

Association for Solidarity with the Immigrant Worker (Spain)

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ODIHR Human Dimension Implementation Meeting

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Spain: Concerns due to the Legislative Erosion of Migrant Workers' Rights

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Spain is Europe's crossroad for migration. In the last ten years, the numbers of migrants arriving and/or passing through Spain has exploded. Today, ten per cent of Spain's population has a foreign nationality (although half of the 4,5 million migrants come from other EU countries).

Human migration creates a complex challenge for human rights protection and the implementation of human dimension commitments in the OSCE region. Fundamental rights to non-discrimination, liberty and security, to education, to work and to health assistance of migrants are at risk. Women and children within the migrant communities are amongst the most vulnerable groups in our societies.

The Spanish government has recently presented Congress with an amendment to the existing Law on Foreigners which undertakes necessary reforms in line with European directives but it also unreasonably cuts back existing rights.² This is to say that the draft Law Amending the Law on Foreigners, presented on the 26 of June, contains several shortcomings worth noting:

1. **Migrant workers as commodities.** It treats the migrant worker as a commodity, ignoring the many situations in which migration is not linked to economic activities (ie., family reunification, studies).
2. **Stigmatisation.** The Draft Law widens internment periods and increases sanctions against persons who at most are in a situation of administrative irregularity but who have not committed any crime.
3. **Hampering registration.** According to the Draft Law, foreigners who are not legally authorized to reside in Spain will not be able to register in their places of temporary residence and thus will not be able to enjoy basic human rights.
 - a. **Limiting the right to education.** Access to education is limited to mandatory education, limiting the right to education of minors and adult migrants.

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² Draft Organic Law Amending Organic Law 4/2000 of 11 January on the Rights and Liberties of Foreigners in Spain and their Social Integration (exp.121/000032) available at <http://www.congreso.es/public_oficiales/L9/CONG/BOCG/A/A_031-01.PDF>.

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- b. **Limiting housing rights.** The Draft Law limits access to housing assistance schemes.
 - c. **Health and other social services.** Only those foreigners able to register will benefit from health and other social services, cutting back existing services which offer a minimum coverage for all persons.
 - d. **Access to justice.** The Draft Law restricts the rights of foreigners to free legal assistance, which may lead to breaches of the principle of non-discrimination in access to justice.
4. **Family reunification.** The new criteria for family reunification impose harder conditions, such as age limits, which makes it more difficult for families to reunite.
 5. **Internment.** The periods of administrative detention are expanded from 40 to 60 days. This is questionable as the measure neither guarantees expulsion nor improves due process. It is worth noting that the 40 day period was set by the Constitutional Court on the basis of the European Convention on Extradition. It is not reasonable to establish longer detention periods for persons not charged with a crime. The extension of detention periods is however in line with the EU “Returns” Directive approved in June 2008, which has already criticized for its lengthy detention periods (up to 18 months).³
 6. **Sanctions.** The new regime creates harder sanctions on the worker, employer and host community. It sanctions acts of solidarity by civil society.

The financial crisis is being used to justify these legal reforms which cut back on fundamental rights of migrant workers in contradiction with OSCE commitments related to liberty and security, health, education and non discrimination policies. Such concerns have motivated the above criticism of the Draft Law by the Spanish NGOs CEAR, Red Acoge and CARITAS, supported by more than 500 organisations throughout the country.⁴

For these reasons, and in order to prevent future human rights violations, the ODIHR should help OSCE States revise their migration legislation to ensure compliance with international human rights standards and respect relevant OSCE commitments.

³ European Union Directive COM (2005) 391 final, 2005/0167 (COD). See Amnesty International statement ‘EU Directive Affects Safety and Dignity of Irregular Migrants, 18 July 2008, <<http://www.amnesty.org/en/news-and-updates/EU-return-directive-affects-dignity-security-irregular-migrants-20080704>>

⁴ CEAR, Red Acoge and Caritas on the Reform of the Law on Foreigners, ‘With the Draft Law we all loose: our society steps back and the rights of migrant workers are cut’, 16 September 2009: available at <http://www.caritasvitoria.org/datos/documentos/CEARCaritasAcoge_160909.pdf>