

When the exception becomes the rule: The Spanish citizenship regime

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Abstract

The Spanish citizenship regime is considered to be one of the most restrictive in Europe. In this paper, we argue that our understanding of Spanish legislation with respect to citizenship and its functioning requires a more nuanced approach. To this end, we focus on the exceptional rules that elude the usual naturalization requirements and allow fast-track naturalization for privileged nationals. Our primary goal is not simply to reconceptualise the Spanish citizenship regime but also to show how heritage-based rules, combined with intense migration flows, have prompted selection mechanisms that contradict the de-ethnicisation process allegedly underway in liberal states.

Keywords: Citizenship regimes, naturalization, Spain, Central and South America

Introduction

International migration has not only increased the heterogeneity of modern societies but has also raised new theoretical questions concerning access to national membership (Bauböck and Guiraudon 2009). Within the citizenship debate, countries that privilege *jus soli*, whereby one's nationality is acquired according to one's country of birth, are considered to be more liberal than those privileging *jus sanguinis*, whereby citizenship is acquired according to the nationality of one's parents, regardless of one's place of birth.

As an outcome of historical contingencies and differing traditions of nationhood, citizenship regimes have often been considered resistant to change. For instance, France and Germany have been identified as two classic examples of the "civic" and "ethnic" models of citizenship, respectively (Brubaker 1992). However, citizenship regimes have proven to be less rigid than scholars had predicted. Countries such as Germany, Finland, the Netherlands, and Portugal have liberalized their citizenship regimes, opting for a more extensive application of *jus soli* and dual citizenship (Howard 2009). In this respect, Joppke (2005) observed that the liberal state is experiencing a general de-ethnicization process based on the increasing relevance of *jus soli* and the decreasing importance of ethnicity in the selection of migrants. As the author explains, liberal states "no longer can explicitly and directly reproduce and reinvigorate particular nationhood through immigration policy" (Joppke 2005: 2). However, not all Western democracies are experiencing the same liberalizing trend. Countries such as Austria, Denmark, Italy, and Spain are still as-

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cribed to the group of “historically restrictive” countries (Howard 2009). The latest *Migration Policy Index* results (Mipex 2011) support this classification. Through the analysis of the legal framework that regulates naturalization in each country, Mipex reveals that the aforementioned “historically restrictive” countries score low in the category of citizenship acquisition.

Spain, in particular, is considered to have the “worst path to citizenship for all newcomers and descendants of all major countries of immigration” (<http://www.mipex.eu/>). Spain scores low in this matrix because of the general ten-year residency requirement for naturalization, as well as its lengthy discretionary procedures. However, the high number of naturalized migrants between 2000 and 2009 seems to contradict such a classification. According to a recent data analysis, naturalizations in Spain increased from 21,810 to 79,578 between 2002 and 2009 (Finotelli and La Barbera 2012). How can such an increasing trend be explained? Is the Spanish regime less restrictive than is generally assumed? Or, does it operate according to rules that are not accounted for in international indexes?

In this paper, we argue that the analysis of legislation concerning Spanish citizenship and its modes of functioning necessitate a more nuanced approach that takes into account special rules that shorten the ten-year requirement. To this end, we will first analyse the legal framework, highlighting the numerous exceptions to the general ten-year residency requirement. We will then show how the application of these exceptions has affected the evolution of the naturalization process. Our data analysis focuses on the heritage-based rule that allows for naturalization after two years of legal residence for nationals from former Spanish colonies in Central and South America, the Philippines, and Equatorial Guinea. This naturalization channel seems to be particularly salient when we take into account that some of these privileged national groups already represent 30% of the migrant population living in Spain. Our final goal is not only to identify the most recent trends in Spanish naturalization but also to reconceptualise the Spanish citizenship regime for international comparison.

The Spanish citizenship legal framework

According to the Spanish Civil Code, citizenship **by origin** is awarded *jure sanguinis* to those who were born of a Spanish father or mother, even if they were not born on Spanish soil. By virtue of the Constitution, citizenship by origin can be voluntarily renounced but not forcefully removed. This is the major difference with **derivative** citizenship, which can be acquired 1) by right of option¹, 2) through a certificate of naturalization granted by governmental decree, 3) for *de facto* use of Spanish citizenship, and 4) by residence. The fourth item represents the most frequent mode of citizenship acquisition and is therefore analysed in this paper.

¹ The right to opt for Spanish citizenship is defined by art. 20 Civil Code.

According to the Civil Code (art. 22), foreign nationals who have resided in Spain “legally and continuously” for ten years have the right to acquire Spanish nationality. Considering this requirement, Spain has among the most demanding national standards in terms of citizenship acquisition (Lister, Williams et al. 2007: 83; Howard 2009; Mipex 2011). However, several exceptions allow a shortcut for naturalization. For example, **five years** of legal and continuous residence are sufficient for those who have obtained refugee status in Spain. The civil code also establishes the possibility of obtaining Spanish citizenship after only **one year** of residency for 1) those born of foreign parents on Spanish territory²; 2) those married to a Spanish citizen for at least one year (as long as they are not legally or *de facto* separated); 3) the surviving spouse of a Spanish citizen; 4) those who have not exercised the right to obtain citizenship by option; 5) those under the tutelage, custody or foster care of a Spanish citizen or institution; 6) those born outside of Spanish territory of a mother, father, grandmother or grandfather who was originally Spanish but lost their nationality.

Most importantly, **two years** of residency are required for applicants coming from Central and South American countries, Andorra, the Philippines, Equatorial Guinea, and Portugal. This heritage-based rule is most commonly justified on the basis of Spain’s special historical relationship with these countries stemming from prior colonial bonds (Martín-Perez and Moreno Fuentes 2012). Moreover, bilateral agreements with Central and South American countries allow nationals from these countries to hold dual citizenship, while all other applicants, including EU citizens, must renounce their citizenship of origin³. Such treatment has been explained as the “Spanish society’s preference for particular kinds of immigrants,” who in the collective imaginary are considered closer in terms of culture and tradition (Izquierdo Escribano et al. 2003).

Although the civil code establishes the period of time required to apply for citizenship, the notion of legal and continuous residence is an ambiguous legal concept that has been interpreted by the Supreme Court. Jurisprudence has established that occasional or justified absences from Spanish territory do not invalidate the requirement of uninterrupted residency (Supreme Court, Administrative Chamber, Section VI, n. 8575/2000, n. 3367/2007, n. 525/2008). In this respect, sporadic absences for study or work purposes are not considered an impediment. On the contrary, lack of an effective residency on Span-

² Even though birth in the Spanish territory does not award citizenship on the basis of *jure soli*, the one-year rule is a generous provision when compared to other countries. For example, in the United Kingdom, minors born to foreign parents can apply for citizenship only after ten years of residence; in France, voluntarily after sixteen years, or automatically after eighteen years; and in Italy, after eighteen years, <http://www.vecchiocontinentenuovicittadini.eu/file.php?lang=2>.

³ It should also be noted that Spanish legislation allows for a generous treatment of citizens of former colonies compared to other European countries (Waldrauch 2006). Spain also has among the most demanding sets of requirements for EU citizens. In Italy, for instance, EU citizens can apply for nationality after four years.

ish soil (as, for example, in the case of an applicant being self-employed abroad) is an obstacle to fulfilling residency requirements. Proof of *de facto* residency in Spanish territory is, however, insufficient if the applicant has not obtained a residency permit.

The enclosed documentation must also attest to the applicant's good conduct. Good conduct is defined as complying with the norms of civic society, not only while a resident in Spain but also before. Poor conduct is one of the most frequent justifications for the rejection of citizenship applications, although the lack of a criminal record is not considered proof of good conduct *per se* (Supreme Court, Administrative Chamber, Section VI, n. 3606/1998).

Moreover, a sufficient level of integration within Spanish society must be proved through an interview conducted by a presiding official, who tests the applicant's language proficiency and degree of adaptation to Spanish culture and lifestyle. Past court decisions define language proficiency as the ability to communicate in one of the national vehicular languages⁴, such skill being a prerequisite for social integration. Language proficiency is indeed a necessary but not sufficient element for a successful application; the lack of it is a cause for rejection (Supreme Court, Administrative Chamber, Section VI, n. 6486/2007, n. 6488/2007, n. 367/2009). At any rate, no predefined test of general culture is used to assess applicants' degrees of integration into Spanish society, as it is the official on duty who decides the content of the interview. The process is thus highly arbitrary.

In summary, the number of exceptions present in the legislation makes the Spanish citizenship regime more flexible than is assumed when one considers the ten-year rule. The following section of this paper will show how the trend in naturalization has been particularly influenced by the extensive application of the heritage-based rule for privileged nationals.

The new Spaniards: An overview

Between 2000 and 2009, Spain witnessed spectacular economic and demographic growth, in which the migrant population rose from 923,000 to more than five million. In particular, South American and European communities saw the most spectacular population growth, as shown in the table below.

The increased foreign presence in Spain has been accompanied by a significant rise in the number of naturalizations. This growth is accompanied by a very low number of application refusals, which have not exceeded 2.5% to date (Finotelli and La Barbera 2012). As shown in table 2, Central and South Americans accounted for the largest increase in the number of naturalizations in the last decade. In 2009, 84% of naturalized immigrants were Central and South American nationals. This percentage has continued to increase, while naturalizations for Africans, Asians and Europeans have declined.

⁴ The official language of Spain is Castilian, but four other co-official languages exist: Basque, Catalan, Galician, and Aranese.

Table 1. Foreign population growth in Spain (2002-2009)

| | 2000 | 2002 | 2004 | 2005 |
|-------------------------|-----------|-----------|-----------|-----------|
| Total | 923,879 | 1,977,946 | 3,034,326 | 3,730,610 |
| Europe | 429,844 | 701,062 | 1,047,206 | 1,352,253 |
| Africa | 228,972 | 423,045 | 579,372 | 713,974 |
| North America | 22,884 | 32,351 | 42,726 | 51,619 |
| Central & South America | 183,954 | 720,212 | 1,219,693 | 1,422,874 |
| Asia | 56,547 | 98,942 | 142,828 | 186,848 |
| Oceania | 1,264 | 1,746 | 1,920 | 2,321 |
| Stateless | 413 | 587 | 581 | 721 |
| | 2006 | 2007 | 2008 | 2009 |
| Total | 4,144,166 | 4,519,554 | 5,268,762 | 564,8671 |
| Europe | 1,609,856 | 1,895,727 | 2,314,425 | 2,496,891 |
| Africa | 785,279 | 806,795 | 909,757 | 1,009,169 |
| North America | 51,149 | 45,608 | 49,620 | 52,677 |
| Central & South America | 1,476,928 | 1,548,730 | 1,735,270 | 1,790,236 |
| Asia | 217,918 | 219,843 | 256,728 | 296,734 |
| Oceania | 2,363 | 2,271 | 2,405 | 2,434 |
| Stateless | 673 | 580 | 557 | 530 |

Source: National Statistical Institute / Municipal Registry 2012.

Table 2. Naturalizations according to region of origin (in absolute numbers and %)

| | 2002 | | 2003 | | 2004 | | 2005 | |
|-------------------------|--------|------|--------|------|--------|------|--------|-----|
| | N | % | N | % | N | % | N | % |
| Total | 21,810 | 100 | 26,556 | 100 | 38,375 | 100 | 42,829 | 100 |
| EU | 1,255 | 5.8 | 1,306 | 4.9 | 1,163 | 3 | 911 | 2.1 |
| Rest of Europe | 278 | 1.3 | 267 | 1 | 695 | 1.8 | 696 | 1.6 |
| Africa | 4,325 | 20 | 8,522 | 32 | 9,991 | 26 | 7,346 | 17 |
| Central & South America | 13,738 | 63 | 14,298 | 54 | 24,264 | 63 | 31,727 | 74 |
| North America | 145 | 0.7 | 145 | 0.4 | 113 | 0.3 | 103 | 0.2 |
| Asia | 2,014 | 9.2 | 1,994 | 7.5 | 2,061 | 5.4 | 2,010 | 4.7 |
| Oceania | 5 | 0 | 5 | 0 | 7 | 0 | 7 | 0 |
| Other | 50 | 0.2 | 51 | 0.2 | 72 | 0.2 | 27 | 0.1 |
| | 2006 | | 2007 | | 2008 | | 2009 | |
| | N | % | N | % | N | % | N | % |
| Total | 62,339 | 100 | 71,810 | 100 | 84,170 | 100 | 79,578 | 100 |
| EU | 795 | 1.28 | 1,157 | 1.6 | 1,424 | 1.69 | 1,062 | 1.3 |
| Rest of Europe | 864 | 1.39 | 639 | 0.9 | 756 | 0.9 | 648 | 0.8 |
| Africa | 7,618 | 12.2 | 7,618 | 12.2 | 11,201 | 13.3 | 8,816 | 11 |
| Central & South America | 50,821 | 81.5 | 57,334 | 80 | 68,206 | 81 | 67,243 | 84 |
| North America | 125 | 0.2 | 132 | 0.2 | 149 | 0.18 | 77 | 0.1 |
| Asia | 2,078 | 3.33 | 2,202 | 3.1 | 2,398 | 2.85 | 1,692 | 2.1 |
| Oceania | 15 | 0.02 | 9 | 0 | 16 | 0.02 | 15 | 0 |
| Other | 23 | 0.04 | 25 | 0 | 20 | 0.02 | 25 | 0 |

Source: Yearbook of the Spanish Ministry of Labour and Immigration 2010.

The reasons for such a disparity clearly lie in the “legal asymmetries” (Cortina Trilla and Gonzalez-Ferrer 2011) that characterize the Spanish citizenship regime. As table 3 shows, the naturalizations based on the two-year residency requirement rose from 21,549 to 60,352 between 2004 and 2009, and they currently represent 75.8% of the naturalizations issued. By contrast, the naturalizations based on the ten-year requirement decreased in the same period of time and currently represent 9.3% of all naturalizations (table 3).

The naturalizations through marriage have decreased, despite the feared “leaky sieve” effect of marriages of convenience. This outcome is related to Spain’s recent immigration history. In fact, the number of intermarriages is comparatively low, as most immigrants have left families in their country of origin. Further, endogamy remains considerably high among Africans, as well as among Central, South American, and Eastern Europeans (Cortina and Esteve 2012).

Table 3. Naturalizations according to all residency requirements, 2004-2009

| | 2004 | | 2005 | | 2006 | |
|---------------|--------|------|--------|------|--------|------|
| | N | % | N | % | N | % |
| 2 Years | 21,549 | 56.1 | 28,507 | 66.5 | 45,596 | 73.1 |
| 10 Years | 7,305 | 19 | 5,237 | 12.2 | 4,941 | 7.9 |
| Marriage | 5,808 | 15.1 | 5,597 | 13 | 7,547 | 12.1 |
| Born in Spain | 3,005 | 7.8 | 2,636 | 6.1 | 2,930 | 4.7 |
| Other | 708 | 1.8 | 852 | 1.9 | 1,325 | 2.1 |
| Total | 38,375 | 100 | 42,829 | 100 | 62,339 | 100 |
| | 2007 | | 2008 | | 2009 | |
| | N | % | N | % | N | % |
| 2 Years | 50,030 | 69.6 | 58,813 | 69.8 | 60,352 | 75.8 |
| 10 Years | 6,426 | 8.9 | 6,636 | 7.8 | 5,365 | 6.7 |
| Marriage | 10,155 | 14.1 | 12,554 | 14.9 | 9,038 | 11.3 |
| Born in Spain | 3,864 | 5.3 | 4,578 | 5.4 | 3,696 | 4.6 |
| Other | 1,305 | 1.8 | 1,589 | 1.8 | 1,137 | 1.4 |
| Total | 71,810 | 100 | 84,170 | 100 | 79,578 | 100 |

Source: *Yearbook of the Spanish Ministry of Labour and Immigration 2010*.

The predominance of naturalizations via the two-year requirement is directly related to the preponderance of Central and South Americans in Spanish naturalization statistics. It is possible to speculate that the heritage-based rule had a magnet effect on the Central and South American community. As a matter of fact, South American nationals represent 98.3% of naturalizations based on the two-year requirement (table 4). This effect has been enhanced by the major population growth experienced by South American communities as a result of favourable visa regulations and the ease of overstaying one’s visa (Finotelli and Arango 2011). Once they had obtained legal residency permits through regularization, naturalization represented the quickest and easiest way for many Central and South Americans to obtain a permanent resident status. In times of economic crisis, in which unemployment levels may become an

obstacle for the renewal of residency permits⁵, naturalization can become a superior alternative for stabilization.

The preponderance of naturalized Central and South Americans contrasts with the lesser rankings of the African and European communities. Moroccans, in particular, comprise one of the oldest immigrant communities in Spain, and many have already fulfilled the residency requirements for Spanish citizenship. Indeed, the naturalizations for African immigrants have almost doubled between 2000 and 2009 and currently account for 78.1% of all naturalizations based on the ten-year residency requirement (table 4).

Table 4. Residence-based naturalizations according to region of origin (2004-2009)

| | 2004 | | | | |
|-------------------------|--------|---------|-------|----------|-------|
| | TOT | 2 years | | 10 years | |
| | N | N | % | N | % |
| Total | 38,375 | 21,549 | 56.1 | 7,305 | 19.03 |
| EU | 1,163 | 451 | 2.09 | 222 | 3.04 |
| Rest of Europe | 695 | 4 | 0.02 | 291 | 3.98 |
| Africa | 9,991 | 437 | 2.03 | 5,962 | 81.6 |
| Central & South America | 24,264 | 19,936 | 92.5 | 29 | 0.4 |
| North America | 122 | 2 | 0.01 | 37 | 0.51 |
| Asia | 2,061 | 717 | 3.33 | 717 | 9.82 |
| Oceania | 7 | 2 | 0.01 | 7 | 0.1 |
| Stateless | 71 | - | - | 32 | 0.44 |
| | 2009 | | | | |
| | TOT | 2 years | | 10 years | |
| | N | N | % | N | % |
| Total | 79,578 | 60,352 | 75.8 | 5,635 | 9.3 |
| EU | 1,062 | 358 | 0.5 | 166 | 3.09 |
| Rest of Europe | 648 | 5 | 0.008 | 183 | 3.41 |
| Africa | 8,816 | 302 | 0.5 | 4,188 | 78.1 |
| Central & South America | 67,243 | 59,300 | 98.3 | 156 | 2.91 |
| North America | 77 | 4 | 0.01 | 24 | 0.45 |
| Asia | 1,692 | 379 | 0.63 | 636 | 11.9 |
| Oceania | 15 | 3 | 0 | 4 | 0.07 |
| Stateless | 25 | 1 | 0 | 3 | 0.06 |

Source: Yearbook of the Ministry of Labor and Immigration 2010.

Nonetheless, the overall percentage of naturalized Africans (11%) is small when compared to the size and tenure of the Moroccan community. This fact may be the consequence of the community's reluctance to naturalize when dual nationality is not allowed. Finally, the relatively small number of naturalized Europeans might be explained by the ten-year rule as well as by the fact

⁵ Immigrants in Spain must renew their residence permit twice after obtaining permanent residency. In the case of labour and work permits, this renewal often depends on the applicant's employment situation.

that the acquisition of European citizenship,⁶ together with the lack of dual-nationality agreements with European countries, makes the acquisition of Spanish citizenship less attractive for many EU citizens.

Conclusions

In this paper, we have considered the disparity between Spain's classification as a restrictive citizenship regime and its increase in naturalizations during the last decade. An analysis of the legal framework shows that the Spanish regime has preferential rules that make it more flexible than is assumed by indexes that only consider the ten-year rule. For instance, there is the case of the generous reduction to a one-year residency requirement for children of non-Spanish parents born in Spain. Most importantly, our data analysis indicates that the generous heritage-based rules for people from Spanish-speaking former colonies, together with the increasing numbers of immigrants from these countries, has been the driving force behind the Spanish naturalization increase during the last decade. In this way, the application of an exceptional citizenship regulation to the largest non-European immigrant community in Spain became, if not *de jure* at least *de facto*, the main path to Spanish citizenship. In this respect, it can be argued that the Spanish regime still contains a certain degree of ethnic "selectivity," which, in Joppke's words, is "reproducing and reinventing a particular nationhood" (Joppke 2005: 2).

It has yet to be seen whether the described trend will continue over the coming years. The predominance of the heritage-based rule has played an important role in the prodigious immigration increases of the last decade. However, within a few decades, the naturalization of the children of immigrants after one year's residency will certainly have a greater impact on the overall naturalization trend. Finally, the preferential treatment given to certain nationalities, favouring bonds with the ex-colonies to the detriment of European migrants, raises questions regarding the need to modify the Spanish nationality legislation and the residency requirements for naturalization. In particular, the reasons for the persistence of such preferential treatment (and the inertia of Spanish policy-makers in this respect) merit further attention from citizenship scholars.

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⁶ Scholars have noted, for instance, that Romanian nationals have lost interest in naturalization following their country's entry into the European Union (Gonzalez-Ferrer and Cortina Trilla 2011).

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