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Policy Brief - SPAIN

The project aims	EMILIE PROJECT OVERVIEW <p>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 21st 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:</p> <ul style="list-style-type: none">• 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

- Spain's foreign population reached 5,268,762 people in 2008, representing 11.4% of the total population. Spain has a diverse immigrant population, and its the largest groups come from Latin American countries (36%), African countries (23%), EU countries (22%) and non-EU European countries (12%).
- The Spanish Constitution (Art. 13.2) does not grant immigrants the right to vote and stand for election. Sole exceptions are cases where this right is established by treaty or when the law attends to the principle of reciprocity (see below). This exclusion from political participation does not affect residents who are European Union Member State nationals. EU-citizens have been entitled to vote in municipal and European Parliament elections since the adoption of the Maastricht Treaty in 1993.
- The principle of reciprocity conditions the voting right of immigrants in Spain in the following way: immigrants whose country of origin grants voting rights to Spanish emigrants living in its territory receive equivalent political rights in Spain (for example Norway and also in principle, Argentina, Chile, Colombia, Uruguay and Venezuela). However, this leads to the differential granting of political rights to immigrants and, therefore, the undermining of the objective of common integration.
- The Spanish Constitution's historic legacy associated with the country's transition to democracy poses substantial difficulties and political hesitation to reform it. Essentially, this restraint buries any attempted change on the issue of voting rights for third-country nationals. The institutional and constitutional framework, therefore, does not allow for any extension of voting rights to immigrants at the regional or national level. For this reason, the debate on non-EU immigrants' political rights has been limited to the local level.
- At present, acquiring the Spanish nationality is the main way through which non-EU immigrants can obtain political rights. The Spanish civil code (Art. 22.1) establishes that in order to naturalise, an immigrant has to prove continued and legal residence in the country for 10 years prior to applying. This period decreases to two years for Hispano-Americans and other nationalities historically linked to Spain. In other words, the Spanish civil code establishes a framework of "institutional discrimination", which impacts directly on the equal access to political rights between different nationalities residing in Spain.
- Overall, Spanish immigration policies have focused on the labour market. Migrants have been treated as a work-force and only more recently has the focus shifted to integration policies that approach migrants not only as workers but as residents and potentially future citizens.

The Current Public Debate

Political rights and political representation of migrants is one of the main ongoing debates related to immigration in Spain. The demand for immigrant voting rights from immigrant associations, left-wing political parties and other social actors has become more pronounced in pre-election periods. This issue has been intensively discussed by consultative bodies at the local and national levels and has become part of the agenda of a number of Spanish political parties, including the governing Socialist party.

Article 13.1 of the Spanish Constitution equates the rights of foreign residents to those of Spanish citizens. However, Article 13.2 does not grant immigrants the right to vote and to stand for election, except in cases where it is established by treaty or when the law attends to the principle of reciprocity. European Union Member State nationals are not affected by this rule. They have been entitled to vote in municipal and European Parliament elections since the adoption of the Maastricht Treaty, which led to the reform of the Spanish Constitution, the issuance of the Constitutional Tribunal's interpretation, and the subsequent adaptation of Spanish legislation to this treaty. Apart from the agreements signed with the Netherlands, Denmark and Sweden before the establishment of the EU and European citizenship, the only bilateral agreement that has been effective is the one made with Norway in 1990 – this agreement gave Norwegian nationals resident in Spain the right to vote in Spanish municipal elections. Spain has also signed similar agreements with Argentina, Chile, Uruguay, Venezuela and Colombia, but these have not yet been implemented and transposed.

The Spanish government is, however, in the process of taking the first steps to promote voting rights for immigrants. In September 2008, the government asked the Council of State to draft a report on the reforms of the electoral regime that would be required and the relevant constitutional constraints. In addition, in August 2009 the Council of Ministers appointed an Ambassador for the promotion, negotiation and signing of reciprocity treaties in order to further expand this constitutional exception to additional nationalities who are residing in Spain.

The debate on immigrants' voting rights has two dimensions. The first concerns the territorial dimension of elections. More specifically, a Spanish citizen has the right to vote in elections at four different levels: the European, the national, the regional and the local. The core debate therefore revolves around which level of governance non-EU immigrants should be allowed to vote. The second debate focuses on the legal criteria that should be used for granting voting rights to immigrants, i.e. access to citizenship and access to political rights through the principle of reciprocity and permanent residence.

Main challenges

1) **Territorial Level.** The first challenge concerns the level at which non-EU immigrants should be allowed to vote. As mentioned above, the Spanish Constitution only allows immigrants from the EU and countries with the principle of reciprocity to vote in local elections. The Constitutional Tribunal considers that the right to vote at the local level does not affect national sovereignty; the rationale being that local elections are considered to be of a purely “administrative” nature. This interpretation facilitates the required constitutional reform of Article 13 in order to promote voting rights for non EU- third country nationals at the local level. However, it renders the extension of immigrants’ voting rights to the regional and national level more complex. Such an extension would require the reform of Article 23 related to voting rights and Article 1.2, which states that sovereignty derives from the Spanish people.

2) **The Spanish Constitution.** Political rights for third country nationals was not an issue at the time when the Constitution was written in 1978. Efforts to promote the voting rights of immigrants are at present hindered by the difficult choices that constitutional change would pose to political parties. The latter hesitate to put such dilemmas on their agendas because they fear the political cost of challenging the political consensus around which the democratic transition of Spain was established when the Constitution was drafted after the long rule of Franco’s dictatorship.

3) **The Spanish Civil Code.** Article 22 of the Spanish Civil Code establishes that, in order to naturalise, an immigrant has to prove 10 years of continued and legal residence before applying, or two years if he/she has a Hispano-American or other nationality historically linked to Spain (this applies, therefore, to nationals coming from Ibero-American countries, Andorra, the Philippines, Equatorial Guinea, Portugal or to Sephardic Jews). In other words, the Spanish Civil Code establishes a framework of institutional discrimination, which has a direct impact on political rights. Some nationalities are more eligible than other nationalities when it comes to obtaining voting rights. This ethnicization of access to voting rights is therefore more structural rather than social or political.

4) **The Principle of Reciprocity.** The principle of reciprocity was established with the approval of the Spanish Constitution, in a historical period during which a substantial number of Spaniards lived as emigrants abroad. Hence, the rights enjoyed by Spanish emigrants in their host countries conditioned the voting rights of immigrants in Spain. This principle distinguishes between immigrants of different origin, and therefore indirectly challenges the objective of common integration. Moreover, if voting rights are promoted via the principle of reciprocity, a “recognition à la carte” situation may occur: the Spanish government would be promoting the rights of immigrants on a preferential basis, based on criteria such as, the size of the immigrant group and political or economic interests. Reciprocity also excludes immigrants from countries with non-democratic regimes and from countries, like Ecuador, that prohibit their citizens from voting outside the country. To sum up, the reciprocity mechanism provokes inequalities between different groups of immigrants. It also creates legal complexities, because of differences with the legal regimes of the signatory countries

Recommendations for promoting migrant political inclusion and participation

Reform of the Spanish Civil Code

A reform of the Civil Code in order to avoid discrimination by nationality, culture or origin, when applying for Spanish citizenship, would be an important step in promoting immigrant voting rights. However, for many immigrants naturalisation requires giving up their original nationality. This is a high price to pay with wide-reaching family, legal and personal implications for immigrants. Thus, double citizenship should be allowed as it would consolidate migrants' sense of belonging to the host society while also maintaining his/ her links with the country of origin nationality.

Abolition of the Principle of Reciprocity

We do not consider the extension or promotion of the principle of reciprocity as an optimum approach through which to promote immigrant voting rights. Although, reciprocity would ensure that some resident immigrants gain the right to vote in a relatively quick and non-politicised manner, it would equally deny this right to many other immigrants. Reciprocity agreements discriminate against immigrants who come from countries that do not or cannot have such agreements with Spain. The reciprocity principle is not the appropriate solution because international treaties or diplomatic practices are external mechanisms that lack the power of a domestic institution to monitor and efficiently promote migrants' rights. Reciprocity agreements involve long negotiations and diplomatic steps before the treaties are signed or ratified and in some cases may rely on further agreements for their implementation. Until now, Spanish governments have considered abolishing the principle of reciprocity, but it is argued here that its abolition is important not only for reasons of discrimination, but also on another matter of principle. Namely, reciprocity agreements essentially contradict democratic principles since they promote fundamental human rights (in this case political rights) selectively through bilateral agreements.

If there is no constitutional reform, the reciprocity principle will perpetuate inequalities between immigrants of different origins and threaten social cohesion. Rather, what is needed is a constitutional reform that would promote migrants' political rights based on length of residence in the country and other objective criteria.

Reform of the Spanish Constitution

One way through which the Spanish Constitution could be reformed involves deleting the requirement of reciprocity in Article 13.2, or deleting point 2 entirely from Article 13. In order to do so the process of constitutional reform established in Article 167 would have to be followed. This process would require the approval of the reform by a majority of three fifths (3/5) of each of the Chambers (The Spanish Parliament, *Cortes Generales*, is made up of two Chambers, the Congress and the Senate, and both Chambers represent all of Spain, see Art.66 of the Spanish Constitution). This is the formula that was used to allow European residents to take part in local elections after the adoption of the Maastricht Treaty (1993).

The second path towards enfranchising non-nationals would require, according to the criteria of the Constitutional Court (Statement of July 1 1992, F. 3.c), a modification of Article 1.2 (Spanish Constitution, Article 1.2: "National sovereignty belongs to the Spanish people, from whom all State powers emanate."). In order to do so, we would have to resort to the more complex procedure set out in Article 168: that is, the approval by a two thirds (2/3) majority in each Chamber, the immediate dissolution of the Chambers and new elections held. The new constitutional text approved by the *Cortes Generales* (Spanish Parliament) would then need to be submitted to a referendum for ratification.

The first approach that involves the reform of Article 13.2 of the Constitution in order to grant voting rights to immigrants who have fulfilled 5 years of permanent residence is supported by the *Convention on the participation of foreigners in public life at local level* (Council of Europe, 1992) and the Report prepared for the European Commission *Handbook on Integration*. This approach is also the one that we consider is the most appropriate for Spain's quality of democracy.

Role of NGOs

In Spain, NGOs or trade unions, are strongly campaigning for the right to vote for immigrants. Although a number of proposals have been put forward, most of them are not viable or easy to implement. Against this background, it is therefore argued that their concerted efforts would probably be more effective if these NGOs focused their claims and resources on advocating for the abolition of the principle of reciprocity, and the promotion of voting rights after 5 years of permanent residence instead.

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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