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COUNTRY REPORT: SPAIN

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European University Institute, Florence
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Report on Spain

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Spain¹

**Ruth Rubio Marín, Irene Sobrino,
Alberto Martín Pérez, Francisco Javier Moreno Fuentes**

1 Introduction

Nation-states have markedly different and deeply rooted conceptions as to what constitutes the national community. These sets of ideas, relating to the boundaries of the political community, as well as to how to cope with the diversity existing within it, constitute “policy paradigms” that, although open to change, constitute a normative substrate that strongly influences the patterns to be followed by the different populations of immigrant origin into the host society in order to fit in (Brubaker, 1992; Favell, 1998). Nationality law is strongly linked to these conceptions, since it establishes the normative framework that defines the boundary of the inner-group (nationals), as well as the different paths (mostly depending on the nationality of origin and the reason for settling in the receiving country) by which those placed outside of the limits of citizenship may reach the status of member of the national community.

This report aims to describe the evolution of nationality² legislation in Spain, an area of regulation that has remained strongly anchored in the paradigm of a country of emigration, and thus focused on maintaining the links with Spanish communities abroad. We also claim that Spain’s colonial past has played a crucial role in defining its nationality legislation, and that this area of legislation has not yet been included in the normative framework aimed at facilitating the integration of immigrant populations settled in Spain.

After this brief introduction, this report is divided into four additional parts. The second section briefly reviews the main characteristics of current Spanish nationality law, describing its key features in order to contextualize the sections that will follow. Section three will then thoroughly review the historical evolution of nationality legislation in Spain, stressing the crucial role played by the concern for the situation of Spanish nationals living abroad in the definition and implementation of Spanish nationality law. In the fourth part of the report we systematically describe the mechanisms by which Spanish nationality is acquired, transmitted, lost and combined with other nationalities, while paying attention to the

¹ Ruth Rubio-Marín and Irene Sobrino were the authors of the report published in 2009, Alberto Martín Pérez and Francisco Javier Moreno Fuentes updated and revised the report comprehensively in 2012. Changes have been approved by the original authors.

² As a brief note on terminology, it is necessary to point out that the Spanish term used to refer to the concept of ‘nationality’, understood as the legal bond between an individual and the state, is ‘*nacionalidad*’. The Spanish term for citizenship, referring to the full entitlement of political rights is ‘*ciudadanía*’. From the legal viewpoint, the concept of citizenship therefore is more restricted than nationality. However, in some cases, ‘citizenship’ is used in the legal texts in a less accurate way as it is actually referring to the wider conceptual sphere of ‘nationality’ (e.g. articles 11.3, 13.4, and 41 of the Spanish Constitution; article 22.2 of the Spanish Civil Code). From a political or sociological viewpoint, the term ‘*nacionalidad*’ can also be understood as the different historical-cultural reality integrated within the Spanish national community. In fact, the Spanish Constitution acknowledges the plural character of the country using the term ‘*nacionalidades*’ (article 2 of the Spanish Constitution) (Santolaya, 2008:11-14; Carrascosa, 2007:17-23).

institutional arrangements responsible for the implementation of this area of legislation, and reviewing the latest statistical developments regarding the acquisition of Spanish citizenship by foreign residents. We finish with some concluding remarks centred on the lack of visibility of nationality issues in the Spanish public and political agendas, and the lack of consideration given to the potential role played by this area of regulation in the incorporation of populations of immigrant origin into Spanish society.

2 Brief overview of current Spanish nationality law

Spain belongs to the small group of countries that, up to the present, continue to regulate their nationality law (including the residency requirements for the naturalization of foreigners, the right of children born of foreign parents to acquire Spanish nationality, or the regulation of dual nationality) through some articles of the Civil Code (henceforth CC).³

As a country with a centuries old emigration tradition that strongly marked Spanish society up to very recently, the main mode of automatic acquisition of nationality in Spain is *ius sanguinis*, even though the system also contains certain *ius soli* elements. Spain embraces an unqualified *ius sanguinis* in favour of those born of a Spanish mother or father who become nationals regardless of whether they are born in Spain or outside of the country (art. 17.1 CC). Automatic access to nationality is also guaranteed for those born in Spain, but only if at least one of the parents was also born in Spain (double *ius soli*) (art. 17.1.b CC), or if the individual would otherwise become stateless (either because both parents are also stateless, or because none of their nationalities is passed on to the child via *ius sanguinis*) (art. 17.1.c CC). Finally, automatic acquisition of Spanish nationality through filial transfer is also provided for in the case of adoption, for minors – i.e. those under eighteen- adopted by a Spaniard, and from the very moment of the adoption (art. 19.1 CC).

With regard to the modes of non-automatic acquisition of nationality, the Spanish system distinguishes four modes: 1) by option; 2) by discretionary naturalisation (*carta de naturaleza*); 3) by residence-based acquisition, and 4) by ‘possession of status’. Acquisition by option only requires the applicant to express his or her will. It applies to people who have a special link to Spain including: those who are or have been subject to the *patria potestas* of a Spaniard (art. 20.1.a CC) (for instance, the children of a naturalised immigrant); those whose (natural or adopted) father or mother was a Spaniard at birth, born in Spain (art. 20.1.b CC) (for instance, the children of Spanish emigrants who lost their Spanish nationality); those for whom descent from a Spaniard or birth in Spain is established after they reach their majority, at eighteen years of age (20.1.c CC in connection to art. 17.2), and finally, those cases of adoption in which the person adopted is eighteen or older (20.1.c CC in connection to art. 19.2).

Non-automatic acquisition through naturalisation includes acquisition by discretionary conferral, called “*carta de naturaleza*”, or other forms of entitlement-based conferrals. The latter can be either purely residence-based, or hinge upon both residence as well as other criteria. Typically these forms are labelled as ‘acquisition by residence’. Regarding the acquisition by discretionary conferral the Spanish legal order simply allows for this possibility when extraordinary circumstances concur. No definition is given as to what ‘extraordinary circumstances’ means. It is the target person who has to apply for citizenship and he or she may be successful or not, depending on the full discretion of the Government (art. 21.1 CC).

What is commonly identified as acquisition by residence refers to a mode of acquisition that entitles the applicant to Spanish nationality conferred by the Ministry of

³ Nationality is currently regulated by articles 17 to 28 of the Civil Code.

Justice upon application (art. 21.2 CC). If the requirements are fulfilled, the person is therefore entitled to naturalisation, but the government may deny nationality if public order or national interests so dictate. The legal system provides for a general residence requirement of ten years of uninterrupted, legal and prior residence, although it also provides for shorter residence requirements for specific groups (art. 22 CC). These include: refugees (five years); nationals of Latin American countries, Andorra, Philippines, Equatorial Guinea, Portugal or Sephardic Jews (two years) and finally a set of categories in which only one year of residence is required. The latter include: those born in Spain; those who had a right to acquire nationality by option, but did not exercise it in due term; those who have been subject for at least two consecutive years to guardianship of a Spanish citizen or institution; those who at the time of application have been married for at least one year to a Spaniard; the widow or widower of a Spaniard if they were not separated at the time of the death of their spouse; and those born outside of Spain whose father or mother, grandfather or grandmother were Spaniards by birth.

Common requirements for acquisition by option, discretionary naturalisation and residence-based acquisition include: an oath of loyalty to the King and obedience to the Constitution and the laws; renunciation of prior nationality, and registration in the Civil Registry (art. 23 CC). Moreover, residence-based acquisition by entitlement requires proof of good civic conduct and sufficient integration into Spanish society. Some nationals are exempt from the renunciation requirement. They form the class of nationals for whom dual citizenship is legally accepted. This class includes nationals from Latin American countries, Andorra, Philippines, Equatorial Guinea, and Portugal (arts. 23.b and 24.1 CC).

Finally the Spanish CC provides for the possibility of acquisition based on possession of status for people who, in good faith, have enjoyed and used Spanish nationality for at least ten years under a title which they thought was legitimate (art. 18 CC). As for the loss of Spanish nationality, the 1978 Spanish Constitution (art. 11.2) determines that Spaniards ‘by origin’ cannot be deprived of their nationality.⁴ Therefore, when regulating the modes of loss, the Spanish CC distinguishes only two possibilities: voluntary and involuntary loss (the latter does not apply to those who are Spanish by origin).

There are four possibilities for voluntary loss (art. 24 CC). First, for those who are emancipated,⁵ live in a foreign country on a regular basis, and have voluntarily acquired another nationality (except in the cases in which the second nationality is one of a Latin American country or that of Andorra, the Philippines, Equatorial Guinea or Portugal). Loss can be prevented through declaration at the Civil Registry. Second, Spanish nationality can be lost by those emancipated Spaniards who live abroad on a regular basis and make exclusive use of another nationality which was attributed to them when they were minors. Here again the loss can be prevented through declaration of the wish to retain Spanish nationality before the Civil Registry. Third, Spanish nationality can be voluntarily relinquished by those emancipated individuals living abroad regularly, as long as they have another nationality. Finally, the Spanish legal system provides for the loss of Spanish nationality for those who were born and live abroad and are descendants of Spaniards who were also born abroad as long as the country of residence recognises them as nationals, and unless they do not declare

⁴ Traditionally, Spanish citizenship law has distinguished between ‘nationality by origin’ (*nacionalidad originaria*) and ‘derivative nationality’ (*nacionalidad derivativa*). Whereas the former used to refer, and still does for the most part, to instances of automatic acquisition and acquisition at birth, the latter was usually reserved for non-automatic and acquisition after birth. Currently the Spanish legal system still refers to these two modes of acquisition although it provides for instances in which ‘nationality by origin’ is not acquired at the moment of birth and requires application.

⁵ Typically emancipation comes either upon achieving majority, at eighteen, when a minor marries, with consent of those exercising *patria potestas*, or with judicial authorisation, see article 314 CC.

their will to retain their Spanish nationality before the Civil Registry within three years of coming of age or becoming emancipated.

Involuntary loss (art. 25 CC), on the other hand, occurs in three instances. First, if naturalised nationals make exclusive use for three years of the nationality they relinquished when acquiring Spanish nationality. Second, if a naturalised alien voluntarily joins the military or takes up political office in a foreign country in contravention to the express prohibition by the Government. Third and finally, when fraud in the acquisition of nationality is legally proved.

As for the reacquisition of nationality (art. 26 CC) the main condition, other than the expression of will, is legal residence in Spain. Emigrants and their descendants are exempt from this requirement, and the Ministry of Justice can also exempt others in case of exceptional circumstances. As for those who lost Spanish nationality involuntarily, reacquisition is subject to the discretion of the government.

One of the most confusing aspects of Spanish nationality legislation is the regulation of dual nationality. In this respect the CC only establishes the possibility for dual nationality in the case of the countries with historical links with Spain (whose citizens can apply for Spanish citizenship only after 2 years of legal residence). These applicants do not need to renounce their previous nationality and, reciprocally, Spanish citizens can maintain Spanish nationality when naturalizing in one of those countries. However, article 24 CC anticipates the possibility of keeping two nationalities in the case of those Spanish nationals simultaneously holding the passport of another country. Although in the case of obtaining Spanish nationality through naturalization the candidate must renounce his or her previous nationality (with the exception mentioned above), in the case of Spanish-born citizens who obtain another nationality they may keep their Spanish citizenship by declaring their will to do so in a period of three years after they obtain the passport of another country. Therefore, Spain tolerates this particular case of dual nationality in order to reinforce *ius sanguinis* (through this principle it becomes easier to remain Spanish-born citizen). There is, moreover, no reciprocity in this principle: when becoming Spanish nationals, immigrants are compelled to renounce their nationality of origin (outside the exception of dual nationality previously mentioned). Nationality law, in this particular case, strengthens the *ius sanguinis* principle and, at the same time, establishes a limit for *ius soli*, making it more difficult to apply for naturalization for those who do not want to renounce their nationality of origin.

A crucial role in the implementation of this regulation is played by the General Directorate of Registries and Notaries (*Dirección General de los Registros y del Notariado*, DGRN), an administrative body within the Ministry of Justice. It deals with civil status and nationality, and has largely been in charge of producing administrative guidelines which have proven essential for interpreting this relatively vague legislation. This body is also in charge of deciding on the acquisition and loss of nationality. Its decisions can be appealed to contentious-administrative courts (the National Court -*Audiencia Nacional*-, and the Supreme Court -*Tribunal Supremo*-). Both the administrative decisions by the General Directorate, and the judicial decisions, especially those by the Supreme Court, have also become a rich, yet dispersed and not always consistent, source of interpretation of citizenship law in Spain.

3 Evolution of Spanish nationality legislation: a historical overview

The fact of regulating nationality in the CC, and the absence of a law specifically devoted to this potentially sensitive issue, reflect the relatively low profile that this area of policy has traditionally had in the Spanish political agenda. An overview of the evolution of this area of legislation illustrates this particular point, by showing the strong path-dependency of Spanish

citizenship law in explicitly intending to maintain the connection with the country of Spanish emigrants and their descendants.

Since the sixteenth century, Spain was strongly affected by the experience of emigration of its citizens to the American colonies. After the independence of most of these territories at the beginning of the 19th century, and the emergence of the new republics in Latin America, the issue of the nationality status of the first generation of Spanish settlers and their descendants in those countries constituted one of the key problems to be negotiated in the peace treaties between the former metropolis and the newly independent countries (agreements signed in the 1850s and 1860s). Those bilateral agreements required that preferential treatment be given to Spanish migrants in those countries in terms of facilities to settle, as well as the possibility of obtaining the nationality of the host country without losing their Spanish nationality of origin. Those agreements aimed at conciliating the demographic needs of the new states, with the interest of Spanish authorities to guarantee some protection to its emigrants and their descendants, allowing the development of a regulatory framework of situations of dual nationality that is still in force today. Only the colonies separated from Spain at the end of the 1898 Spanish-American War (Cuba, Puerto Rico and the Philippines) did not sign treaties allowing first generation Spanish settlers and their descendants to keep Spanish nationality (Moreno Fuentes, 2001:120).

From its inception, Spanish nationality regulation had among its main objectives to maintain the links with the communities of Spaniards settled abroad, as well as to provide protection to those groups by making sure that they would not easily lose their Spanish citizenship. The regulations on Spanish nationality in their contemporary form date back to the origins of constitutionalism in Spain in the early 19th century (Fernández Rozas 1987). It became a common trend for the several constitutions that Spain enacted in that period, starting with Spain's first constitution in 1812, to briefly address the question of the acquisition of Spanish nationality and the rights and duties of foreigners in Spain.⁶ All of these constitutions regulated the matter briefly, delegating the responsibility of expanding the regulatory framework into laws that, for the most part, were never enacted.

The first legislative attempt to define the main traits of Spanish nationality in a more comprehensive manner occurred in 1889, when the CC was passed. Until today the CC has remained the locus of Spain's nationality regulations. Given that this code can only contain a few provisions dedicated to nationality, precedents set by the administrative body responsible for deciding on the conferral or denial of nationality, the judicial decisions overseeing such decisions, as well as administrative regulations, have been crucial in supplementing this legislation.

3.1 The 1889 Civil Code

The 1889 CC devoted twelve articles to nationality. The main characteristics of the nationality system embodied by this regulation were a strong component of *ius sanguinis*, a relatively generous application of *ius soli*, and a rather naive application of the principle of naturalization by residence, as well as the prevalence of the principle of legal unity of the family. The brevity of this regulation allowed for a large degree of judicial discretion in its application. The rules were criticised by legal scholars who complained about their deficient technical value, especially when compared to other systems in force at the time in other countries (Fernández Rozas 1987:70). Nevertheless, this regulation has remained the backbone of Spanish legislation on nationality until the present.

⁶ All of the following Spanish constitutions made some reference to the nationality regime: the Constitution of 1812; that of 1837 which inspired the regime that would then be reproduced by the Constitutions of 1845, 1869 and 1876, ultimately influencing the 1889 Civil Code regulation.

Regarding the principle of *ius sanguinis*, which has remained stable until today, the CC stated that individuals born from a Spanish father or mother would be Spanish even if they were born outside of Spain (art. 17.2 of the 1889 CC). This ensured that Spaniards who, at the end of the century, were emigrating (mostly to Latin America) could pass on their nationality to their children. This allowed Spain to maintain links with its emigrants and their descendants. Moreover, since Spain had signed agreements with many of these countries during the 1860s and 1870s implicitly accepting dual nationality, there were a large number of cases of dual nationals among those expatriates. To avoid the perpetuation of generations of Spanish nationals living abroad without any connection to Spain, a concern that was partly triggered by the participation of the descendants of Spanish emigrants or *criollos* in the struggles for independence of the American colonies (Moreno Fuentes 2001:124), article 26 of the CC required all Spanish emigrants who wanted to maintain their Spanish nationality in those countries who, by virtue of their residence considered them to be their nationals, to register themselves, as well as their spouses and descendants, at Spanish embassies or consulates.

Women and men were treated equally under art. 17.2 CC, and thus could both pass their nationality on to their children. However, according to then article 22 CC, a Spanish woman who married a foreigner would automatically assume his nationality, to ensure the principle of the legal unity of the family. She would only be able to recover Spanish nationality if the marriage was dissolved. Similarly, a foreign woman automatically became naturalised when she married a Spanish man. This meant that although in theory, and through the application of *ius sanguinis*, women could pass on their nationality to their descendants, this was only the case when they were single mothers. As for the children, it was foreseen that until they became of age, or emancipated, they would have the nationality of their parents (art. 18 CC), which meant, unless these were children born out of wedlock, the nationality of their father.

As for the application of *ius soli*, article 17 CC provided that all those born in Spanish territory would be Spanish. However, art. 18 and 19 CC toned down this apparently generous *ius soli* regime by requiring the foreign parents of a Spanish-born child, or the child him/herself after reaching the age of majority, to declare his/her will to acquire Spanish nationality, and then to renounce to their previous citizenship, in order to actually enjoy the benefit of Spanish nationality. Thus, more than strictly *ius soli*, this represented what has been named a *facultas soli* (Fernández Rozas, 1987:71). Even if conceptualised as a 'privilege', or an 'extraordinary benefit' (Castro y Bravo, 1952), this procedure still allowed for a relatively easy naturalisation for second generations. Nothing was added to address the concerns of the third generation.

As for naturalisation, the 1889 CC contemplated naturalisation by discretionary granting (*carta de naturaleza*) (art. 17.3 CC), or acquisition by residence (art. 17.4 CC). The requirements for the former were not further specified, other than the mandatory renunciation of prior nationality, swearing loyalty to the Constitution, and registering before the Civil Registry (art. 25 CC). As for the latter, the provision simply stated that all those who had become residents of any locality in the monarchy would be Spanish, but did not add any definition of residence, of the length of that residence, or any clarification on the way to certify it. In 1916, a law was passed introducing the residency requirement of ten years before qualifying for naturalisation, a provision that has remained in place until today. That law already provided for shorter residence requirements (5 years) in some cases such as when a man married a Spanish woman, or somebody started or developed an industry in Spain, owned an industry or business, or rendered a special service to the country.

As far as the loss of nationality was concerned, the 1889 CC foresaw that Spanish nationality would be lost through the acquisition of a foreign nationality, the acceptance of

employment in a foreign government, or the enlistment in the military forces of a foreign country without royal authorisation (art. 20 of the 1889 CC). However, nationals who lost their nationality because of naturalisation abroad could recover it, were they to come back to Spain and declare their willingness to do so at the Civil Registry (art. 21 CC). Those who instead lost their nationality for accepting employment in a foreign government, or joining the military forces of a foreign country without royal authorisation, would not be able to recover Spanish nationality without royal authorisation (art. 23 CC). Finally those who were born in a foreign country from a Spanish father or mother who lost their Spanish nationality as a result of their parents losing theirs could also recover it by expressing their willingness to do so upon coming of age, at the Civil Registry, or at a Spanish Consulate (art. 24 CC).

3.2 The Second Republic (1931-1939): a failed attempt of reform

The proclamation of the Second Republic, in April 14th 1931, represented a radical transformation of the Spanish political and legal system, including the nationality legislation. The reforms introduced by the 1931 Constitution, taking the most progressive European legislation as a reference (mostly the French Nationality Code of 1927), represented an attempt to radically transform the nationality regime. Despite its brief period of life, this regulation is worth mentioning because it inspired many of the characteristics of today's nationality legislation. Due to the brevity of the Republican period, however, the set of regulations drafted in 1931 was, for the most part, not developed into comprehensive laws. The interpretation given to it, when applied by the government and the courts, was just as progressive, and this jurisprudence has also contributed to today's nationality regime.

The main objectives of the new nationality rules were also to better protect Spanish emigrants abroad (especially in view of the increasingly non-assimilationist policies of receiving countries) (Alvarez Rodriguez, 1990:173-189); to increase the Spanish population, and to consolidate the idea of a 'community of Hispanic nations' (Fernández Rozas, 1987:73). This legislation made the application of *ius sanguinis* even more flexible, and explicitly regulated dual nationality with countries belonging to the Ibero-American community. The new law also clarified the procedures for the naturalization by residence (while maintaining the general requirement of ten years of residence, it reduced that period to two years for nationals of the Ibero-American community of nations and the Spanish protectorate in Morocco).

The new Constitution exempted Spanish expatriates from the requirement of registering at an embassy or consulate to avoid losing their nationality. Henceforth, a Spanish national would lose his or her nationality when acquiring a second citizenship only if that acquisition was fully voluntary, and never in the case of acquiring the nationality of an Ibero-American country. Children of Spanish nationals abroad would also acquire Spanish nationality by descent, regardless of whether or not the country of residence granted them its nationality. On the other hand, children born in Spain of foreign parents would have a right to choose, unless they were born from unknown parents, in which case they would automatically acquire Spanish nationality (arts. 23.2, and 23.3).

In accordance with the egalitarian spirit of the Republican regime, the new law tried to eliminate all kinds of gender discrimination, and women who married foreigners would no longer lose their nationality. This fully ensured equal chances for women to pass on their nationality to their children, regardless of their marital status. Women had the right to opt to the nationality of their spouses through marriage, or to retain their previous citizenship (art. 23.4).

The proceedings for naturalisation by residence were also clarified in the only piece of nationality legislation that was enacted under the 1931 Constitution. While the original ten-

year residence requirement was maintained, in the spirit of strengthening the relations with the nations with whom Spain considered to have historical ties, the residency requirement was reduced to only two years if the foreigner came from one of the Hispano-American republics, Portugal, Brazil or the Spanish protectorate in Morocco.

As for the loss of Spanish citizenship, this was foreseen as a consequence of accepting employment in a foreign government if that entailed exercising public authority, or of joining the military forces of a foreign country without state approval (art. 24.1 of the 1931 Constitution). Nationals who voluntarily acquired another nationality would also lose Spanish nationality (but without this having an automatic impact on their descendants' nationality) (art. 24.2). The Constitution provided that, on the basis of reciprocity, and as determined by law, nationals of Portugal, Hispano-America, including Brazil, residing in Spain could naturalise without losing their nationality of origin. The Constitution also mentioned that in those same countries Spanish nationals could acquire a second nationality without losing their previous Spanish citizenship, as long as those countries allowed for this, and regardless of reciprocity (art. 24.2).

3.3 Franco's regime: the 1954 and 1975 reforms

The brevity of the republican period, marked by the Civil War (1936-39) and finished by the victory of the nationalist rebels, implied the re-establishment of the Civil Code as the main legislative framework governing Spanish nationality: in 1938 the Republican constitution was invalidated, and the regulation regarding nationality in the 1889 CC was effectively reintroduced. In addition, the political turmoil of the 1930s and the Civil War had the consequence of sending a large number of Spaniards into exile.⁷ Although the Francoist regime did not automatically deprive of their Spanish nationality all those who fled his repressive regime, the long term consequence of their settling abroad was that many of them (and certainly their descendants), ended up losing their Spanish citizenship, since they acquired the nationality of the country where they settled, and they could not, or did not want to, remain in contact with the bureaucracy of what they saw as an illegitimate authoritarian regime in order to maintain their Spanish passport.

Within the Francoist regime, a major reform of nationality law did not take place again until 1954.⁸ The changes introduced in the CC through the 1954 legislation were consistent with changes in Spain's emigration patterns. The emigration to Latin America was ending, being replaced by temporary migration (mostly men) to European countries which were rebuilding their economies after the war. The main destinations now included Germany, France, Switzerland, and the Benelux. There was the assumption that this newer form of migration would be temporary, and thus the 1954 legislator did not expect it to have any implications for nationality issues. This explains why the focus remained on expatriates in Latin America, and on the question of the number of generations that would be allowed to pass on their Spanish nationality while abroad. Reviving the spirit of the old CC, the legislator decided at that moment that third-generation emigrants had to register at a Spanish embassy or consulate for them to retain their Spanish nationality, to avoid the perpetuation of expatriates without real connection to Spain (article 26 CC as amended by the 1954 Law). First and second generations remained exempt from the registration requirement.

⁷ The commonly accepted estimation of the total number of exiles at the end of the Spanish Civil War is about 500,000 (Lagarde, 1991). The fate of these exiles was very diverse. Whereas many managed to travel to Latin America (mainly Mexico), others remained in France during World War II, fought in the *maquis* or worked in French factories. Some exiles went back safely to Spain, but the less fortunate ended up in Nazi concentration camps, or were handed over to the Francoist regime by the authorities of occupied France.

⁸ Law of 15 July 1954 developed by a Decree of 2 April 1955.

The 1954 reform picked up the idea of establishing dual nationality treaties with the countries of the Ibero-American community of nations. Although, as we saw, the idea was originally put forward in the 1931 Constitution, it fitted well with Franco's ideology which embraced the narrative of Spain's continuation of the long lost Spanish Empire of glorious times (Moreno Fuentes, 2001: 141). In fact, the preamble of the 1954 reform stated that Spain shared a 'spiritual mission' with countries with which 'for well-known reasons that transcend all kinds of contingencies it is inextinguishably linked' (Lete del Rio, 1984). Thus, the new article 22 of the reformed CC stated that Spanish nationals who voluntarily acquired the nationality of another country would automatically lose their Spanish citizenship, except when the country belonged to the Ibero-American community of nations or the Philippines, if the relevant bilateral agreements had been signed. During the 1950s and 1960s, Spain signed twelve such agreements giving legal expression to a *de facto* reality, and providing a framework for its regulation.⁹

Another novelty of the 1954 reform was that it rendered slightly more flexible the requirements to access nationality, by introducing for the first time the principle of double *ius soli*, to ensure that the third generation of foreigners living in Spain would automatically gain access to Spanish nationality (art. 17.3 CC). The requirements were, however, strict: both parents had to have been born in Spain and reside in Spain at the time the child was born. The idea was to avoid the perpetuation of generations of foreigners living permanently in Spain.

Access to nationality through naturalisation by residence was also made slightly easier in some respects. Although the ten-year residency requirement was retained as a general rule, the period was reduced to two years in the case of a foreign man marrying a Spanish woman. Borrowing from the Second Republic legislation, two years was also the rule for nationals of the Ibero-American community and the Philippines. On the other hand, the concept of public order became a tool to exercise greater political scrutiny over the naturalisation process, allowing the Ministry of Justice a very significant level of discretion in this respect. Article 20 of the CC plainly stated that Spanish nationality could be denied for public order considerations.

As for the loss of Spanish nationality, the regulation remained practically unchanged, except for the addition of the possibility to lose Spanish citizenship as a punishment for a criminal offence (art. 23.2).

One of the most regrettable aspects of the reform was the fact that it went back to some of the more regressive aspects of the old CC, including discrimination against women (who in the name of the legal unity of the family lost their nationality if they acquired that of their husbands -art. 23.3-). Foreign women marrying Spanish men would, on the other hand, acquire Spanish nationality automatically (art. 21 CC).

The priorities determined by the political agenda of the Francoist regime, together with the evolution of the migratory patterns of the Spanish population, defined the boundaries of a nationality law that remained unchanged until the last months of the dictatorship. A partial reform of the CC was introduced in 1975 with the objective of taming those aspects of nationality legislation that more openly discriminated against women. According to the new wording of the CC, marriage was not a sufficient factor for losing or acquiring Spanish nationality. This breaking of the principle of the legal unity of the family represented a reinforcement of the principle of individual will, and a recognition of the right of Spanish women to maintain their nationality, although it did not grant them the right to pass their nationality to their children (something possible only when their children did not have the

⁹ These treaties include those signed with Chile (24 May 1958), Peru (16 May 1959), Paraguay (15 June 1959) Nicaragua (15 June 1961), Guatemala (28 July 1961), Bolivia (12 October 1961), Ecuador (4 March 1964), Costa Rica (8 June 1964), Honduras (15 June 1966), Dominican Republic (15 March 1968), Argentina (14 April 1969), and Colombia (27 June 1979).

right to obtain the nationality of the father). These small changes must be understood in the context of an authoritarian regime aiming at softening its profile in issues that did not question the core of its values, in order to adjust to a rapidly modernizing society, and in search for the legitimacy that would allow it to survive even after the death of the dictator which was to take place just a few months later.

3.4 Spain's transition to democracy and to a country of immigration

After the death of Franco in November 1975, the transition towards a parliamentary liberal democracy implied the gradual adaptation of the whole legal corpus. The enactment of the Constitution of 1978 marked the emergence of a liberal democratic regime, and was therefore followed by the transformation of the entire political and institutional organization of the country. Nationality law did not appear as a top priority, and even when the issue was brought to the political agenda, in late 1981, it received little attention by public opinion and political parties, more concerned with other legislative measures being discussed at the time.

The current Constitution, approved on December 6, 1978, epitomises the result of this transition. Together with Spain's embracing of democracy, the relevant framework for our purposes needs to take into account two further phenomena: the return migration that took place during the transitional period, and the beginning of the transformation of Spain into a net recipient of migratory flows.

During 1974-1977 the migratory balance of Spanish nationals shifted for the first time with nearly 300,000 emigrants returning from abroad. This phenomenon truly had a high political profile and left its visible traces in the new Constitution (Moreno Fuentes, 2001: 130). At the same time, in spite of Spain's severe economic crisis at the beginning of the 1980s, democratic Spain, a main attraction for foreign investment, started generating jobs at the very top and bottom of the occupational scale. These jobs were partly taken by foreigners. From less than 50,000 in 1975, the number of foreigners rose gradually to about 250,000 in 1995. Growing numbers of immigrants from Africa (mostly the Maghreb), Latin America (Ecuador, Colombia, Peru), and Asian (China, Pakistan and Philippines) slowly but steadily started to increase their numbers.

3.4.1 The 1978 Constitution and the 1982 reform of the Civil Code

The 1978 Constitution, breaking with Spain's constitutional tradition, did not aim at offering a comprehensive regulation of nationality. Thus, article 11.1 refers the matter to other regulations that will define the way Spanish nationality is to be acquired, kept and lost. The Constitution does however define a set of basic principles that must be respected. In this way, art. 11.2 states that Spanish nationals 'by origin' cannot be deprived of their nationality, whereas art. 11.3 authorises Spain to sign dual nationality agreements with Ibero-American countries, as well as with other countries that have or have had special links with Spain. The same provision recognises that, with regard to those very same countries, Spanish nationals can naturalise without losing their nationality of origin. The existence of a historical community of Ibero-American nations, a legal concept dating back to the 1931 Second Republic, has thus been preserved in the Spanish Constitution. As mentioned, the return of Spanish emigrants was also taken into account in the drafting of the new Constitution which, in its art. 42 (within the Chapter on Leading Social and Economic Principles), states: 'the State shall protect the social and economic rights of Spanish workers abroad, and enact a policy to facilitate their return'. These are the only provisions that make explicit or implicit reference to nationality in the basic Law of Spain. However, other clauses, such as the one

that prohibits discrimination on the grounds of sex, have naturally had an impact on the relevant legislation.

The first reform of nationality legislation of the new democratic regime took place in 1982, when the numbers of foreign nationals living in Spain were still quite small, and Spain was far from being perceived as a country of immigration.¹⁰ The 1982 reform retained the basic traits of Spanish nationality legislation,¹¹ adapting it to the constitutional mandates. All types of discrimination against women, regarding both their access and their right to pass on their nationality to their descendants, were finally removed (art. 17.2 CC as reformed by the 1982 Law). However, the opportunity was not seized to change the regulation in depth. It was clear that changing Spanish nationality legislation was not perceived as a priority in the new democratic venture, and when the government presented its bill to be discussed in parliament, only the Communist Party challenged it in depth, yet with little success.¹² Indeed, the matter also had a very low profile in the public opinion, and the law passed almost unnoticed during the summer of 1982.

One of the main characteristics of the new regulation was the systematic differentiation between nationals ‘by origin’, and those with ‘derivative nationality’, a relevant distinction for the purpose of the acquisition and, even more importantly, for the loss of Spanish nationality (arts. 22.2, 23.4 and 24 CC). The 1978 Constitution had, in fact, foreseen that Spaniards ‘by origin’ could only lose their nationality voluntarily, and the 1982 legislative reform made a strict interpretation of this point. In fact, the reformed CC still stated that the voluntary acquisition of another nationality could imply the loss of Spanish nationality, but several exceptions made this rule inapplicable in practice. The acquisition of the nationality of one of the Ibero-American community of nations, plus Andorra, Equatorial Guinea or, for that matter, any other country with whom Spain had signed a bilateral agreement of dual nationality, would not imply the loss of Spanish nationality. At the same time, nationals would not lose their Spanish nationality if they stated that the acquisition of another nationality was the result of their emigration to that country (art. 23 CC as reformed by the 1982 legislation). The underlying reason behind this new provision was the aim of protecting emigrants living in countries with which Spain did not have bilateral agreements.¹³ The other possibilities of loss (committing certain crimes, falsity or fraud in the acquisition of Spanish nationality, voluntarily joining the military forces or exercising a public office in a foreign nation without governmental authorisation) were only reserved for nationals who were not so ‘by origin’ (art.24 CC).

Beyond those elements, *ius sanguinis* was maintained as the central mode of acquisition of Spanish nationality, and the registration requirement at the embassy or consulate as requirement for the retention of Spanish nationality was removed. *Ius soli* was rendered slightly more flexible by allowing the double *ius soli* rule to apply, even when only one of the foreign parents (and not both) was also born in Spain, and by removing the requirement of residence of the parents in Spanish territory at the time of birth (art. 17.4 CC).

¹⁰ This reform was enacted by the Law 51/1982 of 13 July and was developed by the Instruction of the DGRN of 16 May.

¹¹ See Law 51/1982 of 13 July, modifying articles 17-26 of the Civil Code.

¹² The Communist Party insisted that nationality in Spain should stop being regulated through the few provisions of the CC dedicated to it and, following the example of other European countries, should instead be the object of a special Code or Law dedicated exclusively to nationality and in higher detail to its regulation.

¹³ Another way to protect emigrants and thereby respect the constitutional mandate to do so was to foresee, for the first time, that they could recover Spanish nationality, had they lost it, with exemption from the otherwise general requirement of being residents in Spain (art. 24.4 CC).

Other novelties were the inclusion of automatic acquisition of nationality by minors adopted by a Spaniard (art. 18 CC),¹⁴ and the restriction of access by option.

Some changes were made to the acquisition of Spanish nationality by residence. The rule of ten years of residence was once again maintained, but the affinity based privileged regime of two years was expanded to cover, not only nationals from the Ibero-American community, but also those from Andorra and Equatorial Guinea. In recognition of its historical debt to Sephardic Jews (expelled from the Spanish kingdoms in 1492) the legislator included the descendants of this community into the group which need an abbreviated period of residence to be able to apply for Spanish nationality. For those married to a Spanish national, born of a Spanish parent who had lost her or his nationality, or born in Spanish territory, the one year of residence rule was introduced. While trying to facilitate the incorporation of second generations, the Spanish legislator thus departed from the option of *facultas soli*, or naturalisation by option of second generations.

3.4.2 The 1990s and early 2000s minor reforms of the Civil Code

In 1990 the Socialist government promoted a new reform of the regulation on nationality. This reform had a very technical nature, but it introduced significant modifications aimed at simplifying procedures, and eliminating certain interpretation and applicability problems experienced by the previous regulation.

The discussion of this reform constituted the first occasion in which the potential effects of nationality legislation in the incorporation of immigrant populations were debated in Parliament. Several parties expressed once again their concern about the need to enact a law on nationality outside of the framework of the CC, although their proposals were finally rejected. The main novelties in this new regulation were a more favourable treatment for political refugees in the naturalisation by residence, the efforts to avoid the marriages of convenience, and the opening of a period of amnesty to reacquire Spanish nationality by those emigrants who had lost it without expressing their will to do so when acquiring the nationality of their receiving country.

Recycling a proposal put forward by the Communist Party during the 1982 reform, the Socialist Party in government included a clause reducing the residency requirements for the naturalization of refugees. This reduction (from ten to five years) was justified with the argument of favouring the integration of these groups in their host society by facilitating their access to Spanish nationality, as recommended by the 1951 Geneva Convention (ratified by Spain in 1978). Also within the sphere of naturalization by residence, both the *Partido Nacionalista Vasco* (PNV, Basque Nationalist Party), and the coalition of left wing parties *Izquierda Unida* (IU, United Left), presented an amendment to reduce to two years the requirements for nationals of other countries of the European Communities to obtain Spanish nationality. This proposal was studied by the commission in charge of drafting the new articles of the CC, but it was finally rejected after not finding precedents of such preferential treatment in the legislation of other European countries.

The use of the comparative study of nationality law in different countries of the EEC was the main argument used by IU in its proposal to reduce the general requirement of ten years of residence in Spain in order to qualify for naturalization. According to this group, a five-year period was common in European legislation, and this shorter period already showed the integration of the foreigner in the host society. This proposal was also rejected, and the general requirement of ten years of residence remained unchanged.

¹⁴ The Law 24/2005, 18th of November amended the process of registration in cases of international adoption in view of the extraordinary increase of its social importance (articles 16 and 18 of the Civil Registry Code, 8 June 1957; Alvarez, 2008: 202-204).

In the first steps of this reform, IU proposed to give the right to opt for Spanish nationality to all those foreigners born in Spain when they reach their majority, in order to facilitate the integration of second generations into Spanish society. This proposal would have introduced a *facultas soli*, similar to that in place before the reform of the CC in 1954. This amendment was also rejected by the commission that estimated the period of one year of residence for those born in Spain to be a mechanism that achieved the same objective, while it allowed to exclude those who may have been born in Spain accidentally, and did not have any real contact with the country.

An interesting aspect of this reform was the modification of the conditions governing the acquisition of Spanish nationality by residence. Up to then, the period had to be legal and continuous (without long interruptions), immediately before the application for naturalization by residence. After the reform, the continuity condition was dropped, and only the legality of the residence was maintained. The legislator was also concerned with the marriages of convenience, by which foreigners married Spanish nationals in order to acquire their nationality with a preferential period of one year of residence. After the changes introduced by this reform the marriage should have been effective for at least one year, without a separation in the couple, either *de iure* or *de facto*.

Some changes were also introduced in the mechanisms to maintain and regain Spanish nationality for those Spanish nationals living abroad. The 1982 reform had eliminated the need to express the will to maintain Spanish nationality after acquiring the nationality of another country by simply declaring that the acquisition was the result of emigration to that country. That clause proved quite difficult to apply in practice, and the new text aimed at correcting those problems while maintaining the same degree of generosity in the application of *ius sanguinis*. The new rule guaranteed the right to maintain Spanish nationality when acquiring the nationality of another country, but reintroduced the need to express the will to do so within three years after the acquisition of the new nationality.

In order to solve some of the problems derived from the changes in nationality legislation, and the lack of precision of some of the previous regulations, the new text introduced a three-year transitional period within which all those who had lost Spanish nationality without expressing their will to do so could regain it. In 1993, that amnesty was extended for two more years, to make sure that all those who wanted to benefit from it could do so effectively.

In November 1996, a few months after the conservative Popular Party (PP) got into power, IU and the socialists (PSOE) presented two proposals for the reform of Spanish nationality legislation. Although both projects were rejected in the same parliamentary session, and therefore did not affect the regulation in force, they intended to change the traditional framework of Spanish nationality law, from its concern towards the Spanish communities abroad towards the phenomenon of immigration by establishing a normative framework aimed at taking into account the incorporation of immigrant populations into Spanish society.

Both texts proposed a bigger role of *ius soli* in the attribution of Spanish nationality, while maintaining the *ius sanguinis* principle. The transformation of Spain into a country of immigration was used to justify the liberalization of the principle of *ius soli* as a mechanism to facilitate the incorporation of the second generation of migrants into their host society with the full set of civil, political and social rights granted by full citizenship. The socialist proposal aimed to attribute Spanish nationality to those foreigners born in Spain if at least one of the parents was also born in Spain, or was a legal resident in the country. The proposal of IU only asked for one of the parents to live in Spain, eliminating the legality requirement.

In the criteria for the naturalization by residence, both proposals differed considerably, although they agreed in the objective of reducing the length of the periods required. In the bill

presented by the socialists the main changes were the reduction to five years of the general residency requirement, with only two years for political refugees. The proposal presented by IU included a few more challenges to the existing regulation, by establishing a general requirement of ten years without any other requirement, and five years if the residence had been legal and continued. It also proposed a reduced period of two years for refugees, for the descendants of the populations expelled from the Spanish kingdoms between the fifteenth and the seventeenth centuries (not only the Sephardic Jews already covered by the existing regulation, but also the *Moriscos*¹⁵), and those coming from territories where the different languages of the Spanish state (Castilian, Catalan, Galician/Portuguese, and Basque) were spoken.

In 1998 (IU) and 1999 (PSOE) these parties presented their proposals for the reform of nationality legislation again, but the composition of the Parliament (with the PP holding the majority and ruling in cooperation with the regional nationalist centre-right parties), implied the automatic rejection of the proposals.

In 2002 a new reform of the CC regarding nationality was enacted. The conservative party in government (now with an absolute majority of the PP in Parliament since the March 2000 general elections) brought about a new initiative for the reform of nationality law limited to small changes (once again in the direction of protecting the Spanish communities abroad). In October 2000, during a plenary session of Congress a motion had been passed on the need to undertake measures to improve the legal and economic situation of Spanish emigrants. The motion was influenced by the findings of a report presented to the Social Policy and Employment Commission in Congress on the situation of expatriates as well as that of immigrants and refugees in Spain. The report recommended legislation to facilitate acquisition of nationality by descendants of emigrants, and the recovery of nationality by emigrants themselves, but also measures to avoid the marginalisation of foreigners living in Spain. It expressed the concern that relegating foreigners to the status of second-class citizens would create the objective conditions for virulent racism and xenophobia to emerge. Unfortunately, only the first set of recommendations was followed. Therefore, the new regulation basically aimed at including facilities for the descendants of Spanish citizens living abroad to maintain the nationality of their ancestors by reinforcing *ius sanguinis*. Thus, every restriction of age when opting for Spanish citizenship for descendants of Spanish citizens born in Spain was removed, as well as the obligation of renouncing to their previous nationality. This reform also strengthened Spanish nationality of origin, by removing every possibility of losing it as a punishment (this particular aspect had already been removed from the Penal Code in 1995).

These changes were approved by the absolute majority of the PP parliamentary group and the abstention of most of the opposition due to the fact that every amendment introduced by the latter was rejected during the discussion of the new regulation. Therefore no changes were made in the direction proposed by the opposition parties, and the general requirements for naturalization for residence (ten years) remained unchanged. No public debate developed at the time of this parliamentary discussion, showing once again that the question of the access of immigrants to Spanish citizenship did not occupy much space in the public and political agendas.

¹⁵ Muslim populations of the territories conquered by the Christian kingdoms in the 15th century, first forced to convert to Christianity, and finally expelled from the Spanish kingdoms in 1609. The proposal for granting a preferential treatment to the *Moriscos* would have had a very difficult implementation. In the case of the Sephardic Jews the measure had already created a series of problems of applicability, but the existence of cultural traits (language, traditions), and historical records (lists of those families expelled from the different Spanish kingdoms), had helped to trace the origins of the applicants. In the case of the *Moriscos*, neither of those sources could be used to identify the potential beneficiaries.

In 2003, the PSOE presented a new proposal that was once again rejected. This proposal endorsed measures similar to those the party had been defending in previous years with the integration of immigrants in mind. Moreover, the project was also sensitive to the requests of a group that had become more active in civil society: those who went into exile during the dictatorship (and their descendants), as well as the so-called children of the war (*'niños de la Guerra'*)¹⁶ a group that had been asking for the reinstatement of Spanish nationality and its extension to their direct descendants, however remote, as a form of reparation.

3.4.3 The 2006 'Statute of Spanish Citizenship Abroad' and the 2007 'Law of Historical Memory'

In 2006 a Law on the Statute of Spanish Citizenship Abroad (*Estatuto de la ciudadanía española en el exterior*) was passed. This legal text aimed at defining the rights that the Spanish administration ought to grant to the estimated one and a half million Spanish nationals settled abroad as a result of the emigration flows that marked Spanish society during most of the twentieth century. Those rights included social protection measures (in the form of healthcare, pensions, etc.), political entitlements (right to vote in national and regional elections in Spain based on their region of origin), as well as facilities to return to Spain (to the emigrants themselves, as well as to the two following generations).

Although one of the issues raised during the parliamentary debate of this initiative was the reform of nationality law (with the objective of reinforcing *ius sanguinis*), the final text of the Statute only introduced an additional clause compelling the government to draft a bill for the reform of nationality legislation in the direction indicated by this text within six months of the passing of the Law. The specific purpose of this initiative was in fact to expand the protection granted to the Spanish nationals living abroad, showing once again the concern of Spanish policy-makers for these groups. This regulation responded in fact to the request of the General Council for the Emigration (*Consejo General de la Emigración*, an advisory body created in 1985 to represent and articulate the interests of the Spanish emigrant communities settled abroad), which had traditionally pleaded for the recognition of those rights, as well as for the extension of Spanish nationality to the children and grandchildren of Spanish emigrants.

This Law did not alter the articles of the CC regarding nationality law, so no effective implications derived from it regarding the regulation of Spanish nationality. Nevertheless, and as previously mentioned, it compelled the government to draft a reform of that legislation in the six months following the passing of this text. The government did not strictly comply with that requirement, but the discussion of the Law of Historical Memory (*Ley de Memoria Histórica*), which initiated its parliamentary discussion shortly after, ended up including a reform of nationality legislation extending the rights of the descendants of Spanish migrants to regain the nationality of their ancestors. Although the existing possibilities of naturalization and option for the grandchildren of Spanish emigrants were already fairly liberal, the main change added by this law is that those who may apply for Spanish citizenship under the new requirements will not be considered naturalized citizens (derivative citizenship), but Spanish-born citizens (citizenship 'by origin').

More than three decades after the beginning of the process of transition towards a democratic regime in Spain, an urge to revisit the conditions under which that process took

¹⁶ This is the popular name given to about 3,000 children who were evacuated from Spain by the Republican government to several countries between 1937 and 1938, mostly to the Soviet Union, but also to the UK. The loss of the Spanish Civil War in 1939, the immediate breakout of WWII, and the Cold War prevented these children from returning to their families in Spain.

place has been experienced in recent times. Thus, the re-evaluation of the decisions taken during those times (prioritising stability over reparation and justice), and the growing focus on the need to honour the victims of the repression of the Francoist regime (including those of the Civil War 1936-39, and the long decades of authoritarian rule that followed until the death of the dictator in 1975), have characterised the political agenda over the last years.

In September 2006, much to the dislike of the main opposition conservative party, the socialist government presented in Parliament a proposal for a Law of Historical Memory inspired on those concerns and considerations. Among other objectives, linked to the notion of the need for reparation of the wrongdoings of the Franco period and the elimination of the symbols of his regime, this text made an initial reference to the need to compensate to all those who had “lost their fatherland” due to political prosecution and exile. Despite this declaration of intentions (and the request of the Statute of Spanish Citizenship Abroad previously mentioned), the first draft of this law only included a reference to the granting of Spanish nationality to those volunteers that fought within the International Brigades to defend the legitimate republican regime during the Civil War. During the discussion of that proposal, left wing parties, including IU and *Esquerra Republicana de Catalunya* (-ERC-, Catalan nationalists), were the only political forces that supported the extension of nationality ‘by origin’ to those Spaniards who had to get exiled (as well as to their children and grandchildren) due to the War and the Francoist regime. This amendment to the text originally drafted by the government was accepted by the PSOE in the parliamentary debate, so it was included in the final text passed in October 2007.

In addition to the impact of this Law in Spain, this regulation had a considerable echo in some Latin American countries in which it was euphemistically called “*Ley de Nietos*” (Grandchildren’s Law), due to the possibilities it opened to “recover” Spanish nationality ‘by origin’ for all those who could prove that their parents or grandparents had fled Spain due to political reasons between 18 July 1936 (the day of the fascist insurrection against the Republic), and 31 December 1955. The time window to apply for this recognition of Spanish nationality was limited to an initial two year period (with an extension of one additional year decided by the Spanish government, so finally until December 2011). As a consequence of the passing of this Law, more than 500,000 applications to obtain a Spanish passport (that would allow the recipients to settle in the EU) were presented in Spanish embassies and consulates, most of them in a small group of Latin American countries (Cuba, Argentina and Mexico combined accounted for two thirds of the total number of applications).

The figures reflecting the outcomes of this Law prove the importance of this regulation. At the end of the process 503,439 applications for obtaining Spanish citizenship through this mechanism had been presented (more than 95% of them -477,462- in Latin-American countries). In March 2012, the number of those who had obtained a Spanish passport was 241,763, although some of the files presented were still being evaluated by the Ministry of Justice in charge of managing the bureaucratic process of granting Spanish nationality.¹⁷ However, the expectation of Spanish authorities has always been that most of those who may obtain Spanish nationality through the “*Ley de Nietos*” will not actually settle in Spain, since in many cases obtaining that passport constitutes a possibility to easily travel in and out of the other country of which they are a national (like in the case of Cuba), or a guarantee against any possible social, political or economic instability in those countries (like for example Argentina).

The political implications of the debate on the passing of the “*Ley de nietos*” contrast with the low interest of political and social actors in associating the debates on the arrival and integration of immigrants with the reform of nationality law over the last twenty years. As we

¹⁷ *El País*, 30 March 2012.

have seen, during the period 1996-2002 only left-wing political forces tried to pass legislation that would have implied a radical change of this pattern, by proposing to use nationality law as a means for the integration of the growing flows of immigrants settling in Spain. This period is, in fact, the most fecund in terms of proposals for the reform of nationality law, but none of those bills was actually approved due to the conservative majority in parliament. All of these proposals came up in a context of lack of public debate on the issue of nationality within the more general debate on the arrival and integration of immigrants in Spain.

The proposals on nationality raised by left-wing parties were, in fact, framed by their stand towards a liberal reform of the general legislation of immigration. This reform only succeeded in early 2000, before the general election in which the centre-right government finally attained the absolute majority, and reformed again the immigration law, by autumn 2000 introducing a more restrictive immigration policy. Framed by the new legislation, the government brought about the new initiative for the reform of nationality law passed in 2002, which explicitly rejected the change of the pattern, and therefore strengthened the logic of *ius sanguinis*.

4 The current citizenship regime

As explained before, Spain does not have a specific Nationality Code. The regulation on nationality is still contained in the CC, as well as in other procedural norms, notably in the Law of the Civil Registry, and the Civil Registry Code (CRC).¹⁸

4.1 Acquisition of nationality

Following the tradition that has gradually become controversial as Spain has turned into a country of immigration the Spanish nationality regime still distinguishes between ‘nationality by origin’ (*nacionalidad originaria*), and ‘derivative nationality’ (*nacionalidad derivativa*) (Lara Aguado, 2003). Whereas the former is used to refer to instances of automatic acquisition or acquisition at birth, the latter was usually reserved for non-automatic and acquisition after birth. The Spanish legal system still refers to these two modes of acquisition, although it contemplates a few instances in which ‘nationality by origin’ is not acquired at the moment of birth and requires a process of application. The major practical implication is that ‘nationals by origin’ enjoy a set of prerogatives from which those who have a ‘derivate nationality’ have been excluded. These prerogatives include: the capacity to be the King’s tutor (according to art. 60.1 of the Constitution); the right not to be deprived of Spanish nationality against one’s will (according to both art. 11.2 of the Constitution and art. 25 CC), and the possibility to retain Spanish nationality when acquiring the nationality of a certain set of countries with which Spain has special historical and cultural ties (according to art. 11.3 of the Constitution and art. 24 CC).

The main form of automatic acquisition is still the *ius sanguinis*, although the system also contains *ius soli* elements. *Ius sanguinis* applies in favour of those born of a Spanish mother or father, who will become nationals ‘by origin’ regardless of whether they are born in Spain, or abroad (art. 17.1 CC). Automatic access to nationality ‘by origin’ is also guaranteed to those born in Spain, but only if at least one of the parents was also born in Spain (double *ius soli*) (art. 17.1.b CC), or the individual would otherwise become stateless (either because both parents are stateless, or because none of their citizenships is passed on to the child via *ius sanguinis*) (art. 17.1.c CC). Automatic acquisition ‘by origin’ through filial transfer in

¹⁸ Law of the Civil Registry (*Ley del Registro Civil*), of 8 June 1957 and CRC (*Reglamento del Registro Civil*), Executive Decree of 14 November 1958. A new Law of the Civil Registry containing new regulations was passed in 2011, but it will not come into force before July 2014.

case of adoption is also considered for those under eighteen adopted by a Spaniard from the moment of the adoption (art. 19.1 CC). Before the introduction of this regulation in 1990, acquisition ‘by origin’ was only recognised to adopted children if at birth at least one of the adopting parents was also a Spaniard.

As we have seen, there have been some unsuccessful voices in the political arena claiming for the need to embrace further elements of *ius soli* with the objective of best integrating the increasing immigrant population that has arrived in Spain during the last two decades. Thus, the various bills submitted to the parliament over the decade before the 2002 reform, and again in 2003, included the recognition of Spanish nationality for those born in Spain from foreign parents if at least one of them was a legal permanent resident at the time of birth. IU proposals did not even require legal residence but only a *de facto* permanent residence.

As for non-automatic acquisition, Spain has traditionally distinguished, and still does, between two modes: by option, and by naturalisation (the latter can be divided into two sub-modes: discretionary naturalisation - ‘*carta de naturaleza*’ -, and residence-based acquisition). A third mode was added in the 1990 reform and is still present in the CC regulation: acquisition by ‘possession of status’.

Acquisition by option is a privileged form of acquisition recognised in favour of people with special links to Spain, who must only express their will in due time and form (through either a declaration or petition) to acquire Spanish nationality (Lete del Río, 1994:27). To this day, there are four kinds of beneficiaries. The first are those who are, or have been, subject to the ‘parental authority’ (*patria potestas*) of a Spaniard (art. 20.1.a CC).¹⁹ Before the introduction of this provision in 1990, it referred to people being subject to either ‘parental authority’ or guardianship. After the reform introduced that year, the latter only enjoy a privileged residence-based entitlement (one year residence in Spain). Thus the foreign children who naturalise in Spain will acquire a right to Spanish nationality by option for being, or having been (if they are of age), under the ‘parental authority’ of a Spanish citizen. The parent must first be (or become) a Spanish national, so that his or her descendants can then be entitled to this option (Marín López, 2002: 2859-2882).

The second group entitled to nationality by option are those whose (natural or adopted) father or mother was Spaniard ‘by origin’ born in Spain (art. 20.1.b CC), without any time limit and regardless of their age and place of residence. This possibility was introduced in the latest legal reform on nationality in 2002. It is aimed at allowing the children of those Spanish emigrants who had lost their nationality at the time their children were born to acquire Spanish nationality. This option had already been introduced in the 1990 reform through the above cited transitory provision. At that time, the legislator justified it as a way of ‘solving the last negative consequences of a historical process – the massive emigration of Spaniards – which is unlikely to reoccur’. The provision provided that the applicant who exercised his or her right of option should be legally residing in Spain, although this requirement could be waived by the government. In 1993, the transitional provision was delayed until January 1996, in order to reach those beneficiaries dispersed throughout the world, especially those living in rural areas and for whom accessing information might have been more difficult. The right to opt was again extended until 7 January 1997. Finally, the 2002 reform incorporated the possibility (to be exercised as of 9 January 2003) without subjecting it to time limits of any sort, and removing the requirement of the applicant having his or her residence in Spain. The legislator specified that, in doing so,

¹⁹ The Spanish CC provides that non-emancipated children are under the *patria potestas* of both the mother and the father. This *patria potestas* is exercised jointly by both the father and the mother unless they are separated, in which case the person with whom the child lives will, in principle, exercise this authority. See arts. 154 and 156 CC.

the mandate of article 42 of the Constitution was fulfilled, as the fact of facilitating the retention and transmission of Spanish nationality was a way of protecting Spanish emigrants. This responded to the demands of numerous emigrants to the General Council for the Emigration (*Consejo General de la Emigración*) over time. However, the provision has been subject to criticism by those who believe that the two restrictions implicit in it are unjustified (Lara Aguado, 2003). On the one hand, the restriction against those whose mother or father are Spanish ‘by origin’, which means that the children of a naturalised immigrant who emigrates losing his or her Spanish nationality in the process would not be able to benefit from this option. Second, the restriction implicit in the requirement that person(s) in question, the father or the mother, must have been Spaniards born in Spain, which is a way of limiting the possibility of option to the children of the first generation of Spanish emigrants, maybe for no other reason than to accept those whose numbers would be enough to fulfil Spain’s labour needs (Rubio and Escudero, 2003: 126).

The third group of individuals entitled to nationality by option since the 1990 reform are those for whom descent from a Spaniard or birth in Spain have been established after they turned eighteen (20.1.c CC in connection to art. 17.2). Prior to the reform acquisition was automatic, regardless of the age of the person, and this could entail granting Spanish nationality to an adult who might not have had any ties with Spain. This was considered excessively intrusive.

For similar reasons, the right of option is also restricted to a fourth group: those cases of adoption in which the adopted person is eighteen or older (20.1.c CC in connection to art. 19.2 CC). Before 1990, adoption only opened the path to acquisition when the adopted person was a minor. Exercising this option, except in the case of those whose mother or father was Spanish ‘by origin’ born in Spain, is subject to a time limit – basically, until the person turns twenty, for those subject to the ‘parental authority’ (*patria potestas*) of a Spaniard, except when the person cannot be considered emancipated at the age of eighteen in accordance with the law of his or her nationality, in which case the individual can exercise the option during the two years following emancipation. The time frame is also two years after adoption, determination of descent or place of birth.

The procedure is described in articles 226 to 230 of the CRC. Basically, the request has to be formulated before the Civil Registry of either the place of birth or the place of residence of the applicant, or at a consular or diplomatic office if the individual resides abroad. In any event, a copy of the file is to be sent to the judge in charge of the Civil Registry of the place of birth of the applicant, or to the Central Civil Registry if he or she was born abroad. After the documents have been presented, the applicant exercises the option, which only comes into effect fully after he or she relinquishes his/her prior nationality (if necessary), and swears loyalty to the King and the Constitution (if he or she is fourteen or older). In case the procedure is not successful, an appeal can be submitted to the DGRN and, in case of failure, the decision can be appealed in the contentious-administrative jurisdiction.

Non-automatic acquisition through naturalisation includes acquisition by discretionary conferral, traditionally called ‘*carta de naturaleza*’, and other forms of entitlement-based conferrals, either purely residence-based, or focusing on both residence and other additional criteria. The Spanish legal school has traditionally placed all of these schemes under the common label of naturalisation by residence, even though in some instances the period of residence required is very short.

Regarding acquisition by discretionary conferral, the Spanish legal system allows for this possibility when ‘extraordinary circumstances’ concur in the applicant. This depends strictly on the discretion of the government that can grant citizenship through a Royal Decree (art. 21.1 CC). In practice, the set of interpretations of what those ‘exceptional circumstances’ are has ranged from an interest in spreading the Spanish language, in naturalising some

famous sportsmen, or having belonged to the International Brigades during the Spanish Civil War (Rubio and Escudero, 2003). The survival of this mode has been subject to constant criticism by the legal school as such broad discretion is said to contradict the spirit of the Constitution (Espinár Vicente, 1986). On the other hand, its usefulness in allowing the gaps and deficiencies of the existing legal order to be filled and overcome has also been recognised (Abarca Junco and Pérez Vera, 1997:176).

What is commonly known as residence-based acquisition by the Spanish legal school, which we call naturalisation by residence, refers to a mode of acquisition that entitles the applicant to 'derivative' Spanish nationality conferred by the Ministry of Justice and requires individual application (art. 21.2 CC). Although once the applicant fulfils the required legal conditions he/she is entitled to acquire nationality, the system still allows for some discretion. The provision explicitly states that 'Spanish nationality is (also) acquired through residence in Spain, under the conditions specified in the following provision, and is conferred by the Ministry of Justice, which can deny it on public order or national interest grounds. According to the Supreme Court, granting nationality is not simply a matter of right. Rather, once the person qualifies according to the law, the government is authorised to check that the necessary requirements have been fulfilled and that in view of the general interest. On the other hand, it is the specific denial of nationality that needs to be justified, not the conferral, to which the person is entitled once it fulfils the legal requirements (Morán del Casero, 2002).²⁰

As for the conditions that the applicant has to satisfy, the legal system contemplates a requirement of ten years of continual, uninterrupted, legal and prior residence, and then provides for shorter residency requirements for specific groups (art. 22 CC). This general ten-year requirement, which comparatively speaking makes Spain fall into the category of the more demanding countries in terms of naturalisation requirements, has survived various reforms and, as we have seen, has been subject to constant criticism. The bills presented by the socialists and IU parliamentary groups during the last decade have advocated for a reduction of the general residence requirement to five years. IU also proposed that the ten-year residency requirement should be left only for those cases in which either the legality, or the continuous nature of residence, could not be proved.

There are however quite a few groups of applicants who are placed in a faster naturalisation track. The list has been changing and gradually expanding over time. Refugees have a residence requirement of five years.²¹ Nationals of Latin American countries, Andorra, the Philippines, Equatorial Guinea, Portugal or the Sephardic Jews have a residency requirement of two years. As we have seen, in the nationality reform bills discussed during the last decade, both the socialists and IU suggested that it would be convenient to reduce the requirement for refugees to two years, and to extend this option also in favour of stateless individuals (see also Rubio and Escudero, 2003).

Finally, there is a category for whom only one year of residence is required which includes several groups. This requirement applies to those born in Spain of foreign parents, which means that although no *ius soli* exists for second generation immigrants, one year of legal residence is sufficient for the children of immigrants born in Spain to apply for derivative nationality (legally represented by their parents) if they do not acquire it otherwise. One year of residence is also sufficient for those who had a right to option subject to a time limit but, for some reason, did not exercise it. Included in this fast track are also those who have been subject to the guardianship of a Spanish citizen or institution for at least two

²⁰ See also Supreme Court decision of 1 July 2002.

²¹ Probably in fulfilment of article 34 of the UN Convention of 28 July 1951, signed by Spain in 1978, that refers to the duty of states to facilitate and accelerate the possibility for refugees to acquire their nationality as well as to simplify the proceedings as far as possible.

consecutive years. Those who at the time of application have been married for at least one year with a Spaniard are also covered. In the case that the person in question is somebody who has naturalised, he/she must have enjoyed Spanish citizenship for at least a year before his or her spouse applies for nationality. Not included in this possibility are partners in civil unions (regardless of their sexual orientation), something that the socialists' proposals have unsuccessfully tried to amend. The widow/-er of a Spaniard, if they were not separated at the time of the death of the spouse, is also entitled to Spanish nationality through the one-year residence track. Finally those born outside of Spain whose father or mother, grandfather or grandmother was a Spaniard by origin are also included in this group.²²

There has been some controversy about how 'legal and uninterrupted residence' should be interpreted for the purpose of satisfying residency requirements. A ruling by the Supreme Court (September 19, 1998) was crucial in this respect, by defining that short trips abroad do not interrupt residence, as long as the person keeps his or her life centred in Spain. More complex to determine is what 'legal' residence actually means, other than the obvious exclusion of people who are in the country in contravention of the legal system. According to the most restrictive interpretation, the requirement needs to be analysed in the light of immigration legislation, because such legislation distinguishes between three situations (stay, temporary residence, and permanent residence). The claim is that, strictly speaking, only residence (and not 'stay') qualifies for naturalisation, be it temporary or permanent (Pérez de Vargas, 2003; Palao Moreno, 2001; Díez Picazo, 2003). This interpretation also used to be frequently embraced by the Supreme Court.²³ Part of the doctrine and usually the DGRN have sustained that the legal residence concept in the CC is independent from that in the immigration legislation altogether, which means that as long as the residence is not in contravention to the legal order (for instance, disobeying some expulsion order) it qualifies for naturalisation purposes regardless of the type of permit under which the person lives in Spain (Díez del Corral, 2001).²⁴ More recently, the Supreme Court has also occasionally embraced this interpretation.²⁵ Finally, some scholars defend an intermediate position: although the concept of residence has to be interpreted in the light of the immigration legislation, once the person has achieved the status of legal resident, the other periods that the person has spent in the country legally can also be taken into account (Pretel Serrano, 1994). The 2002 reform was a crucial opportunity for the legislator to finally clarify this question. However, the response was once again ambiguous: the provision was not changed, and still refers to 'legal residence'. However, in the explanatory introduction to the Law the legislator explicitly mentions the need to interpret residence as 'effective', and points to the interpretation offered by the Supreme Court in its 19 November 1998 ruling making reference to the individual's intent to integrate into Spanish society. Thus, actual residence (as long as it is legal) and the consolidation of effective ties with Spain seems to be becoming the main factor to take into consideration for the purpose of naturalisation (Lara Aguado, 2003).

Common requirements for acquisition, both through option and naturalisation (either through discretionary or residence-based entitlement), include: oath of loyalty to the King and obedience to the Constitution and the laws; renunciation of prior nationality and registration in the Civil Registry (art. 23 CC). Moreover, residence-based naturalisation requires, in

²² Notice that in reality if the mother or father, besides having been Spaniard by origin, were born in Spain, their children would not need to reside in Spain as they could simply access nationality through option.

²³ See, further, decision of 19 September 1988.

²⁴ See also Resolution of the DGRN 1 of 27 November 2001 (BIMJ), num. 1910:412-414.

²⁵ See for instance, Supreme Court, decision of 23 May 2001, allowing a foreign student to count all of the time legally and effectively spent in Spain regardless of the technicalities of the student's permit under the immigration legislation.

addition, proof of good civic conduct, and sufficient integration into Spanish society. Some of these requirements call for further specification.

Since the 1990 reform, some nationals have been exempted from the requirement to renounce prior nationality. They form the group of nationals for whom dual citizenship is legally accepted. This group includes nationals from Latin American countries, Andorra, the Philippines, Equatorial Guinea and Portugal (art. 23.b and 24.1 CC).

‘Good civic conduct’ is an indeterminate concept. To prove good civic conduct, the applicant is asked to present certificates that prove a clean criminal record and a good conduct, issued by both the Spanish authorities, and the authorities of the country of origin. Moreover, the DGRN may refer to the Ministry of Interior to check the conduct of the applicant, especially where it relates to the fulfilment of obligations regarding his/her entrance and residence in Spain. The Supreme Court has established that the requirement of good conduct needs to be interpreted in the light of the constitutional order, which means the need to check whether the conduct infringes the norms regarding the exercise of rights and duties in the Constitution and other international instruments.²⁶ As for the relevance of the existence of a criminal record which has been deleted, there is nothing specified, however the Supreme Court seems to favour the interpretation of the irrelevance of such records unless the criminal conduct is considered too serious. In addition, this Court has established that the criminal record itself is not enough to reject an application for naturalisation, as it needs to be evaluated within the whole assessment of good civic conduct and integration in Spain. For instance, the Supreme Court has established that if the crime or offence was committed 20 years ago, and after that time the applicant had proved good civic conduct, these facts within the criminal record might not be taken into account for the rejection of the application.²⁷

As for ‘sufficient social integration’ into Spanish society (art. 22.4 CC), the law does not clearly specify what this means. Art. 220 CRC requires applicants to declare whether they know Spanish or any other official language in Spain, and any other circumstance showing adaptation to Spanish culture and life style (studies, social service in the community, etc.). The provision also refers to the need to show sufficient means of subsistence in Spain. Ultimately, it is the judge in charge of the Civil Registry who interviews the applicant and decides whether this requirement has been adequately fulfilled. The religious belief of the applicant cannot be taken into account in making such judgement.²⁸

Procedurally speaking, the applicant formulates the request to the judge in charge of the Civil Registry of his/her domicile, who will speak for or against the conferral and send the application to the DGRN, which by delegation from the Ministry of Justice decides within one year. After that the applicant can appeal the decision in the Contentious-Administrative jurisdiction. If the DGRN decides affirmatively, the applicant needs to ratify the intention of becoming Spanish citizen before the Civil Registry within 180 days and swear loyalty to the King and allegiance to the Constitution and the laws. In case of refusal, current legislation allows a right to appeal before two instances: appeal for reversal in administrative instance (the DGRN itself) and appeal before two jurisdictional instances (the National Court and the Supreme Court).

Since the reform of 1990, the Spanish legal system has incorporated the possibility of acquisition by ‘possession of status’ for people who, in good faith, have possessed and used Spanish nationality for ten years (art. 18 CC) on the grounds of a title validly inscribed at the Civil Registry, even if it turns out that the title was not valid after all. This mechanism is a way to avoid sudden and drastic changes in the nationality of an individual. Although not

²⁶ See decision by the Supreme Court of 12 May 1997, 2 June 1998, and 16 March 1999.

²⁷ See decisions of the Supreme Court for 19 December 2002; 5 November 2001; 12 March 2002 and 5 October 2002.

²⁸ See Supreme Court decision of 24 October 2001.

necessarily fulfilling the tasks that it was intended to, a retroactive application of this provision has recently been allowing people born in Equatorial Guinea and in the Western Sahara during the period that these countries were Spanish colonies, and who are now living and working in Spain, to regularise their employment situation in the absence of the necessary documentation (Garcia Rubio 1992).

The CC contemplates the possibility of recovery of a lost nationality. Given that the political debate thus far has mostly centred on the effects of emigration, nationality recovery has actually been a relatively high profile issue. According to article 26.1 CC the main condition for recovering Spanish nationality, other than the expression of will and the registration in the Civil Registry, is that the person be a legal resident in Spain. However, emigrants and their children are clearly given preferential treatment in that they are exempt from the residence requirement. At their discretion, and in exceptional circumstances, the Ministry of Justice may grant other exemptions from the residency requirement.

Apart from the loss and possible recovery of nationality due to emigration, the other instance of recovery of lost nationality that deserves attention was that of Spanish women who lost their nationality through marriage to a foreigner. The 1995 law reforming the CC on the matter contained a transitional provision stating that a Spanish woman who had lost her nationality because of marriage to a foreigner before the 1975 statute came into force (abolishing this practice), could recover it under the same conditions as emigrants and their descendants (i.e. requirement of legal residence that could be waived by the government, declaration of intention, registration in the Civil Registry and, until the 2002 reform, renunciation of prior nationality).

Finally, one important caveat needs to be added for the case whereby Spanish nationality was lost involuntarily. Under article 26.2 CC, when loss of nationality had occurred involuntarily and had been applied to persons who were not nationals ‘by origin’ (who are the only ones who can lose Spanish nationality in this way) reacquisition is subject to the government’s discretion. Prior to the 2002 reform, this additional requirement of discretionary governmental authorisation also applied to those who had lost their Spanish nationality by not having fulfilled their mandatory military or civil service obligations, unless they were 40 years or older (50 years or older, until the 1995 reform). After the abolishment of mandatory military service, or alternative social civil service, in 2001 this restriction no longer made sense.²⁹

4.2 Loss of nationality

The 1978 Spanish Constitution (art. 11.2) determines that Spaniards ‘by origin’ cannot be deprived of their nationality. This is the most relevant distinction between nationals ‘by origin’ and those with ‘derivative’ nationality. Although some scholars have criticised it (Lara Aguado, 2003), it is a distinction embedded in the Spanish constitutional system. Other than this constitutional distinction, the modes of loss are also regulated in the CC: voluntary and involuntary loss. Logically, the latter does not apply to those who are Spanish ‘by origin’.

As far as voluntary loss, there are four possibilities (art. 24 CC), of which none are valid when Spain is at war (art. 24.5 CC). First, for those who are emancipated, live abroad on a regular basis, and have voluntarily acquired another nationality, except when the second nationality is one of a Latin American country or that of Andorra, the Philippines, Equatorial Guinea or Portugal. The loss in this instance can be prevented by submitting a declaration to the Civil Registry (24.1 CC). In 2002, this provision was amended to introduce the option to retain Spanish nationality by declaring a will to do so at the Civil Registry, a declaration that

²⁹ It was abolished by the Royal Decrees 247/2001 of 9 March, and 342/2001 of 4 April.

must take place within three years of the acquisition of the new nationality. Second, Spanish nationality can be lost voluntarily by those emancipated Spaniards who live abroad on a regular basis and make exclusive use of another nationality which was attributed to them when they were minors. This mode of loss was introduced in the 1990 reform. Here again, and since 2002, the loss can be prevented by declaring the wish to retain Spanish nationality at the Civil Registry (24.1 CC). Third, emancipated nationals who live abroad regularly can freely relinquish their Spanish nationality as long as they have another nationality (24.2 CC). This mode was amended in 1990. Before that, this option was foreseen only for those who enjoyed another nationality since they were minors. After emancipation they were given the option of relinquishing the Spanish nationality. Unlike now, it was not required that they live abroad. Finally, setting some constraints to the perpetuation of generations of expatriates abroad, since the 2002 reform the Spanish legal order provides for the loss of nationality for those who were born and live abroad, descendants of Spaniards who were also born abroad, as long as the country of residence provides them with its nationality, and as long as they do not declare their intention to keep their Spanish passport before the Civil Registry within three years of becoming of age or becoming emancipated (art. 24.3 CC).

Involuntary loss (art. 25 CC) can occur in three instances. First, when naturalised nationals make exclusive use for three years of the nationality they renounced when acquiring Spanish nationality (art. 25.1.a CC). Second, when the naturalised alien voluntarily joins the military or takes up a political office in a foreign country in contravention of an express prohibition by the government (25.1.b CC), something which is rather interesting at a time in which Spain not only allows, but actually promotes, the recruitment of foreigners into its professional army (Rubio and Escudero, 2003). Third, loss can occur when through a judicial decision it is determined that the person acquired the nationality through falsity or fraud (25.2 CC). Until 2002, the CC contemplated the possibility of loss of nationality by naturalised aliens as a result of a criminal conviction, but this condition was finally removed from the CC altogether, while the new text specified that the loss would not affect third parties acting in good faith.

4.3 Special categories and institutional arrangements of nationality legislation

Together with the general regime on nationality, we should also note the existence of a special regime for nationals of certain countries or cultures with which Spain is said to have either a historical debt, special ties of cultural affinity or a logical combination of the two. The special treatment is limited to two features: the shortening of residence time required to naturalise, and the existence of a legal regime of dual nationality.

As we saw, Spain's general residency requirement for residence-based naturalisation is ten years. Two years is, however, sufficient for nationals of Latin American countries, Andorra, the Philippines, Equatorial Guinea, Portugal or the Sephardic Jews.³⁰ In the nationality reform proposals discussed lately, both the socialist and the IU parliamentary groups suggested the convenience of extending this option in favour of nationals of the EU, the descendants of the Moors (who were expelled in similar ways as the Sephardic Jews) and the people from Western Sahara for the circumstances under which Spain abandoned the then Spanish province (Lara Aguado, 2003). This would expand the circle of persons to whom Spain acknowledges a historical debt, or with whom it recognises special ties.

As for tolerance of dual nationality (Aguilar Benitez de Lugo, 1996), starting in the 1950s Spain signed the abovementioned covenants of dual nationality with many Latin

³⁰ According to the instruction of the DGRN of 16 May 1983 one can prove one's condition as a Sephardic Jew through one's family name, family language as well as other indicia, of which belonging to the Sephardic Jewish religion is only one of them.

American countries, recognising an affinity in traditions, culture and language. Strictly speaking, these treaties did not recognise two nationalities but rather created a system of active and dormant nationality that meant that the two nationalities were never active at the same time. In general (although there are slight variations), these treaties state that the exercise of rights, diplomatic protection, the granting of passports and all other social, civil and employment rights will be ruled by the legal system of the country in which the person resides. The same applies to military obligations. Being a national of one of the countries does not entail automatic acquisition of Spanish nationality. Rather, the person still has to fulfil all the applicable legal conditions (arts. 22 and 23 CC) with the one single exception of the agreement with Guatemala, in which the two-year residence requirement is automatically waived.

The 1978 Constitution echoed this tradition, so article 11.3 authorises Spain to sign dual nationality agreements with Ibero-American countries, as well as with other countries that have, or have had, special links with Spain. The same provision recognises that Spanish nationals can naturalise in those countries without losing their nationality of origin. In spite of the constitutional sanctioning, the practice has been discontinued and practically replaced with a system of legal, as opposed to conventional, dual nationality, starting in 1990 when the CC was amended to allow for dual nationality of nationals from Latin American countries, Andorra, the Philippines, Equatorial Guinea and Portugal to acquire Spanish nationality through residence (art. 23.b and 24.1 CC). Consistent with this, Spanish nationals voluntarily acquiring the nationality of those countries do not lose their Spanish nationality (24.5 CC). Also, from 1990 onwards, those applying for the recovery of Spanish nationality were exempted from relinquishing their prior nationality if that nationality was the nationality of one of those countries. In 2002 the renunciation requirement was removed altogether for those applying for the reacquisition of their lost nationality.

Although Spain is a quasi-federal country with seventeen Autonomous Communities, each with legislative powers, the Constitution entrusts the regulation on nationality exclusively to the central state (art. 149.1.2 of the Constitution). Some matters, mainly those of a 'constitutional nature' (i.e., legislation on constitutional rights or on the country's political institutions and system) are subject to regulation by organic law (art. 81 of the Constitution). Such legislation requires an absolute majority in Congress, which represents a high degree of political consensus among the parliamentary parties. Because nationality legislation is referred to in article 11, and has not been included under article 81, there is a general understanding that it does not need to be covered by organic laws and, in fact, it has not been (Pérez Vera, 1984).

Unlike most of its European counterparts Spain has never had legislation exclusively focused on nationality. Rather, as we have seen, it has consistently ruled on nationality through the CC. Dedicated to many other subject matters, the CC devotes only 11 articles (out of 1976) to regulating nationality matters. If one adds to these the five procedural provisions contained in the Law of the Civil Registry, we have a total of only sixteen articles dedicated to this subject. Needless to say, administrative regulations and guidelines have been necessary to fill in the legislative gaps (Carrascosa González and Sánchez Jiménez, 2002). This practice has been criticised for not respecting the constitutional mandate that nationality be regulated by law (Fernández Rozas, 1987), especially in view of the fact that many of these guidelines (such as those of the DGRN in 1983) have been clearly restrictive in nature.

The DGRN is the main administrative body in charge of deciding on the acquisition and loss of Spanish nationality. In those cases in which there is virtually no discretion involved (such as acquisition by option), the procedure is instantiated in front of the judge in charge of the Civil Registry where the applicant's birth is recorded, or his/her place of residence if the applicant was born in Spain. If the procedure is not successful, an appeal may

be submitted to the DGRN within 30 days. After that the judicial path is open to the applicant, who can submit its case to a contentious-administrative court. In the case of acquisition by residence, a decision is taken (within one year of the application) by the DGRN, acting in the name of the Ministry of Justice. Every six months the official bulletin publishes a list with the names of those who have acquired nationality by residence. If the application is denied, the person in question can appeal the decision to the Contentious-administrative judicial order. The decisions of the DGRN, together with those of the judges who eventually get to revise them, and especially those of the Supreme Court (which, in the Spanish system are the only ones who are granted value of legally binding case law) have also become a rich, yet diverse, and not always consistent source of interpretation of nationality law. In view of the increasing foreign population and the increasing importance of access to nationality as a source of integration, it seems increasingly clear that there needs to be a piece of legislation specifically dedicated to regulating nationality.

In addition, one needs to take into account that the judges in charge of the several Civil Registries (49 in Spain, one in each of the main provinces plus a Central Registry in Madrid) as well as consular and diplomatic offices abroad, all apply nationality legislation, so there is quite a large space for discretion and diverging interpretations. For instance, it is the judge of the Civil Registry of the place of residence of the applicant who will interview the applicant for residence-based naturalisation and thus decide whether he/she is of good moral character, and it is sufficiently integrated into Spanish society. While in the past only a minimum knowledge of Spanish was tested in an informal interview, and societal integration was evaluated based on responses to very simple questions (such as whether the applicant had friends in Spain, the kinds of activities that they and their children did, the things they liked or disliked about the Spanish culture, etc.), the DGRN has increasingly insisted that the judges of the Civil Registries must ask more specifically about Spanish democratic institutions or history.³¹

Besides, when evaluating applicants' civic conduct, the judge also examines their criminal records from different sources (Spain, the country of origin, or the country where the applicant lived before coming to Spain). At the same time, the report sent to the DGRN by the Ministry of Interior accounts for police records in Spain. The exact requirement is to have a clean criminal record in both countries, which includes the fact of not being currently accused of any crime or offence. The law provides no further clarifications on which offences may make applicants ineligible. The appreciation of these facts belongs to the general evaluation of 'civic conduct' made by the judge.

Moreover, the courts (namely the National Court, *Audiencia Nacional*, as well as the Supreme Court, *Tribunal Supremo*) have established over time different grounds for refusing nationality in cases in which it is evident that the applicant does not fulfil general legal provisions in Spain. These aspects are different from the evaluation of the criminal record requirement, and tackle information obtained from different sources: besides the personal interview, the judge and the central authorities of the DGRN can ask for the advice of social

³¹ In Spain there is no specific language test for applicants for naturalisation. The proof of sufficient knowledge of Spanish and regional languages is included in the personal interview conducted by the judge of the local Civil Registry. This implicitly involves wide margins of discretion in the assessment of language knowledge: the judge freely evaluates language knowledge through the personal interview. Nevertheless, the judge's discretionary powers open the possibility for the refused applicant of reviewing the case before the National Court. The sentences of this jurisdictional body on the fulfilment of the language requirement are frequent (last sentences in 2012: SAN 2546/2012, June 14th 2012; SAN 2827/2012, June 13th 2012; SAN 2143/2012, May 14th 2012), sometimes leading to questioning of the methods used by the judge, but frequently ratifying the initial refusal. In addition, these sentences show that the proof of language knowledge can also be assessed by other bodies, such as the police, the social services and the local authorities, when consulted by the judge or the DGRN.

services, local authorities, and even diplomatic authorities. Polygamy is the most common cause of refusal for the non-fulfilment of general legal provisions in Spain, resulting in multiple sentences of the National Court every year.³²

4.4 Nationality statistics and current developments

No systematic and comprehensive effort to produce the sort of publicly available statistical data relevant for the purpose of assessing the impact of different legislative reforms of nationality legislation on naturalisation rates has been undertaken until the last few years. There are, however, no thorough statistical data in Spain establishing differences between modes of acquisition and nationalities of origin, but separated data on residence-based naturalisations, and the rest of the different modes of acquisition (which, in numbers, are in fact residual). There is also a general lack of studies analysing naturalisation tendencies, although this can be explained by the fact that naturalisation rates have significantly increased only in the last few years. It is therefore predictable that the analysis of naturalisation data will become more important and visible in the near future.

Table 1. Residence-based naturalisations by continent of origin.

YEARS	TOTAL	EUROPE		AMERICAS		AFRICA	ASIA	OTHER
		EU*	REST	NORTH	LATIN			
1960-64	767	327	134	12	74	49	34	65
1965-69	1,162	539	146	17	256	96	65	43
1970-74	2,204	949	94	37	674	192	147	121
1975-79	12,052	4,101	278	138	5,059	968	1,019	179
1980-84	27,310	8,855	596	335	13,184	1,319	2,633	284
1985-89	31,971	5,130	568	518	10,450	12,498	2,567	251
1990-94	32,282	4,940	806	685	18,718	5,745	4,303	256
1995	6,750	616	53	111	4,053	1,059	818	40
1996	8,411	688	59	119	5,410	1,029	1,080	26
1997	10,293	846	81	176	6,204	1,471	1,486	29
1998	13,165	1,137	103	223	8,024	2,149	1,480	49
1999	16,373	1,168	150	302	10,063	2,880	1,756	54
2000	11,996	828	122	254	6,893	2,575	1,283	41
2001	16,735	1,043	192	395	9,447	3,824	1,787	47
2002	21,805	1,226	191	496	13,382	4,325	2,131	54
2003	26,556	1,252	193	457	13,954	8,522	2,122	56
2004	38,335	1,426	295	573	23,813	9,991	2,198	39
2005	42,829	1,146	307	540	31,290	7,346	2,164	36
2006	62,339	1,037	397	692	50,254	7,618	2,303	38
2007	71,810	1,135	445	725	56,741	10,312	2,418	34
2008	84,170	1,404	490	912	67,443	11,201	2,684	36
2009	79,597	1,068	776	661	66,659	8,816	1,692	40
2010	123,721	1,734	667	1,022	103,971	13,828	2,294	35
2011	114,599	2,086	837	960	89,698	18,333	2,536	41

* EU figures calculated with the member states of each period (so up to 2008 it includes Romania and Bulgaria).

Sources: Martín Pérez and Moreno Fuentes, 2012, and *Secretaría General de Inmigración y Emigración*: <http://extranjeros.empleo.gob.es>.

³² Last 10 sentences of the National Court on refusal due to polygamy: SAN 921/2012, March 1st 2012; SAN 5777/2011, December 26th 2011; SAN 1759/2011, April 5th 2011; SAN 924/2011, February 23rd 2011; SAN 5329/2010, November 22nd 2010; SAN 2794/2010, June 9th 2010; SAN 2016/2010, May 6th 2010; SAN 5893/2010, December 17th 2009; SAN 3068/2009, June 4th 2009; SAN 1640/2009, April 7th 2009.

Naturalisation patterns were rather erratic until 1995 (see Table 1), when they started increasing systematically, from 6,750 naturalisations per year, at a rate of approximately 3,000 per year (with the exception of a drop in 2000), reaching 26,556 in 2003, still lying at that time below the European average (Izquierdo, 2004). Since then, naturalisation rates have continued to increase, much more rapidly during the last decade, until reaching a peak of 123,721 residence-based naturalisations in 2010. This quick increase is due mainly to the growing acquisition of Spanish citizenship by immigrants from Latin American countries (they represented 61% of the naturalisations in 2002, whereas they reached a share of 84% in 2010). The main explanation for this quick increase is that the cohorts of migrants who arrived mainly in the early 2000s have reached their minimum period of legal residency in Spain, and have consequently applied for naturalization given the advantages derived from that change of legal status. The rapidity of the process of naturalization in the case of Latin Americans is, no doubt, a consequence of the privileged system of acquisition they enjoy compared to the migrants who settled in Spain from other parts of the world.

Table 2. Residence-based naturalizations: main countries of origin, 2002-2011.

YEAR	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total
Ecuador	1,173	1,951	6,370	10,031	19,477	21,371	25,536	25,769	43,091	32,026	186,795
Colombia	1,267	1,801	4,194	7,334	12,720	13,852	15,409	16,527	23,995	19,803	116,902
Morocco	3,111	6,831	8,036	5,555	5,690	7,864	8,615	6,683	10,703	14,427	77,515
Peru	3,117	2,933	3,958	3,645	4,713	6,490	8,206	6,368	8,291	9,255	56,976
Argentina	996	1,009	1,746	2,293	3,536	4,810	5,188	4,629	6,395	5,482	36,084
Dom. Rep.	2,879	2,648	2,834	2,322	2,805	2,800	3,496	2,766	3,801	4,985	31,336
Cuba	2,088	1,602	1,889	2,506	2,703	2,466	2,870	2,696	3,546	3,088	25,454
Bolivia	104	129	218	289	648	709	1,103	1,813	4,778	5,333	15,124
Venezuela	438	529	703	752	908	1,324	1,581	1,744	2,730	2,596	13,305
Uruguay	219	235	327	408	624	839	1,201	1,451	2,219	1,978	9,501
Brazil	477	500	683	695	782	779	1,049	943	1,738	1,854	9,500
Chile	352	350	484	620	844	838	1,141	1,090	1,688	1,556	8,963
Philippines	831	670	800	680	762	872	782	431	507	612	6,947
Others	4,753	5,349	6,093	5,699	6,127	6,796	7,993	6,687	10,239	11,604	71,340
Total	21,805	26,556	38,335	42,829	62,339	71,810	84,170	79,597	123,721	114,599	665,761

Sources: Martín Pérez and Moreno Fuentes, 2012, and *Secretaría General de Inmigración y Emigración*: <http://extranjeros.empleo.gob.es>.

Except the case of Morocco, with a large community of immigrants many of which have been settled in Spain for more than two three decades, the top 10 countries in terms of naturalisations are from Latin America (see Table 2). The large numbers of people from those Spanish-speaking countries (although Brazil is also included) who naturalize reflect the importance of the historic links with the former colonies in Spanish nationality legislation to which we referred in previous sections of this report. The special treatment for Latin Americans, who can apply for dual nationality only after two years of legal residence in Spain, promoted in the past as a mechanism for building an Ibero-American community of nations, has become in practice a relatively easy (and quick) procedure of naturalisation and, as proved by data in Table 1, has become the main explanatory factor for the growing numbers of naturalizations experienced in Spain over the last ten years. This also explains the absence of a claim for the reform of nationality law in the case of Latin American immigrant communities (Ecuadorians, Colombians, Peruvians, Argentinians, Dominicans, and lately Bolivians, are the most important in numbers, and among the best organized communities of immigrants in Spain), since they already benefit from a particularly liberal regulation on naturalization.

Despite the predominance of Latin Americans, migrants from Africa (mainly Morocco) and Asia (with the particular case of Filipinos, who also benefit from the privileged two-year residency requirement) have also been gaining importance in the procedure of naturalization in recent years. We must take into consideration that the period of legal residence required for most of these other groups is ten years, so the “maturation” of the process in these cases is obviously longer. In fact, the difficulty for naturalisation in those cases can be clearly observed in the excessively long period of residence required, as well as in the need to relinquish one’s prior nationality in order to obtain the Spanish one.

Given the relatively ample set of rights already enjoyed by nationals of other EU member states (granted through the notion of European citizenship), the structure of incentives for naturalization for people from this region has not pushed them to apply for Spanish nationality in significant numbers. The large presence of EU nationals in Spanish territory over a long period has not implied a tendency towards the acquisition of Spanish nationality. The pattern does not seem to have changed after the last EU enlargements (notably in the cases of Romania and Bulgaria, with important immigrant communities settled in Spain). Therefore, foreign residents from the new EU countries of Eastern Europe that would have applied for Spanish citizenship before joining the Union do not need to do so anymore in order to achieve a considerable set of rights in Spain. As an example, the figures show that applications for citizenship from Polish, Romanian and Bulgarian permanent residents (after ten years of legal residence in Spain) have not grown as it was expected before these countries joined the EU.

The growing trend towards naturalisation, however, seems to have reached a point of stagnation. This could be due to two factors, one of which is the deep economic recession of the Spanish economy after the 2008 global financial crisis. Although this has only slightly affected the demographic patterns of immigration in Spain, there is currently a slow, but continuous, wave of return migration and re-emigration to other countries by immigrants up to now living in Spain. Although some of them are returning to their home countries (or moving to another EU country) after having acquired Spanish nationality, those migratory flows may logically decrease the numbers of potential candidates for naturalisation.

On the other hand, the bureaucracy in charge of resolving the files sent by the local civil registries all across Spain may also be part of the explanation for the stagnation of residence-based acquisition of nationality. It seems that the DGRN, by only making use of its own means in terms of human resources, has clear difficulties in resolving more than 120,000 naturalisation files per year (although a more or less stable figure of 155,000 applications have been registered every year since 2009). The growing numbers of naturalisations have challenged the already busy administration of the DGRN (within the Ministry of Justice) and, at the local level, of the local and provincial civil registries in charge of the initial proceedings. As a result of this increasing workload, it can be said that demands for naturalization are flooding into the local civil registries all around Spain and some of these offices have attained a saturation point. To give an example of the current situation of the bureaucratic organization of naturalization, whereas the government is legally compelled to resolve the naturalization procedure in one year once the file has reached the central services of the DGRN, in practice the average period for a decision to be made in this respects is estimated to be at least two years. In addition, there is extreme variation in the delay for the initial steps that have to be taken at the civil registries’ level. While some of them tend to send the files in around three months, in most the decisions are delayed for more than a year.

In 2009 the Spanish government undertook a new program for the modernization of the judicial system, which also included the tasks developed by the civil registries and the proceedings for naturalisation. More specifically, the authorities stated that the objective was to respect the one-year deadline for the decisions on naturalization by mid 2010. However,

this well-intentioned purpose was contested by the facts: without an increase in the budget of the DGRN, especially in terms of human resources, it was clearly impossible to reach a number of 150,000 application files resolved per year in 2010. On the contrary, cases continued to accumulate delays since reaching an approximate number of 400,000 pending files in 2012.³³ In order to find a solution to this extremely serious holdup, in July 2012 the Ministry of Justice proposed a provisional increase in the human resources allocated to the task of qualifying the naturalisation files. It was not a question of hiring new civil servants within the DGRN, but to relocate other civil servants from other profiles which are now less busy than in the past. This was the case of the body of Property Registrars, now less occupied than in the years of the Spanish real estate boom. Thus, the Ministry of Justice signed an agreement with more than 1,000 registrars including them in the task of collaborating with the DGRN in clearing the now saturated procedure. This implied an increase of 1 million euro in the budget allocated for resolving the accumulated naturalisation application files.

Despite the trend showed by the data, in which the use of naturalisation as a mechanism for the integration of immigrants into Spanish society seems to be working without much difficulty (particularly for Latin Americans, but also for other migrant groups), legislative bodies and political parties have refused to debate on the reform of nationality law since the latest reform in 2002. Although the Forum for the Integration of Immigrants (advisory body of the civil society regarding immigration issues), as well as the regional parliament of Catalonia, suggested in 2007 that a reform of citizenship law should be enacted in order to best take into account the growing presence of populations of immigrant origin in the country, no measure has been adopted in this sense. A reduction of the general residency requirement, from ten to five years, was the main suggestion within these proposals, but they were never considered as a priority by the government or the main political parties in opposition. That proposal has never been introduced again into the political arena, although the potential for the reform of nationality law remains latent: the reduction of the general residency requirement in order to minimise current inequalities in the access to citizenship, together with the possibility of double citizenship for every naturalised immigrant, is still the main potential suggestion in case the question on nationality law is raised in parliament in the following years.

5 Conclusions

In almost every aspect of its nationality regime Spain has always looked to the past. Since the 19th century it has relied on brief constitutional references and the CC as a locus of regulation without fully embracing the public law dimension of the subject. For over a century, legislation regulating Spanish nationality has been driven by the will to keep close links with the Spanish communities settled abroad. The mechanisms by which Spanish nationality could be passed on, retained and recovered (the main issues affecting those communities of Spanish origin abroad), attracted most of the attention of the legislator when reforms of the legislation on nationality took place.

With some changes, the substance of this law also portrays Spain's self-image as an emigration country. It still very much favours *ius sanguinis* over *ius soli*, and it asks many foreigners to reside in Spain for ten years and to renounce their prior nationality before they can acquire Spanish citizenship. The transformation of Spain into a net receiver of migration flows has not (as yet) changed Spain's historical view of the matter. The focus has been that of trying to remedy past wrongs, at least since the passing of the 1978 Constitution. Indeed, up to this day the only politically salient matter has been how to attend to the needs of those

³³ Europa Press, 26 July 2012.

who were forced to emigrate because of rough socio-economic conditions of the past and, as a result of that, have lost their Spanish nationality (or seen their descendants lose theirs). More recently another situation that has been conceptualised as requiring reparation is that of the people who, as a result of the Civil War and Franco's dictatorship, had to leave the country with similar consequences for themselves and their descendants in terms of loss of nationality.

The presence of growing numbers of non-nationals in the Spanish territory does not seem to have had much influence on the legislator forcing it to consider the convenience of adapting the regulation on naturalisation, or the mechanisms to obtain Spanish nationality, in order to facilitate the incorporation of these new communities into their receiving society. Civil society organizations also seem oblivious to the importance of this area of legislation for the incorporation of immigrant communities. They spend considerable energies in achieving what could be considered 'middle-range objectives' for immigrant groups (like the right to vote in local elections),³⁴ but do not seem to make much efforts to minimize the effects of the less favourable treatment of certain migrant groups (notably those coming from Africa and Asia) in the acquisition of Spanish nationality. Focusing on this aspect would make more sense, since it implies the acquisition of the whole set of rights available to the category of citizen within the nation-state.

The increasing presence of immigrants in Spain over the last decade rendered the potential role of nationality as a key aspect to integration more pertinent than ever. In this regard, certain reforms of nationality legislation seem crucial, such as the expansion of *ius soli* to allow people born in the country to acquire Spanish nationality, at least if it can be proved that the parents are permanently settled in Spain, or to allow them to opt for Spanish nationality once they turn of age if they were born in Spain. Another obvious expansion would be reducing the period of residence required for naturalisation from ten to five years as a rule. In fact, the evolution of Spanish citizenship law during the last three decades shows a clear liberalizing pattern in four basic dimensions: elimination of different forms of gender discrimination, slight opening in the application of *ius soli* and the application of *facultas soli* for the second generation, the reduction of the periods required for the naturalization by residence for some groups, and the increased acceptance of dual nationalities (both *de iure* and *de facto*). In order to explain the driving forces behind this liberalizing trend, the main structural factor to be considered is the process of democratization that started after Franco's death, which implied the adoption of the main values of a liberal democracy (respect for basic human rights, gender equality, etc.). These developments in nationality legislation were also connected to the trends of the reforms taking place in this area of policy in other European countries. Although Spain has often been absent from the international agreements regulating the basic traits of nationality law, it incorporated into its legislation most of the agreements adopted in those treaties. The Francoist legislator was ready to soften the application of the principle of the legal unity of the family in the reform of the CC of 1954 in order to avoid statelessness (even if Spain was not part of any of the treaties that addressed this specific issue). In the same vein, Spanish legislation granted the right for Spanish women to retain and pass on their nationality in 1982, without the formal incorporation of Spain to the international convention regulating the matter.

There is one domain in which the demands of the past and the present, each valid in its own terms and considered separately, clash when they come to be perceived jointly. It is the privileged treatment that certain nationals are receiving vis-à-vis other possible candidates for naturalisation. Taking numbers into account, immigrant populations can be divided into two

³⁴ The condition of reciprocity embedded into the Spanish Constitution makes it extremely difficult to expand that right to many immigrant groups whose governments do not or cannot recognize similar rights to Spanish nationals in their territories

large groups: one, formed by immigrants from Latin America and other former Spanish colonies, and another one formed mostly by Moroccans as well as other migrants coming from Africa and Asia. The former is offered a much easier path to inclusion in Spain through nationality. Beyond the rhetoric of cultural affinity, the privileged system of naturalisation can also be based on a vague idea of historical obligation towards those countries due to Spain's history of conquest and exploitation in the new world. On the other hand, the exclusion of the largest non-European foreign population from this faster track to integration, namely Moroccans, is worrisome, not least because of the religious and cultural overtones that such exclusion is doomed to have in our times. Neither the argument concerning cultural ties (the history of interaction with the North-African neighbour is as long as the history of Spain as a country), nor the argument of historical wrongs can sufficiently justify the existing differentiation regarding this particular group (think of the inclusion of descendants of Sephardic Jews among the privileged group in contrast with the exclusion of the *Moriscos* who were also expelled from Spain at the end of the 15th century, not to mention the Spanish colonial past in significant areas of the Maghreb during the 19th and 20th centuries).

Probably the best way out of this conundrum would be to bring the two big categories closer by redefining and making the rules for inclusion more flexible altogether, avoiding at the same time any bias in the degree of symbolic recognition. Once again, expanding *ius soli*, shortening the general residence time for naturalisation, and maybe also giving up the rule requiring prior renunciation of nationality altogether could be the best way to advance towards a more balanced handling of the issue.

Despite the growing presence of immigrants, and the worrisome indications that racism and xenophobia may be gradually increasing within Spanish society, particularly in a context of economic crisis, immigration and nationality issues do not have a very high profile in the Spanish political arena. Beyond the mobilization of a small number of anti-immigrant political entrepreneurs operating in certain municipalities,³⁵ and the opportunistic use of the issue by the main conservative party (PP, particularly when in opposition), the issue of immigration has maintained a relatively low profile in political debates in Spain. The media has covered quite extensively the issue of the migratory pressures experienced by Spanish borders from migratory flows from different areas of the world, as well as the situation of undocumented immigrants living in Spain. Simultaneously, virtually no attention has been paid at either the public or political spheres to the role that nationality law may play in the process of incorporation of the foreign communities settled in Spain into their receiving society. The low level of politicisation of immigration issues may in part explain the lack of salience of nationality law in the political agenda (with no extreme right parties directly capitalising on both the issues of immigration and/or naturalisation).

Most of the immigrants likely to settle in Spain in the near future will come from North Africa or Latin America, regions with which Spain has had special historical links. Spanish nationality legislation, and the way in which it is granted, will suffer increasing pressures to address the issues that will emerge from those migratory processes. Avoiding bias and prejudice is not only going to be essential in shaping forward-looking nationality legislation but also in ensuring its fair application. Legal certainty will prove to be essential and will require putting legislation in an institutional space so far occupied mostly by administrative guidelines and precedents set by the courts and administrative bodies. Vague

35 Those extremist groups appear largely delegitimized after forty years of conservative authoritarian regime, but the appearance of xenophobic entrepreneurs, specifically in areas with a higher concentration of immigrants, is probably only a matter of time. If these forces appear in the future, the public profile of this area of policy will be quite likely to gain visibility, and with it the policy environment in which policy-makers have managed to “muddle-through” during the last years will be significantly transformed.

clauses and principles, such as ‘general interest’, ‘public order’, ‘sufficient social integration’ and ‘good civic conduct’, for the most part loosely and generously interpreted in the past, will require concretisation as the question of the naturalisation of immigrants gains political profile, as it will presumably do over the next decade, unless we let nationality become the new gate for exclusion that it has become in other countries with a longer immigration tradition.

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