Chapter 6

Immigration policies in Portugal

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Migratory context

Since the 1980s, immigration has ceased to be a minor component in Portuguese population movements. At the beginning of the 21st century, the foreign population with residence permits and temporary presence permits amounted to approximately 400,000 people, thus representing around 4% of the total resident population. In the recent history of Portuguese immigration it is possible to distinguish three periods: immigration from Africa following decolonisation, the 1980s and 1990s, which were marked by the growth and diversification of migratory flows, and the period of new migrations from Eastern Europe and Brazil at the turn of the century.[1]

Since the 1980s, in line with the trend in Mediterranean Europe as a whole (Werth et al., 1991; Machado, 1997), immigration into Portugal has been developing at an accelerated pace. Between 1980 and 1999, the foreign population with Portuguese residence permits increased at an average annual rate of 6.5%. In this period, a migratory system emerged that was essentially composed of flows of unskilled workers from the PALOP (Portuguese-speaking African countries) and flows of skilled professionals from the EU (and the USA, to a lesser extent). The slow establishment of a flow of Brazilian immigration, notably heterogeneous from a socio-occupational viewpoint, is also worth mentioning. At the end of the period, around 200,000 foreigners were living in Portugal, of whom 28% were from the EU, 45% from the PALOP and 11% from Brazil.

At the end of the 90s, references to the emergence and rapid growth of new immigration flows from Eastern Europe began to appear in the Portuguese press, in documents from the SEF (Foreigners and Borders Service) and in initiatives by non-governmental organisations. The actual extent of these flows, however, would only be visible when the new rule for temporary presence permit came into effect. This was established by Decree-Law No. 4/2001, which is analysed below and, in practice, included the granting, in Portugal, of a work visa to foreign citizens living illegally in Portugal, provided when they had a work contract with an employer. The massive legalisation carried out with the granting of the new status also revealed the exponential growth in illegal immigration from Brazil.

With these new flows, a sudden rise in the foreign population in Portugal can be observed at the end of the 1990s and beginning of the present decade: on 31 December 2002 there were over 400,000 foreigners (about double the number in 2000) living legally in Portugal, that is, 4% of the total population of the country. About half had residence permits while the other half had temporary presence permits.

Table 6.1 Foreign population resident in Portugal, 2004

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NB: the data for residence permits is provisional.

Source: SEF (Foreigners and Borders Service).

This growth and diversification in immigration from the end of the 1990s can be explained by a combination of external and internal factors. At the external level, prominence should be given to the pressure to emigrate in the migrants' countries of origin (in particular, Brazil and Eastern Europe) and the dynamics produced by European integration. It should be kept in mind

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that the new immigration from Eastern European countries is not only due to social disorganisation processes inherent in the political and economic transition affecting these countries, but also the accumulation, over years, of an unfulfilled migratory potential: "In retrospect, it is clear that the end of the Cold War was a watershed event in the history of global migration, ending a policy regime that had held world emigration rates at artificially low levels for more than 40 years" (Massey, 1999: 311). At the internal level, prominence should be given in particular to the changes on a socio-demographic and corporate plane. On the first of these two, a phase involving the progressive drying up of internal labour reserves was being experienced due to the resurgence of emigration, the rapid fall in the birthrate and its continuation at a low level (inhibiting replacement of the population), and the accelerated feminisation of the working population. On the corporate plane, there was the general spread of methods producing precarious wage relationships in different sectors, along with the spread of management practices based on the outsourcing of a company's non-core or non-permanent activities, and concentration processes like those involving large-format commercial activities. As a consequence, there was an expansion in the labour market segments that Piore (1979) and Portes (1999) qualify as belonging to the secondary sector. Their more precarious nature is linked to the non-continuous nature of the activity (particularly construction), informality in the employment relationship (particularly construction and cleaning) and, in general, eccentric and extended working hours, low pay and a diminished status – characteristics that make them unattractive locally. In those places, therefore, the demand for immigrant labour tends to be greater.[2]

The growth in immigration due to the growth in demand in these labour market sectors was reflected in the predominance of unskilled work-migration flows in terms of the occupations in the place of destination. Thus, the polarised model that had characterised the configuration of migrations to Portugal since the 1980s was altered, even if, ironically, with the immigration from Eastern Europe, there was an increase in the number of immigrants with educational qualifications above the national average.

Over these three periods it is possible to see the emergence of immigration policies that did not exist in the Portugal of the *Estado Novo*, with its closed doors. In the first period, these policies were centred on the question of nationality; in the second, importance was given to the progressive rebalancing of policies to control migratory flows and policies to promote the integration of immigrants; and, finally, in the third period, there was a trend towards recentring policies on the question of immigration control.

The nationality issues

From the immigrant point of view, the changes to the nationality legislation following the 25 April Revolution established a more restrictive framework, discouraging settlement. The principle followed was to substitute the *ius solis* system in effect (dependent on place of birth) with a mixed system in which *ius sanguinis* (dependent on blood-ties) predominated.

This change commenced with decolonisation. Independence in the Portuguese ex-colonies presented the question of the maintenance or loss of Portuguese nationality for those resident or born there before independence. On 24 June 1975, with Decree-Law No. 308-A/75, the lawmakers chose to "establish the loss of Portuguese nationality as a basic principle" (Esteves et al., 1991: 132).

Since the introduction of the Civil Code in 1867, the legal regulations on nationality in Portugal had been based on the *ius solis* criterion.[3] This was maintained (and improved) in the 1959 law on nationality (Law No. 2098/59) and meant that those who were born in the former colonies,

2 This growth of secondary sector is consistent with Dornelas' analysis of the persistence in Portugal and other southern European countries of a "system of low labour standards" characterised by "a very high level of wage flexibility [...], very high percentages of workers on low salaries [...] and the highest levels of wage dispersion in the European Union" (Dornelas, 2001: 510-1).

3 *Ius solis* refers to systems in which the right to nationality is given to anyone who is born in the country; *ius sanguinis* refers to systems in which the right to nationality is given to all descendants of that country's nationals. In practice, these systems have the status of ideal types, since existing rules on nationality represent a combination of the two systems, though one of them predominates, in particular with regard to the granting of nationality to foreigners' children who are born in the country. See Weil (2001) for an international comparison of different rules on nationality.

before the time of independence, had the right to Portuguese nationality for their whole life.

Fearing the migratory effects of the political crisis (and the civil war, in the case of Angola) which marked the transition of the ex-colonies to independence, the state decided to prevent, selectively, the possibility of an influx of refugees. Selectively, as it was considered necessary to allow the resident white population in the ex-colonies the option to be repatriated, as the insecurity resulting from the crisis and civil war was increased by the fear of an inversion of colonial racial discrimination.

As they could not apply that selectivity on a racial basis, the Portuguese political authorities of the time resolved the dilemma by submitting the possible retention of nationality by those born and resident in the ex-colonies to the *ius sanguinis* criterion. After independence, essentially, the Portuguese born in Portugal (mainland or islands) or with forebears born in Portugal (continent or islands) retained Portuguese nationality.[4]

This legislative measure had far-reaching effects on the subsequent history of immigration in Portugal, for three fundamental reasons: (i) it distinguished between repatriation from the ex-colonies and the immigration of foreigners with the same origin; (ii) it defined the legal and symbolic conditions (in the area of identity and belonging) for the integration of future immigrants, foreigners and their descendants into Portuguese society; and (iii) it contributed to the perception of immigration as a threat and chose a reduction in immigrant rights as a specific strategy to deal with that threat, in that it was (or was considered to be) an element that discouraged an increase in flows and, particularly, the development of immigration for permanent settlement.

The publication of a new nationality law on 3 October 1981 [Law No. 37/81] resolved the tension between the solution to the particular problem of the maintenance (or loss) of Portuguese nationality by individuals born or resident in the ex-colonies, a solution based on the *ius sanguinis* criterion, and the general framework for the acquisition of Portuguese nationality. The latter was still governed by Law No. 2098/59, which gave priority to the *ius solis* criterion. The legislation resolved the tension by opting for the *ius sanguinis* rule.

The principle according to which all those born in Portugal were considered Portuguese now has the limitation that the children born in Portugal of foreign parents are only considered Portuguese if (i) their parents have habitually resided in the country for at least six years and (ii) have declared their wish to be Portuguese. But the restrictive clause on the acquisition of nationality by the foreign-born children of a Portuguese father, relating to the establishment of residence in Portugal, has disappeared.

This track was followed and reinforced in Law No. 25/94 of 20 October, which is still in force. The claim to Portuguese nationality by children born in Portugal of foreign parents is restricted to

> individuals born in the territory of Portugal to foreigners who have resided here with a valid residence permit for at least 6 or 10 years, depending on whether they are, respectively, citizens of countries with Portuguese as an official language or other countries...
> [Law No. 25/94, Article 1 c)]

This restrictive policy is extended to the acquisition of nationality by marriage – with the added demand of a period of three years for such effects [Article 3 (1)]; to the requirements for naturalisation – with the inclusion of a new paragraph demanding proof "of an actual connection with the national community" [Article 6 d)]; and to a broadening of the grounds for the rejection of a naturalisation application – with the new wording of Article 9 a), which places the onus of proof of "an actual connection with the national community" on the applicant for naturalisation.[5]

At the same time, this law introduces the principle of negative discrimination against non-

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4 In strict terms, the following retain nationality: the Portuguese born in Portugal (mainland or islands), the Portuguese who are born abroad of a father or mother born in Portugal (mainland or islands) or naturalized, a woman who is married to, divorced from or the widow of a Portuguese man in the situation mentioned above, and the children of the latter who are minors [Decree-Law No. 308-A/75, Article 1 (1)]. It was also specified that, after the date of independence, third generation descendants of Portuguese in any of those three situations retained nationality. The only exception to this criterion concerned those born in the former State of India, before it was annexed by the Indian Union in 1961. In this case, the *ius solis* criterion prevailed [Article 1 (1) e)].

5 The law makes naturalisation more difficult and restricts its acquisition to adults. So, it assigns the children of immigrants resident in Portugal that were born abroad before migration, to the "second generation" foreign segment. It thus creates an integration problem since, as Piore stresses, "in relation to individual attitudes and behavior, the critical distinction appears not to be the place of birth but the place where one grows up and, in particular, spends his or her adolescence" (Piore, 1979: 65-6).

Portuguese-speaking foreigners and their children who are born in Portugal (once again presenting the latter with the effects of their parents' condition), at the level of both the right to native-Portuguese nationality and the conditions for naturalisation. In both cases, the law demands that they have previously lived in Portugal for a longer period (10 years, as against 6 for Portuguese-speakers).

The changes in the Portuguese legislation on nationality correspond to the trend, analysed by Weil (2001), which characterised immigration policies in European countries in a phase of reaction to the newness of the phenomenon. Weil relates different countries' modifications to the nationality regulations to the development of the migratory cycle, arguing that "first, access to nationality was restricted when the law was perceived as permitting easy access to residence without having respected immigration laws. Second, all provisions that did not provide for the facilitate integration of second- and third-generation immigrants were progressively overturned: access to citizenship was thus opened to long-term residents and their children" (Weil, 2001: 32-3).

The second phase would have been provoked by the growing influence of democratic values, the stabilisation of borders, and the acquired experience of immigration. Moreover, in the latter area, it was decisive the recognition of the incompatibility between democratic norms and values and the restrictions on access to nationality, as well as the recognition of the negative effects of those restrictions on national and social cohesiveness.

Table 6.2 Changes in the law on nationality

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In the legislative activity of 1981 and 1994 in Portugal, restrictive attitudes characteristic of the first phase still predominated, represented by the predominance of the *ius sanguinis* criterion. When the XVII Constitutional Government took power following the Socialist Party victory in the 2005 general election, the law was amended once again. For the first time since 1974, a reduction was approved in the residence periods necessary before immigrants themselves or their children (if born in Portugal) may acquire nationality. For the first time, a route was introduced (educational success at the end of the primary education, i.e. Grade 4) to avoid the excessive dragging-out of the effects of the parents' illegality on the children's exclusion from nationality. For the first time, also, the conditions were created for minors born in Portugal of foreign parents and recognised as satisfying the necessary conditions – at the request of their parents – to acquire Portuguese nationality, instead of remaining in an identity limbo until adulthood. In summary, for the first time since 1974, the criteria for the right to nationality by place of birth were strengthened over those depending on blood-ties.[6]

The emergence of immigration policies in the 80s: the control of flows

Throughout the 80s, the character of immigration policy was one of reaction to the increase in the resident foreign population, centred on the production of legislation aimed at regulating the flows, on the one hand, and creating and developing a specialist police structure for the purpose, the SEF (Foreigners and Borders Service), on the other.

The clearest indicator of this slow development is the absence, until 1995, of any reference to immigration issues in government programmes. The same political low-profiling of the immigration topic in the planning for government is evident in the GOP (Major Planning Options), in which it is only minimally dealt with from 1990. Until 1995, that meant concentrating on questions related to the EU, Portugal's participation in the Schengen Agreement (in 1991) and internal security, plus two active policy measures. These were the extension to immigrants of urban rehabilitation programmes, particularly in the sphere of social housing [GOP, 1992] and the regularisation programme of illegal immigrants provided for in Law No. 17/96 [GOP, 1993]. The predominating interpretation of immigration in this text is that of a threat – of a disturbing and, to a great extent, undesirable phenomenon [Law No. 1/92 of 9 March, GOP, 1992].

In this phase, a restrictive idea of immigrant rights prevailed, with a broad interpretation being made of the range of constitutional exceptions. Since 1976 the Constitution has laid down the principle of providing foreigners and Portuguese nationals with equal rights, with the exceptions to

6 Organic Law No. 2/2006 of 17 April. This law also abolishes the criteria of discrimination on the basis of nationality (Portuguese-speakers, non-Portuguese-speakers), which subordinated the definition of the immigrant situation to "foreign affairs" interests.

the rule being political rights (electoral rights, the right to set up parties and submit petitions, and access to office in the organs of state power and of power in the autonomous regions) and the exercise of public duties and others that the law defines. Positive discrimination is possible in favour of foreigners from Portuguese-speaking countries, in that access to certain rights reserved for Portuguese nationals is extended to them [Constitution of the Portuguese Republic, Article 15, (1), (2) and (3)].

However, the latter possibility, which is included in the legislation on nationality and, in general, in the legislation relating to foreigners, is limited by the establishment of the principle of reciprocity. This principle is extended, moreover, to foreigners as a whole with regard to regulation of their ability to vote in local elections [Constitution of the Portuguese Republic, Article 15 (4)].

With no limitations expressed in the text of the Constitution, access is provided to the right to services, i.e. education, social security, health and housing (Esteves et al., 1991:104).

Among the set of rights that, constitutionally, may be restricted, the right to work was the one that was going to be the object of more restrictive regulation. Decree-Law No. 97/77 of 17 March on the regulations covering the dependent work of foreign citizens resident in Portugal remained in effect until 1998. With reference to employers, and foreign immigrants with visas granted by the SEF, it demanded that at least 90% of the personnel in companies with over five employees should be Portuguese. These restrictions were conditionally eliminated only in the case of work involving foreigners from Portuguese-speaking countries with which bilateral agreements existed: Brazil (1971), Guinea-Bissau (1976) and Capo Verde (1977).

Such a restricted framework was not compatible with the growth in immigration analysed above. It is therefore probable that in the sphere of labour regulations for foreigners, as in others, there was a gap between the demands of the law and actual practice. This kind of gap tends to encourage the growth of informal economic activity and, therefore, undermine the compensatory effectiveness of social policies, while also increasing the asymmetries of power inherent in the system of subordinate labour (Santos, 1985).

The cornerstone of immigration policy in this period was regulation of the entry, stay and departure system for foreigners, instituted in 1981 [Decree-Law No. 264-B/81 of 3 September] and amended in 1993 [Decree-Law No. 59/93 of 3 March]. An analysis of these two pieces of legislation allows us to identify two fundamental immigration policy assumptions of the time.

Present in both these laws is orientation of a long-term precarization in the foreign immigrant's stay in Portugal, which is consistent, moreover, with the orientation of the nationality law. The validity and programming of the three residence permits described in the legislation illustrate that orientation: the first and the second valid for one and five years respectively and renewable for equal periods, and the third unlimited, though with 20 successive years of residence required. This understanding of immigration as a temporary situation is completed by the absence of any mention of the right to family reunification in either piece of legislation.

In the second place, there was the widespread understanding that immigration could be controlled on an administrative and bureaucratic basis, in particular with regard to the proliferation of entry statuses and the strengthening of the expulsion regulations, which were only defined as such in 1993.

The 1993 law sets out the specific handling (less restrictive than the general one) of the entry and settlement of foreigners from the European Union, incorporating the new Community policy on the free circulation of people and the specific aspects of the reinforcement of this new right among the signatories of the Schengen Agreement. Thus, on the legal level, it represented a paradoxical development in the regulation of what were, at that time, the two most important, and socially distinct, immigration flows – from the PALOP and the EU. It was paradoxical because it emphasised the social polarisation, repeating it on a political level, according to a principle that restricted rights for the socially most vulnerable sectors and extended them for the most skilled immigrants, on account of the near-total overlapping of the social and geographical differentiation of the flows.

The corollary of centring immigration policy on controlling flows by administratively and bureaucratically obstructing foreigners' entry and settlement in Portugal was to concentrate implementation of this policy within the SEF (Foreigners and Borders Service). This definition of powers, however, contradicted the decision taken, also in 1993, in the Resolution of the Council of Ministers No. 38/93 of 15 May, to give the Ministry of Employment and Social Security the responsibility for “coordinating the measures directed at the full social and occupational integration of immigrants and ethnic minorities”. It, thus, in fact, divided the responsibilities for immigration policy between the SEF and the latter ministry (Justino et al., 1999: 282). The effect of the resolution was to broaden foreigners' access to occupational training programmes.

The central guidelines of the immigration policy pursued in this period contrast with the results of a continuous increase in the population movements analysed above, with immigration aimed at settlement, especially from the PALOP (but also Brazil). It is not to be concluded from this contrast that the policy pursued was inconsistent but rather that it had other consequences than those intended, in particular an increase in illegal immigration. This consequence is common to most developed countries where, since the middle of the 80s, there has been a growing gap between "national immigration policy [...] and the actual results of policies in this area" (Cornelius, Martin and Hollifield, 1994: 3).

The reaction to increased illegal immigration, in a democratic political framework anchored in liberal and humanist values, led to regularization programme for illegal immigrants in 1992/3 [Decree-Law No. 212/92 of 12 October].

As is typical of all the legislation analysed, a more favourable treatment was specified for Portuguese-speaking immigrants. It was reflected in reduced demands regarding the conditions of admissibility for legalisation.

A new regularization programme in 1996 [Decree-Law No. 17/96 of 24 May] responded to the limitations of the earlier process, though it maintained the different treatment for Portuguese-speaking immigrants.[7]

The consolidation of immigration policies in the 90s: the problem of integration

The Socialist government which, in 1995, followed the Social Democratic governments (1986-1995) was responsible for this process of legalisation. The process reveals certain important alterations in national immigration policy, which is confirmed by an analysis of other documents and legislation.

It is possible to discern, since that time, a process of placing immigration regulation questions in a less marginal sphere of government action. Then, for the first time, a government programme included specific sections on immigration [Programme of the XIII Constitutional Government, 1995, and the GOP (Major Planning Options) for 2000, 2001 and 2002], which were distributed between the areas of internal administration and social policies.[8] Of particular note in the programme were: the need to improve control of the European Union's external borders as a result of the suppression of internal borders and the increase in migratory pressures from Portuguese-speaking countries; and the need to support immigrants with socially inclusive policies.

Among the measures to implement the objectives defined in the section on "social security and solidarity" in Chapter IV (social policies), paragraph d) is (almost completely) devoted to immigration.

This change in immigration policies may essentially be characterised by the broadening of the object of such policies to the field of integration, in contrast to the earlier concentration on the sphere of regulating flows. The regulation of integration is, in turn, mainly defined as (i) involving a particular case of making access to social rights effective and, additionally, as (ii) depending on the removal of legal limitations on the right to work and, within the constitutional limits, to participate politically and as (iii) depending on the granting of the right to family reunification. Earlier positions persist, however, particularly in the handling of the immigrant question in accordance with the objectives of external policy (above all in the maintenance of the constitutional restriction relating to the reciprocity principle for electoral rights) and the symbolic reaffirmation of the institutionalised national identity narrative (to be seen in the continued justification of the different treatment of Portuguese-speaking immigrants). Also present are the culturalist and ethnicising assumptions on the dynamics of integration, based on the political discourse and revealed, above all, in the linking of the immigration issue with the Romany issue, both subsumed by reference to one and the same category

7 A distinction that was reflected not only on a legal level but also in the application of the law, since the rejection rate of applications for legalisation was systematically lower for Portuguese-speaking immigrants than for other migrants (Pires, 2003: 146).

8 This logic of separation, which places immigration policy either on the level of security policy (when it concerns migrant flows regulation) or on the level of anti-exclusion social policy (when it concerns the promotion of migrants integration), was discontinued in the Programme of the XIV Constitutional Government (Socialist Party, 1999-2002) and, essentially, reinstated in the Programme of the XV Constitutional Government (a PSD/CDS coalition). However, in the first case, the policy measures were concentrated on the social plane, whereas in the second the security component was given precedence.

– ethnic minorities.

With regard to the new elements of immigration policy, in the area of integration, their implementation was particularly associated with the legislative and organisational programmes. In the first case, it is important to note:

— the implementation of the possibility, constitutionally, for foreigners from countries where the Portuguese have the same rights to take part in local elections [Law No. 50/96 of 4 July];[9]
— the new labour law for foreigners, eliminating the quotas imposed on companies [Law No. 20/98 of 12 May];
— the elimination of legislative inconsistencies that allowed a restrictive interpretation by the administration regarding foreigners' access to constitutionally guaranteed rights to services, in particular in the health area [Order No. 25.360 of 2001];
— the specification of the applicability of the new social policies, on the basis of residence category and not nationality, with the legal base for such being the regulations on the guaranteed minimum income, in stipulating "legal residence in Portugal" as the first condition of allocation [Law No. 19-A/96 of 26 June, Article 5 (1) a)].

At the organisational level, the execution of immigration policy was no longer confined to the action of the Foreigners and Borders Service, with the creation in 1996 of ACIME (High Commissariat for Immigration and Ethnic Minorities), aimed at dealing with the problems of integration [Decree-Law No. 3-A/96 of 26 January]. At a second point, the progressive involvement of immigration issues with the execution of the government's sectoral policies can be observed: the programme of the XIV Constitutional Government (1999-2002) included a separate chapter entitled "A policy of full integration for immigrants and ethnic minorities", which consisted of 17 measures for the social and economic integration of immigrants. In 2001, the coordination of these measures led to the creation of an "Interministerial Committee for the Monitoring of Immigration Policy" [Resolution of the Council of Ministers No. 14/2001 of 14 February].

This change in immigration policies had repercussions on the redefinition of ideas on the regulations for foreign entry and settlement in and departure and expulsion from Portugal. Though the administrative and bureaucratic rationale was maintained, Decree-Law No. 244/98 of 8 August included two amendments that partially reversed the restrictive nature of earlier policy. The period of uninterrupted residence for a permanent residence permit was reduced from 20 to 10 years [Article 84 (2)] and the opportunity for family reunification was strengthened. In fact, the whole of Chapter V is devoted to this question, defining it for the first time as a right.

In 2001, the law was amended again [Decree-Law No. 4/2001 of 10 January]. Once again, it introduced the principle of positive discrimination for Portuguese-speaking immigrants, for whom the period of uninterrupted residence necessary for a permanent residence permit was reduced from 10 to 6 years [Article 85 (1) a)]. With this law, two innovations were also put into operation: the creation of "temporary presence permit status" and the association between the control of immigrant flows and regulation of the labour market.

The temporary presence permit, valid for a year and renewable for up to a maximum of five [Article 55 (4)],[10] was given to illegal foreigners (i.e. those living in Portugal without the appropriate visa) who could prove, if only with a witness, that they had a labour relationship of subordination. In practice, what was granted was a work visa (with validity limited to Portugal) after illegal entry and settlement in the country. The creation of this document represented a new response to the upsurge in illegal immigration at the end of the 90s, one that sought a problematic reconciliation between two objectives. The first was to distinguish legal and illegal immigration by making a difference in the conditions of stability linked to the residence document awarded in each case. The second was to avoid extreme segmentation of the labour market as a result of the rise in the number of immigrants who remained illegal for prolonged periods.

The repercussions of this legal amendment on the immigrant situation resulted in particular from the effects on the regulation of the labour market associated with it, especially because legalisation of the immigrants' situation also signified the legalisation of their labour relationship.

9 The perverse effects of the reciprocity criterion are to be seen in the exclusion of voting rights for the nationals of two of the countries with the most immigrants in Portugal – Angola and Guinea-Bissau. These are also the countries of origin of immigrant populations in Portugal that most suffer conditions of exclusion and discrimination that favour the emergence of the dynamics of ethnicisation.

10 After five consecutive years, holders of permission to stay could apply for a residence permit without a previous residence visa [Decree-Law No. 4/2001, Article 87 (1) o); paragraph m) of the same point in the wording given in Decree-Law No. 34/2003].

For the first time, the new legislation implied the recognition of a connection between the operation of the labour market and the development of migratory flows. The intervention relating to this connection was also extended, with employers being made responsible for the illegal labour situation of illegal immigrants [Decree-Law No. 4/2001, Article 144 (4)].[11]

The application of temporary presence permit redefined the conditions of attraction at the destination, in seeking to move against the labour deregulation processes inherent in the informalisation of the segments of economic activity that use illegal immigrant employment. It had effects, simultaneously, on the dynamics of labour flows (operating on the bases of recruitment at the destination) and on the integration of immigrants (operating on the legalisation of their situation and inclusion in the labour market). As a perverse effect, however, the temporary presence permit rule may result in a reinforcement of the dynamics of labour market deregulation on account of the discrepancy between the maximum validity of the document granted, five years, and that of contracts for a limited period, which are legally restricted to three years.

The direction of this new orientation in immigration policy corresponded essentially to the type of measures that, two decades earlier, Piore suggested regulated migratory flows more effectively, in regulating the labour market so as to reduce the size of the secondary sector and, therefore, the demand for migrant labour at the destination (Piore, 1979: 174 and 185-6). According to his argument, this is because "efforts do curtail the secondary sector by curtailing the supply of labor are, thus, likely to have exactly the opposite effect", with the development of illegal immigration and, therefore, the conditions for that sector to flourish (*idem*: 185). As an alternative, he suggests measures to extend labour market regulation, in particular the reinforcement of minimum standards of rights for secondary sector workers and the establishment of the employers' responsibility for the illegality of the labour situation, instead of the penalisation of the immigrants in this situation (*idem*: 185-6).

The limits on these changes, especially in the medium-term, lay in the maintenance of the nationality law and, therefore, of the roots of segmentation in the legal area involving immigrants and their descendants. They also lay in the maintenance of an organisational model for frontier controls that was almost exclusively based on entry checks. In other words, the system regulating work migration flows did not include their channelling by institutions from the outset, in particular by the launching of recruitment programmes supported by organizations of external representation. On the other hand, the functions and organisation of the Foreigners and Borders Service were changed once again, reinforcing their bureaucratic and administrative rationale: their powers were increased from 20 to 24, in particular to make their activity in expulsion and extradition matters more effective [Decree-Law No. 252/2000 of 16 October].

In the field of integration, too, the immigration policies defined in this period contained certain contradictions, particularly to be seen in the coexistence of "republican" orientations (or, more accurately, those involving the broadening of citizenship on the basis of the residence criterion), clearly predominant, and "ethnicizing" orientations. The first, already mentioned, represented the search to cancel the specificity of the immigrant situation as a negative conditioning factor in the access to rights; they generally equate foreigners with the Portuguese on the level of rights.[12] The second were to be seen in the persistence of cultural and ethnic criteria in the primary definition of the immigrant condition.

In this second area, on the one hand, discursive practices persisted, particularly in the naming of legislative initiatives (systematically referred to as intended for immigrants and ethnic minorities). On the other hand, importance should be given to the measures regarding the *Secretariado Entreculturas* (Inter-culture Secretariat), created in 1991 [Normative Act 63/91 of 18 February] and reformulated in 2001 [Normative Act 5/2001 of 14 December]. It established the figure of the social and cultural mediator, in 2002, and institutionalised the immigrant association movement (see, in particular, Albuquerque, Ferreira and Viegas, 2000; Machado, 2002: 405-430). The fundamental political and legislative milestones in the latter's institutionalisation as a partner of

11 The intervention relating to the connection between migrations and the labour market was also reflected, in the organizational level, by the institutionalization of cooperation between ACIME and the Employment and Occupational Training Institute, as documented in the GOP (Major Planning Options) text for 2000, 2001 and 2002. In the process of legalization through the granting of temporary presence permit, that organizational connection of the forms of intervention would also include cooperation between ACIME and the IGT (Inspectorate General of Labor), as laid down in Decree-Law No. 4/2001 itself.

12 An orientation also present in the establishment of the Welcome to Portugal programme (under the Choices programme), with the objective of offering "basic courses for foreigners in citizenship and the Portuguese language" [Resolution of the Council of Ministers No. 4/2001, of 9 January].

the state in defining and monitoring immigration policy are the creation of ACIME, the establishment of *Cocai* (Advisory Council on Immigration Affairs) in 1988 [Decree-Law No. 39/98 of 27 February], and the definition of the legal framework for immigrant associations in 1999 [Law No. 115/99 of 3 August].

In summary, in this second period, immigration issues gained prominence in governmental and legislative activities, on the one hand, and, on the other, immigration policies were marked by a broadening of integration and a reformulation of the ways of controlling flows. In the field of integration, despite the persistence of ethnicising references, the accent was placed on extending immigrant access to rights. In the regulation of flows, the main innovation was the link between border policies and labour market regulation policies. Amendment of the nationality law and repeal of the reciprocity principle in the sphere of political rights were left aside. Thus, the development of "immigrant citizenship" inconsistent with the classical sequence defined by Marshall (1950) was consolidated, an inconsistency already indicated by Marques and Santos (2001: 165).

Immigration policies at the beginning of the new century: setbacks

In March 2002, the PSD (Social Democratic Party) won the general election, which had been brought forward, and formed a coalition with the CDS (Social Democratic Centre). A new immigration policy had been announced by both parties in their election manifestoes and was reaffirmed in the programme of the XV Constitutional Government.[13] The amendment of the law on the entry, stay and departure of foreigners marks the immigration policy of the XV and XVI Constitutional Governments. Following the dissolution of the Assembly of the Republic by the President of the Republic in 2004, and the call for parliamentary elections, the Socialist Party won the general election with an absolute majority. New changes to immigration policy were announced in the programme of the XVII Constitutional Government, though it is still very early to analyse them. That programme provided for a coordinated policy around the axes of integration, regulation and control.

At the beginning of this new century, we are thus witnessing not only an expansion of the migratory phenomenon in Portugal but also the appearance of new immigration patterns, as well as, simultaneously, the emergence of new controversies about immigration policy.

The change of the immigration policy developed in the second half of the 90s can be exemplified by the PSD/CDS coalition's amendments to the law on the entry, stay, departure and expulsion of foreigners in or from the national territory [Decree-Law No. 34/2003 of 25 February, rectifying Decree-Law No. 244/98 of 8 August]. The most important amendments were already set out in Law No. 22/2002 of 21 August, which authorised the government to legislate in this area. They are, in particular:

— repeal of the temporary presence permit regulations [Article 55 of Decree-Law No. 4/2001 of 10 January was repealed by Article 20 of Decree-Law No. 34/2003];[14]
— facilitation of the removal mechanisms through creation of the regulations for cancelling visas [with the addition of Article 51-B to Decree-Law 244/98 of 8 August];
— restriction of the concept of "resident" to the holders of "residence permits" [new wording for Article 3], in this way restricting the applicability of the regulations on equal rights between foreigners and the Portuguese;
— definition of an "obligatory annual maximum limit on foreign citizens arriving from third states to carry out an occupational activity" [new wording for Article 36 (2)], to be published in the report on labour needs, now appearing every two years.

13 The Programme of the XVI Constitutional Government (2004-2005), formed following Durão Barroso's departure, affirms the intention to continue the work of the former government regarding immigration policy.

14 As a substitute for the regulations on the temporary presence permit, the regulation of labor flows was proposed, from the countries of origin, on the basis of work visas and the signing of agreements with those countries. Migration agreements, as mechanisms for regulating migratory labor flows, especially temporary ones, had already been made in the past with Cape Verde (Decree-Law No. 524-G/76 of 5 July and Decree No. 60/97 of 19 November), with Guinea-Bissau (Decree No. 115/81 of 5 September) and with São Tomé and Príncipe (Decree No. 155/78 of 16 December and Decree No. 34/79 of 21 April). As these agreements were not accompanied by the establishment of institutional channels between the origin and destination, which would allow the flows to be organised, their effect was limited, as the subsequent history of the flows demonstrates.

This latter objective was already set out in the programme of the XV Constitutional Government (2002) in the chapter on Internal Administration: "Establishment of an obligatory annual limit on the number of immigrants from non-Community countries who may enter Portugal".[15] This type of pronouncement may generate the dynamics, analysed by Brubaker (1994: 230), of the social rejection of immigration. That author stresses that, when assessed from the viewpoint of the potential immigrants in their countries of origin, entry control is effective. So the image of uncontrolled immigration in the countries of destination results less from the real ineffectiveness of the policies than the assessment of these policies on the basis of unrealistic goals. Moreover, the gap between the declared goals and objectives attained, and not so much the ineffectiveness of immigration control policies, measured according to the growing demand at the point of origin, lies at the base of the public perception of immigration as a process out of control and, therefore, of a possible increase in restrictive attitudes to immigration among European voters.

The new law also increased the difficulty of gaining the right to family reunification, since it is now demanded that the immigrant has resided legally in Portugal for at least a year [Article 56 (1)] before being able to claim it. In the case of its effects on the labour market, changes in the opposite direction are to be noted, changes that expand immigrant opportunities rather than restrict them:

— the ability of holders of temporary visas, in properly grounded cases, to exercise occupational activity on similar terms to those of a work visa [Article 38 (2)], without the activity needing to be provided for in the labour needs report;

— the creation of a new work visa for scientific research or an activity that presupposes highly qualified technical knowledge [Article 37 b)].

The objectives of Decree-Law No. 34/2003 of 25 February involved, overall, the progressive recovery of the earlier strategy of controlling the volume of immigration by reducing immigrants' rights and, particularly, by assuming that the costs for immigrants of the illegality resulting from the abolition of the temporary presence permit system, at a time when the push-factors in the place of origin remained strong, would represent a deterrent factor for new immigrant flows and settlement. Irrespective of the greater or lesser effectiveness of the plan to control flows, that strategy implied the reappearance of an integration situation that made assimilation processes less viable than the process being developed. (Moreover, the strategy was hardly compatible with the removal of the two main obstacles still standing in the way of their intensification: the amendment of the nationality law in favour of *ius solis* and the repeal of the constitutional principle of reciprocity, as a negative restriction on access to rights, in particular political participation).

The regulations for Decree-Law No. 34/2003, via Regulative Decree 6/2004 of 26 April, introduced policy mechanisms that were not apparent in the law. In particular, it permitted legalisation for those who:

though not possessing the documentation qualifying them for dependent labour, have joined the employment market and have registered with and made the payments due to the social security and tax authorities for a minimum period of 90 days, by the date of the coming into effect of Decree-Law No. 34/2003.[16]
[Regulatory Decree 6/2004 of 26 April, Article 71 (1)]

Mention was not made to the document to be granted to foreign citizens who satisfied those conditions and pre-registered with ACIME [Article 1 (3)] in the 45 days following the entry into effect of the regulative decree [Article 1 (4)]. It was laid down that citizens who satisfied the requirements set out for legalisation would not be disadvantaged by the fact that the employer had not complied with its social security and tax authority obligations, though, for the purpose, they had to present documentary proof of supplying labour [Article 71 (7)].[17]

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15 In the Programme of the XVI Constitutional Government (2004-2005), the reference to entries was changed to "establishment of an annual limit to the number of immigrants from non-Community countries that may enter Portugal; it should be consistent with their ability to be integrated into Portuguese society".

16 Applicable, therefore, to foreign citizens who had entered the country at least 90 days before 12 March 2003 and not to those who had done so up to that date.

17 According to data published in the press at the end of 2004 ["Immigrants may follow their applications on the Internet, *Jornal Público*, 19 October 2004], the number of preregistered immigrants was around 53 thousands. It was reported in December ["SEF (Foreigners and Borders Service) summons 8000 immigrants: contributions to

In addition to this general opportunity for legalisation, another route was established for foreign citizens who were the parents of minors born until 12 March 2003, provided that they exercised their parental power over them. Under these conditions, according to Article 70 of the same Decree-Law, both the children and parents became eligible to obtain a residence permit, without the need for a visa.

The regulations for foreign minors born in Portugal have, moreover, been complemented with the creation of a national register for foreign minors in an illegal situation in Portugal, to provide a guarantee of access to health services and (pre-school and school) education [Decree-Law No. 67/2004 of 25 March, following what was already laid down in Decree-Law No. 34/2003 of 26 February]. ACIME was made responsible for guaranteeing that right, in combination with the relevant services of the Public Administration [Decree-Law No. 67/2004 of 25 March, Article 3 (2)].

The opening-up to the legalisation of foreign citizens, arising from the regulatory legislation for the law, partly resulted from the pressure applied by immigrant associations and humanitarian NGOs, some with a place on the Advisory Committee for Immigration Affairs. Since 2002, along with the Committee for Equality and against Social Discrimination, this council had included the High Commissariat for Immigration and Ethnic Minorities [Decree-Law No. 251/2002 of 22 November]. The alteration from a body with, hitherto, a single name, was justified by the need for a "structure that had broader means of permanent action, in human and logistical terms, than those formerly provided for, in particular through the places supporting and attending to immigrants" [Preamble of Decree-Law No. 251/2002 of 22 November].

Also in connection with the regularisation of accumulated situations of illegal immigration, though only for Brazilian citizens living in Portugal, the Agreement on the Reciprocal Employment of Nationals was signed in Lisbon between Brazil and Portugal on 11 July 2003 [Decree No. 40/2003 of 19 September].[18] Under this agreement, Brazilians living illegally in Portugal would have to prove that they were in the country by 31 July 2003, by means of the pre-registration to be carried out from 25 August of the same year, in order to obtain a work visa.[19]

The slowness of handling these cases was reflected in a low rate of implementation of the legalisation goals, extending the illegal situation of tens of thousands of immigrants. In the meantime, the suppression of temporary presence permit status, in the absence of the organisational conditions that would allow work visas to be granted speedily, resulted in the continuing inflow of new illegal immigrants. In other words, the obligatory limits on the volume of immigration existed as a registration limit and not an actual limit.

Table 6.3 Chronology of basic immigration legislation, 1976-2005

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This discrepancy between the actual migratory flows and the juridical mechanisms of their regulation sets fundamental problems to immigration policy. Firstly, because the inefficacy of the channels for legal migration contributes for the increasing of irregular migration toward levels above the limit, due to migratory pressure. Secondly, because the existence of a phase of illegality in the migrant's trajectory badly commits the successes on the integration policy domain, namely

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the Social Security are a condition", *Diário de Notícias*, 27 December] that 15,450 immigrants were registered at the Social Security with the 90 days' contributions requirement and 7721 without confirmation of those contributions.

18 The background to the agreement is the Friendship, Consultation and Cooperation Treaty between the Portuguese Republic and the Federal Republic of Brazil, signed in Brasilia on 22 April 2000. The regulations for application of the treaty, with regard specifically to the granting and registration of the status of equality in the rights and duties between Brazilian and Portuguese citizens in Portugal and Brazil, are the subject of Decree-Law No. 154/2003 of 15 July.

19 Official estimates pointed to 10,000-15,000 Brazilian citizens being able to obtain legalization. According to data published in the press ["Lula Agreement should legalize the situation of around 14,000", *Jornal Público*, 5 August 2004, by Ricardo Dias Felner], 31,000 registrations were carried out, 18,000 immigrants were summoned and only 14,000 satisfied the requirements to stay in Portugal. In October 2004, the Assistant Undersecretary of the Minister for the Presidency stated that "6955 work visas have been issued this year and 7704 other applications, which only await an appointment to obtain the visa, are being finalized" ["Immigration policy", *Jornal Público*, 4 October 2004, by Feliciano Barreiras Duarte].

the effects produced by decreasing the terms that extended in time the situation of foreigner.

It is in this context that should be focused the Governmental proposal of the Socialist Party aiming to review the law of entry, stay and departure of foreigners, in or from national territory. Decreasing the gap between the regulation policy objectives and the actual irregular situation of the majority of immigrants in the first phase of settlement in Portugal depends on the extent of changes to be introduced on that law.