



---

# **THE PALESTINIAN CITIZENS OF ISRAEL AND THE LABOUR MARKET**

---

*Barriers, discriminations and possible avenues for EU action*

**JEANNE DUBROCA**  
**FRANCESCO PAOLO RUSSI**  
Sine Qua Non

The views and opinions expressed in this paper are those of the author(s) and do not necessarily reflect the official position of Sine Qua Non or any of its members.

Copyright © 2021 by Sine Qua Non  
All rights reserved.

No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other noncommercial uses permitted by copyright law.

For permission requests, write to the publisher, addressed “Attention: Permissions Coordinator”, at the address below.

[info@sinequanon-eu.com](mailto:info@sinequanon-eu.com)

# **THE PALESTINIAN CITIZENS OF ISRAEL AND THE LABOUR MARKET**

*Barriers, discriminations and possible avenues for EU  
action*

**JEANNE DUBROCA**

**FRANCESCO PAOLO RUSSI**

*Special thanks to*

**ANDREA CACCIA**

# CONTENTS

<b>Chapter 1: Barriers and discriminations</b> .....	5
The inconsistency of being a Palestinian citizen of a “Jewish and Democratic” State.....	5
The Israeli labour market and the protections provided by the Knesset: weaknesses and failures.....	8
The roots of the inequalities: the allocation of resources and the lack of economic and social infrastructures.....	10
The education system as a further source of discrimination in the labour market.....	13
<b>Chapter 2: Limitations of EU instruments in addressing discriminations against Palestinian citizens in the Israeli labour market</b> .....	14
Abstract.....	14
The protection of Human Rights as a priority for the EU.....	15
Prohibiting discrimination within the EU legal framework.....	15
Promoting Human Rights in EU’s external policies.....	15
The European Neighbourhood Policy.....	16
The European Instrument for Democracy and Human Rights.....	17
Tackling discrimination in labour markets: different attitudes in the MENA region.....	19
The EU – Israel cooperation and the discriminations against the Palestinian minority.....	20
The existing EU instruments for Human Rights in Israel.....	20
The application of EU instruments in Israel’s labour market.....	22
<b>Chapter 3: Recommendations to the EU for a more effective fight against ethnic discrimination in the Israeli labour market</b> .....	25
Recommendations.....	25
The EU and its instruments.....	26
ENP.....	27
EIDHR.....	27
NDICI.....	28

## CHAPTER 1

# BARRIERS AND DISCRIMINATIONS

### *The inconsistency of being a Palestinian citizen of a “Jewish and Democratic” State*

The issue of Palestinian employment in the Israeli labour market has always been an area of critical concern and of crucial importance for achieving stability and equality domestically. Furthermore, Israel’s accession to the Organization for Economic Cooperation and Development (OECD) in 2010 stressed the need for improving employment, housing and access to higher education for disadvantaged Israelis (mainly Palestinian citizens of Israel).<sup>1</sup> However, before starting to analyse and examine the specific situation of the labour market, a brief background on the legal structure of Israel appears necessary.

Since its very foundation, the State of Israel has strongly and repeatedly affirmed its Jewish nature<sup>2</sup> by defining itself as the “Sovereign State of the Jewish people”.<sup>3</sup> If, on the one hand, such definition had (and still has) the immediate effect of institutionalizing a direct nexus between the belonging to the Jewish religious community and the Israeli citizenship, on the other hand, it undermines the fair and complete recognition of the same right to citizenship to non-Jewish minorities living in Israel, in particular the Palestinian one.

In this already delicate context, the protracted occupation and the influential role played by Zionism, the ideology and nationalist movement which strives for the re-establishment of a Jewish state in the historic land of Israel has been exacerbating the existing inequalities between the Jewish and the Palestinian communities.<sup>4</sup> As a matter of fact, the simple recognition of the Israeli citizenship does not constitute an automatically sufficient element for the complete acquisition of those rights and services that the State of Israel grants exclusively to the citizens having Jewish “nationality”.<sup>5</sup> To support this argument, it is useful to recall the ruling of the Israeli Supreme Court on the *Tamarin v. State of Israel* case (1970) in which the Court enshrined the impossibility of stipulating the existence of “(...) the Israeli nationality distinct from the Jewish one”.<sup>6</sup> The racial discriminations against the non-Jewish citizens of Israel do not stem only from the decisions of the Supreme Court but also from a great variety of laws and legal provisions which had the effect of further worsening inequalities in the Israeli society.<sup>7</sup> Recent tendencies of the Knesset have posed serious threats to the respect of human and fundamental rights of the Palestinian minority. Since its enactment on

1 Avivit Hai, Liron Shoham, *Arab Citizen Employment in Israel: Critical Concern and Great Potential*, Inter-Agency Task Force on Israeli Arab Issues, July 2013.

2 Among others: Ilan Saban, *Minority Rights in Deeply Divided Societies: a Framework for Analysis and the Case of The Arab-Palestinian Minority in Israel*, in *Journal of International Law and Politics*, 2004; Ian Lustick, *Arabs in the Jewish state: Israel’s control of a national minority*, University of Texas Press, 1980; Nadim Rouhana, *Palestinian citizens in an ethnic Jewish state: identities in conflict*, Yale, University Press, 1997; Yoav Peled, *Ethnic democracy and the legal construction of citizenship: Arab citizens of the Jewish state*, *The American political science review*, 1992.

3 This quote is attributed to the first President of Israel, David Ben-Gurion.

For further details refer to: Ariel Feldestein, *Ben-Gurion, Zionism and American Jewry; 1948 – 1963*, Routledge, New York, 2007, p.126.

4 Gabriel Piterberg, *The return of Zionism*, Verso, London, 2008.

5 Saban, supra note 2.

6 Israeli Supreme Court sitting as the Court for Civil Appeals, *Georges Raphael Tamarin v. the State of Israel*, 1970.

7 See, in this regard, the database created by the Israeli NGO *Adalah*, available online in Arabic, Hebrew and English, with all the 65 laws of the Knesset that, allowing for distinctions among the citizens, generate forms of direct and indirect discrimination, available at <https://www.adalah.org/en/law/index>.

May 1, 2018, the Nation-State law has joined the Israeli Constitutional corpus due to its Basic Law status.<sup>8</sup> This Basic Law seriously challenges the democratic values Israel claims to pursue, since it proclaims that the State of Israel is the “national home of the Jewish people”, grants exclusively to them the right of self-determination, defines “complete and united Jerusalem” as the capital of Israel and does not mention at all the Palestinians or other minorities living in the national territory.<sup>9</sup>

This last aspect appears to be highly significant if we compare it with its equivalent in the Constitution of the Republic of Kosovo. On this matter, it is important to remember that Kosovo can be considered a rather relevant case of comparison with Israel. Both Israel and Kosovo were born out of war and both of them regularly and strongly assert their national identities, as they consider to be facing a constant challenge to their existence that requires a more exclusive national self-definition. Both of them are multi-ethnic countries with their own minority: Serbs and Albanians in Kosovo, and Palestinians and Jews in Israel. However, unlike Israeli Basic Laws, the Kosovar Constitution asserts, in the first article, that Kosovo is “a State of its citizens” (Art.1).<sup>10</sup> Further, Art. 3 recognizes the multi-ethnicity of the State and warrants equality before the law and protection of fundamental Human Rights and freedoms.<sup>11</sup> By contrast, in the Nation-State Law, there is no mention of any national minority<sup>12</sup> and the fundamental principle of equality among people does not find place in any of the other Basic Laws.<sup>13</sup> Hence, this comparison highlights how the Nation State Law, by lacking the inclusive and respectful approach towards national minorities, ends up creating a legal structure where discriminations based on ethnicity and religion could easily take place.<sup>14</sup> It is mainly for this reason that the Nation-State Law has been attacked by critics from Israeli minorities (such as Palestinians and Druze) and from a part of the moderate Jewish

8 Israel never had a written and unique Constitution but several Basic Laws formulating general State principles which result to have a quasi-constitutional value. It is useful to recall, in this sense, the “Harari Resolution” enacted by the Knesset in 1950 which states that « (...) *the Constitution shall be composed of individual chapters, in such a manner that each of them shall constitute a basic law in itself. The individual chapters shall be brought before the Knesset [...] and all the chapters together will form the State Constitution* ».

9 Even though this represents the constant position of the Israeli Government and Parliament, the law institutionalised the annexation of the occupied territories within the borders of Israel. Nevertheless, International Law still considers Jerusalem under an international status and as a *corpus separatum* (UN General Assembly resolution 181(II), Future government of Palestine, UN Doc. A/RES/181(II), 29 November 1947) and this illegal annexation was opposed and condemned by many resolutions of the Security Council (UN Security Council resolution 446, Territories occupied by Israel, UN Doc. S/RES/446, 22 March 1979; UN Security Council resolution 452, UN Doc. S/RES/452, 20 July 1979; UN Security Council resolution 465, UN Doc. S/RES/465, 1 March 1980; UN Security Council resolution 471, UN Doc. S/RES/471, 5 June 1980; UN Security Council resolution 476, UN Doc. S/RES/476, 30 June 1980) and the General Assembly of the United Nations (UN General Assembly resolution 2253, Measures taken by Israel to change the status of the City of Jerusalem, UN Doc. A/RES/2253 (ES-V), 7 July 1967; UN General Assembly resolution 2851, Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, UN Doc. A/RES/2851, 20 December 1971).

10 Constitution of the Republic of Kosovo, 2008, art. 1, 2, available in English at <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>.

11 Ibid.

12 Israeli Basic Law, Israel - The Nation State Of The Jewish People, 19 July 2018, available in English at <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>.

The Bill only talks about the Arabic language, to strip off its status of official language and retrograde it to a “Special Status”, different from the official status it used to have.

13 Human Rights Committee, *Civil and Political Rights – Human Rights Council consideration of initial report of Israel*, CCPR/C/81/Add.13, 1998.

14 Dahlia Schedinlin, *Israel’s Nation-State Law: Just like other democratic constitutions? Not quite*, Independent opinion, Research & Strategy, 2018.

community,<sup>15</sup> and it was also officially condemned by the European Union<sup>16</sup> and the United Nations.<sup>17</sup>

Given these facts, it is clear that this correlation between Jewish and Israeli creates discrimination against the Palestinian citizens of Israel who cannot be considered “citizens” at the same level as Jewish citizens. This shows how difficult and weak the equilibrium is between the professedly democratic soul of the State of Israel and the constant reference that the State itself holds with its Jewish roots.<sup>18</sup> This, as said, leads to a substantial overlay between Jewish nationality and Israeli citizenship which prevents other minorities from enjoying the entire range of benefits and rights that the status of Israeli citizen should grant. As a matter of fact, such range is conferred exclusively to those citizens who have Jewish “nationality”. Indeed, the Jewish citizens of Israel, as clearly - and maybe brutally - described by the Israeli writer Abraham B. Yehoshua, are the ones who « (...) live a Jewish life where the land, the language and the self-determinations are their distinguishing marks » and the “Jewishness” of the State of Israel cannot be mitigated for the sole presence of some other « (...) Israeli citizens, who belong to another people, to another religion and whose language is not Hebrew ». <sup>19</sup> Hence, the author states that this second category of citizens has to experience « (...) the schizophrenia of the dual identity » and the only way to cure it is to « (...) move to a place where their national identity would meet the needs of a majority (a Jordan-Palestinian State) or to enjoy a complete participation to a total Jewishness ». <sup>20</sup> Furthermore, it seems useful to recall the definition given by Azmi Bishara, a Christian Palestinian member of the Israeli Knesset, to the concept of Israeli citizenship: according to his vision, such concept is so tied to the notions of Hebraism, Zionism and, as a consequence, exclusion of the Palestinian culture, that it « (...) seems impossible to be an Arab Israeli citizen without denying one of the two roots ». <sup>21</sup> Following his reasoning, Bishara defines the citizenship recognized to the Jewish people as “substantial” or “essential” compared with the “accidental” one of the Palestinian minority: the author believes that the Palestinian people were not meant to be part of the State of Israel and their recognition as Israeli citizens happened to be an accidental result of their staying in those lands that would become Israel even during and after the 1948 Palestinian exodus, also known as the Nakba. <sup>22</sup>

In this sense, the direct correlation between Jewish and Israeli, and the subsequent discrimination of the Palestinian minority, even institutionalised by the Knesset and the Supreme Court, and the consequent discriminations towards the Palestinian minority, are essential to frame the objective of the present research. Hence, as mentioned above given the relevant literature published elsewhere on this issue and the breadth of the subject of discriminations suffered by the Palestinian citizens of Israel, this paper will mainly focus on the specific situation of the labour market, pointing

<sup>15</sup> On this matter: Inter-Agency Task Force on Israeli Arab Issues, “Basic Law: Israel as the Nation-State of the Jewish people: discourse and implications for Arab citizens of Israel”, July, 2018; Peter Lintl, Stefan Wolfrum, *Israel’s Nation-State Law*, SWP Comment, October 2018; Fania Oz-Salzberger, Yedidia Z. Stern, *The Israeli Nation-State: political, constitutional, and cultural challenges*, Boston, 2014.

<sup>16</sup> Reuters, “EU expresses concern over Israel’s Jewish nation-state law”, July 19, 2018, available at <https://www.reuters.com/article/us-israel-politics-law-eu/eu-expresses-concern-over-israels-jewish-nation-state-law-idUSKBN1K91K7>.

<sup>17</sup> UN Committee on Economic, Social and Cultural Rights (UN CESCR), *Concluding observations on the fourth periodic report of Israel*, 18 October 2019, available at [https://www.adalah.org/uploads/uploads/E\\_C-12\\_ISR\\_CO\\_4\\_37524\\_E%20.pdf](https://www.adalah.org/uploads/uploads/E_C-12_ISR_CO_4_37524_E%20.pdf).

<sup>18</sup> In this sense, the Declaration of Independence of the State of Israel (14 May 1948) states « (...) *the establishment of a Jewish state in Eretz-Israel, to be known as the State of Israel* » and, at the same time, guarantees the democratic principle according to which the State « (...) *will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex* ». Even more explicitly, the Basic Laws “Human dignity and Freedom” - 1992 (art. 1) and “Freedom of Occupation” - 1994 (art. 2) ensure the duty of the State to respect « (...) *the values of the State of Israel as a Jewish and Democratic State* ».

<sup>19</sup> Abraham B. Yehoshua, *Ebreo, israeliano, sionista: concetti da precisare* [Italian: “Jew, Israeli, Zionist: concepts to be specified”], Edizioni e/o, Rome, 1991.

<sup>20</sup> Ibid.

<sup>21</sup> Michele Giorgio, Chiara Cruciani, *Israele, mito e realtà: il movimento sionista e la Nakba palestinese settant’anni dopo* [Italian: “Israel, myth and reality: the Zionist movement and the Palestinian Nakba seventy years later”], Alegre, 2018.

<sup>22</sup> Jonathan Cook, *Israeli Palestinians: the unwanted who stayed*, The Link, vol. 41, n. 4, 2008.

out the unequal access and the evident wage discriminations to which the Arab minority is subject. Actual equality in such field would facilitate, by reducing economic gaps, a fair distribution of wealth and a significant enhancement in social integration.

## *The Israeli labour market and the protections provided by the Knesset: weaknesses and failures.*

Even though in 1988 the Israeli Knesset has passed the “Employment (Equal Opportunities) Law” that forbids any kind of discrimination based on “nationality”, is still easy to find evident and alarming social inequalities in the labour market (such as lack of adequate infrastructure and investments aimed at reducing poverty among Palestinian communities). The latter undermines the intent of the law previously mentioned. On this matter, it is not surprising that the 2017 employment rate of the Palestinian minority is twenty percentage points lower than the Jewish one;<sup>23</sup> that the average wage of a Palestinian worker is 30% less than the one of a Jewish worker;<sup>24</sup> and that, while only a fifth of Palestinian women participate in the labour force, the Palestinian men who actually are employed are concentrated mainly in low skilled industries.<sup>25</sup>

Such a pattern of inequalities not only affects the social environment by worsening the relations between the Jewish and the Palestinian communities, but also slows down the growth of the national economy as a whole. On this matter, a more intense cooperation between the Jewish and the Palestinian people and a more active and fairer participation to the labour market of the Palestinian citizens of Israel, could guarantee a concrete improvement of the living conditions of such minority through more inclusion and social mobility. Indeed, according to the Program Director and the Associate Director for the Inter-Agency Task Force on Israeli Arab Issues, Avivit Hai and Liron Shoham, « (...) increasing overall labor participation and effectively integrating Arab citizens into Israel’s advanced job market stands to strengthen the economy, help close economic gaps, and stem costs associated with high rates of poverty and low economic activity in Arab communities— creating a more equal society and strengthening Israel’s social fabric ».<sup>26</sup>

Several studies have explored the impact of discrimination in society both from a psycho-sociological and a socioeconomic approach: on the one hand, discrimination can seriously affect personal well-being in terms of low self-esteem, internalisation of the prejudice, fear and stress; on the other hand, the common thread that runs through discrimination, tensions between communities and reinforcement of social hierarchies prevents a complete integration and overall progress.<sup>27</sup>

These rough considerations, given the relevant burden placed by the issue of employment of Israel’s Palestinian citizens on the Israeli society and on the Israeli economy, reveal the necessity to deepen the analysis of the status recognised to the Palestinian minority. It accounts for approximately one-fifth of the population of the State of Israel and it is mainly concentrated in Galilee, in the Wadi Ara region and in the Negev desert.<sup>28</sup> Despite the fact that neither

<sup>23</sup> According to the data released by the Israeli Central Bureau of Statistics in 2017, the employment rate of the Israeli Arabs is equal to 43.4% while the Jewish one to 61.8%.

Central Bureau of Statistics, « *Statistical Abstract of Israel* », 2017.

<sup>24</sup> Shimon Shamir, *The Arabs in Israel – Two Years after The Or Commission Report, The Konrad Adenauer Program for Jewish-Arab Cooperation*, 19 September 2005.

<sup>25</sup> Central Bureau of Statistics, « *Statistical Abstract of Israel* », 2017.

<sup>26</sup> Hai and Shoham, *supra* note 1.

<sup>27</sup> See UN, Department of Economic and Social Affairs, *Prejudice and discrimination: Barriers to social inclusion*, 7 February 2018, available at <https://www.un.org/development/desa/dspd/2018/02/prejudice-and-discrimination/>. ; see also Raymond Murphy, *Social closure: The theory of monopolization and exclusion*, Clarendon Press, Oxford, 1988, p.88; University Corporation for Atmospheric Research, *Social Closure: An introduction and some broad examples*, 20 April 2018, available at <https://cpaess.ucar.edu/gold-blogs/social-closure-introduction-and-some-broad-examples>.

<sup>28</sup> According to the data published in 2018 by the Central Bureau of Statistics, Israeli population amounts to

international law nor the Israeli legal system has provided an accurate definition of “national minority”, this concept seems to fit perfectly the Palestinian citizens of Israel who failed to have an actual legitimation within the State itself.<sup>29</sup> In this sense, such loophole in the legal system has been interpreted, by a significant amount of research studies, as an element that had an adverse effect on the status of the Palestinian minority and on the vulnerability of the Palestinian citizens themselves.<sup>30</sup> Interestingly, even though the State of Israel has frequently committed itself to the most relevant treaties of the United Nations<sup>31</sup> and even if the Knesset stood out in terms of enactment of various progressive laws in order to guarantee the protection of the fundamental rights of the weakest,<sup>32</sup> the Palestinian minority’s rights did not receive the same efficient guardianship system. Indeed, as already mentioned above, despite the concern recently expressed by the UN Human Rights Committee (HRC),<sup>33</sup> the «Basic Law: Human Dignity and Liberty», enacted in 1992 to protect the country’s main human rights, does not explicitly incorporate the principle of equality and non-discrimination. Furthermore, the cultural, religious and ethnic connections between the Palestinian citizens of Israel and the Palestinians residing in Gaza, the West Bank and in the neighbouring Arab countries, happen to limit the scope of the progressive laws enacted by the Knesset and to strengthen the prejudice of the Palestinian community as a concrete threat to the security and the survival of the State of Israel.<sup>34</sup> Indeed, even though the Israeli laws do not contain any referral to Arab countries as “enemy countries”, there are still many norms that have the scope of limiting their relations with the State of Israel. In this sense, the 2008 amendment of the Citizenship Law (1952) gives the Government the right to strip the Israeli citizenship to those citizens who have the citizenship (or even only the permanent residence) in Iran, Afghanistan, Lebanon, Libya, Sudan, Syria, Iraq, Pakistan, Yemen and Gaza. Therefore, the issue of family reunification highlights the hostile attitude against Arab countries: if on the one hand the already mentioned Citizenship Law (1952) gives the right to each Israeli citizen to reunite with their family, on the other hand the Nationality and Entry into Israel Law (2003) denies such right to the citizens whose families come from the West Bank, the Gaza Strip, Syria, Lebanon, Iraq, Iran or other states which constitute a threat to the State of Israel. As a direct consequence, such prejudice, which is already involved in the social substratum of the Country, exacerbates the divisions, increases the conflicts and dramatically hinders the integration of the Palestinian minority in the Israeli society.<sup>35</sup>

---

8.630.000 inhabitants: 6.450.000 Jews (74,8% of the population), 1.796.000 Arabs (20,8%) and 384.000 others (4,4%).

Central Bureau of Statistics, *supra* note 26.

<sup>29</sup> Indeed, as stated by Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, “*a minority is a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language*” (Minority Rights: International Standards and Guidance for Implementation, United Nations Human Rights, 2010).

<sup>30</sup> See PASSIA (Palestinian Academic Society for the Study of International Affairs), *International law: Israeli violations and third-party responsibility*, 2017, available at <http://passia.org/publications/107>.

<sup>31</sup> Namely the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination against Women (1979) and the Convention on the Rights of the Child (1989).

<sup>32</sup> On this matter, it is useful to recall the Employment of Women Law (1954), the Civil Service Appointment Law (1959), the Employment Equal Opportunities Law (1988), the Male and Female Workers Equal Pay Law (1996) and the Equal Rights for Persons with Disabilities Law (1998).

<sup>33</sup> For further information, see UN Committee on Economic, Social and Cultural Rights, “Concluding observations on the fourth periodic report of Israel”, 12 November 2019.

<sup>34</sup> Netta Barak-Corren, Yuval Feldman, Noam Gidron, *The Provocative Effect of Law: Majority Nationalism and Minority Discrimination*, *Journal of Empirical Legal Studies*, 2018.

<sup>35</sup> Among the several surveys and studies carried out through the years, it is interesting to recall the in-depth analysis of the complex relations between Israel’s Jewish and Arab Citizens conducted in 2019 by the Guttman Center for Public Opinion and Policy Research, directed by Prof. Tamar Hermann, at the Israel Democracy Institute. According to the research, 47% of Jewish Israelis prefer that Arab and Jewish Israelis should live separately and 22% believe that Arab Israelis should not be allowed to purchase land in Israel at all. Another major

## *The roots of the inequalities: the allocation of resources and the lack of economic and social infrastructures.*

At a closer look, the unequal allocation of resources can be a further cause of discrimination and of differences in the labour market. In this sense, the exploitation of the land should be undoubtedly classified as one of the most emblematic indicators of the discriminations suffered by the Palestinian minority and, therefore, of the obstacles it has to face when accessing the labour market.<sup>36</sup> Indeed, despite representing 20% of the entire population, the Palestinian citizens of Israel possess only the 3.5% of the land and this, by largely limiting the resources of the Palestinian community, inevitably undermines its development.<sup>37</sup> For example, the Absentees' Property Law (1950), which did not apply to the Jewish community, gave to the State of Israel the authority to expropriate the lands of all those people considered "absentees". Indeed, according to Art.1 (b) of the above-mentioned law, the "absentees" were those citizens who had obtained the nationality or the citizenship of Lebanon, Egypt, Syria, Saudi Arabia, Jordan, Iraq or Yemen or had left Israel to seek shelter in "Palestine", in any of the above-mentioned States or in any other State «(...) who was attempting to prevent the formation of the State of Israel or fighting against its institution ».<sup>38</sup> Hence, this law demonstrates the intent of the Knesset to legalize the seizure of Palestinian properties, and, as a consequence, to further isolate Israeli Arabs. As a matter of fact, the immediate effects of this norm have been not only the confiscation of thousands of square kilometres of Palestinian land but also the fact that, between 1948 and 1953, the 95% of the Jewish settlements were built on the "properties of the absentees". In 1954, more than one hundred thousand Jews, only in the cities of Jaffa, Haifa and Akko, were living in houses expropriated to the previous Palestinian landlords.<sup>39</sup>

Therefore, there are also other emblematic elements that have led to the discrimination of the Palestinian citizens of Israel and, as a consequence, to their gradual exclusion from the labour market. First, the complete absence of planning regulations that would have enabled the construction or the improvement of the Palestinian villages constitutes one of the major obstacles to the integration of the Palestinian citizens in the Israeli society.<sup>40</sup> Second, the institution in 434 municipalities of the Admission Committees (2004) with the right to accept or reject, on a discretionary basis, new applicants that have shown the intention to rent or buy a property within the community, is a further relevant phenomenon of discrimination against the Palestinian minority.<sup>41</sup> Such committees, in fact, according both to Decision no. 1015 (2004) of the Israel Lands Administration and to the Law to Amend the Cooperative Societies Ordinance No.8

---

finding of the analysis was that 57% of Jewish Israelis and 63% of Arab Israelis agree that Arab and Jews do not stand equal chances for success in Israel. For further information, see <https://en.idi.org.il/articles/28654>.

<sup>36</sup> See, for further analysis, Eyal Weizman, *Hollow land: Israel's architecture of occupation*, Verso, London, 2007 and The Mossawa Center, *Israel and its Arab Palestinian Citizens*, Haifa, 2018, available at <http://www.mossawa.org/eng/Public/file/oIsrael%20and%20its%20Arab%20Palestinian%20Citizens%20-%2024%20May%202017.pdf>.

<sup>37</sup> Oren Yiftachel, *Lands, Planning and Inequality: The Division of Space Between Jews and Arabs in Israel*, Position Paper, The Adva Center, 2000.

<sup>38</sup> Israeli law, The Absentees' Property Law, 14 March 1950, available in English at <https://unispal.un.org/UNISPAL.NSF/o/EoB719E95E3B494885256F9A005AB90A>.

<sup>39</sup> The Mossawa Center, *supra* note 37.

<sup>40</sup> Since 1948 the State of Israel has allocated lands and approved planning regulations for more than 600 Jewish communities. However, in the same time, no Arab community has been created and only four Arab villages have adequate planning regulations (Nazareth, Taibeh, Tira and Abu Basma). Furthermore, almost fifty thousand Arab families live in Israel without any building permit and more than two hundred thousand of them risk every day the demolition of their home.

The Mossawa Center, *supra* note 37.

<sup>41</sup> The "Admission Committees Law" has been also recently upheld by the Israeli Supreme Court on the basis that it was not possible to "determine at this stage whether the law violates constitutional rights".

Israeli High Court of Justice, H CJ 2504/11, *Adalah, et al v. The Knesset*, 17 September 2014.

(5771-2011), can arbitrarily decide whether the applicant meets the social suitability criterion, according to which they can be accepted within the community itself.<sup>42</sup> This widely discretionary parameter, which in many cases has led to the exclusion of the Palestinian minority from the allocation of lands,<sup>43</sup> directly contributed to the institutionalisation – typical of a system of apartheid<sup>44</sup> – of cities and villages separated according to the ethnic origin or religion. Indeed, the unequal allocation of resources and the ineffectiveness of the Israeli integration policies inevitably worsened and exacerbated the differences among the citizens.<sup>45</sup> Nonetheless, despite the fact that for decades there has been a massive gap between the budget for the development of Palestinian and Jewish communities,<sup>46</sup> it is worth mentioning that in 2015 the Israeli Government has approved a five-year plan (2016-2020) for the economic development of Arab localities which represented, and currently represents, the largest and most comprehensive plan ever advanced to reduce the differences within Israeli society.<sup>47</sup> Such allocation of almost NIS 15 billion will hopefully have overall positive effects on the Palestinian minority. Nonetheless, according to a study carried out by the Mossawa Centre on the Israeli State Budget, the Israeli government should have guaranteed, in order to close the gaps between the Palestinian and Jewish community, an investment of at least NIS 32 billion to foster the inclusion of Palestinian citizens of Israel in the national labour market and to reduce social inequalities.<sup>48</sup> Hence, it is also useful to point out that this five-year plan still clashes with the previous acts enacted by the Knesset.

For instance, the Nakba Law (2011) allows the Finance Ministry to withdraw funds from all the public entities, including educational institutions, that commemorate the Nakba as a day of mourning. As a matter of fact, such clause, directly targeting the Palestinian minority, not only limits its freedom of expression but also reduces its possibilities of economic growth and subsequent self-determination. The same pattern emerges from the analysis of the policy which permits to the Government to define certain regions of the State as “National Priority Areas” (NPAs) and, according to such definition, to allocate public funds for the development of the region itself.<sup>49</sup> Out of the 553 cities who have benefited from this type of government support, there were only four villages with a Palestinian majority.<sup>50</sup> Although the Israeli Supreme Court in 2006, after the petition filed by Adalah on behalf of the High Follow-up Committee for Arab Citizens in Israel and of the Follow-up Committee on Arab Education, called on the Knesset to eliminate this «(...)

42 Among the number of criteria to be applied in deciding whether or not to accept a candidate’s request to live in one of these settlements, the two most prominent conditions regard the “*suitability of the applicant for the social life in the community*” and the “*compatibility with the social-cultural fabric of the community town, where there is reason to assume that this would harm this fabric*”.

Israeli law, Law to Amend the Cooperative Societies Ordinance (No. 8), 5771, 2011. The full text is in English available at <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/12-Admissions-Committees-Law-2011.pdf>.

43 On this matter, it is important to recall the case of the Arab spouses who got rejected in 2007 by the Rafeket Admission Committee on the basis of their “non-suitability” with the community.

Israeli Hight Court of Justice, 8036/07, Fatina Ebriq Zubeidat, et al. v. The Israel Land Administration (Authority), et al., 26 December 2010.

44 Yara Hawari, *Apartheid all'interno: il caso dei cittadini palestinesi di Israele* [Italian: “Apartheid from the inside: the case of the Palestinian citizens of Israel”], Al-Shabaka, 2017.

45 The Mossawa Centre, *The Economic Status of Arab Citizens of Israel: An Overview*, Haifa, 2008.

46 According to the data collected by the Mossawa Center, in 2008 the budget for the development of the Arab communities accounted only for the 7.6% of the total allocated by the Israeli Government.

The Mossawa Center, *supra* note 37.

47 Government of Israel, Resolution No. 922, known as the “Economic Development Plan for the Arab Sector”, 30 December 2015.

48 The Mossawa Center, “Position paper on the Israeli State budget and the government decision for economic development in the Arab community for the years 2016-2020”, 2020, available at <https://din-online.info/pdf/ms2.pdf>.

49 Government of Israel, Decision No. 3292, 15 February 1998.

50 Nadim Rouhana, *Israel and its Palestinian Citizens: Ethnic Privileges in the Jewish State*, Cambridge University Press, 2017.

illegal discrimination against the Arab citizens»<sup>51</sup>, both the Economic Efficiency Law, approved in 2009, and the more recent Israel Land Council's (ILC) decision, passed in April 2019,<sup>52</sup> legitimate the State to grant substantial economic benefits without objective criteria, thus worsening the inequalities within the Israeli society.

Directly linked with inequalities in the allocation of resources is the lack of economic infrastructures in Palestinian cities and villages. About 70% of Palestinian citizens of Israel are currently living in the peripheral regions of the country, mainly in Galilee and the northern part of the country (57%) and in the Negev in the South (13%).<sup>53</sup> With regards to the peripherality of municipalities, the Israeli Ministry of Interior has conducted a study intending to measure geographical position with respect to the centers of economic activity,<sup>54</sup> ranking them on the basis of several characteristics, including their proximity to the Tel Aviv District - as it represents the country's business and industrial center.<sup>55</sup> It is clear that both Galilee and Negev, identified as regions with low development potential, are the two areas that include some of the most peripheral local authorities.

First, it is worth noting that the majority of Palestinian municipalities are villages with very limited financial resources and professional capacity.<sup>56</sup> Hence, there is no public investment policy to attract businesses and the economic viability of building industrial parks is surely not guaranteed for potential investors.<sup>57</sup> Economic activity in Palestinian localities is mainly based on small businesses, such as garages, which are often developed and transmitted within a family and that do not intend to become large factories.<sup>58</sup> Thus, most of the Palestinian population in Israel is located far from industrial zones, limiting the development of employment opportunities. Furthermore, as Yosef Jabareen underlines, only 2,4% of the total industrial area in the country is situated in Palestinian neighbourhoods. The author also notes that «(...) in the North of the country (...) the average industrial zone is 550 square kilometres in the Jewish local authorities, as compared to 76.9 square kilometres in the Arab local authorities, i.e. a ratio of 7:1».<sup>59</sup> This high peripherality of Palestinian localities gives substantial disadvantages to their population. They are, indeed, not - or really poorly - connected to more developed cities through public transportation and, because of the lack of employment opportunities available locally, a system of facilities to access easily to urban employment centers would be highly necessary. This also represents a major issue for students from Palestinian localities who want to pursue higher education.

51 H.C. 2773/98 and H.C. 11163/03, The High Follow-up Committee for the Arab Citizens in Israel, et. al. v. the Prime Minister of Israel.

52 According to this decision, communities will be entitled to receive economic benefits according to their classification as "geographic periphery area". Such criteria, indeed, does not take into consideration the "social peripheries" - namely the Arab communities - which have even lower socio-economic level.

53 Central Bureau of Statistics, *Statistical Abstract of Israel*, 2018.

54 Natalia Tsibel, *Peripherality Index of Local Authorities in Israel: Combination of Potential Accessibility Index with Proximity to the Tel Aviv District*, Central Bureau of Statistics - Statistical Methodology Department, June 2009 (Hebrew), see maps pp.41-2.

55 Ibid. It «reflects the specific structure of the country and emphasizes the proximity of the local authority to the region that serves as the country's economic and business center located close to its geographic center. The proximity between the geographical units is measured by the shortest distance in the road network, under the constraint of the roads closed due to construction or security reasons», according to the research conducted by Natalia Tsibel.

56 Yosef Jabareen, *The Employment of Arabs in Israel: The Challenge of the Israeli Economy*, 18th Caesarea Forum, 2010

57 Ibid.

58 Hai, Shoham, supra note 1.

59 Jabareen, supra note 57.

## The education system as a further source of discrimination in the labour market.

The other possible cause of discrimination in the labour market can be found in the education system. Indeed, even if Israel has ratified in 1961 the Convention against Discrimination in Education, it is not surprising that the 2016 Budget Law has earmarked NIS 642 million to the Ministry of Culture and that, out of the total amount, only NIS 12 million (less than 2%) have been set aside for the promotion of the 'Arab' culture. Moreover, according to the data collected by the Taub Center for Social Policy Studies in Israel, and although the various efforts to bridge this gap,<sup>60</sup> the average outgoings of public funds for each Palestinian student are still lower than the ones for a Jewish student.<sup>61</sup> The lack of an advanced and equal education system, linked with the isolation of Palestinian towns and the high unemployment rate in this community, does constitute a primary obstacle for Palestinian Israelis to enter the labour market.<sup>62</sup> As a result, in spite of the efforts led by the Israeli government to hinder discriminations and social exclusion, large gaps remain in the field of education between Jewish and Palestinian Israelis. Owing to the lack of effective public policies, Jewish students enjoy an educational system that is separated from the one that educates the Palestinian minority in Israel.

While Israel fares well in terms of education according to the OECD, this figure does not account for the great discrepancy between Jewish and Arabs citizens.<sup>63</sup> According to OECD data, «(...) in 2016, 46% of 25-34-year-old Israelis had a tertiary qualification»<sup>64</sup> which is higher than the OECD average. However, regarding specifically 25-34-year-old Palestinians, this percentage dropped to 26%.<sup>65</sup> Moreover, more than one third of young Palestinians between 18 and 22 years old are considered "not in education, employment or training"<sup>66</sup> (NEET) and this figure rises to one half for Palestinian women. Another discrepancy between the Palestinian and Jewish school systems is exemplified by the fact that, whilst more than 90% of Jewish children of the same age went to preschool, only 25% of Bedouin children between age 3 and 4 had the same opportunity.<sup>67</sup> Indeed, the unequal budget allocations, and the consequent lack of public childhood structures in the Palestinian communities which forces parents to take care of their children at home, could explain the Palestinian women low rate participation in the Israeli labour market which is, again, one of the main concerns expressed by the OECD.<sup>68</sup>

Therefore, the fact that the majority of Palestinian men have low levels of education makes it increasingly hard for them to find work in the professionalized and tech-oriented Israeli labour market. In this sense, higher education constitutes a fundamental prerequisite to quality employment: according to the data collected by the Authority for Economic Development, the Palestinian with higher education are employed at a rate of 81%, almost double the

60 It is usefull to recall that, in 2005, according to the Follow-Up Committee for Arab Education, the Israeli government spent an average of \$192 per year on each Arab student compared to \$1,100 per Jewish student. For further information, see Hanan Alexander, Halleli Pinson, Yossi Yonah, *Citizenship, Education and Social Conflict: Israeli Political Education in Global Perspective*, Routledge, 2012.

61 Taub Center Staff, *The Arab Education System in Israel: are the gaps closing?*, 2017.

62 Dan Ben-David, *A Picture of the Nation: Israel's Society and Economy in Figures*, Taub Center for Social Policy Studies in Israel, 2014.

63 Organization for Economic Cooperation and Development (OECD), *Education Policy Outlook, Israel*, April 2016.

64 Ibid.

65 Lilach Lurie, *Labour market and employment policy in Israel*, Prepared for the ETF (European Training Foundation), 2014.

66 Nasreen Hadad Haj-Yahya, *Opportunities Now: Arab Employment in the Galilee*, the Israel Democracy Institute, 27 July 2017.

67 Adalah, *Inequality of Opportunity in Early Childhood Education: The case of 3- and 4-year-old Palestinian Arab children in Israel*, May 2015.

68 OECD, *Economic Surveys, Israel*, March 2018.

## CHAPTER 2

# LIMITATIONS OF EU INSTRUMENTS IN ADDRESSING DISCRIMINATIONS AGAINST PALESTINIAN CITIZENS IN THE ISRAELI LABOUR MARKET

### *Abstract*

While noticing that their cooperation relies on a pattern of shared values, this chapter investigates how the European Union could address racial discrimination in the Israeli labour market, through external policy instruments. Indeed, this analysis demonstrates that Brussels must legitimately intervene in favour of the implementation of an efficient protection system against racial discrimination in the Israeli labour market. This assumption is explained by the numerous binding treaties that the State of Israel and the European Union have signed stating their mutual defense and promotion of those values and objectives specified in article 2 and article 3 of the Treaty on European Union. Therefore, this paper thoroughly analyzes the two European instruments through which the intervention of the European Union is possible, namely, the European Instrument for Democracy and Human Rights (EIDHR) and the European Neighbourhood Policy (ENP). The chapter points out the weaknesses that limit the effectiveness of these instruments in addressing the specific issue of discriminations suffered by the Palestinian citizens of Israel in terms of access to the labour market and equal compensation. Additionally, a comparison is advanced between the definition of discrimination provided in the EU-Israel Action Plan and the ones included in the agreements signed with other neighboring countries. Thus, this highlights the discrepancies among the components and criteria of this definition.

### *Résumé:*

Tout en affirmant que la coopération repose sur un modèle de valeurs communes, ce chapitre explique comment l'Union européenne pourrait, grâce aux instruments de politique étrangère, contribuer à remédier aux discriminations raciales sur le marché du travail en Israël. En effet, cette étude démontre que Bruxelles doit légitimement intervenir en faveur de la mise en œuvre d'un système de protection efficace contre ces discriminations raciales. Cette hypothèse repose sur les nombreux traités contraignants signés entre l'État d'Israël et l'UE, qui assurent la promotion d'objectifs et de valeurs communs spécifiés par les articles 2 et 3 du Traité sur l'Union européenne (UE). Ce chapitre analyse précisément les deux instruments européens à travers lesquels l'intervention de l'UE est possible, soit l'Instrument Européen pour la Démocratie et les Droits de l'Homme (IEDDH) et la Politique européenne de voisinage (PEV). Le chapitre souligne ainsi les faiblesses qui limitent l'efficacité de ces instruments pour remédier au problème spécifique des discriminations salariale et d'accès au marché du travail dont les citoyens palestiniens d'Israël sont victimes. Enfin, en proposant une comparaison de la définition de la discrimination dans le Plan d'Action avec Israël avec celles des traités signés avec d'autres pays de la région, le chapitre met en évidence les **disparités parmi les critères attenants à cette définition.**

## The protection of Human Rights as a priority for the EU

### Prohibiting discrimination within the EU legal framework

In order to understand how the European Union could tackle the issue of the widespread discrimination against the Arab citizens of Israel in the context of the labour market, it is essential to recall the importance of the defence of human rights within the European legal framework. In particular, this paper will focus exclusively on the prohibition of discrimination. Such principle is clearly enshrined in the Community law. The prohibition of any form of discrimination based on any ground has been stated not only in the Charter of Fundamental Rights of the European Union<sup>1</sup> but also in the two core treaties of the European Union (the TEU<sup>2</sup> and the TFEU<sup>3</sup>) and in the European Convention on Human Rights<sup>4</sup>.

Furthermore, it seems useful to recall that the EU law not only prohibits any kind of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation but also forces itself to mainstream the right to equal treatment in relation to all such grounds.<sup>5</sup> Nevertheless, since treaty provisions and secondary legislation are often vague and contain broad concepts, European jurisprudence has been essential for the interpretation and further development of the anti-discrimination law as general principles of Union law.<sup>6</sup>

In particular, according to the analysis of the 2000 Equality Directives<sup>7</sup>, it will be possible to outline, in the grounds mentioned above, four different forms of discrimination which the European Union aims to tackle and combat: direct discrimination, indirect discrimination, harassment, and instruction to discriminate.<sup>8</sup> The first case occurs when one person is treated less favourably than another in a comparable situation; the second when an apparently neutral provision, policy or rule, which theoretically applies to everyone in the same way, in practice creates particular disadvantage for some categories of people; the third consists in an unwanted conduct that forces the victim to live in a hostile, humiliating or offensive environment and, finally, the last one happens when a person incites another to discriminate against someone else.

### Promoting Human Rights in EU's external policies

Given this brief background, the paramount importance that all the Member States decided to grant to the principle of non-discrimination, as one of the main pillars and driving forces of their policies, is unequivocal. Firstly, not only article 2 of the Treaty on European Union identifies such principle as one of the core values on which the EU itself is built, but also article 21 of the same treaty binds the Union to “develop relations and build partnerships with third countries, and international, regional or global organisations which share [its] principles”. Secondly, the European commitment to “fight social exclusion and to promote justice and social protection” is also emphasised in article 3, par. 5, of the TEU. Furthermore, the new EU Action Plan on Human Rights and Democracy for 2020-2024 defines the opposition of all forms of discriminations as a priority of the Union and, as a consequence, reaffirms the commitment

1 Charter of Fundamental Rights of the European Union, Nice, 7 December 2000, 2000/C 364/01, Art. 21.

2 Treaty on European Union (TEU), Maastricht, 7 February 1992, Art. 2, Art. 3, Art. 21.

3 Treaty on the Functioning of the European Union (TFEU), Rome, 25 March 1957, Art. 18, Art. 19.

4 European Convention on Human Rights, Rome, 4 November 1950, Art. 14.

5 Supra note 2, TEU, Art. 10.

6 Among the many : *Court of Justice of the European Union, judgment of 10 July 2008, C-54/07, Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV. It is the first race equality judgment of the Court of Justice.*

7 European Commission, 2000/43/EC, 2000 (“*Directive against discrimination on grounds of race and ethnic origin*”).

European Commission, 2000/78/EC, 2000 (“*Directive against discrimination at work on grounds of religion or belief, disability, age or sexual orientation*”).

8 Evelyn Ellis, Philippa Watson, *EU Anti-Discrimination law*, Oxford EU Law Library, 2012, Chapter 2.

of the Commission to promote and protect these values worldwide.<sup>9</sup> Hence, in this scenario where Europe seems “a project driven by values”<sup>10</sup>, its commitment to support human rights and to fight all forms of discrimination within its own borders as well as with third countries<sup>11</sup>, is clear.

This had, and still has, direct consequences in setting and shaping the European foreign policy and external relations. Indeed, on this matter, it is useful to recall the resolution adopted by the European Parliament in 1993, when it called “for the inclusion in all association agreements of specific clauses to protect against the infringement of fundamental rights and racial discrimination”.<sup>12</sup> The Association Agreements, which find their legal basis in article 217 of the Treaty on the Functioning of the European Union<sup>13</sup>, are the documents regulating the EU relations with third States and they represent the framework for cooperation on a wide range of topics. Indeed, they develop and strengthen a special and privileged relationship between the Union and the signatory third States which binds the parties to respect certain rights, such as the principle of non-discrimination, and entitles them to require from each other the strict application of the clauses included in the agreement.

Apart from the Association Agreements, which are undoubtedly essential in shaping the relationship between the EU and a third country, the EU has two cooperation instruments as an incentive to foster the principle of equality. The European Neighbourhood Policy and the European Instrument for Democracy and Human Rights, if efficiently implemented and by targeting both the public and private sector, could in fact both address those situations in which it could be argued that there have been violations of fundamental rights.

### *The European Neighbourhood Policy*

The European Neighbourhood Policy (ENP), one of the main EU cooperation frameworks aims to encourage social cohesion, democracy, respect for human rights and economic prosperity. It sets ambitious objectives based on commitments to uphold the shared values negotiated with the partner countries<sup>14</sup> through Action Plans and it intends to foster a sense of ownership and flexibility.<sup>15</sup> In particular, the cooperation between the EU and Israel, under the ENP

9 High Representative J. Borrel : “*This is an opportunity for Europe to stand up for its values and interests. We need the courage and ambition to tackle challenges together. Today, we propose an ambitious plan to defend human rights and democracy all over the world by using all our resources faster and more effectively.*”

European Commission, “Human Rights and Democracy: striving for dignity and equality around the world”, Press Release, 25 March 2020, available at [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_492](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_492).

10 Stephen Weatherill, *Law and values in the European Union*, Oxford University Press, 2016, Chapter 1.

11 The European Parliament, in 1997, affirmed as one of its priorities to promote the « *European Idea, namely that harmonious societies characterized by ethnic and cultural diversity are an expression of civilisation and that the diversity of the various cultures and traditions constitutes a positive and enriching factor.* »

European Parliament, OJC 055, 24 February 1997 (“*Resolution on racism, xenophobia and anti-semitism and the European Year against Racism*”).

12 European Parliament, OJC 150/127, 21 April 1993, Para. 13 (“*Resolution of the European Parliament on the resurgence of racism and xenophobia in Europe and the danger of right-wing extremist violence*”).

13 « *The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.*»

Supra note 3, TFEU, Art. 217.

14 Sixteen countries are involved in the ENP. They are divided in two categories: Southern and Eastern neighbours.

Southern neighbours: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria, Tunisia;

Eastern neighbours: Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine.

15 European Neighbourhood Policy (ENP) official website, “A tailored and flexible partnership”, available at <https://www.euneighbours.eu/en/policy/european-neighbourhood-policy-enp>, accessed January 2021.

framework, focuses on economic development and regional political stability through the promotion and respect for human rights, democracy and good governance.<sup>16</sup> On the one hand, when dealing with democracy, the ENP addresses issues that dampen the establishment or the maintenance of a “just, inclusive and stable society with maximal respect for human rights and space for civil society”.<sup>17</sup> On the other hand, when focusing on economic and social development, it aims at the implementation of measures to stabilise the regional economy.<sup>18</sup> Given these premises, it is clear not only that non-discrimination should definitely form part of the ENP’s priorities but also why the EU should take stock of the ENP’s potential to efficiently tackle discrimination issues in the Israeli labour market.

Nonetheless, despite the clear relevance of the principle of non-discrimination in such a policy-context, the definition of the scope of action in the fight against discriminations significantly lacks precision. In fact, the ENP regulation only provides that “the rights of persons belonging to minorities and the fight against discrimination and inequalities” should be at the intersection of any action undertaken.<sup>19</sup> Article 2(a) of the aforementioned regulation also vaguely mentions discrimination, by specifying that the Union supports actions that tackle discrimination “in all its forms”, yet without developing what these forms are.<sup>20</sup>

Looking at non-discrimination through the perspective of labour standards, the ENP Regulation also presents clear shortcomings. This, although the protection of labour rights represents a large part of the ENP’s objectives, as that of including, creating or maintaining the conditions for an “inclusive (...) society”. Moreover, it is without directly mentioning labour rights, that the ENP regulation underlines the EU’s attachment to the effective implementation of “internationally recognised labour standards”.<sup>21</sup> Thus, linking the Policy to compliance with International labour law, including the Discrimination (Employment and Occupation) Convention<sup>22</sup> defining discrimination as potentially based on a large range of criteria including race, colour or religion.<sup>23</sup>

Thus, the Regulation’s definition of non-discrimination appears to be highly imprecise and in clear contrast with other instruments of both EU law, such as the 2000 equality directives<sup>24</sup>, and the international law provisions the Union relies upon. Therefore, a clear need arises for the EU to outline, in the country-specific Action Plans, its conception of the values it is bound to promote and abide by in order to ensure these remain not only justiciable but mostly meaningful. As a matter of fact, in the EU Ukraine Association Agreement there is an unequivocal declaration of the parties of their willing to eliminate and combat discrimination “on all grounds”<sup>25</sup> and, in particular, “in respect of employment and occupation”.<sup>26</sup>

### *The European Instrument for Democracy and Human Rights*

The European Instrument for Democracy and Human Rights which, given its thematic focus, offers to the EU another way of action to support the fight in defense of human rights and, in particular, to tackle any form of discrimination.

<sup>16</sup> EU - Israel Action Plan, 2005, p.4, available at [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/eu-israel\\_action\\_plan\\_2005.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/eu-israel_action_plan_2005.pdf).

<sup>17</sup> Supra note 15, ENP official website.

<sup>18</sup> Ibid.

<sup>19</sup> European Parliament, Council of the European Union, Regulation No 232/2014 establishing a European Neighbourhood Instrument, 11 March 2014, Recital (21).

<sup>20</sup> Supra note 19, ENP regulation 232/2014, Article 2(a).

<sup>21</sup> Supra note 19, ENP regulation 232/2014, Recital (22).

<sup>22</sup> International Labour Organization (ILO), *Discrimination (Employment and Occupation) Convention*, C111, Geneva, 25 June 1958.

<sup>23</sup> Supra note 22, *Discrimination Convention*, Article 1(a).

<sup>24</sup> Supra note 7, directive 2000/43/EC and directive 2000/78/EC.

<sup>25</sup> EU - Ukraine Association Agreement, 2014, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0529\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0529(01)&from=EN).

<sup>26</sup> Ibid.

The EIDHR is one of the EU's external assistance instruments embedded within EuropeAid, the Directorate-General for International Cooperation and Development, of the European Commission. Through the EIDHR, the Commission provides assistance to the development of democracy and the protection of human rights worldwide. As a matter of fact, regulation 235/2014 provides that the EIDHR aims to develop "a special relationship founded on cooperation, peace and security, mutual accountability and a shared commitment to the universal values of democracy, the rule of law and respect for human rights in accordance with the TEU".<sup>27</sup>

With a budget of €1,333 million for the 2014-2020 mandate, the EIDHR constitutes the cornerstone of a recent shift of the European Union external policy to move towards a more sensitive democratization approach, focusing on local particularities. Instead of dealing with governments merely on electoral and procedural matters, the EIDHR grants funding for activities and programmes fostering democratic principle and human rights within civil society in the targeted states.<sup>28</sup>

This rights-based approach<sup>29</sup> at the national level is implemented through calls for proposals which address local priorities, such as tackling discriminatory practices and unjust distributions of power that threaten human rights.<sup>30</sup> The EIDHR defines three general areas of work. As regarding business and human rights, the EIDHR commits to "support and empower civil society to collaborate with business and investment actors in the mitigation, prevention and remediation of adverse impacts of business activities on human rights".<sup>31</sup> Furthermore, the EIDHR outlines specific issues it intends to tackle regarding the local situation, based on a strategic paper, the Multiannual Indicative Programme, that sets out the priority areas and expected results.<sup>32</sup>

Unlike the ENP Regulation, the Regulation 235/2014 establishing the EIDHR provides a broad list of criteria on which discriminations could be based on: "sex, race, colour, caste, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation and gender identity".<sup>33</sup>

Moreover, each of the indents of article 2 mentions the principle of non-discrimination, with specific regards to women, children and people with disabilities.<sup>34</sup>

Labour rights and discriminations in the labour market are mentioned only in the recital (xii): "economic, social and cultural rights, including the right to an adequate standard of living and core labour standards".<sup>35</sup> Just like for the

<sup>27</sup> Supra note 19, ENP regulation 232/2014, Article 1 (1).

<sup>28</sup> Milja Kurki, "Governmentality and EU Democracy Promotion", *International Political Sociology* 5(4), 2011, pp.349- 366.

<sup>29</sup> "A human rights-based approach (HRBA) is a conceptual framework that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse obligations, inequalities and vulnerabilities, and to tackle discriminatory practices and unjust distributions of power that impede and undercut human rights."

Social Protection and Human Rights website, *Introduction to a rights-based approach*, available at <https://socialprotection-humanrights.org/introduction-to-a-rights-based-approach/>.

<sup>30</sup> EIDHR 2019 Global Call for Proposals, available at <https://www.euneighbours.eu/en/south/stay-informed/opportunities/eidhr-2019-global-call-proposals>.

<sup>31</sup> Ibid.

<sup>32</sup> European Parliament, Council of the European Union, Regulation EU 235/2014 establishing a financing instrument for democracy and human rights worldwide, Art. 4 and Art. 5.

See also European Instrument for Democracy and Human Rights, Multiannual Indicative Programme (2018-2020), available at [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/eidhr\\_multiannual\\_indicative\\_programme\\_2018-2020.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/eidhr_multiannual_indicative_programme_2018-2020.pdf).

<sup>33</sup> Supra note 32, EIDHR regulation 235/2014, Art 2(1)(b)(iv).

<sup>34</sup> Supra note 32, EIDHR regulation 235/2014, Art 2.

<sup>35</sup> Supra note 32, EIDHR regulation 235/2014, Recital (xii).

ENP, this must be associated with International Labour Law, especially with the Discrimination (Employment and Occupation) Convention.

Lastly, it is also important to highlight that EU legislation provides for a mechanism to monitor and evaluate the EIDHR. Such process, which aims to identify the failures and improve the functioning of the instrument itself, is directed by the European Commission as set out in the Practical Guide about Procurement and Grants for European Union external actions.<sup>36</sup> Moreover, according to the same document, also the single projects financed by the EU are constantly monitored and evaluated by an ad-hoc Evaluation Committee which has to ensure its impartiality and transparency. Nevertheless, the control mechanism provided by the EU is mostly limited to ex-ante procedures and limits the ex-post controls mainly to the cases where the Commission discovers any kind of corrupt practices at any stage of the award process or implementation of the contract.<sup>37</sup>

### **Tackling discrimination in labour markets: different attitudes in the MENA region**

Although they present noteworthy differences, the fact that all the other South Neighbourhood Action Plans (AP) do seem to tackle discrimination and equality in a more explicit way than the EU Israel AP is a surprising and significant issue that needs to be discussed. The European attitude towards the prohibition of discrimination in the Israeli labour market can be examined by comparison with the way the EU has addressed this topic in the Action Plans concluded with some of Israel's neighbours.

First, the example of the AP with Egypt shows that, despite it unsurprisingly not specifically mentioning antisemitism, it refers to broader and more encompassing notions as "intolerance" and "discrimination". Then, after referring to xenophobia, the paragraph stresses the need to promote "respect for religions and cultures".<sup>38</sup> Thus, the EU - Egypt Action Plan contains more details about discriminations, especially regarding the elements on which they can be based: religion, beliefs, race or origin. Moreover, the last sentence of the EU - Egypt Action Plan stresses on the general principle of equality, which is absent in the same article of the EU - Israel Action Plan. In the same manner, and in spite of the general and well-known situation of discrimination, the AP with Israel does not even overtly mention the word "discrimination". Nonetheless, in the Israeli case, references to equality should be construed in a more restrictive way, as referring exclusively to gender, and not ethnicity, religion or culture.

Secondly, if the EU's AP with Israel does not, some APs even refer precisely to discrimination that occurs in the labour market. In this sense, for instance, the EU Morocco AP states that the cooperation with the EU helps to enhance initiatives aiming at better integrating "disadvantaged groups in the labour market" and "combating discrimination".

Lastly, as it appears clearly from the previous chapter, the inclusion of the term "ethnicity" would be particularly relevant in efficiently qualifying the situation of discrimination at stake. Accordingly, the EU - Jordan Action Plan makes an explicit reference to ethnicity, as it states that attention should be given to the promotion of "tolerance and respect for all ethnic and religious groups".<sup>39</sup>

---

<sup>36</sup> European Commission, Procurement and Grants for European Union external actions – A Practical Guide, 15 January 2016, available at [https://ufmsecretariat.org/wp-content/uploads/2016/02/prag\\_prac\\_guide\\_ufm.pdf](https://ufmsecretariat.org/wp-content/uploads/2016/02/prag_prac_guide_ufm.pdf).

<sup>37</sup> Ibid.

According to the Practical Guide, « *corrupt practices* are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the contracting authority ».

<sup>38</sup> EU - Egypt Action Plan, 2007, p.8, available at [https://www.europarl.europa.eu/cmsdata/123584/egypt\\_enp\\_ap\\_final\\_en1\\_o.pdf](https://www.europarl.europa.eu/cmsdata/123584/egypt_enp_ap_final_en1_o.pdf).

<sup>39</sup> EU - Jordan Action Plan, 2005, Art III. (15), available at [https://eeas.europa.eu/archives/delegations/jordan/documents/eu\\_jordan/jordan\\_enp\\_ap\\_final\\_en.pdf](https://eeas.europa.eu/archives/delegations/jordan/documents/eu_jordan/jordan_enp_ap_final_en.pdf).

## The EU – Israel cooperation and the discriminations against the Palestinian minority

Since its foundation, the European Union is to be considered one of the main actors of the Middle East Peace Process. Together with the UN, the EU undertakes political and practical measures to support the resolution of the Arab-Israeli conflict, through a peace agreement, the end of the occupation which began in 1967, and the creation of an independent Palestinian State.<sup>40</sup> Moreover, the EU, as first trading partner for Israel, could play a pivotal role in influencing the Israeli politics.<sup>41</sup> Although Brussels condemned Israel for its policy towards its Palestinian citizens, this did not hamper the « special status » of Israel as a privileged economic and diplomatic partner of the Union.<sup>42</sup> Yet, even the formal condemnation made by the EU regarding the Nation-State Law had no repercussions for the Jewish State.<sup>43</sup>

In this already delicate context, since such discriminations hinder social mobility and hamper further improvement in the status of the Palestinian-Israeli minority, it will be crucial to understand the limits of the European Union policies, agreements and instruments already in use, in order to point at more efficient solutions. Furthermore, it should be noted that the two cooperation instruments that have just been examined not only already operate in Israel but also could prove to be significantly effective to counter the discriminations suffered by the Palestinian minority in the Israeli labour market.

### The existing EU instruments for Human Rights in Israel

Hence, the EU-Israel partnership relies on the Association Agreement, entered into force on June 1, 2000, which aims to “provide an appropriate framework for political dialogue” and to strengthen regional cooperation and economic development.<sup>44</sup> Among other things, the agreement states that “the relations between the Parties [...] shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element for this agreement”<sup>45</sup> and therefore opened the way for Israel to enter the framework of the ENP. In this context, as of 2005, the Parties – as neighbours – have reinforced their political and economic ties signing the EU-Israel Action Plan.

The Plan, extended for three years in December 2018<sup>46</sup>, intends to confirm the common values of democracy, respect for human rights, rule of law and basic freedoms on which the special partnership is built and to help fulfil the provisions of the Association Agreement.<sup>47</sup> Such framework, enhancing political dialogue and co-operation between the Parties,

40 For more information, see EU external action website, Middle East peace process, 2021, available at [https://eeas.europa.eu/diplomatic-network/middle-east-peace-process/337/middle-east-peace-process\\_en](https://eeas.europa.eu/diplomatic-network/middle-east-peace-process/337/middle-east-peace-process_en).

41 European Commission website, Report on European trade with Israel, 2020, available at <https://ec.europa.eu/trade/policy/countries-and-regions/countries/israel/>.

42 « *The European Council considers that Israel, on account of its high level of economic development, should enjoy special status in its relations with the EU on the basis of reciprocity and common interest.* »

Essen European Council, 1994, Presidency conclusions.

43 Reuters, *EU expresses concern over Israel's Jewish nation-state law*, 19 July 2018, available at <https://www.reuters.com/article/us-israel-politics-law-eu/eu-expresses-concern-over-israels-jewish-nation-state-law-idUSKBN1K91K7>.

44 EU – Israel Euro-Mediterranean Agreement, 2000, Art.1.

45 Supra note 44, EU – Israel Euro-Mediterranean Agreement, Art 2.

46 Council of the European Union, 2019/105, 20 December 2018, Decision concerning the extension of the EU-Israel Action Plan, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019D0105>.

47 Among the many priorities set out in the Action Plan, it is useful to highlight that EU and Israel agreed to “improve the dialogue between cultures and religions”, to “strengthen the legal framework at all levels to combat racism and xenophobia, including Islamophobia” and to “promote and protect rights of minorities, including enhancing political, economic, social and cultural opportunities for all citizens and lawful residents.”

would provide efficient tools for the EU to take action against discrimination in Israel, thus fostering major changes in the Israeli society.

Building upon the Regulation's general objectives, the EU and Israel agreed, under the AP, to set as the first priority the promotion of human rights and of "the dialogue between cultures and religions, co-operating in the fight against anti-Semitism, racism and xenophobia".<sup>48</sup> It is relevant to highlight that the Action Plan mentions the protection of the rights of minorities and encourage the enhancement of "political, economic, social and cultural opportunities for all citizens and lawful residents".<sup>49</sup> Still, it is worth bearing in mind that, unfortunately, never does the EU Israel AP refer to "ethnicity" and to the importance of supporting the rights of ethnic groups neither when it refers to human rights promotion, nor when it comes to the improvement of the social situation, employment rates or reduction of poverty.<sup>50</sup> Extending the scope of discrimination through mentions to ethnicity as possible basis, would, together with references to religious affiliation, better encompass the more complex aspects of the Israeli society and could constitute an important element to be considered in the struggle against discrimination. However, even though it should be noted that the Action Plans between the EU and some of Israel's neighbouring countries do not share a common interpretation of the concept of non-discrimination, a precise and complete definition would be paramount in implementing adjusted projects, to efficiently tackle specific issues that occurred in these countries.

To add on the lack of precision and clear gaps of ENP planning, it should be noted that the Action Plan with Israel was signed fifteen years ago, and has not been reviewed or updated ever since, despite the provisions included in the Action Plan itself to this effect. Moreover, the lack of dialogue on ENP topics should be linked to the fact that the Association Council formed under the EU-Israel Association Agreement, and charged with fostering dialogue between the two partners, has not met since 2012. As a matter of fact, despite their close links, which have deepened on numerous topics since this date, both actors have kept postponing the meeting of the EU-Israel Association Council, due to the lack of political momentum. Thus, clearly hampering the responsiveness of European efforts in the country under its leading cooperation policy, the ENP.

Moreover, it is crucial to highlight that Israel, due to its flourishing economy, has always received limited funding from the ENP.<sup>51</sup> Nonetheless, after the outbreak of the Covid-19 crisis, the flow of funding could increase to provide Israel with the necessary means to emerge from the recession.

Such funds have been, and still will be, particularly concentrated on the development of Twinning projects. As these projects aim at the approximation of standards and the sharing of best practices, they associate public sector expertise from EU Member States and partner countries administrations. Thus, they offer the opportunity for EU neighbours to receive support in specific areas of interests, as defined in the country-specific and bilaterally-established Action Plans.

Due to the special relationship between Israel and the EU, that has led to the development of several partnership initiatives through the years, Israel also benefits from the expertise and funds of another EU instrument, the EIDHR which, given its thematic focus, offers to the EU another way of action to support the fight against discrimination in the labour market. As has been outlined in the previous paragraphs, the EIDHR establishes, through the Multiannual Indicative Programme, the exact issues it aims to focus on regarding single national situations. As for Israel, one of the priorities for the 2018-2019 term was to address discrimination issues in all its forms.<sup>52</sup> Accordingly, the EIDHR

---

EU – Israel Action Plan, 2004, available at [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/eu-israel\\_action\\_plan\\_2005.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/eu-israel_action_plan_2005.pdf).

48 Supra note 47, EU – Israel Action Plan, p.1.

49 Ibid.

50 Supra note 47, EU – Israel Action Plan, section 2.2.

51 European Commission website, "The European Neighbourhood Policy in Israel", 2021, available at [https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/israel\\_en](https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/israel_en).

52 "Objective 2: Fighting discrimination in all its forms within Israel: notably by fostering the freedom of religion and combating practices resulting in inter-sectoral discriminations based on grounds of race, ethnicity, age, disability, gender or sexual orientation. It includes advocating for the rights of persons belonging to minorities, and particular attention should be given to actions empowering the most marginalised and vulnerable groups."

2018-2019 call for proposals for Israel also contains this provision. Specifically, in the call for proposals for Israel, tackling discrimination goes through advocating for the “the freedom of religion” and fighting against “practices resulting inter-sectoral discriminations based on grounds of race, ethnicity, (...)”.<sup>1</sup> The call for proposal then declares that actions empowering minority groups should receive specific attention.<sup>2</sup>

### The application of EU instruments in Israel’s labour market

In the EU – Israel Action Plan, despite the willingness of the Union to promote the principle of non-discrimination in the broader planning of its foreign policy instruments, no explicit reference specifically addresses the discriminations against Palestinian citizens of Israel within the national labour market. Furthermore, in the light of the wage differences between the Palestinian minority and the Jewish part of the population,<sup>3</sup> the protection of minority rights is of critical importance in Israel. Hence, even though such topic has been acknowledged in the EU – Israel AP, it is pivotal that any project launched in the frame of the ENP should address the issue of discrimination of the Palestinian minority in the Israeli labour market.

Moreover, the Israeli labour market has significantly evolved since 2005 and, more precisely, there seems to be a connection between labour discrimination and the unstable political context.<sup>4</sup> On this matter, the ongoing occupation, as well as governmental instability and regional insecurity, but also other elements such as the 2008 financial crisis, negatively affected discrimination within the Israeli labour market. Therefore, the recent ongoing and unpredictable pandemic crisis, that is forcing Israel to impose numerous and frequent restrictions, is definitely causing high uncertainty in the national economy, further worsening the already unstable situation of the Palestinian citizens which, given the mainly unskilled nature of their jobs, are one of the categories most exposed to an economic crisis.<sup>5</sup>

Unfortunately, although it is established that improving the integration of Palestinian Israelis on the labour market is in line with the EU principles, the EU does not, at the moment, undertake any project that promotes non-discrimination and labour rights implemented through neither the ENP nor the most specific twinning programmes. Still, it is interesting to underline that the EU and Israel did indeed implement joint projects that could have addressed the issue of discrimination against the Palestinian citizens in the labour market but failed to.<sup>6</sup>

In 2008, through the frame of a Twinning project, the Israeli Equal Employment Opportunities Commission (EEOC; under the Ministry of Labour, Welfare and Social Affairs) has benefitted from the expertise of the Northern Ireland Equality Commission (NIEC) in conjunction with Northern Ireland Public Sector Enterprises (NICO).<sup>7</sup> With a budget of 300,000 €, this eighteen-month long project focused on four main components, among which the implementation of “*equality agreements with employers in Israel that have a key role to play in tackling discrimination*” and the establishment of databases and reports on equalities in Israel.<sup>8</sup>

1 Supra note 53, EIDHR call for proposals for Israel, p.5.

2 Ibid.

3 Shimon Shamir, *The Arabs in Israel – Two Years after The Or Commission Report, The Konrad Adenauer Program for Jewish-Arab Cooperation*, 19 September 2005.

4 Claudio Lucifora, Simone Moriconi, « Political Instability and Labor Market Institutions », IZA DP No. 6457, March 2012.

5 Supra note 56.

6 Among them, EBSOMED : a four-years project (2018-2022) through which the EU intervenes in the private sector of the Southern Neighbours’ labour markets. Unfortunately, even though Israel is part of the potential beneficiary States, no EBSOMED project has been implemented in Israel yet and there is also no mention of the fight against discrimination, nor the promotion of any other fundamental rights. See EBSOMED official website: <http://ebsomed.eu/en/>.

7 Equinet, “Update on the EU twinning project”, 11 July 2010, available at <https://www.archive.equineteurope.org/Update-on-the-EU-Twinning-Project>.

8 Ibid.

Most of its objectives were oriented towards research and sensibilisation activities, including the organisation of “large scale annual conferences on key themes”.<sup>9</sup> Given that the majority of the objectives concern theoretical research, the project regrettably fails to develop concrete measures to directly tackle the problem of discrimination suffered by the Palestinian community at the source. The limited resonance of the programme equally emerges from the choice of beneficiary. In fact, the EEOC is only a consultative body for the government, whose mandate is to raise awareness on non-discrimination and to handle litigation on the issue.<sup>10</sup> As a result of this, even though the Twinning project focused on an issue, such as the discrimination against the Palestinian citizens of Israel, that had actually proved the need to be addressed, its impact remained very limited. On this matter, the European assistance would have probably been more efficient if it had been addressed at a decision-making authority within the Ministry of Labour or if it had been directed at a monitoring and evaluating body. Indeed, monitoring and evaluating process are already key activities undertaken by the European Union to ensure the correct implementation of its projects and to increase their effectiveness. As a result, this analysis framework could be employed in the EU-Israel twinning projects to achieve a deep understanding of the issue of discrimination and to ultimately eradicate it.

Since this project, Israel has not experienced other Twinning projects that deal with discrimination or equality in the labour market. In 2019, the only ongoing twinning project in Israel addresses waste management with the Ministry of Environmental Protection.<sup>11</sup> Therefore, because of the irregular and inconsistent implementation of Twinning projects in Israel, the EU has relatively little margin for manoeuvre through these projects. In addition, Twinning has a limited potential regarding the fight against discriminations as it only targets public institutions, whereas most discriminations occur in the private sector.

Lastly, it seems crucial to jointly analyse the EIDHR regulation and the more specific EIDHR call for proposals for Israel. In particular, even if the latter does not contradict the former, the definition of the scope of discriminations in the call for proposals does not cover the overall criteria listed in the Regulation itself, thus appearing more restrictive. In fact, discriminations based on language, religion or belief, are not mentioned in the call for proposals. Hence, as the Israeli labour market reflects the ethno-religious complexity of the Israeli society, a reference to discrimination with regards to religion would have specifically mattered.

Under this call for proposals, the Association of Civil Rights in Israel and Kav Laoved have received funding for a project entitled “*Dignity in work: upholding labour rights for Palestinian workers employed in Israel*”. For a 27-month project duration, the grant amounts to 298,514 €. Unfortunately, very little information about the practical objectives and concrete implementation of the project can be found in the EIDHR and in the concerned NGOs’ websites.

While this project seems to be relevant for the scope of this analysis, it does not deal with the Palestinian citizens of Israel, but with Palestinians who do not have Israeli citizenship. Palestinians without national citizenship fall under the PA administrative regime of labour rights, or under a specific regime for foreign workers if they work in the Israeli territory. Therefore, issues pertaining to their rights are close but separate from the topic of discriminations between Israeli citizens. In light of the above, although some of the EIDHR-funded projects concerned labour and discrimination, they do not overtly address the intersection between discrimination and labour.

What clearly emerges from the above analysis is a void in the Union’s action in Israel with regards the conjunction of labour rights and the principle of non-discrimination. Despite the emphasis put on such priority in the programming of EIDHR actions, the EU failed to negotiate a comprehensive definition of non-discrimination with the partner country. The programme’s scope of action excludes the protection of the Palestinian Israelis from discrimination

9 Ibid.

10 International Labour Organisation, Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013), Discrimination (Employment and Occupation) Convention, 1958 (No.111) - Israel (Ratification : 1959), available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P13100\\_LANG\\_CODE:3079337,en](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:3079337,en).

See also Inter-Agency Task Force on Israeli Arab Issues website, “Equal Employment Opportunity Commission (EEOC)”, available at <https://www.iataskforce.org/governments/view/20>.

11 Twinning Notified Results of 2019, available at [https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/notified\\_results\\_2019.pdf?](https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/notified_results_2019.pdf?).

in the context of the labour market. Yet, the EU -through the EIDHR- still does indirectly address the conjuncture of labour rights and the principle of non-discrimination through the use of ethics clauses in contracts regulating the allocation of funds for EIDHR projects. Such clauses impose, on the recipient of EIDHR funds, compliance with a certain number of human rights, environmental and labour standards to qualify for eligibility. Thus, the importance of such clauses derives from the fact that, even though the EU, through its actions, does not directly address discriminations in the Israeli labour market, it still forces its beneficiaries to respect some fundamental values such as the principle of non-discrimination in the labour market. Hence, since the failure to comply with one of these clauses may provoke the exclusion of the beneficiary from the programme and even penalties from the EU, it is clear how the Union could take further advantage of such clauses to foster the integration of Palestinian citizens of Israel within the Israeli labour market.

## CHAPTER 3:

# RECOMMENDATIONS TO THE EU FOR A MORE EFFECTIVE FIGHT AGAINST ETHNIC DISCRIMINATION IN THE ISRAELI LABOUR MARKET

### *Recommendations*

Throughout the previous chapters of this paper, it has been possible to point out both the problematic issue of the participation of the Palestinian citizens of Israel in the national labour market and the reasons why the EU could, and probably should, use its tools to influence the policies of the Knesset. Indeed, the EU, which has devoted itself to the promotion of democracy and human rights not only within its boundaries but also in all its external relations, does have the right credentials to take a leading role in fostering a substantive equality in the labour market and to fight discrimination in all its forms.

Nonetheless, this research has outlined all the inefficiencies and the weaknesses of the instruments enacted by the European Union to improve the situation in the Israeli labour market. Such instruments do not tackle the discriminations against the Palestinian citizens of Israel and, hence, they do not break down the existing barriers between the Jewish majority and the Palestinian minority that hinder the overall development of the State.

Accordingly, it seems necessary to reconsider the European policy regarding discriminations in the Israeli labour market and, therefore, to imagine new efficient solutions to the problems that the Palestinian minority is facing in the current context. A reform of the EU policy in Israel would indeed ease the integration process of the Palestinians and enhance their living standards.

Firstly, it will be essential for the EU to think carefully about where to start its projects. Undoubtedly, European initiatives in the Israeli labour market should be driven by geographical awareness and, thus, should be concentrated in the most disadvantaged areas where it would be possible to expect more substantial results. In this sense, given the fact that the North of Israel hosts a majority of Palestinian localities and represents also one of the regions most afflicted with poverty in the country, the EU should not develop economic programmes that cover the entire territory of the State and, on the contrary, it should focus its efforts on addressing this region as a priority.

Secondly, it will be also fundamental for the EU to take into consideration the high segmentation of the Israeli labour market within which it is appropriate to record an unequal ethnic representation in the different economic sectors. Following this, and as already underlined at the beginning of this research, it seems useful to recall that not only is the employment rate of the Palestinian minority twenty percentage points lower than the Jewish one, but also that the Palestinian men who actually are employed are concentrated mainly in low skilled industries. As an example, Palestinian citizens of Israel are under-represented in the public administration and are often *de facto* excluded from certain sectors that Israel considers strategic. These include technology industries, military services and other high-skilled jobs. On this purpose, it is also relevant to underline that historically the Arab parties have never been part of a majority government and that a Palestinian citizen of Israel has only held ministerial positions on three occasions.<sup>1</sup> Therefore, it is not surprising that the Palestinian community does not seem able to exert a decisive and specific weight in the formation of the State's policies.

<sup>1</sup> Nawaf Massalha, Vice Minister of Foreign Affairs 1999; Salah Tarif, Minister without portfolio, 2001; Raleb Majadele, Minister of Science and Technology, 2007.

Hence, it is clear why the EU should target specifically those professional sectors which are the most problematic in terms of ethnic or religious diversity, in order to guarantee an equal representation and participation of the two communities within the labour market. In particular, since the Palestinian minority is mainly engaged in unskilled jobs, it would be pivotal for the Union to promote projects in order to invest in education and training of the Palestinian citizens of Israel. Theoretically, on the one hand, it would be necessary to enforce cooperation between universities (through exchange projects, joint research activities or providing targeted funds to improve the educational offer) and, on the other hand, to frame a system of facilities and benefits for those firms that decide to offer vocational training courses to their Palestinian employees. Indeed, such courses would give them the chance to acquire new skills that would allow them to participate in sectors that are covered mainly by the Jewish majority at the moment.

## *The EU and its instruments*

It has already been stated that the EU has a range of tools at its disposal to address the issue of discrimination of the Palestinian citizens in the Israeli labour market. Nonetheless, among the instruments described above, both the ENP and the EIDHR have proven useless. Therefore, it is crucial for the EU to figure out how to solve such shortcomings in order to improve the situation on the ground.

More specific recommendations must also be addressed to EU instruments regarding the convention agreed with Israel. In order to take into consideration the changes that have occurred in Israel in the recent years, the renewal of the binding conventions but also the convening of more frequent meetings between the parties, for instance the Association Council<sup>2</sup>, appear to be clearly necessary.

In addition to the lack of reference to equality, it must also be noted that, through several periods of escalating tension in the region, the relations between Palestinian Israelis and Jewish citizens have greatly evolved in the past fifteen years and so has the political situation and the challenges facing Palestinian citizens of Israel. Because of this, it is important to consider that the 2005 Action Plan is very outdated. Indeed, the context of relations between Jewish and Palestinian Israelis is perpetually changing: several waves of violence have hit the region since 2005, including protestations and skirmishes in Gaza, the West Bank and East Jerusalem. More recently, mass demonstrations and strikes took place in Palestinian localities in Israel, in May 2021 after the expulsion of several Palestinian families from their house in Sheikh Jarrah neighborhood in East Jerusalem.<sup>3</sup>

Following this line of thought, it should be noted that the decrease in employment rate, and more generally the slow-down of the economic activity, have been more impactful for Palestinian citizens of Israel than the Jewish population. Indeed, Haberfeld and Cohen have shed light on a tendency for the Jewish citizens of Israel, during these outbreaks, to avoid consuming products that can be associated to Palestinian groups.<sup>4</sup>

Very much rooted in the past, binding conventions between the EU and Israel should now include, among their main purposes, the respect of equality. Among them, the Action Plan must align with other Action Plans concluded between the EU and its Southern neighbours. Indeed, the absence of the expression “equality” in the EU-Israel Action Plan turns out to be a clear gap that needs to be filled.

<sup>2</sup> The council, formed within the framework of the EU-Israel Association Agreement and in charge of promoting the dialogue between the two parties, has not met since 2012.

<sup>3</sup> See: Berger, Miriam, « For first time in two decades, mass protests erupt among Israel’s Arab citizens », Washington Post, 12 May 2021, available at [https://www.washingtonpost.com/world/middle\\_east/israel-arabs-palestinians-protests-unrest/2021/05/12/af8df29a-b308-11eb-bc96-fdf55de43bef\\_story.html](https://www.washingtonpost.com/world/middle_east/israel-arabs-palestinians-protests-unrest/2021/05/12/af8df29a-b308-11eb-bc96-fdf55de43bef_story.html).

Shiloh Vidon, Tamar, « Against backdrop of Gaza violence, Israel’s Jews and Arabs join forces for peace », France 24, 18 May 2021, available at <https://www.france24.com/en/middle-east/20210518-against-backdrop-of-gaza-violence-israel-s-jews-and-arabs-join-forces-for-peace>.

<sup>4</sup> Haberfeld, Yitzchak, and Yinon Cohen. *Earnings gaps between Israel’s native-born men: western Jews, eastern Jews*. No. 85. and Arabs, 1987–1993’, Discussion Paper, 1996.

Furthermore, to uphold its proclaimed values, the EU should also reach an agreement with Israel to broaden the definition of discrimination, by referring to more relevant and specific criteria for the Israeli situation, such as ethnicity, religion or beliefs and language. In order to properly tackle the issue of discrimination in Israel, a broad definition of the concept of discrimination which will have to include a clear reference to the principle of equality is essential.

### **ENP**

It will also be crucial to reform the system that regulates the launch of twinning projects which, at the moment, depends entirely on partner countries demand. In fact, to design a more effective ENP policy, based on the principles of equality and able to fight discrimination in the Israeli labour market, the EU should introduce a mechanism that allows it to make proposals for twinning projects itself. Undoubtedly, it could constitute an interesting way to open discussions on issues that are not properly tackled by the partner countries and that the EU, with an external point of view, would have the possibility to finally raise and contribute to address.

Accordingly, based on the previous recommendation, the EU could make a proposal for a twinning project with the aim of achieving key objectives for the Israeli labour market, each of them focusing on the different public institutions to which it is regulated by. In particular, one of the priorities of the EU should be to contribute to improve the efficiency of the Labour inspectorate by advocating for an increased staff number and budget in order to give real means to this institution and to ensure respect of the national labour laws. Furthermore, the EU should also actively promote the enforcement of such laws by the Israeli government so as to guarantee wider protection systems for the Palestinian citizens of Israel. Hence, through the Twinning programme, a reform of the judiciary system could also represent an alternative, which would have a greater impact on discrimination than the EEOC project. Such kind of reform has been implemented through a Twinning project launched in the Republic of Serbia in 2013, with the objective of “supporting the advancement of human rights and zero tolerance to discrimination”.<sup>5</sup> In this initiative, increasing the capacity of the judiciary in implementing anti-discrimination legislation has been the first action to achieve the project purpose, with a total budget of 1,200,000 €, for a three-year long plan.<sup>6</sup> Such projects could also represent a solution for an increased collaboration and a legislative adaptation between Israel and the European Union.

Therefore, even though the EEOC (Equal Employment Opportunity Commission) has already been at the centre of a twinning project, it would be necessary for the EU to adjust its strategic approach in order to improve the efficiency of this core commission.<sup>7</sup> As researcher Talya Steiner recommends, the EEOC work would be more impactful if the commission recruited employers as active partners.<sup>8</sup> This means they could bring a new perception of how to lift the barriers that prevent Palestinian Israelis from achieving equal participation to the labour market. The EU, through a twinning project, should propose its assistance in this transition.

### **EIDHR**

Regarding the EIDHR, it is central that the projects funded through the EIDHR in Israel should directly target the labour market and, in particular, try to solve the issue of the discriminations suffered by the Palestinian citizens of

---

5 EU-Republic of Serbia Twinning project fiche, « Support to the advancement of human rights and zero tolerance to discrimination », 2015.

6 Ibid.

7 Twinning project, Israeli Equal Employment Opportunities Commission (Ministry of Labour, Welfare and Social Affairs) and the Northern Ireland Equality Commission, 2008.

8 Steiner Talya, *Combating Discrimination against Arabs in the Israeli Workforce*, Arab Society in Israel, 2013, available at <https://en.idi.org.il/publications/6759>.

Israel. In this sense, the fact that the EIDHR provides grants exclusively in favour of civil society actors, such as local associations, represents another major problem. Indeed, these actors, despite having the clear merit of promoting and advocating for the rights of the Palestinians within the Israeli society, do not have a central role in the labour market and therefore do not seem able to address the problem of fighting discriminations. Consequently, the EU should reform the beneficiaries of the grants by including all the companies and the firms which show enthusiasm and willingness to embrace and enact non-discriminatory policies and to guarantee the fundamental principle of equality. In particular, a pattern of awards and facilities should be provided by the European Union for those firms which will promote social inclusion and implement internal programmes to fight discrimination. As stated above, this is not only the introduction of vocational training courses, but also the establishment of quotas for the Palestinians at all levels of the economic process of the firm that would be a decisive element for the allocation of European funds. As a consequence, the firms encouraged to enact inclusive policies would play a key role in the inclusion of the Palestinians in the Israeli labour market and, therefore, would help tear down the barriers in the Israeli society.

In 2016, the EU and Jordan concluded an agreement, the “compact”, included in the Association Agreement to promote a better inclusion of the Syrian Refugees in the Jordan society. While it simplifies the procedure by which Jordan provides working permit to Syrian refugees, it facilitates Jordanian exportations to the EU, encourages investment increases concessional financing by the European banks.<sup>9</sup> On this model, the EU should implement lower custom rates or better access to the European market to the Israeli firms which contribute to the integration of the Palestinian citizens in the Israeli labour market.

Furthermore, in 2017, in the context of these monitoring activities the European Commission published a mid-term external evaluation of the first year of EIDHR implementation. The document stated the effectiveness and the “increasingly efficient” nature of the EIDHR and also the fact there is no need to modify and reform the instrument. However, these positive conclusions may rely on an excessively optimistic analysis presenting a range of methodological issues.

First, it seems that the mere level of activities started within the framework of the EIDHR is already taken as an indicator of success regardless of their contribution to promote democracy and human rights. Then, it also can be affirmed that the evaluation process lacked independency and credibility since over half of the “external stakeholders” consulted were funded by the EU and even the stakeholders from the European Parliament that have been interviewed came almost all from the same political group.<sup>10</sup> Most importantly for the purposes of this paper, also all these stakeholders came from organizations that have received EIDHR funding.<sup>11</sup> Hence, the civil society representatives that haven’t received any funding, and whose opinion could have been utterly useful, have not been consulted. At the same manner, since all other stakeholders interviewed were European or Member States’ delegates,<sup>12</sup> the EIDHR mid-term evaluation has not been able to report the opinion of all the parties involved and, in this sense, turned out to be partial and probably not strictly adherent to the truth. Hence, reform of such mechanism is highly desirable.

## **NDICI**

Finally, it is also crucial to remember that, through the Neighbourhood Development and International Cooperation Instrument (NDICI), adopted in 2018, the European Commission is proposing to integrate the financing of all its

---

<sup>9</sup> EU - Jordan Partnership, The Compact, 2016, available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/jordan-compact.pdf>

<sup>10</sup> Three out of the four stakeholders consulted were affiliated with the Greens/EFA (MEP Barbara Lochbihler; her assistant, Anne-Sophie Maier; and Raphael Fisera, a human rights and foreign affairs advisor to the Greens/EFA group).

<sup>11</sup> The NGOs Democracy and Workers’ Rights Center in Palestine, HaMoked, Breaking the Silence, Ir Amim, Adalah and Hotline for Refugees and Migrants.

<sup>12</sup> With the exception of the Israeli Ministry of Justice and USAID.

external action instruments<sup>13</sup> in a new simplified structure that would let the EU act in a more effective way to achieve its goals. Furthermore, the EU, given the serious challenges posed by the current pandemic crisis, has already approved a targeted amendment to the NDICI in order to increase its budget and, hence, to better support the partners of the EU in their struggle to fight and recover from the impact of the COVID-19.<sup>14</sup>

It is clear how the restrictions caused by the pandemic and the consequent severe economic depression will further hamper the integration of the Palestinian citizens of Israel in the national labour market. Still, according to what the EU High Representative Joseph Borrell said after a meeting of EU Foreign Affairs ministers held on the 21<sup>st</sup> of September 2020, the EU's ambition to strengthen multilateral cooperation "to the highest possible level" will not be stopped by the coronavirus. In this sense, the NDICI will be fundamental in implementing European main concerns and to increase the effectiveness and visibility of EU's external policies.<sup>15</sup> As a consequence, such financial tool, with a now even a stronger budget of €96.4 bn, will be the main European instrument to address the discrimination of Palestinians in the Israeli labour market.

Following this, the EU should further increase the funds allocated to human rights and democracy activities in order to combat discrimination in a more effective way. Accordingly, the NDICI will have to focus its efforts mainly on the integration of the Palestinian community by encouraging firms and companies to include the Palestinian citizens of Israel in all the economic process. In this sense, with a substantial budget, the NDICI will be able to strengthen public and private infrastructure and hence promote job creation.

Next, and in light of the challenges posed by both the coronavirus crisis and the climate change, it will be fundamental not only to act promptly and bravely with an ambitious funding plan but also to require the beneficiaries of the funds to comply with climate and employment quota targets. This would guarantee both an inclusive and sustainable growth and, importantly, a decent employment.

Finally, since the NDICI already provides a system that allocates a 10% of the funds to reward progress in democracy, human rights, cooperation on migration, economic governance and reforms, it will be crucial – in order to further encourage firms to hire people from the Palestinian community – to guarantee the same reward also to those companies that decide to fight the discrimination against the Palestinian citizens of Israel. In any case, the EU should also propose the suspension of assistance in case of human right violations or non-compliance with the agreed conditions.

More generally, the EU, by all diplomatic ways, should actively promote the enforcement of such laws by the Israeli government so as to guarantee wider protection systems for the Palestinian citizens of Israel. Lastly, it will be crucial to keep in mind that transparency and dialogue should be the cornerstones of any project enacted by the

<sup>13</sup> Namely, the European Development Fund (EDF), the European Neighbourhood Instrument (ENI), Development Cooperation Instrument (DCI), European Instrument for Democracy and Human Rights (EIDHR), Instrument contributing to Stability and Peace (IcSP), Partnership instrument for cooperation with third countries (PI), Guarantee Fund for External Actions.

See Proposal for a Regulation of the European Parliament and of the Council, establishing the Neighbourhood, Development and International Cooperation Instrument (COM/2018/460 final).

<sup>14</sup> European Commission, The EU budget powering the recovery plan for Europe, May 2020 (COM/2020/442 final), available at [https://ec.europa.eu/info/sites/info/files/about\\_the\\_european\\_commission/eu\\_budget/1\\_en\\_act\\_part1\\_v9.pdf](https://ec.europa.eu/info/sites/info/files/about_the_european_commission/eu_budget/1_en_act_part1_v9.pdf).

See also: "On 27 May 2020, the Commission published a revised MFF proposal, increasing the budget for the NDICI from €89.2 to €96.4 bn (in current prices). Included in this increase are €11.4 billion from the emergency European Recovery Instrument ('Next Generation EU'), to be used to support the EU's partners "in their efforts to fight and recover from the impact of the pandemic"."

European Parliament, Legislative Train schedule, available at <https://www.europarl.europa.eu/legislative-train/theme-foreign-affairs-afet/file-mff-ndici>.

<sup>15</sup> EU Budget for the Future - The Neighbourhood, Development and International Cooperation Instrument, 02 June 2020.

European Union. For instance, at the moment, it is not possible to have access both to the twinning project fiche and to the results achieved by it and this should be corrected.

To conclude, it is pivotal to remember that Israel and the EU will be called, in the next few months, to outline, in the framework of the new EU Southern neighborhood strategy, their new partnership priorities. These priorities will have to provide the EU the tools, both from an economic and a political point of view, to effectively address the issue of discrimination in Israel, in order to guarantee to the Palestinian citizens of Israel equal rights and fair participation to the Israeli labour market.