

The Law of Democratic Memory: Reparation for Descendants of Emigrants or Political Objective?

La Ley de Memoria Democrática: ¿reparación del daño a descendientes de emigrantes u objetivo político?

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Globalization and technological interconnectedness have made it possible to increase human mobility in many parts of the world, allowing to reactivate different historical connections between destination and return migration countries (Muñoz, 2002). Taking this context into account, one of the factors that slows down migration is access to multiple citizenship, a topic that has been studied in recent years by multiple migration specialists (Mateos, 2015). Having more than one nationality, among other things, provides the opportunity to return to an ancestor's country of origin with full legal rights and increases the possibility of political participation from abroad. For some historically high-migration countries, this has been a crucial factor in their choices (Beltrán, 2018). In Spain, these types of laws are commonly seen as a way to help the government that enacts them gain more votes. For this reason, this note aims to reflect on two topics: the access to voting from abroad for elections in Spain and the benefits and limitations of the Law of Democratic Memory (LDM).

POLITICAL PARTICIPATIONS OF “THE NEW” SPANIARDS

The political participation of people who have obtained and received their nationality is the result of laws, such as Law of Democratic Memory (LDM) and Historical Memory Law (HML). Through these laws, for example, the state citizens living abroad can exercise their right to vote. In Spain, the possibility of voting from abroad for elections has undergone many changes, including the Organic Law 5/1985 on the General Electoral System reform in 2011 and, more recently, the reform from September 30, 2022. Before this last reform, the Spanish citizens living

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abroad who wanted to vote had to request voting documents via postal mail within a short timeframe. In Spanish this is known as *voto rogado*, literally meaning begged vote, which resulted in a participation rate of less than 10 percent—almost half the number of participants in previous elections where the begged vote did not exist.

This kind of political participation through voting could be seen as symbolical in some cases; however, it has had an impact on the July 2023 elections. On the one hand, by the time the begged vote was eliminated, the voting percentage had almost doubled compared to the 2019 elections. On the other hand, the vote of registered persons in the Census of Absentee Residents Abroad, better known as the CERA vote, changed the results on July, 2023, at least in Madrid. The CERA vote was counted five days after election day and, after the count, the number of Madrid deputies changed; the political party *Partido Popular* (PP) gained one more seat, leaving *Partido Socialista Obrero Español* (PSOE) without one. The latter took the elections—already complicated—to the extreme, which finally led to a Pedro Sánchez-led government (from PSOE) on November 16, 2023.

Although it is true that just a few were benefited for the LDM in time to being part of the CERA and vote on July 2023, it is highlighted that this census was mainly composed by Spain-born individuals living abroad and individuals that acquired their nationality for more than 10 years thanks to the HML or other laws. For this reason, the cumulative impact of these laws on the CERA vote results has been contrary to what was discussed regarding their relationship with LDM and their approval in Spain politics. That is to say, in 2023, it took the opposite stance of the ruling party that had passed the law, at least in the Madrid case.

In that sense, Chao Pérez (2022) found in his doctoral thesis that, for descendants of Spanish republican exiles in Mexico, the possibility of voting in Spain elections represents an important symbolic aspect related to their identity and belonging to a political community. Throughout their lives, Spain nationality has been present on an emotional level, but the HML opened the possibility for them to actively participate in Spanish politics.

Meanwhile, Golías (2016) says that recognition and access to Spanish citizenship through HML is not only due to an historical restoration, but also a political interest of the current government at that time with the objective of generating new voters and, the majority of them, were affiliated with the PSOE party. However, despite the fact that the PSOE was the main supporter of the LDM, it lost a seat in favor of the PP, even though some of the PP representatives were against the LDM and mentioned that, when they were elected, they would repeal the law so that, according to Alberto Núñez Feijóo (from PP), they could create a Nationality Law. The need for a Nationality Law is evident; nevertheless, it has been proposed and postponed many times. Therefore, the LDM, HML, and the possibility of a Nationality Law are currently part of a political debate that does not prioritize the objective of ensuring that descendants and exiles of their nationality exercise their rights by *ius sanguinis*, and the option to have political participation through their vote.

ACCESS TO CITIZENSHIP BY HISTORICAL RECOGNITION

How is it that descendants of Spanish emigrants have acquired their ancestors' nationality? There are two ways in which countries grant citizenship, either through *ius soli* or *ius sanguinis* which means, being born within the territory or blood tie. In the case of Spain, citizenship is given through *ius sanguinis*, which means being a child of Spanish parents regardless of where one is born or how the parents obtained the Spanish citizenship. Furthermore, there are other factors for which a person could get Spanish citizenship "by choice," for example, after being legally resident in Spain for a certain period, having a residency card by marriage, or having a Spanish ancestor at the time of birth.

Spain does not have a Nationality Law. Since 1995 to date, certain regulations included in the Civil Code and its reforms are laws that enable the recognition of access to the descendants' nationality. These regulations had been in force temporarily (approximately three years each) with the objective of resolving specific cases in its different editions. However, most of these laws are just a compensation for the harm caused (as in the case of those exiled due to the Civil War), rather than a recognition of the rights to citizenship by *ius sanguinis*; for example, demonstrating the recent *ius sanguinis* of up three generations has been a requirement of these laws for which documentary evidence is needed and they are not easy to obtain during the time these laws are in place.

Through a chronological review of these legislations, it was found that since 1995 laws have begun to be created for the people that had lost their citizenship in order to recover it; for example, Spanish women married to foreigners. This change was finally included in the LDM. However, these normative instruments like the Law 29/1995, just solved isolated cases. In the early 2000s some Latin American groups began movements with the aim of exerting pressure for citizenship recognition for those who didn't have access to previous reforms. The *Morados* group in 2001, revealed the lack of an adequate legislative basis in terms of nationality (Trejo & Martínez, 2011). *Morados*, a group composed of grandchildren of exiled individuals, requested the Spanish Congress of Deputies to grant citizenship to those who had been denied.

The Law 36/2002 reformed the Civil Code in 2002, supported by the political parties *Izquierda Unida*, *PSOE*, and *PP*. This reform promoted the recognition of Spanish citizenship for a few descendants of the Spanish emigration, including some people from the group; nevertheless, the citizenship rights were just recognized for children of parents that had been born in Spain.

Another one of these groups was the *Hijos y Nietos de Españoles* (HyNE) group, actively counseling descendants during the time the additional provision seven of the Law 52/2007 or HML was in place. This law granted access to Spanish citizenship to people whose mother or father had been originally Spanish (regardless of whether they were born in Spain or not), to grandchildren of exiled migrant people during the Civil War and the possibility of passing the citizenship to their minor children, excluding children of full age, as in earlier cases (Law 52/2007). Nevertheless, the option to have access to citizenship through exile has been difficult to prove; therefore, they had

to request it through the corresponding economic migration appendix (the so-called Appendix 1, that does not require exile evidence) (Trejo & Martínez, 2011).

It is noteworthy that these types of laws had been related to the recognition of an historical debt due to the Civil War, with the memory, the status as a victim, and the damage repair. However, then the nationality recognition is through *ius sanguinis*?

The struggle for the nationality recognition by the exiled groups was endless. In 2011 a new group was created, called *Centro de Descendientes De Españoles Unidos* (CeDEU), composed by persons over the age of legal majority excluded from the HML, regarding what was happening since the Law 29/1995. Notwithstanding, new proposals to initiatives for this law only remained as ideas or options for many years. Therefore, the limitations to obtain citizenship for a massive quantity of children, grandchildren, and great-grandchildren continued.

Consequently, it has been clear that there's two specific cases in which certain groups of people have benefited from these laws in recent years. Firstly, the Sephardic Jews that were exiled from Spain in 1492. Secondly, persons that have recent blood ties, as fathers, mothers, grandfathers, or grandmothers, connected to the economic migration or the exile (mainly from Latin American countries). On the other hand, some groups exiled from Spain, as the Moorish and Sahrawi descendants, didn't have the opportunity to have citizenship for historical reasons.

As in the case of the Sephardic Jews, a law was enacted for the first time in 1924, which encouraged that this group could obtain the nationality. From then on, another reform was not established until 1981, when there was an increasing interest in the Sephardic community in Spain. To acquire Spanish citizenship, this community has to reside in Spain the same amount of time as people from Ibero-American countries that only need to be legally residents in Spain for two years. Moreover, the most recent decree that allowed access to Spanish citizenship for the Sephardic community was through the Law 12/2015 in June, 2015. The law was in force until 2019, granting Spanish citizenship to anyone that demonstrated a Sephardic origin.

In relation to the documents and evidentiary requirements, one obligation included in the Law 12/2015 was an exam demonstrating a candidate's knowledge of the Spanish Constitution and different aspects of Spanish life and culture, as well as a notarial certification of the documents to be submitted. Moreover, between the requirements to attest having a connection with Spain, it was possible to validate it through economic activities; for example, donations to Spanish people and institutions, including those related to the Sephardic culture. Despite these obstacles, it is estimated that about 50 000 Mexican citizens took the knowledge exam at the Instituto Cervantes and most of them were from San Pedro Garcia, Nuevo León (Robertet, 2022). The above leads one to think about the huge void that was left even after the LDM.

Finally, some people were compensated with access to their ancestors' citizenship through an additional LDM 20/2022 provision. The provision was temporary and, like on earlier occasions, it was implemented in a law whose objective was a remedy for the harm and the recognition of the

Civil War Spanish victims, as well as its consequences until the 1978 Constitution (Law 20/2022) entered into force. Therefore, it is not a Nationality Law per se, nor the central objective.

The specific cases that are resolved by the LDM while it is in force for those who have the required documentation are: the possibility to recover Spanish citizenship for people who are descendants of Spanish women that lost their citizenship by marrying foreigners before the implementation of the 1978 Constitution. In the same way, the women that couldn't pass Spanish citizenship simply because they were women, due to the fact that the previously established Civil Code doesn't allow the recognition of nationality of origin for their descendants. As a result, the gender discrimination that Spanish women experienced in the past for decades was repaired.

Furthermore, there was also a positive change for the children of full age who were finally recognized with their nationality of origin and had not been taken into account by the HML. This is thanks to the additional provision seven of the Law 52/2007, which includes children of full age of those who are acquiring citizenship for the first time.

The LDM also consider the change of citizenship by naturalization to nationality of origin. In this way, the transmission of it by *ius sanguinis* for people that decided to migrate to Spain is recognized; for example, children of full age that had not been taken into account in the HML or minors whose citizenship was recognized through the Article 20.1b of the Civil Code.

The LDM has been positively received by the Latin-American descendants, making it possible for the families to be in the same condition. A Mexican descendant interviewed said "After the family was divided due to the HML for many years, I was the only one that couldn't apply for citizenship because I was of legal age. Finally, we're all Spanish" (J. Álvarez, personal communication, March 22, 2024). The justice for the recognition of women of Spanish origin and the recognition of children of full age had allowed families, divided by the previous laws, to have the same rights. The recognition of a large number of Spanish descendants in Mexico is expected to turn the groups' past struggles for recognition into an achievement for the children, grandchildren, and great-grandchildren of Spanish emigrants.

CHALLENGES OF THE LDM FOR 2025

It is important to mention that, during the first year that the LMD has been in force, important discussions occurred. One of the main difficulties was the complaint for lack of resources and budget for its implementation in consulates and even paperwork in inland Spain. In February 2023, the PSOE proposed a new motion in the Spanish Senate due the fact that there wasn't clear progress in the resolution of the procedures. The motion was approved with important modifications; proposals made mainly by the political parties *Esquerra Republicana de Catalunya* and *Nacionalista Vasco*, despite the *Partido Popular* rejection. Even with these problems the General Consulate of Spain in Mexico has received more than 27 000 cases and solved several requests—particularly of the Appendix 3 corresponding to legal age persons that had been excluded by the Law 52/2007—.

Since each consulate has its own autonomy, the law can be implemented with certain differences to enable certain individuals to benefit from it as well. Since the LDM has a short validity period and the processes can take several months, the General Consulate of Spain in Mexico made it possible for children of full age to submit their documents once their fathers or mothers did. Initially, this process was conducted in that way to avoid the risk of being left out due to time constraints; however, an official statement was issued in July 2024, clarifying that the LDM would continue for one more year.

Another issue is related to the instruction and the differences in how recognition is interpreted for various life stories, whether of exiled individuals or not. For this reason, in the first version of this law clarifications were made to clearly identify that the LDM does not only include exiled persons. This statement has caused controversy in Spanish politics, where those who proposed it are being accused of seeking votes and political approval.

At the end of 2022, a new atmosphere of hope could be felt within the Spanish descendants that weren't recognized by the previous laws, despite the difficulties and limitations. The current LDM—the result of a 20-year struggle—represents a recognition, a repair to the denied access to citizenship by *ius sanguinis*, and to the living Spanish identity in countries that hosted the grandparents and great-grandparents who had to leave Spain and now their descendants are part of Spain.

CONCLUSIONS

After reflection about the political impact of the damage repair to descendants that, for many reasons, couldn't keep the nationality of their Spanish ancestors, it was found that although the LDM has represented a great advance in incorporating the excluded groups by previous legislations, such reforms to the Spanish Civil Code will remain incomplete. What is truly needed is the creation of a Nationality Law that permanently and not transiently establishes up to which generation can one access nationality of origin, always keeping the gender perspective of this current law. There is still much to be done with the “new” Spanish community that have acquired citizenship through the LDM, meanwhile, the effect this community will have on the Spanish politics will be closely observed.

The LDM have not only increased the population with Spanish nationality, but also have provided an opportunity to increase the number of persons with political rights in Spain. At the beginning, it was noted the impact that the Census of Absentee Residents Abroad (CERA) had in Madrid's latest elections. It is important to remember that both Historical Memory Law (HML) and the Law of Democratic Memory (LDM) had been greatly promoted by the party PSOE. It is then that the question arises, whether those who had the Spanish nationality, favored by the LDM, will vote for PSOE in gratitude or just by political conviction. However, this assumption will only be verified after the next elections in Spain. At that moment, it could be observed if the new

Spanish citizens are interested in voting and if this interest is meaningful for the Spanish residents' future.

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