
**Undocumented Workers in Spain
and the Politics of Regularization**

Inara Stürckow

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Summary

By the end of 2004, low migration flow regulation contributed to a high rate of irregularity and hampered adaptation of foreign labor supplies to the demands of the Spanish labor market, contributing therewith to an increase in irregular workers. The remarkable change came with the change of government in March 2004 and with the approval of the Royal Decree 2393/2004 which established a complex system for managing immigration and was accompanied by the sixth and final regularization process, driven by government, business, and employer organizations in the framework of the Social Dialogue.

This paper analyses immigration in Spain, paying special attention to illegal immigration, a structural feature of the Spanish immigration regime, and to the extraordinary regularization processes that are key tools for immigration management. First, it provides a brief chronological reconstruction of Spanish immigration history and the evolution of the legal framework to the present day. Based on this, it analyses irregularity and regularization, highlighting the normalization of 2005, the most important regularization process, and the role of business and employer organizations in it. Furthermore, it addresses how the last five years have had an impact on (illegal) immigration and contributed to a revision of the Spanish immigration model.

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Immigration in Spain

Once a country of emigration due to economic and political reasons, and with an emigration tradition dating back over five hundred years, in the past two decades Spain has become, like other countries in the South of Europe, a country of immigration in terms of annual flows, and, since 2000, a country of mass migration.

In the process of constituting 'immigrant Spain' (*España inmigrante*) (Cachón 2002 and 2009), Cachón uses Dassetto's concept of the 'migratory cycle' as a starting point, defined as 'the set of processes by which people belonging to a peripheral economic space enter, establish and settle in the space of a nation-state which belongs to the central poles of the capitalist economy' (Dassetto 1990: 16). Based on this concept, Cachón (2002) distinguishes three stages in the conversion of Spain from a country of emigration into one of immigration: before 1985, from 1985 until 1999, and the last and most important stage, from 2000 onwards. He points out that "the chronological stages recognized in immigration in Spain do not conform (they do not have to) to the three "moments" of the migration cycle, but [...] as we will see, the problems identified in the "migration cycle" of Dassetto do appear' (2002: 102). In the first stage, which runs until 1985, Spain played the role of a country of emigration within the international population flow, and this emigration was of enormous importance to the Iberian country. Immigration in Spain was mainly of European origin; immigrants were primarily pensioners or annuitants who settled in Spanish territory. In the mid-1980s, when the country entered the second stage of the migration cycle, a 'new immigration' appeared as the characteristics of immigrants changed. Immigration then transformed into a 'social fact', as understood by Durkheim. According to Cachón, the triggering factor of this stage of transition was the "attraction factor" which produced a "calling effect" from the perspective of the labor market restructuring taking place in Spain in those years and the remarkable change in the level of desirability of local workers' (2002: 104-105). This mismatch in the Spanish labor market that marked the second stage 'acted as the engine that put Spain on the map of international migration as a possible destination country' (Laparra and Cachón 2009: 41). The third stage of the migration cycle began in 2000 when Spain, due to a multiplicity of reasons, entered a new phase of migration that coincided with economic and social globalization, and placed the country in the current 'age of migration' (Castles and Miller 2009). Since then, the 'institutionalization' of immigration as a 'social fact' or as a 'social problem', as understood by Lenoir (1993), has taken place in Spain

(Cachón 2002: 106-107). Lenoir distinguishes three sets of factors that influence the formation of a 'social problem': first, changes in daily life caused by environmental changes, primarily by changes in the labor market; secondly, the processes of 'evocation,' of 'imposition' and 'legitimation'; and thirdly, immigration becomes a 'social problem' through 'institutionalization' by the establishment, for example, of immigrant organizations, the development of an integration plan, or the study of migration (Cachón 2002:107-108). Around 2000 arose 'issues related to citizenship [...], relevant processes of conflict and struggle for demands for improved working and life conditions and – above all, and before that – the struggle for documents, for the recognition of legality, which will “enable” a claim for citizenship rights. And for social co-inclusion challenges arise’ (Cachón 2002: 107).

Characteristics of the immigration phenomenon

With regard to the characteristics pertaining to the immigration phenomenon in Spain, it is possible to highlight some essential features derived from the nature of recent immigration which significantly contributed to these important transformations in Spanish society (see Arango 2002; Oliver Alonso 2008; Cachón 2002 and 2009). The composition of the immigrant population is primarily young, which is called, in demographic terms, a 'typical age effect' (Arango 2002: 3). Furthermore, there is great diversity with respect to immigrants' countries of origin, their socio-occupational profiles, educational levels, and their migration projects. Due to the consolidation of migration networks, from 2000 Spain started to register an increase and diversification of migration flows, and an uneven sectoral distribution of immigrants across the territory. Family reunification also affects the characteristics of immigrants and results, in the long run, in the emergence of a second generation. Another feature of Spain's immigration is the high participation of foreign workers in the labor force. Yet migrant workers are over-represented in certain economic sectors such as construction, agriculture, gastronomy, domestic service, and retail, where their presence has already been consolidated and their jobs can be defined as '3D jobs: dirty, dangerous, demanding' (Cachón 2002: 121). Cachón states that the 'status of immigrant workers [...] is a key feature in the understanding of immigration in Spain and to comprehend immigrant vulnerability' (2009: 247). But, as stressed by Arango, 'probably no aspect of immigration in Spain is as influential and important as the high proportion of irregular migrants, which is a chronic feature [of the immigration landscape] despite the existence of frequent opportunities for regularization' (2002: 14). Irregular migration, caused by different factors, is a structural feature in Spain.

Immigration in Spain is recent and unexpected (Izquierdo 1996), and, since 2000, it has been particularly rapid and sustained, responding to labor market imbalances and attracted by economic development and the welfare state. Nowadays it seems that the crisis has ended an exceptional period, a 'prodigious decade of immigration' (Oliver Alonso 2008: 18; Arango 2009: 54). It is possible that the immigration patterns will change after the crisis, and, compared to previous years, will evolve differently. Immigration has been at a crossroads since then (Aja *et al.* 2008: 10), just as at the beginning of the twenty-first century (Arango 2002: 15).

The foreign population

Immigration flows are a very recent demographic reality in Spain and only since the beginning of the new century have the number of foreigners become significant. The immigrant population has increased six-fold in just ten years. While in 2000, 923,879 foreigners were registered in the Municipal Registry (*Padrón municipal*), in 2011 there were 47,190,493 people registered living in Spain, of which 5,751,487 were foreigners. Thus, in only a decade, foreigners have gone from representing 2.3 per cent of the total population in Spain in 2000 to 12.2 per cent¹ of the total registered (*empadronados*) in 2011. This 'uniqueness' (Pajares 2009: 24) experienced by Spain in recent years is a phenomenon that has not happened in other countries around Europe; while countries like Ireland and the UK have also been important receiving countries, they have not reached the levels of Spanish immigration. Yet, for the first time in ten years, net migration² was negative in 2011 (-50,090). The number of persons who left the country (507,740), of which 445,129 were non-Spanish nationals, surpassed the number of immigrants (457,650). This situation can be attributed to the economic situation and to the lack of employment.

On 1 January 2011, the five most numerous immigrant communities in Spain were the Romanians (865,707), Moroccans (773,995) and at a significant distance, communities from the UK (391,194), Ecuador (360,710) and Colombia (273,176), thus reflecting an immigration structure which is clearly inter- and intra-continental, affected by the geographical proximity of Morocco and the linguistic and cultural ties with Latin America. This range of nationalities is a typical feature in 'immigrant Spain.' As to gender, 52.1 per cent (2,998,707) of all registered foreigners were male and 47.9 per cent (2,752,780) female. In terms of age – one of the key features of immigration in Spain – immigration is still very young: 60.9 per cent were

¹ Data according to the latest official figures relating to 1 January 1 2011 of the Municipal Registry of the National Statistics Institute (INE).

² According to recent population estimates released by the National Statistics Institute (INE) published on 16 January 2012.

between 16 and 44 years (3,503,046), thus situated in the most active and reproductive age-groups.

Given the variety of social, national, and family backgrounds of the foreign population and the plurality of reasons and migration projects, immigration has changed the face of Spain, making it much more diverse, culturally richer, and more heterogeneous. Since the beginning of the twenty-first century, immigration has helped form a new Spanish society characterized by some features which are quite different from those which characterized Spanish society in recent decades.

Immigration Policy

Since 1985, following the approval of the first Law of Aliens, immigration policy has undergone substantial changes (Solanes 2010: 77). On the eve of Spain's entry into the then European Economic Community in 1985, the Organic Law 7/1985 on the Rights and Freedoms of Foreigners in Spain (*Ley Orgánica de Extranjería*, LOE) was passed, defining for the first time an immigration policy, even though, back then, the phenomenon of immigration accounted for barely 0.2 per cent of the Spanish population. The first immigration law was an 'heir to a political community,' 'centralized and implemented from above' (Agrela 2005: 11), and, despite its title, it was almost exclusively focused on the regulation of non-Spanish nationals entering, staying in, and exiting the national territory. The law also aimed at facilitating the expulsion of illegal immigrants and was passed 'to provide security for other Community states that Spain would not be a loophole for immigrants' (Aja 2006a: 21). In those days, immigration fell under the jurisdiction of the Ministry of the Interior under the socialist government. Cachón notes that 'not only the LOE "creates" the figure of the irregular immigrant, it also promotes the increase of this phenomenon as, in practice, the ability to enter legally with a contract of employment is removed' (2009: 169).

While in the second stage of the formation of 'immigrant Spain' the Immigration Law stayed in force for fifteen years and was complemented by only two Regulations in 1985 and 1996; in the third stage, between 2000 and 2011, five legal reforms and three regulatory changes took place. Particularly up to 2005, 'the main feature of the legislation on foreigners in Spain was instability' (Santolaya 2005: 274). Because of its size and rapid development, immigration policy has faced serious difficulties that have hampered its work significantly (Solanes 2010: 97).

In 2000, the first Immigration Law was replaced by Organic Law 4/2000 (LO 4/2000), of 11 January, on the Rights and Freedoms of Foreigners in Spain and their Social Integration. The new law, passed by a parliamentary majority led by the Spanish Socialist Party (PSOE) and against the opposition of the *Partido Popular* (PP), in those days in office, introduced major changes, including a statute which created well-defined rights for non-Spanish nationals; improvement and extension of access to health care rights and education; extension of the right to freedom of association for undocumented immigrants; and granting of free legal aid to non-Spanish nationals in administrative and judicial procedures. It was something utterly new

that the law recognized undocumented immigrants, did not provide for their expulsion, and introduced a process of ordinary individual regularization as a way out of the situation of irregularity. At the time, this law was considered 'the most progressive law in the European Union on immigration' and represented 'clear progress [...] in the legal status of foreigners' (Relaño Pastor 2005: 110, 114). But in less than a year the new law was amended by Organic Law 8/2000, adopted on 22 December 2000, by an absolute majority of the PP in Parliament and with the parliamentary opposition voting against. The most severe criticism of the reform referred to the unjustified cut in the fundamental rights of immigrants. The reform eliminated the right of assembly, demonstration, association, union, and strike for irregular migrants (Cachón 2009: 172), thereby directly violating the European Convention on Human Rights (Chueca 2002: 242). In 2003, in a short timeframe, two additional amendments to Organic Law 4/2000 in Organic Law 11/2003 of 29 September and Organic Law 14/2003 of 20 November were made. The first was not remarkable so much for the changes it implied than for its title³, which brought together the issues of 'safety, domestic violence and social integration of immigrants' and linked 'increased immigration with the increase in crime' (Aja 2006a: 36). The second reform, approved by the PP and PSOE, introduced numerous changes to the Organic Law 4/2000, especially in terms of visas, including the job search visa (Cachón 2009: 172).

The year 2004 marked a change of great importance in immigration regulation. Spain, at that time, had to make adequate arrangements to improve immigration regulation, which suffered from weaknesses. When the PSOE came to power in March 2004, and José Luis Rodríguez Zapatero was elected Prime Minister, a period of stability began in immigration, and the integration of immigrants began to take much more space on the government's political agenda. The government's efforts to promote a more liberal, more open view on the issue of immigration made possible the adoption of the Regulation on immigration by Royal Decree 2393/2004 of 30 December. According to Cachón, the new Regulation was the 'linchpin' of immigration management because it recognized a labor status for immigrants regardless of their legal situation (regular or irregular), it tried to create a system applicable to different procedures of entry, and achieved regulations with the agreement of social partners (2009: 174). This Regulation, as Santolaya also notes, 'has sought not so much an agreement between political forces, but especially with unions and employers, in the context of an intelligent employment system, which is the great challenge of this legislation' (2005: 243). The report 'Immigration and the labour market in Spain,' by the Economic and Social Council (*Consejo Económico y Social*, CES),

³ Organic Law 11/2003 of concrete measures in matters of civic safety, domestic violence and the social integration of foreigners (Ley Orgánica 11/2003, de 29 de septiembre, de medidas concretas en materia de seguridad ciudadana, violencia doméstica e integración social de los extranjeros)

which highlighted the need for immigration policies to take better account of labor market needs, had a crucial influence on the Regulation. Besides having been agreed in dialogue with social partners, the new Regulation significantly changed the direction of migration policies.

One of the main objectives of the Regulation was to cut down illegal immigration and therefore it created a series of mechanisms to reduce and fight irregular migration. The new Regulation increased the possibilities for individual and permanent regularization through *arraigo*⁴ (rootedness for labor, family, or social reasons) and implemented a new regularization, called 'normalization,' early in 2005, the 'cornerstone of the new Regulation.' Another great virtue of the Regulation was the re-establishment of the general employment system as the main route to legal immigration (Aja 2006a: 41). The Regulation also provided for the increase of channels granting legal access to the labor market and facilitated the hiring of workers for vacancies which are hard to fill, through the 'Catalogue of Hard-to-fill Positions' established province by province on a quarterly basis. Moreover, it provided strengthened immigration enforcement mechanisms, such as labor inspections and the tightening of sanctions against employers who hired undocumented workers. This meant a shift in Spanish immigration policy because instead of prosecuting immigrant workers, the government, with the new regularization, began to fight informal employment and the shadow economy and to encourage employers to follow legal channels, involving them in the formal labor market, reducing the exploitation and abuse of workers, and increasing contributions to Social Security (Arango and Jachimowicz 2005).

Unlike the previous government of José María Aznar (PP), the Socialist government made a distinction between management of migration flows and integration policies, thereby de-linking immigration-related issues from security, which, according to Pinyol i Jiménez, also explains the administrative transfer of the migration issue from the Ministry of Interior to the Ministry of Labor and Social Affairs (2008: 58). In 2008, the second Zapatero legislature created the Ministry of Labor and Immigration, which is currently responsible for immigration. From 22 December 2011, after the general elections of 20 November that led to the victory of the PP, the Ministry was renamed the Ministry of Employment and Social Security even though it retains the same powers. The new government of President Mariano Rajoy has removed the Secretary of State for Immigration and Emigration.

Five years after the reform in 2003, the immigration law was amended at the end of 2009 by Organic Law 2/2009 of 11 December. The fourth reform, led by the Socialist government, introduced some new changes but 'cannot be described without incurring drastic exaggeration' (Aja *et al.* 2009: 14). Among the changes were the

⁴ Meaning something close to rootedness.

extension of the maximum period that an illegal immigrant can be detained pending deportation from 40 to 60 days and restrictions on family reunification of immigrants with long-term residence permits limiting it primarily to family members of the nuclear family. In addition, it extended the powers of autonomous communities with regard to recruitment and immigration management (Aja 2009); it introduced measures to protect victims of domestic violence and trafficking in human beings, and hardens the infraction and sanction systems. Among the reasons given for the reform, three are of particular interest: the need to adapt certain provisions of Organic Law 4/2000 to the jurisprudence of the Constitutional Court; the requirement to transpose certain EU directives on immigration into domestic law; and the need to adapt the law to the new requirements of the migration situation in Spain (Solanes 2010: 91-95). With the reform, the integration of migrants acquired, for the first time, the status of organic law, and the law devotes an article to it, with the intention to 'offer [the precept] a minimal response to one of the big issues pending: the connection between integration and rights' (Solanes 2010: 93).

The integration topic, until now, was part of strategic planning in different integration plans. In 1994, the Council of Ministers approved the first 'Plan for the Social Integration of Immigrants,' conceived as an integration mechanism that would provide guidance to policy integration. The Plan established two 'essential' instruments: the Permanent Observatory on Immigration (*Observatorio Permanente de la Inmigración*, OPI) with centralized monitoring and reporting within the Department of Migration and the Forum for the Social Integration of Immigrants. The latter, which gradually altered its essence due to legislative and policy changes, was created as a consultative, informative and advisory organization for the government, constituted in tripartite form by representatives of all public administrations, foreign and social support organizations, including trade unions and business organizations. The main objective of the Forum is to promote the participation and integration of immigrants in Spanish society, recommending, informing, and channeling actions directed at achieving this objective. Among its functions are to draft proposals and recommendations that promote the integration of immigrants and refugees into Spanish society; draft reports on the proposals, plans, and programs that may affect immigrants' social integration as required by national government bodies; prepare annual reports on activities undertaken and on the situation of the integration of immigrants and refugees; receive information on programs and activities carried out by national, regional, and local government; collect and channel proposals formulated by the social organization of immigrants; and to cooperate with other organizations at a regional, local, or international level, seeking better coordination of actions that aim at the same objectives. Bruquetas-Callejo *et al.* point out that 'although, in the beginning, the Forum lacked support from the ministries, besides those of Labor and Social Affairs, its position was subsequently consolidated to ensure participation by all relevant ministries and institutions in its functioning' (2008: 11).

In 2001, the government adopted the Global Programme to Regulate and Coordinate Foreign Affairs and Immigration in Spain (the so-called Plan GRECO) valid until 2004. Later, in 2006, it adopted the 'Strategic Plan for Citizenship and Integration' (*Plan Estratégico de Ciudadanía e Integración*, PEI) for 2007-2010, drawn up from a dialogue involving maximum participation and coordination across a range of social institutions. In the preparation for PEI, immigrant associations, NGOs, local, regional, and national experts from academia and trade unions, and employers were all involved. In September 2011, the Council of Ministers approved the second 'Strategic Plan for Citizenship and Integration' for the period 2011-2014 which followed on from the first of these plans. According to Aja, the new law of 2009 finalized certain integration policy elements and is 'moving in this direction [...] albeit in an insufficient manner' (2009: 39).

The evolution of immigration in Spain has influenced successive reforms of the Immigration Laws. On 30 June 2011, the new Immigration Regulation came into force, adopted on 30 April by Royal Decree 577/2011 and following the latest modification of Organic Law 4/2000 which resulted in Organic Law 2/2009. This new Regulation is, according to González Beilfuss, 'an event certainly relevant' to immigration policy because it is a 'clear legal framework, coherent and consistent with claims of completeness of immigration in Spain' (2011: 13). In its development, the government maintains the Social Dialogue, tentatively introduced in the field of migration in the drafting of the 2004 Regulation, in order to achieve a global agreement with political, social partners, trade unions, employer associations, and NGOs. In socio-occupational issues, the government, together with the trade unions CCOO (*Comisiones Obreras*, Workers' Commissions) and UGT (*Unión General de Trabajadores*, General Union of Workers), the CEOE (*Confederación Española de Organizaciones Empresariales*, Spanish Confederation of Business Organizations), and CEPYME (*Confederación Española de la Pequeña y Mediana Empresa*, Spanish Confederation of Small and Medium-Sized Enterprises) reached an agreement on the draft Regulation which highlighted seven main elements of consensus, including better regulation of migration flows linked to the labor market and the effective integration of the immigrant population in the labor market and in Spanish society. They stressed that labor immigration is 'an area where it is essential that the government and social partners reach consensus' (UGT, 21/02/2011).

The economic crisis has had a major impact even on the immigration phenomenon in Spain, and the new Regulation addresses the new economic and migration cycle and tries to overcome certain shortcomings of the previous regulations found at specific points. It also aims to increase legal certainty in legal immigration procedures by simplifying, streamlining, and ultimately providing them with more clarity. For example, requirements for granting a residence and/or work permit were clearly regulated. The new Regulation

introduces material changes but it does not change the existing immigration model based on the regulation of (labor) migration flows, linked to the labor market, the promotion of social integration and equal rights and duties, and the fight against irregular migration. Among the general challenges and objectives are, *inter alia*, the strengthening of the link between labor migration and the national employment situation, the adaptation of immigration policy to active employment policies, and the promotion of voluntary return as well as the circularity and the attraction of foreign talent. It also aims to facilitate and encourage social integration and to strengthen protection for victims of domestic violence (González Beilfuss 2011).

Spanish immigration policy has undergone significant advances in recent years, particularly since 2004, a date which marked a significant change in immigration policy in Spain, and its incorporation into the European scene. In relation to the management of migration, the Spanish government must necessarily continue to substantially improve its administrative efficiency and, according to Cachón, 'that is the orientation of the new Immigration Regulation' (2011: 74).

The Perception of Immigration as an Undeniable Phenomenon

For many years, unemployment and terrorism were the two main problems of the country (Rodríguez 2006) and belonged, according to Tamayo and Carrillo, in the typology of Spanish public agenda items, to the group of 'chronic problems.' Immigration, however, was a 'new topic' (2004: 45). In the first decade of this century, as a result of the increased migrant population, immigration came to occupy an increasingly prominent position in public consciousness and, since 2005, according to the monthly ranking of the Centre for Sociological Research (*Centro de Investigaciones Sociológicas*, CIS), it was perceived by Spaniards to be one of Spain's three main problems, surpassing even those related to political, social, and economic life. The economic crisis changed this perception. While in 2008 and 2009 immigration still ranked third, in 2010 and 2011 it became the fourth problem of interest, at a respectable distance from unemployment, economic problems, class issues, and political parties.

The social representation of the migration reality is determined largely by politicians and the media, and they have a high responsibility in the creation of attitudes and opinions towards the phenomenon of immigration. At the beginning of the century in Spain, the "institutionalization" of the migration issue and the establishment of immigration as a "social problem" started' (Cachón 2002: 106-107). With the entry of immigration on the social policy agenda, the issue became a 'state issue' (Zapata Barrero 2003: 524) and the politicization of migration began. Until then, immigration had hardly been politicized (Zapata Barrero *et al.* 2008: 103). Between 1999 and 2001, a number of different events contributed to a change in immigration policy, including the controversial debates on immigration law that provoked deep tensions within the government; the regularization processes in 2000 and 2001; the racist incidents in El Ejido (Almería) in February 2000; the enclosure of hundreds of undocumented immigrants in ten churches in Barcelona, where they went on a hunger strike to demand a solution for their illegal status; and the train accident in Lorca (Murcia) in February of 2001, where 12 Ecuadorean undocumented farm workers were killed (Cachón 2002; Zapata Barrero 2003).

According to Zapata Barrero, El Ejido⁵ was the first social conflict that brought the issue of immigration to the political agenda because it linked the main issues in the management of immigration in Spain. 'With El Ejido, Spain "discovered" immigration and began to undertake the formulation of its immigration issue' (2003: 525). The events of El Ejido, which took place shortly before the general elections in March 2000, also meant that for the first time a political party, the PP, used the immigration issue during its election campaign, using the incident to justify the need to reform recent immigration law (LO 4/2000). According to the PP, it was an 'excessively open-border policy' and the racist incidents were the result of the tolerant law. The legislative change was reflected in the Organic Law 8/2000, promulgated by the PP and approved by their parliamentary majority (Zapata Barrero 2003: 531), thereby producing a 'genuine political change towards a definitely more restrictive direction' (López Sala 2007: 10). The law, unlike the first version that addressed the integration of immigrants and their social rights, focused on issues related to the control of migration flows and to combating illegal immigration. The reform, with the PP playing the main role with regard to immigration, also reflected the different approaches of political forces on immigration, and the Conservative Party's rupture with the traditional consensus (Cebolla 2011: 13). While the PP treated immigration as a security issue – seeking legitimacy in European policies and focusing primarily on management and governance – the PSOE developed an argument related to the defense of legal immigration and its integration within the framework of its policy on immigration (Delgado 2007).

In 2003, with the two amendments to the Law on Aliens, the traditional consensus on immigration, which had been the rule, was recovered (Cebolla 2011), and from 2004, with the entrance of the Socialist party to government, the orientation of immigration policy changed significantly. The PSOE, unlike the PP, adopted a different approach to managing immigration in Spain and introduced a 'more complex and global vision of what [was] immigration' (Zapata Barrero *et al.* 2008: 111). While no one can say that from 2008 all deficiencies of the 2000-2004 model were corrected, it is true that since 2005, in the field of migration flows as well as integration policy, a more innovative, realistic, and modern approach has been followed (Cebolla 2011). The Organic Law (LO 2/2009) reflected the consensus among major parties on the content of immigration policy: residence and work-related integration; the guarantee of certain rights being granted, including health and basic social services; a visa system; work and residence permits; the quota system (*contingente*); and the Catalogue of Hard-to-fill Positions (Moya 2009: 19).

⁵ After the murder of a young woman by a young Moroccan with mental disabilities and after the death of two farmers, a real 'Moor hunt' against the Moroccans originated in El Ejido (Almería) and it set off a major outbreak of racism and xenophobia (Castellanos y Pedreños 2001).

Undocumented Workers in Spain and the Politics of Regularization

Illegal immigration in Spain

In southern Europe, and thus in Spain, the phenomenon of illegal migration has often been explained by a geographical position facilitating the influx of illegal immigrants, to what must be added limited controls of external borders and a very recent experience of immigration (Arango and Finotelli 2009: 28). However, as Arango and Finotelli stress, a phenomenon like this cannot be explained by 'unilateral cause-effect relationships' because it forms part of a more general analysis of international migration mechanisms which are the result of a complex mixture of push and pull factors (2009: 19). In Spain, the limited opportunities for legal entry associated with the strong demand for foreign labor reinforce the existing paradox between market demand and state regulations, making irregular migration a structural feature of this mismatch. Thus the control of migration flows and the fight against illegal immigration remain a priority in Spanish politics.

The significant proportion of undocumented immigrants in Spain can be ascribed to the combination of different factors that make the country an attractive destination for illegal immigration. Amongst the elements linked to irregularity, Spain faces considerable difficulties in controlling entry and residence due to reasons of a structural, cultural, historical, and geographical nature. Clandestine residence, or so-called 'visa overstayers' – those who remain in the country after the expiration of their tourist or work visas without having a job or work permit – is the first largest source of undocumented migrants in Spain in numerical terms. Other factors and mechanisms are influential, including the existence of a strong underground economy, one of the largest in the EU; the combination of the narrowing of legal access to employment in Spain combined with a sustained demand for foreign labor; bureaucratic delays in the processing of permits and renewals; as well as a general mindset that does not consider compliance with applicable laws as strictly obligatory. Immigration management, migration networks, and both geographical and cultural proximity with dynamic source countries also play an important role (Arango 2002). For years, the massive

influx of immigrants to the Spanish labor market, primarily in the secondary sector, took place without any prominent intervention of the Spanish government. A policy prevailed which combined labor demand in certain economic sectors with lax regulation that encouraged illegal immigration and the growth of the underground economy (López Sala and Ferrero Turrión 2009). All these factors contributed to the fact that illegal immigration routes became ordinary routes.

Estimating the number of irregular migrants (with regard to illegal entry, residence, and employment) is, in all countries confronted with this challenge, always a difficult exercise, and there are different methodologies that can be employed in this field⁶. In the Spanish case, the figures drawn from the process of regularization as well as from the Municipal Register – the *Padrón* – can be consulted in order to obtain an estimation of illegal immigrants in the country. The *Padrón* is the administrative register where residents of the municipality appear. Given that in Spain there is the possibility to enroll in the *Padrón*⁷, regardless of the legal situation of the person, one can compare, in order to estimate irregularity, the number of non-Spanish nationals registered in the *Padrón* with the number of resident permits. Another possibility is to compare the data with regards to the employed on the Active Population Survey (*Encuesta de Población Activa*, EPA) of the Spanish National Institute of Statistics (*Instituto Nacional de Estadística*, INE) with that of Social Security members (Cachón 2009: 144) (see Table 1). The EPA is held every three months, and it holds information about the main characteristics of the resident population in various categories (employed, unemployed, and inactive) and is based on the municipal census data (*Padrón*), thus including irregular migrants. This, in turn, contrasts with the Social Security data since the latter does not include information about unauthorized immigrants.

Until late 2004, Spain had not developed adequate mechanisms to manage immigration which also had an impact on the increasing number of irregular migrants. In early 2005, the maximum estimate of illegal immigrants was about 1.2 million people, which accounted for 40 per cent of total immigration (Cachón 2009: 143). With the adoption of Regulation on immigration (Royal Decree 2393/2004 of 30 December), there was a paradigm shift in the management of immigration in Spain. Since then, several factors have contributed to decreasing irregularity, including the regularization of 2005, the implementation of the individual regularization system by *arraigo*, and the enlargement of the EU, particularly Romania's accession in 2007 (Aysa-Lastra and Cachón 2011: 74).

⁶ See, for example, for the European case of illegal immigration, Jandl (2004). For the Spanish case, see Cachón (2009) and González Enríquez (2009).

⁷ Spain eased access to social services and public facilities for people without sufficient documentation, including access to health care. Once registered in the municipal census, those people without any administrative status get a medical card.

In early January 2011, the maximum estimate of irregular migrants was 400,000, namely 7 per cent of all non-Spanish nationals living in Spain or 13 per cent of non-EU citizens. Taking into account the overestimation of immigrants in the municipal register and the little attention paid to the official numbers of legal residents, the number of illegal immigrants in fact totaled 250,000 which accounted for 5 per cent of the total number of non-Spanish nationals on Spanish territory, equal to 8 per cent of non-EU citizens (Aysa-Lastra and Cachón 2011: 74).

Table 1: Evolution of the irregular employment of foreigners

Years	Employed Population (EPA) Annual Average	Enrolled Population (Social Security) Annual Average	Difference (EPA-Soc. Sec.)
2000	454,175	402,711	51,464
2001	682,800	557,074	125,726
2002	954,225	766,470	187,755
2003	1,295,625	924,805	370,820
2004	1,659,250	1,048,230	611,020
2005	2,069,100	1,461,140	607,960
2006	2,461,100	1,822,406	638,694
2007	2,785,125	1,975,578	809,522
2008	2,929,650	2,052,406	877,244
2009	2,634,550	1,878,023	756,527
2010	2,549,475	1,853,185	696,290

Source: National Statistics Institute (INE) and Social Security. Own calculations.

Regularization processes in Spain

Since the implementation of the first Immigration Act in 1985, Spain has had six major regularization programs. The PP carried out regularizations in 1996, 2000, and 2001, while the PSOE held them in 1986, 1991, and 2005, with the most recent process, the so-called ‘normalization,’ being the most important quantitatively. In total, more than 1,100,000 immigrants have benefited from the regularization processes⁸, of which 565,000 in 2005 alone. All of these regularization processes have been presented as a collective, ‘exceptional “one-time-only measure”’ (Arango and Finotelli 2009: 19), but they became a key instrument for managing immigration by periodically

⁸ Table 2 shows the number of people certified in each of the six processes of regularization.

legalizing immigrants, primarily workers with irregular status. The regularization processes seem to be ‘the most useful way to “repair”, a posteriori, the structural imbalances of the migration regime in Spain where irregularity and informality feed off each other’ (Arango and Finotelli 2009: 19).

Additionally, the government regularized illegal immigrants through other policy measures such as annual quotas of work permits (*contingente*) between 1993-1999 (except for 1996 due to the third regularization process), which functioned as normal regulatory mechanisms, discreet, and individual (Arango 2005: 154); through individual regularizations by *arraigo*; and two special regularization processes, both in 2001, ‘Operation Ecuador’ and the one held in Barcelona due to the enclosure of undocumented migrants in churches (Cachón 2009: 194 ff.). To this day, regularization procedures have been the main way to achieve legal status in Spain (Arango and Jachimowicz 2005; González 2009). Furthermore, as highlighted by Izquierdo, both, the regularization of 1985 and the second of 1991 substantially influenced the configuration of Spain as a country of immigration (1996: 133).

From the first regularization in 1985 until the last one in 2005, 1,117,715 foreigners regularized their status. The *modus operandi* chosen, the effectiveness, and the impact of regularization programs remain controversial. Regulation policies are therefore interpreted as a failure of the immigration control policy. Hence, it is very difficult to measure the success of programs in the medium and long term.

Table 2: Results of the Spanish regularization programs

Years	Number Applied	Number Regularized
1985/6	38,181	34,832
1991	130,406	109,135
1996	25,128	21,286
2000	247,598	163,913
2001	351,269	223,428
2005	691,655	565,121
Total	1,484,237	1,117,715

Source: Cachón 2009: 196.

The 2005 regularization

The most important extraordinary regularization process since the establishment of this process in 1985/86 took place in early 2005. After the regularization process conducted in the United States in

1986, and in Italy in 2002, Spain's latest regularization program in 2005 was, overall, the third most important regularization process ever made on a global level when it comes to numbers (Cachón 2009: 194). The regularization process was linked to the coming into force of the Regulation on immigration, by Royal Decree 2393/2004, whose most crucial trait was the link of future employment to the granting of a residence and work permit. The new concept related the issues of employment and immigration management to combat illegal immigration. With the introduction of the new Regulation passed by the Spanish government, and the subsequent beginning of the regularization process, a new design of European migration policies came to light (Ferrero and Pinyol 2008: 158).

This regularization process, developed by the Spanish government in order to combat and reduce the illegal hiring of workers while regularizing immigrant workers, contained remarkable and unique components, and it was part of a long and far reaching process. Named the 'normalization process of foreign workers 2005,' it opened with a period from 7 February until 5 May 2005 for submission of applications by entrepreneurs on behalf of immigrants that met the following requirements: a) the ability to prove a stay in Spain for six months prior to 7 August 2004; b) no criminal record; and c) the holding of a 40 hour week future employment contract for the duration of at least 6 months (3 months in the agriculture sector). One of the remarkable and innovative features of this process was that employers or entrepreneurs were responsible for the regularization of their employees (except in the case of workers employed in domestic service) and not, as was the case in the earlier processes, irregular workers themselves. Another new element was the requirement to have future employment in order to obtain a residence and work permit and thereby linking the regularization to the labor market situation (Arango and Jachimowicz 2005; Aguilera Izquierdo 2006: 184).

In the regularization process, 691,655 applications were filed, 58.9 per cent for males and 41.1 per cent for females (Pajares 2007: 215). The provinces of Madrid (171,321), Barcelona (101,504), Valencia (46,965), Murcia (43,732), Alicante (43,710) and Almeria (30,396) received the highest number of petitions recorded, and Ecuadorians, Romanians, and Moroccans were the nationalities which submitted the most applications. In the end, 575,941 clearances were granted and, by 30 December 2005, 550,136 foreign workers had registered for Social Security (Aguilera Izquierdo 2006). Regularized people obtained a residence and work permit for a year with the possibility of renewal. Throughout the process, the government introduced changes such as the relaxation of some requirements including registration by default (Arango and Jachimowicz 2005).

This period saw an unprecedented collaboration between the Ministry of Interior and the Ministry of Labor and Social Security and the measure received support from employer associations, trade

unions, and NGOs, thus creating a 'climate of cooperation' (Arango and Jachimowicz 2005: 5). But some, like the PP, were also dissatisfied with the regularization and even rejected the proposal prior to its negotiation, while the majority of political parties and the central Government signed the pact together with the main trade unions and employers (Ferrero and Pinyol 2008: 158). The PP used the term 'call effect' (*efecto llamada*) to describe one of the possible consequences of the regularization process, insisting that such a regularization would make Spanish society more attractive to foreigners⁹.

However, according to Aja, the discredit of legal channels for immigration is the biggest problem and not the 'call effect' (2006b: 13). Cachón notes that the underground economy is not the result of irregular immigration, but its 'root cause, the real "call effect"' (Cachón 2007: 73). And Pajares indicates that after the continuous rise in unauthorized migrants over the past few years, 'regularization had become a clear need' and 'marked the growth of a large volume of the shadow economy' (2007: 223). Although the underground economy was not completely eliminated, the regularization of illegal immigration has brought important benefits to the labor market and to the state coffers. For the labor market, the normalization has helped to reduce the pool of workers who could hardly enforce any of their rights. For the state, by increasing the number of legal immigrants, the regularization has resulted in a significant increase in Social Security income (Pajares 2007: 223). However, on a European level, the 2005 regularization was the one which provoked the strongest reactions (Ferrero and Pinyol 2008: 160).

Employer Organizations and trade unions on the regularization

The Economic and Social Council's (ESC) report 'Immigration and the Labor Market in Spain'¹⁰ of February 2004, played, as previously noted, a very important role in the 2004 policy shift. It was the first major contribution of the ESC to the field of immigration in Spain.

The Economic and Social Council, the Government's advisory body in socio-economic matters, consists of 61 representatives of trade unions, employers, and other representatives from consumer and agrarian organizations. In this report, drawn up on its own initiative, ESC analyzed the immigration reality in Spain from different

⁹ El País (2004, November 5). "El PP rechaza el proceso de normalización de inmigrantes y espera poder 'corregirlo'". http://www.elpais.com/articulo/espana/PP/rechaza/proceso/normalizacion/inmigrante/s/espera/poder/corregirlo/elpepiesp/20041105elpepinac_5/Tes

¹⁰ Consejo Económico y Social (2004): "La inmigración y el mercado de trabajo en España. Sesión del Pleno de 28 de abril de 2004", Colección Informes CES, Informe 2/2004, Madrid: Consejo Económico y Social, www.ces.es/informes/2004/inf0204.pdf

perspectives and suggested numerous improvements that it considered necessary for the proper management of immigration. The report contributed to improving the participation of social partners, the social integration of immigrants, and the development of cooperation, and it also drew up guidelines for a new comprehensive immigration policy focused on the management of employment flows. The ESC report also stressed the need to strengthen the link between immigration policies and the demands of the Spanish labor market. The report was used as an important argument for drafting the Regulation and the main provisions on labor issues in the Royal Decree 2393/2004 of 30 December, including the consolidation of existing instruments (*contingente*, seasonal permits, and the so-called 'General Regime' (*Régimen General*)) and the realization of 'normalization,' both the results of agreement reached by the social partners within the Social Dialogue framework.

In 2004, after the holding of elections on 14 March, a new stage in social dialogue between the government, trade unions, and employers' representatives came to light, a social dialogue¹¹ that still stands today (Pérez Infante 2009: 45). This phase began on 8 July 2004 with the 'Declaration for Social Dialogue 2004: competitiveness, stable employment and social cohesion,' agreed by the government, the CCOO, and UGT trade unions and the CEOE and CEPYME organizations. This document presents a series of commitments in different areas which should be subject to collective bargaining, and it included the issue of labor migration, which was introduced for the first time, and specified the labor aspects of the implementation of Organic Law 4/2000.

In line with the Social Dialogue, the government forwarded the draft Regulation to the Council of State, the Judiciary Council, and the Economic and Social Council before its approval. On 24 November 2004, the ESC adopted an opinion which 'viewed positively' the draft Regulation which had taken into consideration the contributions of the different public administrations, social partners, and other organizations involved in the field of immigration. It also praised the fact that 'for the first time, [the mentioned organizations] have negotiated and reached agreement on matters relating to employment in the Regulation, circumstances of undeniable importance in the context of the Spanish labor market' (CES 2004: 10).

Amongst the results of the Declaration agreed in the Social Dialogue are numerous agreements reached in the following years. One should mention for example the tripartite agreement between the government, trade unions, and employers on labor aspects of the draft Royal Decree approving the new Regulation, as well as the agreement on the regularization process of 2005, the so-called 'normalization' (Pérez Infante 2009: 65 ff.). The Regulation also created the Tripartite Labor Commission as a body that provides

¹¹ For the development of the social dialogue in Spain, see Pérez Infante (2009).

permanent dialogue and that, since then, has continued to promote and maintain social agreement in the field of migration between the central government, the main trade unions, and employers' representatives. The functions of the Commission include the following: to report on the management of migration flows and on the normal procedure of hiring non-EU foreigners; to draft reports on the quarterly proposal of the catalogue of Hard-to-Fill Positions; to inform the Secretary of State for Immigration and Emigration about the national quota proposal (*contingente*) prior to processing; report on proposals for the granting of fixed-term work permits for paid employment; submit and report on proposals to the competent organs of the General State Administration on any matters concerning the improvement of the social and labor integration of the group of immigrant workers in Spain. The mentioned Commission and the Forum for the Social Integration of Immigrants are the principal organs of the Social Dialogue. During 2005, a new stage for the Forum began, consolidated in 2006 with the Royal Decree 3/2006 of 16 January. Since its constitution on the 6 July 2006, the Forum has broadened its consultative and participatory capacity and is more independent. Taking into account the documents which were approved since its constitution in 1994, one can say that the Forum would have supported the regularization and its mode of implementation. Trade unions and employers associations are represented in both organizations.

The contemporary situation in 2011

For many years the Spanish migratory model had been characterized by irregularity and by what the Administration saw as a lack of control. Spain has had one of the highest rates of irregular migration in the EU. Illegal entries, which are still a minority, are not the cause of this situation; the main cause of this situation is the existence of an underground economy which provides employment without a work permit. There are activities where irregular employment is more common, especially in the fields of domestic service, agriculture, and construction. Immigration control will continue to be limited if this scenario does not change (Laparra and Cachón 2009: 30). But everything seems to indicate that in recent years the Spanish model of immigration, characterized by intense migration flows and irregular migration, is under review (Laparra and Martínez 2008). In Spain, since 2005, when the last collective regularization process took place, irregularity has been progressively reduced. As previously mentioned, estimates of unauthorized migrants in early 2011 ranged from about 400,000 to about 250,000 people. The highest numbers of irregular migrants from non-EU countries are, firstly, from Brazil, followed by Bolivia, Nigeria, Ukraine, and China. While in 2005 one of every two

migrant was irregular, in 2011 this went down to one in eight¹². Compared to 2004, when 1.2 million undocumented immigrants were estimated (Cachón 2009: 143), a decline of almost one million in the number of illegal immigrants living in Spain was registered. This downward trend is due to different factors, including the existence of new legal instruments for migration management that can increase the implantation and development of new tools for migration flows regulation. Of particular importance is the access to work and residence permits based on contracts in the country of origin, organized by the companies themselves, the availability of more flexible jobs in relation to which foreigners can apply for these permits, and illegal immigrants' access to residence permits thanks to social or labor rootedness (*arraigo*) (Laparra and Cachón 2009).

However, the year 2008 marked a turning point in the landscape of immigration in Spain, and the impacts of the financial and housing crisis, which are still present and felt, have marked some relevant guidelines. Examples are job destruction¹³ and the remarkably high unemployment rate in general. Unemployment could lead to drastic changes in the situation of immigrants: the need to renew work and residence permits, for they are not of an indefinite nature, leads to situations of return to the country of origin or to situations of irregularity if the foreigner remains in Spain, in a situation where he/she becomes unemployed.

Job destruction could also contribute to an expansion of irregular employment and thus to an increase in the shadow economy. Furthermore, due to the crisis (but not exclusively so), political debate on immigration has become harder, challenging instruments that have reduced the irregular migration, such as hiring in the country of origin or family reunification (Laparra and Cachón 2009), and one can perceive a recent trend towards a more restrictive immigration policy. This is also reflected in the future plans of the PP after winning the general election of 20 November 2011 by an absolute majority and after the election of Mariano Rajoy as Prime Minister. Days after the election, the PP spokesman on immigration issues announced that his party planned to prevent the individual regularization of immigrants on social or employment rootedness because 'the *arraigo* has led to illegal immigration and should only exist as an extraordinary

¹² Press Release issued by the Office of Immigration Service in Navarre (2011): "Pese a la crisis la regularidad documental de la población extracomunitaria continúa en máximos históricos",

[http://www.navarra.es/NR/rdonlyres/BDEA3C76-7D0A-49FC-A342-](http://www.navarra.es/NR/rdonlyres/BDEA3C76-7D0A-49FC-A342-71AAFD239EA6/183930/Maximohistoricoderegularidaddepoblacionnocomunitar.pdf)

[71AAFD239EA6/183930/Maximohistoricoderegularidaddepoblacionnocomunitar.pdf](http://www.navarra.es/NR/rdonlyres/BDEA3C76-7D0A-49FC-A342-71AAFD239EA6/183930/Maximohistoricoderegularidaddepoblacionnocomunitar.pdf)
¹³ The most brutal adjustment in 2008 and 2009 was between October 2008 and March 2009 when the labour market lost about 1.5 million jobs, with the quarter of 2009, which reached maximum intensity with a total of 760,000 jobs lost, of which 225,000 jobs lost by immigrants representing almost 30 per cent of the total (Oliver Alonso 2009: 87 ff.).

measure'¹⁴. Between 2006 and 30 June 2011, 322,518 immigrants were regularized through this measure.

All these changes and impacts are transforming the new immigration reality that has been evolving over recent years. Yet one should also mention, in the context of the crisis, the (relative) absence of major social conflicts¹⁵, violent incidents (Aja *et al.* 2009, Cachón 2011), and populist movements without denying that there have already been some serious conflicts related to immigration, and that there are situations that may generate new conflicts.

¹⁴ El País (2011, November 25). "El PP planea eliminar la regulación de inmigrantes por arraigo social o laboral".

http://www.elpais.com/articulo/espana/PP/planea/eliminar/regulacion/inmigrantes/arraigo/social/laboral/elpepinac/20111125elpepinac_9/Tes.

¹⁵ For social conflicts related to immigration in Spain and other European countries, see Cachón (2011).

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