions of Council Directive 2004/113/EC2, and outlines the equal treatment of men and women in the supply and access to goods and services. Legal

[27] In line with Council Directive 2010/41EU of the European Parliament

Notice 181 applies to all persons who provide goods and services made available to the public. It shall be unlawful for a person to subject another person to discriminatory treatment, whether directly or indirectly, on the grounds of sex, including discriminatory treatment related to pregnancy or maternity (LN181/08, Article 4(1)). In 2012, an amendment to Chapter 456 was published via Act IX of 2012 which led to an additional extension to the NCPE's remit. The expansion now covers discrimination based on gender identity, religion, age, sexual orientation, and race/ethnic origin in employment as well as access to vocational/ professional training or banks and financial institutions.

All complaints submitted to NCPE are dealt with by the Complaints Section which is responsible for processing complaints, gathering information through the complaints form process, and answering requests for information. Apart from the Complaints Section, the Complaints Sub-Committee is the body within NCPE that is responsible for taking decisions with respect to complaints received or those which are initiated by NCPE. During the year, the Sub-Committee meets regularly in order to discuss the complaints received, to investigate particular matters, and also to conduct face-to-face meetings with concerned parties.

NCPE, under the directives may initiate complaints if it is aware of a breach in the law within its remit, with regards to gender or race discrimination. In order to investigate each case, NCPE has the power to question any person(s) that is able to provide information on the case. After an investigation, the Commission can either defer the case to the appropriate civil court or refer it to the Industrial Tribunal. If the Commission does not want to move forward with the case it can dismiss the complaint. If the complaint is

found valid and under the auspice of its remit the body will take direct action by submitting a report to the Commissioner of Police for action. If the complaint does not constitute a criminal offence, the NCPE can request that the person in question remedy the situation, and provide mediation between the complainant and the parties involved. In most scenarios, cases are solved through mediation and without the involvement of the police or the Industrial Tribunal. For example, for cases pertinent to gender discrimination and employment, once NCPE informs the employer about the breach of the law and begins to mediate, many employers rectify the situation or reach an acceptable compromise with their employees. These conditions are only accepted if all parties concerned agree to them (NCPE 2015).

Since its inception, the NCPE has had the power to investigate complaints of discrimination on the grounds of gender and 'family responsibility'. In 2007, this was expanded, its powers became more broad in the scope of race and ethnic origin. Per the transposition of the directives, all cases concerning discrimination based on race and ethnic origin should be followed through with the body. However, the body in practice has referred cases of discrimination in employment to the Department of Industrial & Employment Relations. This is in conflict with the provisions outlined in Council Directives 2000/78/EC and 2000/43/EC. The Department of Industrial & Employment Relations will take these complaints through the Industrial Tribunal, a body that will be discussed in a later section.

In 2007, the first year the NCPE expanded its remit to cover discrimination on the grounds of race and ethnic origin the body. In its first year, it received three complaints of

discrimination on these grounds. The complaints where cases of discrimination in recruitment, different treatment towards EU nationals; and allegations of xenophobia (housing). In the year 2014, the number of complaints filed on the basis of race and ethnic origin came to a total of 19, one of which was submitted by an NGO. FY2013 had a significantly higher number of complaints filed based on race and ethnic origin than any other year since 2007 (Figure 2)[28].

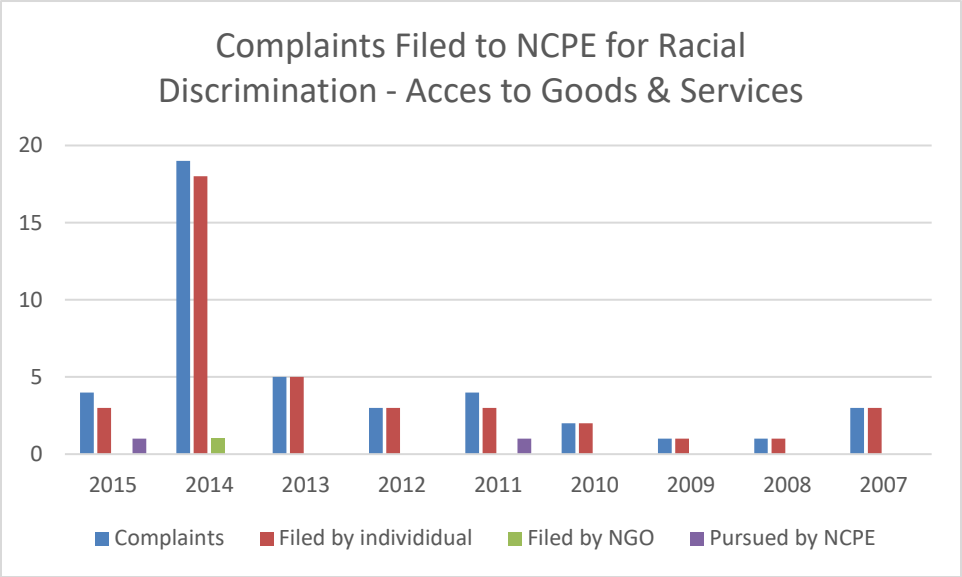

Figure 2. Complaints Filed to NCPE for Racial Discrimination – Access to Goods & Services.

In 2015, The NCPE commissioner closed two investigations. One concerned alleged discrimination in the rental of a property based on race and ethnic origin. The

[28] Figure 2 is based off data provided by the NCPE's annual reports.

commissioner concluded there was an occurrence of discrimination in the access to housing on the basis of race and ethnic origin.

NCPE and the Race Directive

As mentioned above, the NCPE's powers were not vested in national legislation to include matters of discrimination on the basis of race and ethnic original until April 2007. However, this does not mean the NCPE did not become involved in societal issues concerning race prior to the fact. There is evidence of initiatives and participation in projects that aimed to address the Race Directive. An audit of the NCPE's annual reports, revealed the body took on preliminary initiatives to address issues of discrimination on the grounds of race and ethnicity

In FY2006, the body conducted a training of Police Officers. The body prepared specific material emanating out of requests received by various entities. Following the delivery of a training session on racial equality provisions in Maltese legislation and EU Directive 2000/43/EC delivered during August 2005, the Police Academy has included a training session on racial equality in all in-service courses and training programs for new cadets. During 2006, NCPE was asked to increase its delivery to seven in-service training sessions of a length of one hour each, and 3 cadet training sessions of 2 hours each. The Police academy requested training and sensitization on race and xenophobia for their new recruits, according to the NCPE's FY2008 annual report. The trainings included an overview of Legislations related to anti-discrimination with regards to race, an explanation of NCPE's remit and a group discussion regarding xenophobia and racism.

In FY2005, the body undertook an Anti-Discrimination and Diversity Training project. As a part of a Pan-European project entitled Capacity Building Civil Society Dealing with Anti-Discrimination, two members of NCPE and 6 Maltese trainees joined the capacity building program. The aim was that the participants would disseminate the knowledge learnt in the national training program to civil society organizations. A training program was later delivered at the University of Malta, with many equality and non-discrimination NGOs represented. Subsequently, the NCPE was included in a contract won by the Human European Consultancy Group in partnership with the Migration Policy Group. The project proposal envisaged anti-discrimination, and diversity management training to be delivered in 31 European countries. As a result, a two-day seminar focused on anti-discrimination was held in November 2006, various NGOs and trade unions participated. A second two-day seminar was held and aimed at the same precipitants. The Maltese trainers who were participants in the EU project, delivered both seminars. In addition to the anti-discrimination seminar, a one-day diversity management seminar was held in February 2008 and was directed towards employers, organization, large companies and SMEs both within the private an public sector.

When NCPE's remit was finally expanded in 2007, the official transposition of the Race Directive was reflected as not only an expansion of thematic responsibilities but also powers. In the body's annual report, it considered the additional powers as making it the 'Equality' body rather than the 'Commission for the Promotion of Equality'. In 2007, it took on the following goal to address the new part of its remit by auditing the areas of

discrimination on the basis on race and ethnic origin as well as gender. The NCPE began to monitor, review and suggest amendments of laws as necessary to ensure the implementation of an inclusion policy across all grounds in all areas of decision making. The body also began to support research projects, training and awareness with different NGOs to promote intercultural sensitivity; and capacity building (NCPE 2007).
The body continued its activities to combat racial and ethnic discrimination. In FY2010. It implemented an EU funded project entitled "Strengthening Equality Beyond Legislation" (SEBL) which trained students, social partners, parents, educators, media persons, the armed forces, the police corps and other bodies which implement equality laws and are in direct contact with potential victims of discrimination. As promised in 2007, it began to audit and research discrimination in Malta and published the report*, I'm not Racist, But...*[29]*.*, in 2011 which was a survey of the what immigrants and ethnic minority groups experience when trying to access housing in Malta.

The NCPE partnered with ten organizations to embark on a promotion campaign, MOSAIC- One in Diversity[30], an awareness program meant to highlight the six grounds of discrimination as recognized by the EU; Gender, Region or Belief, Race and Ethnicity, Age, Disability and Sexual Orientation. The network produced a brochure, *Diversity Makes Us Stronger*[31], that explains what equality and diversity means as well as making a distinction between direct, indirect and multiple discrimination**.**

[29] http://ncpe.gov.mt/en/Pages/Projects_and_Specific_Initiatives/I%27m_Not_Racist.aspx
[30] http://ncpe.gov.mt/en/Pages/Projects_and_Specific_Initiatives/Mosaic_One_in_Diversity.aspx
[31] http://www.pfcmalta.org/uploads/1/2/1/7/12174934/report_-_fgm.pdf

The NCPE in its reports, highlights that discrimination effecting migrants is a priority high on its list of initiatives. After auditing each annual report, it is clear that matters concerning racial discrimination are directly related to the migrant community in Malta. In 2015, the body contributed to a public consultation, *Mind D Gap*, on the integration of TCNs. The initiative was undertaken by the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties. As a result, the consultation produced a number of proposals in relation to areas such as media portrayals, public institutions, vulnerability, diversity accommodation and research. It also mentioned that integration policy should be attentive to structural inequalities that TCNs might be facing and highlight both the common and specific needs that different TCNs experience.

In FY2014, the body carried out a study on the practice of 'Female Genital Mutilation in Malta' (NCPE 2014). The study explored various issues related to the needs and circumstances of migrant women affected or potentially affected by female genital mutilation. The main objective of the study was to provide an exploratory overview of the subject matter. The research process placed particular emphasis on highlighting some of the newly emerging and existing challenges in terms of awareness and knowledge of the issues that can be addressed through future measures including training initiatives, sensitization efforts and constructive engagement with communities at risk. The study resulted in the passage of law making forced marriages and female genital mutilation a criminal offence[32].

[32] Article 214 of the Penal Code. http://www.timesofmalta.com/articles/view/20130924/local/bill-to-outlaw-female-genital-mutilation.487529

The NCPE in partnership with various organizations in Malta, both governmental and non-governmental, has actively sought out ways to positively act towards the principle of equal treatment. Throughout the process of transposition and implementation, the government has regularly consulted with individuals and entities working to combat discrimination as initiatives and studies continue to be carried out by stakeholders.

The Industrial Tribunal

Malta, like other European countries only dealt with matters of discrimination under the notion that it was an economic concern, not a principle of social inclusion. The Industrial Tribunal was the only body that dealt with cases of discrimination. Prior to the transposition of the Equality Directive. After the transposition process, the Department for Industrial & Employment Relations (DIER) is the second entity that has the power to handle instances of discrimination against individuals, specifically in the workplace. Its power is vested in the provisions of the Employment and Industrial Relations Act 2002 and its subsidiary legislation. DIER is responsible for regulating, checking and enforcing conditions of work and industrial relations. One of the functions of the department is to advise employers and employees on labor related legislation and industrial relations. The department is also responsible for investigating and solving any potential breaches of legislation and also tries to avert and/or resolve potential industrial relations disputes. When disputes are not solved through the intervention of the department's officials, these can be referred to the Industrial Tribunal which formally investigates and decides on labor related disputes. The tribunal's remit is only designated to the employment sector, the potential for cases of discrimination on the grounds of race and ethnic origin are only

handled by this tribunal if taken to court. The Industrial Tribunal is an independent judicial body from other courts, it has exclusive jurisdiction to consider and decide all cases of alleged unfair dismissal, in addition to other cases associated with employment such as breach of the law with regard to provisions such as overtime, parental and maternity leave (as stated on its official page). The tribunal falls under the umbrella of the Ministry of Social Dialogue, Consumer Affairs and Civil Liberties, and its decisions are final and binding except on points of the law.

Despite the powers vested in the tribunal, it has not heard a single case on discrimination on the grounds of race and ethnic identity. The office of the clerk stated this was because upon the filing of complaints on these cases the complainant was unable to provide proof of discrimination (Suban and Zammit 2013). The majority of complaints filed on the grounds of discrimination on the basis of race and ethnic origin were made by foreigners. Although the court has not heard a case on discrimination on the basis of race and ethnic origin, the tribunal has recommended that cases be settled outside of the courts (Suban and Zammit 2013). This is something that is often done not only with the tribunal but with cases that were filed with the NCPE as well.

Section III: Anti-Discrimination Legislation and Employment in Malta

In this section I will discuss the conventions and legislation that exist to combat discrimination on the grounds of race and ethnic origin while exploring how this legislation is implemented and practiced. The legal framework to approach discrimination is now in line with the standards outlined in the Equality Directives in

Malta[33]. The European Commission had opened enforcement proceedings against Malta after it failed to draft legislation that prohibited discrimination on the grounds of race and ethnicity the included access to goods and services in its provision in 2006. In response, Malta added Legal Notice 461 (see appendix g) to the pre-existing Employment and Industrial Relations Act 2002 (see appendix h). In a 2014 Commission report on the transposition of the directives in all 28 member states[34], Malta was reported to still have difficulty transposing the concept of the burden of proof correctly. This may be due to the fact, that the pre-existing principle under Maltese law was that the burden of proof lies with the person making the allegation (Ellul 2007)[35].

Despite being party to international conventions that provide clear and concise definitions for 'race', 'ethnicity', 'indirect discrimination' and 'direct discrimination', Malta does not clearly define these terms in national legislation. The principles of equal treatment and non-discrimination were introduced into the Maltese Constitution of 1964. This provides protection from discrimination on the basis of race, place of origin, political opinions, color, creed or sex and also stated that no law shall make any provision that is discriminatory either of itself or in its effect. Article 14 of the European Convention for the protection of Human Rights and Fundamental Freedoms have become and are enforceable as part of the Laws of Malta. Article 14 can be invoked before and

[33] Council Directives 2000/78/EC and 2000/43/EC
[34] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0002&from=EN
[35] Legal Notice 461 of 2004 provides that in any proceedings brought by a person claiming discriminatory treatment in respect of his/her employment, it shall be sufficient for the plaintiff to prove that he or she has suffered discriminatory treatment and it shall become incumbent on the defendant to prove that such treatment was justified in accordance with these regulations, in the absence of which, the Tribunal or Court shall uphold the complaint of the plaintiff.

enforced by Maltese courts in the event that an individual is denied these fundamental rights provided for in the Convention on the grounds of discrimination (Ellul 2007). Malta is party to the International Convention on the Elimination of all forms of Racial Discrimination which defines racial discrimination as any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life[36]. The Equal Treatment of Persons Order[37], implemented in 2007, distinguishes between both direct and indirect discrimination. Compared to the language spelled out in the conventions Malta is party to, the language in Maltese law does not provide a clear definition of what 'race' and 'ethnicity' means in the domestic context. Furthermore, it has included language prohibiting both indirect and direct discrimination but it does not clearly outline what behaviors these terms include.

Maltese law and legal culture has done little to address the existence of minority groups in the national context. Within Maltese law, there is no distinction made between non-nationals of a minority background and those who are not. In addition, there are no distinctions made between nationals of a minority background and those who are not. Therefore, there is no legal or policy definitions or references to national minorities and ethnic minorities outlined in Maltese law. The only mention of a generation of migrants

[36] International Convention on the Elimination of all form of discrimination Citation
[37] Legal Notice 85 of 2007

is made only applicable to the legal acquisition of Maltese citizenship by second generation Maltese emigrants[38] (Attard, Cassar and Gauci 2013). The National Census asks questions about the individual's country of birth, citizenship and mode of acquisition of Maltese citizenship (if applicable). However, no data is collected pertaining to migrant background, religious affiliation or beliefs, and/or ethnic background (ENAR 2004).

The absence of clear definitions for 'race' and 'ethnicity' and a legal recognition of minorities creates a challenge for the implementation of legislation that serves to combat discrimination on the ground of race and ethnic origin. As discussed in the literature review, the Anglo-Dutch model fails to recognize structural discrimination, this is evident in Malta where there are structural barriers in place that create more obstacles for foreigners to seek and obtain employment in Malta. There is advantage for individuals with Maltese citizenship who have an automatic right to work. In practice, this makes the employment of Maltese citizens far more attractive than any other nationality from an administrative perspective because anyone who does not have Maltese citizenship must go through a bureaucratic process to obtain a permit to work. The bureaucratic process often presents challenges and delays that are a result of the administrative rules and procedures in place that systematically favors Maltese and EU worker's nationals (Suban and Zammit 2013). Individuals granted refugee status are also granted the right to work. Asylum seekers and rejected asylum seekers may receive a work permit upon the application of their prospective employer whilst in practice, refugees and persons with complementary forms of protection have a work permit, meaning that their employer

[38] Those of Maltese descent who live abroad have the right to seek citizenship.

does not need to apply for their permit. This leaves a great deal of the population who have not been granted citizenship yet, or who routinely must apply for a work permit susceptible to difficulties in accessing employment.

The Equality Directives do very little to help address this issue within the Maltese context. Both the Race and Employment Directives specifically exclude nationality from the prohibited grounds of discrimination. In fact, the Equal Treatment in Employment Regulations of 2004 state in Regulation

1(5)(a) that it:

"does not apply to any differences of treatment based on nationality and is without

prejudice to laws and conditions relating to the entry into and residence of third country nationals and stateless persons in Malta and to any treatment which arises from the legal status of these individuals concerned."

Individuals who have been granted subsidiary protection are given a permit to work, and as of very recently, they are also given Social Assistance in the form of a non-contributory benefit[39]. This means that, under certain circumstances, they are entitled to receive some monetary assistance without necessarily having paid National Insurance. Rejected asylum seekers are not eligible for social benefits (despite paying national insurance when they are gainfully employed in the formal economy).

[39] Legal Notice 291 of 2001, The Social Security Act 49 also apply to persons who are accepted as refugees under the provisions of the Refugees Act 50.

From a legal standpoint, it seems that the Maltese legal framework is somewhat problematic. It is not clear to what extent it protects against discrimination against Third Country Nationals, whether in employment or in other areas of social life, on grounds of nationality. The rights of migrants in Malta have been a controversial topic of public discourse. In March of 2015, there was a protest led in the capital, Valletta, organized by a migrant NGO called the African Media Association. Protest participants came to share stories of living and working in Malta for over ten years while facing systemic barriers to accessing education and work permits. The legislation that has resulted from the transposition of the directives does little to address the issue of discrimination as it has materialized in Malta as primarily an issue for those who are left out of the law.

Section IV: Conclusion

The first two sections of this chapter discussed the legislation that has been drafted and implemented as a direct response to the Equality Directives and how that legislation has been mobilized within the Maltese context. The information that has been presented is evidence that Malta has adequately transposed the directives to the satisfaction of the EC. However, the transposition of the directives has highlighted facets of legislation at the national level and at the EU level that have failed to address communities within Malta that are at the highest risk of discrimination and are excluded from the protections of the law. Similar studies have been conducted on the transposition of these directives and have also identified areas of concern where the implementation does not lead to adequate justice for victims of discrimination or provide victims of discrimination with a clear path to seeking justice (Asensio 2008, Sitaropoulos 2007, Keading 2006, Baldwin-

Edwards 2006, Woolfson 2010, Bell 2009) This trend suggests that the realization of legislation and institutionalization of an equality body has a limited capacity to address the symptoms of greater issue. In the case of Malta, as is the case of France and many other countries, identity in terms of citizenship, is a factor to be discussed and may point to the gap in the directives in national law which leaves a number of individuals at risk and unprotected (Gehring 2005). Who able to access justice in instances of discrimination in practice? This study and studies of a similar nature have revealed that groups who are favored within the legal language of the law are the ones who seem to benefit from the protections provided by the Equality Directives the most. The intention of the Race Directive may not realize its full potential given the state of implementation in Malta and other European countries. Citizenship and who has rights as outlined in law have a tendency to correlate with who experiences discrimination and access to justice.

CHAPTER FIVE: CONSIDERING HISTORY: CROWN COLONY OF BRITAIN, EUROPEANIZATION AND NATIONAL IDENTITY

Malta's relationship with Britain during its time as a crown colony is evidence that Malta has relied on external actors for guidance in governance and economic support. As a result, this historical dependence has had implications on the current debate regarding Maltese national identity and political and legal cultures – factors that have been identified as influential in the transposition and implementation process. Many of the problems discussed in the previous chapter can be traced back to Malta's history with Britain. In this chapter will provide an overview of the type of colonial relationship the Maltese shared with Britain in order to set up a foundation for the argument that this history is a factor on how the directives are transposed and this had impacted the practice of anti-discrimination law within the bounds of race and ethnic origin. In the final section, I will connect the data discussed in the previous chapter and this chapter to make the case that this history has influenced the Europeanization of Malta and its legal and political culture. This chapter will finish with a conclusion considering all the information presented throughout this study followed by recommendations.

Section I: Malta, A Crown Colony of Britain

The archival data available on Malta under British rule reveals a unique relationship between the colonized and the colonizer. Malta, like many small island states depended on Britain as a colonizer for governance and economic prosperity (Baldacchino 2004. Rule of law in Malta has been administered by external powers up until its independence in 1964 Prior to British colonization, Malta had two other influential

occupiers that heavily influenced law and society: Napoleonic France from 1798 to 1800 and the Knights of St. John of Jerusalem from 1530 to 1798. Malta officially became a colony of Britain on July 23, 1813. Sir Thomas Maitland was appointed as the first Governor of Malta and was known most for his policy to keep Maltese out of consultation when it came to all forms of governance (Hough and Davis 2009). Scholars who have studied Malta have noticed the effect that the resistance in the American colonies had on British colonial rule. Malta being viewed as a strategic military location was treated as a colony where local stability was highly valued but would not participate in the rule of law (Hough and Davis 2009). Malta's status as a Crown Colony was confirmed by the Treaty of Paris of 1814, which was itself reaffirmed by the Congress of Vienna of 1815 (Mallia-Milancs, Victor, et all 1988).

Malta had a experienced varying degrees of autonomy throughout its colonization, however, the British desire for stability on the island usually resulted in a strict response from London at the first sign on instability. Sir Thomas Maitland was appointed as Governor or first civil commissioner of Malta. His powers and guide for governance stemmed from London and did not involve the participation of a representative assembly, which had been used in British colonies prior to the American revolution. As a result, Sire Maitland did not form an advisory council made up of Maltese representatives. However, he was responsible for establishing the Maltese police force in 1814 and oversaw various reforms in taxation and law (Hough 2012). Sir Maitland and Britain's decision to exclude the Maltese elite from being consulted during the discussions over national policies was the first divide between the Maltese and

identity associations with governance. The alienation of the elites added to the tendency for this group to be anti-Britain and pro-nationalist. The elites often associated Maltese identity with the Catholic church, the Italian language and an affinity for its close ties to Italy. The unification of Maltese around these identity points led to the formation of the Maltese Nationalist Party and the starting point of polarizing politics that can be observed in the present.

Despite the series of governmental reforms, the Maltese did not experience a form of autonomy until 1921. In1846 the Maltese began to riot over a perceived economic hardship by the majority of the population and the low amount of bread that was being made available. These riots were termed the 'carnival riots'. The British began to negotiate with Maltese political elites and in 1849 a Council of Government with elected members under British rule was set up. The council was established following the 1846 Carnival riots (Frendo 2009). In 1870 a referendum on the island was held to determine the desire for autonomy from Britain, by 1881 an Executive Council was established where Maltese elites who were not democratically elected began to participate in governance under British rule. In 1887 the Executive Council was granted more power from London and was entrusted with "dual control" under British rule. In 1903, there was backlash and the system returned to the 1849 rule form of Council of Government under British rule. Whenever the British tried to implements liberal constitutional reforms they faced heavy opposition for the Nationalist Party (Attard 1998).

In 1919, the Maltese began to riot over the excessive price of bread, these riots were referred to as the *Sette Giugno riots*. In 1921, Dr. Filippo Sciberras, a prominent

leader at the time, convened a National Assembly, which resulted in the British granting the Maltese greater autonomy. Under the auspice of the 1921 Constitution, Malta obtained a bicameral parliament with a Senate and an elected legislative assembly. However, self-governance did not last long. Throughout the 1930s the Maltese political elite, the Maltese church, and Britain experienced hostile relations. The Maltese church proved to be as equally as influential as the government, making it hard to hold free and fair elections without the influence and intimidation of voters by the Maltese Church (Frendo 1988). In 1933, the Constitution was withdrawn after a budgetary vote to eliminate the teaching of Italian in elementary schools. The withdrawal of the Constitution led Malta to revert back to its Crown Colony status and under the direct control of London. Malta soon began to earn its governing rights back again in 1936 when the Constitution was revised to provide for the nomination of members of a second Executive Council that would be administered under British rule but comprise of Maltese politicians. in 1939 an elected Executive Council took power over the governance of the island under British administration (Frendo 1988).

Despite the tumultuous relationship between Maltese elites and member of the British administration, Malta was always considered an asset and a colony that had a good relationship with Britain. Malta had proved to be a very valuable to Britain throughout World War II. Its proximity to Italy made it a regular target of the Italian and German air forces while the British used the island as a location to launch attacks on the Italian navy and established a submarine base. On April 15, 1942 King George VI awarded the George Cross, the highest civilian award for gallantry to Malta for its role in

World War II. The war put the Maltese Nationalist Party's affinity to Italian at the forefront for tension between Britain and Maltese politicians that still needed to come to an agreement on Maltese autonomy and participation in Parliament in London. Many were at odds with their loyalty to their constructed identity which shared ties to Italy and their economic and political ties to Britain. This became especially difficult after World War II due to Mussolini's relationship with Nazi Germany and the Italian effort on behalf of the axis powers. At the end of the war, very few members of the Nationalist Party had remained in Malta, many were accused of assisting Italian axis members throughout the war and for being Nazi sympathizers. The Prime Minister at the time, Ugo Pasqual Mifsud, gave a sentimental speech in defense of the fifty Maltese Italians who were accused of pro-Italian political activities. The collaborators were to be deported from the island and sent to concentration camps in Uganda (Baldachinno 2011).

The British were grateful for Malta's role in the war and once again began to consider granting the Maltese for power under its administration. The Maltese recognized the economic benefits of maintaining a British naval base on the island and worked to maintain the relationship while also requesting for representation in Parliament in London. In 1946, a National Assembly was held which resulted in the creation of the 1947 constitution. The Labor Party, a pro-British political party in Malta, played a major role in advocating for more powers in British Parliament hoping t fully integrate with the United Kingdom. The Labor Party grew during World War II as a result of the polarization from Maltese elites that began to sympathize with Italy driving a divide between the upper class and working class.

Although the Labor Party was known for its rhetoric in support of integrating with the UK, it was also willing to cut ties with Britain should they not receive representation in the UK, even though public opinion at the time seemed to favor an affiliation with Britain (Cini 2000). Unlike other colonies at the time who were pushing the independence, Malta enjoyed the economic benefits of being a colony and sought ways to work with Britain rather than sever ties. In December 1955, a round table conference was held in London on the future of Malta. In the negotiations, the British were prepared to offer the Maltese three seats of their own in the British House of Commons. In addition, a Home Office would take over responsibility for Maltese affairs from the colonial office. In addition, the Maltese Parliament would retain responsibility over all affairs except defense, foreign policy and taxation. The Maltese would also maintain economic parity with the UK, overseen by the British Ministry of Defense, this was the islands' main source of employment at the time (Baldacchino 2002).

On February 11 and 12 of 1956, the Maltese held a referendum for integration with the UK. The proposals mentioned above were voted on by the Maltese electorate. Although the proposals were approved by 77% of who voted, only 59.1% of the total electorate participated – the proposals were never implemented. The low turnout was due to a boycott by the Nationalist Party. Whilst the Maltese political elite debated on integration with the UK, the UK was having doubtful considerations as well. Since the end of World War II, members of parliament began to view the navy base on Malta as an expensive expenditure with dwindling strategic importance. Furthermore, granting a small island parliamentary power could possibly set a precedent for other British colonies

(Frendo 2009). Forty shipyard workers were dismissed when the British parliament declared it would no longer maintain the Royal Navy's shipyard in Malta. IN response, the Maltese Prime Minister Dom Mintoff resigned in protest. Maltese politicians refused to form an alternative government and in 1959, an Interim Constitution provided for an Executive Council under British rule (Zammit 1984).

In 1961, an opportunity for self-governance presented itself. A new constitution was drafted allowing for a measure of self-government under British rule. Economist, Wolfgang F. Stolper, developed a report on the economy of Malta. He and his team concluded that the Maltese economy would need to counterbalance the 'multiplier effect' of the British Services Rundown by injected capital investment in the manufacturing industry, tourism and agriculture (Briguglio 1994). The island officially achieved independence on September 24, 1964 following the release of Stolper's report and the establishment of the Central Bank of Malta.

During the tumultuous years under British rule, the Maltese elite struggled for autonomy from British rule but did not seek independence. Whilst, the roots of both major parties in Malta are embedded in identity tied to religion and economic class. The Maltese Nationalist Party and Labor Party both in the end supported full independence from Britain, but only after making an effort to integrate as an equal participant in the UK. Throughout that time, the Maltese electorate never directly chose its leaders, politicians were nominated within the party's elite. Even after independence, this continued to be a practice through 1974.

The colonial history of Malta is pertinent here in the context of this thesis, because the directives are a clear example of a member states adopting legislation from an external entity without consulting how it relates to itself. This same type of adoptive legislation is what Malta experienced under British rule. This sets up the argument that not only is the idea of citizenship, identity and law important to understanding the context of Maltese legislation. Implementing legislation might not be as effective to combating discrimination in Malta due to its tendency to not be vested in the law that is drafted on account of it being influenced by an external actor.

Section II: Identity and Europeanization

Independence was granted to Malta in 1964, yet the British navy did not leave until 1979 (Cini 2000). Like other post-colonial developing states, the question of national identity became a major preoccupation. Prior to World War 11, questions of Maltese identity dominated politics, specifically around the issue of language (Howe 1987). How brought forward the observation that the debate was between those who saw Malta as Catholic, who was very much 'Mediterranean and has a loose affiliation to Italy. On the other end there were those who advocated that the interests of colonialists were in line with that of the Maltese, therefor true patriotism mean consolidating tires with Britain (Caruana 1992). Even today, it seems that Maltese politics are engulfed in the debate over identity.

Politicization of Maltese Identity

The national identity of the Maltese has been a heavily politicized issue. Discourse has had a habit of surrounding the national agenda by the two parties in power.

Studies of Maltese identity can summarize two constructions that have been put forward in political context and have become national discourse. The first is recognizes Malta as a Mediterranean entity. In this respect, Malta is painted as a Mediterranean state and only second as a European one. Rendering the island, neutral and non-aligned. It acknowledges Malta's geopolitical position in the heart of the Mediterranean, it acknowledges Malta's link to Europe, particularly Italy. At the same time is recognizes Malta's proximity to Libya and its relationship with Arab states (Fenech 1988). At one time, the political support of this identity encouraged the instruction of Arabic in Maltese schools. This identity was often used in the context of the Euro-Mediterranean Partnership (de Marco 1999). Cini identifies Malta's second and current construction as a European island. During the campaign for Malta's candidacy for EU Membership, Mitchell observed a shift in dialogue that emphasized the shared Christian identity that Malta has with other European countries. Its Mediterranean identity comes second, and cuts ties with its Arab partners in the Southern-Med. Former Prime Minister Borg called for the reinvention of both the Maltese people as individuals and Malta as a nation (Borg 1999). Both versions of the Maltese identity were pushed by the two opposing political parties in Malta at times when Malta sought out external partners. Is this debate about identity exclusively political? The government, used rhetoric distinguishing means and ends to high the national consensus regarding potential EU membership. Public opinion played a significant role regarding the political divide. There seemed to be a consensus that the EU was Malta's attractive partner in political and economic terms. The NP claimed that improving and reforming the government is their ultimate goal, while EU

membership is merely a means or a strategy to achieve this goal (Fenech-Adami 1999). Mitchell conducted a series of interviews with Maltese citizens during the years in which both the PL and the PN campaigned for closer ties with Libya and then the notion of EU candidacy. His data revealed that Maltese themselves seemed to have conflicting views regarding they Arab ties and Catholic roots.

Section III: Conclusion and Recommendations

Considering the colonial history of Malta in the context of transposing the implementing the EU Equality Directive points to insights regarding the legal and political culture in Malta. These insights can help illustrate the context in which EU policies and principles are to be translated and helps determine their success. We can conclude that the Europeanization of Malta is at the center of the national debate on identity, an issue that is political as much as it is social. The Race Directive complicates this notion. As discussed earlier, the Race Directive highlights a tension at the domestic level between EU principles and deep-rooted institutional attitudes. Uniquely, Malta has never had to approach the issue of race and ethnicity with such sensitivity as it was relatively removed from the implications of the Holocaust. TO that end, it is a legal culture that is accustomed to adjusting and making taking its cues from outside actors. This changes the framework in which legislation is drafted.

Referring back to the case study portion of this study that examined the implementation and transposition of the Equality Directives, it is clear that Malta has transposed the Directives fairly quickly and interest to take on issues of discrimination were taken on by local NGOs. This does not mean that national consensus reflects this. On the contrary,

national discourse regarding integration of migrants has been a politicized and sensitive issue. This politicization might overshadow efforts to address the multi-faceted elements of the national context of racial and ethnic discrimination. The question of how Malta generates its policies and laws come into question. Considering not only its colonial history, but also it prior occupations, provides a legal context that has been heavily influenced by outside actors with economic attachments.

Conclusion

The power of the EU to influence national policy can be investigated quantitatively by measuring results or qualitatively by examining experiences of EU-nationals. In the context of the Race Directive, however, the prospect of measuring its influence over the lives of individuals who live inside EU countries is challenging and lengthy endeavor. In the initial stages of this research project, it became clear that for both scholars and policy -makers interested in this directive, that the lack of quantitative data available to inform on this subject is a gap in the discussion that many would like to fill. Two obstacles stand in the way, national policies that are opposed to the collection of data identifying citizens by race and ethnic origin and lack of adequate resources.

Studies independent of the scholarship that are available on the Equality Directives, have concluded that there is a gap in employment experienced by ethnic and racial minorities (Kahenic, Zaiceva and Zimmermann 2007). Discrimination does not just exist in employment, but also in the access to goods and services such as housing and social services. The European Community and the European Agency for Fundamental Rights have continuously funded research and publications that conclude that minorities

in Europe face discrimination (EU MIDIS Survey, European Agency on Fundamental Rights) and have suggested that the issue has gotten worse (European Network Against Racism 2015). In a 2015 Shadow Report on Afrophobia in Europe, ENAR, posited that although there is race equality legislation at the EU and domestic levels, it is often reports that people of African descent and Black Europeans are not included in their remit. In light of this finding, ENAR noted a shift and decline in public and political support and solidarity regarding anti-racism issues, which is linked to anti-migrant rhetoric. Political discourse, that is racist and Islamophobic, is predominantly framed in the context of anti-immigrations and target migrants that are both Black and Muslim. As a result, migrants from Africa and Black Europeans are reportedly experiencing an increase in violent hatred and discrimination across all areas of life (housing, criminal justice, health care and employment). Recent publications and reports led to the inquiry regarding the how the Race Directive fits into the state of the realities of race in Europe.

This study was not intended to supplement the ongoing academic discussion on small islands and colonizers. Although, the finds indicate that Malta does fall into the exceptional group of post-colonial countries that did not have a desire for independence. In that same regard, the findings in this study could be used to help facilitate a discussion on the influence colonization has on the future legal and political culture of a former colony. The findings in this study combined with qualitative study on the experience of discrimination in Malta could provide substantive insights on the theories regarding race and social construction discussed in the literature review. Per the findings in the ENAR Shadow Report on Afrophobia in Europe, survey participants were more likely to assume

that a Black individual would be a migrant in Malta, even if they were from a European country.

We must consider the meaning of Race, ethnicity and what minorities are in the unique context of each member state. In order t \o understand and develop a European definition of what it is to be a minority but also face realities at the national level. The opposite of being color blind is not having to deal with the idea of ethnic and racial differences at all, certain countries are now dealing with this for the first time, therefore, we must look at the individual case of each member state. Malta has a unique national context in that it is facing a intense upsurge of immigration from other EU countries in combination with a substantial migrant population from sub-Saharan Africa. It is changing demographics and colonial history should make for an interesting consideration for the area of transposition literature that serves to help shape more effective anti-discrimination policies.

The establishment of the Equality Directives is not enough. The existence of the Directives does not address the tension that national practices on anti-discrimination have with the Directives. For example, many countries affected by the Nazi regime have a sensitive response to the notion of the government collecting data on the basis of race and ethnic origin. As a result, it is quite difficult to collect information regarding the experience of ethnic and racial minorities in comparison to the general population. The lack of quantifiable data on the experience of ethnic and racial minorities across the EU has made the scholarly pursuit to discover how effective the Directive have been exceedingly difficult.

Recommendations

How can we make this directive more powerful and effective? The problem is not only the language at the supranational level, but also the language at the national level The beauty of the directive is that it leaves room for countries to do more than what is mandated of them legally. However, its ambiguity leaves room for error and exclusion. Transposition studies allow us to identify the holes that aren't being filled by this new legislation. How do we fill them? The following are ideas for consideration:

1. Consider a European Critical Race Theory: Domestic case studies support the suggestion put forward by Möschel to consider a European version of a Critical Race theory. Assuming it is valid, this could begin to foster discussion on how to approach the weakness of the Race Directive. From a national standpoint, it would encourage policymakers to consider the language of national legislation as a starting point for reform
2. Continue Inquiry at the National Level Considering the Unique Social Context: With more time, perhaps a study that combined the qualitative results with quantitative data on the experience of ethnic minorities in the labor market could help infer how policy can approach the problems of employment gaps.
3. Continue to Examine the Impact of National Legal Culture: To strengthen the informative nature of Europeanization studies, it may help for scholars to shift a focus to the relationship between legal culture and European policy. Many studies tend to focus on the archival research available of the politics and political mechanisms which made transposition possible. In the context of the

Race Directive, the case of Malta reveals the significant role that local NGOs have played in the mobilization of the Equality Directives.

APPENDIX

Appendix A
Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin prohibits discrimination based on racial or ethnic origin may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity. It may also undermine the objective of developing the European Union as an area of freedom, security and justice. s Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment. Member States shall communicate to the Commission, by 2 December 2005 at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

Appendix B
Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation prohibits any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation. The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment. Member States shall encourage dialogue with appropriate nongovernmental organizations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on any of the grounds referred to in Article 1 with a view to promoting the principle of equal treatment.

Appendix C
Article 13 EC of the Amsterdam Treaty Article 13 of the Amsterdam Treaty provides the European Union with a legal basis for the first time to take action to combat discrimination on grounds of racial or ethnic origin, religion or belief, disability, age or

sexual orientation. The general principles of Article 13 are not themselves legally binding.

Appendix D
UN CEDAW was adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination (www.UN.org).

Appendix E
UN CERD consists of a preamble and 25 articles. By the Convention, States parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms. The Convention establishes a Committee on the Elimination of Racial Discrimination, which is to report annually to the General Assembly on, inter alia, measures undertaken by States parties to give effect to the provisions of the Convention, and which may handle disputes between States parties concerning the Convention (www.UN.org).

Appendix F
The Gayssot law of 1990, in the context of a general reinforcement of the struggle against racism and anti-Semitism, sanctions the public questioning of the reality of crimes against humanity “as they are defined by article 6 of the Statutes of the International Military Tribunal appended to the London Agreement of 8 August 1945”, that is to say in practice the genocide committed by the Nazis (Conseil Representatif des Institutions Juives De France).

Appendix G
Legal Notice 461 Implements EU Directives2000/78/EC and 200/43/EC and make provisions to combat discriminatory treatment (direct and indirect) on the grounds of religion or religious belief, disability, age, sexual orientation, and racial or ethnic origin to the Employment and Industrial Relations Act of 2002 (International Labour Organization)

Appendix H
The Employment and Industrial Relations Act of 2002 provides comprehensive legislation on employment and industrial relations. Divided into 2 titles and 7 parts. Title 1 deals with employment relations. Part 1 provides for establishment of Employment Relations Board. Function of Board is to make recommendations to Minister regarding national and sectoral minimum standard conditions of employment. Part 2 makes provision for official recognition of conditions of employment. Part 3 provides for protection of wages; Part 4 for protection against discrimination related to employment. Part 5 regulates termination of employment; Part 6 deals with enforcement and non-compliance related to employment. Title 2 contains provisions regarding industrial

relations. Part 1 deals with organization of workers and employers. Regulates status, registration and activities of trade unions and employers' organizations. Also provides for restrictions in legal liability and for proceedings regarding union membership. Part 2 regulates voluntary settlement of disputes. Part 3 makes provision for the Industrial Tribunal. (International Labour Organization)

BIBLIOGRAPHY

Alba, Richard. “Bright vs. Blurred Boundaries: Second-Generation Assimilation and Exclusion in France, Germany, and the United States.” *Ethnic & Racial Studies* 28, no. 1 (January 2005): 20–49. doi:10.1080/0141987042000280003.

Amiraux, V., and V. Guiraudon. “Discrimination in Comparative Perspective: Policies and Practices.” American Behavioral Scientist 53, no. 12 (August 1, 2010): 1691–1714.

Asensio, Juan Casado. “Transposition beyond Policy Legacies and Veto Players? The Case of Anti-Discrimination Policy in Austria.” Politička Misao 45, no. 5 (2009): 153–174.

Beaman, Jean. “Boundaries of Frenchness: Cultural Citizenship and France’s Middle-Class North African Second-Generation.” *Identities* 22, no. 1 (January 2, 2015): 36–52.

Bell, David A. “Veil of Tears.” *New Republic* 236, no. 10/11 (March 5, 2007): 30–33.

Bell, Mark. “A Patchwork of Protection: The New Anti-Discrimination Law Framework.” The Modern Law Review 67, no. 3 (2004): 465–477.

Bell, Mark. “Beyond European Labour Law? Reflections on the EU Racial Equality Directive.” European Law Journal 8, no. 3 (2002): 384–399.

Bell, Mark. “Civic Citizenship and Migrant Integration.” European Public Law 13, no. 2 (June 2007): 311–33.

Bell, Mark. “Legislation A Patchwork of Protection: The New Anti-Discrimination Law Framework.” Modern Law Review 67, no. 3 (May 2004): 465–77. doi:10.1111/j.1468-2230.2004.00495.x.

Bell, Mark. “The Implementation of European Anti-Discrimination Directives: Converging towards a Common Model?” Political Quarterly 79, no. 1 (January 2008): 36–44.

Bertossi, Christophe. “The Europeanization of Anti-Discrimination in Britain and France.” In European Anti-Discrimination and the Politics of Citizenship.125–42. Palgrave Macmillan UK, 2007.

Bilgilli, Ozge Dr., Thomas Huddleston, and Anne-Linde Joki. “The Dynamics between Integration Policies and Outcomes: A Synthesis of the Literature.” Barcelona Centre for International Affairs and the Migration Policy Group, March 2015. March 13, 2016.

Bisin, Alberto, Eleonora Patachini, Thierry Verdier, and Yves Zenou. “Immigrants and the Labour Market,” January 2011.

Blinder, Scott, Robert Ford, and Elisabeth Ivarsflaten. “The Better Angels of Our Nature: How the Antiprejudice Norm Affect Policy and Party Preferences in Great Britain and Germany.” American Journal of American Science, October 2013.
Blinder, Scott, Robert Ford, and Elisabeth Ivarsflaten. “The Better Angels of Our Nature: How the Antiprejudicial Norm Affects Policy and Party Preferences in Great Britain and Germany.” American Journal of Political Science 57, no. 4 (October 2013): 841–57.
Blinder, Scott, Robert Ford, and Elisabeth Ivarsflaten. “The Better Angels of Our Nature: How the Antiprejudice Norm Affects Policy and Party Preferences in Great Britain and Germany.” American Journal of Political Science 57, no. 4 (October 2013): 841–57.
Blinder, Scott, Robert Ford, and Elisabeth Ivarsflaten. “The Better Angels of Our Nature: How the Antiprejudice Norm Affect Policy and Party Preferences in Great Britain and Germany.” American Journal of American Science, October 2013.
Bloul, Rachel A. D. “Anti-Discrimination Laws, Islamophobia, and Ethnicization of Muslim Identities in Europe and Australia.” Journal of Muslim Minority Affairs 28, no. 1 (April 2008): 7–25. doi:10.1080/13602000802011036.
British Colonial Experience, pp.1–18.
Brown, Christopher. “The Race Directive: Towards Equality for All the Peoples of Europe?” Yearbook of European Law 21, no. 1 (2001): 195.
Brubaker, William Rogers. “Immigration, Citizenship, and the Nation-State in France and Germany: A Comparative Historical Analysis.” *International Sociology* 5, no. 4 (December 1, 1990): 379–407.
Chopin, Isabelle, and Catharina Germaine-Sahl. “Developing Anti-Discimination Law in Europe.” European Commision: Directorate General for Justice, October 2013.
Chopin, Isabelle, Thien Uyen Do, European Commission, and Directorate-General for Justice. Developing Anti-Discrimination Law in Europe the 27 EU Member States, Croatia, Former Yugoslav Republic of Macedonia, Iceland, Liechtenstein, Norway and Turkey Compared. Luxembourg: Publications Office, 2013.
Cini, Michelle. “The Europeanization of Malta: Adaptation, Identity and Party Politics.” *South European Society and Politics* 5, no. 2 (June 2000): 261–76. doi:10.1080/13608740508539611.
Copeland, Paul. “EU Enlargement, the Clash of Capitalisms and the European Social Model.” Comparative European Politics 10, no. 4 (2012): 476–504.
Dancygier, Rafaela M., and David D. Laitin. “Immigration into Europe: Economic Discrimination, Violence, and Public Policy.” Annual Review of Political Science 17 (June 2014): 43–64.
De Witte, Bruno. “New Institutions for Promoting Equality in Europe: Legal Transfers, National Bricolage and European Governance.” American Journal of Comparative Law 60, no. 1 (December 1, 2012): 49–74.
De Witte, Bruno. “The Crumbling Public/private Divide: Horizontality in European Anti-Discrimination Law.” Citizenship Studies 13, no. 5 (October 2009): 515–25.

"Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin." Official Journal L 180, no. 19/07 (2000): 22–26.

Diversity Makes Us Stronger. End Discrimination. Report. National Commission for the Promotion of Equality. Blata, MT: National Commission for the Promotion of Equality, 2007.

E.L. Zammit, *A Colonial Inheritance: Maltese Perceptions of Work, Power and Class*

Einwalter, Tena Šimonović. 2008. "Far, but Not Far Enough: An Idealist Critique of the Racial Equality Directive." Croatian Yearbook of European Law & Policy 4 (December): 195–222.

Ellis, Frank. "Race Legislation in the European Union." The Journal of Social, Political, and Economic Studies 27, no. 3 (Fall 2002): 257–70.

Enjolras, Bernard. "Two Hypotheses about the Emergence of a Post-National European Model of Citizenship." Citizenship Studies 12, no. 5 (October 2008): 495–505. doi:10.1080/13621020802337923.

European Commission, Directorate-General for Justice and Consumers, and TNS Opinion & Social. Discrimination in the EU in 2015 Report. Brussels: European Commission, 2015.

Fredman, Sandra. "Comparative Study of Anti-Discrimination and Equality Laws of the US, Canada, South Africa and India." European Commission: Directorate-General for Justice, February 2012.

Frendo, Henry. "Australian Press Perspectives on Lord Strickland's Malta." *The Journal of Imperial and Commonwealth History* 37, no. 3 (September 2009): 441–63. doi:10.1080/03086530903157631.

Frendo, Henry. "The Naughty European Twins of Empire: The Constitutional Breakdown in Malta and Cyprus 1930–1933." *The European Legacy* 3, no. 1 (February 1998): 45–52. doi:10.1080/10848779808579863.

Geddes, Andrew, and Virginie Guiraudon. "Britain, France, and EU Anti-Discrimination Policy: The Emergence of an EU Policy Paradigm." West European Politics 27, no. 2 (March 2004): 334–53.

Geddes, Andrew, and Virginie Guiraudon. "Britain,France, and EU Anti-Discrimination Policy:The Emergence of an EU Policy Paradigm." West European Politics 27, no. 2 (March 2004): 334–53.

Gehring, Jacqueline. "Resistance or Responsiveness? Explaining State Responses to the European Union's Racial Equality Directive." Conference Papers -- Law & Society, Annual Meeting 2007,

Grigolo, Michele, Costanza Hermanin, and Mathias Moschel. 2011. "Introduction: How Does Race 'Count' in Fighting Discrimination in Europe?" Ethnic & Racial Studies 34 (10): 1635–47. doi:10.1080/01419870.2011.559263.

Grigolo, Michele. "Incorporating Cities into the EU Anti-Discrimination Policy: Between Race Discrimination and Migrant Rights." Ethnic and Racial Studies 34, no. 10 (October 2011): 1751–69.

Guiraudon, Virginie. "Equality in the Making: Implementing European Non-Discrimination Law." Citizenship Studies 13, no. 5 (October 2009): 527–49.

Gülalp, Haldun. “Citizenship and Democracy beyond the Nation-State?” Cultural Dynamics 25, no. 1 (2013): 29–47.

Gurbuz, Mustafa. “Why the French Don’t Like Headscarves: Islam, the State, and Public Space – By John R. Bowen The Politics of the Veil – By Joan W. Scott.” *British Journal of*

H. Frendo, ‘Maltese Colonial Identity: Latin Mediterranean or British Empire?’, in V.

H. Frendo, *Birth Pangs of a Nation: Manwel Dimech’s Malta* (1860–1921) (Malta:

Hepple, Bob. “Race and Law in Fortress Europe.” Modern Law Review 67, no. 1 (January 2004): 1–15.

Hough, Barry. “Coleridge and the Rule of Law on Malta.” Wordsworth Circle 43, no. 2 (Spring 2012): 76–82.

Howard, Erica. “Anti Race Discrimination Measures in Europe: An Attack on Two Fronts.” European Law Journal 11, no. 4 (July 1, 2005): 468–86.

Howard, Erica. “The EU Race Directive: Time for Change?” International Journal of Discrimination and the Law 8, no. 4 (March 1, 2007): 237–61.

I'm Not Racist, But... Report. National Commission for the Promotion of Equality. Blata, MT: National Commission for the Promotion of Equality, 2007.

Jackson, Kelly F., Hyung Chol (Brandon) Yoo, Rudy Guevarra, and Blair A. Harrington. “Role of Identity Integration on the Relationship between Perceived Racial Discrimination and Psychological Adjustment of Multiracial People.” Journal of Counseling Psychology 59, no. 2 (2012): 240–50.

“Joint Report on the Application of Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin (‘Racial Equality Directive’) and of Council Directive 2000/78/EC of 27 November 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation (‘Employment Equality Directive’),” January 17, 2014.

“Joint Report on the Application of Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin (‘Racial Equality Directive’) and of Council Directive 2000/78/EC of 27 November 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation (‘Employment Equality Directive’),” January 17, 2014.

“Joint Report on the Application of Council Directive 2000/43/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin (‘Racial Equality Directive’) and of Council Directive 2000/78/EC of 27 November 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation (‘Employment Equality Directive’),” January 17, 2014.

Joppke, C., 2007. Transformation of immigrant integration: civic integration and antidiscrimination in the Netherlands, France and Germany. World politics, 59 (2), 243–273.

Kaeding, Michael. “Determinants of Transposition Delay in the European Union.” Journal of Public Policy 26, no. 3 (December 2006): 229.

Kantola, Johanna, and Kevät Nousiainen. “The European Union: Initiator of a New European Anti-Discrimination Regime?” In Institutionalizing Intersectionality, edited by Andrea Krizsan, Hege Skjeie, and Judith Squires, 33–58. Gender and Politics Series. Palgrave Macmillan UK, 2012.

Kastoryano, Riva. “Integration and Collective Identities of Immigrants in France and Germany.” Journal of Ethnic Studies (00913219) 19, no. 3 (Fall 1991): 51–64.

Koopmans, Ruud. “Does Assimilation Work? Sociocultural Determinants of Labour Market Participation of European Muslims.” Journal of Ethnic & Migration Studies 42, no. 2 (February 2016): 197–216.

Kreyenfeld, Michaela, and Dirk Konietzka. “The Performance of Migrants in Occupational Labour Markets.” European Societies 4, no. 1 (January 2002): 53–78.

Krizsan, Andrea. “From Formal Adoption to Enforcement. Post-Accession Shifts in EU Impact on Hungary in the Equality Policy Field.” SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, December 18, 2009.

Kumlin, Staffan, and Isabelle Stadelmann-Steffen. “Citizens, Policy Feedback, and European Welfare States,” 2014. Edward Elgar Publishing.

Lahuerta, Sara Bened. “Race Equality and TCNs, or How to Fight Discrimination with A Discriminatory Law.” European Law Journal 15, no. 6 (November 2009): 738–56.

Lawday, David. “A Nation at War with Itself.” New Statesman 135, no. 4785 (March 27, 2006): 20–20.

Lemmens, Paul, and Michaël Merrigan. “Study on Equality Bodies Set up under Directives 2000/43/EC, 2004/113/EC and 006/54/EC: Report on Belgium,” 2010. http://lirias.kuleuven.be/handle/123456789/452214.

Linos, Katerina. “The Development and Diffusion of Anti-Discrimination Laws in OECD Countries: Political Economy and Law Perspectives.” Conference Papers -- International Studies Association, Annual Meeting 2008, 1.

Lodovici, Manuela Samek. “Making a Success out of Integrating Immigrants in the Labour Market.” European Commission, November 2010.

Mallia-Milanes (ed.), *The British Colonial Experience: 1800–1964: The Impact on Maltese Society* (Malta: Mireva 1988), p.210.

Mapping Study of 2 Equality Bodies: Malta, Northern Ireland and Austria. Report. National Commission for the Promotion of Equality. Hamrun, MT: National Commission for the Promotion of Equality. 53

Mason, Luke. “The Hollow Legal Shell of European Race Discrimination Policy: The EC Race Directive.” American Behavioral Scientist 53, no. 12 (August 1, 2010): 1731–48.

Mediterranean Publications 1972).

Mitchell, Jon P. “Looking Forward to the Past: National Identity and History in Malta.” *Identities* 10, no. 3 (June 1, 2003): 377–98.

Möschel, Mathias. “Race Judicata: The Ban on the Use of Ethnic and Racial Statistics in France.” European Constitutional Law Review 5, no. 2 (June 2009): 197–217.

Niessen, Jan. “The Starting Line and the Promotion of EU Anti-Discrimination Legislation: The Role of Policy Oriented Research.” Journal of International Migration and Integration 1, no. 4 (Fall 2000): 493–503.
Niessen, Jan. “The Starting Line and the Promotion of EU Anti-Discrimination Legislation: The Role of Policy Oriented Research.” Journal of International Migration and Integration / Revue de L’integration et de La Migration Internationale 1, no. 4 (December 2000): 493–503.
Orakhelashvili, Alexander. “The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?” European Journal of International Law 19, no. 1 (February 1, 2008): 161–82.p.41, n.27.
Petrova, Dimitrina. 2006. “Implementing Anti-Discrimination Law and the Human Rights Movement.” Helsinki Monitor 17 (1): 19–38.
Piattoeva, Nelli. “Citizenship and Nationality in Changing Europe: A Comparative Study of the Aims of Citizenship Education in Russian and Finnish National Education Policy Texts.” Journal of Curriculum Studies 41, no. 6 (December 2009): 723–44.
Pierson, Paul. “When Effect Becomes Cause.” World Politics 45, no. 4 (July 1993): 595.
Puzzo, Catherine. 2003. “Instruments of British and French Immigration Policy in the 1970s: A Comparative Analysis.” Contemporary European History 12 (1): 71–92.
Ram, Melanie. “Anti-Discrimination Policy and the Roma: Assessing the Impact of EU Enlargement.” Croatian Yearbook of European Law and Policy 3, no. 3. (2007): 491–513.
Rihoux, Benoît, Ilona Rezsöhazy, and Damien Bol. “Qualitative Comparative Analysis (QCA) in Public Policy Analysis: An Extensive Review.” German Policy Studies 7, no. 3 (2011): 9-82-234.
Ringelheim, Julie. “Ethnic Categories and European Human Rights Law.” Ethnic & Racial Studies 34, no. 10 (October 2011): 1682–96.
Schildkraut, Deborah. “The Rise and Fall of Political Engagement among Latinos: The Role of Identity and Perceptions of Discrimination.” Political Behavior 27, no. 3 (September 2005): 285–312.
Schimmelfennig, F. and Sedelmeier, U., 2004. Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe. Journal of European public policy, 11 (4), 661–679.
Schwellnus, Guido, Lilla Balázs, and Liudmila Mikalayeva. “It Ain’t over When It’s over: The Adoption and Sustainability of Minority Protection Rules in New EU Member States.” European Integration Online Papers (EIoP), no. 2 (2009). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1562671.
Schwellnus, Guido, Lilla Balázs, and Liudmila Mikalayeva. “It Ain’t over When It’s over: The Adoption and Sustainability of Minority Protection Rules in New EU Member States.” European Integration Online Papers (EIoP), no. 2 (2009). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1562671.

Services Tender for the Provsion of Public Employees Perception Survey Final Report. Report. National Commission for the Promotion of Equality. Hamrun, MT: National Commission for the Promotion of Equality. 64.
Shaw, Jo. "Mainstreaming Equality and Diversity in European Union Law and Policy." Current Legal Problems 58, no. 1 (2005): 255–312.
Shih, Margaret, Courtney Bonam, Diana Sanchez, and Courtney Peck. "The Social Construction of Race: Biracial Identity and Vulnerability to Stereotypes." Cultural Diversity and Ethnic Minority Psychology 13, no. 2 (2007): 125–33..
Silberman, Roxane, Richard Alba, and Irène Fournier. "Segmented Assimilation in France? Discrimination in the Labour Market against the Second Generation." Ethnic & Racial Studies 30, no. 1 (January 2007): 1–27.
Silberman, Roxane, Richard Alba, and Irène Fournier. "Segmented Assimilation in France? Discrimination in the Labour Market against the Second Generation." Ethnic & Racial Studies 30, no. 1 (January 2007): 1–27.
Šimonović Einwalter, Tena. "Far, But Not Far Enough: An Idealist Critique of the Racial Equality Directive." Croatian Yearbook of European Law and Policy 4, no. 4 (2008): 195–222.
Sitaropoulos, Nicholas. "Equal Treatment between Persons Irrespective of Racial or Ethnic Origin: The Transposition in Greece of EU Directive 2000/43." The International Journal of Human Rights 8, no. 2 (January 2004): 123–58.
Suk, Julie C. "Discrimination at Will: Job Security Protections and Equal Employment Opportunity in Conflict." Stanford Law Review 60, no. 1 (October 2007): 73–113.
Suk, Julie C. "Discrimination at Will: Job Security Protections and Equal Employment Opportunity in Conflict." Stanford Law Review 60, no. 1 (October 2007): 73–113.
Tetreault, Chantal. "Can Islam Be French? Pluralism and Pragmatism in a Secularist State." *PoLAR: Political & Legal Anthropology Review* 37, no. 1 (May 2014): 181–83.
Tetreault, Chantal. "Cultural Citizenship in France and Le Bled among Teens of Pan-Southern Immigrant Heritage." Language & Communication 33, no. 4, Part B (October 15, 2013): 532–43.
Toggenburg, Gabriel N. "The Race Directive: A New Dimension in the Fight against Ethnic Discrimination in Europe †." European Yearbook of Minority Issues Online 1, no. 1 (January 1, 2001): 231–44.
Toggenburg, Gabriel N. "The Race Directive: A New Dimension in the Fight against Ethnic Discrimination in Europe." European Yearbook of Minority Issues Online 1, no. 1 (January 1, 2001): 231–44.
Triandafyllidou, Anna. "Citizenship, Nationality and Migration in Europe (Book)." British Journal of Sociology 48, no. 4 (December 1997): 703–4.
Tymowski, Jan, European Parliament, and Directorate-General for Parliamentary Research Services. Implementation of the Employment Equality Directive European Implementation Assessment. Luxembourg: Publications Office, 2016.

Underreporting of Discriminatory Incidents in Malta. Report. National Commission for the Promotion of Equality. Blata, MT: National Commission for the Promotion of Equality, 2007. 119.

V. Mallia-Milanes, 'The Genesis of Maltese Nationalism', in Mallia-Milanes (ed.)

Vanhala, Lisa. 2006. "Fighting Discrimination through Litigation in the UK: The Social Model of Disability and the EU Anti-Discrimination Directive." Disability & Society 21 (5): 551–65.

Wiesbrock, Anja, and Anna Gajda. "Maintaining Ethnic Ties in the Process of EU Enlargement: The Relationship between Kin-Minority Laws, EU Anti-Discrimination Law and the Schengen Acquis." International Journal on Minority & Group Rights 19, no. 4 (October 2012): 399–426. doi:10.1163/15718115-01904003.

Woolfson, Charles Alexander. "The Race Equality Directive." European Societies 12, no. 4 (September 2010): 543–66.

Ziller, Conrad. "Societal Implications of Antidiscrimination Policy in Europe," December 2014.

BIOGRAPHY

Ava Stone graduated from Oakton High School, Vienna, Virginia, in 2008. She received her Bachelor of Arts in International Studies from Virginia Commonwealth University in 2013. Ava began her interest in the EU at an academic level when she completed her first year of university at Suffolk University's special program located in Madrid, Spain. Since that time, Ava has pursued opportunities to travel and study abroad throughout the Mediterranean. Prior to beginning her graduate studies, Ava spent three years working in public policy advocacy and communications in Washington, DC. She now works in the Office of Collaborative Action and Dispute Resolution for the U.S. Department of Interior.