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Xenophobia and Discrimination
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**Session 3: Combatting discrimination against migrant workers and
facilitating their integration into the societies in which they
are legally residing"**

proposed title: "*How do Third Country Nationals perceive their
participation into mainstream society?*"

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DRAFT:

Since the 1980's, immigration from outside Europe has been part of the debate surrounding European construction. Immigration from outside Europe has become - together with racial discrimination - a major political issue in a number of European states in the last fifteen years. European policy relating to immigration from outside Europe carried out in recent years relates to two domains of activities: 1. the entry, movement and residence of third-country nationals (TCNs) on the national territories of the members States; 2. the integration and the participation of newcomers and TCNs into mainstream society. My short exposé concentrates on the latter domain.

TCNs in Europe are¹, and will undoubtedly remain², an essential structural component of its population. The *de facto* existence of immigration and the foreseeable response of post-Maastricht and post-Amsterdam Europe to this problem has to be addressed though from the point of view of TCN: What do TCNs, and with them the growing number of people of immigrant origin residing in Europe, expect from post-Amsterdam Europe. What are their aspirations? In my oral exposé I have briefly reported on the findings of a recent exploratory study (conducted 2000-2003) that gives voice to TCNs concerning their experiences and

¹ TCNs represent a considerable demographic potential in the Union. The current working population of TCNs comprises several millions of people, distributed throughout the Member States of the Union. They are active in both the labour and consumer market.

² Immigration will certainly continue, despite all the political efforts of most Member States governments to put an official stop to it. The two main (legal) reasons that currently put an obligation upon States to continuously allowing new immigration are, on the one hand, the Member States' humanitarian obligations to allow families to reunite under Article 8 on family life of the *European Convention on Human Rights* and Article 19 on family life contained in the *European Social Charter*, and on the other hand, their obligations, with respect to their commitment to the *Refugees Convention of Geneva* of 28 July 1951 as amended by the *Protocol* of 31 January 1967 to admit persons seeking asylum.

expectations relating to law.³ To what extent do TCNs turn to the judicial system of the country of residence (*in casu* Belgium) to settle their disputes? What is the sort of litigation they engage in, their frequency, the arguments used, the familiarity with the law, the strategic use of it, etc.? The study is as far as I know the first systematic examination in Belgium, since the Treaty of Amsterdam, of the expectations of TCNs concerning the specific role of law and justice in their lives, both as individuals and as a group, and in their relations with the mainstream society.

In my oral exposé I have briefly charted some of the main legal techniques that in practice during the past ten years have shown fairly efficace in facilitating the integration of TCNs in the society in which they are legally residing. Preference has been given to the techniques and experiences that are considered successful by TCNs themselves and thus to be encouraged.

Due to limitation of time, we have developed just a few ideas that can count among the main findings of the research.

Two premimininary findings:

- * negative experiences weigh heavily: negative experiences of law and justice clearly have a much greater, i.e. much more decisive impact on one's view of the legal system, than positive experiences. Policy makers and legislators have to be extremely conscious of it: if foreigners and parties of foreign origin turn away from the law, for being dissappointed in the way their rights are being handled in practice, and therefore no longer trust those who are supposed to enforce them, then efforts to amend the content of rules and regulations lose much of their significance;

- * the gap between the rule and its application: people do not so much perceive the rules themselves as unjust, but the way in which they are implemented. People feel discriminated, not so much by the normative content of the law itself, but in the way the law is being applied. Some laws are even considered offering excellent examples of good legislation (i.e. anti-racist and anti-discrimination laws);

Basic findings:

- * Family reunification: the administrative (and judicial) procedures are perceived as far too complex;

- * Family reunification: ther is a crucial lack of cultural sensitivity on part of the administrative authorities i.a. relating to traditional family ties and notions of solidarity among kins;

³ Published in: M.-C. FOBLETS, e.a., *Wat denken personen van vreemde origine over recht en gerecht in België?/Les populations d'origine immigrée face au droit en Belgique* [What are people of foreign origin expecting from law and justice in Belgium?], Ghent, Academia Press, 2004 (ISBN 90 382 0623 2°

* Family reunification: there is an urgent need to set up integration programmes for the partner who is the newcomer (language trainings, trainings in citizenship, etc.);

* Right to asylum: abuses of the asylum procedure are inevitable as long as Europe is showing unrealistically severe in matters of border control;

* Right to asylum: the access to a 'humanitarian' resident status should anyhow be facilitated;

* Regularization of resident status: nobody leaves his or her country on a voluntary base. That awareness of that reality calls for solutions that grant people a right to stay, even if they do not *sensu stricto* meet the requirements of the law on the long terms residence of foreigners. People should be given a fair chance to regularize their status;

* Access to the labour market: discrimination is still perceived as a main obstacle, both in terms of recruitment as in relation to fair chances to make promotion, once someone is being *de facto* employed;

* Access to the labour market: there is an urgent need to increase the combat against unfair treatment both in the area of education and in the area of employment. Severe anti-discrimination laws are a prerequisite. Professional advice and legal aid (free legal clinics) count among the conditions 'par excellence' if the purpose (intention of the policymakers) is to enforce compulsory anti-discriminatory legislation, whether via penal or by means of civil regulations.

* The protection of one's cultural identity: people show a strong desire to continue living according to their own culture, both in the private and to a certain extent also in the public sphere. They are determined to transmit their cultural values to the next generation(s). There is much uncertainty though about the way this is to happen: who represents the community, how does the group transmit its own values to the younger generation, and who keeps the control over the knowledge required for this transmission, etc.? Public authorities stand to gain from a greater 'cultural sensitivity' in this realm: cultural diversity has become a daily reality, it can no longer be considered to be a temporary exception. People are entitled to feel respected by public authorities in their being 'different': equal but different.

* Nationality: relaxation of Nationality laws, i.e. facilitation of the way(s) to get the nationality of the country of habitual residence makes no sense as long as people who have indeed acquired that nationality do (still) not feel 100% accepted as full 'citizens'. Nationality is thus considered from a pragmatic point of view: it does not correspond to one's 'first' identity, but is rather conceived of as a facilitator, i.e. an access to all types of facilities and benefits that are usually restricted to country nationals;