OLD WORLD...
NEW CITIZENS

Legislation, data and analysis on citizenship

Country Report - Spain

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SPANISH CITIZENSHIP[1]

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1.Historic introduction

Spanish citizenship is the bond that links a natural person to the Spanish nation and consists in the privilege of enjoying full civil and political rights and the duty of defending its territory (art. 30 Const.). The first Spanish law on the acquisition and loss of citizenship dates back to the first Spanish Civil Code, approved in 1889[2]. This was based on the principle of *ius sanguinis*, according to which those born of a Spanish mother and father were classified as Spanish. According to the Civil Code of 1889, Spanish citizenship could be transmitted by both mother and father, though it should be noted that the status of married women depended on that of their spouse, meaning that citizenship was lost in the case of marriage to a foreigner. The Code also foresaw the principle of *ius soli* for those born on Spanish territory to foreign parents, who, on reaching the age of majority, opted for Spanish citizenship and renounced their citizenship of origin. However the Code did not establish the conditions for acquiring citizenship according to duration of residence. Only in 1916 was the minimum duration of residence in Spain established at 10 years for the purposes of acquiring citizenship (Aláez Corral, 2005).

With regard to Spanish citizens living abroad, for those who wished to retain Spanish citizenship while residing in the colonies, the 1889 Code required the entire family to be registered at a Spanish embassy or consulate abroad. This legislation aimed to avoid the formation of a population of 'Spaniards' without links to their homeland arising in the colonies. Indeed the fact that many Spaniards fought in wars of independence alongside rebel forces boosted fears that a loss of connection with the homeland could lead to a loss of loyalty (Moreno-Fuentes, 2010). For this reason the protection of Spanish citizens abroad became one of the main objectives of the peace treaties drawn up with the former colonies between 1850 and 1860. Moreover, the Spanish government drew up numerous bilateral agreements

[2]According to the glossary of the European Citizenship Observatory (http://eudo-citizenship.eu/) the terms "nationality" and "citizenship" are often used as synonyms, except when the term citizenship is used to refer specifically to the rights and duties connected to acquiring citizenship within a given country's legal system. In spite of this we would like to note that in Spanish the term "*nacionalidad*" is generally used to identify the juridical relationship that exists between an individual and the State, when the term "*ciudadania*" is used to refer to full possession of political rights. Cfr. also Aláez Corral (2005: 30-34) who distinguishes between the "inclusive function" of the concept of citizenship as a tool that permits social integration through the acknowledgement of rights and freedoms, and the "excluding function" of the concept of nationality, which enables distinctions between national borders.

with South American countries to facilitate dual citizenship for Spanish citizens resident abroad[3].

From the outset, the procedures for acquiring or losing Spanish citizenship were carried out by the Civil Registries, in accordance with the terms of Law 2/1870. By creating a civil registry in every municipality, the law aimed to remove power from the parish registers, which had the *de facto* control over births, marriages and deaths. To avoid the additional costs of appointing dedicated officials, the functions of the civil registry were entrusted to judges, which, as a "national and professional" body[4], would grant central government control over all the registries in the country (Baró Pazos, 1992). Judges are still in charge of the administrative procedures for obtaining citizenship.

During the Second Republic (1931-1939), the Spanish government showed clear intentions to make the criteria for obtaining citizenship according to duration of residence more flexible. In 1931 the Republican Constitution abolished the obligation for Spanish citizens resident abroad to register themselves and their families on the registry of the Spanish consulate or embassy, as a condition for retaining Spanish citizenship (Rubio and Sobrino, 2010). Moreover, the children of Spanish citizens born abroad could retain Spanish citizenship even if they were guaranteed the citizenship of their country of birth. The children of foreign nationals born on Spanish territory were given the choicebetween Spanish citizenship and their parents' citizenship. Women were granted the right to choose to take on the nationality of their spouse, or retain their own, eliminating the discrimination contained in the Civil Code of 1889. However the general criteria of a minimum of ten years of residence in order to apply for citizenship was not altered. In spite of this the minimum period of residence was reduced to two years for applicants from the countries Spain had historic links with: all the South American countries, Portugal, Brazil and the Spanish protectorate of Morocco.

The legislation introduced by the 1931 Constitution was extremely short-lived, due to the civil war and the subsequent victory of the Franco regime. With the advent of the dictatorship of General Francisco Franco (1939-1975), all the reforms introduced under the Republic were abolished. The reform of the Civil Code in 1954 tightened the norms on acquiring citizenship still further. The new Code attributed Spanish citizenship only to children born of a Spanish father. Children born in Spain to foreign parents had the right to Spanish citizenship due to the principle of "doble *ius soli*". The children of foreigners born in Spanish dominions had to state their intention to obtain Spanish citizenship within a year of coming of age. According to the reform

[3]Bilateral agreements were signed by almost all colonies, with the exception of Cuba, Puerto Rico and the Philippines.

[4] Interview with a senior official of the Spanish Ministry of Justice.

of 1954, women's status was entirely dependent on the status of their spouse. Women who married a foreign citizen automatically lost their own citizenship when they acquired that of their spouse. Furthermore, while a foreign national married to a Spanish woman had to demonstrate a period of residence of at least two years before applying for Spanish citizenship, foreign women marrying a Spaniard automatically acquired their spouse's citizenship.

With regards to the procedure for acquiring citizenship based on duration of residence in Spain, the reform of the Civil Code retained the preferential treatment granted to South American citizens during the Second Republic. The Code also established that any Spanish citizen who acquired the citizenship of another country would lose their citizenship of origin, with the exception of South American countries and the Philippines. This legislation also established that third generation Spaniards had to register on the Spanish consular or embassy registers abroad, or lose their citizenship[5].

The period of transition from dictatorship to democracy in Spain (1975-1978) was accompanied by numerous political and social reforms. Reform of the legislation regarding acquisition and loss of citizenship was not however among the priorities on the political agenda.

The Spanish Constitution of 1978, which is still in force today, reiterates the possibility of signing bilateral agreements with the countries historically linked to Spain. The Constitution also states that Spanish citizens by origin cannot, under any circumstances, lose their Spanish citizenship. Apart from these brief references, the Constitution refers to the Legislator, and in particular the Civil Code, for the norms regarding the acquisition and loss of Spanish citizenship.

The 1954 Code was eventually reviewed in 1982 (L. 51/1982). First and foremost, the 1982 reform entailed that Spanish citizenship could be transmitted through both mother and father. Secondly, it honoured the principle of "doble *ius soli*", even when only one of two foreign parents was born in Spain. The reasoning for this was not fostering the integration of foreigners, given the low level of immigration in that period, but was concerned with avoiding the situation of having entire generations of foreigners resident in Spain (Perez-Martín - Fuentes, 2010). The reform of the Code also enabled children born to foreign parents to acquire Spanish

[5] Both the Constitution of 1931 and the 1954 reform of the Civil Code were characterised by the desire to maintain strong links with the former colonies and safeguard the interests of Spanish citizens living abroad. No attention was devoted to the new flows of emigrants who left Spain in the 1950s and 60s for other European countries or South America. These flows were viewed as a temporary phenomenon and therefore deemed irrelevant in terms of acquisition or loss of citizenship. The Franco regime also ignored the large numbers of exiles who left Spain after the civil war and lost their citizenship over the years without any way of recovering it.

citizenship only one year after birth. The privilege of the two-year period of residence was also extended to Andorra, Equatorial Guinea and Portugal. Lastly, the gender-based discrimination regarding acquisition of citizenship introduced under Franco was eliminated.

As for the situation of Spanish citizens abroad, the reform of the Code reintroduced the possibility of maintaining dual citizenship, in the event of a Spanish citizen acquiring citizenship of a South American country or Andorra, Portugal or Equatorial Guinea[6]. To protect Spanish citizens residing in countries with which Spain does not have bilateral agreements, the new code admitted the possibility of recovering Spanish citizenship lost due to emigration, a *de facto* acceptance of dual citizenship. Lastly, it also eliminated the obligation of registration on foreign consular registries, and introduced the automatic acquisition of citizenship for adopted minors[7].

Following the reform of 1982, the system for acquiring Spanish citizenship did not change significantly, despite the numerous new pieces of legislation passed. In 1990 the minimum period of residence for refugees was reduced from ten to five years. The same reform established that Spanish citizens acquiring foreign citizenship were obliged to communicate their desire to retain Spanish citizenship within three years. In 2006 the Law on the Citizenship Status of Spaniards Abroad defined new rights to social protection, political rights and the conditions for returning to Spain for Spanish citizens abroad (L. 40/2006).

Furthermore, in 2007 the so-called Historical Memory Law (*Ley de Memoria Histórica)* was approved, acknowledging and extending the rights of the descendents of those who suffered persecution and violence during the civil war (1936-1939) and the Franco regime (L. 52/2007). The seventh additional provision of this law grants the right to apply for citizenship to children of "Spaniards by origin" exiled during or after the civil war. The same right applies to the grandchildren of those who lost or renounced their Spanish citizenship as a consequence of the civil war or exile. In this case applicants must prove that they left Spain between 1936 and 1955. If granted, the beneficiaries of this provision not only acquire Spanish citizenship but can also retain dual citizenship. The validity of the seventh additional provision of the Historical Memory Law, commonly known as the Grandchildren's Law (*Ley de Nietos*), which entered into force on 20 December 2008 has a time limit. Applications for citizenship had to be made within two years of the law being passed, a limit which was later extended to 31 December 2011. The Historical Memory Law was accompanied by heated political debate.

[6]On dual citizenship see Mazzolari (2009).

[7]Up to then, under Spanish legislation adopted children could only acquire Spanish citizenship after two years of residence.

According to the conservative *Partido Popular,* the law is discriminatory because it enables access to citizenship for a restricted number of people, discriminating against the grandchildren of Spanish citizens who were not exiled but who emigrated to South America for financial reasons[8]. On the other hand, according to the *Partido Socialista*, in government since 2004, the law responds to the need to redress the consequences of a civil war that tainted the history of Spain. Over the last two years the debate between the two factions has become less intense due to the time limit that applies to this provision.

With the exception of Law 52/2007, the regulations governing acquisition of citizenship have not changed significantly since 1982 and forthcoming political programmes do not appear to entail any reforms. Yet the lack of political debate on this matter contrasts strongly with the considerable increase in the numbers of foreigners applying for and obtaining Spanish citizenship in the last ten years.

2.The new Spanish citizens: an overview[9]

Between 1998 and 2008 Spain witnessed spectacular economic and demographic growth. During this "miraculous decade" (Oliver, 2008), the foreign population rose from 928,000 to more than five million (graph 1). Foreigners currently represent 12% of the total population and the number of permanent residence permits rose from 211,296 to 1,112,064 between 2002 and 2009. In 2009 almost half of the valid residence permits were permanent (graph 2).

The increase in foreign presence in Spain has been accompanied by a significant rise in the number of citizenships granted. In 2009 the total number of naturalizations[10]was six times that of 2000 (table 1). With regards to the number of successful applications, the number of refusals is very low, to date not exceeding 2.5% (table 2)[11]. Despite the high number of successful

[8]El País, 18/12/2007.

[9]The data supplied by the Ministry of Justice and the Ministry of Labour present various lacunae. The data on naturalizations for the period 1998-2003 are not divided by gender or continent. The data regarding 2004-2009 are grouped by continent as of 2004 and by gender as of 2007.

[10]In this report the term naturalization is taken to mean the general acquisition of derivative citizenship (see chapter 3 of this report).

[11]Data on applications for Spanish citizenship are not public. The Ministry of Justice exceptionally provided data on the applications made between 2004 and 2009. The data supplied however are not differentiated by nationality and gender and therefore do not enable us to make any correlations between applications and successful naturalizations according to these criteria.

applications every year, there are important differences between the different countries of provenance that should be taken into account.

Between 1999 and 2009 the number of naturalizations of Europeans doubled, while still remaining below 1,500 annually, with the exception of a peak of 2,180 in 2008 (table 1). If we observe the developments regarding single nationalities, we can see that up to 2007 the number of naturalizations increased for nationals of Romania, Bulgaria, Russia and Ukraine. Only in 2007 was there a dramatic fall in the number of Bulgarian and Romanian naturalizations (table 1). This is probably due to the benefits arising from Romania and Bulgaria joining the European Union and a consequent lack of interest from many Bulgarian and Romanian citizens in those deriving from Spanish citizenship. In relative terms, in 2009 Europeans accounted for just over 2% of total naturalizations, therefore representing a very low percentage compared to other countries (table 3).

In recent years there has also been a progressive increase in the naturalizations of African citizens. The most detailed analysis of the data regarding this group shows that the increase regards above all Morocco, and to a much smaller extent Senegal and Nigeria (table 1). In particular it is worth noting that 75% of naturalized Africans are Moroccan. With regards to gender, among Africans there is a net prevalence of men over women, being 60% of the total of 63,806 Africans naturalized between 2003 and 2009 (tables 4 and 5). Despite the increase in absolute terms, in relative terms the naturalizations of Africans have decreased over the years, falling from 20.4% to 11% of the total between 2004 and 2009 (table 3).

South Americans are undoubtedly the group that has seen the largest increase in the number of naturalizations in recent years, rising from 9,173 to 67,243 between 2001 and 2009 (table 1). In this period the most significant increases regarded Colombians (from 818 to 16,527) and Ecuadorians (from 376 to 25,769), while the increases in the oldest communities of South Americans, such as Peruvians (2,374 to 6,368) and Dominicans (from 2,652 to 2,766), remain fairly moderate. Unlike the situation regarding Africans, among South Americans more women have been naturalized than men. In 2009 39,825 women were naturalized, in other words over half (59%) of the total number of naturalizations, 67,243 (tables 4 and 5). The increase in naturalizations of South Americans is also significant in relative terms. Between 2001 and 2009 naturalizations of South Americans rose from 58% to 84% of total naturalizations, highlighting the upward trend of this group (table 3).

On the other hand, the number of naturalizations of people from Asian countries has not increased significantly. If we observe individual communities, the largest increase regards Pakistanis, rising from 107 in 1999 to 262 in 2009 (table 1). Naturalizations among the largest foreign communities, such as the Chinese community, do not show any notable

increases. Among Asians more men (930) have been naturalized than women (757), though this gap is not comparable to the African case (tables 4 and 5). In relative terms the percentage of naturalizations of Asians has fallen considerably, from 10% in 2000 to 2.1% in 2009 (table 3).

As for minors, the data available to us show that the number of minors naturalized has risen in recent years[12]. The majority of naturalizations of minors under the age of 4 regards Africans, figures for whom rose from 838 to 1,123 between 2004 and 2009. The majority of these are Moroccans, a group which has seen a significant increase in recent years (table 6). In 2004 Africans represented 79.5% of the naturalizations of minors, while in 2009 this figure rose to 82%. For the same age group the percentages of South American and Asian minors naturalized were much lower (table 7).

If we consider the 5 to 14 age group we can see not only an increase in the naturalizations of African minors (from 1,354 to 1,622), and Moroccans in particular (from 1,081 to 1,253), but also an increase in the naturalizations of South Americans (from 393 to 1,847) (table 6). In particular between 2004 and 2009, the number of Colombians naturalized rose from 84 to 439, and the number of Ecuadorians from 67 to 971, with a peak of 1,755 naturalizations in 2008. In relative terms the percentage of South Americans in this age group rose from 19.8% to 42%. Vice versa, the percentage of Africans fell from 69.3% to 42% of the total number of under 14s naturalized. The number of naturalizations of minors from Asian countries also remained low, settling at around 5% in 2009 (table 7).

To conclude, not only have naturalizations increased significantly in recent years, but among naturalized foreign nationals there is a growing prevalence of South Americans compared to other groups such as Europeans and Africans (graph 3).

An analysis of the juridical picture enables us to pinpoint some of the reasons for these changes.

3.The legal framework

The Spanish legal system is characterised by the absence of a unique text regarding citizenship, something which is harshly criticised by the doctrine (Álvarez Rodriguez, 2010). Article 11 of the Constitution is the main norm regarding this issue in the Spanish legal system, and it establishes that Spanish citizenship is acquired, kept and lost in compliance with legal provisions. Articles 17-28 of Book I, Title I of the Civil Code, entitled “Of Spaniards and Foreigners” represent the fundamental nucleus of norms in

[12]Spain is a relatively new immigration country. For this reason differentiated data on naturalizations have only been available since 2004.

this regard. As mentioned above, these norms were changed by the law on citizenship n. 51/1982, which was emended due to numerous lacunae by the subsequent laws L. 18/1990 and L. 36/2002. A part form Civil Code, this area is also covered by articles 63-68 of the Civil Registry Law (LRC), articles 220-237 of the Civil Registry Regulations (RRC) and the circulars and resolutions of the General Directorate of Registries and Notaries (DGRN)[13].

Spanish citizenship is also governed in compliance with the international conventions ratified by Spain, notably including: articles 25 and 34 of the Convention on the Status of Refugees; article 32 of the Convention of the Status of Stateless Persons; article 5.3 of the Convention on the Elimination of all Forms of Racial Discrimination; article 24.3 of the International Covenant on Civil and Political Rights; article 9 of the Convention on the Elimination of all Forms of Discrimination against Women, and article 7 of the Convention on the Rights of the Child.

The Constitution allows dual citizenship for applicants from countries with which Spain has signed treaties in this regard (art. 11, para. 3 Const.). These include South American countries that had or have a particular bond with Spain, specifically Chile, Peru, Paraguay, Nicaragua, Guatemala, Bolivia, Ecuador, Costa Rica, Honduras, The Dominican Republic, Argentina, Colombia and Venezuela.

Spanish citizenship *by origin* is attributed *iure sanguinis* (art. 17CC.), and, by virtue of the terms of the Constitution, it can never be removed (art. 11 Const)[14]. Citizenship by origin is independent of the individual's choice and is attributed when the requirements established by law are fulfillled. The children of a Spanish father or mother, even when born outside of Spanish territory, acquire citizenship *iure sanguinis*[15]. The terms of the Civil Code that

[13] Cfr. DGRN Circular of 20/03/2006, DGRN of 07/02/2007, DGRN of 28/03/2007, DGRN of 23/05/2007, DGRN of 26/07/2007, DGRN of 04/11/2008. We will also refer to the resolutions of the General Directorate of Registries and Notaries (DGRN), which is the administrative organ responsible for handling citizenship applications, and the case law in this regard from the National Court (*Audiencia Nacional*) and the Supreme Court. If an application is rejected, the General Directorate of Registries and Notaries handles administrative appeals, while the Administrative Chamber of the National Court handles legal appeals. The Administrative Chamber of the Supreme Court (*Tribunal Supremo*) intervenes as the last resort and decides only with the function of an appeal court. The complete rulings are available online at http://www.poderjudicial.es/search/indexAN.jsp.

[14] The text of the Constitution thus underlines the basic difference between citizenship by origin and derivative citizenship, as we will see further on.

[15] The principle of *ius sanguinis* reveals the intention to use citizenship as a tool to control the population historically linked to the nation, rather than as a tool to access rights for those who live and pay taxes on its territory. This is interpreted as a historical legacy of a legislation still marked by a national history of colonialism and emigration (Weil 2001; Martín-Pérez – Fuentes, 2010). In this context it is significant that the term 'Spanish territory' has been interpreted extensively, in some cases including the former colonies (Supreme Court ruling 7 November 1999, n. 7011/1999 (Administrative Chamber, Section VI).

foresaw transmission of Spanish citizenship exclusively through the paternal line were modified by law n. 51/1982# due to incompatibility with the Constitution of 1978 (art. 39 Const.).

The principle of *ius soli* is partially applied to children born in Spain when at least one of the parents, albeit foreign, was in turn born in Spain (the so-called "dual*ius soli*)[16], as per article 17 CC.[17] Children born in Spain of two foreign parents also acquire citizenship *iure soli* by origin, if both parents are stateless or their citizenship is not transmitted *iure sanguinis*, and their children would therefore be stateless; the same applies to children born in Spanish territory and not recognised by their parents. The reigning presumption is that minors whose first known residence is on Spanish territory are considered to be born in Spain (Comte Guillemet, 1993).

Spanish citizenship can also be acquired on a *derivative basis*, when requested by the individual. While citizenship by origin cannot be removed (except when voluntarily renounced in order to acquire a different citizenship), citizenship acquired on a derivative basis can be lost, in the conditions detailed in articles 24 (exclusive use of another citizenship for three years) and 25 CC. (enlistment or political office in another country). At its discretion, the government may however grant permission to re-acquire Spanish citizenship (art. 26 CC.). Articles 20-22 CC. establish the ways in which citizenship can be acquired on a derivative basis: by *right of option* (article 20 CC.), through a *certificate of citizenship granted by Governmental decree* (art. 20 CC), for *de facto use of Spanish citizenship* (art. 18 CC.) and by *residence* (detailed in the following section).

Those who have the right to opt for Spanish citizenship (art. 20 CC.) include subjects under the parental authority of a Spanish citizen[18]; those whose filiation or birth in Spain is determined after reaching the age of majority (within two years); those whose parents were Spanish by origin (and later lost their citizenship) and were born in Spain (and not in the former colonies)[19]. This last requirement clearly reduces the number of possible applicants. As previously mentioned, the Historical Memory Law extended the "right of option" also to those whose parents or grandparents suffered from violence and persecutions during the civil war or under the

[16] "Double *ius soli"* is not actually a proper termCfr. Honohan (2010). As it regards third generation immigrants, it would be more accurate to describe the phenomenon as "*ius soli* compounded by *ius sanguinis*".

[17] Law n. 18/1990 modified art. 17 CC, incorporating the provisions contained in art. 7 of the 1989 Convention on the Rights of the Child, ratified by Spain in 1990.

[18] Whether the parent is a citizen by origin or on a derivative basis is irrelevant, as children of naturalised citizens can also opt for citizenship. Adopted minors, on the other hand, are attributed citizenship by origin immediately and automatically (art. 19 and Law n. 54/2007).

[19] Until 1982 citizenship could only be transmitted through the paternal line. As Law n. 51/1982 was not retroactive, children of Spanish mothers (who had lost their citizenship) can opt for citizenship under art. 20 with no time limit.

dictatorship, and lost their Spanish citizenship as a consequence of the exile (up to December 31 2011)[20]. This made it possible to avoid discrimination against the children of emigrants due to the birthplace of their parents.

The declaration of option can be made by the concerned party, within two years of reaching the age of majority (under national law), or by his or her legal representative, if a minor or incapable. Those whose parents are Spanish by origin born in Spain are not subject to the two year rule so that they can exercise the right of option whenever they want[21]. This declaration must be made in person and if the interested party fails to appear the application is rejected[22]. The Civil Registrar of the applicant's home town(or the Consul if the applicant is not resident in Spain) is the competent officer. Residency is indeed not required for obtaining Spanish citizenship by option. The competent court of law (*vecindad civil*) must also be identified.

According to art. 20 CC., Spanish citizenship can also be acquired via "certificate of naturalization" (*carta de naturaleza*) by Royal Decree, granted at the discretion of the government when "exceptional circumstances" occur. The opportunity to acquire Spanish citizenship under art. 20 CC. is a privilege generally granted to famous artists or athletes working in Spain, bypassing residency requirements. On various occasions the government has explicitly stated the exceptional grounds for obtaining a certificate of citizenship by decree (*carta de naturaleza*), as for example, in the case of the victims of 11 March 2004 and those who fought in the *Brigadas Internacionales* defending the Republic during the civil war (art 18, L. 52/2007)[23]. The data supplied by the Ministry of Justice indicate a certain difference between the number of applications and the number of naturalizations granted through art.20. The number of successful applications is yet relatively low compared to the number of applications still being processed (table 8). Another noteworthy aspect is the prevalence of members of the Sephardic community, despite the fact that this group, as we will see, already has privileged access to Spanish citizenship (table 9). In the case of victims of the terrorist attacks of 11 March 2004, only 12.8% of applications were successful (tables 10 and 11).

[20] Cfr. the Ruling of 17 March 2010 which extended the period for exercising the right of option as per the Historical Memory Law.
[21] Cfr. Law n. 36/2002.
[22] DGRN Resolution of 23 March 1991.
[23] Royal Decree 39/1996, which granted citizenship to those who fought in the International Brigades during the Spanish civil war, was issued as a sign of gratitude to survivors, for having fought for freedom. However there were not many applications due to the short deadline foreseen for applications (3 years), but above all because applicants were required to give up their own citizenship of origin. Royal Decree 1792/2008 eliminated the deadline for applications and art. 18 of the Historical Memory Law exempted applicants from renouncing their original citizenship. All the 15 applications submitted were successful, except one, because of decease (Álvarez Rodriguez, 2009: 145).

Lastly, art. 18 foresees that those who have made *de facto* use of Spanish citizenship, in good faith and for ten years continuously have the right to claim it, even if their entitlement by origin, as registered in the Civil Registry, was annulled. This provision has been used to grant citizenship to residents of the former colonies[24].

The majority of successful applications for Spanish citizenship are however made on the basis of residency. As mentioned above, the number of naturalizations of foreign nationals by residency has increased considerably in recent years. For this reason, residency as a preferred channel to acquire Spanish citizenship needs to be examined more closely.

4.Acquiring Spanish citizenship by residence

Foreign nationals who have resided in Spain "legally and continuously before the application" for one, two, five or ten years, depending on the conditions that will be detailed below, have the right to acquire Spanish citizenship (art. 22 CC). Proof of *de facto* residence on Spanish territory is not however sufficient, as applicants must present proof of having obtained a residence permit. A diplomatic visa or study permit is not considered sufficient for this purpose. EU citizens simply have to register at the Registry for EU Citizens, as under Royal Decree 240/2007 residence permits (*tarjeta de residencia*) are no longer required for EU citizens.

Numerous court rulings have interpreted the notion of legal and continuous residence established in the Code: while the General Directorate of the Registries and Notaries (the body appointed to handle the administrative procedures for granting Spanish citizenship) gives a restrictive interpretation of the notion of effective residency, the Supreme Court retains more flexible criteria. According to the court, absences which are occasional or for a justified reason do not invalidate the requirement of uninterrupted residence, so that sporadic absences for study or work purposes have been admitted[25]. On the contrary, who lacks of effective residence on Spanish soil (as for example in the case of the applicant being self employed abroad) has been interpreted as unable to fulfilll citizenship requirements[26].

The general rule foresees a period of *ten years* of legal and continuous residence. As highlighted by a number of recent analyses of integration and

[24] Cfr. the case of citizens of Western Sahara, Supreme Court ruling, 28 October 1998, n. 6268/1998, (Civil Chamber, Section I).
[25] Supreme Court ruling, 23 November 2000, n. 8575/2000 (Administrative Chamber, Section. VI); Supreme Court ruling, 13 February 2008, n. 525/2008 (Administrative Chamber, Section. VI).
[26] Supreme Court ruling, 18 May 2007, n. 3367/2007 (Administrative Chamber, Section VI).

citizenship policy, Spain is one of the most demanding countries with regard to the minimum period of residence required to apply for citizenship[27].

There are however various conditions that allow this period to be reduced. *Five years* are sufficient if the foreign national has obtained refugee status (art. 22 CC). Yet this reduction has not been extended to stateless persons, openly contravening the international obligations ratified by Spain in 1997[28].

Two years of residency are sufficient if the applicant comes from a South American country, Andorra, the Philippines, Equatorial Guinea or Portugal. This reduction is connected to the notion of a special relationship with these countries due to geographical contiguity or colonial bonds. Surprisingly Spain grants a reduction in the period of residence to the citizens of only one member state of the European Union, namely Portugal. No reduction for citizens from other EU countries is foreseen. To obtain Spanish citizenship all other EU citizens must fulfilll the requirement of legal and continuous residence in Spain for a period of no less than ten years, that must be proven by presenting their certificate of registration at the Registry of EU citizens.

The reduction to two years of residence also applies to foreign nationals belonging to the Sephardic community, as a measure of compensation for the persecution suffered during the Inquisition. It should however be noted that the government has started to grant citizenship to applicants of Sephardic origin by decree (*carta de naturaleza*). It can therefore be inferred that membership of the Sephardic community has been elevated to a special condition that grants citizenship by decree without the obligation of residing in Spain (Álvarez Rodriguez, 2009: 115).

Finally, the Civil Code (art. 22 CC.) identifies six groups of applicants who can obtain Spanish citizenship if they can prove to fulfill the requirement of legal and continuous residence on Spanish territory for only *one year*:

1. those born on Spanish territory of foreign parents[29];
2. those married to a Spanish citizen for at least one year (as long as they are not legally or *de facto* separated)[30];

[27] Cfr. Lister, Williams et al. 2007: 83; Howard (2009); Migration Policy Index (2011) http://www.mipex.eu/.

[28] Cfr. Convention on the Status of Stateless Persons.

[29] Birth on Spanish territory to foreign parents does not award citizenship *iure soli* but represents a privileged condition, granting a reduction to one year of legal and continuous residence as a requirement for obtaining citizenship.

[30] Marriage to a Spanish citizen does not lead to automatic acquisition of citizenship, but allows reduction to one year of legal and continuous residence as a requirement for obtaining Spanish citizenship. With regard to marriages of convenience or simulated marriages, see Carrascosa Gonzales (2002). The applicant is required to prove that cohabitation took place before applying, the legal assumption of marital cohabitation not being sufficient under art. 69 CC. With regard to actual cohabitation and the irrelevance of the separation of the couple four months after an application for citizenship, see the Supreme Court ruling of 22 December

3. those who have not exercised the right of option in the period established by law;
4. those under the tutelage, custody or foster care of a Spanish citizen or Spanish institution for two consecutive years;
5. the surviving spouse of a Spanish citizen (as long as they were not legally or *de facto* separated at the time of death of the spouse);
6. those born outside Spanish territory of mother, father, grandmother or grandfather that were Spanish by origin[31].

Box 1: Acquiring citizenship by residence

Status	*Period of residence*
General norm	10 years
European Union citizens	10 years
Refugees	5 years
Citizens of South American countries, Andorra, the Philippines, Equatorial Guinea, Portugal and the Sephardic community	2 years
Those born on Spanish territory	1 year
Those who did not exercise the right of option within the established period	1 year
Tutelage	1 year
Marriage	1 year
Widow or widower	1 year
Those born outside Spain of mother, father, grandmother or grandfather that were Spanish by origin	1 year

The Spanish system of citizenship is therefore characterized by a particularly restrictive general norm and a lengthy series of exceptions, some of which have marked repercussions on the trend of naturalizations, as it can be observed analyzing the increasing numbers of foreigners who have been granted Spanish citizenship in recent years.

4.1 Acquiring citizenship after ten years of residence

Spain has only recently become an immigration country, with sizeable flows of irregular migrants and as yet a low number of foreign nationals with more than ten years of legal and continuous residence. There are therefore few

2006 n. 8100/2006 (Administrative Chamber, Section VI). With regard to the relevance of regional legislation on *de facto* couples and the relevance of this for citizenship application, see the interpretation given by Carrascosa Gonzales (2002); *contra* Sevilla Bujalance (2005).

[31] For the children and grandchildren of those who lost their Spanish citizenship due to exile, the Historical Memory law applies up to 31 December 2011.

naturalizations based on the requirement of a minimum of ten years of residence, in both absolute and relative terms (tables 12 and 13). If we look at the data for 2004-2009, we can see that this type of naturalization has decreased in both absolute and relative terms, falling from 19% to 6% of total naturalizations (table 13 and graph 4).

Naturalizations of European citizens fell between 2004 and 2009, above all due to the lower numbers of citizenships granted to Bulgarians and Romanians (table 12). The number of naturalizations of Ukrainians is still low, while there was an increase in the number of naturalizations of Russian citizens (from 1 in 1999 to 65 in 2009). In relative terms the naturalizations of Europeans remain low, not exceeding 7% of total naturalized citizens (table 13).

Even though the African communities are among the oldest in Spain, no significant increases in naturalizations have been registered according to the ten year minimum residence criteria. On the contrary, naturalizations of Africans have fallen in recent years. In particular, naturalizations of Moroccan citizens – the largest African community – increased significantly between 1998 and 2004, before decreasing in subsequent years (table 12). In 2009 fewer Moroccans were naturalized than in 2004. In spite of this, in 2009 78% of naturalizations under to the ten year minimum residence requirement were Africans (table 13). In this group Moroccans represent 79% of all naturalizations and 62% of total naturalizations under to the ten year requirement.

Naturalizations of Asians fell between 2004 and 2009, from 707 to 636 (with the exception of two peaks in 2005 and 2007). Considering the single communities, it is worth mentioning the sizeable increase in naturalizations of Chinese citizens, rising from 10 to 225 between 1998 and 2009 (table 12). In relative terms, naturalizations of Asians increased by only two points between 2004 and 2009 (table 13). In the Asian group, the low number of Philippine citizens stands out: as we know this group can apply for citizenship after two years of residence and therefore do not make use of this provision.

The low number of naturalized South Americans in this group also stands out. As for Philippine and Guinean citizens, most of this group applied for Spanish citizenship under the requirement of two years' minimum residence.

4.2 Acquiring citizenship after two years of residence[32]

The number of naturalizations of foreign citizens under the criteria of ten years minimum residence has not changed significantly in recent years. In many cases it has actually decreased. The fall in this type of naturalization is due to the increase in naturalizations based on the criteria of two years minimum residence. Naturalizations in this category have risen from 21,549 to 60,352 between 2004 and 2009, going from 55% to 75% of all naturalizations (table 14 and graph 4). This increase is mainly due to the increase in flows of South Americans, who, as previously mentioned, have privileged access to Spanish citizenship (graph 5). Indeed naturalizations of South Americans rose from 19,936 in 2004 to 59,300 in 2009 (table 14). In recent years there has been a rise in the number of naturalizations of Ecuadorians and Colombians, the two largest South American communities in Spain. There has been a lesser increase in the naturalizations of Peruvians and Dominicans, probably because flows from these two countries have slackened compared to those from Colombia and Ecuador. In 2009 naturalizations of South Americans not only represented 98% of all naturalizations based on the requirement of two years' minimum residence (table 13), but 74% (59,300 out of 79,597) of the total number of naturalizations granted in that year. With regard to the other privileged communities, such as Equatorial Guinea, there were no significant increases, and some of these even decreased, such as Portugal and the Philippines (table 14).

4.3 Acquiring citizenship through marriage

Acquiring citizenship through marriage with a national is generally considered one of the easiest ways to get round the norms on entering and residing in a country and represents a serious threat to the effective control of flows. In Spain too, the officials interviewed stated that they feared the "leaky sieve" effect of so-called marriages of convenience and underlined the importance of acting decisively to prevent this phenomenon. A high official of the General Directorate of Registries and Notaries also underlined the need to increase the number of years required for naturalization after marriage with a foreign national. Despite this, the data present a less

[32] We do not have data on refugees applying for and obtaining citizenship after five years of residence. For this reason this report does not take account of the category of foreign nationals entitled to apply for citizenship after five years of residence. In any case this is not a large group: according to the latest statistics from the ACNUR, the number of recognised refugees in Spain does not exceed 4,000 (ACNUR, 2009 Global Trends, Geneva, http://www.unhcr.org/pages/49c3646c4d6.html).

worrying picture than that envisaged by our interviewees. Although naturalizations through marriage increased from 1,063 to 9,038 between 2004 and 2009 (table 15), the percentage out of total naturalizations fell from 15% to 11% in the same period, indicating, against the gloomiest outlooks, that the significance of this channel has actually diminished over the years (graph 4). Now for a detailed look at the trend of naturalizations through marriage in the last few years.

The number of naturalizations through marriage of European citizens is very low in Spain compared to other EU countries. There was a clear decrease in the number of naturalizations through marriage of nationals of France, Belgium, Italy and the United Kingdom between 1998 and 2003 (table 15). In other cases, like Bulgaria and Romania, the drop was less marked. As of 2004, however, there was a clear increase in naturalizations of EU citizens due above all to the increase in naturalizations of Portuguese citizens (from 62 in 2004 to 139 in 2008) (table 15). The same period also saw an increase in naturalizations of Russians and Ukrainians, while those of Bulgarians and Romanians decreased. In the case of many European citizens, naturalizations through marriage represent the main way to obtain Spanish citizenship, above all in the case of countries like Bulgaria, Romania and Russia. The only exception is Portugal, given that most Portuguese citizens are naturalized according to the requirement of two years' minimum residence. Data on the gender of naturalized citizens are limited to 2007-2009. Most of the citizens naturalized in this period were women, accounting for 68% of all naturalized citizens in 2009 (table 16).

Naturalizations of Africans through marriage show two marked peaks in 2007 and 2008. Once again Morocco is the main country. Naturalizations of Moroccans through marriage went from 707 in 1998 to 1,367 in 2008, then fell to 909 in 2009 (table 15). Nigeria, though far behind Morocco, is the second African country, showing a significant increase in this kind of naturalizations, going from 10 to 70 between 1998 and 2009. Slightly fewer men were naturalized than women (table 16). Despite the increase in absolute terms, in relative terms there was a fall in naturalizations through marriage, falling from 19.6% to 13.9% of the total between 2004 and 2009, given that most obtain citizenship under the requirement of ten years' minimum residence (table 17). Above all with regards to Morocco, the percentage of naturalizations through marriage fell significantly, going from 41.3% (707 out of 1,541) to 13.9% (929 out of 6,683) of all naturalizations between 1998 and 2009. To conclude, over the years the significance of naturalization through marriage has fallen compared to other ways of acquiring Spanish citizenship.

The South American community is undoubtedly the group with the highest number of naturalizations through marriage. Between 1998 and 2003 the increase in absolute terms was significant in the case of Brazilians

(from 132 to 231), Colombians (from 172 to 544), Cubans (309 to 661) and to a lesser extent Peruvians (from 211 to 273) and Dominicans (from 365 to 405) (table 15). The trend remains basically stable for applicants from Uruguay and Paraguay. Between 2004 and 2009 naturalizations of South Americans through marriage went from 3,758in 2004 to 6,728 in 2009, with two major peaks in 2007 (7,324) and 2008 (9,255). The most significant increase undoubtedly regards Colombians (from 728 to 1,604), Argentinians (from 457 to 834) and Cubans (from 612 to 811) (table 15). There was also an increase, albeit a lesser one, in naturalizations of Ecuadorians (from 205 to 642), Peruvians (from 283 to 356) and Dominicans (from 401 to 486)[33]. Lastly, in this case too there is a net prevalence of women, who in 2009 represented 69% of all naturalizations in this way (table 16).

The number of South Americans obtaining naturalization through marriage has increased over the years. In 2004 South Americans represented 64% of the total number of naturalizations through marriage, while in 2009 this figure reached 74% (table 17). In spite of this, this channel is less significant than others. Indeed in 2009 only 10% (6,728 out of 67,243) of South Americans obtained citizenship through marriage. The percentage of naturalizations through marriage compared to other channels is particularly low in the cases of Colombians (9.7%), Peruvians (5.5%) and Bolivians (6.2%). The trend of naturalizations appears low in the case of Ecuadorians in particular, for whom naturalization through marriage represented only 2.4% of the total. The only exceptions to this trend are Cubans (30%) and Mexicans (46.2%), with percentages which are higher compared to other ways of acquiring citizenship.

Only 3% of foreign nationals of Asian origin naturalized in 2009 used marriage to access citizenship. This is a very low percentage compared to other countries (table 17). This type of naturalization showed some significant increases in Chinese and Indian applicants (table 15), while there was a clear drop in the number of Iranians (from 30 to 13). In subsequent years there were no major changes, except in the case of Pakistan, which in 2009 was the Asian country with the greatest number of naturalizations through marriage (table 15). When it comes to Asian countries the number of women obtaining naturalization through marriage (535) is slightly higher than the number of men (492) (table 16).

[33] The notably low number of naturalizations of Ecuadorians through marriage is probably due to immigration from this country being relatively recent, and characterized by a high level of illegality.

4.4 Minors acquiring citizenship

The naturalization of minors in Spain can take place one year after birth on Spanish soil or following family reunion. In the latter case, minors can access Spanish citizenship not only by option (if one the two parents is naturalized Spanish) but also by applying after two or ten years of legal residence. Unfortunately there is no data that enable us to distinguish between the different reasons for the naturalization of minors. The number of family reunions has increased in recent years, above all for South Americans[34]. We can therefore surmise that the increase in naturalized South Americans in the 5-14 age range could be a consequence of new arrivals for family reunion.

The ministry also supplies data regarding naturalizations of individuals born in Spain to foreign parents. In this case we can get an idea of the developments in naturalizations, surmising that the majority of those naturalized in this way are minors. The number of foreigners born in Spain, and above all born to two foreign parents, has increased considerably in recent years (graph 6 and table 18). This increase has been accompanied by an increase in naturalizations granted through birth, which rose from 3,005 to 3,696 between 2004 and 2009, with a major peak of 4,578 naturalizations in 2008 (table 19). In 2009 almost 80% of naturalizations of foreign nationals born in Spain regarded Africans. On the other hand the number of children born to South American nationals naturalized in this way remains very low. The low rate of South Americans naturalized by birth, around 5%, is probably due to the fact that many choose to opt into Spanish citizenship rather than applying for naturalization after two years of residence in Spain. Lastly, the low rate of Asian minors naturalized by birth (10%) is probably due to the recent nature of flows from Asia, and therefore to the fact that the number of Asians born in Spain is still very low (table 20).

When it comes to adoption, Spanish citizenship is granted automatically. This is an important channel of citizenship acquisition in the Spanish case, due to the fact that after the United States Spain is the country with the most international adoptions, according to the report of the Italian Commission on international adoptions[35]. Most of the children adopted come from Asia, above all China, or Europe, Belarus in particular, while the numbers of children adopted from South America or Africa are lower (table 21). For almost all countries there was a peak in adoptions between 2004 and 2005, and a sharp fall as of 2007, probably due to the recession.

[34] In Spain in 2000 only 7 permits of this kind were registered, while by 2009 the number had risen to 229,111, 107,848 of which were granted to South Americans.
[35] Cfr. http://www.commissioneadozioni.it/media/49799/13_dp%202_2008_cap%206.pdf.

4.5 The exceptional case of children and grandchildren of exiled Spaniards

In 2007 the yearbooks of the Ministry of Labour and Immigration began to identify the category of children or grandchildren of Spanish citizens by origin who applied for Spanish citizenship after a year of legal residence in Spain. As was to be expected, most of the applications came from South American countries, the main destination for Spanish emigration. In spite of this the number of citizenships granted to children or grandchildren of Spanish citizens by origin remains low. In total, naturalizations have been granted to 2,664 children or grandchildren of Spanish citizens by origin, most in 2008. Almost 96% are South Americans, above all Argentinians (54%) and Cubans (20%), followed by Uruguayans (7.4%) and Venezuelans (4.5%)[36].

With regard to the children or grandchildren of Spanish citizens in exile, we do not yet have precise information about the number of citizenships granted under the seventh additional provision of the Historical Memory Law. For this reason it is not yet possible to assess the impact of this law on the volume of migratory flows towards Spain. According to government estimates, when the seventh provision was passed the number of possible descendants of exiled Spaniards was around half a million, in Argentina, Uruguay, Cuba, Chile, Venezuela, Mexico and France. Above all in the case of Cuba, the government estimated around 300,000 Cubans were eligible to apply for Spanish citizenship between 2009 and 2011. According to Cuban sources, in 2009 20,000 applicants had already submitted their documents to the Spanish authorities in Cuba, so much so that the Spanish General Consulate in Havana has been nicknamed the "Factory of Spaniards" by many locals [37].The Foreign Ministry has not yet made the figures regarding this category of naturalizations available. According to *Associated Press*, in January 2010 the Spanish government announced it had received 161,463 applications, half of which were said to have been successful. Though data regarding nationality were not made available, it is known that 95.5% of applications was submitted and processed in South American countries[38].

[36] These data refer to the children or grandchildren of Spaniards by origin who are entitled to apply for citizenship after a year of residence (see table 1). The children and grandchildren of exiled Spaniards enjoy a privileged channel, but with a restricted deadline, as per the so-called *Ley de Nietos*.

[37] Cfr. http://www.elpais.com/articulo/espana/fabrica/espanoles/elpepuesp/20090131elpepunac_10/Tes.

[38] Cfr http://cubaout.wordpress.com/2010/01/16/espana-beneficiadas-ya-82000-personas-por-ley-de-nietos/.

5.The procedure for granting citizenship by residence

The administration which handles applications for citizenship by residence is the Ministry of Justice, and particularly one section of it, namely the Sub-Directorate of Justice (*Subdirección de Justicia*), to which the General Directorate of Registries and Notaries (DGRN) reports. In turn, among the departments of the DGRN, the department directly concerned is the General Sub-Directorate of Nationality and Marital Status.

Applications for citizenship by residence (art. 21 CC., para. 3) can be made by: a) majors or emancipated minors; b) minors over the age of 14 accompanied by their legal representative; c) the legal representatives of minors under the age of 14, and d) incapable persons alone or through their legal representant, depending on the type of incapacity.

Using the Ministry of Justice form, the applicant must prove he or she has resided on Spanish territory legally and continuously in the period prior to the application. The enclosed documentation must also attest a good conduct and a sufficient level of integration into Spanish society (art. 22 CC., para. 4). The presiding official is obliged to interview the applicant in person to assess his or her language proficiency and degree of adaptation to Spanish culture and lifestyle (art. 221 RRC).

As the language proficiency and degree of adaptation is an indeterminate legal concept, court decisions must be examined, particularly taking into account the peculiarities of the Spanish legal system, which recognizes three historic nationalities, each with its own language. From court decisions it appears possible to deduce that the level of language proficiency required is the ability to communicate in Spanish and talk with others in one of the national vehicular languages[39], this being the basis for social integration and adaptation to Spanish lifestyle[40]. In the case of a citizenship application being made following marriage with a Spanish citizen, generally only the compliance of the applicant's spouse is requested, with the spouse being obliged to declare awareness of the naturalization application. Minors are not usually interviewed[41].

In many cases poor knowledge of Spanish has been a sufficient reason to reject an application for citizenship[42]. Yet, it should be specified that while adaptation and integration into Spanish society implies the duty to know and be able to communicate in one of the country's official languages, integration is more than just language proficiency, entailing acceptance and adoption of a broader set of values considered to be the defining features of "Spanishness". The Supreme Court has recognized the right to obtain

[39] Spain's official languages are Castilian, Catalan, and Basque.
[40] Supreme Court ruling, 10 February 2009, n. 367/2009 (Administrative Chamber, Section VI).
[41] Interview with a former official of the Civil Registry of Alcalà de Henares (Madrid).
[42] Supreme Court ruling, 16 October 2007, n. 6488/2007 (Administrative Chamber, Section VI).

Spanish citizenship to a Moroccan citizen with poor spoken (and no written) Spanish, but in possession of certificates of attendance at literacy courses in professional training centers. These certificates were taken to be proof of the applicant's intention to integrate into Spanish society[43]. Moreover, not being able to read and write in Spanish cannot be the reason for rejecting a citizenship application in cases where the applicant has not been educated in his or her native country and cannot read or write in his or her native language. An adequate level of integration into Spanish society must therefore be attributed to those capable of communicating orally and proving that they have attended adult literacy courses in Spain[44].

At present there is no set test of general culture used to assess applicants' degree of adaptation to Spanish society: it is up to the official on duty to decide on the questions to put to the applicant (art. 221 RRC). The interview to assess applicants' degree of adaptation to Spanish society is therefore highly arbitrary, there being no official provisions covering the approach and contents.

According to case law, a lack of criminal record is not proof of good conduct *per se*. Although it is no longer necessary to present a certificate from the Criminal Records Office issued by the Spanish authorities, applicants are still required to submit a police record issued by the relevant authority in their country of origin as proof of good conduct. The absence of such a certificate is however no longer a reason for the application rejection[45].

Article 22 CC. requires the applicant to prove their good conduct in compliance with the norms of civic society, not only while resident in Spain but also prior to that. The lack of proof of good conduct is one of the most frequent causes for the rejection of citizenship applications[46]. Driving while under the influence of alcohol[47] or being arrested for sexual violence are considered indisputable breaches of good conduct, and for this reason represent an impediment to obtain citizenship. To ascertain good conduct, certificates from the Criminal Records Office and reports of the police and secret services are used. Yet the Supreme Court has established that

[43]Supreme Court ruling, 18 September 2007, n. 6486/2007 (Administrative Chamber, Section VI).
[44]National Hearing ruling, 27/11/2008, n. 4802/2008 (Administrative Chamber, Section III).
[45]Police records from the applicant's native country are however not always a fundamental requirement. The administration must do without this documentation when there are obstacles - not of the applicant's making – to obtaining a certificate from his or her native country. (Supreme Court ruling, 30 September 2008, n. 4978/2008, Administrative Chamber, Section VI).
[46]Supreme Court ruling, 21 September 2010, n. 4978/2008 (Administrative Chamber, Section VI).
[47]Supreme Court ruling, 24 October 2007, n. 6928/2007 (Administrative Chamber, Section VI) and 5 December 2007, n. 7912/2007 (Administrative Chamber, Section VI).

negative police reports do not automatically imply an absence of good conduct[48], and that a criminal sentence should not automatically be interpreted as a lack of good conduct, if it was an isolated episode in a long period of residence in Spain[49].

However the requirement of good conduct is not limited to the non-breach of the penal code or administrative regulations, yet it also entails respect of the civic duties that individuals can reasonably be expected to fulfill. According to the Supreme Court, in order to avoid purely arbitrary decisions these duties are identified as constitutional ones[50].

In 2007, the General Directorate of Registries and Notaries formulated and published the norms on the procedure of applying for citizenship by residence[51]. Up till then, the documents that had to be submitted to start a citizenship application procedure were 1) a certificate from the Criminal Records Office issued by Spanish authorities and 2) the certificate of residence. The General Directorate decided to streamline the procedure by appointing the relevant administration to obtain the aforementioned documents through the official channels[52]. In any case, applicants can submit a report issued by the regional authorities of their place of residence with the aim of demonstrating their level of integration (art. 63, para. 3 LRC)[53].

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[48] Supreme Court ruling, 17 October 2007, n. 7055/2007 (Administrative Chamber, Section VI). See also Supreme Court ruling, 22 September 2008, n. 4785/2008 (Administrative Chamber, Section VI). In the case in question the applicant was refused citizenship due to being reported for sexual violence in 1989. The case was dismissed the following year, 17 years before the citizenship application. The Supreme Court acknowledged the applicant's right to obtain citizenship, given that the applicant had lived in Spain since 1978, married a Spanish citizen with a canonical marriage ceremony and had a daughter. After his first marriage broke down, he married another Spanish citizen and works for the General Directorate of the Merchant Marine as a maintenance officer.

[49] Supreme Court ruling, 15 December 2008, n. 7152/2008 (Administrative Chamber, Section VI).

[50] Cfr. Supreme Court ruling, 2 June 1998, n. 3606/1998 (Administrative Chamber, Section VI).

[51] DGRN Circular of 26 July 2007.

[52] Art. 63.2 of the Civil Registry Law (included in Law 54/2007) foresees that the official in charge of the application for citizenship by residence, for the sole purpose of the procedure in question, and without the applicant's consent, can ask the relevant authorities for all the necessary documents and verify whether the applicant possesses the requisites listed in art. 22 CC. This new procedure has undoubtedly speeded up the application process, but the fact that documents can be requested through official channels without the applicant's consent undoubtedly raises some concerns.

[53] Language and integration courses held by the autonomous regions receive public funding. In order to obtain certificates of integration immigrants are required to attend in person so that attendance is high. Foreigners enroll on the courses even when they are fluent in Spanish, in order to obtain documents attesting their good level of integration. Recently, however, in line with the tendency of other European countries, the People's Party and the Catalan party *Convergencia i Unió* (Convergence and Union) have repeatedly called for the introduction of integration tests to regulate the presence of foreign nationals and assess their level of social inclusion.

The application is presented to the Judge of the Civil Registry in the applicant's place of residence. The judge, who in this case is responsible for the administrative procedure but does not have any jurisdictional power, is entrusted with the task of examining the documentation and submitting a report with his or her own assessment to the DGRN, which has the final say. When documentation is missing or insufficient, the judge cannot dismiss the application because the decision must be taken by the Ministry of Justice, which delegates it to the DGRN. If the judge submits a negative report, before confirming this decision the DGRN must assess the reasons for this and the pertinence of the questions made during the interview.

If the judge notes the absence of documents needed for the application, he or she submits the application to the General Directorate with a negative report (art. 365 RRC). The Public Prosecutor can intervene and call witnesses to verify the statements.

In the event of insufficient documentation, the applicant must appear in person, and if this does not occur within three months, the application can be dismissed. However, the General Directorate has admitted the reopening of dismissed cases if notification does not occur. Moving abroad, if previously communicated to the Police[54], or being out of Spain for medical reasons[55] are considered valid justifications for not appearing, therefore meriting the reopening of the procedure.

Up to 2002 Spanish legislation had no provisions regulating the duration of the application procedure. Law n. 36/2002 (the first additional provision) in compliance with the Civil Registry Law established that the procedure must be completed in one year, excluding the possibility of granting citizenship by tacit consent. In the absence of an express decision, after one year the application should be considered rejected.

However, all the officials of the Ministry of Justice interviewed agreed on the fact that the procedure is very slow due to the difficulties in coordinating the various offices of the relevant administration, namely the DGRN and the 437 Civil Registries located throughout the country. There is also a shortage of staff when it comes to managing the full range of tasks performed by the civil registries. The average duration of a naturalization procedure is two years, though there may be a further delay of one year between the oath ceremony and the applicant receiving his or her Spanish national identity card[56].

Cfr.http://www.elpais.com/articulo/espana/CiU/recupera/idea/carnet/puntos/inmigrantes/elpepiult/20100120elpepunac_15/Tes and http://www.publico.es/espana/46314/los-inmigrantes-tendran-un-visado-por-puntos-si-gana-rajoy.

[54] DGRN resolution of 1 May 2002 (Section I).

[55] DGRN Resolution of 14 June 2002 (Section III).

[56] Interview with a former official of the civil registry of Alcalà de Henares (Madrid).

The Ministry of Justice issues a list of successful and unsuccessful applications for citizenship in six-monthly Ministerial Decrees that are published in the Official Gazette (*Boletín Oficial del Estado*). The applicant can appeal against the ruling of the DGRN through the administrative channel before the same administration within a maximum of 30 days, or directly through the jurisdicional channel before the Administrative Chamber of the National Court within a maximum of 60 days. The rulings of the National Court can be further appealed before the Administrative Chamber of the Supreme Court[57].

When all requisites have been fulfilled[58], the applicant is notified that his or her application has been successful. Yet, this notification does not conclude the procedure for actually granting Spanish citizenship. Citizenship is not granted until the applicant appears before the Head of the Civil Registry, completing the procedure. If the applicant fails to appear in the allotted time, he or she forfeits the right to obtain citizenship (art. 21, para. 4 CC).

Applicants must appear within 180 days of receiving notification before the same official that opened the procedure, to prove that they fulfill the conditions as per art. 23 CC., namely: 1) being over the age of 14 and capable of taking an oath of loyalty to the King and paying obedience to the Spanish constitution and laws[59], and 2) declaring that they renounce their citizenship of origin[60],except in the case of agreements with South American countries permitting dual citizenship.

The procedure for granting citizenship ends with the registration of citizenship on the Spanish Civil Register (art. 23 CC.). In order to register the

[57] Articles 116-117 of L. 30/1992.

[58] Even when all conditions are fulfilled, citizenship can be refused for reasons of public order or national security. The administration must however make these reasons known so that the jurisdictional organ can decide whether they are effectively facts and situations that affect public order or national interest (Supreme Court ruling, 19 June 1999, n. 4353/1999, Administrative Chamber, Section VI). Similarly, the decision of the administration cannot be exclusively based on information supplied by the secret services and covered by confidentiality (Supreme Court ruling, 29 November 2004, n. 4353/1999, Administrative Chamber, Section VI).

[59] While citizens by origin have as only duty that to defend their country, those who acquire derivative citizenship must take an oath of loyalty to the King and obedience to the law established by the Constitution. This requirement can however represent a violation of basic rights for the sons of exiled republicans born abroad who wish to regain citizenship that their parents were deprived of by exile
http://www.elmundo.es/elmundo/2008/12/27/espana/1230396909.html.

[60] See the case of an Italian citizen refused citizenship because he did not renounce his citizenship of origin. With DGRN Ruling of 27 September 2007 the General Directorate of Registries and Notaries established that the requirement described in art. 23 CC was merely a formality and that it was not necessary for this applicant to give up his citizenship in Italy, which would entail submitting the efficacy of Spanish law to foreign law.

citizenship, the birth of the applicant must have been registered previously on the Civil Registry of his or her place of residence. The local registry has the duty to inform the Central Civil Registry[61]. For those born outside Spain this is only possible at the oath ceremony, when the name and surname to be registered are also declared. When the first name does not comply with the norms of the Spanish legal system (art. 213, 2 RRC), the individual must register a different first name to that which appears on his or her native country's documents. Applicants can request to register a different name if they can prove the prolonged use of that name.

With regards to surnames, to avoid prejudices in identification, foreign nationals acquiring Spanish citizenship may keep their surnames in their original form, and are not required to adapt them to Spanish grammar and pronunciation (art. 198 RRC), if they so declare during the oath ceremony or up to two months later (art. 199 RRC)[62]. The DGRN has established that the aim of avoiding prejudices in identification cannot be interpreted in the sense of using one single surname, as this represents a breach of the norms of public order in the Spanish legal system[63]. Aside from the last name present on the documents from the country of origin, applicants must therefore also register their mother's surname, in compliance with Spanish legislation (art. 213, 1 RRC). In the case of no maternal surname, a surname will be given (Álvarez Rodriguez, 2009: 135). However in compliance with the case law of the European Union Court of Justice, citizens of the European Union have the right to retain their original surname, as per the legislation of their member state of origin[64].

Conclusions

Spanish legislation regarding the acquisition of citizenship is among the most restrictive in Europe. In spite of this, the norms are characterized by a long series of exceptions which have clearly influenced the situation of citizenships being granted in recent years. These exceptions, and in particular the requirement of two years' minimum residence for applicants from South American countries, dual citizenship agreements and the Historical Memory Law, are strongly connected to Spanish colonial and migratory history. Since

[61] If the birth was not registered, this must be requested and the granting of citizenship noted in the margin. At this point the applicant can request a Spanish identity card. As of 2005 (by Royal Decree n. 1553/2005, 23 December 2005), the Spanish identity card stopped being mere *iuris tantum* proof and became *iuris et de iure* proof of Spanish citizenship. Obtaining an identity card is the first step to getting a passport.

[62] In this case, however, not applying Spanish law also means giving up the entitlement to invert the order of the two last names.

[63] DGRN Circular of 23 May 2007.

[64] The Court of Justice of the European Union, Case C-148/02 García Avello vs. Belgian state.

the outset a key feature of the Spanish legal system has been that of protecting Spanish communities abroad and maintaining links with all countries considered to represent 'Spanishness'. The requirement of two years' minimum residence for the naturalization of this privileged group of citizens was introduced during the Second Republic and retained through the Franco regime. More than other provisions, it reflects the importance of historical links with countries held to be participants in a shared historical experience and geographical area.

Despite the fact that this norm implies various instances of discrimination, such as considering Portuguese citizens differently from other European citizens, its legitimacy has rarely been called into question.

To date, only *Izquierda Unida* (United Left) has repeatedly challenged the privileges granted by Spanish legislation to South American citizens compared to those from other countries. When the People's Party was in government both the Socialist Party and *Izquierda Unida* proposed extending the principle of *ius soli*. Both parties justified their proposals by referring to Spain having become an immigration country, with the need to extend *ius soli* to foster the integration of the new generations[65]. This reasoning was ahead of its time, in view of the modest volume and low intensity of flows towards Spain in that period (Arango, 2000), and it is therefore not surprising that it was not taken into consideration by the *Partido Popular* government and did not spark much public debate.

On the other hand it is surprising that the *Partido Socialista*, which came into government in 2004, while immigration was developing apace, never reopened the question of a reform of citizenship legislation. On the contrary, the debate on citizenship remained on the back burner compared to other immigration-related issues such as regularizations and granting certain cultural rights to the Muslim minority.

Izquierda Unida is the only party that still maintains a critical position in this regard, and its election manifesto includes the right to vote in all kinds of elections for foreign nationals residing legally in Spain for three years[66]. The only reforms currently foreseen regard the rationalization of the naturalization procedure, and are part of a broader plan to modernize the public administration. The bill on the Reform of the Civil Registry approved on 23 July 2010[67] aims to solve, at least in part, the problems involved in gaining naturalization by residence, by means of increased computerization and giving the secretaries of the Civil Registry increased responsibilities. According to the fourth additional disposition in the bill, applications for

[65]For more details on the bills presented by the various parties in the last twenty years see the text by Perez-Martín and Moreno-Fuentes (2010).
[66]Cfr. http://www.portalelectoral.es/content/view/372/122/.
[67]Cfr. http://www.sisej.com/documentos/cat_view/16-documentos/28-reforma-leyes-procesales.

Spanish citizenship will be initiated and submitted according to the terms of a legislative decree shortly due to be approved. The aim of this is to reduce the presence of judges in the Civil Registries, strengthening the role of the Ministry of Justice[68].As yet unresolved is the problem of the highly arbitrary nature of naturalization interviews. The DGRN has presented a number of proposals to the ministry, aimed at standardizing the interview questions and increasing the efficacy and fairness of the procedure. The considerations of the ministry are not yet known.

Aside from the imminent reform of the Civil Registry, no major changes in citizenship legislation are planned. According to some analysts, the limited interest of left wing parties in a reform of this kind is mainly due to the generous concession of rights to migrants, even illegal ones. According to another hypothesis, firstly due to the increase in the foreign population and then due to the recession, the *Partido Socialista* has sought to avoid calling attention to the debate on immigration and episodes of xenophobia (Perez-Martin and Moreno-Fuentes, 2010). These are plausible explanations, but not entirely convincing ones. According to a high official of the Ministry of Justice the lack of debate is more likely to be linked to the fact that in Spain citizenship issues have never really been seen as part of the general debate on immigration, but part of the lower profile question of Spanish citizens living abroad. In recent years debate on granting citizenship only became heated when key issues in Spanish history were concerned, as happened with the Historic Memory Law. In all other cases, for years the debate on immigration has focused on questions of control, while integration and acquiring citizenship have long been on the back burner. Frequently the Autonomous Communities or municipalities were left to tackle the question of integration, while on a national level the focus of attention was perfecting immigration control systems (Brusquetas-Callejo et al., 2008). Pressing questions of foreign policy should also be taken into account. The historic, political and economic links with South American countries are still strong. The decision to standardize naturalization requirements based on residence, eliminating *de iure* the privileges enjoyed by many citizens of South American countries, could lead to diplomatic tensions, as has already happened after the introduction of new entry requirements for Mexican tourists coming to Spain. And the concept of retaining this privilege for South Americans represents a meeting point between the rationale of foreign policy and the logic of integration policies. Indeed we cannot rule out policy makers harbouring a tacit intention to maintain the privileges accorded to the South American communities with respect to citizens from African and Asian countries: the latter are viewed as culturally and religiously less similar to

[68]It should be noted that the judges report to the *Consejo del Poder Judicial* (the General Council of the Judiciary), while the Civil Registries report to the Ministry of Justice.

Spain, thus presenting greater difficulties when it comes to integration. There are also significant concerns regarding the position of European citizens. Although Spain belongs to the European Union and shares historical and cultural roots with European countries, European citizens in Spain do not enjoy any privileges when it comes to obtaining citizenship and therefore full political participation in their country of residence. The cultural link with the former colonies in South America seems to be much stronger, with Spain representing a privileged partner in many economic and political areas.

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