



Analysis

Austerity policies also cut rights and liberties in Spain

Peio Aierbe, Mugak /SOS Racismo

The austerity policies implemented in response to what has generically come to be called “the crisis” have a stated objective: to prune the social gains that have been won over time. Fear is being used to coerce the population into accepting these cuts. This pruning process has affected practically every sphere of political, economic and social life to the extent that many citizen’s rights and liberties have been lost.

The privatisation of healthcare and the exclusion of immigrants who do not have a residence permit

One of the first things to be cut by the Spanish government was the right to health care. It did this through royal law decree no. 16/2012 which was approved by the *Congreso de los Diputados* (Congress of Deputies, the lower house of parliament) in May 2012 and came into force on 1 September. The law shifts the right to healthcare from being on the basis of one’s status as a citizen to a model of affiliation in which an insured person or beneficiary must be recognised as such by the *Instituto Nacional de la Seguridad Social* (National Institute for Social Security.) The new model retreats from providing universal health care and represents a serious reversal in terms of individual rights and for society as a whole.

Until the enactment of decree 16/2012, the General Law on Health no. 14/1986 established that “Spanish people or a foreigner whose residence is settled in the national territory is entitled to the right to the protection of health and health care.” The new law peremptorily excludes the irregular immigrant population from getting public health care, with the exceptions of minors and pregnant women, leaving other undocumented migrants dependant on accident and emergency (A&E) services.

This prompted a large number of health service personnel groups to consider conscientiously objecting to the new law. Several autonomous communities (regional administrative councils in the Spanish federal system) have contrived formulae to avoid enacting the new law. The Basque government, for instance, rendered the law void through a decree and continues to provide health care to these people. This resulted in the central government appealing against the Basque government’s decree before the Constitutional Court. The outcome is pending, but the court has allowed the Basque government’s decree to remain in force. Contrary to the Spanish government’s aims, this exclusionary measure has not received popular support. According to a survey by *Metroscopia* on 19 December 2012, 77% of the population reject it.

Evictions

One of the most brutal effects of austerity measures has undoubtedly been a large increase in evictions. According to a report by the *Consejo General del Poder Judicial* (CGPJ, General Council of Judicial Power), during the first nine months of 2012 the number of mortgage repossessions across Spain was 67,537 and there were 49,702 evictions. From 2008 until the first quarter of 2012, there were 391,032 mortgage repossessions, equivalent to 321 per day. A significant number of these evictions involved immigrants who had been encouraged by banks to request loans to buy houses despite not possessing sufficient financial guarantees and who, as the situation worsened due to increased unemployment, were unable to make repayments. The appalling situation in which hundreds of thousands of people who had lost their homes found themselves led to the creation of *Plataformas de Afectados por las Hipotecas* (Platforms for People Affected by Mortgages). Using the slogan “STOP evictions”, the organisation has helped those threatened by eviction and raised public awareness of the issue.

Judges had a strong influence on public opinion after they became protagonists in late 2011 when some of them began issuing statements criticising the legislation on mortgage loans and evictions that forced them to unjustly evict thousands of families. Media coverage of their criticism, and the death of a number of people who committed suicide when judicial officers arrived to evict them, forced political parties and the government to appear more responsive to the situation. A Popular Legislative Initiative (*Iniciativa Legislativa Popular*, ILP), supported by 1,400,000 signatures, was delivered to the Congress of Deputies. Among other things, the Initiative recognised repossession as repayment - that once a mortgaged property is handed back to the bank the debt is settled. Pressure by citizens has forced the Partido Popular (PP) to modify its initial opposition and allow the ILP to undergo parliamentary scrutiny on 13 February 2013. Moreover, it was left to the European Union’s Court of Justice (ECJ) to issue a ruling on 14 March 2013 that recognised the existence of abusive clauses in mortgage loans. The court empowered judges to suspend eviction proceedings when they deemed such clauses to exist and ruled that the government must review the legal framework on mortgage loans and evictions.

Criminalisation of assistance to undocumented immigrants

A further turn of the screw to worsen the already precarious position of migrants whose stay has not been regularised was proposed in September 2012, when the government presented a draft bill to reform the penal code. It would introduce the possibility for public prosecutors to charge people for lending assistance to irregular migrants. Past jurisprudence from the courts concerning provisions in the current penal code had already ruled out punishment for acts motivated solely by solidarity, or a will to lend humanitarian assistance. The proposed Article 38 bis states:

*“The Ministerio Fiscal [public prosecutor] **may abstain** from bringing charges for this offence [assisting undocumented immigrants] when the pursued objective is solely to lend humanitarian assistance to the person concerned.” [emphasis added]*

Rather than making it obligatory not to bring charges, the wording leaves it up to the public prosecutor to decide whether or not to bring charges. This legal absurdity already exists in the current art. 318 bis of the penal code, where it is left to the courts - including the Supreme Court - to clarify the reach of the wording and to exclude actions motivated by solidarity from its scope. The current wording leaves it possible, for example, that those receiving undocumented immigrants in

their home, or helping them financially, may be punished with a prison sentence of up to two years. The government's intention has been widely rejected and the *Salvemos la Hospitalidad* (Let's Save Hospitality) initiative was launched, alongside several others, and succeeded in obtaining statements from numerous town councils opposing this legislative measure.

Financial obstacles to accessing justice

The Spanish government approved a Law on Judicial Charges (*Ley de Tasas Judiciales*) on 21 November 2012 which made access to justice more expensive by setting a charge of between 100 and 1,200 euros to appeal against a decision in court. There has been widespread criticism of this law because, once it is implemented, justice will no longer be equal for rich and poor. It has not only been rejected by numerous citizens' groups but also by the majority of magistrates' associations (magistrates, prosecutors, lawyers, court clerks, etc.) The latter announced that they would test its legality before the Constitutional Court, arguing that it contravenes the equality of Spanish people before the law and their right to effective protection. This led to a rare strike by magistrates and prosecutors on 20 February 2013, only the third such action in 35 years. 41% of judges and magistrates participated in the strike according to figures from the *Consejo General del Poder Judicial*. In a display that highlights the inconsistency of the *Partido Popular's* method of governing, the Law on Judicial Charges was modified four months after it was enacted.

Demonstrating: a criminal offence against the State's institutions

The government has been using limitations to the right to demonstrate since the appearance of the protests and camp-ins known as the "indignados" or "15-M". These include applying a measure provided in the penal code as a "crime against the state's institutions" to people participating in demonstrations outside the *Congreso de los Diputados*, as happened recently after demonstration-organising committees called on participants to surround the *Congreso* as a means of exerting pressure on MPs. The possibility of modifying the penal code to make demonstrating while concealing one's face a criminal offence is also being examined.

Denial of access to detention centres for NGOs and journalists

The opacity of the Spanish administration concerning conditions in *Centros de Internamiento de Extranjeros* (CIEs, detention centres for foreigners) leads it to try to avoid any form of democratic control over the way in which these centres are managed, and the human rights violations that occur within them. In 2012, within the framework of the "Open Access Now" campaign led by the Euro-African *Migreurop* network and *Alternatives Européennes*, a request for access to the centres was made by MPs, human rights organisations and the media. The requests were rejected outright, and even those submitted by the MPs went unanswered. These precedents form a backdrop to a draft Regulation to regulate the operation of the centres, which is nearing completion after several years of discussion. In accordance with the policy of cutting back on rights, it seems unlikely that it will include the bulk of the proposals presented by migrant support associations and the judiciary.

A unified response by citizens

The above examples are only some of the consequences of using austerity measures to tackle the so-called economic crisis. There is plenty of scope to continue illustrating its effects. For instance, I could focus on labour market legislation that makes dismissals easier, lowers wages and renders employment more fragile. Spain already has the highest unemployment rate in the European Union,

with 25.8% of the active population and over 50% of young people out of work. Or I could have focussed on the cuts to the education budget that have resulted in tens of thousands of teachers being sacked, the closure of school refectories and a general increase in university fees.

I started this article by saying that the public administrations have been trying to arouse fear as an ally for their reforms to be accepted by the public. However, in the case of Spain opposition is gradually growing and becoming less intimidated. New sectors are joining the protests daily. Moreover, and this is very important, the opposition forces are unified and, so far, they have avoided falling into the trap of treating other groups that are under attack from the measures, such as the migrant population, as targets. It is the government's intention to exacerbate any splits, as is evident from its divisive measures.

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