

## Spain (Basque Country)

# The management of 'otherness' under the crisis of the State: integration policies and inclusive citizenship as a government paradigm in the Basque Country

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### Presentation

In this text we are going to analyse the documents that reflect the policies on immigration within the area of the Autonomous Community of the Basque Country. The documents we will be discussing are *I Basque Immigration Plan* (Gobierno Vasco [Basque government], 2003) and the *II Basque Immigration Plan* (Gobierno Vasco, 2007), which we shall compare with the policies planned by the Government of Spain (*Strategic Citizenship and Integration Plan*, Gobierno de España [Spanish government], 2007). To a lesser extent, we will be paying attention to the proposals of other Basque public administrations, both at the regional level (Provincial Council of Álava [Diputación Foral de Álava]) and the local level (municipal Immigration Plans), and, similarly, to administrative authorities of less scope or with a transversal character but lacking executive powers (the Ombudsman of the Basque Country). The two Basque immigration plans (that of 2003 for the years 2003-2005, and that of 2007 for the 2007-2009 period) were both conceived in the *Department of Housing and Social Affairs* of the Basque government<sup>1</sup> and are inscribed in a widespread process of drawing up plans on immigration in the autonomous communities of the whole Spanish

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<sup>1</sup> Both were drawn up during the period when Ezker Batua-Berdeak (the political referent of Izquierda Unida [United Left] in the Basque Country, which arose from the union of different left-wing – mainly communist – and republican parties) formed part of the tripartite Basque Government (Basque Nationalist Party [PNV], Eusko Alkartasuna [EA] and Ezker Batua-Berdeak [EBB]) between the years 2001 and 2009 (two legislative periods) and when its coordinator, Javier Madrazo, was acting as Councillor for Housing and Social Affairs.

state from the year 2000 onwards (Zarauz, 2007: 180). In fact, at least in the Basque case, these were plans proposed as an approach to the management of the foreign 'other' that differed from how this was done by the government of Spain.

The general argument of this second report of the WP1 of TOLERACE will continue to be based on what was outlined in the first report:

- The substantive differences that are apparent between the Basque Country and the Spanish state in managing the 'other';
- The reflective position – in the sense of not taking things for granted – in the approach of the Basque administrations to strong questions of identity, alterity and citizenship;
- The infra- and supra-state fields as administrative and normative reference frameworks (that is, regional and local administration below; supranational – including European –administration and normative references of universal scope, such as the Universal Declaration of Human Rights, above).

The following text will first deal with certain questions that explain the differences between the Basque Country and the Spanish state as a whole on issues of managing populations that are susceptible to being considered using categories of 'race' or ethnic group, or to being the object of racist or (in)tolerant readings. We will analyse the conditions of possibility of what could be called a Basque immigration policy, that are constructed, in our opinion, on the basis of the following sequence: one, the administrative peculiarities of the Basque Country; two, the lack of powers<sup>2</sup> of the institutions of the Basque government on questions of immigration and alien population; three, the construction of the legitimacy of the government on these issues, considering them **not as a question characteristic of the executive management of nationality, but as a terrain of policies for administering social exclusion and poverty**, issues concerning which these institutions do have experience and administrative powers.

After that, we will concentrate on the conception held of the 'other', to whom a policy of such characteristics should be aimed. The outlines of the 'others' to whom the plans are directed are clearly defined within a reflection inscribed in **a debate on the**

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<sup>2</sup> In the sense of "legal sphere of attributions that correspond to a public body or to a judicial or administrative authority" (RAE, avance de la vigésima tercera edición, <http://buscon.rae.es/draeI/Srvlt/ObtenerHtml?origen=RAE&IDLEMA=83605&NEDIC=Si>). This means that for the autonomous communities within the Spanish state, the jurisdictional capacities determine the limits of their government action, that is, those affairs on which they can act and those on which they cannot do so.

**differences between *the rich North and the poor South*:** foreign immigrants who proceed from countries that are less developed than the Basque Country. Finally, we will develop the central section of the analysis, where the fundamental axes of the semantics of the documents under study are analysed, that is:

- The decline of the sovereignty of the national states, their being surmounted from below (the local) and from above (the European directives and the Universal Declaration of Human Rights), as key elements for justifying the power of the Basque government on questions such as nationality or citizenship.
- The proposal of an *inclusive* conception of citizenship, based on **the criterion of *de facto* residence and not on nationality**: all those who reside in the territory of the Basque Country are Basque citizens.

## **1. Conditions of possibility of the Basque singularity**

What authorises the affirmation about the existence of a certain Basque immigration policy is an architecture of representation of nationality, *alienage* and immigration that is affirmed in the following sequence: (1st) the Basque Country is administratively singular, (2nd) its institutions do not have legal powers in the government of *alienage*, but they do hold (3rd) full legitimacy on questions associated to development, poverty and social exclusion.

### *1.1. The singularity of the Basque Country from the administrative viewpoint*

The political-administrative decentralisation of Spain, with respect to the **State of the Autonomous Communities** and the concrete case of the Autonomous Community of the Basque Country, is perhaps the condition of possibility of the substantive difference that we detect in how the questions that concern TOLERANCE are managed in the Basque Country and in Spain as a whole. Hence, the political and administrative panorama of the Spanish state at present is the product of a process of recognition of the regional peculiarities within the country that took place at the end of the Francoist regime (death of General Francisco Franco in 1975; first elections following the dictatorship in 1977) and that is reflected in the formulation of the State of the Autonomous Communities. Article 2 of the Preliminary Title of the Spanish Constitution of 1978, reads as follows:

The Constitution is based on the indissoluble unity of the Spanish Nation, common and indivisible homeland of all Spaniards, and it recognises and guarantees the right to autonomy of all the nationalities and regions that form it and the solidarity amongst all of them (Gobierno de España, 1978).

Although the only legal and juridical recognised nationality is the Spanish one, the Constitution lays the bases for the creation within the state of regions with the capacity for autonomous government and with certain powers. Besides, it recognises that the territory is divided (from the local to the regional levels) into municipalities, provinces and autonomous communities; within it, the autonomous communities (with their respective governments and legislative power) can be made up of one or more provinces (with their respective provincial councils [diputaciones forales]), which in turn are formed of several municipalities (with their corresponding municipal councils and other bodies of local administration). The autonomous communities, such as the Autonomous Community of the Basque Country, have their legal order – **the Statute of Autonomy** – which is integrated into the juridical order of the corresponding community and that of the state as a whole, a question that is recorded in Article 147, Chapter III, Title VIII of the Spanish constitution:

1. Within the terms of the present Constitution, the Statutes will be the basic institutional regulation of each Autonomous Community and the State will recognise and guarantee them as an integral part of its juridical rules. 2. The Autonomy Statutes must contain: a) The denomination of the Community that best corresponds to its historical identity. b) The delimitation of its territory. c) The denomination, organisation and seat of its own autonomous institutions. d) The powers assumed within the framework established in the Constitution and the bases for the transfer of the services corresponding to the same (Gobierno de España, 1978).

The Autonomous Community of the Basque Country has had an **Autonomy Statute** since **1979**, a legal code of rules on the basis of which it has been developing government powers within its territory (which includes the provinces, or ‘historical territories’, of *Vizcaya*, *Guipúzcoa* and *Álava*). Together with the Autonomous Community of Catalonia, it is one of the autonomous communities that has assumed most powers and the only one that possesses an Economic Agreement (since 1981) with the central state, which enables it to manage nearly everything related to tax collection and the distribution of wealth in its sphere of government.

It should also be born in mind that due to **Law 27/1983**, of November 25th, on Relations between the Common Institutions of the Autonomous Community and the Foral Bodies of its Historical Territories [Ley 27/1983, de 25 de Noviembre, de *Relaciones entre las Instituciones Comunes de la Comunidad Autónoma y los Órganos Forales de sus Territorios Históricos*] (Gobierno Vasco, 1983), known as the “**Law of**

**Historical Territories**”, there is in the Basque Country a greater decentralisation within the generalised state decentralisation. For example, it is the provincial councils [diputaciones forales], with their provincial treasuries [haciendas forales], that hold the definitive powers on questions of tax collection and inspection as well as the redistribution of wealth (which is permitted by the economic agreement between the central government and the Basque autonomous government), which means that each Basque province has the power to manage these issues.<sup>3</sup>

*1.2. The construction of the Basque power to manage the problem of the ‘other’:  
a question of social exclusion and integration*

But there are no powers in the areas of emigration, *alienage* or nationality. That limitation together with the ‘novelty’ of the migratory phenomenon are the starting point of the two Basque immigration plans, their limit and their possibility. With respect to the novelty of the phenomenon of international immigration, this is a reality that has only begun to be outstanding in recent years – unlike the experience of other European countries – and not even to the same degree as its eruption in other areas of the Spanish state:

The Basque population had a negative migratory balance during the decade of the 1980s and 1990s, with a change of tendency occurring in 1997, when it became a growing recipient of foreign population. This recent immigration has settled in the Autonomous Community of the Basque Country with a certain delay with respect to the rest of the Spanish state and with lower figures, in both absolute and relative terms (Gobierno Vasco, 2007: 9).

The ‘new immigrants’ are those proceeding from continents other than Europe, from countries with ‘less resources’: Central and South Americans, Africans and, to a lesser extent, Asians (Gobierno Vasco 2003: 20). Thus, the tendencies that had marked the figures of other developed countries since long before are being reproduced in the Basque Country. However, the management of that new population does not enter the sphere of the powers of the autonomous communities, including the Basque one: this is an issue managed by the state. In spite of that, the accredited experience in the development of policies against poverty and social exclusion at the Basque local and regional levels...

...in spite of the non-existence until now of specific planning in questions of the rights of the foreign collective, Basque public activity sets out from the important basis of having had available, since several years ago, of an active policy of fighting against poverty and social exclusion. From the normative point of view, this policy has been suitably planned and provided with significant resources, condensed in Law 5/1996 on Social Services, Law 12/1998 against Social Exclusion and Law 10/2000 on the Charter of Social Rights. This

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<sup>3</sup> An analysis of this question, introductory in character but reflecting the consequences on the structure and the social imaginary of these administrative differences, can be found in Gatti *et al.*, 2005: 46-58.

policy of fighting against exclusion is based on the goal of achieving the integration of all those persons on the basis of the recognition and guarantee of their human dignity and as a consequence serves as a normative and political basis for the elaboration of this plan (Gobierno Vasco, 2007: 65).

... can serve as a basis – it is argued – for legitimising the government amongst this population: if immigration is considered to be the result of a conflict between a wealthy North and an impoverished South...

Basque policy sets out from a concept of immigration related to the North-South conflict. The unacceptable difference of wealth between some countries and others has led the Basque public institutions to develop a committed policy of cooperation with the societies of the South (Gobierno Vasco, 2003: 68; Gobierno Vasco, 2007: 82).

... and if the subjects who make up that population are conceived as potentially susceptible to forming pockets of poverty, social exclusion and precariousness, the migratory phenomenon becomes an administrative issue for the autonomous administration to the extent that it is susceptible to consideration as an object of those policies directed to fighting against those phenomena.

The bases are thus found for government action to consider immigration as an object of attention (accounts) and intervention (policies), of public policies for the control and governing of populations.<sup>4</sup> The justification of those public policies is based on an argumentative structure (combining the ideas of sphere of powers / experience in the management of exclusion / approach to immigration in terms that do not involve nationality) that deals with immigration by situating it in the area of the question of integration and exclusion, not of nationality, not of *alienage*:

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<sup>4</sup> The following are some of the bodies that make up the institutional framework that the Basque Government has set underway concerning migratory issues. **IKUSPEGI** (<http://www.ikuspegi.org/es/index.php>), **the Basque Observatory on Immigration** [Observatorio Vasco de Inmigración], was created in 2003 within the Office of Immigration of the department of Housing and Social Affairs of the Basque Government (now the Department of Employment and Social Affairs). It was formed in collaboration with the University of the Basque Country as a research tool for the production of knowledge on the incidence of the migratory flows in the Autonomous Community of the Basque Country and seeks to adapt (through research and training) the responses on immigration issues to be made by the Basque administrations, their professionals and the other social agents involved in migratory questions. **BILTZEN, Basque Service of Integration and Intercultural Co-existence** [Servicio Vasco de Integración y Convivencia Intercultural], set up in 2004 by the same Immigration Office, has as its aim (extracted from [http://www.gizartelan.ejgv.euskadi.net/r45-continm/es/contenidos/informacion/2551/es\\_2217/es\\_11996.html](http://www.gizartelan.ejgv.euskadi.net/r45-continm/es/contenidos/informacion/2551/es_2217/es_11996.html)) the setting underway of processes of dialogue amongst the different cultural communities present in Basque society as well as between these and the Administration. **HELDU, Judicial-social Counselling Service for immigrants** [Servicio de Atención jurídico-social a personas inmigrantes], completes the framework: it provides juridical assistance to undocumented citizens, seeking to alleviate the effects produced by situations of administrative illegality for residing in Spain: “serious risk of social exclusion”, “clear social vulnerability”. HELDU completes the ruse of the Basque Government: the Basque Government produces knowledge of the “migratory problem” through IKUSPEGI, which counts and calculates; BILTZEN redirects this towards a field with powers, that of cultural differences; and HELDU attacks social vulnerability that “immigrant citizens” potentially suffer from. **The Basque government’s policy is in effect based on a paradox and a ruse: it governs an object that it cannot govern; it does not govern the object itself, but its consequences.**

"What is sought is a Law of Immigration, not of 'Alienage', a Law that promotes the social integration of immigrant persons on the basis of the recognition of their rights and duties, which recognises rights for immigrant persons that they have so far been denied" (Gobierno Vasco 2007: 83).

These, then, are the initial conditions in which the immigration policies in the space of the government of the Autonomous Community of the Basque Country are being inscribed: a recent phenomenon, assumed to be the product of the friction between *the rich North* that receives the immigration and *the poor South* that emigrates, which falls within the scope of the powers of the Basque administrations to the extent that it produces 'social exclusion' and subjects in a position of 'social vulnerability', questions where there is experience and there are legal powers. In this way, the question of immigration is re-inscribed within a problematic seen as global but managed locally.

## **2. The 'other' to be *managed*: *integration* of the excluded and *intercultural* society**

Before describing in greater detail the fundamental axes of the policies on immigration that are proposed by the Basque government institutions, we will briefly pause to consider how the 'other' to be *managed* is conceived. Two ideas structure this section: integration of the excluded and construction of the intercultural society.

### *2.1. Immigration as a social problem and not an identity problem. Exclusion and Integration*

In accordance with the script we have set out in the earlier epigraphs, the profile of the immigrant is that of a subject born in the countries of the South, strongly marked by poverty and, as a consequence, with a high risk of exclusion. Immigration is thus characterised as a problem-object, a situation to be dealt with according to the social status of its integrants, their vulnerability and their lacks. In representing the immigrant as part of an extremely vulnerable population, the necessary corollary is political action guided by the will to integrate. The shift is interesting: **immigration is described as a phenomenon, the immigrant subject is circumscribed as a category of population that, due to its nature which is *foreign* to the political constitution of the modern subject as citizen, is the captive of *exclusion*, of *vulnerability***. Thus, *the will to integration* becomes a government's will through an operation that defines a subject of government as a "**category of governability**" (Chatterjee, 2008) towards which policies are directed. A logic of identification is thus operating in this process that

consists in empirically delimiting a population through certain indicators that reveal their state of precariousness:<sup>5</sup> judicial exclusion from the rights of citizenship is the fundamental condition of social vulnerability and, therefore, of governmental action to procure 'integration':

The phenomenon of immigration proceeding from the countries of the South towards developed states of the North is one of the central issues of the current political agenda. The migratory processes and population movements, both at the international level and internally, take shape as facts occurring successively, whose existence is nowadays malleable but not inevitable. In the different European societies, Basque society amongst them, this phenomenon of immigration, and alienage as a direct consequence, emerge as irreversible realities that require a collective management conceived for the long term. (Gobierno Vasco, 2003: 18)

The Basque government's public policy on immigration is based, as it can be seen, on an idea that enables to tackle it indirectly through its consequences, the idea of integration. This shift entails a consequence on the normative level, the recognition of the condition of citizen for all those who inhabit the territory that makes up the area of the Basque government. This is how the immigrant 'other' becomes the object of the territory's government:

Integration implies recognition of citizenship. True integration is not achieved through assuring a series of minimum services, but through the recognition of rights, the assumption of duties and the inclusion of immigrant persons in the receptor political community. (...) Full integration requires the possibility of incorporation of the foreign person in the political community, for which the recognition of **a new status of citizenship is required, disconnected from the component of nationality.** (Gobierno Vasco, 2007: 79)

In this way the jurisdictional alibi is shaped allowing both to develop policies on immigration at the sub-state level and **to redefine what being Basque means today.**

In summary, the 'other' to whom the Basque immigration plans are directed is a foreign, non-European Community immigrant, with few resources and in risk of exclusion. **Nothing in those plans marks him from the viewpoint of race, ethnic group or the idea of a minority; nor, in how he is conceived, is recourse taken to questions relating to racism, xenophobia or the rejection of immigrants;**<sup>6</sup> if any

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<sup>5</sup> Referring to certain excluded populations of Calcutta, Chatterjee speaks of a "policy of the governed" as that undertaken by these populations who exert themselves "to seek and obtain recognition as a singular population group, susceptible to becoming, from the viewpoint of governability, a functional empirical category for defining and implementing public policies. But it is equally important to emphasise that in this process the populations found themselves obliged to reinvent their collective identity, giving it a moral character that it previously lacked. This is a crucial element of the policies of the governed: 'dressing the empirical form of a population group (this or that settlement for example) with the moral attributes of a community'" (2008: 130). While Chaterjee is speaking from the position of the action of the "governed groups", it is possible to suppose a government will that is attentive to the identification of those populations that are excluded or affected by some degree of vulnerability.

<sup>6</sup> This is one of the few passages, if not the only one, where mention is made of this: "The presence of immigrant persons in our society can be the source of cultural wealth besides the contributions that they make to the development of our society. In spite of that, it is necessary to prevent racist and xenophobic attitudes resulting from prejudices and ignorance of reality" (Gobierno Vasco, 2007: 74). Something similar happens at the level of municipal regulations, where there are no allusions, except generic ones, to issues



mention is made of discrimination due to nationality, it refers to that emanating from the government institutions that manage the citizens, that is, those of the Spanish state – which determine both who possesses nationality and those who fall under the statute of irregularity – that administer populations using criteria, it is said, characteristic of the executive power, those that consider the emigrant as not being a national citizen.

## *2.2. Public policies for managing the exclusion of the 'other': interculturality on the horizon*

Facing those of the state, the public policies developed in the Basque sphere accept “the primordial responsibility of the public sector in the process of integration” and hold that “the management of the services that guarantee the minimum rights to which citizenship gives access must correspond to the public institutions” (Mancomunidad de Servicios Sociales de Busturialdea [Community of Social Services of Busturialdea], 2008). On the horizon, integration; the key for thinking about it, interculturality. Neither of these two keys – immigration, interculturality – touches the question of nationality. The problem of immigration is tackled, not from the side of nationality but from that of living together with the other:

Both the society and the Basque Public Administration must understand very clearly that we are living together with new citizens and that it is necessary to propitiate a structural change that permits inclusion without distinctions as the only way of achieving an intercultural society. (Gobierno Vasco, 2003: 9)

The presence of that ‘other’, according to the management plans at the municipal level, is really something very new...

The arrival of persons of other nationalities and cultures, bearers of social diversity, in the municipality has been very significant since approximately a decade ago. (II Immigration Plan of the Town Council of Tudela [II Plan de Inmigración del Ayuntamiento de Tudela], 2007-2010: 4)

... and, potentially, it has an enormous effect on living together, something that must be acted on, in a conciliatory sense, from the public institutions, together with reflection on the conditions within which to construct citizenship today:

This has generated a certain social and cultural transformation in the town due to the differences between the autochthonous and foreign persons that, with more or less success,

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of tolerance, racism, xenophobia; there is barely a passing and conventional reference, and no proposals that become effective policies, to interculturality as a general framework for living together with the distant ‘other’ (“*The cultural plurality that the phenomenon of immigration entails can only contribute to a real and dynamic process of integration, if one bears in mind the interaction between the receptor society and the immigrant population, as well as the ecological contexts and social spaces where this occurs, out of respect for the characteristic cultures and their peculiarities, all within the framework of Human Rights*” (II Immigration Plan of the City Council of Tudela [II Plan de Inmigración del Ayuntamiento de Tudela], 2007-2010: 85).

both the citizens of Tudela and the public institutions have tried to reduce in favour of mutual cohabitation. (ibid)

Here the will to integration is made explicit; it is also evident that the 'other' continues to be thought of as such: **a differentiation is made between autochthonous and foreigners, between the local society and the immigrants. Integration, assimilation or 'reduction of differences' emerge from this cartography of identity as policies for connecting with that person who is marked as 'other':**

To that end, the effort of this town council (...) has as its common and collective aim: to foment cultural exchange amongst the different collectives of citizens (...) improving the social integration of these collectives, raising the quality of life of the citizens. (ibid)

To facilitate the social and cultural integration of the society of Álava, the development of positive experiences of living together, the adjustment of the public services and programs to the new reality, as well as the setting underway of measures of information, training and awareness-raising that are intended to extend bridges that favour communication and reciprocal acceptance. (I Provincial Immigration Plan [I Plan Foral de Inmigración]. Álava)

The logic of integration, which condenses the extension of rights and the widening of the notion of citizenship, as we shall see, to those foreign immigrants that reside in the Basque Country, leads to the construction, at least in the legislator's desires, of an intercultural society. Europe is, within that desire, an example and a goal:

Immigration contributes in an essential way to making Basque society richer, both in the economic field and from a cultural perspective. Immigration, and the progressive pluralism of our society, is also a factor of its modernisation, of Europeanisation and dynamism that takes us closer to the modern, developed and plural societies of our setting. (Gobierno Vasco, 2003: 62)

**Interculturality is, without doubt, something that is taken for granted in these plans; it is a horizon of political action, but one which is not been reflected upon.**

### **3. Fundamental axes of the Basque policy on immigration**

#### *3.1. Administrating without the state: globalisation, crisis of the State and local management of foreign immigration*

When it comes to constructing these as a problem-object, the starting point of the Basque immigration plans lies in determining to what extent immigration is an object of their administration as an autonomous community. This is not a trivial question: the field of its action as a government – that corresponding to the autonomous community – does not regard these questions as one of those that makes up its field of government. It has no place in the Spanish constitutional order:

...article 149.1.2<sup>nd</sup> of the [Spanish] constitution points out that issues relating to nationality, alienage, emigration, immigration and the right to asylum are the exclusive power of the

state, which is why it is the central institutions of the state that are responsible for legislating and administering in such substantive fields (Gobierno Vasco, 2003: 52).

As everything relating to migrations, nationality and alienage are the exclusive power of the Spanish state, no autonomous community, including the Basque autonomous community, can govern over these questions. Nonetheless, as we have seen, the Basque immigration plans build a line of argument that, without abandoning the constitutional-judicial framework in force, makes it possible to justify in practice the fact that it does legislate and work on these questions, thus making immigration an issue of its government. The keystone of this argument is none other than the crisis of the state – from both above and below – and the resulting need to rethink citizenship.

The argument begins by indicating that the national states have been overwhelmed with respect to their capacities for developing general policies in a context of growing globalisation (Robertson, 1995; Pérez-Agote et al., 2010), in which these states are breaking down, both from above (emergence and consolidation of supra-state institutions that increasingly invade their natural spaces of sovereignty) and from below (multiplication of processes of decentralization that provoke the appearance of entities with an infra-state character with greater powers in their local field of management).

The power of the state in questions of alienage, nationality and immigration must be revised today in the light of European construction and the assumption of sectorial powers by the Autonomous Communities, as it is being seriously eroded both from the supra-state sphere and from the infra-state sphere. (Gobierno Vasco, 2003: 67)<sup>7</sup>

This sustains the argument of the Basque government: if the Universal Declaration of Human Rights (UDHR) had a world of nation-states as its framework of reference, condition of possibility and executive agent,<sup>8</sup> and if today the nation-states are being disrupted, their capacity to implant the contents of the UDHR is being seriously placed into question. The globalisation and localisation processes are decomposing the national states and, according to the Basque immigration plans, this justifies

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<sup>7</sup> A proof of this erosion from above is that in recent years the legislative production of the European Union has been concerned not only with measures of an economic and commercial character, but also with the development of policies with a social scope that take account of the arrival of collectives proceeding from regions outside the Union: “Since the **Schengen Treaty** came into effect in May 1999, the European Union has the jurisdictional capacity for developing policies of immigration and asylum in the Community area, which had until then remained within the framework of intergovernmental cooperation. The struggle against discrimination has become a Community capacity and has been integrated into the heritage of the Schengen Treaty” (Gobierno Vasco 2003: 52).

<sup>8</sup> Although it is well known, it is worth recalling the work of Hanna Arendt on this question. See Arendt, 1982; Benhabib, 2005.

considering that their capacity to uphold the UDHR is suspect. Thus, the crisis of the nation-state...

In the framework of the said UDHR, the state is without doubt the public agent to which the international community primordially entrusts the defence of the rights proclaimed in the same (...) The crisis of construction and consolidation of the state in many areas of the planet, which has become sharper since the end of the so-called Cold War, has meant the crisis of the international system of defence of such rights. (Gobierno Vasco, 2007: 47)

... has as its first consequence the emergence of new problems, those that transcend state logic...

Without an efficient public agent, capable of watching over and safeguarding such individual freedoms, migrations also become a mechanism of demand for new systems of protecting basic rights at a global level (ibid).

... and, as a second consequence, the need for administrations other than the state ones to intervene and to manage those 'new problems':

These new systems will be characterised by the fact that the really existing states, the sub-state entities that make them up and the new supra-state entities that are being shaped by them, are going to have to assume the safeguarding of the basic rights of those persons whose nationality does not guarantee them such protection (ibid).

Thus, the phenomenon of the crisis of the nation-state seems to provide room for the action of "meso-governments [that] no longer necessarily depend on the 'rationalising' action of the central elites and the programs of state formation characteristic of the XIX and XX centuries" (Moreno, 1998: 118). According to Moreno, this is a case of governmental agencies that possess their own bureaucracy and intelligentsia that connect the local and the global, basing their legitimacy on **a type of 'cosmopolitan localism'** that seems to revitalise the forms of past political communities, but which have been modernised by a context of "common socio-economic interests and shared institutions and values within the European Union" (ibid).

### *3.1.1. From the state downwards: the local as the place of government*

Reference to the crisis 'from above' and 'from below' has for some time been a commonplace in academic thought, in particular that of sociology (see, for example, Castells, 2006; Moreno, 1998). What is relevant about the case is the incorporation of this argument of experts into political management. This leap from the scientific construction of the object to **its construction as a problem of public policies**, entails, on the one hand, **simplification** – in this case, a simplification that arises from obviating the hardest theoretical bases of scientific argument to the point of **making them natural**: those associated with reflection on the ideas of identity, subject or citizen; and, on the other, **greater complexity**, requiring to rethink the relations

between the government and the citizens, returning to the territory where both (dis)connect, denaturalizing the legitimacy of the former and the limits of the second.

The legislator faces the obligation of thinking about how to administer a paradoxical situation: a world where nationality is conceived from the perspective of belonging to national states, and in which the national states do not even have it within their scope to consider the new forms of citizenship or to guarantee the rights of the population they administer. Therefore, there must be a change in the coordinates for understanding identity, nation and nationality; thinking must be done within a post-national framework of action (Habermas, 2000; 2008; Butler and Spivak, 2009) or, one could say, thinking must be done without the state (Lewkowicz, 2004). And also management must be carried out without it.

The Autonomous Communities are going to increasingly assume powers in questions of managing their own migratory flows, as has already happened in Catalonia, which is why this II Basque Immigration Plan must consider the necessary actions for its adaptation to this new institutional reality. All of that without forgetting the European Community's regulations and the decisions that might be taken within it. (Gobierno Vasco 2007: 68)

The further from the state, the nearer to the citizens, although that affects questions that do not, in normative terms, fall within its field of government such as those of nationality, alienage or immigration, on which, as postulated by the Basque Immigration Plan of 2007, even the local administrations have to work:

Basque Immigration Policy is the responsibility of different administrations and institutional fields of the Autonomous Community of the Basque Country. The sectorial distribution of powers affects this policy in a transversal way. By virtue of that, common institutions, provinces [territorios históricos] and municipalities and communities [mancomunidades] hold concrete and direct powers in the issue. The Basque Immigration Plan does not involve reducing the political decentralization of our Community. Quite the opposite, a large part of the public services, and particularly the initial reception and orientation in the immigration process, is placed in the field of local or municipal management, in accordance with the complementary principal of subsidiarity. (Gobierno Vasco, 2007: 89)

Rather than the argument itself – not at all a novelty since it invokes old totems of the reformist administrator: greater decentralization, a closer approach to the citizen, avoidance of the growing 'political vacuum', etc. – what is notable are the elements with which the argument strengthens its framework: the peculiarities of the political-administrative decentralization of Spain and in particular the Basque Country, the institutional strength of the local and, in consonance with this latter point, registration considered as **the basis of effective citizenship**.

### *3.1.2. From the state upwards: human rights as a reference framework for the Basque management immigration*

To understand the mechanism set underway to justify the fact that immigration policies can be developed in the Basque Country, it is not enough to consider the downward loss of power of the national states. The surmounting of the latter is completed looking upwards, raising the level of the regulatory field that provides legitimacy to political action and administrative work facing questions of nationality, alienage or immigration, all of which are affairs that are sited, for rethinking, on the terrain of human rights.<sup>9</sup> Situated there, these affairs will be dealt with in a radically different way from how they are tackled by the instance that currently has powers over them, that is, the Spanish state:

“The central aim of the Strategic Plan is to contribute to the construction of a just, inclusive and united society, in which the living together of all is developed on common values and regulations, respecting the diversity of persons and social groups” (Gobierno Español, 2007: 187).

“The central aim of the Basque Immigration Plan is to achieve the full INTEGRATION of foreign immigrant persons into Basque society. To this end it is crucial to eliminate all discrimination due to nationality and to guarantee the fulfilment of human rights: both civil and political, and economic, social and cultural, as well as the assumption of duties” (Gobierno Vasco, 2003: 69).

“The general aim of the II Basque Immigration Plan is to achieve the integration of immigrant persons into Basque society. To this end it is crucial to eliminate all discrimination due to nationality and to guarantee the fulfilment of human rights: both civil and political, and economic, social and cultural, as well as the assumption of duties” (Gobierno Vasco, 2007: 69).

If in their most explicit statements the Basque and Spanish plans appear to be pursuing similar aims – the achievement of socially integrated and cohesive societies – in the latter case there is a more intense emphasis on “common values and regulations”, and in the former on human rights, which must be asserted in order to eliminate “all discrimination due to nationality”. Two different forms, then, of approaching immigration; both defend the mechanism that enables them to act politically and administratively in managing the ‘other’: in one case, this is done by arrogating, through the force of regulations, the exclusive legitimacy in the government of nationality; in the other, by escaping from that legitimacy provided by regulations from above and entering the field of human rights, a field in which the Autonomous Community of the Basque Country does have powers:

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<sup>9</sup> Any municipal plan in fact invokes wide-reaching regulations in order to construct its own proposals. Thus Busturialdea turns to the Regulations of the United Nations, the Declaration on the Elimination of all Forms of Racial Discrimination of 1963, the Declaration on Territorial Asylum of 1967, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief of 1981, the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They Live of 1985, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992, the Durban Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance of 2001 (Mancomunidad de Servicios Sociales de Busturialdea, 2008).

“...while it is a state power to ensure the fulfilment of the rights and freedoms in the whole of the state, a margin of action exists for the Autonomous Community of the Basque Country, always in a positive or complementary sense to what is established for the whole of the state (...) In this sense, while it is true that the substantive legislation on the issue remains in the hands of the central parliament, it is no less certain that the Basque parliament has the power to regulate the ensemble of sectorial questions that enable the foreigner to have more rights than those envisaged in [the Constitution]. In this way, the Basque public institutions would have no power, in accordance with the rule currently in force, to interfere with the substantive regulation of the state or the juridical categories established in it, but they would to complement them on the basis of the recognition of rights” (Gobierno Vasco, 2003: 54-55).

Thus, with the state surpassed above and below, it could be justifiable that the institutions of the Basque government should manage the ‘other’ through the widening and generalisation of the rights of the persons who reside in its territory beyond the minimums determined by the juridical and legal framework of the Spanish central government. Authorised to act, it is now possible for them to think about how to construct a new notion of citizenship.

### *3.2. Inclusive citizenship*

#### *3.2.1. Inclusive citizenship as a normative ruse for sidestepping state constructions*

Once the institutions of the Autonomous Community of the Basque Country justify through their plans that they have powers to influence the phenomenon of immigration on their territory, the question is raised of how to achieve equality of rights for those who reside there. The way of broadening them towards sectors considered more vulnerable, who, for reasons of nationality, could not turn to the central state (or the European Union) to assert them, is to sidestep the field that limits them (the state) and occupy the higher level of Human Rights.

“The Basque Immigration Policy is based on the extensive recognition of human rights” (Gobierno Vasco, 2003: 67; 2007: 81).

Situated there, not only does the Basque Immigration Plan not contravene what is established by the state juridical framework, but it develops, widens and extends the latter to achieve a universality that it does not have, the universality characteristic of Human Affairs<sup>10</sup>:

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<sup>10</sup> It could be said that the Basque government makes of its institutional peculiarity, that instance of “meso-government” to which we have alluded above, a suitable place for channelling the modern contradiction entailed by the distinction between “man” (human, and as such a depositary of rights) and “citizen”. Since the declaration of 1789, which distinguishes in its title between those two terms, it would seem that the human condition is diluted without the guarantees of citizenship, that is, the rights that emanate from state sovereignty. Already in 1951, Hannah Arendt echoed this contradiction in analysing the condition of national minorities, stateless persons and exiles in Europe in the aftermath of WWI (1982). And Agamben (2000) and Butler (Butler and Spivak, 2009) raise it in order to consider the situation in the context of

“The principle of equality implies the maximum possible extension of the tenure of human rights in the framework of the Autonomous Community of the Basque Country’s own powers. That affects not only civil rights, but also social, economic and cultural rights, which are extended to all resident persons, independent of their nationality, and even political rights to the extent that they can be incorporated into the autonomous juridical regulations. Similarly, it implies equality of duties so that there should be no differentiation” (Gobierno Vasco, 2003: 69-70; 2007: 84).

In this way, both the objective and the condition of possibility of the immigration policy promoted by the Basque institutions lie in the attainment of rights: if the policies on immigration can be situated on the terrain of the struggle for the extension of rights, then the Basque government can make its powers effective and make, if not immigration, then the immigrant in a situation of vulnerability into a field of government. This is how it is stated in the Autonomy Statute:

“The Basque public powers, in the field of their power: a) Will watch over and guarantee the suitable exercise of basic rights and duties of the citizens. b) Will particularly promote a policy tending to improve the conditions of life and work. c) Will adopt those measures that tend to foment an increase of employment and economic stability. d) Will adopt those measures directed at promoting conditions and removing obstacles so that the freedom and equality of the individual and the groups in which he is integrated are effective and real. e) Will facilitate the participation of all the citizens in the political, economic, cultural and social life of the Basque Country” (Gobierno Vasco, 2003: 54).

The Autonomy Statute makes clear what the powers of the Autonomous Community of the Basque Country are with respect to promoting and guaranteeing the basic rights of all its citizens. This is where the argument making it possible to effectively speak of a Basque immigration policy is completed: the construction of a concept of Basque citizenship that reverts both what has historically been understood by citizenship (associated with state sovereignty) and what has traditionally been considered to be Basque<sup>11</sup>. If these powers are to be used to deal with immigration on the basis of an extension of human rights, the notion of citizenship must therefore be extended as well, and the definition of Basqueness changed as a result. This is how this is synthesised in the Basque immigration plans:

“The extension of the recognition of rights and the adoption of a new concept of inclusive citizenship thus enter into the field of the powers of the Autonomous Community of the Basque Country. Similarly, the Autonomous Community of the Basque Country disposes of the power for developing legislation in this sense, which can be concretised in different regulatory dispositions that have as their aim the Integration of foreign persons and the

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contemporary international migrations. Human Rights thus seem to open a new camp of legitimacy favourable to the action of governmental agencies that are also new.

<sup>11</sup> See in the First Report of the WP1, the weight that has traditionally been held by the ethnic component in the construction of Basque identity, inasmuch as the knowledge of the Basque language – Euskera – and to share a set of traditions and customs, which are crystallized as the empirical correlate of the existence of a differentiated community. That same report has already indicated the changes that from the 1980s onwards began to occur in the idea of Basqueness, a turn towards components that were less passionate in nature and more bureaucratic, institutional and rational. In short, a turn towards the notion of citizenship that now seems to be opening up towards the more distant ‘others’.



recognition and widening of their rights as new Basque citizens" (Gobierno Vasco, 2003: 68; 2007: 81).

The extent of the rights of immigrants is clearly determined, to which is linked the adoption of a new idea of citizenship, entering fully into the dominion of the powers of the Autonomous Community of the Basque Country. Thus, the Basque institutions can develop regulations that make it possible to widen, and recognise, the rights of foreign persons who live within their territory through their inclusion in the category of Basque citizens. The final aim, as we have said, is the integration of immigrants into Basque society, an integration that, in order to be effective from the dominion of the powers of the Autonomous Community of the Basque Country, had to pass by way of the fight against discrimination and for the equality of all persons before the basic rights, as well as redefining the very concept of citizenship. This is a question of inclusive citizenship:

"Integration requires a redefinition of the concept of citizenship. In this order, the Basque Immigration Plan will make possible the incorporation of a conception of inclusive citizenship that reformulates, in the field of the powers corresponding to the Autonomous Community of the Basque Country, the classical concept of citizenship contained in the juridical regulations of the state. The starting point is the premise that effective integration is not possible without recognising the condition of citizens of resident immigrant persons and, as a consequence, their tenure in equality of conditions of all the rights and duties to which citizenship gives access in the Autonomous Community of the Basque Country" (Gobierno Vasco, 2003: 66; 2007: 79-80).

Rethinking identity, the notion of citizenship is reconceptualised to make room for those others who could not otherwise have all the rights enjoyed by nationals, and who could not be the object of government of the Basque administration. Created as objects of government, they become a terrain of possible management for the Basque administration:

"Inclusive citizenship implies a uniform status for all its bearers. In this sense, both nationals and foreigners are fully comparable in the minimum field of necessary human rights: civil, political, economic, social and cultural rights as well as of duties for full and effective integration" (Gobierno Vasco, 2007: 80).

These basic rights, which cover all fields (civil, political, economic, social and cultural), cannot be based on an idea of citizenship that is linked to nationality ("Full integration requires the possibility of incorporation of the foreign person into the political community, to which end it is necessary to recognise a new statute of citizenship for him, disconnected from the nationalitarian component" [Gobierno Vasco, 2003: 66]). Disconnected in this way from nationality, the concept of citizenship proposed by the Basque immigration plans contrasts with the proposal of the Spanish plan, which, also wishing to recognise broad rights for foreign immigrants, always encounters its limit in nationality:

"Beyond the right of suffrage in the municipal area, the Constitution reserves the rights of political participation to Spanish citizens. Therefore, those immigrant citizens who wish to reach the highest degree of participation have to acquire Spanish nationality, have to advance in their commitment and come to form part of the political community that makes up Spanish society. But, without the necessity of reaching this final level of participation, the condition of long term resident should equally provide a set of rights, obligations and channels of participation that enable such immigrant persons to understand themselves to be citizens" (Gobierno de España, 2007: 182).

### *3.2.2. Inclusive citizenship and residency once again the local for managing the 'other'*

But if it is not in relation to nationality, how is the status of citizen to be obtained? Residency is the key for the institutions, for which a person living within the limits of their territory will be a Basque citizen:

The link required for acceding to the new citizenship is residency. The new concept of citizenship must be disconnected from nationality in the classical sense, as well as from any other identitarian element, in order to be based exclusively on de facto residency. (Gobierno Vasco, 2003: 66; 2007: 80)

De facto residency, then, replaces not only nationality but also any other element from the field of identity – race, community, etc. – that might exclude immigrants from the category of citizen. In this context, being a citizen does not pass by way of nationality, nor by way of adscription to a cultural imaginary of an ethnic tradition; residing in the Autonomous Community of the Basque Country makes the immigrant a Basque citizen. This, for those immigrants who reside in the Basque Country without their situation being legally regularised, is essential: although in an irregular situation (according to Spanish legislation) they are citizens (according to the Basque administration), and therefore subjects with rights. This is what the Basque Immigration Plan says in this respect:

...Basque Immigration Policy establishes mechanisms orientated towards integration, which disarticulate or mitigate the negative effects that the situation of irregularity leads to. In particular, that policy incorporates strategies for making all resident persons comparable in citizenship, independent of their administrative situation. (Gobierno Vasco, 2003: 68)

While the public institutions of the Spanish state are limited by a legal framework that encloses citizenship within the frontiers of nationality...

The focus of the integration policies set underway are based on the following reflections: without legality there no integration is possible and resources are needed to promote integration, understood as a two-way process that seeks social cohesion. (Gobierno de España, 2007: 7)

... those of the Autonomous Community of the Basque Country work by opening up the concept, giving it new foundations, and leaping over the limitations imposed by its nationalitarian construction. That makes it possible, amongst other things, to consider

any subject to be a citizen who, in terms of an idea of citizenship with a national basis, is considered illegal and lacking documents, since for inclusive citizenship the national condition of immigrant persons is certainly irrelevant:

“Inclusive citizenship obviates the administrative distinction between regularity and irregularity. The absence of legal or administrative authorisation according to the law of alienage does not invalidate and does not alter the primordial rule of the former, assuring its integrating function” (Gobierno Vasco, 2007: 80).

The administrative bodies responsible for putting this policy into practice are sub-state ones, basically municipal councils. These are the ones that manage registration and, because of that, the necessary milestone for achieving inclusive citizenship.<sup>12</sup> Regarding this question, before considering some concrete aspects of the municipal registration policies, it is relevant to recall the considerations of an institution that is transversal to the public administrations of the Basque Country, the *Ararteko* (Ombudsman).<sup>13</sup> He is one of the agents who has participated most actively in questions related to immigration (with special attention to irregularity) and the risks of exclusion that lie in wait to ensnare him in the Basque Country.<sup>14</sup> In one of the studies dedicated to this issue, entitled *Incidencia del padrón municipal en el ejercicio de los derechos de las personas extranjeras en situación irregular* [Incidence of the municipal register on the exercise of the rights of foreign persons in an irregular situation] (Zarauz, 2007), the author points out that the concept of inclusive citizenship – and the rights that this gives access to – could be emptied of content in cases of being unable to administratively accredit ‘de facto residence’, which, according to the Basque immigration plans, is the necessary datum for acceding to it. This might represent a problem, above all for illegal immigrants who, although they reside de facto in the

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<sup>12</sup> The intention recently came to the fore of some municipal councils not to register immigrants who were in a situation of irregularity. The handling of the issue by the Town Council of Vic in Catalonia was especially polemical (La Vanguardia, 2010). The debate moved into the background with the report that the state lawyers published which considered that “the inscription of foreigners in the municipal register” was proper independent of whether or not the former had “legal residence in Spanish territory” (El País, 2010a); and also because of different declarations by member of the Spanish executive, such as that of the Spanish president José Luís Rodríguez Zapatero, who stressed that he was not going to allow a reduction in the rights of immigrants (El País, 2010b).

<sup>13</sup> On the Ombudsman’s own website ([www.ararteko.net](http://www.ararteko.net)) the following definition of his role is offered: “The Ombudsman is the high commissioner of the Basque Parliament for the defense of the rights of persons in relation to the public actions and policies of the public administrations of the Autonomous Community of the Basque Country (Basque government, provincial councils [*deputaciones forales*], municipal councils and public bodies dependent on any of those administrations)”.

<sup>14</sup> Closely related to one of the cases that the team in the University of the Basque Country will be studying in coming Workpackages is the report titled *Situación de la población temporera en Álava. Condiciones del trabajo temporero en las campañas de vendimia y recolección de patata* [Situation of the seasonal population in Álava. Conditions of temporary work in the grape harvesting and potato collecting campaigns] (Ararteko, 2002).

Autonomous Community of the Basque Country, might have difficulties in accrediting themselves:

The concept of inclusive citizenship whose link is, solely, *de facto* residence (...) Nonetheless, the effective enjoyment of many of these rights requires, on many occasions, a series of administrative requirements that, when they cannot be accredited, might result in the concept of inclusive citizenship being emptied out of content. One of these requisites (...) is precisely registration. (Zarauz, 2007: 192)

With respect to *who* administers what gives access to citizenship, that is, registration or administrative certification of being a resident, and how, the municipal councils are the real executors and therefore the ones who carry out the principles of the Basque Plan on questions of extending the rights of citizenship. It should, however, be noted that while the municipal Immigration Plans assume the principles of the Basque Plan as their own, above all those deriving from the concept of inclusive citizenship<sup>15</sup> (citizenship based on residence, not on nationality; immigration as a problem-object in the field not of identity but of social exclusion; immigration as a terrain of action of effective integration policies)<sup>16</sup>, none of them specify how to make them effective.<sup>17</sup>

In summary, the policy with which citizenship is managed in the Basque Country is played out on a terrain full of paradoxes:

First, it manages a population for whose administration it has no powers.

Second, it takes charge of that management, moving the problem of that population onto a terrain where questions of citizenship leave the field where they had been forged in the modern age, that of the nation state.

Third, it provides documents that grant citizenship to subjects – those in an irregular situation – from whom this is withheld by the prevailing legality which classifies them in the place of the undocumented (subjects without

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<sup>15</sup> Outside the municipal field, regional plans like the I Provincial Immigration Plan of Álava [*I Plan Foral de Inmigración de Álava*], in force between 2009 and 2012, share a structure with their plans of reference (the Basque Immigration Plans) and also general aims. The key ideas continue to be: immigration as a phenomenon that is related not to questions of an ethnic, racial or identitarian order, but that must be understood instead according to concepts like social “vulnerability” or “exclusion”; citizenship, integration, interculturality as keystones for the design of policies that mitigate the negative aspects of this problem-object.

<sup>16</sup> Thus for example, the Immigration Plan of Busturialdea is based, like the Basque Plan, on the premise that “the effective integration of immigrant persons is not possible without recognizing their condition as citizens and, in consequence, their equal tenure of all the rights and duties to which citizenship gives access in the Basque Autonomous Community. Accession to the condition of citizenship is through *de facto* residency, thus separating it from nationality in its classical sense, as well as from any other identitarian element” (2008).

<sup>17</sup> On this question, the regulations of the municipal register are currently based on Ley 7/1985, de 2 de abril, Reguladora de las Bases de Régimen Local [Law 7/1985 of April 2<sup>nd</sup>, Regulating the Foundations of Local Government] (Gobierno de España, 1985), which establishes the powers of local entities, including management of the Municipal Register. According to Article 15 of this law, being inscribed in the Register is an obligation of all residents, with or without Spanish nationality (“Every person who lives in Spain is obliged to inscribe himself in the register of the municipality in which he normally resides” (Gobierno de España, 1985)). But this is not a right.

identity, non-citizens). Thus, in searching to regularize an irregular state, it creates a position of identity that is certainly paradoxical: an undocumented person [*sin papeles*] with documents that enable him to accede to the rights of inclusive citizenship.

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