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# Regularization of International Protection Applicants: Alternatives in the Face of a Bleak Horizon

# La regularización de las personas solicitantes de protección internacional: alternativas ante un horizonte sombrío

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ABSTRACT

This article examines the impact of the new Spanish immigration regulation (RD 1155/2024) on applicants for international protection (IP). Although it introduces a provisional pathway to regularization through the Fifth Transitional Provision, it actually consolidates a restrictive jurisprudence that limits the possibilities of accessing a legal status after the denial of an IP application. Through a comparison with the German system, which has developed flexible mechanisms such as the *Spurwechsel* (track-change) to facilitate the transition of rejected applicants towards legal residence, the need to consider stable and coherent alternatives adapted to current mobility dynamics becomes evident. The analysis reveals the prevailing tension between integration and control, showing how Spanish policy, aligned with restrictive European trends, places IP applicants in a legal limbo that compromises their rights and inclusion processes.

*Keywords:* 1. right of asylum, 2. immigration regulation, 3. regularization process, 4. Spain, 5. Germany.

RESUMEN

Este artículo analiza el impacto del nuevo reglamento de extranjería español (RD 1155/2024) sobre las personas solicitantes de protección internacional (PI). Aunque introducirá una vía provisional de regularización mediante la Disposición Transitoria Quinta, consolida realmente una jurisprudencia restrictiva que limita de las posibilidades de acceder a un estatus legal tras la denegación de la solicitud de PI. A través de una comparación con el sistema alemán, que ha desarrollado mecanismos flexibles como el *Spurwechsel* (cambio de vía) para facilitar la transición de solicitantes rechazados hacia la residencia legal, se evidenciará la necesidad de plantear alternativas estables y coherentes adaptadas a las dinámicas de movilidad actual. El análisis revela una tensión constante entre integración y control, mostrando cómo la política española, alineada con tendencias europeas restrictivas, coloca a las personas solicitantes de PI en un limbo jurídico que compromete sus derechos y procesos de inclusión.

*Palabras clave:* 1. derecho de asilo, 2. reglamento de extranjería, 3. regularización administrativa, 4. España, 5. Alemania.

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## INTRODUCTION

Human mobility, in all its forms, is a structural factor of contemporary society. Still, public authorities are reluctant to adapt policy regulations to this urgent reality. Constrained in the rigid categories of foreigner-national or economic migrant-refugee, Spanish lawmakers have not taken advantage of all the possibilities available to manage this phenomenon in the latest regulation of the so-called immigration law—Organic Law 4/2000 of January 11, on the rights and freedoms of foreigners in Spain and their social integration (hereinafter LOEx)—approved by Royal Decree 1155/2024 of November 19, approving the Regulation of Organic Law 4/2000 of January 11, on the rights and freedoms of foreigners in Spain and their social integration (hereinafter the Immigration Regulation or RLOEx). Although this new instrument introduces certain improvements to the immigration regime, especially regarding authorizations for residence permits and labor and training integration, for IP applicants it has meant the regulatory consolidation of a jurisprudence that, in fact, already pointed toward the closure of pathways to administrative regularization once applications are denied.

This article will analyze the Fifth Transitional Provision (DT 5) of the new regulation, which aims to provide a provisional pathway for regularization to rejected IP applicants. Its validity, exclusively provisional, jointly with the restrictions instituted for these individuals by Royal Decree 1155/2024, will make this mechanism a sort of last resort before the definitive denial of the residence permit for IP applicants, which may prove unsuitable for the coming challenges that human mobility will most likely face.

This analysis will be enriched by focusing on the German State, which over the last decade has developed a complex regulatory structure aimed at responding to the large number of people living in its territory temporarily until their expulsion can be processed, by means of instruments such as the *Spurwechsel*, which provides an alternative for redirecting migration trajectories following the rejection of an IP application. This comparative approach, focusing on the potential that German regulations can contribute to the Spanish regulatory framework, will enable us to question the viability of the recent Spanish regulatory reform and provide some clues about possible alternatives for rejected IP applicants. Thus, far from presenting, from a structuralist perspective (Somma, 2015, pp. 153-156), a mere descriptive list of differences and similarities between the two legal systems, we will attempt to provide an evaluative approach that allows for a critical approach to the subject of this study.

Finally, we will evidence how the paradigmatic tension between integration and control is ambivalently reflected in the new immigration regulations: while avenues for legal integration through training or work are encouraged, the stance of lawmakers toward individuals who choose IP clearly leans toward control, with the exception of the aforementioned DT 5.

The elements analyzed in the coming lines will paint a bleak future for the asylum regime, extending the restrictive policies inherent to economic migration to the humanitarian sphere. If in the prologue to Seiler's work (1961), Frisch notoriously stated, "We asked for workers. We got

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people instead" (p. 7) to refer to the immigration policy of the last century, today an even bitterer tone must be given to this assertion, since what is being received today are human beings trying to escape poverty, upon whom Europe imposes other chains: those of legal liminality (Menjívar, 2006).

## A PROVISIONAL PATHWAY TO REGULARITY

Next, we will analyze the provisional pathway to regular administrative status for persons whose applications for international protection (IP) have recently been rejected, as established by RD 1155/2024. Yet, it will be necessary to first understand the legislative and jurisprudential background of this provision, and which could have led to its inclusion in the regulations.

### *Jurisdictional and Legislative Background*

A thorough study of provision DT 5 of the recent immigration regulations requires turning back to the previous version of the aforementioned instrument and to the rulings that have established jurisprudence regarding IP applicants. To do so, it must be taken into account that authorization for exceptional circumstances of residence is the main means of regularization for foreigners (Permanent Observatory of Immigration [OPI, acronym in Spanish for *Observatorio Permanente de la Inmigración*], 2025).[4]

While a detailed study of the new types of residence permits under Royal Decree 1155/2024 would exceed the scope of this article, it should still be kept in mind that the now repealed Royal Decree 557/2011 of April 20, which approves the Regulations of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, already established the concept of an employment residence permit. This was the main trigger for the controversy that will be discussed below regarding the possibilities for rejected IP applicants to regularize their administrative situation by means of residence permits. However, for introductory purposes, it should be noted that residence permits, regulated in Chapter I of Title VIII of the RLOEx, within the scope of residence permits motivated by exceptional circumstances, are subdivided into five types: 1) second chance residence permit; 2) socio-labor residence permit; 3) social residence permit; 4) socio-educational residence permit; and 5) family residence permit (Articles 125-127). All of these seek to enable the acquisition of regular legal status for those who show signs of integration in various spheres, whether familial, social, employment, or educational.

Thus, the employment residence permit, previously included in Article 124.1 of Royal Decree 557/2011, could be requested if one could be demonstrate having stayed in Spain for a minimum of two years, during which time the holding of regular or irregular employment relationships (SEM Instruction 1/2021) in a situation of legal residence or stay must be certified by any legally

[4] According to the latest figures from the OPI (2025), the number of people with permits based on strong ties has grown by 31% in one year, with a predominance of family ties (61%), followed by education (19%). Thus, 313,075 people currently benefit from this type of permits based on strong ties.

admissible means of proof, including a certificate of employment history (STS 1184/2021, FJ 4th). That is to say, after the regulation was amended in 2022, the employment residence permit was limited to cases of supervening irregularity in which the applicant had held a legal residence permit that eventually expired, but had carried out sufficient work during its validity.[5]

It should be noted that limiting this regularization route to persons in a supervening irregular situation, first through investigations and subsequently through jurisprudence and regulations, greatly reduced the effectiveness of the provision, as approximately 93% of those who resort to residence permits do so based on what is known—mainly for statistical purposes and outside the strictly legal sphere—as profound irregularity; that is, persons who have never been able to obtain authorization to reside and work in Spain (OPI, 2024, p. 3).

It is worth mentioning that the restrictive approach to employment residence permits does not end here. Given the steady increase in IP applications in recent years, it became necessary to clarify whether applicants whose procedures had ended with a negative response were allowed to subsequently access job security. Thus, it should be noted that IP applicants are authorized to access a job while their application is being processed, including the subsequent period of administrative or judicial appeal. However, this will only apply for six months after the application is formalized. Therefore, in reality, if the procedural deadlines are met, no applicant would have this authorization, since the application should be resolved within six months.

To this end, the controversy lay in clarifying the legal classification that should be attributed to the period during which asylum seekers await a final response to their application. Law 12/2009 of October 30, regulating the right to asylum and subsidiary protection (Asylum Law) does not fully comply with EU regulations on the matter, giving rise to a certain degree of legal uncertainty.

Thus, Supreme Court Ruling (STS) 414/2024[6] clarified this issue by ruling that IP applicants are not entitled to use residence permit pathway to regularize their situation following a negative response, since they are not under legal residence or stay during the processing of their application, but simply have the right to stay in the territory exclusively until a resolution is issued on the processed application. In this ruling, the Supreme Court refers to Article 9.1 of Directive 2013/32, which provides that asylum seekers shall be authorized to stay in the Member State "solely for the purposes of the procedure, until the ruling authority has issued a decision." It later clarifies that this "right to stay shall not constitute a right to obtain a residence permit." This is how employment relationships established during this period of *tolerated stay* cannot be effective for the purposes of applying ordinary immigration law systems for obtaining residence through the exceptional pathway of employment permits.

[5] It should be noted that this restriction of the scope of application was implemented with Royal Decree 629/2022 of July 26, which amended the provision to explicitly state that individuals must be in an irregular situation at the time of the application, but the prior employment relationship must have been carried out under a legal status of residence or stay (Article 124.1 of the now repealed Royal Decree 557/2011).

[6] This case pertained an IP applicant who resided legally in Spain after having filed an appeal against the execution of the asylum denial in order to suspend the refoulment order.

Ultimately, this 2024 jurisprudence helps dispel doubts regarding the legal status of IP applicants while their application is reviewed by the relevant bodies. These applicants are relegated to a provisional and instrumental stay, subject to a sort of procedural condition that will open or close the door for them to stay in Spanish territory. As such, the possibilities of accessing the exceptional authorization system under immigration legislation are largely closed if one has entered the territory exercising the right to asylum.

It is also worth mentioning Supreme Court Ruling 4937/2021 of December 16, 2021, in which the Supreme Court clarifies that the application for IP entails "the suspension of the expulsion procedure for irregular residence (LOEx, Article 53.1.a) that could affect the applicant until the Administration issues an initial resolution rejecting or deeming inadmissible said application" (FJ 4). Otherwise stated, the right granted to asylum seekers to stay and, where appropriate, to work in Spain is a direct consequence of adopting the precautionary measure of effectual suspension of the expulsion procedure for those applicants who are subject to a sanctioning procedure.

Therefore, this right is not regulated as a residence or stay in its own right, but rather derives from the application of this precautionary measure, the purpose of which is to prevent applicants from being expelled during the evaluation process of their application, thus allowing them to earn their own livelihood through employment meanwhile. Thus, rather than a right to reside and work, IP applicants have a kind of provisional permit that positions them in a legal limbo between regularity and irregularity, a liminal and precarious space in terms of rights and integration, facing a highly uncertain future.

Thus, the doors to regular status through a residence permit for exceptional circumstances remain closed to IP applicants, with the sole contingent exception being the new provision introduced by Royal Decree 1155/2024, which is analyzed below. As the analyzed jurisprudence shows, the Spanish legal system establishes a clear differentiation between IP regulations and the immigration pathway, as two alternatives but in no way converging avenues for obtaining legal residence in the country. The strict interpretation of the articles in light of European legislation thus leads to a legally precarious configuration of the applicant's status.

The minor extent to which the Spanish authorities acknowledge IP situations and their excessive processing time (Spanish Commission for Refugees [CEAR, acronym in Spanish for *Comisión Española de Ayuda al Refugiado*], 2024) has forced a large number of people to remain in an intermediate legal space for long periods of time, a sort of legal interlude during which, nevertheless, they will inevitably begin an integration process, potentially developing social and family ties or beginning career paths, all of which would crumble following a possible negative response to their application. The new regulation of Royal Decree 1155/2024 offers ambiguous temporary relief to individuals in this situation, with short-term solutions but greater restrictions in the long run.

*The Regularization Provided for in the Fifth Transitional Provision*

Although the new immigration regulations have provided a completely new architecture for residence permits, involving substantial changes compared to its previous versions, a gap still persists regarding applicants for IP, who currently lack a stable pathway to regularize their situation if they are rejected, with the sole exception of the temporary channel provided for in the DT 5.

As a matter of fact and except for the DT 5, the new regulation is much more restrictive regarding applicants for IP, explicitly stating in Article 126 that one of the requirements for requesting a residence permit is not to have the status of an IP applicant, either at the time of submitting the application or during its processing. Likewise, it states that the time spent in Spain as an applicant does not count toward proving the two years required to submit this application. Thus, if the door to more lax jurisprudence is closed with this new regulation, which leaves no room for interpretation, the only remaining possibility is the articulation of a separate and permanent pathway for rejected applicants that may circumvent the restrictive jurisprudence and the strict provisions in this regard, as is the case in other countries such as Germany, which will be discussed in the following point.

Specifically, the DT 5 of Royal Decree 1155/2024 establishes that persons who find themselves in an irregular situation as a result of a negative response on their IP status may apply for a residence permit due to exceptional circumstances based on strong ties to the country.[7] To this end, at least six months of irregular residence must be proven, compared to the general rule of two years. This means that the resolution rejecting IP must have been issued at least six months before submitting the residence permit application, a more than reasonable time given the wait that will already precede obtaining the negative response. It is important to note that this provision will only be in force from May 20, 2025, to May 20, 2026, that is, 12 months from the entry into force of the regulation, with the possibility of extension by agreement of the cabinet.

Given the doubts raised by this DT 5, the Secretariat of State for Migration (SEM [*Secretaría de Estado de Migraciones*], 2025) published an explanatory note clarifying certain unclear aspects of this article. It particularly specifies that withdrawal from the IP process in order to apply for residence is not admissible; it must follow a denial or final rejection. Recourse to the DT 5 procedure will only be admissible when an administrative or judicial appeal is withdrawn when it was filed in response to an express denial of the IP application, that is, a negative resolution, and not due to negative administrative silence. In any case, this denial or rejection resolution must be issued before May 20, 2025.

It is so that any praise for this provision should be expressed with extreme caution, as its provisional nature does not provide a response consistent with the integration requirements arising from the State regulatory and programmatic order provided for by the Strategic Framework for

[7] Second chance residence permit (Article 127, letter a) for persons in a supervening irregular situation who did not previously have authorization due to exceptional circumstances is excluded.

Citizenship and Inclusion, against Racism and Xenophobia, 2023-2027, of the Spanish Observatory on Racism and Xenophobia (OBERAXE, acronym in Spanish for *Observatorio Español del Racismo y la Xenofobia*). Indeed, for the purpose of promoting integration, this document equates the situation of IP beneficiaries with that of IP applicants awaiting a resolution (Solanes, 2024, pp. 104-105), in contrast to the European integration strategy, which requires applicants to have a "high probability of a favorable decision" in order to enjoy certain benefits, such as those related to housing (European Commission, 2020). Thus, although applicants are considered lawful subjects of State integration and inclusion policies, this integrative paradigm is not accommodated in the recently adopted regulations.

As such, we can see how the regulation consolidates a formalistic approach to the length of stay required to process a residence permit, moving away from the more factual nature of this concept, which seeks to grant regular status to people who have been living in Spain for a period of time reasonable to establish social, employment, or family ties.

In fact, the residence permit based on strong ties is presented as a regularization mechanism that clearly reflects the concept of integration within the Spanish legal framework, seeking to bring the law closer to the facts. Unlike other more restrictive and selective modalities, such as those that impose integration tests on foreigners, the residence permit based on strong ties considers the individual's actual situation to determine whether there is a degree of integration in the country that can be promoted and consolidated through the granting of a temporary residence and work permit.

The draft reform of the regulation (Ministry of Inclusion, Social Security and Migration [*Ministerio de Inclusión, Seguridad Social y Migraciones*], 2025, p. 35) provided that what is now classified as *second chance residence permit* would also be a permanent pathway for rejected asylum seekers, as it introduced the option of applying for this permit if a person had held a job while staying legally in the country, but still without a residence or stay permit. This was explicitly aimed at IP applicants, to alleviate jurisprudential restrictions. Moreover, the regulatory impact assessment also outlined the intention, now impractical, to "add a specific case for IP applicants in which they may request authorization" (Ministry of Inclusion, Social Security and Migration, 2025, p. 69). However, as we have been pointing out, a provisional mechanism embodied in DT 5 was ultimately chosen, which will operate as a type of extraordinary regularization limited in time.

Although ultimately discarded by the legislator, it should be noted that the draft option was much more consistent with the notion of *residence permit based on strong ties*, since asylum seekers have already begun an integration process while awaiting the procedure's resolution, which, in practice, far exceeds the stipulated six months, but in a precarious legal situation of *tolerated* permanence rather than legal residence. Thus, it is entirely inconsistent that integration, as a cardinal principle of immigration policy (Article 2bis, paragraph 2, letter c, and Article 2ter LOEx), is also aimed at applicants for IP, but that, following a negative resolution, a clean slate is made and the entire integration process that an applicant has undergone prior to the denial is ignored.

If, instead of relying on *provisionality*, an attempt had been made to institutionalize a permanent pathway into the immigration authorization system for IP applicants who have already started their integration process, as is the case in countries like Germany, a better response could have been provided to the complexity of current migration flows; flows that are of a markedly mixed nature and arise from a multiplicity of new causalities currently driving unwanted human mobility, such as the environmental factor. This is gradually making it more difficult to associate a migration trajectory and a life history with a specific category in the immigration or IP regulations, since the boundaries between the two are increasingly blurred. Thus, a strict separation between the IP and immigration regimes, as implied by the latest Royal Decree 1155/2024, may not be adequate for the challenges that immigration policy is to face in the future.

## A COMPARATIVE LEGAL APPROACH TO THE GERMAN *SPURWECHSEL*

A comparative analysis of the regulations is of particular interest, given that the high number of asylum seekers Germany has received since the first wave of refugees in 2014 has led this country to adopt a complex architecture of authorizations and pathways to regular status, which can serve as inspiration for countries in the European region that are beginning to follow suit, such as Spain.

German regulations address the phenomenon of IP applicants by paying special attention to the phenomenon known as *Spurwechsel* (track-change), the term implying a track-change from IP to immigration. While the first hints of this mechanism date back to 2016, certain regulatory changes introduced in 2024 complicate the configuration of IP applicant status and its alternatives for legal residence. Studying the evolution of the German legal reality over the last decade regarding this issue, highlighting the main laws adopted since the refugee wave of 2014, will allow for us to critically approach the recent changes in the Spanish legislation and to glimpse the possible paths still to be taken by Spanish lawmakers.

### *The Legislative Evolution of German State Regulations Regarding the Treatment of IP Applicants*

As already known, German immigration and asylum policy is characteristically complex, with numerous ramifications for each of its provisions and constant modifications to its articles that have gradually furthered the *expellability* status of foreigners (Torró, 2024, pp. 1710-1715).

For reasons of space, the starting point from which the situation of IP applicants will be discussed is the so-called refugee crisis (Becker, 2017, p. 55) of 2014, which triggered unprecedented legislative activity in the German State, previously rather limited to the transposition of European standards (Hruschka & Rohmann, 2021, pp. 14-15). Although the German Residence Law (*Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern*, hereinafter AufenthG.) contains an article since 2005 that offers rejected asylum

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seekers (*Geduldete*)[8] the possibility of legalizing their status after 18 months of *Duldung*,[9] it was not until 2016 that a hint of what would later become consolidated as a true *Spurwechsel* was introduced for the first time, especially since the optional nature of the law was discarded for it to be consolidated as a genuine right.

Thus, in 2016, the Integration Law (*gesetz*) was passed with the aim of facilitating the inclusion process for refugees and IP applicants, representing a significant change in immigration management compared to previous years. This law connected the asylum procedure with integration into the labor market for the first time, establishing *regulated channels* that link the spheres of vocational education, asylum, and the labor market. This suggests a certain economic shift in German asylum policy, as it responds to the demand for specialized labor in sectors under pressure rather than to a humanitarian logic. Indeed, as Fontanari (2022) points out, this law represented a significant break with the traditional asylum policies that had prevailed in Germany since the 1980s, since the asylum law prohibited IP applicants from working.

Specifically, the 2016 law established a new concept known as the *3+2* or *Ausbildungsduldung* (vocational education tolerance permit) (Article 60c AufenthG.), which allowed *Geduldete* to extend the suspension of their expulsion for three more years. This period required vocational education, along with the subsequent two years of work, after which it would be possible to obtain a legal residence permit. It should be noted that not all *Geduldete* were treated equally; instead, those with a higher probability of obtaining a favorable resolution were prioritized (*gute Bleibeperspektive*). This established a harmful hierarchy among the foreign population itself, eroding the traditional link between status and access to rights: the rights that were previously unified under the IP applicant category now diverge depending on the subcategory[10] they belong to (Hruschka & Rohmann, 2020, p. 4).

Also, in 2019, a new immigration package will add the *Beschäftingungsduldung* (employment tolerance permit) (Article 60d AufenthG.), a type of permit intended for those with *Geduldete* status who are employed and meet a series of requirements, such as financial self-sufficiency or demonstrating basic German language skills.

Later, in 2022, the *Chancen-Aufenthaltsrecht* (Article 104c AufenthG.) was incorporated into the law, a type of permit intended for those with *Geduldete* status who are sufficiently integrated into German society after a five-year stay The main novelty lies in the fact that this authorization represents a bridge to a permanent permit, since its main objective is to provide the rejected IP applicant with the necessary time (18 months) to meet the legal requirements for permanent

[8] *Geduldete* is the legal category in German law for rejected asylum seekers without a legal residence permit who, in principle, are subject to expulsion, but this cannot be carried out for factual or legal reasons.

[9] The term *Duldung* (tolerance permit) refers to the legal status of denied asylum seekers whose expulsion has been suspended for factual or legal reasons beyond their control.

[10] This includes not only having "good prospects for residence," but also coming from a safe country, or being a person whose identity is unclear.

residence under articles 25a and 25b of the AufenthG., in addition to eliminating the criterion of the *gute Bleibeperspektive* to attend integration courses that the 2016 law had introduced.

A year later, in 2023, a law on skilled migration (*Fachkräfteeinwanderungsgesetz*) was passed, allowing asylum seekers to withdraw their application before it is rejected and obtain a residence permit under the new Sections 18a, 18b, and 19 of the AufenthG., provided they entered the country before March 29, 2023, and hold qualification of some kind, from a university degree to two years of certified vocational education abroad. It is by means of this law that the concept of *Spurwechsel* was explicitly consolidated, which can be broadly defined as the granting of a residence permit for employment or vocational education after the renunciation or rejection of the asylum application (*Gemeinnützige Gesellschaft zur Unterstützung Asylsuchende* [GGUA], 2024).

Thus, the selective nature that was already emerging with the 2016 Integration Law has progressively solidified with the various reforms put forward. As such, it seems that the humanitarian nature and the safeguarding of human rights has been overshadowed by a purely economic drive through the *Spurwechsel*, according to which IP applicants are turned into useful labor for the productive machinery of the German state, not so much under the logic of *acknowledging* rights based on belonging to a single category, but rather under the logic of *deserving* said rights after an individualized analysis of merits and capabilities (Bendixsen & Näre, 2024, p. 7).

### *Brief Characterization of German Legislation Regarding Asylum Compared to Spanish Regulations*

Analyzing the labyrinthine German legislation would require much more detail than is possible in this article. Hence, this section will address three elements that can irrefutably be identified as defining such law, and that will be useful for drawing comparisons with Spanish regulation.

First, an initial overview of this legislation suffices to affirm that German lawmakers have been characterized in recent years by their legislative hyperactivity, which has led to an inconsistent and disparate application of the law. As Hruschka and Rohmann (2021) show, since 2014, 40 amendments have been introduced to immigration and asylum regulations; on the one hand, to improve material reception and accommodation capacity, and on the other to offer a *symbolic* response to the alleged sense of loss of control resulting from the entry of a large number of refugees and immigrants in recent years.

Also, the fragmentation of the law itself is striking, each of the proposed concepts set forth branching in multiple ways, often unnecessarily due to the close similarity among them. In fact, a recurring debate in the German context concerns the potential creation of an immigration code that could address the hyper-complex and dysfunctional legal status quo (Thym, 2019). While since 2005, Section 25(5) of the AufenthG. offered rejected asylum seekers the possibility of regularizing their status after 18 months of *Duldung*, under some additional conditions, this single article has become progressively more complicated.

Two new provisions were added (Articles 25a and 25b) in 2025, which made regularization a right for rejected asylum seekers who demonstrate sustained integration.[11] Added to this are all the new developments addressed in this article, which include the classification of *Duldung* into various types according to the activity to which they give access (education or employment, Arts. 60c and 60d) and new types of residence, such as the *Chancen-Aufenthaltsrecht*, or the authorizations for skilled workers of Articles 18a, 18b, or 19c of the AufenthG.

Finally, the last feature that should be brought up is the substantial modification of the migration model, leaving behind the system based on labor market demand to move to another where what prevails will be human capital, that is, the potential of people to generate wealth and boost the labor market, what Laubenthal (2019) calls "liberal reorientation of German immigration policies" (p. 416). This ultimately concerns the extension of the workfare logic, instituted with the Hartz IV reforms in 2000, to immigration policy under the well-known motto "Fördern und Fordern" (promote and demand), which aims to reduce dependence on the welfare State through incorporation into the labor market. It should as well be noted that the 2024 reform also introduces a new type of authorization based on a points system called the *Chancenkarte* (opportunity card), in which Thym (2022) identifies the shift from the typically German model based on labor demand to one focused on attracting talent, assessable through a series of indices.

This summary characterization of the main lines of German immigration policy regarding asylum seekers must now be linked to the Spanish case and the recent approval of Royal Decree 1155/2024. What must be specifically highlighted is the notable openness of the German system to building bridges between immigration and IP regulations, which, beyond the questionable logic that may underlie this dynamic, provides a way out for the large number of people who find themselves in the legal limbo of being a rejected asylum seeker subject to expulsion, or *Geduldet*.

In the Spanish case, the new regulation's strict lock-out of IP applicants is striking, with the exception of DT 5. Its clear intention is to dissuade asylum seekers from accessing residence. This reflects a certain attitude of suspicion and distrust toward applicants, which has become a common practice in migration governance (Borrelli et al., 2021). Furthermore, while many of the German regulations are adopted for a clearly limited time, in the Spanish case, reducing DT 5 to a one-year validity undoubtedly opens up far fewer opportunities for regularization and ignores the structural and structuring nature of migration in all its forms in the current era, including mobility for humanitarian reasons.

However, the side effect of this DT 5 is probably closer to "disintegration" than to "dissuasion," the former understood as the barriers that the State places before certain social groups or legal categories to prevent their participation in the various social systems. "Organized disintegration" is a term used by Täubig (2009) to describe the attitude and practices of German institutions towards IP applicants, which not only ignore the already existing permanence in the territory, but

[11] This concept (*nachhaltige Integration* in German) is defined as having no criminal record, having language competence, and being prospect to future economic self-sufficiency.

also actively seek to undermine and discourage it, in many cases within a broader integration framework that overshadows these sly intentions. Thus, although Royal Decree 1155/2024 establishes integration as one of its basic axes, especially through employment and vocational education, this intended integrative framework takes on a bitter tone when approaching the reality of IP applicants. Despite not finding themselves in the critical situation described by Täubig, since they can access employment, their permanence in Spanish territory and their (social, employment, familial, etc.) connection to it are not acknowledged as enabling them to access legal status. In the words of Sayad (2011), they rather are absent presences.

Although the reactive and insufficient legislative production detected in the German State regarding immigration policy can also be found in the Spanish legal system, in the latter case IP applicants have not been targeted by institutions until fairly recently. In fact, Law 12/2009 of October 30, regulating the right to asylum and subsidiary protection, has undergone few reforms since its passing compared to the LOEx and its regulations.[12]

However, the reactive and circumstantial way in which German lawmakers regulate immigration and asylum also bears similarity to the regulatory regime for the rights and freedoms of foreigners in Spain, which has been hastily developed over the last 40 years, with a continuous overlap of regulations and several declarations of unconstitutionality (Solanes, 2010), which have generally arrived late in the face of continuously increasing migration flows. This is an indisputable demonstration that the status of foreigners, whether IP applicants or economic migrants, increasingly found in both Germany and Spain, is an exceptional regime, anomalous in the nation-State, whose legal system has the national individual at its center, and it is from this condition that all areas of the social sphere are regulated. As such, the legislative production of the State provides the legal outline for what Obligado (2020) defines as the foreigner status: “Exile as identity. Foreignness as homeland” (p. 76).

It can certainly be stated that the specifically German practice of developing multiple alternative options for exiting a provisional status, such as the *Duldung*, is at odds with the approach adopted by the Spanish legal system, which is currently at a stage that could comparatively be considered premature. It accounts for a single status for rejected IP applicants, which Royal Decree 1155/2024 practically positions one step below that of an irregular immigrant, as it does not even consider their legal presence in the country as meriting any rights. Thus, while German asylum policy has been influenced by the shift in immigration laws across Europe, which aim to attract skilled workers and strengthen the national labor market in the context of an “international race for talent” (Shachar, 2006, pp. 106-107), it seems that in the Spanish case the latest regulation would lean more toward rather traditional positions that deny any alternative possibilities to rejected IP applicants.

[12] Specifically, there have been five reforms in 15 years of validity.

## INTEGRATION *VS.* CONTROL: A DIALECTIC IN CONSTANT DISPUTE

The rejection of immigration based on racist and xenophobic grounds is a growing phenomenon throughout Europe. Its corollary is the demand for greater restrictions on migration flows to the EU coming from third-country States. This has a direct impact on Spain, as it serves as the Union's southern border.

However, European countries find themselves at a difficult crossroads: many sectors have a latent need for labor, especially in certain technical fields or those linked to new technologies, as well as in the field of long-term care, a result of the progressive aging of the population. Thus, the prevailing need to control the entry of foreigners into the country through the multiplication of borders and their respective strengthening is faced with a labor shortage that demands the attraction of foreign workers, resulting in a scenario of constant dialectic between defensive and identity-based demands and those that opt for a more instrumental or utilitarian approach towards immigrants. These ideas are embodied in the new Royal Decree 1155/2024 and converge in the figure of the IP applicant, who, on the one hand, will be subject to restrictive policies, which will be countered, on the other, by a favorable State integration framework.

### *Inclusive Disposition vs. Sovereigntist Impulses: Its Embodiment in Royal Decree 1155/2024 and IP Applicants*

At the dawn of the 21st century, family reunification and IP applications became established as the main forms of immigration in Europe (Hollifield et al., 2022, p. 13), classified as *subie* (suffered) immigration, according to the unfortunate expression coined by former President Nicolas Sarkozy over two decades ago (Sarkozy, 2005). The non-selective nature of the vast majority of immigration currently arriving in Europe poses a dilemma between integration and control, one that finds no parallel in traditional immigration countries, such as Canada or Australia, where immigrants are selected and arrive through the employment pathway, with a clear preference for highly skilled workers (Joppke, 2024). Thus, Hollifield's (1992) liberal paradox now takes on its full splendor in Europe: How can economic pressure, which calls for greater openness to immigration, be reconciled with political concerns for security and public order that advocate closure and control?

In every new regulation approved that is directly or indirectly linked to immigration management and asylum, we can find the dialectic between integration and control, leaning toward one extreme or the other. This dilemma is also reflected in the new Spanish immigration regulation, Royal Decree 1155/2024. On the one hand, its approach is rather integrative, by seeking to make regularization pathways based on strong ties more flexible, but on the other, its stance is restrictive toward IP applicants, who will be subject to the logic of control.

Thus, while integration through work and vocational education are the cornerstones of the new regulation, individuals who have entered the country by means of asylum and have not obtained a favorable resolution to their application are excluded from this equation. This constitutes a form

of border control internalization and, *a posteriori* and after the foreigner has begun an integration process, restricts residence in the country.

According to Joppke (2024, p. 821), the German Integration Act of 2016 established a trend towards integration in German immigration and asylum policy, but from a more neoliberal perspective, promoting self-sufficiency and the acquisition of useful skills for the productive system, through the aforementioned *3+2* concept. Likewise, the author warns of the risks that the *Spurwechsel* entails for asylum or IP: while offering legal integration avenues for people whose IP applications have been rejected may be optimal, the boundaries between IP and immigration regulations, which remain solid in the Spanish case, are weakened here. As such, a constitutive distinction in immigration policy, such as the duality between IP applicants and economic migrants, which finds its rationale in the need for special protection for people who have suffered persecution, appears to be blurred in the German case, thus threatening the legal autonomy and integrity of asylum (Joppke, 2024, p. 831).

The balance between identitarian or defensive claims and a more instrumental rationale has ended up harming IP applicants in the Spanish case, while in Germany it seems to lean toward a greater propensity for an economic rationality that may favor employability. However, as has been pointed out, this is an interplay in constant friction, since it should be remembered that the German State also very recently approved a law that, in response to a security imperative, seeks to expedite expulsion processes (*Rückführungsverbesserungsgesetz*, 2024).

This way, the aim is to recover the imaginary of an inflexible and functional sovereign power whose pillars have been damaged by the increasing arrival of refugees to German territory, turning borders into performative and theatrical walls that yearn providing a forceful response to the desire for delimitation and belonging. Meanwhile, an instrumental reasoning pushes institutions, under pressure from the main business actors, to bring in foreign professionals able to ensure the continuity of the production processes of goods and services. This generates a centripetal force that cuts through border performativity and bows to the interests of the labor market, transforming all humanitarian aspirations into a profitable market force.

While this two-way approach has been identified in the dynamics of German policies, Royal Decree 1155/2024 does not reflect this aspiration, as has been pointed out. On the contrary, it could be argued that the new regulation places people in an irregular situation, both initially and subsequently, at the forefront by attempting to make regularization possibilities more flexible, yet with a serious flaw: the manifest indifference toward the large number of IP applicants, given that this, in many cases, is the only remaining means of access to a territory whose State has failed to build pathways for stable and secure labor mobility. The new Royal Decree 1155/2024 has failed to improve the definition of a strategy for labor migration, which would evidently require coordinated action between States with current mechanisms for hiring that generally provide few guarantees in terms of rights for foreigners and are clearly oriented toward circularity. Yet, the new regulation has paradoxically articulated channels for an *a posteriori* educational-employment integration, once the inescapable condemnation of administrative irregularity has been overcome.

Still, people who have applied for IP and whose applications have been rejected are left out of this integrative tendency, except through the DT 5 pathway.

It can be somewhat boldly predicted that, in the coming years, a path to regularization for IP applicants will need to be consolidated, since the horizon does not seem to point to a decrease in the motivations that force the population to seek refuge in another country, but rather the opposite: forced displacement, according to figures from the United Nations High Commissioner for Refugees (UNHCR, 2024), continues to increase, with a particular upswing in armed conflicts and environmental reasons that push people to migrate. It can also be predicted that the labor shortages in Germany will be echoed in the near future in Spain, State lawmakers having to anticipate the possible sources of irregular workers with foreign qualifications who will arrive in the territory and who, due to outdated and inflexible regulations, will be unable to enter the labor market.

Thus, there where the asylum system cannot reach, proper integration policies must be implemented, providing pathways that may enable successful integration in the country of arrival and residence. Therefore, the focus below is on the integration policies for people with IP status developed within the Spanish framework, which will serve as a counterweight to the apparent and progressive erosion that the asylum regime has suffered since the early 2000s.

### *The Integration of IP Applicants and Beneficiaries*

After years without a clear and coherent approach since the last Strategic Plan for Citizenship and Inclusion (PECI, acronym in Spanish for *Plan Estratégico de Ciudadanía e Inclusión*), 2011-2014, integration policies in the Spanish context finally have a compass that will guide their direction in the coming years: the Strategic Framework for Citizenship and Inclusion, against Racism and Xenophobia, 2023-2027, by the OBERAXE. In a novel way, this instrument includes a section dedicated to "Humanitarian assistance, international protection, temporary protection, statelessness, and reintegration" (p. 121), with multi-level objectives to improve access to the IP process and the reception system, in addition to proposals designed to better address the different vulnerabilities of people arriving through humanitarian channels. Thus, some of the main guidelines are aimed at improving the transparency of the reception system's operation, with the incorporation of indicators of adequacy to standards; at offering better training tools to staff who deal with applicants; and at increasing the resources of reception spaces and adapting them for better care and inclusion.

The importance of placing applicants and beneficiaries of IP at the center of integration policies lies in the fact that, due to the ambiguity of their legal status, they have not traditionally been considered recipients of such policies, as evidenced by the EU Common Basic Principles (CBP), which refer to legally resident immigrants but not to applicants for or beneficiaries of any form of IP. Under the concept of the "integration dilemma," Roxström and Gibney (2012) have encompassed the resistance of States to develop integration policies aimed at refugees for fear that this will discourage subsequent repatriation, based on the provisional nature of their status, as stated in the Geneva regime. However, the vast majority of IP applicants stay in their country of

arrival for years awaiting a resolution, and so an integration policy that goes beyond provisional or temporary solutions should be a priority for States (Parekh, 2016).

Thus, while it is true that at the EU level, legal residence is a *sine qua non* condition for participating in the integration process, in the Spanish legal system, the existence of the residence permit based on strong social ties and the report that came with it in the previous immigration regulations required that integration measures also be aimed at irregular immigrants and IP applicants. Hence, this regularization path previously constituted an ideal channel to avoid disrupting the integration process already underway in Spanish society during the years of waiting for a resolution—generally a refusal—since, otherwise, they would be forced to leave the country, rendering ineffective the public investment made to promote the fruitful integration of these individuals into society. However, with the new articles, which close the door on residence permits based on strong ties for IP applicants, these applicants could be deemed no longer subject to policies that favor compliance with the social integration report and, therefore, can be excluded from integration strategies.

This would contradict the aforementioned Strategic Framework, which does not differentiate according to the status of the person of foreign origin when it comes to integration measures, since all of them should be eligible for actions aimed at preventing racism and xenophobia, and at promoting accessibility in healthcare services, employment, or housing. Therefore, a two-way direction can be identified in the Spanish legal context, aimed, on the one hand, at incorporating IP applicants and beneficiaries into the path of integration, as shown by OBERAXE (2023), and, on the other hand, at a path set by lawmakers intended to avoid by all means the possibility of granting a secure legal status to foreigners. Thus, no matter how many integration initiatives are developed that aim to alleviate the discrimination that weigh on all foreigners, if they do not face a legal situation based on equal rights and obligations, there will be no viability to implement the principles provided for in the Strategic Framework of citizenship, equal treatment, and non-discrimination or integration.

## CLOSING REMARKS

The cross-sectional examination of the IP applicant situation in Spain and Germany, with some nuances regarding the European outlook, allows us to draw a series of conclusions that will be relevant for directing the future regulations of the Spanish State toward the challenges that will become central to its immigration policy.

The analysis of Royal Decree 1155/2024 reveals a significant evolution in the regulation of residence permits based on strong ties, consolidating a more restrictive regulatory approach toward IP applicants. While the regulation introduces a provisional pathway to regularization under the DT 5 for those who have received a final denial or rejection resolution, this measure is insufficient due to its time-limited nature and its strict separation between the immigration and IP regimes. Although Supreme Court Ruling 414/2024 closed the door to IP applicants who resorted to employment residence permits after having met the requirements during the long wait for a

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resolution on their application, the opportunity to consolidate a system—such as the second-chance residence permit in the draft version—that addresses the situation of rejected IP applicants has been missed.

This approach contrasts with models such as the German one, which more consistently acknowledges the integration of IP applicants through permanent regularization pathways. Specifically, in Germany, the implementation of the *Spurwechsel* concept has made it possible to build bridges between asylum and immigration regulations, providing rejected IP applicants with options for legal integration through mechanisms such as the *Ausbildungsduldung* and the *Beschäftigungsduldung*. Our presentation of German immigration law institutions is not intended to promote a legal transformation in the Spanish legal system by means imposition, as the diffusionist method of comparative law or the well-known doctrine of legal transplants (Watson, 1993) would call for. Rather, it seeks to mobilize Spanish lawmakers to open the door to greater legal flexibility and creativity, which would allow foreigners to be offered a status and a set of guarantees that respect human rights.

Spain faces the challenge of designing migration policies that reflect the complexity of current migration flows, where new mobility factors, such as the environmental crisis, blur traditional migration categories. Advocating for structural solutions, such as a second chance residence permits specific to IP applicants, would allow for the articulation of a more equitable and effective system aligned with the integration principles enshrined in Spanish law and the Strategic Framework for Citizenship and Inclusion, against Racism and Xenophobia, 2023-2027. The Spanish State has the opportunity to avoid following the dangerous path the EU is taking in terms of the right to seek asylum, which, with the entry into force of the European Pact on Migration and Asylum, has furthered its progressive erosion and denaturalization. The coming years are likely to see Spanish legislature forced to reconsider the regularization pathways for IP applicants, seeking a balance between the needs of the labor market and the rights of asylum seekers, as has been done in Germany in recent years.

As such, we proactively propose a series of actions to be undertaken.

First, it is imperative to improve the access channels into the territory for labor migration, thus easing the congestion in asylum applications, since one of the main causes of the saturation of the asylum system is that the border closure policy for economic migration implemented in the 1970s has not been reversed, this having a particularly negative impact on the most precarious immigrant workers, who are left out of reach by the shift in the migration model intended to attract highly skilled talent and professionals. Thus, the first action should be aimed at establishing a general framework applicable to all workers—without specifying sector or skill level—so that they can access regular pathways to manage their immigration process without relying on extraordinary regularization mechanisms or extremely complex hiring processes, such as those contained in Articles 72 *et seq.* of the immigration regulations. Thus, it might be advisable to reconsider the concept of job search visa (Article 43 *et seq.*, Royal Decree 1155/2024), which is underutilized

but could bring many benefits for better management of the arrival and incorporation of individuals into the labor market.

Secondly, it is worth highlighting that the Spanish asylum system is under-resourced, as the number of applications that must be handled does not correspond to the resources and personnel actually available. This leads to excessive processing times for IP applications, leaving applicants in a legal limbo beyond which the future is uncertain, especially so after this recent reform of immigration regulation. While the law provides for a maximum response period of six months for applications admitted for processing, the average duration, in practice, ranges between 18 and 24 months, with a recognition rate of 18.5% in 2024 (Ministry of the Interior, 2025). This could be solved at large by strengthening the asylum system in terms of resources.

Lastly, it is essential to support the creation of a solid regularization pathway for those IP applicants who have already begun an integration process and who then see their application rejected, since the impossibility of accessing a legal and stable status can discourage both the applicant and the public authorities from carrying out integration actions, which can lead to greater segregation of this group, which will in turn negatively impact the guarantee of their rights and the fulfillment of the integration objectives set out in the regulations.

It should be highlighted that asylum seekers within the IP reception system receive, as users of said system, assistance from multidisciplinary teams whose goal is to ensure their socioeconomic and employment inclusion in Spain while they are in the reception facilities. Therefore, closing to them the doors of legal residence based on strong ties if they fail to qualify for IP necessarily implies wasting all the work done over months or years, and rendering their efforts useless, as well as those of the staff of civil organizations and the public financial resources allocated for that purpose.

Although establishing a specific formula that this pathway should take is too risky; it is necessary to learn from what is already available and, therefore, commit to a lasting—and not temporary, as the current one—and clear solution that promotes employability and vocational education without falling into the praxis of German lawmakers, which has constructed an unintelligible model of often analogous figures. Thus, it would be advisable to link this regularization to integration indicators subject to a case-by-case assessment, including social integration reports and proof of employment, social, familial, or educational ties. All of this while making sure that regularization does not obey an economic logic that instrumentalizes the displaced person as useful labor, but rather a humanitarian perspective linked to an effective integration of migrants that does not abruptly hinder the path already taken in terms of integration and avoids administrative irregularities as the primary cause of social exclusion.

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