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Motivations, experiences and consequences of returns and readmissions policy: revealing and developing effective alternatives



Executive Summary

Report on the development of the Return and Readmissions policy across Europe: multilevel analysis

Case Study: **Spain**

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Project Number: 101094107



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Disclaimer:

This document provides a concise summary of the key findings from the national report on Spain regarding the return and readmission policy. The study was conducted as part of WP1 Development of the Return and Readmission policy across Europe: multilevel analysis of MORE Horizon Europe research project. The report is based on exhaustive documentary research of the literature as well as policies, regulations, law and transcription of the parliamentary debates, statistical data extracted from the Ministry of Interior, and two in-depth interviews with experts on the return and readmission policies in Spain. For detailed analysis, evidence, and comprehensive insights, please refer to the full report. The information in this summary should not be considered complete or fully representative of the entire study.

How to cite: Tunaboylu, S. Rué, A. Jubany, O. (2025) Report on the development of the Return and Readmission policy across Europe: multilevel analysis, Case Study: Spain (Executive Summary), MORE Project.

DOI: 10.5281/zenodo.14832961

Publication date:

February 2025

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1. Historical and institutional development of R&R policies in Spain:

Immigration in Spain was not a major policy concern until 1980s. Between 1980s to 2000s due to Spain's accession to European Union and Schengen Zones, there has been a process of Europeanization of immigration policies. In early 2000, immigration as a security issue for the first time appeared in the policy debates by the People's Party (PP). This pivotal moment resulted in a shift from more progressive policies towards restrictive ones. Immigration especially irregular immigration today, is still seen through the lenses of criminalization and securitization in the political and media discourse in Spain.

By 2005, the irregular crossings in Ceuta and Melilla and increased arrival of migrants to Canary Islands - also known as the cayuco crisis - has led Spain to increase cooperation with Sub-Saharan African countries (Gabrielli 2023). Meanwhile, migration had become increasingly hyper-visible in both media coverage and political discourse. This heightened visibility led to an increased emphasis on control, deterrence, and return, prompting Spain to enter into bilateral agreements—both formal and informal—with countries such as Morocco, Mauritania, Senegal, Gambia, and Cape Verde, and into regional cooperation such as the initiation of the Africa Plan aimed at increasing cooperation in these areas (Gabrielli 2023b).

Consequently, a range of migration governance tools, including expedited deportation processes from the Canary Islands, pushbacks at Ceuta and Melilla, and forced returns from the mainland to countries of origin, were implemented. Simultaneously, Spain assumed a pioneering role in European border control efforts, exemplified by the first Frontex operations ever held in the Canary Islands in 2006 (IRIDIA 2020).

2. Analysis of Policy:

a. Relationship between Protective and Enforcement Policy Intentions

Spain today can deport third country nationals not only based on the Penal Code violations but also for being in the country without correct documentation. Since the Partido Popular (re)introduced irregular stay as a cause for forced return in Law 8/2000, there have been

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several modifications of the returns policy that have widened the circumstances by which returns are enforceable, opening the door for a loose interpretation of who can be deported at the discretion of frontline police officers (Kalir, 2023). **In turn, there are very limited protective safeguards in place.** Despite internal police regulations and ombudsman best practices guidelines stating that filing a police complaint should not lead to the start of a deportation process, only victims of trafficking and gender violence are explicitly protected by official regulations and there have been notorious cases where people have been deported after filing a complaint or while being part of court proceedings.

b. (Assisted) Voluntary Return

A majority of those who are returned from the Assisted Voluntary Return (AVR) and Reintegration programme are from Latin American countries such as Argentina, Bolivia and Brazil. Data from the Ministry of Inclusion in Spain (2024) shows that Spain has returned 24,645 people under Assisted Voluntary Return and Reintegration programme between 2009 and 2023. It is curious to see that while return and readmission agreements focusing on forced return of third country nationals is made mostly with countries from North and West Africa, AVR programmes largely focus on Latin American countries. Moreover, while the State does not provide the data on expulsions aggregate by nationality even upon request, the data on AVRs by nationality is publicly available.

c. Formal and Informal Readmission Agreements

Spain has engaged in both formal and informal readmission agreements. While formal ones go through scrutiny in the parliament, informal agreements by nature are less transparent and range from information exchange and police collaboration to memorandum of understanding. As mentioned above, these collaborations predominantly target African countries, even though most irregularised migrants in Spain come from South and Central America. This disparity underscores the securitising nature of the discourse surrounding return policies, which often exaggerates the threat of African irregular migration (Gabielli 2023b).

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In total, the Spanish government signed agreements with 11 African countries out of 22. These countries include Morocco (1992: 2012) Nigeria (2002), Mauritania (2003), Guinea-Bissau (2003: 2008), Algeria (2004), Guinea-Conakry (2006), Gambia (2006) Senegal (2006), Mali (2007), Cape Verde (2007) and Niger (2008: 2017). Furthermore, Spain has invested in diplomatic relations with Sub-Saharan African countries via opening embassies, diplomatic satellite offices and Consulates General (Government of Spain 2021). There has also been informal agreement such as the return of Moroccan nationals from Spain and return of Senegalese nationals from the Canary Islands. There are also other forms of informal collaboration such as collaboration of the police forces with Morocco and the 2021 Memorandum of Understanding (MOA) with Senegal.

d. Detention

Foreigners may be detained in CIEs only to prevent flight while deportation is being processed. As of 2022, the majority of detainees in these centres were Moroccan nationals (2,645), followed by Algerians (1,922), Albanians (232), and Senegalese (218) (CEAR 2022). This again highlights the disproportionately high representation of individuals from African countries living in irregular situations in Spain compared to other nationalities. On one hand, Spain continues to invest in CIEs. For instance, in Algeciras, a new facility is being constructed to replace the previous one, expected to be completed by spring 2024. The project, primarily funded by Frontex, has cost 33 million euros and will have the capacity to accommodate up to 500 people. **On the other hand, the overall number of detainees in CIEs has been decreasing, particularly since the Covid-19 pandemic.** For example, only 27 people remained detained in the old CIE of Algeciras as of January 2024. **Furthermore, there are also less harmful non-confinement alternatives to detention for individuals awaiting deportation decisions, such as regular reporting to authorities.** These alternative preventive measures are increasingly being implemented in Spain (Tunaboğlu and Rué 2024).

e. Conceptualizations of “Effectiveness” within the EU System

In the Spanish context, returns policy "effectiveness" is predominantly measured by the volume of enforced returns within a specified timeframe. Discourses around the efficiency

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of returns are easily influenced by the joggling of statistical information on returns. Spain distinguishes three types of returns: ‘devoluciones’ (administrative return when caught entering irregularly), ‘expulsiones’ (judicial return when staying irregularly) and entry denials. Often, opposition will manipulate the different statistics of these categories to argue against the ‘efficiency’ of returns. This perceived ‘inefficiency’ of returns has been justified mainly by the lack of cooperation of third countries in identifying and accepting their nationals, a lack of coordination among EU member states on the identification of people living in irregularity, and a lack of cooperation of migrants who have an expulsion order in facilitating their own deportation. Occasionally, the high economic costs of deportation have also been used to justify the number of forced returns and, more rarely, the lack of sufficient guarantees offered by third countries in the deportation process.

f. Discursive Aspects in Policy Formulation, Promotion, and Application

The underlying assumption in the political debates analysed over returns is that this is an essential measure for the "management of migration", and that no migration control can be achieved without forcibly returning at least some of those that are in the country irregularly. While there have been repeated initiatives to phase out detention centres by left-wing parties since, the necessity of returns has never been explicitly questioned by any of the parties with representation in the *Congreso de los Diputados*. Thus, the debate has revolved around whether successfully returning those in situations of irregularity requires detention or not. Whereas both politicians from left- and right-wing parties mention that actions need to be taken to increase “effective returns” of irregular migrants.

3. Concluding remarks:

Spain, despite its relatively recent immigration history, has played a key role in shaping EU's return and readmission policies. It was one of the first EU states to introduce the practice of push backs which raise serious human rights concerns. Spain was the first member state to enter into a bilateral agreement in 1992 with Morocco. Spain has also been a leader in border security measures, prioritising border securitisation while simultaneously allowing

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irregularised migrants to regularise their status through ‘arraigo’ after three years of residence. This dual approach signals an attempt to balance EU pressure for strict migration policies with labour market demands that benefit from irregular labour.

The discourse around deportations in Spain often focuses on their ‘ineffectiveness,’ measured by enforcement rates. Despite calls to increase deportations, numbers have been reduced, and it is unclear what efforts, if any, have been made to increase the number of deportations. Therefore, it could be argued, as two expert interviewees on Spain’s return policies pointed out, that the main purpose that the returns policy serves is to reinforce the state’s image of being strict against irregular migration which in turn serves as an electoral tool. Despite the latter, there is an underlying lack of interest from governments to actually increase the enforcement rates of returns due to their costs, both in economic and political terms.

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