Reforms and Counter-Reforms in Spanish Law on Aliens

Carlos Nieto Delgado
Associate Lecturer in Private International Law
Universitat Pompeu Fabra **(Barcelona)**

INTRODUCTION

The year 2002 marked the first anniversary of the latest reform of Spanish legislation on aliens, Organic Law (LO) 8/2000 of 22 December.[1] Following electoral victory on 12 March 2000, with an absolute majority in both Congress and Senate, the present conservative government introduced drastic amendments to the Aliens (rights and freedoms and social integration of aliens in Spain) Act LO 4/2000 of 11 January[2] (abbreviated to LOExIS 4/2000). This Act had been promulgated some months earlier following a long series of studies initiated in 1998 with the consensus of all political parties.[3] The original intention of the

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[1] Organic Law 8/2000 of 22 December, reforming Organic Law 4/2000 of 11 January on Rights and Freedoms and Social Integration of Foreigners in Spain, *BOE* no. 307, 23 December 2001, correction of errata in *BOE* no. 47 of 23 February 2001. The terms of this provision have been the subject of various appeals to the Constitutional Court by the Parliament of Navarra (no. 1,707/2001); by the Government of the Principality of Asturias (no. 1,679/2001); by the Ruling Council of the Government of Extremadura (no. 1,677/2001); by the Deputation General of Aragon (no. 1,671/2001); by the Ruling Council of the Government of the Autonomous Community of the Balearic Islands (no. 1,670/2001); by the Ruling Council of the Government of Castilla-La Mancha (no. 1,669/2001); by the Ruling Council of the Government of Andalucía (no. 1,640/2001) and by the PSOE Parliamentary Party in the Congress (no. 1,668/2001), all published in *BOE* no. 131-2001, 1 June 2001.

[2] Organic Law 4/2000 of 11 January on Rights and Freedoms and Social Integration of Foreigners in Spain, *BOE* no. 10 of 12 January; correction of errors in *BOE* no. 20, 14 January.

[3] Based on three bills, tabled respectively by the parliamentary parties CiU (Bill proposing an Organic Law on measures to promote greater protection and integration of immigrants, *BOCG* of 18/3/1998, Series B, no. 179-1), Nueva Izquierda-IC (Bill proposing an Organic Law to Reform Organic Law 7/85 of 1 July, on rights and freedoms of foreigners in Spain, *BOCG* of 2/4/1998, Series B, no. 189-1) and IU (Bill proposing an organic Law on reform of Organic Law Organic Law 7/85 of 1 July, on rights and freedoms of foreigners in Spain, *BOCG* of 18/3/1998, Series B, no. 175-1).

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amended statute was to remedy the shortcomings of the previous Aliens (Organic) Act of 1985[4] (abbreviated to LOEx 7/1985). LOExIS 4/2000 was rushed through in the last days of the previous legislature with the approval of all the opposition parties but was expressly rejected by the Government. The same day of its promulgation, the Government announced that it would amend the new law if it obtained sufficient support in the ballot box. As promised, a new bill[5] was presented in September 2000, reversing the terms of the main options set forth in LOExIS 4/2000. Thanks to the new balance of parliamentary forces, the reform came into force at the end of January 2001. A few months later, Royal Decree 864/2001 of 20 July[6] (abbreviated to RDExIS 864/2001) introduced implementing regulations which came into force on 1 August 2001. Over all this time, two regularizations[7] took place under the transitional clauses in the respective laws, while strong social pressure forced the Administration to accept (without admitting it as such) a third regularization. In the course of the entire process, between 150,000 and 200,000 new resident's permits were issued.

Reforms of the law on aliens are nothing new in Europe. A look at legislative developments among our European neighbours shows that changes in the law such as those introduced in Spain have taken place in most European countries, for example Austria,[8] France,[9] Italy[10] and Germany.[11] In recent years, other

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The preparatory drafts of LO 4/2000 were compiled in *Nueva normativa sobre extranjería. Ley Orgánica 4/2000 y textos para su puesta en práctica*, Barcelona, Itinera-Fundación Paulino Torres, 2000.

4 Organic Law 7/1985 of 1 July, on Rights and Freedoms of Foreigners in Spain, *BOE* no. 158, 3 July.

5 Bill for Reform of Organic Law 4/2000 of 11 January on Rights, and Freedoms and Social Integration of Foreigners in Spain, *BOCG* of 11/9/2000, Series A, no. 12-1.

6 *BOE* no. 174, 21 July, correction of errata in *BOE* no. 240 of 6 October 2001.

7 The first regularization was introduced by Royal Decree 239/2000 of 18 February (*BOE* no. 43 of 19 February, correction of errata in *BOE* no. 59 of 9 March); the second was introduced by Royal Decree 142/2001 of 16 February (*BOE* no. 44 of 20 February).

8 Federal Law on entry, stay and residence of aliens, *Bundesgesetzblatt* I, 1997/75, commentary by C. Nieto Delgado in N. Bouza Vidal and A. Quiñones Escámez, "Derecho internacional privado", *Revista Jurídica de Catalunya (RJCat)*, no. 4/1999, pp. 798–801.

9 French legislation on aliens has in fact consistently been a series of reforms exactly mirroring the politics of the parties in power: laws introduced by Bonnet (1980), Questiaux (1981), Dufoix (1984), Pasqua (1986), Joxe (1989), Debré (1997), Chevènement (1998) and others. Most of these laws have been addressed by A. Quiñones Escámez in the section of *RJCat* directed by N. Bouza Vidal and A. Quiñones Escámez, "Derecho internacional privado'; the last reference was published in no. 1/2002, pp. 197–200, with a commentary on the Circular on family reunification of citizens in France, 1 March 2000, *Journal Officiel* of 28 May 2000.

10 Law 40/98 of 6 March on "Legal regime of immigration and legal status of aliens', *Gazzetta Ufficiale* no. 59 of 12 March and Legislative Decree 286/98 containing the Merged text of the Legal regime of immigration and legal status of aliens of 25 July, *Gazzetta Ufficiale* no. 191 of 18 August.

European countries like Belgium, while not substantially altering the legislative framework, have been forced to introduce administrative regularization procedures to deal with the large numbers of foreigners living illegally in their territory.[12] At the same time, there have been increasing numbers of initiatives at Brussels[13] to develop the new competences attributed to the Community in Title IV, part III of the European Community Treaty, dealing with "Visas, asylum, immigration and other policies related to the free movement of persons". All these legislative initiatives clearly reflect a reality: immigration is a social phenomenon that the Law in Europe is currently ill-equipped to address. It is also a problem that raises serious concern among citizens.[14] Immigration, and the law that regulates it, has become a high-profile issue.

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[11] Law for the reform of certain provisions of the law on asylum and aliens, *Bundesgesetzblatt* 1997-I, p. 2584, commentary by C. Nieto Delgado in N. Bouza Vidal, A. Quiñones Escámez, "Derecho internacional privado", *RJCat* 1999, no. 4, pp. 793–798. Ambitious reform plans are currently in progress: a Bill for Regulation and Control of Immigration and on the regime of residence and integration of EU citizens and aliens, presented on 8/11/2001 (Otto Schily Bill), *Bundesratsdrucksache* 921/01.

[12] Law of 22 December 1999, on regularization of residence for certain categories of aliens resident on Belgian territory, completed by Circular of 6 January 2000.

[13] The initiatives currently in progress can be found in the half-yearly update Communication from the Commission to the Council and the European Parliament on the indicator for supervision of progress in the creation of a space of "freedom, security and justice" in the European Union (COM(2001) 628, 30/10/2001). On the first results of European immigration policy, see J. Martín y Pérez de Nanclares, *La inmigración y el asilo en la Unión Europea*, Madrid, Colex, 2002.

[14] When the reform was introduced by LOExIS 4/2000, surveys by the official statistics office CIS (see historical archive for the CIS barometer survey at *www.cis.es*) showed that Spaniards saw immigration as one of the four most important problems facing the country (along with terrorism, unemployment and Mad Cow Disease). Undoubtedly the media and alarmist messages from the government have helped to magnify the extent of the problem in Spain, where immigration figures are considerably smaller than in neighbouring European countries. At the end of December 2000, some 895.000 aliens were legally resident in Spain – that is, approximately 2.2% of the total population, a far smaller percentage than in some other EU countries (see *Statistiques sociales européennes. Migration*, Eurostat-Comission Européenne, 2000). Moreover, the pattern of immigration in Spain has a number of unusual features. The number of immigrants is now beginning to reach respectable proportions (although nothing like Germany, which with only twice Spain's population has 8 million immigrants), but a large percentage of the aliens here are from EU countries. The statistics for the year 2000 show that 46.8 % of immigrants (nearly 420,000 persons) were born in or citizens of EU countries. Again, up until the last regularization drive, a fifth of the total – 20.7 per cent – were under working age. In other words, at least until now the typical immigrant was not a sub-Saharan or South American labourer but a retired EU citizen. Besides, if we compare the number of foreigners resident in Spain (around 900,000) with the number of Spaniards resident abroad (around 3,000,000), it is obvious that Spain is still a country of emigrants rather than immigrants. In Catalonia, the Spanish region with the largest immigrant population (around 215,000), the presence of foreigners is palpable, especially in big cities like Barcelona. In other

The Preamble to the latest reform of LOExIS 4/2000 by LO 8/2000 seeks to justify the last changes effected in the legal treatment of aliens in Spain by claiming that this framework needs to be adapted to the commitments acquired by our country on becoming part of the European Union. In so doing, the Legislator refers expressly to the conclusions of the summit of heads of state and government held at Tampere on 16–17 October 2000.

The object of this article is to provide an overview of the decisions adopted by the Spanish legislator in promulgating the latest amendment to LOExIS 4/2000 and to compare these with the principal legislative initiatives currently in progress in the European Community. Other possible options are illustrated by examples of the latest amendments introduced in the aliens legislation of other European countries. For a more detailed analysis of specific aspects of the latest Spanish law on aliens, we refer readers to the vast bibliography generated since the promulgation of the latest reforms.[15]

I. FUNDAMENTAL RIGHTS

Title I of the Spanish Constitution, dealing with fundamental rights, contains a clause referring to the rights of aliens which has caused serious difficulties of interpretation: "Aliens in Spain may enjoy the public freedoms guaranteed by the present Title under the terms which treaties or laws may establish". The remittal of regulation of aliens' rights to the law and to international treaties proved a headache for the Legislator in the drafting of the Aliens Act (LOEx) 7/1985, some of whose provisions were declared unconstitutional. After some vacillation, the jurisprudence of the Spanish Constitutional Court eventually

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regions, like Euskadi, Galicia or Castilla-Leon, the numbers are tiny, rarely exceeding 25,000. For the statistics of immigration in Spain, see *Anuario Estadístico de Extranjería*, Ministerio del Interior, Delegación del Gobierno para la Extranjería y la Inmigración, free download from the Interior Ministry website (*www.mir.es*).

[15] For more information on the original version of LOExIS 4/2000, see P. Santolaya Machetti (coord.), *Comentarios a la nueva Ley de Extranjería*, Valladolid, Lex Nova, 2000; J. Asensi Sabater (coord.), *Comentarios a la Ley de Extranjería*, Zaragoza, Edijus, 2000; E. Aja (coord.), *La nueva regulación de la inmigración en España*, Valencia, Tirant lo Blanch, 2000. In connection with the reform introduced by LO 8/2000, see comments by A. Alvarez Rodríguez, P. Agüelo Navarro, *Normativa comentada sobre Derecho de Extranjería*, Valladolid, Lex Nova, 2001; M. Moya Escudero, *Comentario sistemático a la Ley de Extranjería*, Granada, Comares, 2001; C. Esplugues Mota, M. de Lorenzo Segrelles, *El nuevo régimen jurídico de la inmigración en España*, Valencia, Tirant lo Blanch, 2001; A. Rodríguez Benot, C. Hornero Méndez (coord.), *El nuevo Derecho de extranjería*, Granada, Comares, 2001; C. Sánchez-Rodas Navarro (coord.), *Extranjeros en España. Régimen jurídico*, Murcia, Laborum, 2001, and a more recent and up-to-date work by J.L. Monereo Pérez, C. Molina Navarrete (coord.), *Comentario a la Ley y al Reglamento de Extranjería e Integración Social*, Granada, Comares, 2001. On the Internet, see *www.reicaz.es*.

arrived at a threefold classification of the fundamental rights of aliens: a) "hyperfundamental" rights relating to human dignity (right to life, physical integrity, effective judicial protection, etc.) and hence attaching to Spaniards and aliens alike; b) "legal" rights vouchsafed to aliens, although only in the terms established by law and by treaty (rights of association and assembly, right to demonstrate, strike, etc); c) rights reserved solely to Spaniards (right of political participation).

With regard to the powers vouchsafed the ordinary Legislator to determine the content of those aliens' rights not included in the first or third categories, LOExIS 4/2000 was a significant advance on the regulation contained in LOEx 7/1985, in that it abolished the requirement of legal residence for the exercise of many such rights, requiring instead only registration in the municipal roll. Organic Law (LO) 8/2000 constitutes a step backwards, reintroducing the legal residence requirement for the exercise of such rights as those of assembly and demonstration (art. 7), association (art. 8) or organization in unions and the right to strike (art. 11). It even affects some rights considered "hyperfundamental" or closely tied to such rights, for instance the right to private and family life (art. 16) or the right to free legal aid in any proceedings other than procedures for denial of entry, repatriation or expulsion of an alien (art. 22). The only remaining rights vouchsafed to all aliens including those not legally resident are emergency medical assistance (art. 12) and the right to compulsory education (art. 9); the requirement of registration in the municipal roll now only guarantees the right to ordinary health care. In view of the serious doubts as to the constitutionality of the law, various appeals of unconstitutionality have been lodged.[16]

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[16] See note 1. A Constitutional Court decision, 115/87 of 7 July, ruled against the restrictions imposed by the legislator in 1985 on the right of association and the right to join a union and to strike as applied to aliens; it declared some of these restrictions to be unconstitutional but did not rule on the legal residence requirement, which was also questioned. On 26 June 2000, the General Council of the Judiciary issued a report regarding the white paper on LO 8/2000, in which it raised no objection to these restrictions. On the other hand, a report by the Consultative Council of the Government of Catalonia, dated February 2001, did voice serious reservations as to the constitutionality of the restrictions. More specifically, it pointed out that the international treaties on matters of human rights ratified by Spain (including the Pact on Civil and Political Rights and the European Convention on Human Rights), which under art. 10.2 of the Constitution are to govern interpretation in respect of fundamental rights recognized therein, must be respected by all Contracting States in connection with all persons *present* on their territory, and there can be no discrimination based on national origin. On the other hand the Conventions mentioned do allow for restrictions in many cases when these prove absolutely necessary in a democratic society for the safeguarding of public policy, public health or public security (the *safeguard clauses*). However, the report continues, it is doubtful whether the general restrictions imposed by the Spanish legislation on illegal aliens come under the said safeguard clauses.

In following this option the Spanish legislator claims to be implementing the principles underlying Community immigration policy. The Preamble to LO 8/2000 apparently refers to Chapter II point 18 of the Conclusions of the Presidency of the European Council at Tampere, which states that the European Union must ensure "fair treatment of third country nationals who *reside legally* on the territory of its Member States'; furthermore, "a more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens". The same declaration appears in a Communication from the Commission to the Council and the European Parliament on a Community Immigration Policy[17] (point 2.3), which refers only to the granting of comparable rights to nationals of EU Member States and legally-resident third-country nationals. Finally, the Proposals for a Council Directive concerning the status of third-country nationals who are long-term residents[18] and the right to family reunification[19] refer only to recognition of rights for persons legally resident.

In our view, however, the excuse given by the Spanish legislator is clearly a *non sequitur*. It is perfectly understandable that in seeking to regulate entry, residence and working of third-country nationals, the European legislator should identify legally-resident persons as the targets of regulation. However, this does not mean that the European Community views citizens not legally resident as bereft of any rights. If the Spanish legislator wished to align itself with the guidelines of Community policy on illegally-resident immigrants, the proper point of reference was the Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration.[20] This communication makes no reference whatsoever to a strategy to combat illegal immigration based on the denial of rights to citizens in an irregular administrative situation.[21]

In any case, at the present time the guiding instrument for any EU country seeking to determine what rights should be vouchsafed to aliens regardless of legal resident requirements is the Charter of Fundamental Rights of the

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[17] Communication from the Commission to the Council and the European Parliament on a Community Immigration Policy COM/2000/757 final, 22/11/2000.

[18] Draft Directive on the status of long-term resident nationals of third countries COM/2001/0127 final – CNS 2001/0074, *Official Journal* no. C 240 E, 28/08/2001.

[19] Amended draft Directive on the right of family reunification COM/2000/0624 final – CNS 99/0258, *Official Journal* no. C 062 E, 27/02/2001.

[20] Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration, 15/11/2001, COM/2001/0672 final.

[21] The only Community proclamation remotely approaching the idea underlying the reform comes in the introduction to this communication, where it says that "illegal entry and residence should not lead to an attractive and stable form of residence". However, point 3.2 makes it clear that the fight against illegal immigration must be founded on respect for international and human rights commitments and that in any case it is essential to respect the specific needs of potentially vulnerable groups such as minors and women.

European Union,[22] solemnly proclaimed at Nice by the European Parliament, the Council and the Commission. According to the Charter, each person is guaranteed certain rights, including the right to a private and family life (art. 7), the right to freedom of assembly and association (art. 12) and the right to health protection (not only emergency treatment, art. 35).

Whatever the outcome of the constitutional appeals in progress, the appropriateness of the restrictions described above is surely questionable. The legislator's intention may have been to discourage illegal immigration by depriving aliens in an irregular situation of the same rights vouchsafed to residents in possession of the requisite permits, but it is certainly doubtful that such restrictions will dissuade aliens from emigrating to Spain through other than legal channels. Given that the recognition of fundamental rights ought to be the cornerstone of coexistence in any democratic society, it is hard to accept that a group of persons habitually forming part of that society should be deprived of these rights simply for failing to comply with mere administrative requirements. Moreover, what some sociologists have termed the "dialectics of exclusion" is hardly a helpful means of integrating legal immigrants,[23] many of whom have closer ties with the excluded than with the host society.

II. ENTRY AND VISA SYSTEM

The first version of LOExIS introduced a new departure in Spanish aliens law in that it required that reasons be given for all denials of visas. LO 8/2000 reduced the scope of this regulation, so that art. 27.5 of LOExIS now only requires that reasons be given for denial of residence visas for work or family reunification.

It must be said that in this sphere the Spanish legislator had little room for manoeuvre. Which nationals require a visa for short stays and which do not is determined with reference to a recently-introduced double list accompanying Regulation 539/2001 of 15 March.[24] The granting of short-stay visas is further subject to the rules comprising the recently communitarized "Schengen acquis",[25] including the Convention on Application of the 1990 Schengen

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[22] According to Declaration no. 23 annexed to the Nice Treaty, *DOCE* no. C 80, 10/03/1981, the forthcoming Conference on the future of the Union should analyse the status of the European Union Charter of Fundamental Rights as proclaimed at Nice, in accordance with the conclusions of the Cologne European Council.

[23] In this connection see C. Gallego Ranedo, "La extranjería como frontera entre el ser o no ser ciudadano", in N. Fernández Sola, M. Calvo García (coord.), *Inmigración y Derechos*, Huesca, Mira, 2000, pp. 83–96, or A. Solanes, "Sujetos al margen del ordenamiento", in VV.AA., *Trabajadores Migrantes*, Madrid, Germania, 2001, pp. 57–90.

[24] *Official Journal* no. L 081, 21 March 2001.

[25] Council Decision 1999/435/EC of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on

Convention, the Common Manual[26] and the Common Consular Instruction.[27] Some parts of these last instruments are classified,[28] and it is therefore not surprising that the Spanish legislator should have opted not to require reasons for denial of visas in this category. It is true that point 2.4 of Part V of the Common Consular Instruction, "Refusal to process or denial", allows each State to determine whether or not reasons should be given for denials, but the leeway for decision allowed to the States is so small that where reasons are to be given, the Instruction actually provides a brief text to cover it.[29]

The requirement of reasons for denial of residence visas is certainly well guaranteed, as the vast majority of possible situations is covered by residence visas for remunerated economic activity and family reunification. In all other cases (e.g., applications for residence without remunerated economic activity), the legislator has ordained that the alien be left in total ignorance of the reasons for denial of residence in Spain other than a brief statement that his or her name is on the files of the Schengen Information System (SIS).

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European Union, the legal basis for each of the provisions or decisions which constitute the acquis, and Council Decision 1999/436/EC of 20 May 1999 determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen acquis, *Official Journal* no. L 176, 10/07/1999.

[26] Cited in connection with SCH/Com-ex (99) 13 in the list in annex A to Council Decision 1999/435/EC of 20 May 1999 (DO L 176, 10/7/1999, p. 1).

[27] *Official Journal* no. L 239 of 22.9.2000, p. 318.

[28] See Council Decision 2000/751/EC of 30 November 2000 on declassifying certain parts of the Common Manual adopted by the Executive Committee established by the Convention implementing the Schengen Agreement of 14 June 1985, *Official Journal* no. L 303, 2/12/2000. As regards the confidentiality of the amendments to the Common Consular Instruction and Common Manual, note also arts. 1.2 and 1.3 respectively of Regulations no. 789 of 24 April 2001, whereby the Council reserves to itself executive competences in connection with certain detailed provisions and practical procedures for the examination of visa applications, *OJEC* L 116/2 of 26/04/2001, and no. 790/2001 of 24 April 2001, whereby the Council reserves to itself executive competences in connection with certain rules of implementation and practical procedures for the implementation of border controls and surveillance, *OJEC* L 116/5 of 26/04/2001.

[29] *Sic.*: "Your visa application has been denied pursuant to art. 15 as it relates to art. 5 of the Convention on implementation of the Schengen Agreement of 19 June 1990 because you do not meet the conditions listed in the said art. 5, section 1 subsections a), c) d) or e) (tick as appropriate)".

III. RESIDENT'S PERMITS

1. Temporary and permanent residence

LOExIS 4/2000 and its amendment under LO 8/2000 regulate two clearly differentiated types of resident alien: temporary residents (aliens residing in Spain for less than five years) and permanent residents (those able to prove more than five years of uninterrupted residence). Spanish law on aliens first included the permanent residence permit in RD 155/96 (art. 52); LOExIS 4/2000 reduced the residence time required for permanent status by one year. LO 8/2000 made no change in the permanent residence permit, whose regulation indeed seems to bear some relation to Draft Directive COM (2001) 127 on the status of long-term residents. However, there are some striking differences: for example, art. 10.1.a) of the European proposal calls for the loss of long-term resident status in the event of a two-year absence from the territory, whereas art. 53.3.d) of RExIS 864/2001 requires only an uninterrupted absence of six months (oddly enough, this is the same term of absence as is defined for loss of a temporary residence permit in art. 53.1.d of the same regulation). Another example is the protection available to a permanent resident in Spain against expulsion measures (art. 57.4 as it relates to art. 54.a) of LOExIS, whereby protection in connection with any serious breach of the Organic Law on Public Security) is considerably weaker than is provided by art. 13 of the Draft Directive (which proposes a level of protection similar to that enjoyed by EU citizens).

More problematical is the temporary residence permit. Art. 46 a) of RExIS 864/2001 requires that a first application for a temporary resident's permit be accompanied by a currently valid residence visa or the requisite application for exemption, which is only granted in a very limited category of cases.[30] The fact is that this is not expressly provided in either LOExIS 4/2000 or LO 8/2000, but it is an article of faith in Spanish administrative practice. This principle is so strictly applied that persons legally entering Spanish territory with short-stay visas or study visas cannot subsequently alter their intentions and apply for a resident's permit with or without remunerated economic activity. In such cases the administrative authority unfailingly requires that the alien return to his or her country and there apply for a visa, even where he or she has an offer of employment in Spain or possesses sufficient means to reside in Spain without remunerated economic activity. The administration's pig-headedness in this respect has been such that in early 2001 it organized a "shuttle service" for Ecuadoran citizens with offers of employment in Spain to return to their country and there apply for the requisite visa.

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[30] These are very specific cases (aliens from a zone at war or subject to political, ethnic or other conflicts of a magnitude that prevents the issue of a visa; aliens unable to obtain a visa because return to their country of origin or last residence would entail danger to their safety or that of their families or because they lack personal ties with that country, etc.).

One is prompted to wonder about the reasons of the Spanish legislator for maintaining such a system. Every year, Spain receives approximately fifty million tourists and is one of the top three tourist destinations in the world. Probably there is a fear that if a specific visa is not required before applying for a temporary resident's permit there will be a flood of "work tourists". There is no way of determining beforehand how many of these can be absorbed by the Spanish labour market. On the other hand, the consequences of the current system are startling: a person living legally in Spain cannot obtain a residence permit even if he or she has an offer of employment and even if there are no Spanish applicants for the position offered. This issue is discussed more fully in the section on work permits.

Before concluding this argument, it is worth comparing the new Spanish regulations with the EU Draft Directive regarding conditions of entry and residence of third-country nationals for purposes of paid employment and self-employed economic activities.[31] One particularly notable difference is in art. 5.2 of the proposal for a council directive whereby application for a "residence permit-worker" may be made directly in the territory of the Member State concerned "if the applicant is already resident or *is legally living* in that territory". Acceptance of this proposal would mean that any person having legally entered the territory of a Member State (in some cases with a short-stay visa) would be able to apply for a residence permit-worker if he or she has a valid contract of employment or a firm offer of employment and meets all the other formal requirements set forth in art. 5.3 of the proposed regulations.

2. Residence by reason of family rennification

Both LOExIS 4/2000 and its amendments under LO 8/2000 provide for the right to reunification of the "nuclear family":[32] spouse not legally or actually

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[31] Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, COM/2001/0386 final – CNS 2001/0154, *Official Journal* no. C 332 E, 27/11/2001.

[32] The laws of other comparable European countries differ little in this respect. Some are more restrictive, for example the Austrian Law of 1997, article 20 whereof allows only reunification of the spouse and unmarried children who are minors, or art. 12 *bis* of the French *Chevènement* Law. Article 22 of the 1990 German Law allows reunification of relatives other than spouses and single minors where there are humanitarian considerations (*zur Vermeidung einer aussergewöhnlichen Härte*). Art. 27.1 of the Italian Law of 1998 allows reunification of relatives up to the third degree of consanguinity provided that these are unable to work and in the care of the applicant.

separated (protection exclusively of monogamous matrimony),[33] unmarried children aged under 18 or disabled older children (of applicant or spouse), and ancestors (again of applicant or spouse), where they are economically dependent and there are reasons to authorize their residence in Spain. At the same time LO 8/2000 eliminated two categories of relative that LOExIS 4/2000 had included among those eligible for reunification: relatives of Spanish nationals not coming under the Community system (i.e., relatives other than the spouse, children aged under 21 or older where economically dependent, and ancestors, again where economically dependent on the Spanish national); and any other relative of a legal resident where there are humanitarian considerations.

Admittedly the rules introduced by LOExIS 4/2000 to delimit eligibility for reunification, which have since been reformed, raised serious difficulties of interpretation,[34] since they failed to define the requisite degree of consanguinity and the humanitarian considerations warranting reunification where such are required by the law. Also, international instruments for the protection of family life are normally based on the nuclear family, which is likewise the basis of the reunification regime proposed in the draft European Directive currently in the pipeline. On the other hand, the draft Directive does make reference to common-law marriage, which has on occasions been afforded protection by the ECHR in interpreting the scope of Art. 8 of the European Convention on Human Rights.[35] At all events, it remains to be seen whether common-law marriages can be protected within the ambit of aliens law while keeping fraud within reasonable bounds.[36]

Other requirements added by LO 8/2000 to the provisions of LOExIS 4/2000 are: a) that to qualify for reunification the alien must have been legally resident in Spain for at least one year (the "term of wait") and b) must possess a resident's permit valid for at least one year more. As to the other administrative requirements for the granting of such permits, RExIS 864/2001, in implementation of LO 8/2000, includes some of the requirements previously contained in

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[33] In the case of second or later marriages, art. 17.a) of LOExIS bars reunification of a new spouse where the conditions of dissolution of the previous marriage make no provision for the use of the common dwelling, alimony for the spouse and maintenance of the common children. This article refers indirectly to the Islamic practice of repudiation; the problems that this raises in Spain and Europe are fully discussed in A. Quiñones Escámez, *Derecho e inmigración: el repudio islámico en Europa,* Barcelona, Fundación "La Caixa", 2000.

[34] Y. Martínez Cano-Cortés in P. Santolaya Machetti (coord.), *op. cit.* p. 122, E. Aja (coord.), *op. cit.* p. 142.

[35] On the concept of family life as defined in art. 8 of the ECHR, see A. Chueca Sánchez, *La expulsión de extranjeros en la Convención Europea de Derechos Humanos,* Zaragoza, Egido, p. 67 et seq.

[36] In fact, common law marriage is recognized in art. 10 of Law 5/84 of 26 March, which regulates the right of asylum and refugee status, as amended by Law 9/94 of 19 May. In comparative law, provision is made for the reunification of common-law spouses in § 27 of the German Bill on Aliens and social integration of immigrants.

regulatory instruments of inferior rank (basically the MO of 8 January 1999).[37] These include evidence that the subject of reunification possesses sufficient financial means, access to health care and adequate housing.[38]

Residence permits for reunified family members were and still are dependent on the residence permit of the applicant for reunification. LO 8/2000 (art. 19) now makes provision for the granting of independent permits for spouses in possession of a work permit or having demonstrably cohabited with the applicant for reunification for two years[39] (or less if there are family or humanitarian considerations), and for children in possession of a work permit or attaining majority age. Residence permits may be made independent in the event of marital crisis. Art. 16 of LOExIS 4/2000 provided that the reunified spouse could keep his or her residence permit in the event of severing of marital ties but did not specify the requirements; however, this covers two types of situation which cannot readily be addressed by a single norm. Administrative practice has to deal on the one hand with marriages of convenience, which are short-lived, their sole purpose being to take advantage of the benefits that marriage to a resident affords under the law on aliens. On the other hand, there have been cases where the reunified spouse is forced to undergo ill-treatment at the hands of the partner under threat of loss of the residence permit in the event of separation. And yet, the solution provided in art. 41.4 of RExIS 864/2001, which implements art. 19 of LOExIS as amended by LO 8/2000, is in fact the same for either case. On the one hand, the residence permit is withdrawn in the event of breakdown of the marriage in the absence of marital cohabitation in Spain for at least two years. On the other hand, the divorced spouse can always obtain an independent residence permit after the same period of time – albeit the cohabitation requirement may be reduced if warranted by family or humanitarian considerations (including ill-treatment). It is striking that the legislator should have prescribed the same period of cohabitation for the continuance of residence permits in the case of divorce and for the granting of an independent permit in general, given that EC Directive COM(2000) 624 requires four years of uninterrupted cohabitation for the granting of an independent permit and only one year in the case of breakdown of the marriage (art. 13).

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[37] Order of 8 January 1999 establishing general rules and procedures for the issue of visas and residence permits for purposes of family reunification, in implementation of Regulations under Organic Law 7/1985, *BOE* no. 11, 13 January 1999.

[38] Given the notorious problems that this requirement has raised in administrative practice (the evidence required is a report from the local council, or failing that a notarized affidavit), it is surprising that it should still be included in the Act without any provision for more rapid administrative verification (art. 44.4 of RExIS 864/2001 virtually reproduces the rules introduced by the MO of 8/1/1999).

[39] Art. 13 of Draft Directive COM(2000) 624 proposes a maximum of 4 years' cohabitation.

3. Residence by reason of "stability"

LO 8/2000 also introduced changes in residence by reason of stability, one of the chief innovations of LOExIS 4/2000. Art. 29.3 of LOExIS 4/2000 provided for the granting of temporary residence permits to aliens having lived continuously in Spain for two years, being registered in a municipal roll and possessing sufficient means to live. The original intention of the provision was to establish a procedure for "ongoing regularization" of illegally resident aliens. The new version of that provision (now art. 31.3) raises the required period to five years, but at the same time it allows for the consideration of other definitions of stability. Finally, art. 41 of RExIS 864/2001 has established the following categories:

Temporary residence permit for persons living in Spain (art. 41.2.c). The minimum time is raised from 2 to 5 years, but municipal registration is not required and presence in Spain need not be continuous.

Temporary residence permit for persons who have lost their residence permit (art. 41.2.b) and have lived continuously in Spain for two years.

Temporary residence permit for persons who have been in Spain for three years and can prove actual employment[40] (art. 41.2.d) and family ties with foreign residents or Spanish nationals.

These permits are laudable in that they are intended to cater for aliens who succeed in living unlawfully in Spain for long periods of time, but it must be recognized that such a means of obtaining a temporary residence permit is inconsistent with the fact that illegal residence in Spain is classified as a serious offence punishable by expulsion (art. 57.1 of LO 8/2000). In the original terms of LOExIS 4/2000, whereunder the penalty for illegal residence was a fine rather than expulsion, an alien refused a residence permit simply had to register in the municipal roll and wait two years to regularize his or her situation (a species of "purgatory"). During that time, such persons could not be expelled simply for being illegally resident, unless they had also entered the country illegally.

The faults of such a system are obvious: in the first place continuous regularization as defined is an invitation to illegal entry in the country (the dreaded "bad example"). Also, during the period of "purgatory" the aspirant is forced to live outside the law (at best working illegally; at worst resorting to crime) and is easy prey to the mafias controlling illegal immigration. Given that the new law treats illegal residence in Spain as an offence punished by expulsion, it is hard to see how persons illegally resident can obtain residence permits. In

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[40] An unpublished Instruction of the Government Office for Aliens and Immigration dated 13 July 2001 requires that such employment be "accredited by presentation of an offer of employment, whose authenticity must be checked by the appropriate Labour and Social Affairs Areas or Offices".

practice this means that residence permits will be granted to those clever enough to evade police controls for long enough.[41]

IV. WORK AND QUOTAS

LOExIS 4/2000 introduced few changes in the system of work permits provided by LOEx 7/1985, and LO 8/2000 carried on in the same vein. The rules governing work permits in Spain obey much the same principles as discussed in the case of residence permits. Very briefly, the system works on the unrealistic assumption that the putative worker is in a country other than Spain and there receives an offer of work from a Spanish employer. The diplomatic or consular authority requests a report from the Spanish labour authorities to check that the job cannot be taken up by a Spanish worker (this is known as checking the national employment situation), and if the report is positive a visa is issued. The alien worker then travels to Spain, where the employer has his or her residence and work permits processed together. Once these are approved, a contract of employment is drawn up. The initial permit is issued for one year and confined to a given geographical area and industry. Permits are renewed for two-year periods without further restrictions as to geographical area or industry, until the worker has been resident for five years. The worker is then eligible for a permanent residence permit and can engage in any profession or occupation without having to apply for a work permit.

The drawbacks of the system are obvious: the labour relationship is *intuitu personae*; a worker cannot be treated in the same way as a fungible. Hence, other than in certain very specific sectors, it is futile to expect a Spanish employer to hire an alien worker in the first instance without first-hand knowledge of his or her training, skills and personal disposition. Paradoxically, such an employer cannot legally hire an alien who is already in Spain and whom he knows personally, unless the alien has a valid residence permit (for example, because he has worked before). Any application for a first-time work permit for an alien already in Spain will be denied in absence of a visa for remunerated economic activity issued by the Spanish embassy or consulate in the applicant's country of origin. Hitherto, the legal regulations were routinely flouted in practice: the potential workers were already in Spain, and they were selected on the spot. When he found a suitable candidate, the employer would draw up an offer of employment in that person's name; the worker would then apply (either in person or through an attorney) for a visa to the embassy or consulate in his or

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[41] Comments on LOExIS as regards residence by reason of stability range from eclectic tolerance (M. Moya Escudero (coord.), *op. cit.* p. 67) to open rejection (A. Alvarez, P. Agüelo, *op. cit.* p. 560, Yolanda Martínez Cano-Cortés, in P. Santolaya Machetti, *op. cit.* p. 179).

her country of origin, and when this was granted he or she would have to travel there, as the law requires that visas be collected in person.

As a way around the difficulties raised by this model, since 1991 the Government has annually published a Decree approving a contingent or "quota" of non-EU workers, theoretically intended to meet labour demands that cannot be covered by the domestic labour supply. The ostensible advantage of this system up until now was that analysis of the domestic labour supply in respect of such jobs was carried out beforehand, thus speeding up the formalities. The real advantage of the quota system was that it provided workers and employers with an unofficial means of regularizing their situation. Employers issued personal offers of employment within the quota, naming workers whom they knew since the latter were already in Spain; the worker "only" had to take the trouble to return to his or her country of origin to collect the visa or else apply for exemption from the visa requirement if he or she was already in Spain and met any of the legal conditions.

LOExIS 4/2000 struck the first blow at such shenanigans by dint of a strict requirement that the applicant for a quota permit actually be abroad (now art. 39 LOExIS). The norms regulating the latest quota[42] of non-EU workers for 2002 now require that offers be general and stress that the worker must be located abroad. The Administration has begun to take the view that the quota system precludes any other channel for first-time hiring of a foreign worker by an employer[43] when hiring a foreign worker for a position that might be filled from the domestic labour supply. An employer making an offer of employment not coming under the quota must so advise the employment services; these will

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[42] Ministry of the Presidency. Decision of the Under-Secretary's Office, dated 11 January 2002, ordering publication of the Cabinet Decision of 21 December 2001 establishing the quota of non-EU alien workers for the year 2002, *BOE* no. 11, 12 January.

[43] The quota is now the only legal channel for first-time engagement of alien workers in cases requiring reference to the domestic labour supply. Very briefly, the procedure as regards the quota for 2002 is as follows: on behalf of their members, provincial employers' associations must apply to the offices of the Ministry of Labour and Social Affairs for a provincial quota. Once that quota is allocated, they must submit block offers of employment to the labour authority, specifying the number of jobs with descriptions and candidate profiles. The labour authority will ascertain that all the offers meet the requirements laid down by labour regulations and will then pass them on to the Department of Immigration; the latter will then remit these offers, through the Department of Consular Affairs and Protection of Spaniards Abroad, to the Embassy of the country or countries from which workers are sought. Once the applications from alien workers are received, they are forwarded to Spain, where the labour authority, having received signed blank contract forms from the employers, will proceed to select candidates, with the participation of employers' associations in some cases. Following selection, the documentation and the contracts are sent to the Consulate for the issue of visas. The contract must be signed in the worker's country of origin. It constitutes a provisional authorization to work and allows the worker to register with the Social Security. Any other work permit application involving verification of the domestic labour supply will be refused.

then advise the Department of Immigration for approval of a quota extension to cover such offers. It is assumed that any other application for a work permit under the "general procedure" – that is, outside the quota system – is not intended to cover an offer of employment that cannot be filled by Spanish labour.[44]

V. OFFENCES AND SANCTIONS

The most important changes introduced by the new law, however, affect the issue of sanctions. Formally, LOExIS 4/2000 had reorganized the system of offences set forth in LOEx 7/1985, classifying offences as very serious, serious and minor (RD 155/1996). But the biggest changes introduced by LOExIS 4/2000 were in the list of offences and, most importantly, a new sanctions scheme. One of the highlights of this scheme was the exclusion of irregular residence and working from the list of offences qualifying for expulsion. The new LO 8/2000 did not alter the structure of LOExIS 4/2000, but it did modify the allocation of sanctions and generally made these tougher.

Important among the changes introduced by LO 8/2000 was the reclassification of irregular residence and working as grounds for expulsion (art. 57.1 LOExIS as it relates to 53.a) and b)). It should be said that the scheme as introduced by LOExIS 4/2000 contained a paradox regarding the situation of aliens to whom the Administration refused a residence permit (for example, for not having a visa). Refusal of a permit in principle meant that the person must leave Spain; however, if the alien ignored the order to leave, he or she could not be expelled. As noted earlier, in situations like this the system under LOExIS 4/2000 encouraged aliens to remain in Spain, swelling the statistics on irregular immigration, illegal working, etc. – a grim ordeal for those unable either to regularize their situation or return to their own countries.

The new LO 8/2000 sought to be more consistent: in the case of irregular residence and working, aliens are liable to be expelled (in the case of irregular working, this is true only if the alien also lacks a residence permit, but not, for example, if he or she possesses a residence permit of the kind that does not authorize remunerated economic activity). The direction followed by the Spanish legislator is in fact in line with the practice of our European neighbours – France,

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[44] Unpublished Circular from the Department of Immigration 1/2002, dated 16 January 2002. The second form accompanying a denial is specifically based on art. 74.1.a) of RExIS (national employment situation). The only exceptions are work permits for activities not requiring reference to the domestic employment situation (art. 71, RExIS), work permits for cross-border workers (art. 76, RexIS); work permits classified under transnational provision of services (art. 77, RexIS), student work authorizations, aliens with work permits for special circumstances (displaced persons, applicants for asylum, seamen engaged on Spanish vessels or students on work practice (art. 79, RExIS).

Germany, Austria, Italy and Belgium to name but a few. But while the measure is consistent with the aim of eradicating illegal working, combating illegal immigration rings and the exploitation of aliens in irregular situations, the possible consequences of expulsion for residing or working without a permit are arguably disproportionate – i.e., prohibition of entry for 3 to 10 years, which is registered with the SIS and is thus effective for all States in the Schengen group.[45] At all events, the application of this ground for expulsion must take into account the crucial requirement of respect for the principle of proportionality in art. 55.3 LOExIS. Bearing in mind that the offence of "illegal residence" covers a broad range of circumstances (illegal residence following illegal entry; legal entry on a short-stay visa and subsequent irregularity in ignoring the obligation to leave; irregular residence following expiry of permit), expulsion should be reserved for the most serious category – illegal residence following illegal entry. In any event, it seems excessive to leave the decision on whether or not to expel to the discretion of the Administration.

In addition to these causes of expulsion, LO 8/2000 adds other offences to those listed in LOExIS 4/2000, which were already harshly treated in LOEx 7/1985, including concealment from the Administration of information relating to domicile, marital status or nationality. Especially noteworthy is the reintroduction of expulsion of persons having received a prison sentence of one year or more in Spain or elsewhere, which the doctrine has consistently declared to be contrary to the principle of *non bis in idem*. In other cases, the new version of the law removes ambiguities or uncertainties regarding offences already causing expulsion. For example, the system as originally introduced by LOExIS 4/2000 still classified as a serious offence the engagement in "illegal activities" (a type of offence listed in art. 26.1.f) of LOEx 7/1985 and dealt with in our jurisprudence in innumerable cases, mostly concerning prostitution). The new law defines serious offences as acts contrary to public policy which are classified as such in the Public Security Act.[46] The classification of offences for purposes of the law is to be welcomed; however, the wording of some of the events classified in the Public Security Act as serious offences warranting expulsion is unclear.[47]

Another noteworthy feature of the reform introduced by LO 8/2000 in the list of offences and sanctions in LOExIS 4/2000 is the toughening of sanctions for

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[45] An analysis of the laws in other countries reveals two different modes of expulsion: in France and Belgium there is *expulsion* and *reconduite à la frontière*; in Germany there is *Ausweisung* (in the case of serious offences against public policy) and *Abschiebung* (forcible execution by the Administration of an order to quit German territory). A differentiated approach of this kind would have been welcome in Spain, provided that escort to the frontier entailed, for example, a bar on entry for a short time (e.g., one year).

[46] LO 1/1992 of 21 February, on the Protection of Public Security, *BOE* no. 46, 22/2/1992

[47] Art. 23 e): the holding of recreational activities without authorization or exceeding the limits of such authorization; art. 23 f): admittance to premises or establishments of more spectators or users than are authorized, etc.

persons, both Spanish and foreign, involved in illegal immigration – that is, those employing workers without the requisite permits, and transport companies delivering aliens to the Spanish frontier without checking whether their papers are in order or refusing to accept responsibility for their return to the country of origin. The rules are especially strict in relation to transport companies in obedience to art. 26 of the Convention for Application of the Schengen Agreement and Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.

The situation as regards employers is tightened in two ways. Firstly, the hiring of aliens in an irregular situation does not have to be "habitual" to constitute an offence as it did under LOExIS. 4/2000. And secondly, the hiring of one illegal worker is a separate offence punishable by a fine of up to 60010.12 euros each).

As regards procedure, aside from the special rules governing judicial expulsions, the various different modes of expulsion are much as set forth in R.D.155/96:

Return: for persons attempting to enter illegally or defying prohibition of entry. No administrative process is required.
Expulsion by fast-track procedure: reserved for cases of illegal residence, offences against public policy or illegal immigration networks. Expulsion takes place in a matter of 72 h.
Expulsion by ordinary procedure. This comes under the sanctions regulated by RD 1398/93 and thus entails an administrative procedure with full guarantees. Note that the deciding body can impose precautionary measures such as periodic presentation of the person, withdrawal of passport, detention for up to 72 h and application to a court for up to 40 days' internment in a holding centre.

The fast-track procedure under the new regime has come in for criticism as being too hasty to allow effective judicial supervision. A glance at developments in the laws of other countries shows that all our European neighbours have fast-track expulsion procedures, and these were also available in Spain prior to LOExIS 4/2000. In France, however, such expulsion is subject to judicial control in a quasi-instantaneous procedure where the subject has only 48 h in which to appeal. Given the statistics of expulsions and the grounds adduced, a similar provision for appeals would probably not have overburdened the Spanish administrative courts.[48]

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[48] In fact (e.g., art. 122 of the LJCA) there is provision for appeal against orders prohibiting a meeting, whereby the appellants must present a writ within 48 h and the court must issue a decision in 4 days. Under the previous regime the Supreme Court admitted some appeals for infringement of the right to effective judicial protection in preferential proceedings, but these entailed irregularities such as failure to advise the interested party of a proposed decision for the purposes of his defence.

Finally, on the subject of expulsion it remains to briefly mention the expulsion of aliens where this breaks up the family, an issue not often addressed. Since the early 1990s the ECHR has consistently ruled that expulsions entailing the break-up of a family can only be ordered in a democratic society where they are essential to safeguard public policy or public security (there are numerous rulings: Berrehab,[49] Moustaquim,[50] Beldjoudi,[51] Nasri,[52] Mehemi,[53] Ezzouhdi,[54] Boultif,[55] and others). In Europe the issue is so sensitive that in a law promulgated in Austria in 1997, for example, the legislator declared *expressis verbis* that expulsion was not allowable if it could contravene art. 8.1 of the European Convention on Human Rights[56] (incorporation by reference) and could not be justified in the terms of art. 8.2. In Spain, the only provision in this respect that has been made in laws subsequent to that of 2000 is that spouses and children under 18 of permanent residents, of persons of Spanish birth who have lost Spanish nationality or of persons in receipt of disability pensions under industrial accident/disease schemes or unemployment benefit, cannot be expelled other than for serious offences against public policy. As regards temporary residents, on the other hand, family unity does not appear to be a consideration for purposes of expulsion. In this connection we would stress that the European Convention on Human Rights outranks LOExIS 4/2000, and we would call for its application in such cases where the Spanish legislator has proven insensitive to the problems.

CONCLUSIONS

The Spanish legislator has comprehensively amended the law on aliens over the past two years. Among the reasons given for this has been the need to adapt Spanish law to the international commitments attendant on membership of the European Union. However, the foregoing analysis shows that these developments in the Spanish law on aliens are not exactly in tune with the legislative initiatives currently under consideration at Brussels. The restrictions on fundamental rights such as respect for private and family life, the right of assembly and association and the right to demonstrate and to strike contained in LOExIS 4/2000 following the reform introduced by LO 8/2000 clearly impinge

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[49] Decision of 21 June 1988, *Affaire Berrehab c. Pays-Bas, Serie A* no. 138.
[50] Decision of 18 February 1991, *Affaire Moustaquim c. Belgique Serie A* no. 193.
[51] Decision of 26 March 1992, *Affaire Beldjoudi c. France, Serie A* no. 234 A.
[52] Decision of 13 July 1995, *Affaire Nasri c. France, Serie A* no. 320 B.
[53] Decision of 26 September 1997, *Affaire Mehemi c. France, Recueil* 1997-VI.
[54] Decision of 13 February 2001, *Affaire Ezzouhdi c. France.*
[55] Decision of 2 August 2001, *Affaire Boultif c. Suisse.*
[56] § 37 (1) of the FrG 1997 (see note 8): "In the event of intrusion in private or family life in connection with an expulsion order under §§ 33.1 or 34.1 and 3, or a prohibition of entry, such deprival of the right of residence shall only be lawful where it is essential to the purposes of Art. 8.2 of the ECHR"

on the general scope of these rights as defined in the European Union Charter of Fundamental Rights. The system of work and residence permits, strictly subject to the prior issue of visas in the country of origin, is again at odds with the model proposed in the draft Directive as regards conditions of entry and residence for third-country nationals seeking to take up employment or undertake remunerated economic activities. The draft Directive proposes that residence/work permits be granted to persons who have legally entered the territory of a Member State, are in possession of an offer of employment and meet all the other regulatory and documentary requirements contained in the proposal. The rules on family reunification totally ignore common-law families (unlike the draft Directive on family reunification) other than to deny reunification of relatives for legally-married persons not living together, and diverge from the proposed European regulations in the time requirements for the granting of independent residence permits for reunified family members. As regards expulsion, again LOExIS 4/2000 fails to comply with the minimum standards of protection of family life set by the jurisprudence of the ECHR in recent years. In the time it takes for the Constitutional Court to rule on the appeals lodged against LO 8/2000, there will almost certainly have to be another major reform of the Spanish law on aliens once the various bills in process at Brussels are passed. Whatever timid opening is achieved in the gates of "fortress Europe" will be a poor consolation for the families of the hundreds of aliens who lose their lives on Spanish frontiers as they bid desperately for a better life in Europe.