



**Instituto Juan March**

Centro de Estudios Avanzados en Ciencias Sociales (CEACS)

**Juan March Institute**

Center for Advanced Study in the Social Sciences (CEACS)

---

**The Evolution of immigration policies in Spain : between external constraints and domestic demand for unskilled labour**

Author(s): Moreno Fuentes, Francisco Javier

Date 2004

Type Working Paper

Series Estudios = Working papers / Instituto Juan March de Estudios e Investigaciones, Centro de Estudios Avanzados en Ciencias Sociales 2004/211

City: Madrid

Publisher: Centro de Estudios Avanzados en Ciencias Sociales

---

Your use of the CEACS Repository indicates your acceptance of individual author and/or other copyright owners. Users may download and/or print one copy of any document(s) only for academic research and teaching purposes.

**THE EVOLUTION OF IMMIGRATION POLICIES IN SPAIN.  
BETWEEN EXTERNAL CONSTRAINTS AND DOMESTIC DEMAND  
FOR UNSKILLED LABOUR.**

Francisco Javier Moreno

Estudio/Working Paper 2004/211

December 2004

Francisco Javier Moreno Fuentes is *Doctor Miembro* of the Juan March Institute and Associate Professor in the Departament de Sociologia i Anàlisi de les Organitzacions, Universidad de Barcelona.

## **Abstract**

From country of emigration, Spain became a net receiver of immigrants in the early 1980s. In the absence of a nationally specific tradition on the issue, the first immigration policies implemented in Spain were strongly influenced by the emphasis placed by Western European governments in restricting migratory flows towards their countries. That influence over Spanish policy making resulted in a restrictive policy of border control that did not reflect the small magnitude of migratory flows towards Spain, or the insignificant size of the stock of economic immigrants settled in this country at that time.

The initial policies, based on the enforcement of a strict control of the external borders, became soon unable to address the problems derived from the growing presence of immigrants. A more sophisticated set of policies (regularisation of undocumented immigrants, development of agreements with sending countries, extension of social rights) was gradually developed to address those issues. Throughout this process of development of a more comprehensive policy on immigration, EU objectives remained a priority for Spanish policy-makers, although reflecting now a more direct involvement of Spanish policy-makers in the definition of a common European policy on immigration. The analysis of the evolution and inter-relation of both Spanish and EU immigration policies highlights the changing nature of the process of “Europeanisation” of national policy making, as well as the increasing profile of immigration issues within the Spanish political agenda.

## 1. Introduction<sup>1</sup>

As in all Southern European countries, immigration became an issue in the Spanish political agenda only in recent years. From traditional sending country of migratory flows, in the last two decades Spain became a net receiver of immigrants. This shift of position in the international migration system was determined by three somehow interconnected processes affecting Spanish society: an important transformation of the economic structure, a relatively smooth political transition from a right-wing dictatorship to a liberal parliamentary democracy; and the incorporation of Spain to the European Communities in 1986. In this context of large economic and political changes the direction of the migratory flows reversed, and together with considerable numbers of returned migrants, an initially small but increasingly growing number of foreign nationals settled in Spain.

During the late 1980s and early 90s, the policy agenda on immigration issues in Spain was, to a large extent, determined by goals and objectives defined at the European level. In the absence of a nationally specific stand on immigration, the “Europeanisation” of this area of policies represented the somehow thoughtless acceptance of European policy objectives within the legislation implemented at the national level. The result was a very restrictive policy that did not correspond with the migratory processes that were affecting Spain. Over time a growing conflict between the externally induced restrictive policy directions, and the situation of immigration issues at the national level (large numbers of undocumented immigrants, demand for unskilled labour, foreign policy and economic interests in sending regions, etc.) resulted in a higher salience of immigration within the Spanish political agenda, and in the gradual development of a more comprehensive set of policies. While complying with EU requirements for strict border policing, these policies increased the degree of intervention of Spanish authorities in this area of policy.

---

<sup>1</sup> A preliminary version of this paper was presented at the ECPR Joint Sessions of Workshops. Workshop 14: ‘Beyond Fortress Europe?’ New Responses to Migration in Europe: Dual Nationality, Co-Development and the Effects of EU Enlargement. Copenhagen 14-19 April 2000.

This paper will be structured in three sections. In the first section I will frame the analysis of Spanish immigration policies within the European context. I will then proceed to review the evolution of Spanish immigration policies analysing the evolution of both border control and policies for the incorporation of immigrants. Finally, I will analyse the evolution of other policies that came to counterbalance the strong emphasis initially placed on border policies, solving some of its negative side effects and proposing alternative approaches to the issue of migration flows towards Spain.

## **2. Debates on EU immigration policies: ‘Fortress Europe’ and integration policies**

The development of a common European immigration policy has been an incremental process that expanded from the granting of free movement for workers within the EEC, to the definition of common procedures in asylum, border control, or family reunification. The nature of this increasingly communitarised area of policy could be defined as an uneasy equilibrium between a restrictive trend, gravitating around the strict control of the EU external borders, and more inclusive tendencies promoting policies such as the equalisation of rights of third country nationals with those of European citizens, or the integration of foreign populations into European societies.

The primacy of the first of those tendencies during the late 1980s and early 90s generated a large body of literature criticising the construction of “fortress Europe”. In fact, with the implementation of the Schengen agreement by a group of European countries, those restrictive tendencies took the shape of a strong emphasis on issues of border control (common visa policies, co-ordination of police forces, exchange of computerised personal data), and the conceptualisation of illegal immigration and international crime as illicit activities to be prevented through the intervention of police forces. The implementation of the Dublin Convention also resulted in a restrictive shift in asylum policies in most EU member countries.

The 1991 Maastricht Treaty represented a significant move in the process of increasing supranationalisation of immigration policies within the EU, although the new institutional framework created to deal with issues of justice and home affairs (the so called third pillar), remained firmly anchored within the realm of intergovernmentalism. The introduction of the concept of European citizenship for nationals of member states contributed to fuel the fears for an exclusive reading of the process of European integration that would exclude third country nationals living within the Union.

With the objective of counterbalancing the emphasis on border control measures, and harmonising immigration and asylum policies across the Union, the Commission elevated a series of reports and communications to the Council and to the European Parliament, on the social integration of immigrants in the member states. In one of the most influential, *“Improving Living and Working Conditions. Social Integration of immigrants from non-Community Countries”* (European Commission, 1994), the Commission stated the three main lines of policy that would characterise EU immigration policies in the following years: co-operation with sending countries to prevent migratory flows, control of migration flows towards the Union within manageable parameters, and strengthening of integration policies for legal immigrants. In the section on the promotion of integration, the Commission proposed a series of objectives to be achieved like the improvement of the position of third country nationals legally residing within the Union, the improvement of the framework conditions for social integration, the development of communication systems and forum for dialogue, and the combat against racism and xenophobia.

In 1997, the Commission presented a draft paper, *“Proposal for a Council Act establishing the Convention of rules for the admission of third country nationals to the member states”* (European Commission, 1997). This proposal tried to set out common rules for the admission of third country nationals for the purpose of employment, studying or training, and family reunification. It also aimed at defining the basic rights for long term residents, including the possibility of working in another member state different to the one where they acquired their initial residence permits. This proposal failed to receive the

necessary support from the Council of Ministers, for most member states representatives considered it too liberal (Niessen, 1999:10).

The relatively weak agenda-setting power of the Commission under the TEU resulted in a poor level of implementation of its proposals. The strong resistance by the governments of member states to increase the competences of the Commission and the European Parliaments in issues related to the integration of immigrant populations resulted in an underdevelopment of more inclusive policies at the EU level, and therefore a stronger salience of policies aimed at regulating and controlling migratory flows to the Union. As the Austrian Presidency recognised in its draft strategy paper elaborated for the Vienna summit of December 1998, with the exception of the policy to combat racism and xenophobia (which was the object of a EU action), the rest of the proposals presented by the Commission in his 1994 paper were still valid and yet to be implemented (European Union Council, 1998: 15).

The entry into force of the Amsterdam Treaty, in May 1999, was an important step forward in the process of communitarisation of immigration policy within the EU. The creation of an area of freedom, security and justice shifted issues of asylum, admission and residence of third-country nationals, and immigration from the third (intergovernmental) pillar, to the first. The whole Schengen scheme (up to then an intergovernmental agreement outside of the EU structure) was then incorporated into the EU framework. In addition, the Amsterdam Treaty attributed competences to European institutions to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The Plan of Action of the Council and the Commission on the implementation of the Amsterdam Treaty made a distinction between measures to be taken within two, and five years of the entry into force of the Treaty. In the first group were included issues of readmission and return, combating illegal immigration, procedures and conditions for issuing visas and the list of countries whose nationals are subject to visa requirements, and carriers' liability. Among those policies to be developed within five years were long-term residence permits, family reunification, conditions of entry and residence, and movement of third country nationals across the EU. Between these two groups of policy objectives the division introduced between

control and integration was quite explicit. So was the priority granted to the first over the second in terms of timing, but for the first time integration issues were recognised as an area of policy that should be addressed at the European level.

In the conclusions of the Tampere summit, the European Council explicitly recognised the convenience of treating asylum and immigration issues separately, stated its determination to create a common European asylum system, and asked the Commission to elaborate within a year a communication on the implementation of a common asylum procedure. Similarly, the Council expressed its will to separate issues of illegal immigration from issues of organised crime, while stating its determination to fight criminal organisations specialised in smuggling undocumented migrants into the EU. The conclusions of that summit also stressed the need for a more efficient management of migration flows, as well as to fight against poverty, war, and for the respect of human rights in the sending countries, all important push factors placed at the origin of migratory flows towards the EU. Finally, the Council recognised the EU obligation to pursue a more vigorous integration policy aimed at granting all third country nationals legally living within the Union a set of rights and obligations comparable to those of EU citizens, while endorsing the objective that third country nationals be offered the opportunity to obtain the nationality of the member state in which they reside.

Despite the explicit recognition of the need to move in the direction of an harmonisation of integration policies in the EU, the specific mechanisms through which those objectives should be achieved remained uncertain. Like the *Forum des Migrants de l'UE* denounced shortly after the publication of the conclusions of that meeting<sup>2</sup>, “...*Tampere moderate immigration demands come out with blurred, meaningless clichés (more dynamic policy, bringing the status closer, approximation of laws, and so on). It does not specify the measures to be taken, it does not set any dates or schedules, it does not suggest any initiative or financial means for a consistent and homogeneous integration policy*” (Forum des Migrants, 2000: 4).

---

<sup>2</sup> The European Parliament has also complained about the lack of transparency with which issues of the newly created area of Justice and Home Affairs are handled, as well as about the lack of contents of many of the policies on immigration loudly announced by the Council. See “La Vanguardia”, 14<sup>th</sup> of February, 2000.



*- Directives on family reunion and the status of long term residents...*

The definition of a common policy for the control of the EU external borders was a relatively feasible task, despite the persistence of many particularities in the implementation of that policy by the different member states. The development of a common set of policies to promote the integration of immigrants in the EU has not been achieved at the same speed, due to the strong resistance exercised by governments of the member states. The existence of nationally specific philosophies of integration (Favell, 1998), and the perception that integration policies are intimately connected to the notion of state sovereignty (they define the *Demos*, that is to say, those who belong to the *Polity* and are entitled to participate), explains the reluctance on the part of state authorities to further EU intervention in this policy area (Hailbronner, 1995: 185; Callovi, 1991: 25; Joppke, 1999: 36). While calls by the European Parliament and the Commission for a higher degree of co-ordination proved unsuccessful until now (the application of the Amsterdam Treaty should change this situation considerably in the coming years), the existence of some degree of convergence in this area of policies has been explained as the result of more or less subtle processes of policy emulation and policy learning between the different countries (Weil, 1998; Hansen, 1998).

The tensions between the two trends we identified were reproduced in a very country-specific manner in all member states, rendering extremely difficult any effort to characterise immigration policies in the EU under a single label. Similarly, to consider the impact of the EU in policy-making procedures at the national level only as the result of the implementation of EU directives or regulations would underestimate the impact of the complex processes of policy emulation and learning that take place in a political entity such as the European Union. As Weil points out the convergence of national immigration policies in Western Europe, due to international constraints and to the existence of similar conditions during the policy-making process, have in fact resulted in very different policy outcomes in each country (Weil, 1998:22). Those differences could be explained by the different role played by several factors

in the immigration policy sphere<sup>3</sup>, as well as by the different policy tools chosen by each state for the implementation of those policies.

The common internal market, with the disappearance of internal borders within the member states, and the creation of an external border, clearly set strong pressures on national policy makers to harmonise their immigrants' integration policies with those of other EU countries (Brochman, 1996; Layton-Henry, 1992). This view coincides with neo-functionalist approaches that identify in the existence of "spill-overs" the main driving factor for the coordination of policies at the European level (Callovi, 1991: 33). Although those processes can explain the need to develop a common approach to immigration issues at the EU level, they do not explain why the communitarisation of immigration policies has been the institutional arrangement finally chosen to answer the problem of negative externalities arising from market integration. More recent approaches have tried to explain that communitarisation as a consequence of the failure of previous regulatory arrangements, based on intergovernmental co-operation (Stetter, 2000; Niessen, 1999).

Despite the existing pressures the relative convergence of immigration policies could not be in fact the result of direct EU regulation on the issue, strongly resisted by states and limited by the Treaties, but of more subtle processes of policy learning, and emulation (Hailbronner, 1995). The "Europeanisation" of national policy making on this area appears as a particular version of those processes of emulation through the adaptation of policies, ideas and values, not only from other countries, but also from discussions and debates among experts and policy makers at meetings organised by EU institutions, as well as from recommendations and proposals for policy emanating from those very same institutions (Radaelli, 1997).

### **3. Spain as guardian of the EU's Southern border**

---

<sup>3</sup> Those factors could be classified as conditioned by geopolitical considerations (geographical situation, political culture, historical interactions, and diplomatic interest), and aspects related to the policy-making process proper (degree of politicisation of immigration issues, mechanisms of agenda building, and administrative and legal traditions of each specific country).

In 1973, the oil crisis resulted in the closure of Western European countries to further labor migration and with it the end of the cycle of mass emigration of Spanish workers. Taking advantage of the schemes set up by some Western European countries to facilitate the return of foreign workers to their home countries, more than 300,000 Spanish nationals returned to Spain between 1974 and 1977. Despite the magnitude of those return flows, more than two million Spanish nationals continued to live abroad at the end of the 1990s.

In the 1980s the countries of Southern Europe, up to then net exporters of labour, progressively became countries of immigration due to the arrival of growing numbers of migrants from less developed regions of the world. Their growing economic development, political stability, and participation in the process of European integration, their geographical position as the Southern border of the European Union, as well as their historical and commercial links with some of the sending regions favoured the arrival of increasing numbers of immigrants.

During the 1980s the Spanish economy faced a series of important reforms (tertiarisation, crisis of some labour-intensive activities, labour markets de-regulation) linked to its opening to international markets. Despite the very high unemployment rate derived from those transformations the Spanish economy generated jobs both at the top and at the very bottom of the occupational scale, opportunities for employment that were in part occupied by foreigners. At the end of 2002, and according to Census data, foreigners constituted already 3.85 percent of the Spanish population, and in September 2003 the number of foreigners affiliated to the Social Security system was just below a million people, constituting around 5.7 percent of the total affiliated working force.

In 1986, the incorporation of Spain to the then called European Economic Community (EEC) represented a wider opening of the Spanish economy to foreign capitals, and with it the arrival of a considerable number of highly qualified professionals coming to occupy managerial positions. Pensioners in search of milder winters at an affordable price in a politically stable setting also increased the number of foreign residents coming into Spain from other European

countries. The total numbers of this privileged group multiplied by four between 1975 and 2002 (see table 1). In general, foreigners from developed countries (most of them nationals of other EU member states, and therefore enjoying the social and the political rights of a EU citizen) were rarely thought of when immigration issues were discussed, for they represent a non controversial issue for the Spanish public.

At the other extreme of the social and occupational scale a series of niches of low skilled poorly paid jobs not readily accepted by Spanish nationals (mainly in the domestic and caring sectors, agriculture, construction, catering, and the informal economy) were occupied by immigrants from developing countries. These economic migrants raised from less than 50,000 in 1975, up to nearly 1.2 million at the end of 2002 (representing 2.9 percent of the total Spanish population). Coming from Latin America (Ecuador, Colombia, Argentina, Dominican Republic), Africa (mostly from Morocco, but also from Central and West-Africa –Senegal, Congo, Nigeria-), Eastern Europe (Poland, Romania, and the former USSR), and Asia (the Philippines, China and Pakistan), these groups settled in the two largest cities (Madrid and Barcelona) as well as along the most economically dynamic areas of the Mediterranean coast.

*Table 1. Foreign residents in Spain*

<b>Years</b>	<b>Total</b>	<b>EU</b>	<b>Rest of Europe</b>	<b>North America</b>	<b>Latin America</b>	<b>Africa</b>	<b>Asia</b>
<b>1975</b>	<b>165,289</b>	92,917	9,785	12,361	35,781	3,232	9,393
<b>1980</b>	<b>182,045</b>	106,738	11,634	12,363	34,338	4,067	11,419
<b>1985</b>	<b>241,971</b>	142,346	15,780	15,406	38,671	8,529	19,451
<b>1990*</b>	<b>407,647</b>	-	-	21,186	59,372	25,854	29,116
<b>1995</b>	<b>499,773</b>	235,858	19,844	19,992	88,940	95,718	38,352
<b>1997</b>	<b>609,800</b>	260,600	28,500	21,000	106,000	142,800	49,100
<b>1999</b>	<b>801,339</b>	312,203	41,353	17,138	149,571	213,012	66,340
<b>2001</b>	<b>1,109,060</b>	331,352**	81,170	15,020	282,778	304,109	91,552
<b>2002</b>	<b>1,324,001</b>	362,858	107,574	15,774	364,569	366,518	104,665
<b>2002***</b>	<b>1,572,017</b>	360,181**	160,981	25,798	609,634	337,389	73,645

\* Europeans were not included that year because of changes in the measuring system

\*\* It includes all those coming from the European Economic Area (EEA).

\*\*\* Data from the Census including all those registered (regardless of their legal status).

Source: Ministerio del Interior 2002; and INE 2003.

Those figures remained relatively modest if compared to those of most Western European countries, but as we can observe in table 1 their considerable growth, and the novelty of the phenomenon, make the Spanish immigration case a particularly interesting one.

Up to 1985, Spanish legislation on immigration was characterised by two main features: the definition of issues related with immigration as matters of “public order”(and therefore exclusive responsibility of the Ministry of Interior), and an extremely weak regulation of all other issues related to the settlement of foreign nationals in Spain (definition of rights and duties, regulation of their incorporation into the labour market, access to social services, etc). This situation determined, to some extent, the context in which the first legislation on immigration was to be defined and implemented. The rather poor social and institutional heritage of immigration policies in Spain also included the existence of a stock of undocumented foreigners living in Spain without a residence or work permit (a by-product of the previous laxity in the control of immigration), the attribution of a big role to the police forces in the managing of immigration issues, and the lack of a public agency with experienced staff specialised on immigration.

In July 1985, the government passed the first Law aimed at regulating immigration to Spain. Presented as an urgent bill, the proceedings were considerably shortened, facilitating in this manner its promulgation before the formal incorporation of Spain to the European Communities, the first of January of 1986. The urgency, together with the extremely low profile of this policy area in the political agenda made for a very poor debate in Parliament, with virtually no amendments presented to the bill. The *Ley Orgánica 7/1985 sobre derechos y libertades de los extranjeros en España* (literally Law about the rights and freedoms of foreigners in Spain, commonly known as *Ley de Extranjería*), was passed in Parliament by virtual unanimity (only five MPs voted against it).

The new legislation had a very restrictive character, with a strong emphasis placed on issues of border control. Despite its title, evocative of the rights and freedoms that were to be enjoyed by foreigners in Spain, the police aspects of the legislation, and its inability to deal with the issues arising from the daily presence of immigrant populations, were soon quite

apparent. During the debate of the Law, many references were made by MPs to the importance of preventing the action of international criminal organisations, terrorist groups, and drug smugglers, but hardly any to the need of integrating the newly arrived immigrants into Spanish society. In line with that emphasis in control, several articles of the Law explicitly limited the rights of meeting and association for foreigners living in Spain. The new Law also defined the presence in Spanish soil without the necessary authorisation, as an offence punished with expulsion from the territory.

In many other respects, the Law fell short of what a comprehensive immigration law should have been. One of its main limitations was the extremely restrictive character of the system of work and residence permits that it established. While it did not recognize the existence of permanent permits, the law introduced a highly demanding set of requirements for the renewal of the temporary permits already granted. With the objective of solving the issue of the undocumented foreigners living in Spain, the Law also established the development of an exceptional regularisation process. Here again the restrictive spirit with which immigration issues were treated became apparent. During the development of that process, initially designed to last for two months over the summer period, a large number of detentions were made among undocumented immigrants, creating distrust towards the authorities and therefore limiting the efficacy of the regularisation process. In September, when the process was supposed to be closed, only 9,000 applications had been presented. Several extensions to the regularisation period were then granted, and the process was not officially closed until March 1986. Of the nearly 44,000 applications for a work or residence permit, only 23,000 were granted, the rest did not even receive an answer from the Spanish administration. One year later, only 13,000 of those who had received a residence or work permit during the regularisation process were able to retain it, due to the strict conditions requested for the renewal of those permits (M<sup>o</sup> Asuntos Sociales, 1998b:33). Together with the strict legislation, the lack of a specialised agency staffed by experienced personnel and supplied with the necessary resources contributed to generate and perpetuate the existence of a large group of undocumented immigrants.

Abounding in that lack of consideration for the need to integrate the immigrant populations, the 1985 Law did not recognise the immigrants' right to family reunion. Similarly, it did not expand on the issue of the immigrants' rights to access the social protection schemes (health care, education, personal services, housing), leaving this issue unregulated and in the hands of the authorities of the Autonomous Communities (the level of authority that exercised most of the competences in the domain of welfare policies). The result of was a lack of co-ordination between the different regional governments, and the appearance of severe inequalities in the access of immigrant populations to basic social services. In this context the intervention of third sector organisations (NGOs, charitable organisations, etc) became essential for the reduction of the most extreme cases of social exclusion, although these organisations proved unable to prevent the creation of a group of marginalised immigrants living in miserable conditions in the outskirts of big cities and rural areas.

As a result of the conditions under which the 1985 Law was passed, the *Ley de Extranjería* clearly placed Spain in the role of gatekeeper of the EEC's southern border. The strong emphasis in border control issues responded explicitly to that responsibility, while it left unresolved the real needs arising from the presence of a still small but growing number of immigrants from less developed countries living and working in Spain.

The strict rules regulating labour migration to Spain since 1985 resulted in a considerable rise in the number of demands for asylum, for many immigrants tried to legalise their situation by applying for asylum. That increase in the number of applications, which peaked in 1993, was immediately responded with a toughening in the requirements for granting that status, and therefore with a drastic decline in the rate of acceptance of those demands. In 1994, the government introduced significant changes in a ten years old legislation that it considered to be too generous. The main argument used to justify the restrictive shift in the legislation was the need to comply with compromises signed at the European Union level. With the objective of adapting Spanish legislation to the requirements of the Schengen and Dublin Conventions, the government eliminated the figure of territorial asylum, merging it within the status of refugee. The new legislation also established an abbreviated process of admissibility, previous to the formal acceptance of the application, deemed to act as a filter

and to eliminate those demands considered clearly abusive. This system of pre-filtering was implemented in accordance to the resolutions adopted at the December 1992 London meeting of EU Ministers in charge of immigration issues.

*Table 2. Evolution of Political Refuge in Spain, 1984-98*

<b>Years</b>	<b>Demands Presented</b>	<b>Demands Considered</b>	<b>Demands Accepted</b>	<b>Acceptance Rate</b>	<b>Number of People</b>
<b>1986</b>	-	709	401	<b>56.6</b>	850
<b>1987</b>	2,500	843	262	<b>31.1</b>	513
<b>1988</b>	4,516	1,379	303	<b>22.0</b>	555
<b>1989</b>	4,077	1,515	134	<b>8.8</b>	264
<b>1990</b>	8,647	2,236	246	<b>11.0</b>	490
<b>1991</b>	8,138	3,808	156	<b>4.1</b>	313
<b>1992</b>	11,708	7,357	296	<b>4.0</b>	543
<b>1993</b>	12,615	14,954	592	<b>4.0</b>	1,287
<b>1994</b>	11,192	11,045	345	<b>3.1</b>	627
<b>1995</b>	5,678	4,941	276	<b>5.6</b>	464
<b>1996</b>	4,730	3,521	143	<b>4.7</b>	243
<b>1997</b>	4,975	3,822	105	<b>2.7</b>	156
<b>1998</b>	6,764	4,475	123	<b>2.7</b>	238

*Source:* Mº Asuntos Sociales, 1998b, and Mº Interior 1998.

As we can see in table 2, those changes in the legislation resulted in a very sharp decline in the number of applications for political refuge in the second semester of 1994, after the effective application of the changes in the Law. Despite that decrease in the number of applications, and the existence of a previous filtering that considerably reduced the number of demands finally considered, the acceptance rate continued its falling trend initiated in the mid 1980s. This decline in the acceptance rate reached its lowest level in 1997, when only 2.7% of those applying for the status of political refugee were granted that status.

*Table 3. Political Refuge cumulative statistics, 1989-98*



Country	Applications	Demands accepted	Acceptance rate %
Germany	2,024,960	163,178	8.0
France	324,150	82,180	25.3
Belgium	153,060	11,386	7.4
Spain	77,620	4,371	5.6
Italy	44,460	4,610	10.3

*Source:* UNHCR.

The extremely restrictive application of the legislation on political refuge can be perceived in table 3 where we can compare the data for Spain with that of other EU countries. The figures show how during Spain was one of the European countries that received the smallest number of applications for political refuge during the last decade, while simultaneously having one of the lowest acceptance rates.

The development of a restrictive legislation with a strong emphasis on issues of border control was supposed to be matched with an increase in the resources allocated to police the borders. The evidence to this respect appear less conclusive than in the case of legislative measures. Up to the late 1980s, Spanish authorities maintained a relatively flexible stand on the implementation of effective policies of border closure (Pérés, 1999:15). The complex nature of the relations with Morocco, and the close historical connections with Latin America, made Spanish authorities to adopt a more relaxed attitude towards the flows of migrants coming from those areas, facilitating thus the development of significant communities of Moroccans and Latin American immigrants working and living in Spain.

The attitude of the Spanish authorities with respect to the policing of the borders changed gradually in the early 1990s. In May 1991, coinciding with the expiration of the agreements with Morocco and Tunisia for the mutual suppression of visas, the Spanish government reintroduced the requirement of visas for nationals of countries from the Maghreb. This change was again related to immigration policies designed at the European level, for the closure of the external borders appeared as a precondition for the incorporation of Spain into the Schengen agreement, formalised a few weeks later. That change in the visa policy resulted in the reinforcement of the control of the external borders, specially in Ceuta

and Melilla (the only land borders between the EU and Morocco). In the following years Spanish authorities invested considerable resources to try to build an effective system of border control around those two enclaves<sup>4</sup>, as well as along the hundreds of kilometres of coast of the Iberian Peninsula.

In more recent years Spanish authorities also introduced visa requirements for citizens from a series of Latin American countries. Here again Spanish EU membership was crucial, for it worked both as a pushing factor for the introduction of that measure (aimed at limiting the growing number of economic migrants overstaying their stays as tourists and joining the ranks of undocumented migrants), and as a way of blame dilution (attributing responsibilities to Brussels) for a measure that was strongly criticised both in Spain and in the American countries<sup>5</sup> (particularly Colombia in 2001, and Ecuador in 2003). The large number of *pateras* (small and fragile boats) arriving to the Spanish coasts<sup>6</sup>, and the constant flow of undocumented migrants towards the cities of Ceuta and Melilla, gained growing media and political attention in the following years.

After the introduction of the visa requirements for North-Africans and Latin Americans, and the strengthening of the external borders, the number of people rejected at the borders or sent back to their country of origin significantly increased. For Spanish authorities the responsibility of exercising a strict border control directly derived from the compromise

---

<sup>4</sup> That system included the building of a road around the perimeter of the enclaves, together with the installation of a double barbed-wired fence 3.2 meters high, ditches, turrets, thermal sensors, and infra-red cameras supporting the patrolling of the *Guardia Civil* (Civil Guard). Since the end of 1998, the army was also called in to patrol the border in co-operation with the *Guardia Civil*.

<sup>5</sup> This change in the visa policy with respect to countries of Latin America was particularly difficult to justify and implement, due to the historical connections that link Spain to those countries, to the perception of the existence of an historical debt towards those countries for the role they played as receivers of Spanish emigrants up to the 1950's, and because of the increasing economic interests of Spanish firms in the markets of that area.

<sup>6</sup> One tragic indicator of that flow are the figures of immigrants drowned when trying to cross the *Estrecho* (straits) of Gibraltar. According to the Ombudsman of Andalucía, more than 1,000 immigrants were reported dead while trying to cross the *Estrecho* between 1993 and 98. For ATIME, an association of Moroccan immigrants in Spain, that was the figure for 1998 alone, for most shipwrecks took place near the Moroccan coast or were taken away by the streams, and therefore went unnoticed for the Spanish authorities. See "El País", 9th of February of 1998, and 8th of August 1998.

acquired by Spain with respect to its European partners. This idea was clearly reflected in their numerous requests for the EU to co-finance the policing efforts<sup>7</sup>, demand that was positively responded with the allocation of EU funds to the strengthening of the borders of Ceuta and Melilla, and through the development of several initiatives to co-operate in the actual patrolling of the *Estrecho*<sup>8</sup>.

#### **4. Beyond border policing: demand for unskilled labour and the need to incorporate immigrant populations**

During the 1980s, EU objectives in border control policies were implemented in a pretty straightforward manner in Spain for they did not challenge previously existing policies, seriously damaged articulated interests, or openly questioned other areas of policies applied by the Spanish state. This was a clear example of “direct Europeanisation”, that is to say, domestic policy changes in response to a series of explicit requirements defined at the EU level (Radaelli, 1997: 555).

With regard to policies for the incorporation of immigrant populations, the lack of a well defined guideline emanating from the supranational level, and/or of an external pressure to implement policies in any specific direction, implied that Spanish authorities had more room for manoeuvre while designing those policies. Although the timing for the implementation of those type of policies was determined by domestic considerations, the proposals of the European Commission for the co-ordination of integration policies were used by Spanish authorities as a basic framework of reference. This became an example of “indirect Europeanisation”, for national policy makers conceived a domestic issue within a European

---

<sup>7</sup> Public statements by Spanish official in this direction have been quite common in recent years. See some examples in “El País”, 4th of September 1996, 16th of January 1998, 9th of August 1998, 14th of November 1999, and 21 of October 2003.

<sup>8</sup> The navies of different European countries (Italy, Great Britain, France and Spain) have been developing closer ties to work together in the patrolling of the Mediterranean Sea to prevent unwanted migratory flows.

frame of reference, and adapted their policies to that framework, even though no specific compulsion to do so existed.

During the 1990s Spanish authorities tried to elaborate a more sophisticated set of policies to be applied within a growingly complex policy environment. By then it was already clear that immigrants were not only using Spain as a transit platform to move towards other European countries. Migration was clearly not a temporary phenomenon, and the demand for unskilled labour that had strongly contributed to bring those immigrants to Spain in the first place was not disappearing (well on the contrary, it was quite likely to increase in the future). Despite the restrictive family reunion policy applied, primary migrants had managed to bring their relatives to Spain, and their children represented a growing share of the pupils in certain schools. The development of growingly diverse immigrant communities within Spain implied an altogether different image of immigration, and a series of brand new challenges to public services (particularly to social protection schemes).

The tensions between the border control philosophy embedded in the 1985 Law, and the respect for the basic rights of the individual, was in fact addressed by the Spanish judiciary in several occasions. Its intervention went from rulings by different Courts criticising specific aspects of the legislation as well as their application by the public administrations (in particular issues related to expulsions, denial of the *habeas corpus*, and detention of undocumented immigrants beyond the time limits established by the law), to a Constitutional Court ruling declaring unconstitutional several articles of that Law that aimed at limiting the meeting and association rights of foreigners. In several of his annual reports the Ombudsman also expressed his concern over the situation of marginalisation suffered by immigrants from less developed countries, in particular by those without work or residence permits.

Although in absolute terms immigrants from developing countries still represented less than 3% of the total Spanish population at the beginning of 2003, the novelty of their presence, their high concentration in certain regions of the country (Catalonia, Madrid, and the Mediterranean coast), the attention immigration received in the media, together with the activities of some uncoordinated but locally powerful xenophobic entrepreneurs, contributed

to the salience of immigration in the Spanish public opinion. Several racist incidents occurred in different towns since the late 1990s (notably in El Ejido, Terrassa, and Figueres), highlighted the need for a higher degree of involvement by public authorities to facilitate the incorporation of immigrant populations into Spanish society, and to refrain the development of xenophobic and racist sentiments within the Spanish population. Policies such as the regularisation of undocumented immigrants, the development of special agreements with the sending countries to regulate the arrival of seasonal workers, and the extension of basic social rights to all immigrants regardless of their legal status responded to that logic.

I will briefly review those three basic lines of action aimed at reconciling a strict policy of border control with the satisfaction of some of the demands that the Spanish society expressed in relation to migration.

### *1. Regularisation processes*

Since the first law regulating immigration issues in 1985, four regularisation processes were developed with the explicit objective of legalising all immigrants living in Spain without a residence or work permit (1986, 1991, 1996 and 2000). These processes, common in many other European countries (Italy, France, Belgium), have been strongly criticised at the level of the EU Council, for they are supposed to provide strong incentives for further illegal immigration (Hailbronner, 1995: 201)<sup>9</sup>. Despite those critiques Spanish authorities have used these procedures to bring to the surface the stocks of undocumented foreigners that due to their lack of a recognised legal status were pushed towards the underground economy and did not enjoy the most basic rights.

The first of those processes was conducted in 1986 (right after the first immigration Law was passed) with the objective of legalising the stock of undocumented foreigners generated

---

<sup>9</sup> The European Parliament showed a more positive stand towards this kind of processes, and in April 1997, it advised all member states to regularise the legal status of undocumented immigrants with some period of residence in the host country (M<sup>o</sup> Asuntos Sociales, 1998: 27).

by the previous vacuum of legislation. This process was implemented in a very uncoordinated manner and its effects did not last very long for many of those who obtained a permit lost it shortly after, due to the strict rules regulating the renewal of those permits.

Between 1986 and 1991, when the second regularisation process took place, the stock of undocumented immigrants grew considerably. Trade unions periodically denounced the situation of exploitation and marginalisation suffered by those undocumented immigrants, and third sector organisations tried to provide relief for some of their more elementary needs while advocating for the change of a legislation that condemned those immigrants to social exclusion. Despite those domestic pressures the main rationale for the implementation of the second regularisation process came from the domain of foreign policy in the form of an agreement with Morocco in which Spanish authorities accepted to develop a process of regularisation to legalise the situation of undocumented migrants (many of them Moroccans), in exchange of the introduction of the visa requirement for nationals of that country (López, 1993: 66). More than 133,000 demands were presented to this process, and some 116,000 new work permits were granted (nearly 50,000 of them to Moroccans) (Hernando de Larramendi, 1994: 132). Apart from the much larger scale of this process, other changes resulted in a more effective running of this process (closer co-operation with third sector organisations and associations of immigrants for distributing information, better coordination of the process, etc). It also had a more lasting effect due to a more flexible approach to the renewal of the permits issued during the process.

After this second regularisation process, and in order to organise the inflows of immigrants, the government established a system of quotas according to which a certain number of work permits would be issued every year to fill those jobs not accepted by Spanish nationals. Those permits were supposed to be distributed (through Spanish consulates and embassies abroad) among those potential immigrants wanting to migrate to Spain to fill in those jobs. In practice though, this system ended up functioning as a mechanism for the regularisation of those undocumented immigrants already present in Spain. Since 1993, and nearly in a yearly basis, between 20,000 and 40,000 work permits were issued every year to undocumented immigrants already present in Spanish territory. This system did not accomplish

its original objective of regulating and controlling the inflows of immigrants, but it contributed to provide the unskilled labour demanded by certain sectors of the Spanish economy, while simultaneously helping to bring to the surface the stocks of undocumented immigrants working in the informal sector.

1996 process, connected to the passing of the Reglamento of that year, and aimed at granting permits to those who held them before and had lost them because of the intrinsically restrictive character of the regulation. It granted more than 14,000 working permits for nearly 25,000 applications.

Since March 1998, and for nearly two years, a Parliamentary Commission debated a new immigration bill aimed at substituting the 1985 Law with a more comprehensive legislation that would take into account the complexity and structural character of immigration in contemporary Spain. That bill was negotiated in a consensual manner by all parties up to its very last stages, when the conservative government of the *Partido Popular* (PP) started to oppose some aspects of the bill drafted with the participation of their own MPs. After voting against it in Congress in the first instance, the PP tried to introduce a series of changes in the bill during its discussion in the Senate (112 amendments were presented for a bill of 77 articles), but its relatively weak situation in Parliament (without an absolute majority and depending on the support of the Catalan and Basque nationalist parties), resulted in a defeat of its proposals and the acceptance of the bill as it had been initially drafted by the Parliamentary Commission. Part of the PP opposition to the new Law was related to the mechanisms for the regularisation of undocumented immigrants recognised in that text, considered too generous.

The new Law established the development of another regularisation process that would grant a fresh start to the implementation of the Law by regularising all those immigrants who could proof residency in Spain before the 1st of June of 1999. This fourth regularisation process started to be implemented in March of 2000, and by October 2001 it had legalised some 164,000 out of a total of nearly 250,000 applications.

The handling of the process is been done with the active co-operation of third sector organisations, trade unions, and immigrant's associations, and because of its relatively generous conditions, it is expected to legalise the situation of most of the undocumented immigrants living in Spain.

On the other hand, the new Law introduced a mechanism for the automatic regularisation of all those undocumented immigrants that are able to proof more than two years of residence in Spain. This point was strongly opposed by the government of the PP, which argued that it was against the spirit of the conclusions of the European summit of Tampere, celebrated just a few weeks before the passing of the new immigration Law. In fact, during the campaign for the last general election of March 12th 2000, the PP clearly stated its intention of reforming the new immigration Law. The conservative party won, this time with an absolute majority, so a modification of the Law appears quite likely in the coming months. Among the modifications to the Law that the PP wants to introduce, the mechanism for the automatic regularisation by residence may be severely curtailed, or disappear altogether.

Exceptional regularisation process by "arraigo" (those living in Spain before 23 January 2001 that could prove "arraigo", meaning job offer or relatives living in Spain).

By June 2002, some 184,000 applications were granted out of a total of more than 350,000 (some overlapping with the regularisation by 4/2000).

"Contingente" also included in the new laws (30,000 in 2002, and in 2003 some 10,000 job offers available both to potential migrants and to those already in Spain).

Beyond the growing politicisation of immigration issues in the Spanish political arena, and the reticent attitude of the EU towards the implementation of legalisation programs as a way of handling the issue of illegal immigration, Spanish policy makers implemented mechanisms for the regularisation of undocumented immigrants (exceptional regularisation processes, yearly quotas, automatic regularisation by residence) as a way of answering some



of the demands perceived within Spanish society (demand for unskilled labour, fight against marginalisation and exploitation of undocumented immigrants).

## *2. Bilateral agreements for the import of labour*

The signing of bilateral agreements with sending countries for the channelling of migratory flows towards Spain drafted in recent years responded to a combination of demographic, economic and political interests.

The publication of a report by the population division of the UN, pointing out the ageing and decline of the Spanish (and European) population was the starting point for a debate that tried to reflect on the consequences of having the lowest fertility rate in the planet<sup>10</sup>. According to the projections generated by that report, in the year 2050 Spain would have the oldest population in the world, and it would need some 12 million immigrants to keep the actual ratio of 4 workers for every retired person. In the same report, the UN report estimated that by the year 2025, some 159 million immigrants would be necessary to maintain the current levels of social protection that characterise European welfare states. Although UN experts recognised that the levels of migration predicted by the report would be socially and politically unthinkable in Europe, they also stated that the demographic trends are there, and that substitution migration will be a reality in Western Europe in the forthcoming years (“El País”, 7th of January, 2000).

The complex set of reasons that brought Spain to the last position in the ranking of countries according to their fertility rates (unemployment and job precariousness, raising expectations, underdevelopment of personal social services, etc), are very unlikely to change drastically in the foreseeable future, so the already existent demand for unskilled labour in certain sectors of activity of the Spanish economy will continue to grow in the future. The

---

<sup>10</sup> In 1998 Spain had the lowest fertility rate in the world with only 1.07 children per woman. Since the beginning of the 1990's, Spain has been at the bottom of the ranking of countries in relation to their fertility rates, together with Italy and Hong Kong. See “El País”, 22th of December 1999.

highly segmented demand for labour, quite strong in sectors such as the domestic service, construction, and labour intensive agriculture, has been one of the most powerful pulling factors in the development of, very often illegal, migratory flows towards Spain in the recent past. For many years, employers in those sectors found in the undocumented immigrants a cheap and flexible supply of labour with no additional costs (Social Security contributions, redundancy payments, or paid holidays). They took advantage of this situation and hired large numbers of undocumented immigrants that were too often exploited at work, and socially marginalised in the cities and villages where they lived.

Meanwhile the Spanish government did not show much interest in controlling and imposing sanctions on employers who hired undocumented immigrants. The argument was that there were not enough resources at the Ministry of Labour to control those areas of activity where the hiring of irregular immigrants was more common. The lack of political will to pursue a more strict policy of labour market control may be related to the will to show a lax attitude towards the black economy (extremely important in certain regions, and specific areas of activity), very often businesses struggling to survive in an increasingly internationally competitive environment (textiles, shoe factories, etc). In the case of the intensive agriculture, particularly in the South East, the possibility of keeping production costs down through the use of lowly paid undocumented immigrants allowed many farms to remain competitive in the European markets, in comparison with imports from other countries such as Morocco, where the same products are grown at much lower costs.

But that model, based on the exploitation and marginalisation of the undocumented immigrants, cannot last permanently. Social actors have started to become aware of the negative consequences deriving from the maintenance of such a system, in the form of shanty towns, increasing marginalisation, and crime, together with xenophobic feelings and racism against the immigrant population. The serious racist incidents in El Ejido in January 2000, where the killing of a Spanish woman by a Moroccan immigrant under psychological treatment was followed by three days of attacks against the immigrant community (houses, shops and cafes burned, together with the site that was used as a mosque by the Moroccan immigrants), were the final explosion of a malaise that had been mounting in the last years, in parallel to the

uncontrolled arrival of undocumented immigrants, and the activities of some xenophobic entrepreneurs that tried to capitalise on the tensions generated by that situation.

Even though employers had taken great advantage of those undocumented workers, by using them as a plentiful supply of cheap labour, and by rejecting any responsibility for the provision of proper working and living conditions for those immigrants, in more recent times they started to accept the convenience of regulating migratory inflows, and establishing mechanisms to improve the extremely precarious conditions in which those undocumented immigrants lived. Last year, both employers and trade unions publicly declared their interest in changing the *pateras* for boat tickets, and the shanty towns for decent housing arrangements, and negotiated with the Spanish government the development of a framework to determine the responsibilities of each actor in that process, as well as their economic contributions, to set up a new system for the regulation of unskilled labour migration.

In that context, the Spanish government announced in October 1999, the signing of an agreement with Morocco for the development of a scheme of regulated temporary migration to Spain. According to that agreement (broadly defined, although initially thought for the agriculture sector), those jobs not covered by Spanish, Communitarian, or regularised foreign workers already present in Spain, would be offered to potential immigrants from Morocco. The Spanish authorities would grant a temporary work permit (for a maximum of 9 months a year), would offer health care insurance, and would subsidise transportation costs and the provision of decent housing, that would be the final responsibility of the employers.

Although similar agreements were announced for a near future with other countries such as Ecuador, Colombia, Romania, Dominican Republic and Poland, the bilateral agreement with Morocco was by far the most important for many reasons (geographical proximity, large flows of illegal immigration, largest immigrant community in Spain, etc), not the smallest of which are foreign policy concerns in relation to that country. In fact, immigration issues have become one of the hottest topics in the bilateral relations between these two neighbouring

countries, already quite loaded with issues such as the status of the Western Sahara<sup>11</sup>, the sovereignty over Ceuta and Melilla<sup>12</sup>, the smuggling of illicit drugs, or the access of Spanish boats to Moroccan fisheries. Since the incorporation of Spain to the CEE (perceived by the Moroccan authorities with suspicion) new issues appeared in the bilateral agenda (increasing competition for European markets in agricultural products, growing capital investments and relocalisation of certain areas of production by Spanish firms in Morocco), including different issues related to migratory flows of Moroccan nationals to the EU (visas, transit through Spain of Moroccan immigrants settled in the EU, remittances of Moroccan immigrants living in Spain, Social Security transfers for retired workers).

In this context of complex bilateral relations, Spanish authorities tried to implicate Moroccan authorities in the control of the migratory flows concerning not only Moroccan nationals, but also other Africans who try to get into Europe, either by crossing the land border between Morocco and the Spanish enclaves of Ceuta and Melilla, or by boarding a *patera* in the Moroccan coast with the intention of disembarking in a Spanish beach. With that objective, the authorities of both countries signed an agreement in 1992 for the readmission of illegal immigrants that crossed to Spain from Morocco. The implementation of that agreement though, has depended on the mood of the Moroccan authorities that used this issue as a leverage to negotiate other issues of the bilateral agenda. Within that broad process of negotiation between the two countries, the bilateral agreement for the import of temporary workers to Spain could be understood as a way of regulating the inflows of migrants (an objective for Spanish authorities), while improving the working and living conditions of Moroccan immigrants in Spain (in the interest of Morocco).

---

<sup>11</sup> The Western Sahara was a Spanish colony until 1975 when, taking advantage of the delicate political situation in Spain derived from the imminent death of the dictator Francisco Franco, the Moroccan authorities increase their pressure to annex that territory to Morocco. Spain retrieved from the W. Sahara leaving the issue of the status of that territory as an unresolved question. The war between the pro-independence Polisarian Front supported by Algeria, and Morocco, floated for many years as an uncomfortable situation for the Spanish diplomacy. For a good account of that situation see Hernando de Larramendi, 1994.

<sup>12</sup> Although those two enclaves have been under Spanish control for more than five centuries, the Moroccan authorities do not recognise the Spanish sovereignty over those cities. The issue has been used by the Moroccan state as a mechanism to press Spanish governments at critical junctures of the relations between both countries.

One interesting thing regarding the bilateral agreement regulating temporary migration to Spain is that the emulation processes with policies implemented in other European countries or at the EU level, that may explain other aspects of immigration policies in Spain in the last years, do not seem to operate here. Although the second round of guestworker recruitment initiated in Germany in the early 1990's seem to have worked quite successfully in its objective of avoiding permanent settlement, that was not the case of previous experiences with guestworker schemes, which failed in their objectives, and facilitated the permanent settlement of immigrants in the receiving countries (Joppke, 1999a: 22). The replication of the most recent German experience would not be an easy task for Spain, for the differences in the experiences in managing migratory processes, as well as the institutional capacities necessary to handle such a complex scheme, make the two cases much too different.

In the last summit of Tampere, the High Level Group on Asylum and Migration, set up by the Council in January 1999, presented its report of progress, as well as the different draft action plans for a series of countries considered to be of special interest. The report on the action plan for Morocco, co-ordinated by Spain, made a big emphasis on the idea of this country as a "buffer" zone to reduce migratory pressures on the Southern external border of the EU. To accomplish that objective, several proposals were made, sharing the main guidelines of the Spanish policy towards that country: co-operation to facilitate the socio-economic development of the country, the signing of agreements to implement mechanisms of readmission of illegal immigrants trying to get into the EU through Moroccan territory, and the development of temporary migrations schemes. Maybe by designing and monitoring those programs at the EU level, and by linking them to broader issues of financial aid and access of Moroccan products to European markets (in the line of the recent negotiations between the EU and the ACP countries), the implementation of those programs would proof more successful.

### *3. Policies of integration: the expansion of rights*

After the recognition of the limitations of the 1985 Law as a regulatory framework for the incorporation of immigrant populations into the Spanish society (due to its strong emphasis on the control of the borders), and of the structural and permanent character of the phenomenon of immigration in Spain, policy makers started to consider the convenience of developing a set of policies aimed at facilitating the integration of those immigrants into their host society.

Before the mobilisation of the parties of the left, and the demands of third sector organisations working with immigrants, the social democratic party in government approved a Plan for the social integration of immigrant populations in December 1994. This Plan defined three main lines of action in relation to immigration issues:

- a) To prevent the creation of migratory flows by co-operating to promote the social and economic development of the countries where those flows originate.
- b) To increase knowledge of those flows, as well as of the demand for unskilled labour in the Spanish economy, with the objective of regulating immigration effectively.
- c) To facilitate the social integration of immigrant populations into the Spanish society.

Those three sets of objectives replicated the goals defined by the European Commission in its failed attempt to co-ordinate integration policies within the EU (Hailbronner, 1995: 203). Because of the lack of a nationally specific tradition of policies for the incorporation of immigrant populations, and in a process of policy emulation, Spanish policy makers adopted the main guidelines for policy defined by the European Commission.

Despite those declarations of good intentions, the development of policies aimed at effectively incorporating immigrant populations into Spanish society was not that easily accomplished. The decentralised institutional arrangements that characterise the Spanish state, together with the multidimensional nature of the issues at stake, resulted in a considerable lack of co-ordination among the different authorities involved, considerable gaps in the coverage of

the most basic needs of immigrant groups, and a growing marginalisation, specially among the undocumented migrants.

One area in which the failures in the granting of the most basic rights was more evident was health care for immigrants. The process of expansion of health care coverage for all immigrants followed a tortuous and gradual path, similar to the one developed during the universalisation of health care coverage for all Spanish citizens during the 1980's, when the public health care system evolved from a social insurance system, linked to work related contributions, to a universalist system with entitlements based on citizenship.

Foreigners with a work permit and that had contributed to the Social Security (at present or in the recent past), as well as their dependent relatives, were entitled to access the *Sistema Nacional de Salud* (Spanish National Health Service), just like Spanish citizens. In addition to that, every person was entitled to emergency care and to treatment for infectious diseases. The problems came mainly with undocumented immigrants, long term unemployed immigrants, and those that only had a residence permit. Third sector organisation covered the gaps that public administrations did not want, or did not know how to attend, including primary care for immigrants excluded from the public health care system. For specialised care (treatments requiring hospitalisation, chronic illnesses, etc), informal networks of doctors and public hospitals provided the services in an unofficial basis. This complex scheme, set up to cover the gaps left open by a partial and restrictive regulation, resulted in an unequal coverage for immigrants, depending in the last instance in the good will of the medical professions. This issue was the object of public discussion in several occasions when the media, the ombudsman, or the judiciary pointed out the violation of the rights of immigrants, as persons, that this situation represented.

The first among undocumented immigrants to get full access to the public health care system were those under 18, followed by pregnant women shortly after. These two groups were granted free access to health care when the 1989 UN Convention on the Rights of the Child (which states that every person under 18, as well as pregnant women, should receive free health care services), was incorporated into a new Law for the protection of minors in

1993. Many different institutions (at the national, regional and local level) were involved in the process of implementation of that policy so, despite the formal expansion of the right to access the services *de jure*, several cases of denial of treatment because of lack of accreditation (lack of a Social Security card) were denounced by third sector organisations, and appeared in the press.

In January 1999, the intervention of the Public Attorney of Madrid denouncing the INSALUD (Spanish NHS) for the denial of treatment to several children suffering chronic illnesses, brought to the front line of the public debate the question of the *de facto* access to health care by children, offspring of the undocumented migrants. Before the mounting pressures coming from parties on the left, NGOs, trade unions, and associations of immigrants, the Minister for Health announced that his Ministry was considering the possibility of extending the right to access the public health care system to every person living in Spain, regardless of their legal status. The parties on the left presented a bill in Parliament a few weeks later, with the objective of granting universal access to free health for every person present in the Spanish territory. Despite being voted unanimously in Congress, the implementation of this legal measure was voluntarily delayed in attendance of the new immigration law which was in the process of been drafted at that time, and which was supposed to include the granting of the right to free health care for all.

The new immigration Law, passed in December 1999, and to which I referred in the previous section, introduced significant changes in the area of rights for immigrants living in Spain. While it equalised the civil and social rights of legal foreign residents with those of Spanish nationals, and it established the possibility of voting rights at the local level (in the grounds of the existence of reciprocity agreements with the sending countries), it also extended the right to free access to the public health care services for undocumented immigrants. According to the new Law, undocumented immigrants were also entitled to free compulsory education (from 3 to 16), access to grants for education, as well as to the (limited) public housing policies available, in equality of conditions with Spanish nationals. These entitlements to social rights were based on the criteria of residence (inscription of the Census), moving somehow in the direction of de-coupling of nationality and citizenship rights.



During the debate of the new immigration Law in Parliament, the tensions between the two different approaches to immigration issues (closure vs. integration), appeared not only between the different political parties, but also within the Parliamentary group of the party in government, and among the different Ministers of the Cabinet. On the one hand, the MPs of the Popular Party that participated in the drafting of the bill, together with the Minister for Labour and Social Affairs, praised the consensual manner in which the bill had been drafted, and the positive steps towards the integration of immigrant populations within the Spanish society that the new Law represented. On the other, a series of Ministers (Economy and Finance, Interior, Foreign Affairs), backed by the President of the Government, showed their concern for the unexpected consequences that could derive from the implementation of the new immigration bill. For the Minister of Economy, the cost of the extension of social rights to undocumented immigrants would be an extremely high burden to the finances of the Spanish welfare state. In particular, the cost of granting access to health care for undocumented immigrants could represent some 45 million Euros a year, only for an estimated population of 80,000 undocumented immigrants<sup>13</sup>. For the Ministers of Interior and Foreign Affairs, the new Law would be by far the most progressive in the EU, and that was difficult to handle for a country like Spain so exposed to the inflows of illegal immigrants, and with a responsibility for guarding the Southern border of the EU.

In that context, the argument of the immigration policies promoted by the EU played an important role in the debates, although every side took the aspects that better suited their interests. For those defending the need to expand immigrant's rights, EU documents and drafts for common policies emphasised the need for integration of immigrant populations. To this argument, those defending more restrictive positions argued that all measures promoted

---

<sup>13</sup> The government worked with a report conducted by the consulting firm Pricewaterhouse & Coopers, that estimated a figure of 80,000 undocumented immigrants, by considering those denied applications for the annual quotas, as well as those applicants for the status of refugee who had been denied that status, but were allowed to stay in the country on humanitarian grounds (OPI, 2000).

by the EU to integrate immigrants were referred to legal residents, and explicitly exclude undocumented immigrants<sup>14</sup>.

Although the Law was passed with the opposition of the conservative party in government, this party promised to change the Law to comply with the agreements reached at the Tampere summit, that is to say, excluding undocumented immigrants of all social services programs. After winning the elections, the PP has call for a reconstruction of the consensus among the political forces to reform the 1999 immigration Law, this time with a more restrictive spirit. The issue of health care coverage for undocumented immigrants, although used to justify the high cost of the expansion of social rights to this group, did not appear in the initial proposals for reform, probably due to the unpopularity of such a move after having explicitly granted that access to all, regardless of their legal status.

## 5. Conclusion

The convergence of national immigration policies in Western Europe resulted in very different policy outcomes in each country. In the case of Spain, the initial implementation of strict policies of border control to satisfy demands in that sense from its European partners, were soon tinged with the intervention of a series of factors pushing in different directions. While the geographical situation of Spain as the Southern border of the EU, neighbouring one of the areas with the highest migratory pressure towards the Union, emphasised the need to control the borders, its tradition of historical interaction with North Africa and Latin America, and the economic and diplomatic interest in both areas intervened to some extent to soften the implementation of a strict control of migratory flows.

---

<sup>14</sup> The granting of those rights to all immigrants may be in fact against the current treatment of the issue at the EU level, as the strategy paper on immigration elaborated by the Austrian Presidency clearly stated: *"No European country today would consider going it alone in opening up the right of asylum, making access easier for immigrant workers or increasing social security benefits for immigrants. Such topics do not therefore need to be discussed even at regular intervals"*, (European Council, 1998:5).

At the policy-making level, different actors also played a significant role in defining Spanish immigration policies. Although the level of politicisation of immigration issues in Spain has remained relatively low, with no extreme right party capitalising on the issue of immigration, the appearance of some local xenophobic entrepreneurs in areas with a higher concentration of immigrants (Ceuta, Melilla, El Ejido), and the outburst of some racist incidents, have helped to raise the profile of this area of policy. In the recent general elections of March 2000, political parties were forced for the first time to express their opinion on immigration issues in their political manifestos. The conservative party won the election by an absolute majority. Among the objectives of their program was the promise to change the new immigration Law in a more restrictive sense.

Among the new policies implemented in recent times, the development of a program for the import of temporary labour from Morocco seem to fulfil the need for unskilled labour perceived in certain sectors of the Spanish economy. Although some authors suggested that the Spanish state was turning a blind eye on the issue of the hiring of undocumented immigrants, a recent consensus among employers, trade unions, and the state pushed towards a regulation of the flows under official monitoring, subordinating migratory flows to the perceived needs of the Spanish economy. In this respect the negative experiences with guestworker schemes in other European countries did not seem to act as a discouraging factor for the design of the bilateral agreement with Morocco.

Although the administrative skills of the Spanish state in relation to immigration issues were nil fifteen years ago, the handling of programs such as the regularisation, and the yearly quotas have considerably increased its capacities. Integration policies have remained to a large extent in paper, but a network of agencies, research bodies and forums have started to develop the capabilities to implement a more sophisticated set of policies to facilitate the incorporation of immigrant populations into the Spanish society. Third sector organisations played a significant role in that direction, by fulfilling the tasks that the state was not willing or prepared to accomplish, while retaining their role as advocacy groups in the interest of immigrant populations.

Arguments pointing at the liberal -democratic character of Western European countries to understand their policies of control of migratory flows, and at the universalistic idiom of liberalism to explain the extension of civil and social rights to immigrant populations (Joppke, 1998), may contribute to explain the low profile of those issues in the Spanish political agenda. The weak nature of liberalism in a relatively young democracy like Spain (Malefakis, 1992), would account for the lack of mobilisation before explicit violations of immigrant's rights, or more subtle forms of discrimination and marginalisation. Despite those weaknesses, the judiciary and the courts have played a substantial role in the granting of basic rights for immigrants, very often against state authorities.

With all its particularities, the variable of the "Europeanisation" of policy-making on immigration issues appears as one of the key elements to understand immigration policies in Spain in the last two decades. Either through direct pressures (requirements to join the Schengen area), or indirect influences (policy learning, and emulation), the participation of Spain in the process of building a common market without internal borders has strongly conditioned the shape of its policies with regard to immigration issues.

In issues related to border control policies Spanish authorities were particularly sensitive to the opinion of other European governments, for that area of policy was based on reciprocal trust among the member states. That resulted in a very restrictive stand in relation to the control of migratory flows. Greater autonomy has been gained more recently by Spanish authorities in relation to policies to promote the integration of immigrant populations. These policies tried to answer a series of needs perceived within Spanish society.

## References

- BALDWIN-EDWARDS, M., 1999, "Immigrants and the Welfare State in Europe", in TAYLOR, E., and ARANGO, J., "Migration at Century's End", Oxford U. Press.
- BROCHMANN, G., 1996, "European Integration and Immigration from Third Countries", Scandinavian University Press, Oslo.
- BRUBAKER, R., 1992, "Citizenship and Nationhood in France and Germany", Harvard University Press, Cambridge, Ma.
- \_\_\_\_\_, 1989, "Immigration and the Politics of Citizenship in Europe and North America", University Press of America, New York.
- CALLOVI, G., 1991, "Immigration and the European Community", Contemporary European Affairs, vol.4.
- CASEY, J., 1996, "Las Organizaciones No Gubernamentales: su papel en las políticas públicas", Gestión y análisis de políticas públicas(5-6).
- CELAYA, C., 1997, "La política en la frontera: inmigración y partidos políticos en España durante 1996", Migraciones, n.2.
- COLEMAN, D., 1999, "New Light on Mediterranean Migration", International Migration, vol. 37, n.2.
- DEFENSOR DEL PUEBLO, 1994, "Informes, estudios y documentos. Situación Jurídica y Asistencial de los extranjeros en España", Madrid.
- DIPUTACIÓ DE BARCELONA, 1991, "Informe sobre el treball social amb immigrants estrangers a la provincia de Barcelona".
- ENZENSBERGER, H. M., 1992, "La gran migración", Anagrama, Barcelona.
- ESPING-ANDERSEN, G., 1999, "Social Foundations of Postindustrial Economies", Oxford U. Press, Oxford.
- \_\_\_\_\_, 1993, "Los tres mundos del Estado de Bienestar", Edicions Alfons el Magnànim, Valencia.
- EUROPEAN COMMISSION, 1997, "Proposal for a Council Act establishing the Convention of rules for the admission of third country nationals to the member states", Brussels.

- \_\_\_\_\_. 1994, "Improving Living and Working Conditions. Social Integration of immigrants from non-Community Countries", Brussels.
- EUROPEAN COUNCIL, 1999, "Presidency Conclusions. Tampere European Council, 15 and 16 October 1999".
- \_\_\_\_\_. 1998, "Strategy paper on immigration and asylum", Austrian Presidency.
- FAIST, T., 1995, "Boundaries of welfare states: immigrants and social rights on the national and supranational level", in MILES, R., and THIRANHARDT, D., "Migration and European Integration. The Dynamics of Inclusion and Exclusion", Pinter Publishers, London.
- FAVELL, A., 1998, "Philosophies of Integration. Immigration and the Idea of Citizenship in France and Britain", Macmillan, London.
- FORUM DES MIGRANTS DE L'UE, 2000, "Immigration under the watchful eye of Tampere", Brussels.
- \_\_\_\_\_. 1999, "A few observations of the EU Migrant's Forum as regards the draft action plan for Morocco from the high level group 'Asylum and Migration'", Brussels.
- FREEMAN, G., 1995, "Modes of Immigration Politics in Liberal Democratic States", International Migration Review, vol. 29, n.4.
- \_\_\_\_\_. 1986, "Migration and the Political Economy of the Welfare State", Annals of the American Academy of Political and Social Science.
- GUIRAUDON, V., 1998, "International Human Rights Norms and their Incorporation: The Protection of Aliens in Europe", EUI Working Paper No. 98/4, Florence.
- \_\_\_\_\_. 1999, "The Marshallian Triptych Re-Ordered: The Role of Courts and Bureaucracies in Furthering Migrant Social Rights", EUI Working Paper No. 99/1, Florence.
- HAILBRONNER, K., 1995, "Third-country Nationals and EC Law", in ROSAS, A., and ANTOLA, E., "A Citizens' Europe. In Search of a New Order", SAGE, London.
- HAMMAR, T., 1990, "Democracy and the Nation State. Aliens, Denizens and Citizens in a World of International Migration", Avebury, London.
- HANSEN, R., 1999, "Migration, citizenship and race in Europe: Between incorporation and exclusion", European Journal of Political Research, 35.
- HERNANDO DE LARRAMENDI, M., 1994, "La proyección mediterránea de España: Las relaciones con Marruecos", in VILAR, J., "Murcia frontera demográfica en el sur de Europa", Ude Murcia.

- HOLLIFIELD, J. F., 1992, "Immigrants, Markets and States. The Political Economy of Post-war Europe", Harvard U. Press, Cambridge, Ma.
- IRELAND, P., 1991, "Facing the True 'Fortress Europe': Immigration and Politics in the EC", Journal of Common Market Studies., vol XXIX. no. 5.
- IZQUIERDO, A., 1996, "La inmigración inesperada", Trotta, Madrid.
- JACOBSON, D., 1996, "Rights across Borders. Immigration and the Decline of Citizenship", Johns Hopkins U. Press, Baltimore.
- JOPPKE, C., 1999a, "The Domestic Legal Sources of Immigrant Rights: The United States, Germany, and the European Union", European University Institute, Florence.
- \_\_\_\_\_, 1999b, "Immigration and the Nation-State. The US, Germany and Great Britain", Oxford U. Press, Oxford.
- \_\_\_\_\_, 1998, "Why Liberal States Accept Unwanted Immigration", World Politics, vol. 50, n.2.
- \_\_\_\_\_, 1995, "Multiculturalism and Immigration: A Comparison of the US, Germany and Britain", European University Institute, Florence.
- LAYTON-HENRY, Z., 1992, "Citizenship and Migrant Workers in Western Europe", University of Warwick.
- \_\_\_\_\_, 1990, "The Political Rights of Migrant Workers in Western Europe", Sage, London.
- LOPEZ, B., 1993, "Inmigración magrebí en España. El retorno de los moriscos", Mapfre, Madrid.
- MALEFAKIS, E., 1992, "Southern Europe in the XIXth and XXth Centuries: An Historical Overview", Instituto Juan March de Estudios e Investigaciones, Working Paper, Madrid.
- MINISTERIO DE ASUNTOS SOCIALES, 1998a, "Anuario de Migraciones 1998", Dirección General de Migraciones, Madrid.
- 1998b, "Informe sobre la Inmigración y el Asilo en España", Foro para la Integración Social de los Inmigrantes.
- MINISTERIO DEL INTERIOR, 2002, "Anuario de Extranjería", Madrid.
- \_\_\_\_\_, 1998, "Anuario Estadístico de Extranjería", Comisión Interministerial de Extranjería, Madrid.

- MODOOD, T., and WERBNER, P., 1997, "The Politics of Multiculturalism in the New Europe", Zed Books, London.
- NIESSEN, J., 1999, "EU Policies on Immigration and Integration after the Amsterdam Treaty", Migration Policy Group.
- OPI, 2000, "Indicadores de la inmigración y el asilo en España", January, n.8.
- \_\_\_\_\_, 1999, "Indicadores de la inmigración y el asilo en España", April, n.5.
- PÉRÉS, H., 1999, "L'Europe commence à Gibraltar. Le dilemme espagnol face à l'immigration", Pôle Sud, n.11.
- RADAELLI, C., 1997, "How does Europeanisation Produce Domestic Policy Change? Corporate Tax Policy in Italy and the United Kingdom", Comparative Political Studies, Vol.30, n.5.
- RODENAS CALATAYUD, C., 1994, "Emigración y economía en España", Cívitas, Madrid.
- ROSE, R., 1976, "On the Priorities of Government: A Developmental Analysis of Public Policies", European Journal of Political Research, 4.
- \_\_\_\_\_, 1991, "What is Lesson Drawing?", Journal of Public Policies, 11.1.
- SAFRAN, W., 1991, "State, Nation, National Identity, and Citizenship: France as a Test Case", International Political Science Review, Vol 12, nº 3.
- SOYSAL, Y., 1994, "Limits of Citizenship. Migrants and Postnational Membership in Europe", University of Chicago Press, Chicago.
- STETTER, S., 1999, "Regulating migration: authority delegation in justice and home affairs", Journal of European Public Policy, vol.7, n.1.
- WALZER, M., 1983, "Spheres of Justice", Basic Books, New York.
- WEIL, P., 1998, "The Transformation of Immigration Policies. Immigration Control and Nationality Laws in Europe: A Comparative Approach", EUI Working Paper n 98/5, Florence.