

# Rights, Immigration and Social Cohesion in Spain

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## ABSTRACT

This article examines the main changes to immigrant integration policy in Spain following the impact of the economic crisis. To this end, it analyzes the way legal immigration continues to be strictly bound by the labor market. The fact that demand for foreign labor has fallen makes it difficult to reconcile immigration with inclusion. One of the clearest indicators that integration is not a priority in Spain is the significant restriction of immigrants' rights, particularly in relation to health-care. This situation underlines the compelling need to develop a multidimensional policy that considers those in Spain with a migrant background as individuals with rights. Such a policy must introduce plans and measures that support social cohesion from a perspective of fundamental legal equality.

*Keywords:* 1. legal status, 2. integration, 3. equality, 4. Spain, 5. European Union.

## Derechos, inmigración y cohesión social en España

## RESUMEN

Este artículo tiene como objetivo abordar las principales modificaciones de la política de integración de los inmigrantes en España tras el impacto de la crisis económica. Para ello se evidencia la difícil compatibilidad entre la inmigración legal, ligada al mercado de trabajo, que no demanda mano de obra extranjera, y la inclusión. Una de las principales evidencias de que la integración no es una prioridad en España es la significativa restricción de derechos de los inmigrantes, en especial en relación con la asistencia sanitaria. Todo ello obliga, como conclusión, a insistir en la necesidad de articular una política multidimensional que tome en consideración a la población de origen migrante presente en territorio español como sujetos de derechos, y se concrete en medidas que apuesten por la cohesión social desde la igualdad jurídica.

*Palabras clave:* 1. categoría legal, 2. integración, 3. igualdad, 4. España, 5. Unión Europea.

## *Introduction*<sup>1</sup>

Of all the social phenomena that have contributed most to the transformation of Spain in recent decades, migration flows have been the most significant. In fact, the percentage of foreigners living in Spain in 2011 stood at approximately 12.1 percent (over 5.7 million) of the registered population, a similar proportion to that of other European countries that have traditionally been receivers of immigrants. Spain also became the European Union (EU-27) member state with the second highest number of foreign residents, after Germany (Moreno and Bruquetas, 2011:13). Since 2012, these figures seem to have leveled out while the number of registered foreigners has fallen for the first time in fifteen years. It is therefore likely that the immigrant population will continue to decline, while the Spanish once again embark on migration routes themselves.

Since late 2007, as a result of the economic crisis, together with rising unemployment and fiscal adjustment, the debate has intensified on the needs and opportunities created by both the entry of third country nationals and the residential status of those already living in Spain. The recession has completely changed the landscape of the Spanish labor market while providing the perfect excuse for all kinds of cutbacks. Since the beginning of the crisis, concerns about the increasingly difficult economic situation have led to a social situation in which anti-immigration sentiments have taken root, particularly in the most vulnerable segment of the native population (Cea and Valles, 2013). At the same time, the factors causing poverty and social exclusion have hit immigrants, especially illegal ones, particularly hard.

In this context, the requirement of legal immigration as the virtually exclusive pillar of Spanish immigration policy, in line with Euro-

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pean guidelines, has strengthened the link between immigrants and the labor market as the means of attaining and retaining legal status, and thus becoming entitled to rights. In parallel, an already weak integration policy has been sidelined. One is therefore witnessing what could be called the destruction of a standardization model that had focused on the inclusion of the immigrant population, the seeds of which had been planted, through small achievements, in the years leading up to the economic crisis. This foreign labor, which can be seen from a Marxist perspective as a *reserve army* constituting an essential component of the social mechanism of capitalism, now seems expendable in a recession that has hit hard, even among the Spanish-born population.

The key issue in this context is that the numbers of immigrants (and their offspring) have exceeded the projections of the *de facto* powers. They will remain in Spain, and, as was made apparent by the integration projects, which now seem to have been consigned to oblivion, formal and material equality measures will be required to encourage social cohesion.

This article seeks to highlight the close link between legality and the labor market, which has caused the exclusion of certain categories of immigrants against a backdrop of crisis. At the same time, it shows that the implementation of unequal integration measures has failed to deliver the expected outcomes. Moreover, legal restrictions on specific social rights such as the right to healthcare have not contributed to promoting integration. Without examining the legal status of migrants in depth, which would go beyond the scope of this analysis, the aim is to draw attention to the ways in which rights are curtailed by considering the social impact of current legislation. Based on a methodology that goes from the general to the particular in order to allow a critical and constructive, *lege ferenda* analysis, this legal-political study underpins the need to foster material equality through public policy, including legislation, particularly in the field of migrant integration.

### *Labor Market, Immigration and Recession: A Difficult Relationship*

A succession of laws, overlapping continuously and questionably, with partial exceptions, different regulations, multiple implementing instructions and orders, has become the common legislative strategy for regulating the legal status of immigrants in Spain since *Organic Law 4/2000* and subsequent amendments (*Aliens Act*<sup>2</sup>), (Parlamento Español, 2000; Solanes, 2010a). However, these much debated legal changes have done little to change the basic guidelines of Spanish Aliens' legislation (De Lucas, 2009a; Santolaya, 2009).

The fact that *Organic Law 2/2009* expressly recognized that its objectives included perfecting the system of channelling labor migration flows in a legal and orderly way was nothing new. In this way, it strengthened the link between the capacity for welcoming immigrant workers and labor market needs (De Lucas, 2006; Solanes, 2005).

Through the collective management of hiring in countries of origin, a mechanism introduced by *Organic Law 2/2009*, and the catalogue of hard-to-fill jobs that continues to complement it, the labor market-regularization dialectic has remained unchanged. In this context of economic recession, there is very little scope for the legal entry of new immigrants, or for the extended stay of those who are already in the country, with varying consequences for different groups, such as women (Oso and Parella, 2012). At the policy level, only the well-known exception of reunification remains, which has finally incorporated the traditional demand for reunited family members (spouse and children only, according to regulations) to be able to enter the labor market without needing further administrative authorization.

<sup>2</sup>This is the basic law on foreign nationals in Spain: *Organic Law 4/2000*, of January 11, on the rights and freedoms of foreigners in Spain and their social integration, in the wording approved by *Organic Law 8/2000*, of December 22; *Organic Law 11/2003*, of September 29; *Organic Law 14/2003*, of November 20; *Organic Law 2/2009*, of December 11; *Organic Law 10/2011*, of July 27; and *Royal Decree-Law 16/2012*, of April 22 and its implementation guidelines approved by *Royal Decree 557/2011* of April 20 and *Royal Decree 844/2013*, of October 31; Constitutional Court Ruling of January 31, 2013; *Organic Law 4/2013*, of June 28, and *Organic Law 4/2015*, of March 30 (hereinafter referred to as *Aliens' Act*).

Very few employment proposals were received from the Autonomous Communities. Consequently, and in light of information provided by the Spanish Public Employment Service on the national employment situation, it is not surprising that the collective management of hiring in countries of origin in 2011 and 2012 led to the number of stable jobs being limited to a much narrower range of occupations (Carrasco and García, 2012). The door to legal immigration has practically been shut, since the preferred model continues to be instrumental immigration (De Lucas, 2012:18).

In a deficient labor market, the difficulty of maintaining regularized administrative status prompted the introduction of what are termed return programs for third country nationals under the *Aliens' Act* and its implementation regulations. An examination of assisted voluntary return programs (leaving aside so-called forced returns, a euphemism enshrined in *Directive 2008/115/EC* to refer to cases of expulsion), shows that the various alternative proposals were designed to take the pressure off a labor market that no longer required the same workforce, even though they failed to yield the expected results (Pajares, 2010:118–124). Thus, assisted return in Spain was divided into three types: return on humanitarian grounds (designed for socially vulnerable individuals); assisted return and reintegration (which requires the returnee to find gainful employment in his country of origin) and the Voluntary Return Program, drawn up by the government to offset a cooling economy (which sought to encourage migrants to search for opportunities in other countries through advance payment of the unemployment benefits they had earned in Spain, subject to compliance with legal requirements). The number of returnees has been very low since these programs were first introduced in Spain.

It is plausible to think that the incentives offered by these programs were insufficient to encourage those they targeted. At the same time, although the economic crisis in Spain continues to plague the job market, the Spanish situation is comparatively better than that of the immigrants' countries of origin. Furthermore, major obstacles have been detected in the launching of these pro-

grams, such as the shortage of human and material resources required to implement them and the lack of information on both potential returnees and the circumstances and procedures for assisted voluntary return (EMN, 2009:51–52).

As highlighted by the EMN (2011), Spain is now faced with significant numbers of available immigrant workers, some of whom are unemployed, already residing in the country. The situation is exacerbated by the influx of immigrants via family reunification (La Spina, 2011). Worse still this surplus will not even be seen as a reserve, but as a human workforce that is superfluous to requirements and of little use (De Lucas and Añón, 2013:53).

In addition to these public policies encouraging voluntary return, which are increasingly paralyzed by lack of subsidies, the fact is that the decision to *freely* apply for one of these programs may also simply correspond to the departure of people from Spain to their country of origin or to third countries in search of better opportunities. Alternatively, it may be linked to a more complex issue such as that of their “legal invisibility” due to their failure to meet the legal requirements to reside and/or work in Spain (Rojo, 2010:66).

As well as the difficulties of entering and remaining in Spain in a regularized administrative situation, another key instrument of immigration policy has been recently linked to the tyranny of the labor market. This involves one of the ways of acquiring a residence or work permit through the provisions of Title V of the aforementioned *Royal Decree 557/2011*, on residence in exceptional circumstances: social ties.

Of the various forms of residence in exceptional circumstances, social ties have been one of the most widely used as a standard procedure for acquiring regular status. Among the specifications introduced by *Royal Decree 557/2011* for managing this procedure, one of the most striking features is the way it has been linked to the national employment situation. Thus, Article 124.4 of this regulation states that by Order of the Office of the Prime Minister, on the proposal of the Ministers of the Interior and of Labor and Immigration, and following a report from the Tripar-

tite Labor Commission for Immigration, the national employment situation criterion may be applied to temporary residence permit applications for reasons of social ties. This provision, if enforced, would mean eliminating the most flexible path (in a largely rigid system) to ordinary regularization. The combination of the small number of legal entries available, as mentioned above, and limited access to residence and work permits for those who are in an irregular situation is not, in the author's opinion, the best way to deal with immigration or encourage the influx of regular immigrants.

Another of the disadvantages of acquiring regular administrative status through exceptional circumstances, particularly in cases of not only social, but also work ties, is related to the need to provide documented proof of a continuous stay in Spain, with a minimum of two years for work ties and of three for social ties. By this I mean accreditation of their continuous stay through the municipal register. As had already happened in previous legal reforms, *Organic Law 2/2009* and *Royal Decree 557/2011* have stiffened the regulations for infringements and penalties linked to the municipal register (Solanes, 2010b), to which the Constitutional Court has also granted police access<sup>3</sup>, in ruling *17/2013*, of January 31.

These difficulties in acquiring, and retaining, regular administrative status in Spain are compounded by the traditional discrimination against immigrants in the labor market (Carrasco and García, 2012). This has been fairly significant in recent years, despite the fact that employment is key to their legal status and largely their integration, as discussed below (Calvo, 2013). For example, in its study of discriminatory behavior in Spain, the Council for the Promotion of Equal Treatment and Non-Dis-

<sup>3</sup> *Constitutional Court Ruling 17/2013*, of January 31, which resolved the appeal against unconstitutionality no. 1024-2004, filed by the Counsel of the Basque Parliament against various provisions of *Organic Law 14/2003*, of November 20, amending *Organic Law 4/2000*, of January 11, on the rights and freedoms of foreigners in Spain and their social integration; of *Law 7/1985* of April 2, regulating the bases of local government; of *Law 30/1992* of November 26, the *Public Administration and General Administrative Procedure Law*; and *Law 3/1991*, of January 10, on Unfair Competition.

crimination on the Grounds of Racial or Ethnic Origin (2011), behavior, shows that people of sub-Saharan origin are the group that claims to be most severely discriminated against in the greatest number of situations. Moreover, the areas in which ethnic or racial discrimination occur with the greatest frequency, for all groups, are those related to housing, employment and relations with the police (García, 2013). Likewise, the FRA (2011) notes that although the workplace is where most social discrimination occurs in Spain, neither the public or legal practitioners are familiar with anti-discrimination legislation.

For this reason, ECRI (2011:25) recommended that the Spanish authorities double their efforts to combat discrimination in the workplace, particularly with respect to North African Muslims. This is the group which has been most severely affected by discrimination in the labor market (reasons cited included the fact that respecting the month of Ramadan reduced their capacity to work). While conceding that higher unemployment amongst immigrants is not only attributable to issues related to racial discrimination, but also to the collapse of Spain's economy—particularly in sectors that had traditionally attracted foreign labor, such as construction—the fact that, despite the recession, immigrants are still coming to Spain and that discrimination continues, cannot be ignored. ECRI therefore also recommends that the Spanish authorities ensure that the law is enforced to combat racial discrimination in the workplace.

Looking beyond the figures behind these new migratory movements, an analysis of immigrants already in Spain, the potential recipients of integration policies, reveals the devastating impact of the crisis they are suffering. As noted by Colectivo Ioé, in a report published for the International Organization for Migration (IOM), there is a need for greater awareness of the situation of this group, which is also forced to endure the negative perceptions of the Spanish, who regard them as a threat to their jobs.

The data in this report provides a perfect analysis of the state of affairs on different levels and support the urgent need to introduce cross-cutting integration measures. For example, the study



indicates that the native population is divided into three groups in their attitudes towards immigrants: those who reject immigration (who account for 37 percent, although this percentage has not increased much as a result of the crisis); those who tolerate it (33 percent); and those who are undecided (30 percent), who identify more with rejection. These data show a significant increase in the number of nationals who agree with the expulsion of irregular immigrants (from 12 percent in 2007 to 20 percent in 2010), who call for the return of those who have committed crimes to their countries of origin (from 68 to 73 percent) and even the return of the long-term unemployed (from 39 to 43 percent), (Colectivo Ioé, 2012:14). These data are indicative of the plight of immigrants, or rather the difficulty of reconciling the labor market and immigration (even for those who have already settled in the country).

Between 2008 and 2011, 2.2 million jobs were lost. According to the aforementioned report, while 11.5 percent of Spanish workers lost their jobs, among the immigrant population, 15 percent from Latin America and from the rest of Europe were affected, as were 21 percent of Africans (Colectivo Ioé, 2012:3). The crisis has increased the level of severe poverty. In view of this situation, policies and measures aimed at promoting integration are becoming both urgent and vital.

*Integration as a Stabilizing Factor for Immigration:  
A Poorly Defined Goal*

If one examines the issue of integration as a second line of Spanish immigration policy, and looks at the multiple aspects to be considered in the development of an integration policy for and with immigrants (Cachón, 2008), legal status is particularly important (Solanes, 2011). There is a need to move away from the consequences of being tied to the labor market, as noted above, and towards a second level where equality is indispensable. Legal conditions ascribed to aliens under the *Aliens' Act* according to their permit type are undoubtedly a destabilizing factor.

This paper will therefore focus on what integration means from a legal perspective, beginning with the consideration that this is only possible on the basis of the equality of freedoms and responsibilities, since there can be no integration without rights, rather than vice versa (De Lucas and Solanes, 2009).

Although *Organic Law 4/2000* already referred, in its title, to the issue of integration from a social perspective, none of the articles addressed the subject until the most recent reform in *Organic Law 2/2009*, as seen below. With the successive reforms of the *Aliens Act*, steps have been outlined, with regard to rights, on the basis of a regularized administrative situation as well as municipal registration.

The presence of immigrants in Spain requires adaptation, inclusion and standardization in many areas, including legal, administrative and social, in which the premises are not always clear. The requirements of the integration process need to be established, developing specific proposals around what we might consider “social indicators for managing plural coexistence in everyday life” (De Lucas, 2006:13). These translate into rights such as health, education, housing or work (Añón, 2010), which, in this escalating destruction of an alleged integration model, are progressively being reduced almost to the point of annihilation.

From the immigrants’ perspective, when questioning their integration it is not enough to ask them whether or not they feel adapted to the culture and customs of the host country; immigration is necessary, not only in the civic but in other dimensions too, including the political (De Lucas, 2012:36).

Integration does indeed address sensitive issues such as cultural and religious diversity, which bring burning, highly sensitive issues to the forefront of social debate, such as the use of the full-body veil (burqa), the Muslim headscarf or religious education in the public sphere (Solanes, 2013). In fact, the Spanish Supreme Court has overturned a ban on wearing burqas, imposed by the town of Lleida, a ruling based on the fundamental argument that a town council does not have the power to limit a fundamental right such as religious freedom.<sup>4</sup> This is the context in which is-

<sup>4</sup>Supreme Court Ruling, February 6, 2013, Chamber for Administrative Litigation, section seven. Cessation Appeal No. 4118/2011.

sues that traditionally generate controversy in pluralistic societies are found, even at the intrastate level. For example, language rights must be addressed if the goal is integration rather than assimilation (Cachón, 2011). It is precisely for this reason that the role of law is critical in establishing the boundaries of what is acceptable, allowed, required or forbidden, as well as guaranteeing equality in the eyes of the law for all those overit governs.

There must be greater insistence on the idea that integration is not necessarily strictly cultural, but rather social and, in particular, legal and political in terms of belonging (De Lucas, 2009b). This is where the notion of citizenship comes into play, one that is not just a fact of belonging to the organization that is the state, but that also determines legal status in terms of content, establishing citizens' rights and responsibilities. These must include democratic rights that entitle individuals to consciously change their material and legal situation, position or status. If certain individuals are denied these rights, their ability to secure equal treatment and influence decision-making is circumscribed, thus closing the circle of exclusion (Habermas, 2000:626). Full legal status is the starting point of legal integration, in other words, what makes it possible.

Rights and responsibilities common to all under the rule of law represent the purest contractual distillation of the social pact; they make the development of specific legal obligations for certain groups, in addition to those already provided for by the legal system, unnecessary (which is debatable, even if consideration is given to international provisions, coupled with the impossibility of making distinctions based on them). Limits on the rule of law are consistent: and involve respect for the Constitution and the law, on the part of nationals, citizens, EU nationals and immigrants, because they are (or rather should be) common to all individuals within a system (Aja, 2012). Otherwise, certain people are asked to contribute more than others (De Lucas, 2006:37).

Another fact that cannot be overlooked is that the migration phenomenon is linked to the very essence of integration. If we attempt to dissociate the terms 'immigration' and 'integration',

then we are no longer speaking of the former from a purportedly theoretical approach that develops it from an economic, labor dimension, but rather a legal one. We are no longer referring to a workforce being *claimed* by a formal job market that is in a recession or expanding, but to other realities that run parallel to migration flows (Cachón, 2009).

That is the question: how to reconcile the goal of integration, a process central to the very idea of immigration, with a reality in which legal status is unequal and irregular immigration is reaching considerable proportions, directly affecting both the Spanish democratic sphere and immigrants, whose socially inferior status has made them particularly vulnerable to the economic crisis (Izquierdo, 2008; Colectivo Ioé, 2012).

In the Spanish case, it is important to bear in mind that competence over integration policy is shared by the state, which lays down basic legislation, and autonomous communities, which are responsible for its development and implementation. It is therefore necessary to analyze both national-level legislative measures in the field of integration and some of the most significant ones adopted at the regional level.

Along these lines, one positive development is the fact that, in *Organic Law 2/2009*, Spanish legislation has devoted an article to the integration of immigrants for the first time. The article specifies that this will be a fundamental principle in the development of Spanish immigration policy, taking into account the EU acquis on migration and international protection, which seeks to achieve a framework for the coexistence of identities and cultures. Thus Paragraph 2 of Article 2a states that all government authorities will exercise their powers related to immigration in respect of the following principles: coordination with the policies defined by the European Union; labor migration management based on the needs of the national employment situation; and social integration of immigrants through horizontal policies designed for all citizens.

A striking aspect of Spanish policy is the denial of the existence of the “integration contract” for immigrants (exclusive and excluding) as a legal obligation in Spain, since the general provisions constitute the legal reference framework, and policies must

be cross-cutting. *Organic Law 2/2009* does not stipulate any kind of additional integration contract for immigrants.

Thus, Spain distances itself from the tendency of some countries to introduce legally binding integration programs into their respective national legislations, taking a large step backwards in terms of recognizing diversity (Martiniello, 2007). This does not mean that the debate on an integration deficit coinciding with the crisis and the idea of the declining inclusive capacity of the welfare state has been resolved; on the contrary it continues to gain momentum. The concept of integration linked to a contract is, in this author's opinion, extremely limited and in no way reflects the two-way process proposed by the European Union insofar as the host society remains impervious to it (Sassen, 2013)<sup>5</sup>.

Indeed, the main recipients of legally binding integration programs are newly arrived adults, who have an extremely rudimentary knowledge of the host country's language, followed by those who wish to obtain permanent residence, but not all foreigners. Here we observe a link related to integration and poverty, since economic status and dependence are among the factors given the greatest consideration when determining whether or not the immigrant shall be subject to the integration programs (Carrera, 2006). In contrast, unemployment (with negligible income) and dependence on the resources of the welfare state can be interpreted as the immigrant's failure to integrate.

In this context, the Spanish approach defined by *Organic Law 2/2009* is the correct option. The provisions laid down in Article 2b link integration to training activities, knowledge and respect for the statutory and constitutional values of Spain, the values of the European Union, human rights, civil liberties, democracy,

<sup>5</sup>In 2000, COM 757 final, of November 22, Communication from the Commission to the Council and the European Parliament on a Community immigration policy, established that integration is "a two-way process based on the mutual rights and obligations of legal third country nationals and the host society, which provides for the full participation of immigrants". Since then, this concept has steadily been consolidated in instruments such as COM (2012) 250 final of May 30 2012 and COM (2013) 422 final of June 17 2013.

tolerance and equality between women and men, entry into the education system, the learning of all official languages, and access to employment.

Since these are the basic pillars of state immigration policy, they must be developed on the basis of cooperation and coordination. This must also be the case in the Autonomous Communities. The gradual allocation of powers to them in the area of immigration in the coming years is a factor that cannot be overlooked. Indeed, they play a key role in the documents accrediting immigrants' integration. *Royal Decree 557/2011* establishes that it is possible to submit four types of report, which come under the competence of the Autonomous Communities, although it is possible to establish that two of them (social ties and adequate housing) were issued by the Local Authorities. These reports come under the following headings: effort to integrate, social ties, adequate housing and children's schooling.

The first of these reports, effort to integrate, will be issued by the Autonomous Community corresponding to the foreigners' place of residence, at their request, for the purpose of the renewal of temporary non-lucrative residence permits, renewal of temporary residence permits for family regrouping, and renewal of temporary residence and workpermits for those who are employed or self-employed. This report is not compulsory, but may be submitted by the foreigner if compliance with a legal requirement for renewal of the permit may not otherwise be proven, and will be taken into account by the immigration office in its assessment of the case. The report will include certification, where applicable, of the foreigner's active participation in the aforementioned training activities, detailing the time spent on the specified areas of training. The report will take into account the training activities organized either by duly accredited private entities or by public entities.

A positive assessment of the foreigner's effort to integrate, accredited by a positive report from the Autonomous Community in which he resides in keeping with the abovementioned administrative procedures, must be seen as an additional factor in the possibility of permit renewal when submitted by the foreigner or

when he fails to satisfy the requirements for this purpose, but not as an exclusionary requirement.

The report required in the case of social ties<sup>6</sup> should be interpreted along the same lines. In this case, regulations require family ties with other foreign residents or, failing this, submission of a social ties report attesting social integration. This report is issued by the Autonomous Community of his usual place of residence or by his city of residence if stipulated by the Autonomous Community. The nature of these reports, in essence, does not allow the provisions of Spanish legislation to be tied to the requirements of an exclusive binding integration contract for immigrants.

This non-consideration of specific legal obligations related to the integration of immigrants appears to be in line with the various regional and state measures implemented to date to encourage integration. These are the Autonomous Community integration plans that have common areas of action such as reception, education, healthcare, employment, training, housing, social services, awareness raising, development cooperation and legal assistance, and basic approaches. Among these areas, Martínez de Lizarrondo (2009:58–61) highlights the aim of providing for the population without emphasis on the criteria for legal permanence, the identification of integration policies with multidimensional policies, and the application of the principle of standardization and universality as a guiding criterion for all social policies, avoiding the creation of specific resources that might lead to the establishment of a parallel network, while not rejecting the possibility of coordinating specialized services to facilitate access to standardized services for the entire population. However, the economic recession and its major impact on the funding sources for these plans have reduced the effect of recent achievements.

Something similar is happening on a national level. Nationwide, the 2007-2010 *Strategic Plan for Citizenship and Integration*

<sup>6</sup> DGI/SGRJ/3/2011 Instruction on implementing regulations of *Organic Law 4/2000* on the rights and freedoms of foreigners in Spain and their social integration, in relation to their social ties report, of June 28 2011.

(PECI I) was designed for the whole population without demanding particular obligations from the immigrant population. On the contrary, the three principles on which the plan was based (equality, citizenship and interculturalism) were intended to establish a policy framework to guide the actions of society on the whole in the two-way process of mutual accommodation that integration should entail (Cachón, 2008:223–224). The main objective of its successor, the *2011-2014 Strategic Plan for Citizenship and Integration* (passed on September 23, 2011) is to strengthen social cohesion, although now in a new migration context characterized by reduced inflows of immigrants. Another of its objectives is to strengthen both the tools and policies of integration, such as public and participatory services, to guarantee access to all citizens under equal conditions. Practical implementation of these measures has been nonexistent and instead of promoting integration, the main pillars of the rule of law have largely begun to be dismantled, the first step being the drastic and significant reduction of immigrants' rights.

*The Curtailment of Social Rights as a Paradigm of the Crisis:  
Healthcare Denial*

Integration policy has suffered a major setback in the form of curtailed rights. This has undermined the successes achieved in the years prior to the impact of the economic recession, which has been used as an excuse for more repressive restrictions (Vela, 2013). Indeed, if, as noted above, respect for and the guarantee of rights constitute an acid test for integration policies, attacking their most representative indicator, namely social rights, is proof of a regression in the normalization of the migrant population in Spain. A case in point is healthcare.

The amendment introduced by *Royal Decree-Law 16/2012*, of 20 April, on urgent measures to ensure the sustainability of the National Health System and improve the quality and safety of their services, modified Article 12 of the *Aliens Act*, incorporating a rollback in the area of health care provision, denying this right to illegal aliens.



Thus the provision that recognized a general entitlement to this right for foreigners in Spain, regardless of their administrative situation, yet which in practical terms required municipal registration, has been removed. The new regulation refers to current healthcare legislation, particularly to *Law 16/2003* on Cohesion and Quality in the National Health System, which has itself been amended in Article 3, by the aforementioned *Royal Decree*. The reference to “all Spanish citizens and foreigners in Spain under the terms laid down in Article 12 of Organic Law 4/2000”, has been replaced by the delivery of healthcare to foreigners who are not resident in Spain only in special situations: in the event of emergency due to serious illness or accident up to patient discharge, and care during pregnancy, childbirth and postpartum. This restriction does not apply to foreigners under the age of eighteen, who receive healthcare under the same conditions as the Spanish.

Obviously the reform of *Law 16/2003* is more comprehensive than the amendment now referred to, with provisions that have had a major social impact, such as copayment. However, the focus of this study is policy innovations of particular significance in the area of immigration. That which concerns Article 3 is linked to others that are also contemplated in the aforementioned *Royal Decree Law*, introducing new provisions, such as Article 8a regulating the basic common services portfolio of the National Health System, Article 8b regulating the supplementary common portfolio of the National Health System, and Article 8c regulating the common portfolio of ancillary services of the National Health System.

In other words the argument, in this case, for the extraordinary and urgent need for government approval of this *Royal Decree-Law* is debatable. As set out in the explanatory statement of the *Royal Decree-Law*, one of the main justifications for the amendment is the need to regulate the status of those entitled to healthcare coverage in order to prevent some of the abusive situations that are taking place and weakening the National Health System. These include healthcare provision to people who are already covered, either by institutions in their home countries, or by private insurance.

The fact that the National Health System is also providing this service has contributed heavily to its erosion by depleting its financial capacity and preventing the improvement of its services.

With respect to the right to health and healthcare, the Court of Auditors (2012:39) highlights shortcomings in administrative management and dysfunction in various administrative bodies, which have led to the failure of European citizens to claim and be billed for healthcare services provided in Spain. The case of the United Kingdom is a highly significant example in understanding the kind of abuse referred to by the report. As noted by the Court of Auditors, in this case, and based on estimations rather than the total sum billed for healthcare services up to December 31, 2008, Spain had a yearly shortfall of at least 20 million euros in 2007 and 2008.

Moreover, if we examine the way the right to health is formulated in the Spanish Constitution, the doctrine of the Constitutional Court on the fundamental rights of foreigners from ruling 236/2007 onwards, and the limitations of legal arrangements in dealing with fundamental rights, then it is extremely debatable whether a measure as regressive as the aforementioned *Royal Decree-Law* relating to healthcare might stand up to the most basic filters of the constitutional mandate. Restricting healthcare coverage for people in an irregular administrative situation, except in the special situations mentioned above, constitutes a violation of the fundamental rights enshrined in international treaties as well as constitutional rights, overstepping the bounds of what may be included in changes to the law (Grup de Treball Royal Decree-Law 16/2012, Comissió d'Estrangeria ICAB, 2012).

This provision is completed by *Royal Decree 1192/2012*, of August 3, which establishes the status of insured persons and their beneficiaries. It insists on restricting the right to health and healthcare, in line with legislation, to Spanish citizens and foreign residents alone, and considers, literally and quite surprisingly given its contradiction in terms, that it is thereby “establishing the universality of the right to healthcare in Spain” (Parlamento Español, 2012). This provision has been modified by *Royal Decree 576/2013*, of July

26 (Parlamento Español, 2013), establishing the basic requirements of the special agreement on access to healthcare for people who are neither insured nor beneficiaries of the National Health System, further developed through the Resolution of September 30, 2014, of the National Institute of Health Management, approving the model subscription to the special agreement regulated by *Order SSI/1475/2014*, of July 29.

Underlying both provisions of 2012 there appears to be a widespread idea that the health system is exclusively supported by the Social Security contributions of workers and businesses, although this belief is false. The financing system for public health services is established within the financial model of the Autonomous Communities and funded by taxes (such as Value Added Tax, Income Tax and excise taxes) paid by all members of the public, as well as of course foreigners, regardless of their immigration status when, for example, they consume any product or service.

With this regulatory framework, healthcare provision, regardless of the person's administrative status (although municipal registration is a permanent requirement) has been replaced by a health service that excludes a whole set of immigrants from a fundamental right exclusively on the grounds of their irregular status. Moreover, it has opened the door to discretionary practices and even extreme arbitrariness as evinced by healthcare provision agreements for those who are neither insured parties nor beneficiaries of the National Health System. Although the final details of these agreements have yet to be settled, the various proposals being considered are discriminatory. It is claimed that these agreements do not just target irregular immigrants (who have been on the municipal registry for over a year), but also certain high-income people, but it is obvious that the impact is very different in each case. In the case of immigrants, the proposed agreements will be confined to basic healthcare provision, excluding additional and complementary services, involving cost projections equivalent to paying for private insurance. The likely outcome is that a vast majority of irregular immigrants will be unable to benefit from these agreements, and medical assistance will therefore

be exclusively limited to emergency services (Forum for the Social Integration of Immigrants, 2012a; Defensor del Pueblo, 2013).

Since the entry into force of the aforementioned cuts, various Autonomous Communities have continued to provide some form of healthcare to irregular immigrants, while doctors, among others, have objected to the introduction of these measures. This process is supposedly underscored by a discourse of necessary, and in any case selective, austerity. It sheds light on the destruction of the intended integration model based on equal rights, which were never consolidated.

Thus, in Spain, citizens are drawing dangerously close to what has happened in other decentralized systems, in which, as a result of the distribution of healthcare responsibilities between the central government, regions and local authorities, there is a range of administrative practices in the delivery of healthcare to irregular immigrants based on their place of residence. The ambiguity of the regulations leads to different interpretations on the part of public officials and doctors. Against this background, Catholic and Protestant Churches and NGOs provide additional or complementary healthcare to irregular immigrants, and in some states, these are the only healthcare services available to this particular group (González, 2012:6).

The practical implications of this type of policy measure are extremely diverse (Forum for the Social Integration of Immigrants, 2012b). They include the fact that (with the exception of children, emergencies and pregnancies) there is no longer public health coverage for people with an irregular administrative status, which means, among other issues, a broken link in the prevention and early detection of diseases, even in cases that may have an impact on public health, and the interruption of ongoing treatments for chronic diseases (which may be as serious as antiretroviral treatment, radiotherapy or chemotherapy); and the neglect of particularly vulnerable groups, such as women who are victims of gender violence and trafficking, for whom the activation of protocols needed for their protection will be extremely complicated. In this last case, various organizations have stressed the need to decouple

the prosecution of gender violence from immigration control, and to eliminate legal, structural and practical barriers that prevent irregular immigrants' access to social services, including healthcare, to which they should be entitled (PICUM, 2012:144).

From the perspective of an intended integration model and related policies which, as noted above, were designed from a cross-cutting approach to avoid the stigmatization of immigrants, the provisions of the legal reform will have a major "disintegrating" sociological impact. Indeed, such measures project stereotypes, or "phobotypes", to Spanish society as a whole, of immigrants who abuse the Spanish public health system or benefit from so-called "health tourism". In reality, however, scientific studies and research have adopted various approaches to demonstrate that the migrant population in Spain is young and does not transmit diseases from their countries and instead that their vulnerability increases due to living standards, work and other factors in the receiving states (Agudelo-Suárez *et al.*, 2010).

Those who support this kind of restriction often use comparisons with other European states to demonstrate that the laws designed to limit the access of irregular immigrants to public healthcare are already in place there. With a line of thinking echoing the theory of the tyranny of the majority, they note that the regulation that has now been incorporated into the Spanish legal system is now aligned with those existing in other EU countries.

Most European Union states have introduced some form of limitation on irregular immigrants' access to public healthcare. There is no common standard that defines and guarantees healthcare for these people, nor do they have access to publicly-funded medical assistance. Many elements have been taken into account in drawing up various policies related to the right to health: the scale and composition of irregular immigration; regulating access to health for the whole population; the distribution of powers between central and regional governments; the availability of resources; the importance of NGOs and churches in the debate; and the existence of health tourism or migration (González, 2012:2). Many of these elements have also been used as arguments to justify the reform of the Spanish legal system.

The common ground in the various approaches throughout Europe is medical assistance in the event of emergencies (although delivery is not always the same in the various national healthcare services) and children (age brackets vary), which is often the same as that provided for Spanish citizens. The arguments underpinning the measures are also reiterative: fighting against irregular immigration while reducing the cost of the public health system.

However, in the case of Spain, there is a significant difference compared to other European states, which cannot be ignored: the regressive nature of the new legal measures and their incompatibility with the constitutional framework. Thus various basic rights are affected by the new provisions relating to healthcare. First of all, there is the legal guarantee enshrined in Article 9.3 of the Spanish Constitution establishing the non-retroactivity of provisions restricting individual rights. It is also debatable whether Article 53.1 of the Constitution, which requires the law to respect essential content when regulating rights and freedoms, has been enforced. Other rights, such as personal dignity (Article 10.1 of the Constitution) or health protection (Article 43.1 of the Constitution), and responsibilities, such as the supervision of the public health service (Article 43.2 of the Constitution), have also been affected (Méndez and Sagarra, 2012:13–14).

As noted, in the short term these measures are already having a significant impact on part of the immigrant population. However, the scale of the long-term effects is still unpredictable. The principle of fairness that had hitherto guided Spanish healthcare policies has undoubtedly been violated. Instead, inequalities have been established between different population groups, increasing deprivation and social disadvantage for individuals who are subject to immigration law.

### *Some Final Remarks*

Various conclusions may be drawn from the topics that have been tackled. The first concerns the recommendation regarding the development of regular immigration as an avenue for integration and diversity management in Spain. It is essential to stress the

need for overall labor market management that does not lose sight of the importance of migration flows and/or sacrifice any rights.

The short-term development of Spanish immigration policy appears to be focusing more on highly qualified immigrants, which will push the massive influx of the previous decades into the background, although it will be unable to eliminate it. The shift towards selective immigration is the European Union's chosen approach for the coming years (Sassen, 2013). To date, no method has been introduced on a European level to assess the lack of skilled labor in the various member states, or to determine whether third-country nationals have the skills and qualifications required to meet this shortfall. In any case, there is a shared, urgent need to address these deficiencies throughout the EU. Efficient immigration management and the promotion of both effective participation and inclusion in the labor market are essential to achieve the employment targets set in the Europe 2020 Strategy (European Commission, 2011).

If Spain is to narrow the gap between labor market needs and the supply of skills, a debate on the recognition or validation of qualifications held by third country nationals is required. Along these lines, the European Commission is working to try to create instruments that will be able to examine the matching of skills and demand, through, for example the Skills Panorama, the European Employment Observatory and the European Job Mobility Bulletin. Whether this will lead to a relaxation of the strict national policies of skills recognition has yet to be seen.

Once residence has been established in a particular country, however, it then becomes essential to guarantee access to the labor market in a way that does not discriminate. Non-discriminatory access to employment is a major challenge in a state like Spain, where jobs and housing are two of the areas where the highest levels of discrimination occur across the board (ECRI, 2011).

For this reason, a focus on labor as the driver of legal immigration must not in any way overlook the need to promote social cohesion. Otherwise, immigration policies, rather than promote integration, will bring back the assimilation model based on the



strict assessment of individuals according to the status of the group with which they share identifiable characteristics. Certainly, an exclusive focus on employment prospects cannot be sensitive to structural inequalities and discrimination or differential treatment, the basic characteristics of group behavior (Joppke, 2007).

This brings one to the second point, namely, the importance of merging immigration and integration policies into a whole, so that the legal status of immigrants aids in their integration while enabling diversity management. Integration must undoubtedly be a question of not only, but also, rights, the same rights exercised by the entire society in which the immigrant resides, to exactly the same extent as obligations are laid down by the law. That is what is meant by rule of law: that we are at the center of democratic self-government, in that ideal of public autonomy based on the principle that those who are subject to the law must also be its authors (Benhabib, 2005:154).

The unilateral conception of integration as a specific contractual obligation is, in this author's opinion, difficult to reconcile with a global view of the integration process, in other words, with the idea that it invariably requires a multidimensional approach that will go beyond the strict consideration of knowledge of the language or culture as almost exclusive integration indicators and will also entail a timeframe that does not correspond to the contractual deadlines. Integration as a two-way process, which involves the native population, and challenges the stereotypes that have been deliberately associated with the phenomenon, is essential, particularly in times of economic recession.

For this reason, a positive evaluation should be given a priori to the fact that, in Spain, on the one hand, no exclusive or excluding integration contract has been introduced; while on the other hand, integration measures have been proposed, such as those laid out in PECCI II (Strategic Plan for Citizenship and Integration), which have been devised to be cross-cutting and are designed for all members of the public, and which now need to be implemented. However, the significant impact that the crisis has had and is now having on the situation of immigrants cannot be ignored, since it is placing them in situations of extreme vulnerability.



The law, in this context, can be an undeniably valuable instrument in the considerable future challenge of combating social exclusion. It may also, in the case of immigration, constitute a channel in the attempt to reduce what De Lucas (2009c:14) has called the “deficit of the three Rs”: respect, recognition and representation. As the author points out, the actions following the riots in the *banlieues* of France, in the autumn of 2005, were no more than a public enactment of the failure of French integration policy. In the case of France, the most imaginative intercultural programs of immersion in traditions and customs and the proclamations of tolerance and solidarity served very little purpose, since the fundamental issue was overlooked, namely the need for equality of working conditions, salary and basic rights such as health.

Indeed, in the adoption of multidimensional integration policies, it is time to start insisting on the need to promote immigrants’ access to social rights such as education, health, housing, and social services, as well as social and labor integration. These are certainly the most precarious aspects of legislation in the various European Union Member States, as well as in Spain.

Moreover, on a legal and political level, the integration process requires what has been called a “secularization of identities”, from both a religious and cultural perspective. In other words, the existence of a shared belonging to a sphere of common rights, obligations and values, and an individual belonging to a private sphere in which differences may be cultivated. The role of the state would be to address the political dimension of society, to preserve its identity from a perspective based on constitutional values; this has to be the common and overriding link (Nair, 2006:207).

In short, immigrants, like other subjects of law, must be granted the legal status of members of modern democratic states if they are to find a place in the cosmopolitan roots of democracy (Beck, 2008; Aja, 2012). It can therefore be said that these individuals accept the social contract, i.e. that through this shared common fiction they recognize the existence of an authority, of rules and regulations to which they are subject; and if they do not, the general provisions established by law to that effect will come into play, and then can we speak of integration.

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