On the Regulation of Aliens and Immigration in Spain in 2006

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I. INTRODUCTION

The purpose of this article is to familiarise non-expert readers with the general features of Spanish policies regarding aliens and immigration as from the entry into force of the Spanish Constitution of 1978, and to provide an overview of the legal framework and the published sources of law relating to this subject. It is important to set forth the scope and confines of this paper in advance, as otherwise we might overwhelm the reader by offering a list of the endless provisions that have emerged from the different concurrent legal sources (domestic, autonomous regions, the European Union and international) or a description of Spain’s many erratic and often contradictory policies since becoming a democracy. The existence on this subject of disparate contradictory policies formulated by right- and left-leaning governments are not the exception but rather the rule.

Starting in 1984 (when the first law on asylum and refugee status was enacted), in Spain everything relating directly or indirectly to immigration and the rights granted to non-nationals has moved along at an accelerated pace to 2006, following the
most recent “regularisation/normalisation process” that took place in 2005 and with the continued massive arrival in the Canary Islands of “cayucos” (traditional wooden boats) from Africa.

Spain has achieved of “Guinness record” of sorts in the enactment of organic laws (the law of highest rank in the land) on aliens, with the passage of four laws on this subject in a three-year period (2000–2003), in addition to a large number of implementing provisions.

The stark reality is that over the past fifteen years the entry of aliens into Spain, particularly of immigrants, has mushroomed. This phenomenon has brought about some changes in the receiving society, owing to heterogeneity of the immigrant population, its multiracial nature and religious diversity, and the different social value scales now present in Spain. These circumstances have made it necessary to repeatedly change policies aimed at regulating and managing the entry and accommodation of immigrants into Spain and as a gateway into Europe. These policies have, unfortunately, been unsatisfactory to date, as thousands of people continue to arrive daily in Spain by land, sea and air, seeking a “better life.” The result of this avalanche is the oft-encountered, albeit strange and peculiar “status” of many individuals described several years ago by the author of this paper1 as “irregular immigrants with official deportation orders, who are registered residents and living legally in Spain.”

Owing to its limited length, this paper will not deal with the system of sanctions applicable to aliens, nor with the “privileged, special or unfavourable status” in Spain into which an alien can be categorised in application of internal, community or conventional legislation. In the first place we are referring to the system for asylum-seekers, refugees, stateless and displaced persons with unfavourable status. Second, we refer to the status derived from the Kingdom of Spain’s historical and treaty relations with former colonies, particularly in Latin American.2 Lastly, we also will not discuss the status of aliens who are EU nationals, as they enjoy an especially privileged status in terms of comparative law as citizens of the European Union.

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