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THE NATURALISATION BASED ON RESIDENCE PROCESS IN SPAIN: differences that discriminate?

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1. Relevance and pertinence

Nationality gives immigrants equality of rights and obligations and ensures their recognition by society as equals within the legal framework. Naturalisation is, from the theoretical and practical point of view, a fundamental step towards integration, especially in the European Union context and, for many; it is the last step in the process of accommodation. In the EU-27 from 2003 to 2012 an average of 741,550 people were naturalised per year, increasing the number of new European citizens progressively over the past ten years, although trends varied visibly between the member states. Spain, in particular, has become, in absolute terms, one of the main naturalising countries in Europe along with Germany, France and the United Kingdom.

Abstract: Nationality gives immigrants equality of rights and obligations and ensures their recognition by society as equals within the legal framework. Naturalisation is, from the theoretical and practical point of view, a fundamental step towards integration. However, the naturalization process in Spain is developed within a framework of legal differentiation by origin and high discretion in the hands of the competent authorities. This process is causing differences between groups (inter-group) according to origin, language and culture, as well as intragroup differences in relation to factors such as age, gender or education. One of the main consequences of this process is the emergence of a feeling of rejection and hostility both towards the process itself and towards Spanish citizenship in general. In this context the present document contains a set of recommendations.

Keywords: nationality, immigration, differentiation, integration, Spain

There are various reasons for Spain's relevance as a case study. First is the comparison with its European neighbours. In Spain only 16% of immigrants residing in Spain have acquired nationality compared with the EU-15 average of 34%, which can be explained in large part by Spain's relatively recent establishment as a country of immigration. Similarly, 85% of the immigrants naturalised took 10 years to acquire it despite the fact that for the vast majority it could have been granted after two years of legal residence. It is also significant that, as the *Immigrant Citizens Survey* (Huddleston and Dag Tjaden, 2012) shows, immigrants in the special two-year regime had been residing in regular basis in Spain 6.2 years before beginning the application process.

Second, the number of immigrants during the crisis period who accelerated the naturalisation process with the aim of

being able to emigrate, whether to return to their countries of origin or to look for new opportunities in other EU countries is significant (González Ferrer, 2013). On the one hand, at these times, according to the data for 2013 from the National Statistical Institute (INE in Spanish), Spain had a negative migratory balance of 251,531. On the other hand, of the 2,058,048 people of Spanish nationals living abroad in 2004, 65.4% of those registered overseas were born abroad. In the period just prior to the crisis (2008-2009) an average of 74,479 people were naturalised, while in the following four years (2010-2013) the rate of naturalisation was more than double, with an annual average of 153,793. 2013 was especially significant in the sense that granted naturalisations reached a total figure of 261,295. This was in good measure due to the establishment of the Intensive Nationality Plan (PIN), a course of action that was taken by the government with the object of speedily processing thousands of delayed citizenship applications. In 2014, the number of applications granted fell again to 83,141, which can be explained by the plan's lack of continuity.

Third, and as a number of academic studies have already pointed out, Spain's process of accessing nationality also makes it worthy of interest. In this sense, the process of accessing citizenship is one of the most negative for the immigrant in the EU-15 countries. According to the studies made by Dag Tjaden and Sánchez-Montijano in 2013 and the OECD in 2011, access-related discretion is one of the main problems mentioned by immigrants in terms of their ability and desire to naturalise themselves. It is this last issue that interests this policy paper and to which the main actors involved in the integration of immigrants should give particular attention. In any case, the process has been made especially difficult in the past two years, so while in 2012 around 10% of the requests were denied, in 2013 the figure rose to 19% and in 2014 it was 38%.

The political context is relevant in the debate on the naturalisation process. The party in government, aware of the problems and difficulties that have dogged the process throughout, put the PIN in place, as a temporary measure, in 2012, and have reused it on three further occasions since its implementation, though with differing degrees of development. The PIN enabled the resolution of more than 500,000 files that were stalled in the Directorate General for Registries and Notary Affairs through a process of mass digitalisation of applications and a special support group for the administration. Without going into the problems caused by this plan (to be examined later in this paper), what is certain is that it allowed thousands of foreigners who found themselves in a situation of administrative vulnerability to receive a response to their application for nationality.

To this it is necessary to add the draft law that the government set underway in March and April 2015. Within the framework of the law regulating access to nationality for the community of Sephardic Jews, an attempt was made to introduce a reform that significantly affects all immigrants' access

to nationality based on residence. The inclusion of the fourth additional provision on applications for nationality based on residence establishes various questions to be exhaustively debated by the various actors involved in the nationality policy. Among other issues, it sets out the steps the application process should follow through the various public bodies. Likewise, it includes the provision that all immigrants must demonstrate good civic conduct for up to 180 days after having acquired nationality. Finally, one of the most controversial questions is the introduction of a double test by which foreigners must demonstrate their knowledge of the Spanish language and culture to given by the Instituto Cervantes.

Though this attempt to regulate access to nationality caused strong political debate in both legislative chambers, involving the most of the political parties with representation, ultimately, the party in government amended the provision and eliminated it from the final text. Despite this, what is certain is that it is the first attempt at regulation allows us to observe the interest and relevance of the nationality process issue for all political actors. And if the chapter is now closing on this draft bill, there can be little doubt that the debate has only just begun and much remains to be written.

2. The DNIs project and its results

The naturalisation procedure is one of the most negative for immigrants compared with most countries in the EU 15

In this setting, the project "DNIs: Differentiation in the Nationalisation of Immigrants in Spain", funded by the Open Society Foundations, was started to specifically analyze the Spanish case.

The project sought to analyse the effects of Spain's policy of accessing nationality based on residence. Starting from the fact that legal differentiation and substantial discretion on the part of the competent authorities are the foundations on which the naturalisation process takes place, the project analysed the discriminatory effects the system produces. The study focussed on understanding the mechanisms by which the process creates differentiating situations within the immigrant community, the type of discrimination produced and its effects, especially on integration, understood not so much in the legal as the structural sense. The DNIs project reviewed the legal issues that underpin this situation, as well as the administrative and bureaucratic mechanisms that may, in addition, bring about discriminatory practices in this process. The ultimate goal is to generate debate on the subject of nationality and identify areas for improvement in the current system in order to, as far as possible and without claiming to be exhaustive, allow intervention and improvement of the public policies affecting these issues.

In order to answer the questions that guide this study, a qualitative methodology was chosen. In large part this choice was made because of the lack of data that could clarify the phenomenon under analysis. Thus, document analysis as a qualitative research technique was used, along with in-depth interviews and discussion groups. Exhaustive analysis was carried out of the legal framework (laws, regulations, decrees) as well as documentation issued by the political and

judicial authorities (rulings, instructions, etc.), with the aim of objectively learning about the process followed by the public administration itself. The interviews conducted were semi-structured and a distinction was made between experts and lawyers specialised in the rights of foreigners and immigrant associations/NGOs with representation in institutional areas. A total of 27 interviews were carried out, divided between the autonomous communities of Andalusia, Catalonia and Madrid. Ultimately, the discussion group held with representatives from the Forum for the Social Integration of Immigrants allowed a common, shared point of view on the process of naturalisation to be taken.

2.1. Intra- and inter-group differences

The acquisition of nationality should be understood as the final step in integration. But what is certain is that the access process based on residence, beginning with its own legal framework, creates a set of differentiations between immigrants that discourages naturalization, especially for certain communities. In this sense, naturalisation maintains the status quo that is being developed by both the immigration policy (borders) and that of integration in Spain. That is to say, it is a process that makes it difficult for certain immigrants to become part of the group of the population with Spanish nationality, which has preferential norms for certain groups of immigrants and thereby seems to create a degree of “origin selectivity”.

Starting with the naturalization by residence’s legal framework we find that it establishes rules of exception that produce differences between groups of immigrants.

First, the Civil Code (CC) (Article 22.1) establishes that residence must have been for ten years, with the exception of nationals with “historical links”. This difference, which is hardly sustainable nowadays, has become especially relevant during the economic crisis, given the irregularity arising from the loss of employment that has led some immigrants who already had stable residences to lose all possibility of acquiring nationality. This step to the irregular status has occurred in both migrants categories (2 and 10 years of regular residence), although second group’s chances are higher.

Second, Article 23.b of the CC specifies that in naturalisation the immigrant must give up their previous nationality, with the exception of those who come from countries with “historical links”. For immigrants subject to this criterion, having to give up their original nationality creates a disincentive towards the naturalisation process as well as towards the nationality itself. Some of the mentioned previous studies have shown that around 30% of the foreigners in Spain do not want to be nationalised for precisely this reason. Preserving their previous nationality is a significant advantage to them, from practical as well as emotional and psychological standpoints.

To the legal framework must be added the administrative process that underpins and endorses the mentioned differ-

entiation phenomenon. Many immigrants see the process of naturalisation as complicated, lacking in transparency and clarity and serving as a means of selection of new citizens. First, and from a practical perspective, some of the documents that must be presented to make the application produce differentiating situations according to country of origin. The most notable of these is the criminal record certificate from the country of origin – each country has its own procedure and the possibility, facility or time period for issuing the document is not the same for all countries of origin. Some of the countries where obtaining the document is complex or even involve problems in the issuing of the document are Brazil, because of the quick expiry of the document, Senegal, because of the long process involved, and Cameroon, where the document should be obtained in the country itself.

Second, it is worth mentioning the effect of the high degree of discretion in the process permitted by the law that can bring about differentiating situations through the capacity held by judges or civil registry officials to establish whether a foreigner is suitable or not to be a national through the issuing of a report. This is particularly significant in reference to the need to justify “good citizenship conduct and a sufficient degree of integration into Spanish society”, as set out in CC Article 22.4. These two requirements in the naturalisation

process allow great regulatory ambiguity by not establishing clear and specific criteria of what they mean and how they are justified during their application.

In this framework it seems relevant to take a closer look at two issues. First, on the natu-

ralisation refusals resulting from bad conduct in cases where a police report has been filed because of a simple identity check due to police racial profiling on the street. This is especially significant when we consider that this kind of identity check is performed most often on people of sub-Saharan and North African origin.

Second, the civil registry checks the “degree of adaptation to the Spanish culture and lifestyle” (Regulation on the Law of the Civil Registry) by interview. Though the Directorate General for Registries and Notary Affairs attempted to delineate the concept of integration as far as possible in its instruction of July 26th 2007 specifying that there must be “something more than the simple passing of time” and that of October 2nd 2012 where indicating that “it is not reduced to an acceptable knowledge of the language, but knowledge of the institutions, customs and adaptation to the Spanish way and style of life are necessary”, what is certain is that neither the content nor the format were firmly established. In practice, this lack of regulatory development has led the legal officials in some civil registries to perform no check at all (Granada and Madrid) while in others a complex written test is carried out (Getafe, Malaga and Barcelona). Likewise, it should be mentioned that in registries where examinations are conducted, they are not given to all immigrants in a systematic way but there appears to be a degree of inten-

The procedure to access nationality through residence maintains a system of differentiation both between immigrant collectives (by origin) as well as for individual characteristics

tionality in their application. The results of the investigation allow us to state that an asymmetric system results in terms of requirements that favours immigrants with some specific group or individual characteristics: Latin American origin, Spanish speakers, non-Muslims, young people, medium to high socioeconomic level, highly qualified.

Ultimately, we find ourselves not only with a system of preference for some communities, but one that also presents extra difficulties to others. From the results, it can be said that both North Africa and Pakistan nationals face larger obstacles at the time of naturalisation and therefore face a higher number of denials. In the same way it is difficult to state that one single naturalisation process exists within the Spanish state owing to the existence of a clear lack of procedural uniformity. In each civil registry the immigrants may find different practices ranging from the documents to be submitted, the tests to be carried out (in particular to measure integration) and the application process itself (waiting time).

2.2. Effects on the integration process

As is being pointed out, Spain has a complex system of access to nationality based on residence due to its development within a framework with a high level of differentiation. This system seems to respond (or is at least perceived as such by many of the experts and people involved) to an explicit political intention to facilitate access to immigrants with special links. Neither can the importance of so-called “organisational inertia” be underestimated, which is understood as the propensity of certain public policies to continue performing the same activities in the same way if there is no will for explicit change (Moreno Fuentes, 2004).

The various legal residence and nationality schemes have a crucial impact on immigrants’ personal decisions to naturalise themselves, beyond the potential costs. According to the *Immigrant Citizen Survey*, close to 80% of immigrants in Spain (Huddleston and Dag Tjaden, 2012) aims to naturalise. However, the obstacles that go along with the process mean that on many occasions foreigners are dissuaded from naturalisation. This situation can have a high impact in linking certain groups of immigrants with the society in which they live. In fact, it poses an interesting question about the effects of the process of integration of foreign nationals.

In the European context, in which the concept of nationality has been intimately linked to the existence of the nation state, the acquiring of nationality seemed to be the last step in the process of integration – the moment in which the foreigner ceased to be so and became a citizen with full rights. This concept of nationality emerged linked to an implied nationalism that takes for granted the coincidence between political and cultural borders, between citizenship and nationality and which does not get into the discussion over what the features are of the “national” people upon which the existence of the state is legitimated. But, increasingly, there is debate over whether naturalisation is effectively the last step in the full in-

clusion in society or just a step more in the integration process. In that sense, can it be said that naturalised immigrants are better off than immigrants who have not acquired nationality? And, when compared to the autochthonous nationals, do the newly nationalised find themselves in the same conditions? According to the ‘Access to Citizenship and its Impact on Immigrant Integration (ACIT)’ study (Dag Tjaden and Sánchez-Montijano, 2013) and bearing in mind the indicators related to the labour market, social exclusion and living conditions, it can be stated that in most of the countries, immigrants who have acquired nationality are normally better off than non-naturalised immigrants, even taking into account differences in their age upon arrival in the country, residence, education, place of origin, location of the destination country and reasons for emigration. Meanwhile, comparisons between the labour, social and economic situations of the ‘new’ nationals and the original nationals did not turn out to be as positive in those countries where comparative studies have been made (OECD, 2011), which confirms that naturalisation alone does not imply full integration.

In this context, there are two key-effects from the process of naturalisation into the integration of foreign people in Spain. First is the perception that the process is constructed to dissuade or promote naturalisation depending on the foreigners’ national origin. In practice, one of the main effects of

While nearly 80% of immigrants would like to obtain Spanish nationality, the obstacles that accompany the procedure deter them from doing so

the system is to create differences as much between immigrant communities as within the communities themselves. These differences, as has been shown throughout the paper, are the result of an amalgam of reasons such as the differences between the civil reg-

istries, access to information or the manner of justifying integration. This complexity in accessing nationality suggests that what is being produced is the selection of who forms part of the Spanish *demos* that is as much *de jure* as *de facto*, only at different levels. Both in the legal framework and its implementation, the process of naturalisation looks with favour some immigrant communities over others who, despite the length of their residence in Spain, take much longer to solicit and acquire nationality. This can generate a significant sense of exclusion in certain people, who consider themselves to be seen as less desirable in the society of residence. Thus, the system causes the sensation that being a “citizen” or forming part of the Spanish *demos* is relegated to a second level and even brings with it a feeling of rejection and animosity as much towards the procedure itself as towards Spanish citizenship.

Second, a large number of future citizens find Spanish nationality to be a utilitarian instrument for strengthening their legal status. In this sense, having the right to social services in equality of conditions, encountering administrative normality and being able to travel or immigrate are some of the main objectives for which the immigrants naturalise. Further, it allows the enjoyment of the advantages (especially freedom of movement) of being a European citizen. Effectively, naturalising oneself for utilitarian reasons as an administrative solution to many day-to-day situations is not only a real possibility but

a wholly respectable one. Even so, it is a subject that should be treated with caution. On the one hand, because most nationals of the destination country may perceive naturalisation to be a “devaluation” of citizenship (OECD, 2011). On the other, because the acquiring of nationality to solve administrative issues can cause a feeling of alienation that could make difficult the new national’s full participation in the political and social *demos* of the new country of nationality.

The chances of producing feelings of exclusion or alienation, or the possibility that the nationality is perceived as devalued are key elements for consolidating social and political cohesion that should be taken into consideration at the time of establishing a regulatory framework (normative and procedural) for the nationality process.

3. In conclusion: some recommendations

Despite it has been understood in such way for a long time, naturalisation is not the end of the integration process. It is evidently a key step in as far as it confers equality of rights and obligations, but it is not the final goal of the integration process. The process must, therefore, adapt to new challenges.

The objective of this section is to offer some ideas for debate that allow a response to the areas for improvement detected throughout the study. Thus, the suggestions are divided into three areas: the general framework, the regulatory framework and the procedural framework. The guiding logic of all of these is to make progress on a naturalisation process that is transparent, ordered and guarantee-based, in which there is no room for discrimination or opacity.

The feelings of exclusion or alienation arising from the naturalisation procedure complicate social and political cohesion

3.1. General

- It is necessary to begin a constructive debate on the meaning of Spanish nationality in general and on the process of naturalisation in particular. It is also necessary to establish a narrative on nationality that reflects the intentions of the process. It should highlight the need to speak about the acquisition of nationality as the acquiring of rights and obligations, but also as the possibility of participating with equality of opportunities in the political, social, economic and cultural spaces in the society.
- To increase information about naturalisation, about the process and its benefits in general in order to combat feelings of exclusion and alienation and to promote cohesion.
- To provide access to quantitative data in a transparent way: it should be detailed and disaggregated and focus as much on the granting as on the rejection of naturalisation.

3.2. Regulatory

- To draw up a new comprehensive law on nationality that responds to the changes in Spanish society and international mobility:

- Nationality must be an administrative process that is not linked to the Civil Code;
 - Arrangement of different types of nationality: Spanish nationality by origin, by option, by residence, etc.;
 - Unification, coordination and incorporation of jurisprudence (rulings) on naturalisation;
 - Development of precise, clear regulation that relies on the participation of the actors involved in the process;
 - Following of the Ombudsman’s recommendations.
- To establish five years as the general rule for naturalisation based on residence. Although it would be optimal for this regulation to be general rule, it is understood that a more viable proposal would be to opt for five years in general and two for those already enjoying that exceptionality. Even so, it is necessary to emphasise that this difference in the residency requirement is one of the elements that causes greatest differentiation (and perceived discrimination), and the desirability of its modification is greatly shared by the majority of social actors and academics consulted.
 - To favour dual nationality in general, beyond those in the special arrangement granted by CC Article 23.b.

3.3. Procedural

- To provide a clear and homogeneous definition of all steps in the process:
 - Good conduct: clarification and determination of the evidence to be presented, shared by all civil registries;
 - Integration: clarification and determination of evidence to be presented. Avoid duplication of the contributions, especially given the existence of a process such as that of long-term residence which already requires some of this evidence. Certain civil registries have begun to assess integration via a general knowledge questionnaire meant to assess the level of integration of a foreign person in Spanish society. This practice is a clear example of discretion, not only because it is used without defined, public criteria in distinct civil registries, but also because the content of the questions does not fulfil the criteria of objective knowledge. In our understanding, the naturalisation questionnaire is not an ideal solution and therefore we do not consider that its use should be recommended. Even so, if this is the chosen formula to determine integration, the questionnaire must be based on identifiable material (such as a manual) that is both transparent and clear. The United States’ model could serve as an example in this sense. Additionally, it is important to determine the content of the questionnaire: in the majority of European countries in which this type of questionnaire exists, it seeks to demonstrate the historical-legal knowledge of the country of residence, as well as basic knowledge of shared social norms.
- To improve the efficiency and effectiveness of the process through:
 - Regulation of the process and its requirements that is clear and accessible in different languages
 - Common instructions that are coordinated by the civil registries;

- Diversity training for officials – civil registries cannot be a space for social discrimination;
- Establishment of reasonable, homogeneous timeframes for the process (from the appointments to the final decision), using the advantages of electronic administration.
- To address the intra- and inter-group discretion differences and gaps by:
 - Avoiding any kind of discrimination by origin, age, education, etc.;
 - Establishing a mechanism of supervision of the process, that is accessible to people who consider their rights to have been jeopardised.

These proposals are talking about naturalization, indeed, but also public policies of inclusion, minority rights or affirmative action. It seems necessary, therefore, that the debate on nationality should incorporate the citizenship dimension. Nationality means the role of a person, supported by the state through secondment or consent, to act in the public sphere with full rights. Meanwhile, citizenship implies the recognition of political community, meaning the real exercise of this belonging and of the process of inclusion in the *demos*.

Avoiding nationality-citizenship link could mean recurring conflicts in which those who are outside are individuals who, despite being nationals, do not recognise or are not recognised as full belonging members of the national community. Furthermore, it would be necessary to frame these results within the theoretical debate in order to discuss if this exclusion by the nation-state is contrary to the principles of equal treatment and non-discrimination.

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