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Policy Brief - SPAIN

### **The project aims**

#### **EMILIE PROJECT OVERVIEW**

EMILIE examines the migration and integration experiences of nine EU Member States and attempts to respond to the new challenges that multiculturalism is facing in Europe in the early 21<sup>st</sup> century. EMILIE studies three important areas: Education; Discrimination in the workplace; Voting rights and civic participation, in Belgium, Denmark, France, Germany, Greece, Latvia, Poland, Spain and the UK. EMILIE aims to:

- track the relationship between migration-related diversity and citizenship, i.e. multicultural citizenship, across these EU countries; and
- identify whether multicultural citizenship is emerging in Europe, and if so what distinctive patterns and types can distinguished.

### **Case studies**

EMILIE conducted three policy-related case studies in each country. The first set of case studies focused on education policy and the measures and practices adopted in dealing with cultural diversity in secondary education. The second set of case studies assessed the implementation of the EU 2000 Anti-Discrimination Directives in the different national contexts. And the third set of case studies investigated voting rights and overall issues of political participation and representation of migrant communities and ethnic minorities in the countries studied.

### **Definitions**

(Multicultural) Citizenship: The notion of citizenship requires a self-governing political community in which individuals have rights and correlative duties enforced by law but are likely to also have a sense of shaping and being shaped by a public space that goes beyond law and politics. Multicultural citizenship debates ask how citizenship can be fully enacted for and by individuals that are culturally diverse.

### **Methods, data and period of reference**

Each case study focuses in the last twenty year period (from 1989 till today). Data collected include policy documents, media coverage, scholarly studies, statistical data, qualitative interviews with key informants, and where it has been possible discussion groups with civil society actors and policy makers.

### **Focus**

The project is concerned with migration-related cultural diversity and not with historical, native ethnic minorities. Special attention is paid to religious diversity and issues concerning Muslim migrants as their integration in European societies has been approached as increasingly challenging in these EU Member States.

### **Main findings**

- Immigrants face significant discrimination on the level of access to the formal labour market and at the workplace. Discrimination is also evident in other areas, namely access to housing and mortgages, social services and in encounters with the police.
- The most important efforts directed to fight the discrimination of immigrant workers are related to the combat of “exploitation” of irregular immigrant workers in the underground economy.
- It is estimated that at least 670,000 undocumented immigrants are working in the underground economy at present. This number has not diminished in the last years, in spite of the “normalization” (instead of former regularization) process of 2004.
- Immigrants are working under temporary contracts more often than Spanish nationals.
- Discrimination of immigrant workers in Spain primarily refers to those working in the underground economy facing harsh working conditions, without basic rights and protection.
- The transposition of the anti-discrimination Directives in Spain has not stirred any noteworthy political debate; Moreover, there is a marginal use of the instruments put into place to make the new legislation effective (like the Council for equal treatment).
- The RED directives [i.e. the Racial Equality directive (2000/43/EC of 29/06/2000) and the Employment Equality directive (2000/78/EC of 27/11/2000)] have stimulated the (first) developments of anti-discrimination policies and anti-discrimination considerations in collective-contract bargaining. However, in practice, the legal fight against the discrimination of immigrant workers remains largely confined to the combat against the exploitation of irregular workers.

**Background of the Spanish anti-discrimination policy approach**

The change of government in March 2004 has impacted policy orientations. Prior to 2004 when the right wing party *Partido Popular* (Popular Party) was in government, Spanish migration policy was grounded in a traditional security approach and focused on the control of migration flows by toughening the Foreigners Law and by policies concentrated on restrictions and “building barriers”. This restrictive migration policy encouraged the country’s informal economy and increased irregular immigration. However, since the *Partido Socialista* (Socialist Party) has been in government there have been some changes. Most significantly, the focus has shifted from security concerns to matters of integration and the link between immigration and the labour market. Policies are now concentrated on the capacity of the Spanish labour market to absorb immigration. A result of the new approach has been the last regularisation process (called the “normalisation process”) aiming to “normalise” the life of irregular immigrants already working in the Spanish informal economy.

In Spain, discrimination against immigrant workers primarily concerns those working in the underground, informal economy, facing harsh working conditions, without basic rights and no job protection. The fragmented anti-discrimination legislation, the lack of sensitivity or prioritisation among the judiciary, and the lack of overall social awareness on the matter all lead to a more narrow focus of antidiscrimination policy. Namely, to the combat of irregular workers’ exploitation. Any progress on the enforcement of the policy is dependent on local initiatives and non-governmental actors.

Although Spain is a *de facto* multicultural society, the policies attempting to manage migration related diversity remain in the first phase of “the process of multiculturality” (*proceso de multiculturalidad*). In this first phase, the principle concern is for equal access to rights. In the second phase, (once equal rights are guaranteed) discrimination (understood as aberration from a regime of equal opportunities and treatment) is taken into account. The fight against discrimination in Spain is so far concerned with granting migrants the right to equality in the first place: the main barrier that needs to be overcome so that an immigrant enters an environment of equal rights is his/her irregular status. Spain is, in other words, in the first phase of the “process of multiculturality”.

**Discrimination of immigrant workers in Spain**

Discrimination of immigrant workers in Spain is mainly understood as the inequality of access to work and inequality of employment conditions for irregular immigrant workers. Next to this institutionally (or legally) induced discrimination of immigrant workers, there are also other types of discrimination such as *structural* and *personal* discrimination.

The best example of an institutionally discriminating practice is the legal framework that determines the possibilities for immigrants’ entry into the labor market. The Spanish Foreigners’ Law is discriminatory because contracting third country nationals is legally possible only in their country of origin and only for occupations that cannot be filled by unemployed Spanish (or EU) workers in the same sector and region. Therefore, discrimination in hiring in the private sector is enforced by the priority that Spanish and EU nationals have over third country nationals. In order to channel immigration flows into the Spanish labour market, the government has established since 1993 annual ‘labor entry quotas’ (*contingentes*). These yearly established quota check the vacancies for temporary and permanent foreign workers by sector, autonomous community and nationality and have resulted in yet another type of institutional discrimination, as some countries of origin are favoured over others.



Structural discrimination is generated by the duality and segmentation of the labor market in Spain. It is very difficult for third country nationals to escape from the "dirty, dangerous and demanding" jobs of the unwanted economic sectors of the Spanish economy (that are also characterized by a high incidence of informal economic arrangements) to the labour markets that are desired by Spaniards and EU nationals.

At the individual level, third country nationals do face discrimination by their employers, co-workers or labour unions. Studies conducted on individual discrimination have mainly focused on discrimination conducted by employers towards specific immigrant groups upon hiring and at the workplace, in different sectors and jobs. While some employers avoid contracting immigrant workers from certain ethnic minorities (especially for high-skilled jobs), others (small enterprises in sectors such as hotel and catering, agriculture, construction etc.) prefer contracting them instead of Spaniards or EU nationals because it is easier to exploit their differences in race and origin and legal status. In the formal labour markets this type of discrimination is usually practiced by small subcontractors and agricultural employers that are less controlled by the relevant governmental bodies.

#### **Final reflections**

The EU Directives arrived in Spain before any meaningful social and political debate on equal treatment of and opportunities for immigrant workers took place. The Directives have stimulated the (initial) developments of anti-discrimination policies and anti-discrimination considerations in collective-contract bargaining. However, the current fragmented anti-discrimination legislation, the low sensitivity among the judiciary on this matter, and the lack of social awareness of these directives and the relevant Spanish law has resulted in a very small number of court-cases that could test the new legislation. In practice, the legal fight against discrimination of immigrant workers remains confined to the combat against the exploitation of irregular workers, and is highly dependent on local initiatives and non-governmental actors.

The above policy response to discrimination in the labour market is in sharp contrast with respective policy developments in the field of education. The entry of immigrant children in Spanish classrooms has challenged educational practices and debate and concerns of equal rights and opportunities have come at the centre of the policy discourse. The combat of discrimination at the workplace, on the other hand, is perceived as a future challenge by policy-makers and stakeholders. Labour market discrimination policies will need to change in the near future. The price of changing nothing becomes greater as time goes by, since the children of immigrants will be entering the labour market in larger numbers and will be competing with Spaniards and EU nationals for the same jobs. Last but not least, discrimination existing in the labour market strongly influences discrimination in other areas of life.

## Recommendations

In order to prevent the discrimination of immigrant workers, the relevant public and other authorities must:

- Improve the conditions for migrants' legal access to the labour market and secure the legality of their status. To date, the Foreigners Law works more as a legal barrier to the immigrant workers' entry in the Spanish labour market and less as an institutional channel intended to regulate their entry.
- Develop more flexible mechanisms for contracting foreign workers in their countries of origin. Employers' organizations experience and advice should be used towards this end.
- Introduce more flexible terms for the renewal of work permits and provide incentives for access to the Spanish Social Security System.
- Speed up the validation of foreign diplomas and degrees with the view to improve the conditions of equal access to the labour market.
- Improve the working strategies and methods of labour inspections and other mechanisms of control. And vest labour inspectors with greater powers.
- Introduce the principle of equal treatment and non-discrimination horizontally in all policy fields. As a means towards this end, develop a National Plan of non-discrimination, appoint institutions responsible for enacting the Anti-discrimination law (like the Council for Equal Treatment) and vest them with more responsibilities over both policy implementation but also policy monitoring and design.
- Provide a minimum legal base to fight discrimination in the Penal Code.
- Raise social awareness with campaigns that target especially: the judiciary, employers, labour unions, immigrants and the associations representing them. Social groups should not only be better informed about their rights, but also about the instruments available to exercise the latter.

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For more information on the Social Sciences and Humanities Research Programme of the European Commission please see:

[http://ec.europa.eu/research/social-sciences/index\\_en.html](http://ec.europa.eu/research/social-sciences/index_en.html)