Love and its borders: The monitoring and control of binational marriages in Spain

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Abstract

The sustained growth of immigration to Spain from the 1990s to approximately 2010 was fundamental to the dramatic increase in binational marriages. This resulted in an inevitable association in which immigration is conceptualised as a social problem, and binational couples (one Spanish and one non-EU citizen, in this case) are often suspected of trying to use marriage to circumvent the system controlling access to Spanish citizenship. Our main objective is to study the exclusive procedure these couples undergo, qualitatively analysing the arguments state officials apply to authorise or refuse marriage permits or registration of these marriages. The analysis reveals the existence of discrimination against some couples, both in the legal norms and their application.

KEYWORDS: binational marriage, marriage migration, legislation, marriage of convenience, immigration control, Spain

Introduction

The concept of mixed or binational marriages, expressions which are used interchangeably in this article, is undoubtedly complex, as Williams has pointed out (2010: 9). By "mixed" or "binational marriages", we mean those legal unions formed by two heterosexual people, one Spanish and the other of a different nationality of origin. Such marriages have been taking place for centuries, but they have become a growing phenomenon only in recent decades, in the context of a general increase in mobility due to migration and the development of new information and communication technologies, especially in countries with large immigrant populations, such as Spain. The Spanish example has some unusual features: during the first three quarters of the 20th century, Spain was an emigration country. However, in the second half of the 1990s, it became one of the European countries with the highest

immigration rates, a trend that became especially marked in the first decade of the 21st century. In fact, the Spanish National Institute for Statistics (INE, in its Spanish acronym) began collecting data on immigration in 1984 and has been publishing information about mixed marriages only since 1996.[1] In 1996, the population of non-nationals was 542,314 (1.36% of the total population); the peak number came in 2010, with 5,747,734 people (12.2% of the total population). In January 2017, under the effects of the economic crisis, it was down to 4,549,858 (9.9% of the total population) (INE 2017).

A similar pattern occurs with mixed marriages: in 1996, there were 8,009 mixed marriages (4.13% of the total), while in the peak year of 2009, there were 29,282 (16.8% of all marriages). Between 1996 and 2015 (the last year of available data), 384,456 bi-national couples married: 223,608 (58%) of these marriages comprised a foreign woman and a Spanish man, and 160,848 (42%) a foreign man and a Spanish woman. The foreign wives came from North and South America (61%), Europe (28%), Africa (9%), and Asia (2%). The foreign husbands were from North and South America (38%), Europe (34%), Africa (24%), and Asia (4%). Even though foreign spouses of both sexes are predominantly from Central and South America, the statistics show that Spanish women marry either North Africans or Europeans from neighbouring countries more often than Spanish men marry women from those countries; and that Spanish men marry Latin American or Slavic women more often than Spanish women do men of those origins. This distribution of origins embraces both countries with a colonial past linked to Spain and others that are geographically close. Moreover, it is not possible to separate either the increase in mixed couples or the origins of the foreign spouses from the profound changes that occurred in the Spanish system and its gender relations in the 1980s and 1990s (Roca 2011, 2013).

The growing academic literature on binational marriages has focused on many aspects of the reality of binational couples: integration processes, identity, and transnational relations in such unions; gender relations, power and the visibility of mixed couples (see e.g. Charsley 2012; Williams 2010). Since the second half of the 1980s, many works have described and analysed romantic relationships between men and women from different countries (see e.g. Constable 2005; Williams 2010). Studies on binational couples have primarily come from conventional immigration countries such as the US, Canada, Australia, and northern and central European countries (especially the UK, France, Germany, Switzerland, and the Netherlands). In southern European countries, the study of intermarriage has increased in parallel with its growing demographic incidence. In Spain, Italy, and Portugal, scholarship is therefore recent, limited and partial. The contributions can be grouped into two broad areas: on the one hand, interculturality, integration, hybridisation, and cultural negotiation (Albert & Masanet 2008; Djurdjevic & Roca 2016; Miguel et al. 2015; Rodríguez 2006, 2015; Santacreu & Francés 2008; Steingress 2012), and on the other, processes of choosing a foreign spouse, the market and matrimonial patterns of mixed couples (Arjona & Checa 2014; Cortina, Esteve & Domingo 2007; Díez Medrano et al. 2014; Roca & Urmeneta 2013).

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[1] The first Spanish *Ley de Extranjería* [Immigration Law] was passed in 1985, as a requirement for the country to join the EU, as it did in 1986, and not because immigration was a concern of Spanish public opinion (Colectivo Ioé 1999: 182).

The fact that there have been a considerable number of mixed marriages just as immigration is being conceptualised as a social problem in receiving countries results in the suspicion that binational marriages between EU and non-EU citizens are illegal manoeuvres aimed at acquiring residency or citizenship in the host country. This has motivated the attempt to regulate them and the corresponding appearance of relevant research. At the European level, we can point to that of Conradsen and Kronborg (2007), De Hart (2006, 2015), Infantino (2013), Maskens (2013), Staring (1998) and Williams (2010). At the country level, it is worth highlighting the work of Jorgensen (2012) and Fernández (2013) for Denmark, Eggebø (2013) for Norway, Neveu (2015) for France, Parisi (2014) for Italy, Pellander (2015) for Finland, Studer (2001) and Lavanchy (2013b) for Switzerland, Van Walsum (2008) for Germany or Wray (2006, 2008) for the UK. This set of references allows us to contrast peculiarities and similarities in the policies of countries with significant rates of binational marriage, and to tackle marriage laws and immigration regulations, the question of citizenship, and the management of the so-called "marriages of convenience".[2]

Although Eggebø (2013), Lejeune (2013), the *Red Europea de Migraciones* (2012) and Williams (2010) reported that marriages of convenience are very difficult to quantify, they had a considerable negative impact on those European citizens wishing to marry a native of another country. This is accentuated if the foreign partner comes from one of the 133 "third world" countries included in the European Council's Regulation (EC) No 539/2001,[3] containing two lists of countries: the "negative" one including those countries whose citizens require a visa for entry to the EU, and the other, "positive" one, of countries whose citizens are exempt from requiring a visa for stays of less than three months. The negative list includes 133 third countries, mainly in Africa, Asia and the Middle East (Jeandesboz 2009).[4] Such couples are subjected to rigorous scrutiny aiming to ascertain whether their marriage is "legitimate". Their "suspicious identities" (Bernand 2001) have resulted in increasingly repressive administrative measures (Maskens 2013), to the point of establishing a particular process that applies only to such unions. Rytter (2012: 104) argued that the policy has turned 'a *territorial border* of the nation state … into a *moral boundary* that stipulates how to contract marriages and organize family life,' in a clear example of shifting from the level of personal relationships towards that of border control (Conradsen & Kronborg 2007; Maskens 2013). This occurs in a context in which the vulnerability of western societies is the main justification for policies and security practices that seek to limit mobility (Scherrer, Guittet & Bigo 2012).

As Eggebø (2013: 3) argued, there are several studies that analyse 'the relationship between immigration policy and norms of intimacy, marriage, gender and sexuality', making

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[2] Defined in Spain as a social phenomenon whereby a Spanish citizen or a foreign resident marries a foreigner with the sole purpose of 'benefitting from the legal consequences of the marriage institution in the field of nationality and immigration' (DGRN Instruction of 31st January 2006).

[3] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al14007b

[4] The main countries of origin of non-EU spouses appear in these lists: Colombia, Cuba, Morocco, Nigeria, Pakistan, the Dominican Republic, Russia, Senegal and Ukraine appear on the "negative" one, whereas Argentina, Bolivia, Brazil, Ecuador or Venezuela are on the "positive" one.

marriage migration a 'special case for studying intimate norms and practices.' However, as Lavanchy (2012: 3) stated, whereas 'various studies have shown how marriage regulation mobilized symbolic and social boundary making,' we have little 'empirical knowledge about the articulation of institutional practices and social categorisations.'

Objectives

Having these data in mind, we designed three following objectives: 1) to document the concepts and the processes established in Spanish law to manage requests for marriage permits or the registration of binational marriages between a Spaniard and non-EU spouse; 2) to describe the implicit or explicit criteria used by state officials to process these requests; and 3) to detect if any type of discrimination occurs in the processing of these requests.

Methodology

To carry out this investigation, we take a qualitative perspective, as we are seeking to analyse the logical reasoning behind both the law and the administrative rulings affecting the management of binational marriages.

The Spanish and EU legislation on marriages of convenience, the INE data, and the rulings of the Department of Registers and Notaries[5] (DGRN, in its Spanish acronym) were the main sources for our research. The latter are included in the Westlaw Insignis legal database, a source not often used in social science. We conducted a metasearch, selecting all keywords related to marriages of convenience between 1996 and 2011,[6] and the database returned 1,836 administrative rulings on heterosexual marriages between couples of different national origins, one of them Spanish. Of those 1,836 rulings, 73% (1,338 rulings) related to appeals lodged by a Spanish man and a non-EU woman against the refusal of their request to get married or to register their marriage contracted in another country. Couples comprising a Spanish woman and a non-EU man accounted for the 27% that made up the remaining appeals (498 rulings). We also gathered data on the spouses' profiles (age, nationality, previous marital status, and profession) where available,[7] recording the place and year of the request (for authorisation of registration or marriage permit), as well as the couples' arguments in support of their appeal, the civil servants' justifications for their decisions, and the outcome of the process.

Due to the high number of rulings returned in the initial search, and in order to conduct a thorough analysis of discourse on them, we had to compile a relevant sample. To do so, we selected 10% of the rulings found in each year for the 1996–2011 period, making a total of 184 rulings. Although we were not attempting to carry out a representative analysis of all the rulings, but rather a qualitative analysis of their contents, we took account of the features of the rulings as a whole in constructing our sample. Thus, as a proportion of the total rulings, Spanish men had lodged 73% of the appeals, and Spanish

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[5] This is, the state body ultimately responsible for deciding whether to authorise the permit for or registration of binational marriages with a non-EU spouse.

[6] These choices were made because the INE included binational marriages in its database in 1996; the analysis of the Westlaw Insignis database was completed in 2012, so the last full year available was 2011.

[7] This data was not systematically included in the Westlaw Insignis database, so we could only use it when available during the analysis of discourse.

women the remaining 27%. In the sample, Spanish men accounted for 71% of the appeals studied, and Spanish women the remaining 29%. Furthermore, in the rulings as a whole, 78% of cases had resulted in refusals and 22% in authorisations, while in the sample, 39 (21%) were authorisations and 145 (79%) refusals.

Using the methodology proposed by Glasser and Strauss (1967, 1970), Hammersley and Atkinson (2007), and Roberts (1997) for analysing this type of data, we paid attention to the language used in reporting the evidence, to the reasons advanced by couples to demonstrate the "legitimacy" of their union, and to the criteria used by the state representatives in justifying their decisions.

Legislative measures regulating binational marriages

In the 1990s, in the context of the EU's growing concern with regulating migration, many European countries adopted legislative measures affecting the conditions for entry and residence of nationals from non-EU countries (Charsley 2012; Jeandesboz 2009; Maskens 2013).

In Spain, three pieces of legislation (one European and two national) affect or control this issue: 1) EU Council Resolution of 4 December 1997 on measures to take in the fight against fraudulent marriages,[8] 2) DGRN Instruction of 9 January 1995 on proceedings prior to marriage when one party is domiciled abroad (BOE 21, 25/01/1995: 2316-2317),[9] and 3) DGRN Instruction of 31 January 2006 on marriages of convenience (BOE 41, 17/02/2006: 6330-6338).[10]

The 2006 Spanish Instruction identifies marriages of convenience with unions that are contracted for payment: 'an individual – often, but not always, a foreign citizen – pays an amount to another individual – usually, but not always, a Spanish citizen – for the latter to enter into a contract with the former to marry him/her,' with the explicit or tacit agreement that there will never be 'authentic marital cohabitation' or 'willingness to establish and raise a family' and that 'after a year or some other agreed period, legal separation or divorce proceedings will be initiated' (BOE 2006: 6330). The purpose of this "business" would be to acquire Spanish nationality in a shorter time[11] and/or to obtain a residence permit in Spain.

Administrative procedure to obtain a permit or register a binational marriage

When Spanish or binational couples wish to marry, they have to complete a "pre-marriage form" to instruct the registrar. This application is a way to verify whether the couple meets the requirements outlined in the Civil Code[12] and, exclusively in the case of mixed

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[8] http://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX:31997Y1216(01)

[9] http://www.boe.es/buscar/doc.php?id=BOE-A-1995-1943

[10] http://www.boe.es/buscar/doc.php?id=BOE-A-2006-2776

[11] Marriage to a Spanish citizen reduces the time needed to apply for Spanish nationality from two years to one for nationals from former Spanish colonies (Latin American countries, the Philippines and Equatorial Guinea) and from 10 years to one for all other non-EU nationals (Art. 22.1 Spanish Civil Code).

[12] Art. 46, 47, and 56, Spanish Civil Code, http://www.boe.es/buscar/act.php?id=BOE-A-1889-4763 (BOE, Last accessed 12/12/2016).

marriages, it is used 'so that the instructor ensures the true purpose of the signatories and the existence in both of the real intent of marriage' (BOE 1995: 2316). To this end, the applicants are subjected to a personal hearing that each attends separately, held either at a registry office in Spain, or in a Spanish consulate in the foreign spouse's country of residence.

The EU Council Resolution and the 2006 Spanish Instruction describe the criteria for judging whether a marriage is fraudulent. The verification process involves a questionnaire that the registrar may use during the hearings (Instruction DGRN 2006). There are 118 questions, divided into three broad groups: the first aims to determine the degree of mutual knowledge of personal, family and professional data; the second seeks to understand the development of the relationship, from first contact until marriage or the decision to get married; and the third is about daily life together, e.g. hobbies, whether or not they smoke, their common language, any illnesses suffered, whether the foreign partner knows the benefits of marriage to a Spanish national and/or has family in Spain. After the two separate hearings, the officer compares the answers given by each party and issues an administrative ruling either authorising or denying the marriage permit or registration. If denied, the parties have the opportunity to lodge an appeal to the DGRN, which evaluates and decides definitively without appeal. Although we do not have data on the total number of binational couples initially denied authorisation or registration of their marriage, we do know that, after receiving a negative answer, 1,836 of them presented an appeal to the administration.

DGRN rulings

Of those 1,836 couples, most comprised a Spaniard and a partner originally from Cuba, Colombia, the Dominican Republic, or Morocco (countries on the EC's "negative" list).

If we compare the most common nationalities of foreign partners with the nationalities of those who appealed to the DGRN[13] following denial of their request to marry or register their marriage (Table 1), we see that Cubans of both sexes are over-represented in the latter group. Whereas Spanish-Cuban couples represent just 3-4% of all mixed marriages for the period under consideration, we found that they account for around 40% of the appeals lodged following a negative answer from the administration. The proportions are similar for people from the Dominican Republic and Colombia, though to a lesser extent. No sub-Saharan country appears near the top of the total population of mixed marriages, yet Nigerians and Senegalese (both on the EC's 'negative' list) are among the most frequent in the number of appeals following a negative answer to their request to marry or to register their marriage.

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[13] All western Europeans disappeared from the table of DGRN rulings because this part of the process only applies to marriages between Spaniards and non-EU foreigners.

Table 1: Main foreign spouses' origins (1996–2011)

TOTAL BINATIONAL MARRIAGES				DGRN RULINGS			
SPANISH MAN/ FOREIGN WOMAN		SPANISH WOMAN/ FOREIGN MAN		SPANISH MAN/ FOREIGN WOMAN		SPANISH WOMAN/ FOREIGN MAN	
Colombia		Morocco		Cuba		Cuba	
24,174*	14.1%**	16,875	13.5%	512	45%	194	39%
Brazil		Argentina		Colombia		Dominican Republic	
18,018	10.5%	7,563	6%	291	26%	86	17%
Morocco		Colombia		Dominican Republic		Morocco	
11,124	6.5%	7,100	5.7%	259	23%	66	13%
Ecuador		Italy		Morocco		Colombia	
9,656	5.6%	6,855	5.5%	101	9%	35	7%
Argentina		England		Peru		Pakistan	
8,232	4.8%	6,698	5.3%	50	4.4%	21	4.2%
Dominican Republic		France		Nigeria		Peru	
8,039	4.7%	5,654	4.5%	20	1.8%	17	3.4%
Russia		Germany		Brazil		Algeria	
7,958	4.6%	5,473	4.4%	18	1.6%	12	2.4%
Venezuela		Cuba		Ecuador		Nigeria	
6,058	3.5%	4,483	3.6%	17	1.5%	11	2.2%
Cuba		Dominican Republic		China		Senegal and India	
5,205	3%	4,270	3.4%	14	1.2%	6	1.2%

Source: compiled by the authors, based on INE and Westlaw Insignis data
*Absolute values on the left; **percentages on the right

The same applies to Peruvians, Chinese women, and Algerian, Pakistani, and Indian men, all from countries on the "negative" list referred to above. The opposite occurs with other nationalities listed in the top spots of the total population of binational marriages: Argentinians, or Russian and Venezuelan women. Argentina and Venezuela are on the "positive" list of countries drawn up by the EC, while Russia is on the negative one. Among the nationalities most frequently involved in the appeals, we find countries with significant populations of Afro- and Native American descent. We can then infer that at least some of them might have different and "racialised" physical characteristics. As Kirton (2000: 68) states, 'racialized physical features and the associated expectations may have an impact on any encounter or relationship.' This suggests there are more or less "desirable" partners. Some aspects of historical and geopolitical relations between the countries involved might also have a bearing on decisions (Fernandez 2013; Patico 2009; Wade 2015), thus establishing a ranking of origins that are more or less "convenient" or more or less "dangerous" to the host community (Colectivo Ioé 1999; Fueyo 2002; Vázquez 1999), 'whose supposed homogeneity should be protected' (Lavanchy 2013b).

Analysis of Discourse in the DGRN Rulings

The 2006 Instruction was passed to establish guidelines to improve the performance of Spanish registrars in identifying so-called "marriages of convenience". To that end, it stipulates that the basic information allowing them to infer simulation of consent to marriage is: a) lack of knowledge on the part of the bride, the groom, or both of the other party's basic personal and/or family details, and b) the absence of prior relations between the parties contracting marriage. Other information can also be used, in a subsidiary manner (e.g. lack of a common language; "irregular" situation of the foreign spouse; significant age difference between them; one of the two contributing neither assets nor resources). In this section, we will consider these two elements, as well as some of the other reasons registrars use to justify their decisions.

Inconsistencies and contradictions around personal/family questions

We noticed that the most common reason for refusal of an application was inconsistency or contradiction in the answers to the personal/family questions. To illustrate this point, here is one registrar's reasoning in refusing an application:

> During the private hearing, the bride … did not know where or when her spouse was born, if he had siblings or if he had studied at university … The groom stated … that he did not know his spouse's home address (Ruling 7, 2001; Spanish man/Dominican woman; refused).

Many of these questions would be easy to answer for partners who were in a relationship, even though insignificant details were sometimes required:

> … the appellant declares that the last time she travelled to the Dominican Republic, he went to pick her up from the airport, but he did not know the airline with which she flew or the duration of the flight (Ruling 159 2010; Spanish woman/Dominican man; refused).

Sometimes the contradictions between both parties are flagrant, but not always. On one occasion, the contradiction stems from one saying that they met in the street, and the other talking about a bar (Ruling 7, 2011; Spanish woman/Nigerian man; refused); or because a spouse said that her fiancé was divorced when his previous relationship was in fact common law (Ruling 14, 2002; Spanish man/Dominican woman; refused).

Lack of physical contact before the wedding

Another reason often cited by registrars is that the couples had not physically met until just before the wedding:

> The parties only got to know each other eight months before getting married and not directly.… Direct and personal knowledge occurs when the marriage is held (Ruling 41, 2004; Spanish woman/Cuban man; refused).

However, this criterion is not applied systematically. One exception is the marriage between a Cuban doctor and a Spanish receptionist, which is authorised despite their

meeting only days before the wedding and his having gone to Cuba with the intention of getting married:

> He is thirteen years older than she is and they got to know each other personally just a few days before the wedding was held. These circumstances may reveal the absence of consent to marriage, but, in themselves, are insufficient to lead to such a conclusion (Ruling 36, 2004, Spanish man/Cuban woman; authorised).

This reason, used in 89 of 145 (61%) cases, was introduced by EU Resolution 1997 but modified by DGRN Instruction 2006. As foreseeable, virtual relationships have since gained legitimacy (Roca, Anzil & Martínez 2015), and the fact that couples have not physically met before their wedding has ceased to be indicative of fraud, though registrars do not always agree with this idea:

> Given that the relationship has been maintained essentially through electronic media … it does not seem possible that a bond sufficient to lead to marriage can have arisen (Ruling 149, 2010; Spanish man/Cuban woman; refused).

The parties involved in this ruling made use of the following argument, without success:

> The interested parties lodged an appeal with the DGRN, claiming that in just a few months they have come to love and respect each other in a way that other couples do not manage in several years or even their whole lives, that with the range of media there is in the modern world and which they use, knowing each other in person can be secondary (Ruling 149, 2010; Spanish man/Cuban woman; refused).

The absence of physical contact before the wedding was still being used as a reason to reject applications after 2006, denying all legitimacy to long-distance love (even though such relationships have become increasingly common (Beck-Gernsheim 2007; Rosenfeld & Thomas 2012)), and to "arranged" marriages, frequent and normal in some African and Asian countries:

> The interested party argues that the proposed marriage is in keeping with this type of union in the Muslim world, where the custom is for the betrothed not to know or only to have some basic knowledge of their future spouse. This does not constitute sufficient justification to authorise the issuing of the requested marriage certificate (Ruling 157, 2010; Spanish man/Moroccan woman; refused).

Robinson (2007: 490) pointed out that 'the state imposes a particular view about the necessary qualities of a relationship that can be the basis of a marriage. Western states presume a model of attachment defined in terms of romantic love and are suspicious of marriages where the intimate bond cannot be demonstrated.' Similarly, Alexandrova (2007: 144) argued that 'the discourse of romantic love is employed to guarantee the authenticity of a transnational marriage.' We can also detect the influence of the "companionate marriage" model, based on the premise of 'marrying for love and staying married for love, giving priority to permanent affective primacy of conjugal unity' (Wardlow & Hirsch 2006: 3).

Furthermore, as contradictory as it may seem, the authorities also regard it as suspicious if the non-EU partner has made unsuccessful visa applications to travel to the EU. Consequently, only the Spanish partner is able to travel to their partner's home country without arousing the suspicions of the system, thereby hampering the possibility of personal encounters.

> ... they are planning to take up residence in Spain because her parents do not want to be separated from their daughter and he wants to work in this country; he had requested a visa to travel to Spain to meet his girlfriend and her family but it was not granted (Ruling 23 2003; Spanish woman/ Dominican man; refused).

However, the marriage application was refused because they had not physically met before the wedding. The detail of the rejection was:

> They met in 2001, both over the internet and face-to-face when she travelled for the first and only time to the Dominican Republic. She stayed there and they lived together for a fortnight, getting married on the last day of her stay in that country. The Dominican man had previously expressed his interest in travelling to Spain and requested a visa for that purpose, which was refused. (Ruling 23 2003; Spanish woman/Dominican man; refused).

There is also no uniform opinion among registrars about what the minimum acceptable duration of courtship is, nor the number of visits, nor the time partners should have been living together. Despite using expressions such as 'they got married a few days after meeting' or 'with very little prior knowledge of each other', this is never particularly accurate, and "acceptable" time periods can range from zero days to several months. By not specifying any standard for how long a relationship should take, the risk of arbitrariness in the decisions is considerable. Below are the reflections of the registrar in the negative ruling on a request by a Moroccan administrative employee and a Spanish cook to marry each other:

> … the brief duration of the relationship needs to be emphasised; as she states, they began the period of courtship eight months before the hearing and direct knowledge between them has been for only six days (Ruling 72 2006; Spanish woman/Moroccan man; denied).

However, when a Spanish man requested the registration of his marriage to a Cuban woman, and in spite of the registrar noting that 'he does not recall the name of the locality where they got married, that he met his wife through a friend', or that 'their relationship up until the date of their marriage lasted for five months' (Ruling 8 2001), the registration was authorised despite the courtship being shorter than in the previous case.

Lack of a common language

The lack of a common language appears in EU Resolution 1997 on the list of reasons for refusal. The reasoning commonly employed by the registrar is that without a common language, there cannot be real communication, which would result in the failure to form

a real relationship. Despite the greater flexibility offered by DGRN Instruction 2006, it remained a decisive factor in 34 rejected applications in our sample, even after 2006:

> They do not have a common language, as the spouse required an interpreter in her private hearing, and in this regard one of the reasons indicated by the ruling cited above allowing for the presumption of a marriage of convenience is the non-existence of a common language (Ruling 182 2011; Spanish man/ Algerian woman; refused).

Often the fact that the foreigner has needed an interpreter during the private hearing is perceived negatively. The hearing, described in the legislation as a "fundamental element" in verifying the existence of genuine consent to marriage, can cause anxiety and nervousness in the couple, as confirmed by Eggebø (2013: 779). In this uncomfortable context, marked by inequality (the bride and groom undergo examination, but do not know exactly what the parameters are), anyone without very fluent Spanish will certainly feel more comfortable with the mediation of an interpreter.

National origin

We noted earlier the over-representation of certain nationalities in DGRN rulings (Table 1), some of which suffer clear discrimination: namely Cubans, Dominicans, and Colombians, three of the most common national origins among non-EU people married to Spanish citizens, and all included in the "negative" list. An illustration is that since 2004, 42% of the negative rulings involving Cuban nationals include a phrase such as:

> According to the Consulate, consciously or unconsciously, in some marriages between Cuban citizens and foreigners, they use the institution [of marriage] for immigration purposes, which this case seems to corroborate, given the applicant's statement of his willingness to reside permanently in Spain (Ruling 35 2004; Spanish woman/Cuban man; refused).

Three years later, citizens of Colombian and Dominican origin received the same treatment. Like most of Latin America, these three Caribbean countries have historical colonial relationships with Spain, and populations resulting from the mixture of the many groups that have historically coexisted on the subcontinent. Anne McClintock (1995) proposed that the European colonial explorations and exploitations of Africa, Asia and America relied on an ideological apparatus that connected gender, race, and sexuality. Fueyo analysed advertisements for products aimed at Spanish men that repeatedly showed images of Caribbean women portrayed as sex objects, emphasising 'the idea of certain areas (Cuba and the Dominican Republic) as appropriate places for the consumption of those products and the "objects" shown with them' (2002: 78). Moreover, Fueyo inferred that social representations follow a stratification by colour, with "whites" placed at the top level (ibid.: 69), an observation that may help to understand why some national origins are over-represented in the DGRN rulings, while others are almost absent.

Scholars have shown how immigration policies partake in constructing narratives of national belonging through racial and cultural othering (Pellander 2015: 1474).

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As Wade (2015: 194) stated, 'Europe is more impenetrable to non-white than to white people, without race being an official criterion of exclusion.' To reinforce his claim, he cited the example of the abovementioned EU "Black/White" list (later renamed "Positive/Negative"), which 'specifies the countries whose citizens need and do not need [a] visa to enter the EU' (Wade 2015: 194). Other authors pointed out that in Spain, people from Eastern Europe are often perceived as "close to us" because of their physical appearance in an example of the prevalence of "cultural racism"; while other communities (Moroccans, sub-Saharan Africans and even Latin Americans, despite their socio-political and cultural proximity) would embody the "other" (Anzil 2013: 207). Phenotypic traits are used to signal (dis)similarity and (non)belonging to Europe (Breger 1998: 129, 141; Myrdahal 2010; Rodríguez 2015; Wade 2015), and religion (Islam, in particular) would represent the "other" par excellence (Capussotti 2007: 203; Rodríguez 2015). As Connolly (2015: 147) argued, 'in Spain, cultural racism is manifested in the view that the homogeneous nation is incompatible with immigrants or outsiders who are deemed ethnically or "civilisationally" distinct, in particular, Muslims.' All of these elements have contributed to the formation of national stereotypes that may have influenced the decisions taken by registrars. To paraphrase Connolly (2015: 145), representing foreign spouses in stereotypical ways 'continues to fix them as outsiders of national and cultural norms and further serves to reinforce notions of ethnic and racial homogeneity, in essence, refusing to fully come to terms with the changing demographics of Spanish society.'

Discussion

Migration scholars have presented different arguments concerning the relationship between norms of intimate relationships and immigration policy. One argument is that the family norms of the majority population in a local context function as the normative standard against which all relationships are judged (Eggebø 2013; Muller 2010; Rytter 2012; Schmidt 2011; Shah 2012; Williams 2010; Wray 2006). Wray (2006: 312) demonstrates how "marriages of convenience" are defined by policy makers and implementers whose decisions may represent a form of "moral gate-keeping" as officials search for the spouse who matches their personal criteria of suitability rather than criteria relevant to the prospective partners. Moreover, intermarriage regulations involving non-EU citizens embody a fundamental tension between the right to privacy and family life on the one hand, and national immigration control on the other hand (Foblets & Vanheule 2006; Strasser et al. 2009; Wray 2008). In fact, concerns over the "proper" or "fraudulent" use of binational marriage are just a mechanism for controlling migration flows, both in its volume and composition. As noted, nationality plays a major role in determining whether the outcome of marriage applications is either positive or negative. As Eggebø (2013: 779) described, the authority sets the rules and defines the criteria for "legitimate marriage", and the registrar has the power to make decisions on those bases. Officials conducting the hearings do not live on the margins of society but, like everyone else, carry a number of social constructs (stereotypes, preconceptions, prejudices) in relation to various topics which, consciously or unconsciously, will affect their daily lives, including their role in public administration (Eggebø 2012, 2013; Lavanchy 2013a; Valli, Martin & Hertz 2002). These officials have

considerable leeway to interpret existing rules as they see fit, according not only to their personal convictions but also to their perception of public opinion on the subject, and any need for changes in immigration policy they think necessary. Based on a series of representations, they make judgements about what is or should be a "real marriage" or a "real relationship" and the characteristics that both partners have to embody to ensure the legitimacy of their intentions (Lavanchy 2012: 2).

In contrast, a conflict arises in the hearings between the two aspects of the registrars' work: they are guardians of fundamental rights (to equal treatment and to marriage) while acting at the same time as "moral gatekeepers" (Wray 2006: 303), thus becoming 'specialists of the intersection between legality and intimacy' (Lavanchy 2013a: 680-81). In practice, this leads to: 1) arbitrariness and the lack of clear or common criteria to establish the (il)legitimacy of a relationship (courtship duration, valid proof of contact, degree of knowledge of personal data and family, etc.); 2) the resolution of similar situations in the opposite way; or 3) a clear discrimination against certain national or "racial" groups. We would like to illustrate these points with a paradigmatic example consisting of an application received by an Andalusian registry office in 2009. A 37-year-old single Spanish man unsuccessfully requested authorisation to marry a 37-year-old single Russian woman:

> …the lack of personal familiarity and the contradictions arising from the hearing process allow us to infer that the proposed marriage is one of convenience. The responsible judge opposed authorisation, and ruled against proceeding with the authorisation of the marriage ceremony (Ruling 183 2011; Spanish man/Russian woman; refused).

The woman decided then to lodge an appeal with the DGRN. Two years later, her appeal also met with refusal, because in the meantime she had married another Spanish man. In order to do so, the pair had requested the necessary authorisation to get married in a registry office in Almeria, this time successfully:

> In this request for the authorisation of a civil marriage in Spain between a Spanish national and a Russian citizen, it transpires that, before the appeal ruling, the foreign applicant has contracted civil marriage with another Spanish citizen at the R. registry office (Ruling 183 2011; Spanish man/ Russian woman; refused).

Even though her situation and relationships may have differed at the two points in time, this is evidence of the arbitrary nature of the process. We do not have data on how many binational couples were initially denied authorisation or registration of their marriage; we only have data on the couples that, after receiving a negative answer, presented an appeal to the administration. Thus, we do not know the real dimensions of the initial population of our search. This would have been useful information and we acknowledge the resulting limitations on our findings. Since our research was conducted using secondary sources (the Spanish and EU legislation on marriages of convenience, the INE data, and the rulings of the Department of Registers and Notaries), our knowledge of the couples' personal details was limited, making it impossible for us to know what the outcome of the relationships was.

Conclusions

In recent decades, Spain has changed from being a country of emigration to becoming one of the EU countries that receives the most immigrants, a fact that has contributed to a dramatic increase in binational marriages. The link between the two phenomena has created suspicion about the possible benefits that marriage might provide immigrants, particularly those from outside the EU. This has led, in turn, to the creation of regulatory bodies, both in Spain and in other EU countries, designed to prevent these so-called "fraudulent" unions, or marriages of convenience. The Spanish case described here demonstrates a scenario quite similar to those in other EU countries: the features of the resulting system have given great power and discretion to the registrars in determining whether a marriage is genuine or fraudulent. In fact, the outcome rests exclusively on their decision, thus entailing important risks of arbitrariness and discrimination. The registrars' actions seem to convey an idea of what is and should be a "love story" as such, while revealing a clear shift from the level of personal relationships to border control, allowing regulations on mixed couples to achieve their ultimate goal, which is simply to exercise control over immigration.

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Povzetek

Vztrajno naraščanje priseljevanja v Španijo od devetdesetih let 20. stoletja do približno 2010 je bistveno prispevala k dramatičnemu povečanju binacionalnih zakonskih zvez. To je neizogibno povzročilo dojemanje priseljevanja kot družbenega problema, binacionalne pare (med španskim državljanom/ko in državljanom/ko, ki v našem primeru ne prihaja iz EU) pa pogosto sumijo, da skušajo zakonsko zvezo izrabiti v izogib sistemu, ki nadzoruje pridobivanje španskega državljanstva. Naš glavni cilj je preučiti izključevalni postopek, ki ga opravijo ti pari, pri čemer kvalitativno analiziramo argumente, ki jih državni uradniki uporabljajo za potrdotev ali zavrnitev dovoljenj za poroko ali registracijo teh zakonskih zvez. Analiza razkriva obstoj diskriminacije nekaterih parov tako v pravnih normah kot pri njihovi uporabi.

KLJUČNE BESEDE: binacionalna poroka, poročna migracija, zakonodaja, poroka iz koristoljubja, nadzor priseljevanja, Španija

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