

# **Analytical Report on Legislation**

## **RAXEN National Focal Point SPAIN**

Movimiento por la paz, el desarme y la libertad (MPDL)  
Movement for Peace, Disarmament and Liberty, Madrid

BY

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# 1. EXECUTIVE SUMMARY

Spain, a country from which many people still emigrates in search for better opportunities elsewhere, has become a country that attracts immigrants. Even if the number of foreigners who arrive in Spain is small in comparison to those arriving in neighbouring countries, particularly the European Union, it has become an important phenomenon with profound social, economic, political, legal and cultural consequences.

It is worth noting that the great majority of foreigners arriving in Spain, hoping to improve their life conditions, come from the North of Africa, Latin America, particularly Ecuador, and Eastern Europe. The migratory phenomenon in Spain must necessarily be analysed within the European context, not only because Spain is bound to apply policies and legislation originating in the EU, but also because its geographical position makes it a country of transit for those who aim for Northern European countries.

Statistics show that the number of foreigners living in Spain has increased significantly over the last twenty years. Until 1999, the growth of immigration was moderate, but since then, the growth has been quite significant. For instance, in 1981 the number of foreigners resident in Spain was 198,042, but in 1999 it had reached 801,329, and in June 2003 there were 1,448,671 registered foreigners<sup>1</sup>.

The transformation from country of emigrants to country of immigrants undergone by Spain has been reflected in various legislative stages that may be classified according to quantitative factors.

The first piece of substantive legislation aimed at controlling and regulating the phenomenon of immigration in Spain was the Organic Law 7/1985 of 1 July<sup>2</sup>. However, this law soon became obsolete: with reality moving faster than the law, it was soon to be repealed and, subsequently, replaced with the Organic Law 4/2000, of 11 January, on the rights and liberties of foreigners living in Spain and their integration into society<sup>3</sup>. Whilst this new Law on Foreign Status, as it is commonly referred to, addressed the issue of immigration in a more pragmatic and realistic manner, it also introduced inconsistent procedures for the regulation of immigration. The Law on Foreign Status enshrined the rights and liberties of foreigners who found themselves in Spain and introduced measures against discrimination. However, the law was unviable from the outset and was soon amended by the Organic Law 8/2000, of 23 December<sup>4</sup>. Notwithstanding these changes, the Law on Foreign Status continues to be incomplete and, in many respects, inadequate, so that at the time of writing this report there is yet another bill being discussed in Parliament which proposes to introduce further amendments. The bill has the support of the principal political groups and it is expected that it will soon become law. The **Amendment of**

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<sup>1</sup> Annual statistics on foreign population 2002, July 2003  
([www.mir.es/dgei/documentos/anuario](http://www.mir.es/dgei/documentos/anuario))

<sup>2</sup> [www.aranzadi.es](http://www.aranzadi.es) [www.westlaw.es](http://www.westlaw.es)

<sup>3</sup> BOE (Official Gazette) No. 10, of 12 January 200, [www.boe.es](http://www.boe.es)

<sup>4</sup> BOE (Official Gazette) No. 307, of 23 December 2000, [www.boe.es](http://www.boe.es)

**the Organic Law 4/2000 (Foreign Status Bill)** aims at establishing a clear and well-defined legal framework and will be the fourth act yet to deal with immigration.

In this new piece of legislation, the criterion followed by the legislator has been to make a clear distinction between legal and illegal immigrants. The premise of the law, as declared in the Global Programme for the Regularisation and Coordination of Foreign Status and Immigration in Spain (in acronym, the “GRECO” programme), is that Spain’s ability to accommodate foreigners is limited. According to GRECO unlike other EU countries, the rate of unemployment in Spain is very high and there are about two million Spaniards many of whom, having emigrated in the past, now wish to return to their country to work and to live<sup>5</sup>. Notwithstanding the above, legal immigration is seen as positive and even necessary for Spain’s future.

Having established the above, the fundamental aim of the current policy is to integrate the immigrants into Spanish society, through legal work and, thereby, contribution to the Spanish social security and payment of taxes, when their income so warrants. In other words, legal immigrants will be able to benefit from all the rights and liberties afforded by the law if they regularly reside in Spain and, presumably, for as long as they remain legally to reside in the country.

Another criterion of the legislator is that immigrants should, to a greater or lesser extent, depending on their cultural background, adapt to the culture of the country in which they have decided to settle down. The first practical example of the application of this criterion is reflected in the new Organic Law Bill for the adoption of specific measures for the prevention of crime and domestic violence and for the promotion of the integration into society of foreigners<sup>6</sup>. This bill defines female circumcision, so far unknown in Spain, as a new form of crime. It also amends the Civil Code in some aspects of family law to afford better protection to women, particularly those of Muslim origin. At any rate, the legislative changes to be introduced by this bill need to be observant of the fundamental liberties enshrined in the Constitution, such as the religious freedom.

Among others, one of the aims of the new bill is to harden the penalties of the new forms of crime that take advantage of immigration, such as the smuggling of illegal immigrants into the country and prostitution, to establish an emergency expulsion process and to reinforce border controls. The latter is a particularly difficult problem in Spain, given that it is a member of the Treaty of Schengen and that its very long coastline is difficult to protect. The employment of illegal workers is further discouraged by an increase in the fines imposed on business and private employers who give paid work to those without a work permit.

Furthermore, the problem is made all the more difficult by the fact that there are no reliable data on the number, origin, destination or activities of illegal migrants, adding to the complication of designing policies and solutions to address it.

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<sup>5</sup> Commentary extracted from the GRECO programme, section III: Need for a Global Programme: Basic Outline, para.3, at [www.mir.es/dgei/necesidad.htm](http://www.mir.es/dgei/necesidad.htm) and <http://dgei.mir.es/es/general/programaglobal.html>, last visited on 26.01.04.

<sup>6</sup> BO de las Cortes (Official Gazette of Las Cortes, of 3 July 2003).

The Law on Foreign Status also provides a definition of discrimination and states that certain behaviour by persons in authority, civil servants, employers, business people or any other person will necessarily constitute acts of discrimination. This law then goes on to say that discriminatory practices can be challenged in the courts of justice, both in ordinary proceedings and, also, in proceedings before the Constitutional Tribunal.

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### **3. INTRODUCTION (AIM, MOTIVATION AND ORGANISATION OF THE STUDY)**

The influx of immigrants from third countries is one of the biggest challenges faced today by the European Union, Spain included. The importance of immigration as a topic of discussion in political debates has increased steadily and over the last few months it has become one of the most important issues in the political arena.

In this context, modern societies need to carry out an objective analysis of the phenomenon of immigration and clearly define the criteria according to which they will deal with immigrants.

The objective of this report is to provide a brief description of the existing legal framework that regulates foreign status in Spain and a summary of the legal initiatives currently underway. In the first instance, the study briefly considers the social, political and cultural environment in Spain, that is, the context in which immigration is developing. Secondly, we have then gone on to analyse in more detail the legislation in force, as well as the bills which are currently going through Parliament, and the reasons behind the various reforms of the legislation affecting foreigners living in Spain.

Fundamentally, we have analysed in detail two very important bills that propose to modify the Law on Foreign Status now in force. We have tried to describe not only their contents, but also their likely impact and the criticisms voiced by politicians and groups interested and involved in the situation of immigrants.

Since these are bills and, therefore, subject to amendment, we have considered not just the document originally drafted by Government, but also the reports prepared by the Council of the State and by various other institutions, as well as the parliamentary debates on the subject prior to the bills being passed by the Cortes.

To complement the legal analysis, we have analysed Spanish case law, considering both the practical application of the Law on Foreign Status and also of other legislation (civil, employment, penal) in situations where foreigners are specifically involved.

Furthermore, we have analysed the contribution made by bodies created to deal with and address the issues posed by migration. In this respect, we have made ample reference to the findings reported in the 2002 Statistics Yearbook, which compiles specifically relevant information as recent as June 2003.

We have not considered local legislation dealing particularly with the employment, education or living accommodation of immigrants, as we expect that these subjects are dealt with in detail in the relevant reports. However, we do mention that there exist specific legislation and initiatives that address these matters. Similarly, and with respect to discrimination towards immigrants, including the impact of anti-discrimination legislation, it is dealt with in detail in the report on racial violence.

## 4. GLOSSARY OF TERMS

**Autonomous Community:** Political and territorial division of Spain. There are a total of 17 Autonomous Communities in Spain. Each AC has its own local government and parliament that can and must legislate on those matters that the Constitution has declared are of the exclusive competence of the central Spanish Government.

**CIU *Convergència i Unió*:** Nationalist conservative political party of Catalonia.

**Discrimination:** Different treatment afforded to foreigners who are in exactly the same situation as Spanish nationals, or same treatment afforded to Spanish nationals and foreigners whose different circumstances would justify a diverse treatment. The Law on Foreign Status, for its own purposes, defines discrimination as “any act which, directly or indirectly, implies a distinction, exclusion, restriction or preference against a foreigner on the grounds of race, colour, ascendancy or national or ethnic origin, religious convictions and practices, and the objective or effect of which is to destroy or limit the recognition or the exercise, on an equal basis, of the human rights and the political, economic, social or cultural fundamental freedoms”.

**Foreigner:** A non-Spanish national.

**Immigrant:** A person who has settled in Spain, but who is not Spanish native.

**Internment:** Judicial decision whereby a person is deprived of its freedom to move without restriction and to live where he or she wants. The situation of internment is regulated by the law, takes place in facilities which are under constant surveillance, and is meant to last for the limited period of time during which the process of expulsion is dealt with by the administration and the courts of justice.

**Law:** Secondary piece of legislation which deals with all matters other than those which must necessarily be legislated for by organic law. Laws are approved by simple majority of the Congress.

**Law on foreign status:** Generic term by which is known the Law on the rights and liberties applying to foreigners and on their integration into society, which was first published in 1985 and has been amended several times since, twice in 2000 and again in 2003.

**Organic Law:** Secondary piece of legislation that deals with fundamental rights and public freedoms, Local Statutes, electoral systems and any other matters specifically determined by the Constitution. An organic law can only be passed, repealed or amended with the absolute majority of the Congress. An Organic Law may not regulate matters that can be regulated by simple Law.

**Partido Popular:** Conservative political party, in government at the time of reporting (Spanish central government).

**Positive discrimination:** Different or more favourable treatment afforded by the law or by bodies in authority which favour a group rather than another despite both groups meeting the same criteria.

**PSOE:** Socialist party, main opposition party (in central government) at the time of reporting.

**Public opinion:** The prevailing or popular belief or view that can be gathered from the media, polls, surveys and similar methods for assessing views.

**Regulation:** Tertiary piece of legislation that develop the detail of the laws, including the organic laws.

**Spanish Constitution:** Piece of legislation in which are enshrined the political principles on which the Kingdom of Spain governed. It is the primary source of legislation in Spain and all other secondary sources must respect its contents.

## **5. SHORT OVERVIEW OF PAST AND CURRENT POLITICAL/ CULTURAL SITUATION RELATED TO THE THEME OF THE STUDY**

Within less than half a century Spain has moved from exporting to importing labour. In an ever-changing process, Spain's transformation into a receiving country has evolved through various phases, from the legal and the social points of view.

Until the mid-nineties, any studies relating to immigration were made to address the needs of groups directly involved with the problems suffered by immigrants in society. Thereafter, multidisciplinary teams undertook to study immigration in Europe as a specific phenomenon, delivering their findings to specialist bodies. At present, it is one of the leading issues in politics and society, a subject everyone talks about and feels affected by, and the object of many studies and debates.

At this point, it is worth noting some of the facts about immigration highlighted by the Foreign Status Statistics Yearbook 2002<sup>7</sup>:

There are 1,448,671 foreigners registered as living in Spain, which amounts to 3.2% of the population. Of those, 538,144 (35.5%) are European and the rest have arrived from the American continent (28.7%), Africa (27.7%) and Asia (7.9%). IN the first six months of 2003, the number of persons from outside Spain increased by 124,670. All of the above have a valid resident permit, but it is estimated that only 900,000 of them do also have a valid work permit.

Since 1996, the number of foreigners resident in Spain has tripled. This increase has been particularly noticeable amongst the Moroccan community, which with 282,432 immigrants is the largest foreign group, the Ecuadorian community with 115,301 people and the British, with 90,091 resident in Spain.

The average age of foreigners from the E.U. is 44, for those of African origin it is 29 and 33 for Latin Americans.

Immigrants are mainly men, although of late the amount of women has increased to make 45 per cent of the total foreign population. Of the women, 56% come from South America and, of those, 72% are from Brazil. Their main occupation is as home help.

The clearest indication of the fact that immigration is now an established trend is the increase in the number of births amongst foreign women and the number of foreign children starting primary school. In 202, 43,469 children were born of foreign mothers, which amounted to 10.44% of the total number of births in Spain. One in every four was born to a Moroccan woman.

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<sup>7</sup> [www.mir.es/dgei/documentos/anuario](http://www.mir.es/dgei/documentos/anuario)

In the school year 2001-2002, 201,518 foreign children, or 2.76% of the total, registered for primary or secondary school in Spain. About 1% of the university students (14,414 in total) were foreign.

The Autonomous Communities with the most foreign residents are, in order of importance, Catalonia, Madrid, Andalusia, Valencia, the Canaries and the Balearic Islands.

In 2002, there were 6,309 applications for asylum. In decreasing order of importance, the applicants were from Nigeria, Cuba, Colombia, Algiers and Sierra Leone.

During the local elections campaign of May 2003, it became apparent that politicians now focus on immigration as an issue affecting the country's population in general, rather than as a separate issue. One of the reasons is that immigrants from developing countries are now clearly visible and their number greatly exceeds those of developed countries. It was during this electoral campaign that the ruling conservative party, the Popular Party, announced yet another amendment of the Law on Foreign Status, the third in as many years and the fourth in total, and emphasised the need to address crime. The main reasons behind the latest changes to the law are the fight against gangs of smugglers of immigrants, the simplification of the legal process to acquire legal residence whilst imposing tougher conditions for entry, the implementation of new EU directives, a rapid expulsion process and preventing 'chain' family groupings. The main opposition party, the Socialist Party, backed the government's proposed amendments whilst the left wing party, United Left, opposed to it.

A consequence of immigration is that after many years of a decreasing birth rate and worrying aging of the Spanish society, the trend has finally turned. For the first time in fifteen years, the number of children who have started school has increased in 65.000.

Additionally, and in a climate of diminishing public expenditure, the allocation of money to programmes for the integration of foreigners has been decreasing, and also other groups such as Roma and certain underprivileged communities, have been deprived of resources previously available to them. It should also be borne in mind that, in spite of Spain's apparent good economic situation, we may be on the verge of a change in economic climate which is already affecting employment.

Although many foreigners quickly find work, mostly in farming, construction and the unskilled service sector, one of the main obstacles for the integration of immigrants into Spanish society is the difficulty in finding work, a problem also shared by nationals. Due to the time difference between obtaining a residence permit and, subsequently, a work permit, many legal immigrants find themselves forced into unemployment or clandestine work. The precarious working conditions and the bad pay result in increased marginalisation. In spite of this, the Law on Foreign Status, currently under review, does not address the situation, other than to toughen penalties imposed on those who employ foreigners without a work permit.

The government, unions and associations of immigrants estimate that about half a million foreigners living in Spain are illegal immigrants. Their impact in the country's economy is important and, at least on the surface, it appears that the increase in illegal immigration over the last twenty years has gone hand in hand with the increase in

black market economy, currently estimated at about 130 billion euros (130,000,000,000) and growing, and the third largest in the EU, after Italy and Greece.

The association of immigration with an increase in crime made several times either by some of the press or by the public is one of the main reasons for the rejection of certain groups of immigrants, particularly single men<sup>8</sup>. In this context, it is necessary to mention the appearance of new forms of crime in Spain, such as organised gangs and foreign mafias.

The lack of cheap accommodation is another exclusion factor. In addition to the difficulties that Spaniards themselves encounter after years of massive increases in the price of housing, immigrants are faced with the reluctance of small property owners who refuse to rent it in the fear of the people who will crowd the flat, which will likely result in a loss of value of the property.

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<sup>8</sup> The poll carried out by 'Sigma – dos' in the Autonomous Community of Madrid, and published in the journal El Mundo on 19 October 2003, reflects, amongst others, the following facts:

48% of the interviewees believe that illegal immigration has had an impact on the increase in crime in the area; 36.9% believe that it has a big impact and 10%, on the contrary, think it has had a small impact.

## **6. CONCISE DESCRIPTION OF THE CURRENT LEGAL SITUATION RELATED AND DISCUSSION OF NEW POLICIES AND INITIATIVES**

### **6.1. CURRENT LEGAL SITUATION**

The point of departure of all legislation relating to foreigners, immigration and asylum is the Spanish Constitution of 1978:

Firstly, article 10 opens the section relating to fundamental freedoms and obligations, stating in paragraph two that “the laws relating to fundamental rights and freedoms recognised by the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and international treaties and agreements on the subject that have been ratified by Spain”. Therefore, the following provisions of the Universal Declaration of Human Rights are incorporated into the Spanish legal system by reference:

Article 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Article 7: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.

Article 13 affords foreigners present in Spain the rights enshrined in Title I and provides that national legislation will determine how foreigners and stateless persons shall enjoy asylum rights in Spain. Secondly, article 14 reserves for the State, as opposed to the Autonomous Communities, the exclusive right to legislate on matters relating to nationality, immigration, migration, foreign status and asylum. This is significant to the extent that those Autonomous Communities which are mostly affected by the immigration phenomenon are unable to legislate on the subject, have their own local laws challenged and, in turn, they challenge the constitutionality of the laws issued by the State on this subject.

Despite the above it is worth noting that article 14, which opens Chapter II, dedicated to rights and freedoms, and standing on its own, provides that Spaniards are the ones who “are equal before the law, and there cannot prevail any discrimination on the grounds of birth, race, sex, religion, opinion or any other social or personal condition or circumstance”.

On the basis of the above, legislation specifically dealing with immigration, foreign status, employment rights of foreigners, asylum rights, etc. can be clearly separated

into two blocks, depending on whether the foreign nationals in question are members of the European Union, the European Economic Area or Swiss, or whether they are not.

There are also provisions of civil, employment and criminal law, applicable to Spanish nationals and foreigners alike, which specifically refer to immigration and foreign status, briefly referred to below.

Finally, the application of these laws is shaped by the judgments of the Spanish courts and tribunals which, within the remit of the law, generally seek to punish discrimination against illegal immigrants and the abuse, by both nationals and other foreigners, of their precarious conditions.

### **6.1.1. Legislation applicable to EU nationals, nationals of the EEA and Switzerland**

These citizens are subject to the provisions of the new Royal Decree 187/2003, which came into force on 22nd February 2003<sup>9</sup> and replaces Royal Decree 766/1992, bringing Spanish legislation in line with EU law. By default, Organic Law 4/2000<sup>10</sup>, as amended by Organic Law 8/2000, applies in relation to any matters not specifically regulated in the Royal Decree 187/22003.

### **6.1.2. Legislation Applicable to all foreigners who are not nationals of the EU, the EEA or Switzerland**

The basic piece of legislation dealing with immigration and foreign status is the Organic Law 4/2000, substantially amended by the Organic Law 8/2000, NS generally referred to as the Law on Foreign Status. The provisions of the Organic Law 8/2000 relating to the subjects listed below were challenged before the Constitutional Tribunal by various Autonomous Communities and by the Socialist Party: Right of reunion and of demonstration, freedom of association, freedom to join a union and to go on strike, right of appeal against administrative decisions, right to legal aid, procedure for expulsion from Spanish territory, preferential expulsion procedures, enforcement of expulsion orders.

Law 4/2000, as amended, is further developed by secondary legislation, namely Royal Decree 864/2001, although some of its provisions have been declared illegal by judgment of the Supreme Court of 23 March 2003<sup>11</sup>.

In addition, the following pieces of secondary legislation, analysed in the 2002 report, continue to apply:

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<sup>9</sup> BOE (Official Gazette) of 22 February 2003, [www.boe.es](http://www.boe.es).

<sup>10</sup> Organic Law 4/2000, of 11 January, on the rights and liberties of foreigners present in Spain and their social integration, published in the Spanish Official Gazette, No. 10, of 12 January 2000, , as amended by Organic Law 8/2000, [www.boe.es](http://www.boe.es).

<sup>11</sup> Judgment of the Supreme Court of 20.03.2003, published in the Spanish Official Gazette, n° 117, of 16 May 2003.

- Royal Decree 239/2000, of 18 February, on the procedures for the legalisation of foreign status according to Organic Law 4/2000<sup>12</sup>.
- Royal Decree 142/2001, of 16 February, establishing the requirements for regularisation<sup>13</sup>.
- Royal Decree 865/2001, of 20 July, which approves the Regulations for the recognition of stateless status<sup>14</sup>.

Order PRE/237/2002, of 8 February, establishing the guidelines for linking of the entry visa number in relation to foreign status<sup>15</sup>.

### **6.1.3. The Organic Law 4/2000 on the Rights and freedoms of foreigners in Spain and their integration into society<sup>16</sup> (generally referred to as the Law on Foreign Status)**

After about fourteen years since it was first published, the Organic Law 1/1985 on Foreign Status had fallen behind the times and so it became necessary to repeal it and issue a new law with which to replace it. In January 2000, a new Law on Foreign Status was published. On the one hand, this new piece of legislation introduced a more progressive and modern approach to the treatment of foreigners choosing Spain as a country to settle in, but on the other it created dysfunctions in the legal treatment of immigration, not only by reference to national Spanish legislation, but also by reference to the obligations undertaken by Spain as a member of the European Communities. Among the latter, there were clear discrepancies between the new Law on Foreign Status and the decisions of the European Council of October 1999, in Tampere, and the Treaty for the application of the Schengen Agreement.

One of the most important contributions made by the Organic Law 4/2000, was to define in detail the rights and liberties enjoyed by foreigners permanently or temporarily on Spanish soil. New measures were introduced to prevent discrimination and to offer certain benefits to those cooperating against mafias and organised criminal networks dedicated to smuggling people into the country.

One of the most disputed features of the new Law on Foreign Status was the introduction of an emergency procedure for expulsion of illegal immigrants that was never regulated and, therefore, was totally ineffective. The joint mention and treatment of stateless persons and persons without proper documentation was also heavily criticised. Lastly, the introduction of this new piece of legislation made Spain the only country receiving large amounts of immigrants that did not have a mechanism to return foreigners to their countries of origin who were not legally in its territory. Thus, Spain had deprived itself of the one instrument required by policies aimed at controlling migratory flows.

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<sup>12</sup> BOE (Official Gazette) of 19 February 2000, [www.boe.es](http://www.boe.es).

<sup>13</sup> BOE (Official Gazette), of 20 February 2001.

<sup>14</sup> BOE (Official Gazette) No. 174, of 21 July 2001.

<sup>15</sup> BOE (Official Gazette) No. 37, of 12 February 2002.

<sup>16</sup> BOE (Official Gazette) No. 10, of 12 January 2000.

In the face of all these problems, it became necessary to amend the law. The new Organic Law 8/2000, amending Organic Law 4/2000, was passed in December 2000 and came into force in January 2001. The aim of the amendments was to regulate immigration as a matter affecting the structure of Spanish society on the grounds that Spain is not just a point of destination for many immigrants, but also a step for many of them on their way to third countries.

One of the novelties of Organic Law 8/2000 was the division into two groups of the rights and liberties of foreigners. The first group included the fundamental rights and freedoms that all foreigners, as persons, enjoy in Spain and of which they cannot be deprived. These are the right to use the health services, the right to information, basic public assistance, protection of the law, access to education for children and legal aid. The second group of rights includes those to be enjoyed exclusively by foreigners legally residing in Spain. These are referred to as 'social or political rights' and are the right to vote in local elections, provided that a reciprocal treatment applies to Spaniards in the country where the foreigner comes from, the right to join a union and to strike, to hold meetings and demonstrate, the right to earn money through employment or self-employment, housing benefits, the right to bring their family to Spain, access to local or central government employment, freedom of circulation and other. Additionally, the amendments introduced by the new law tried to encourage immigrants to enter Spain and reside in this country legally, rather than illegally.

Finally, a special chapter was introduced in the Law on Foreign Status clearly defining discriminatory acts against immigrants and defining the procedure to punish such acts. The Law on Foreign Status, as amended, includes a brief section on anti-discriminatory measures. It gives a definition of 'discrimination' and states that certain behaviour by persons in authority, civil servants, employers, business people or any other person will necessarily constitute acts of discrimination. This law then goes on to say that discriminatory practices can be challenged in the courts of justice, both in ordinary proceedings and, also, in proceedings before the Constitutional Tribunal.

## **6.2. PENAL CODE**

The Criminal Code considers the fact that a crime or misdemeanour has been committed for a racial motive (or xenophobic, religious, or otherwise discriminatory reason) is an aggravating circumstance. On the other hand, the Criminal Code does define as criminal various conducts consisting of provoking racial discrimination, or denying a right or benefit to someone who is entitled to it on the grounds of race, xenophobia, etc. Besides the sections specifically referring to racial issues, there are several sections that refer to the abuse by a person of a position of power, or authority or superiority and which aggravate the penalty attaching to the crime. The existence of these aggravating circumstances has been found to apply in various cases in which the victim was a foreigner or of a different "race", but not in others which, at first sight, seemed to be entirely motivated by racism.

Section 22.2 defines the following aggravating circumstance: "the commission of a crime for racist or anti-Semitic motives or for some other discriminatory reason relating to the ideology, religion or beliefs of the victim, his or her race, ethnic background or nation of origin, illness or disability that he or she may suffer". When

this aggravating circumstance is found to exist, the penalty applicable to the specific crime is applied in its more severe form.

The Spanish Criminal Code distinguishes between crimes and misdemeanours (or lesser offences), depending on the seriousness of the facts or the resulting consequences. All acts relating to racism, xenophobia and discrimination are considered crimes.

The following are highlighted as specific forms of racial crimes. They are included in a separate chapter devoted to criminal offences affecting the exercise of fundamental rights and freedoms.

Section 510.1 provides that: “Those who provoke discrimination, hatred or violence against groups or associations, for racist, anti-Semitic or any other motive relating to ideology, religion, beliefs, family situation, belonging to another race or ethnic group, or because of national origin... shall be punished with imprisonment for one to three years and a fine of six to twelve months”.

Paragraph 2 of section 510 also punishes the dissemination of injurious information about groups or associations in relation to their ideology, religion or beliefs, the belonging of their members to an ethnic group or race or their national origin. This paragraph is particularly important because it sets boundaries to the freedom of expression, enshrined in the Constitution, and by reference to which xenophobe and anti-Semitic organisations have tried to protect the propagation of their ideas.

Sections 511 and 512 punish those who deny a person, because of race, ideology, religion or beliefs, ethnic background or race or national origin, a benefit to which that person is entitled.

Section 515.5 criminalises those associations that promote discrimination, hatred or violence against persons, groups or associations by reason of their ideology, religion or beliefs, the fact that one of their members or one of them belongs to an ethnic group, race or nation.

### **6.2.1. General legislation and jurisprudence**

Albeit only showing the tip of the iceberg, the Spanish courts have assiduously applied and continue to apply general legislation to protect illegal immigrants from abuse. The courts have thus applied general civil and employment laws, and general principles of the law, such as unjust enrichment, to guarantee the rights of illegal workers to be paid for work carried out, national insurance benefits and protection from bad practices.

### 6.3. IMPLEMENTATION OF THE 2000 DIRECTIVES ON RACIAL DISCRIMINATION

The Council Directives 2000/43/EC and 2000/78 have not been transposed yet. However, the Spanish Government has confirmed that the above-mentioned Directives will be transposed by the end of the year.

There has not been a public debate about this question in the Spanish society, which might have allowed citizens to understand the importance of ensuring a complete transposition of these Directives against racism, discrimination and xenophobia. The interaction between the Government, the Civil Society and the Social agents until now has not been very exhaustive. No respective discussions have taken place till now in the Spanish Parliament.

The full transposition of the Directives should entail changes in the existing Labour and Penal Code, as well as in the Alien Law. A recent article, published on 31 October 2003 in the Spanish newspaper ABC, stated that the governing Popular Party had prepared an amendment of 2004 Budget in order to apply the anti-discrimination Directives. This amendment will lead to future changes in the Labour Law and recognises “direct” and “indirect” discrimination<sup>17</sup>. The transposition of these Directives into Spanish legislation will create a “Council for the Promotion of equality and non discriminatory treatment.”

### 6.4. NEW POLICIES AND INITIATIVES

Two political initiatives seeking to adapt the legislation to the existing reality are under way at the time of reporting in the shape of two legal bills, to be dealt with through emergency parliamentary procedures. It is likely that these bills will suffer several amendments before becoming law, but the fact that they have been put to Parliament during the summer recess suggests that the objective is to have them passed without delay. The proposed pieces of legislation deal, respectively, with a further amendment of Organic Law 4/2000 and with specific measures aimed at prevention of crime and domestic violence and at promoting the integration in society of foreigners. If passed, both pieces of legislation will have the qualified status of

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<sup>17</sup> **“Direct discrimination”:** *when a person is dealt with in way less favourable than another one in analogous situation by reasons of racial or ethnic origin, religious, disabled, sexual option or age.*

**“Indirect discrimination”:** *when a legal or prescribed disposition, a conventional or contractual clause, an individual pact or an unilateral decision can cause a disadvantage to a person with respect to others for the reasons before mentioned.*

<sup>17</sup> The bill was approved by Parliament and became law in December 2003, as Organic Law 14/2003, of 20 November 2003, published in the BOE (Official Gazette) No. 279, on 21 November 2003.

Organic Laws, since they deal with fundamental rights enshrined in Title 1 of the Spanish Constitution.

### **Proposed amendment of Organic Law 4/2000<sup>18</sup>**

The Ministry of the Interior is aware of the need perpetually to review the laws on foreign status to adapt the legislation to the changing realities brought upon by immigration. Accordingly, it has drafted a bill amending Organic Law 4/2000, which will be dealt with through emergency parliamentary procedures.

The background to these amendments is the increase in the number of foreigners who over the last few years have arrived in Spain and settled in the country and the changes in the forms that migration itself is taking. The experience gained over the last few years provides a deeper knowledge and understanding of the migration phenomenon, which shows that there is a clear need for legal instruments which enable a better management of the flows of migration, thereby facilitating legal immigration and strengthening the fight against illegal immigration.

This proposal must go hand in hand with EU legislation, as well as observe the ruling of the Supreme Court of 23 March 2003, which declared the illegality of a number of provisions of the Royal Decree 864/2001, a key piece of legislation.

The bill sets out four major objectives:

- The simplification of existing legislation and the speeding up of administrative procedures.
- The strengthening of those provisions which aim to tackle illegal immigration and those who profit from it.
- The implementation of EU legislation on immigration.
- The amendment of existing legislation in accordance with the judgment of the Supreme Court of 23 March 2003.

Particularly important in this case is the new proposals for dealing with family reunification. The bill aims to afford sufficient legal cover to prevent 'chain unification', i.e. that whereby those foreigners who first become resident in Spain are entitled to bring in their relatives who, in turn, on acquiring resident status apply to bring in further relatives on the grounds of reuniting the family. In this respect, the current wording of the bill is confusing and may be insufficient to achieve this particular objective. A ruling of the Council of the State on the subject suggests new wording according to which 'resident status acquired by virtue of family reunification shall not enable further unifications'; or that subsequent unifications should be subject to a long stop period, for instance, ten years, to prove that those who became resident as a result of an initial grouping are well settled and have become independent from the person or persons who originally called for them to be brought into the country.

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<sup>18</sup> The bill was approved by Parliament and became law in December 2003, as Organic Law 14/2003, of 20 November 2003, published in the BOE (Official Gazette) No. 279, on 21 November 2003.

Equally important is the proposal to simplify administrative procedures and, in particular, the current situation of multiple and separate procedures to obtain an entry visa, a residence permit and a work permit. This multiple-stage administrative procedure results in immigrants legalising their resident status, yet being unable to obtain legal employment for want of a work permit. Indeed, one of the biggest criticisms raised by lawyers and associations dealing with immigrants is that, as a result of the time lapsed between the grant of a residence permit and obtaining a work permit, many are pushed either into unemployment or into clandestine work, in both cases with serious negative repercussions both for the immigrants and the receiving community.

To prevent this situation, the bill proposes to move from the existing three different documents and stages (entry visa, residence permit and work permit) to only one (joint residence and work permit) enabling the immigrant both to become a legal alien and to seek employment or be self-employed. However, it is not clear that the current wording of the bill achieves its purpose, as it also refers to work permits and residence permits. An additional element of confusion is the new identity card for foreigners, which is now required by EU law.

From an administrative point of view, the bill introduces increased compulsory collaboration between the various public administrations, granting the police and other security forces access to information available to other governmental bodies. In particular, the General Directorate of Police is granted access to the local census, with a view to improving control over immigrants and their right of residence in Spain. This raises an important issue in the light of the new organic legislation for the protection of data and the legislator should pay particular attention to the wording of the bill, to prevent unconstitutional provisions being passed only to be challenged immediately following approval.

### **Measures for the prevention of crime, domestic violence and to promote the integration of immigrants in society<sup>19</sup>**

The second of the bills submitted to Parliament proposes the amendment of current criminal and civil legislation, to cover the following areas:

- Treatment of illegal aliens who commit crimes in Spain. In particular, where an illegal alien commits a crime punished with a prison sentence of less than six years, the general rule will be to substitute expulsion for imprisonment. If the person is sentenced to more than six years, the general rule will be expulsion once three fourths of the sentence has been served in Spain. The aim of this amendment is to prevent the criminal remaining in Spain thereby contravening the spirit and objectives of the law.
- Increased punishment for new forms of delinquency which take advantage of immigrants. The proposed legislation severely increases the penalty for those found guilty of promoting illegal immigration and smuggling foreigners into the country.

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<sup>19</sup> Official Parliamentary Gazette, N° 138, of 03.07.2003

- The proposed legislation acknowledges that the promotion of the integration of foreigners in Spanish society brings with it undesirable cultural practices. In particular, ablation or female circumcision is typified as a crime.
- Amendment of civil laws relating to family and divorce to allow foreigners, particularly Muslim women, to apply for legal separation or divorce. Current Spanish civil law provides that marriage and divorce are ruled by the national law common to both spouses, which frequently results in immigrants being unable to separate or divorce their spouses, even if legally resident in Spain.
- Finally, the law of foreign status is amended to confront recent changes in the patterns of delinquency, so that the process of expulsion will entail not only a withdrawal of any right of residence in Spain previously granted, but also the immediate cancellation of any residence or work permit application process which may be underway.

## **7. THEORETICAL AND METHODOLOGICAL APPROACH FOR ANALYSING DATA**

For the preparation of this report we strived to adopt a more legalistic style, structuring the report on the basis of legal changes and policy developments and focusing on the analysis of the text of the law. Without being exhaustive, our objective has been to ensure that one single document is sufficient to provide a clear picture of the evolution over the last seventeen years of the Spanish legislation on the subject and, more particularly, since 2000.

The law in force and the various bills are analysed by making a concise description of the legal text and the estimated impact of the law and legal initiatives.

With respect to the data contained in the Statistics on Foreign Status Yearbook 2002, we have collected and included the information which we believe provides a good overview of the immigration phenomenon in the country.

We have not considered in detail the legal situation of illegal immigrants because, amongst other, the issue is not specifically considered in the bills submitted to Parliament by the Government, other than to enable an expulsion process.

The web pages from which legislation, whether in force or under proposal, and case law are obtained are checked on a daily basis.

## 8. DESCRIPTION AND ANALYSIS OF EXISTING AND NON-EXISTING DATA AND SOURCES

Over the last few years, Spain has made a big effort to provide itself with a legal and institutional framework to deal with immigration from all points of view. Thus, it has not only drafted the relevant laws, but it has also created a number of bodies, such as the Government's Delegation for Foreign Status and Immigration, attached to the Ministry of the Interior, the High Council on Immigration Policy, the Immigration Permanent Observatory, the Forum for the Integration of Immigrants into Society, the Interministerial Commission on Foreign Status and the GRECO Programme. In addition, a number of regional and local bodies have been established to deal with immigration matters.

During 2002-2003, virtually all of the Autonomous Communities have created some department to deal with immigration policies, development of initiatives, documentation and similar. This has been done either by adapting existing social services departments or assigning new functions to such departments to deal with and control immigration matters, or by creating interdepartmental commissions or consultative bodies. All in all, these Autonomous Communities have undertaken initiatives to understand the impact of immigration in their respective territories and adopted specific measures to deal with it. The type of measures adopted vary widely from one region to another, and may consist in providing help to improve accommodation for temporary workers or the strengthening of basic social services in rural areas during harvesting; other measures have to do with education, access to basic social services, health and living accommodation for immigrants.

Additionally, many bodies and institutions are taking action to promote the integration of foreigners into their local communities. Good examples of these are the initiatives undertaken by the Women's Institute and the departments of Education and Health.

Here follows a commentary of the various functions of some of these bodies and their activities throughout 2003.

**The Government's Delegation for Foreign Status and Immigration**, attached to the Ministry of the Interior, has been created with the objective of establishing the government's policy on the subject of foreign status, immigration and asylum, as well as to give momentum to all related activities. We understand that the Bill for the reform of the Law on Foreign Status currently going through parliament, and already referred to, has been drafted by this department.

Within the Government's Delegation for Foreign Status and Immigration has been created the **Immigration Permanent Observatory**. This body has been supplied with the resources necessary to analyse, reach conclusions and develop policies on immigration.

Among the documents published by the Permanent Observatory it is worth highlighting the Foreign Status Statistics Yearbook 2002, issued on 8 July 2003 and including data up to June 2003.

The Ministry of the Interior has a web page dedicated exclusively to providing information relating to foreign status in Spain, laws applicable to foreigners, procedures for legalising their situation, how to protect their interests, general information and statistics about the evolution of immigration in Spain<sup>20</sup>.

#### THE GRECO PROGRAMME

Programme for the Global Regulation and Coordination of Foreign Status and Immigration in Spain:

The premise on which this programme has been established is that Spain needs immigrants. This is combined with the conclusion that we have reached on analysing the various government policies that one of the key issues for implementing a global policy must be to invest in the development of those countries from which immigrants originate, favouring, amongst other, the return of foreigners to their native countries. The professional skills acquired during their time of residence in Spain will be an added value that will enable them to contribute to the effort of developing their own countries.

The GRECO programme is bi-annual and so it will be effective between 2001 and 2004. We have not found up-to-date data on how the programme has been executed over the last two years, so that we cannot evaluate whether the objectives for 2002-2003 have been met.

#### THE FORUM FOR THE INTEGRATION OF IMMIGRANTS INTO SOCIETY

This is a collegiate body established to assist the government and other public bodies with consultation, information and advice. Represented in the Forum are associations of immigrants and refugees, non-governmental associations, unions and business associations. With respect to the Bill for the reform of the Organic Law 4/2000, the Council of the State advises in its report of 12 June 2003 that the Forum has been advised of the contents of the bill, but it has not commented on it.

#### THE INTERMINISTERIAL COMMISSION ON FOREIGN STATUS

This Commission has been established to ensure that the various initiatives of the different ministerial departments competent to deal with immigration are properly coordinated. It was originally created in 1992 and has undergone several changes.

#### THE BILLS FOR THE REFORM OF THE LAW

The PSOE (Socialist Party, in opposition) and the conservative Government (Popular Party or PP) have reached an agreement to ensure that the current Law on Foreign Status can be amended. However, some of the local political parties with a governing majority in the Autonomous Communities most affected by immigration believe that the proposed amendments are insufficient. Such is the case of the Canaries Coalition (Canaries), which will nonetheless support the PSOE-PP alliance, and of CIU Convergència i Unió (Catalonia); the latter has declared to the press that, although in

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<sup>20</sup> [www.mir.es/extranje/extnormativa](http://www.mir.es/extranje/extnormativa)

agreement with the basic proposals contained in the Bill, the power to oversee the policies on immigration should rest with the Autonomous Communities, and not with the central government. At this point, it is worth noting that Catalonia has been the region where politicians have most assiduously declared, during the local electoral campaign of May 2003, that immigrants have to show their will to integrate into their host society by learning the language and assimilating the local customs.

The most important amendments to be introduced by the bill at the request of the PSOE are a severe increase in the fines to be imposed on employers who engage illegal immigrants, the penalisation of persons who prevent or limit the access of the security forces to the Municipal Census or to the list of travellers compiled by airlines and a clear definition of the rights, guarantees and obligations of immigrants who are held in internment centres.

## CASE LAW

The number of judgments issued by Spanish tribunals and which are directly related to immigrants is limited. These judgments are, for the most part, to do with criminal and administrative cases. The case law analysed dates back to 2002, as more recent cases have not yet been reported by the courts and been published by the specialist companies.

In the ambit of criminal law, it is worth highlighting the numerous cases which condemn Spaniards and foreigners alike for the smuggling of people into the country or for infringing the rights of workers.

In the ambit of administrative law, the judgments refer mostly to the expulsion process, the refusal of a first residence permit or the refusal to renew an existing residence permit in the absence of the conditions required by the Law on Foreign Status.

We have also come across a judgment that confirms the obligation of employers to pay National Insurance contributions on behalf of all workers employed, even if they are illegally employed, and confirming the entitlement of the latter to receive fair payment for work done on behalf of their employer.

An analysis of the case law shows that immigrants from developing countries are not properly protected in a country that is rather indulgent with those who do not abide by the law. To avoid their being identified as illegal immigrants and, possibly, deported, many of them fail to denounce the abuse to which they are subjected. Therefore, one of the conclusions that must be reached is that the cases that make it to the courts of justice are only the tip of the iceberg and that we lack the necessary information to determine the extent of the problems with which are confronted those immigrants in precarious financial conditions.

The judgments are available through legal publishers, such as Aranzadi. A few relevant examples are cited below:

Judgment of the Constitutional Tribunal of 29 January 2001, on racial discrimination (Aranzadi, RTC 2001\13): **FUNDAMENTAL RIGHT OF EQUALITY BEFORE THE LAW**: This case considers whether a black woman was discriminated against when travelling in the company of a white man (her husband) she was asked by the police to identify herself at a railway station and he was not. The woman claimed damages against the Spanish government on the grounds of discrimination. This judgment considers the meaning of overt and covert discrimination and whether it existed or not in this case, whether the police acted in an inconsiderate or humiliating way. The case was decided against the claimant with one vote against (Judge Julio Diego Gonzalez Campos).

Judgment of the Supreme Court, of 20 March 2001, on the revocation of a residence permit because of lack of legal means of survival (Aranzadi, RJ 2001\2651): This case considers what proof the foreign residents must provide to guarantee that they have means of survival sufficient to support a claim to renew their residence permit, irrespective of whether or not their status has been legalised.

Judgment of the Supreme Court, of 2 December 1998, concerning a work permit and the obligation of the employer to make National Insurance contributions on behalf of an illegal immigrant employed by him (Aranzadi, RJ 1998\10268): This case confirms the obligation of employers to register all employees with the national social security system, irrespective of whether or not the workers are legally resident in Spain.

Resolution of the Directorate General of Registries and Notaries, of 9 October 1993, revoking the registration of a marriage with a non-EU citizen on the grounds that it is a marriage of convenience, the marriage being null and void for lack of consent (Aranzadi, RJ 1993\7969).

Judgment of the Provincial Court of Cadiz, of 19 February 2001, offences against the rights of foreign citizens (Aranzadi, ARP 2001\537): this case, decided against the Spanish police, clears a Spaniard travelling in the company of a foreigner whose papers are insufficient legally to enter Spain of the accusation of smuggling people into the country. The wording of the police and witness reports was considered poor and insufficient to infer that the accused is guilty. No attempt was made to hide from the police.

Judgment of the Provincial Court of Malaga, offences against the rights of the workers (Aranzadi, ARP 2000\1069). Breach of the rights afforded to employees: This case considers the existence and the promotion or facilitation of the entry of clandestine foreign workers in Spain; transport of persons of Moroccan nationality who wish to work in Spain; existence of an organisation that facilitates the clearance of police controls and make available the necessary documentation.

Judgment of the Superior Tribunal of Justice of Murcia, on the deportation of foreigners (failure to motivate the deportation order), (Aranzadi, RJCA 1999\2294): This case considers whether an order for deportation made on the grounds that an illegal activity is taking place is sufficiently motivated to justify the deportation. The case is decided against the government for failure to prove that the alleged illegal activities took place and the deportation order declared invalid. The judgment confirms that everyone seeking effective legal protection in the Spanish courts is entitled to it.

## THE PRESS

The swings in the public mood as a result of the events happening throughout the world have resulted in the press and the television making many more references to European groups which are opposed to immigration than had been made in the past. Even politicians occasionally use expressions, particularly when referring to illegal immigrants, which they would not have dared to use before. One such 'off the record' comment has resulted in the resignation of a member of a local administration.

We have followed some of the commentary made in the press on the subject of immigration, which is also referred to throughout the report.

## **9. ANALYSIS OF STRATEGIES, INITIATIVES AND GOOD PRACTICES FOR REDUCING RACISM AND SUPPORTING DIVERSITY**

Spain has made a big effort to provide the public administration and the country in general with the legal instruments and bodies that should enable it to operate within a clear, coherent and well defined framework, and in which are called to participate all groups, bodies and institutions which are involved in dealing with foreign status and immigration.

Within the various strategies that have been designed, it has become apparent that there remains to be established a mechanism that will facilitate the cooperation between the central government and the regional governments of the Autonomous Communities, particularly those which are most affected by immigration. The Spanish constitution provides that the central government is exclusively competent to legislate on matters relating to immigration, and, therefore, to determine when an immigrant is a legal immigrant, thereby enabling him to obtain employment and to be financially self-sufficient. However, the burden falls upon the Autonomous Communities to ensure integration into society, employment, education and healthcare for foreigners and, in the event, primary assistance for illegal and indigent immigrants.

Frequently, the impossibility determining the country of origin of an illegal immigrant has resulted in the impossibility of deporting him or her once it has been determined that their status could not be legalised. This is particularly true in the case of immigrants from the sub-Saharan region, many of who arrive without documents and refuse to say where they come from. As their internment cannot exceed a certain period of time, the Autonomous Communities are left to take care of their situation and to provide assistance.

Since 2001, virtually all of the Autonomous Communities have created a department of immigration, designed immigration policies or drafted relevant documentation. To do this, they have both remodelled existing social services departments, which have been assigned the task of controlling and monitoring immigration, and/or created interdepartmental commissions or consultative bodies. All in all, they have developed initiatives to understand the immigration phenomenon in their own region and to take the appropriate specific measures.

What specific measures are adopted depends very much on the Autonomous Community concerned and may range from help to improve accommodation for temporary workers or the strengthening of basic social services in rural areas during harvesting; other measures have to do with education, access to basic social services, health and living accommodation for immigrants. Some of these initiatives are aimed at very specific groups of immigrants who, because of their particular circumstances, require special attention. For instance, the Community of Madrid has very recently opened a refuge for Latin American women. In this respect, it should be noted that agreements have been entered into by the Institute of Migration and Social Services (IMERSO), attached to the Ministry of Employment and Social Services, and the

Autonomous Communities, which agreements provide for joint action from the relevant bodies. Also, the central government has developed the Housing Plan 2002-2005, designed to house marginalised groups of people, such as immigrants and the aged.

One of the initiatives developed to tackle illegal immigration is that of voluntary repatriation. On the one hand, it appears that this policy results from the general guidelines on immigration designed by the European Union. On the other, it is considered advisable to provide the legal framework within which policies can be agreed with the countries from which immigrants originate to contain the flows of immigrants in those countries and/or to facilitate and encourage repatriation and settling back into the country of origin. Some Autonomous Communities are already putting these policies in practice.

With respect to public opinion on immigration issues, it is important to distinguish between what the 'man in the street' thinks and the commentary published by the press and claiming to be public opinion. The latter is often by editorial policy and by the needs of the mass media to be sensationalist.. Spanish nationals generally think that foreign immigrants must respect the local laws and customs of their host country. In this respect, the third reform of the Law on Foreign Status acknowledges that the integration into the Spanish society of foreigners creates new situations which the legislator needs to address. On this basis, certain foreign customs, such as female circumcision, are considered contrary to our legal system and criminalised, punished not just with penal sanctions, but also with the loss of parental rights.

Along the same lines as above, we consider that another new policy conducive to integration and the avoidance of discrimination is the proposed amendment of certain aspects of civil law (family and divorce) that will enable foreign women to ask for the application of national law when applying for divorce. This is particularly relevant for Muslim women whose national law discriminates against them if they apply for legal separation or divorce. At present, and as a sign of respect for the national laws of other countries in matters as personal as the family, foreigners living in Spain would be subject to their national law on family matters and divorce. However, this system shows that, in reality, foreign women living in Spain have serious difficulties in obtaining a legal separation or a divorce from their husbands. To prevent the different treatment of foreigners and nationals, the law will be amended and Spanish family law will always apply. This will likely result in divorces being granted in Spain which are null and void in the country of origin of the spouses, the consequences of which are beyond the scope of this report.

Another positive amendment to be introduced by the law, on proposal by the socialist party, is the widening of the circumstances in which family reunion can be achieved, particularly for women who are subjected to domestic violence. If the amendment is introduced, these women will be entitled to a residence permit independent of the one granted to their spouses.

The United Left Federal Parliamentarian Group and the Rainbow Party have on 10 July 2003 presented to Parliament a proposal for an Organic Law to establish the right of foreigners to vote and be elected in Spain.

A further initiative proposed by the PSOE to prevent discrimination and social marginalisation is the grant of a three-month working visa. It is likely that this proposal will become law.

According to a poll carried out by the company ASEP, SA, in 2002, out of several measures suggested to contain and control immigration in Spain, 32.3% considered that the most effective measure would be to set an annual quota of workers allowed in the country. In fact, this is one of the measures that the central government has already introduced (Resolution of 14 January 2003, Official Gazette of 16 January 2003). The said Resolution establishes a procedure for providing employment and determines the number of job offers and their characteristics, available to foreigners who are legally resident in Spain and to foreigners who are neither living nor legally resident in Spain for the year 2003.

With respect to private initiatives, banks and other financial institutions have created special accounts aimed at foreigners who want to send money to their families outside Spain.

Several Law Societies throughout Spain have set up groups devoted to assisting and advising immigrants and lobby for changes in the legislation.

There are numerous organisations, which can normally be found on the internet<sup>21</sup>, who assist immigrants by giving advice on legal status, employment, rights and obligations.

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<sup>21</sup> For example: [http://www.aicode.org/derechos\\_y\\_deberes.htm](http://www.aicode.org/derechos_y_deberes.htm)

## 10. SUMMARY AND CONCLUSIONS

The study of the Spanish legislation on immigration and foreign status, in the current political and social context, and of its evolution over the last 18 years (the first Law on Foreign Status came into force in 1985), shows that Spain has had to react quickly to the fundamental changes that the country has undergone and is still undergoing.

Indeed, in a few years Spain has evolved from a developing country, with an agricultural based economy and excess labour that has traditionally migrated to wealthier countries, to become a highly developed service economy which attracts immigration.

This change has confronted Spanish society with some challenges whereby cultural diversity has been increasing. In other words, in the last 20 years a large number of people from different origins and places have arrived in the country and contributed even more to the already existing cultural diversity. Their traditions and religions have become noticeable. Therefore, the legislator has also been confronted with new challenges: The State has issued legislation based on the criteria that immigration is necessary for the country to continue to develop and should be fostered, provided that such immigration is legal and under control. This legislation has been issued in line with the directives issued by the EU on the subject. In tandem with this, the legislator also aims to ensure that illegal immigration and immigration-related crime are firmly tackled and punished (the main forms of crime to be prevented are the smuggling of foreigners into the country, female prostitution and the abuse of illegal workers in precarious conditions).

Having analysed the legislation currently in force and the various legislative initiatives soon to become law, we have reached the conclusion that whereas many of the measures that have been, and will be, put in place are not only necessary, but also desirable, many of them are insufficient and soon become obsolete to deal with the many issues which result from the migratory phenomenon.

The laws in force and the bills now going through Parliament deal almost exclusively with legal immigrants, but there is a large proportion of illegal immigrants whose situation remains to be dealt with. The government is aware of their existence but does not even quantify their number, since the official data available cannot be relied upon. In spite of this, various charitable organisations involved with immigrants estimate that there are more than 300,000 illegal immigrants living in Spain. Additionally, some unions speculate that the government itself estimates that there are at least half a million illegal immigrants, bringing the number of foreigners living in the country to over two million.

The latest governmental efforts have focused on trying to ensure that immigrants arriving in Spain already have an employment contract, which would have been negotiated in their country of origin. However, this initiative has been unsuccessful. Statistics show that in 2003 there are another 124,000 new foreign residents, of whom 60,000 have an employment contract and have a national insurance number. Of these 60,000, only 15,000 were offered an employment contract to work in Spain in their

country of origin, the balance having found employment once they became resident in this country (Statistics on Foreign Status Yearbook 2002).