

CITIZENSHIP RIGHTS, VOTING RIGHTS, MIGRATION AND MOBILITY

Universal suffrage does not exist: if you are a foreign national, you cannot vote

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A young migrant waiting to regularize his situation shows his passport of origin.
Photography by Jordi Borràs

Racism is a form of exclusion, segregation, discrimination and aggression on the basis of ethnic or national origin, skin colour, religious belief or cultural practices. It is not just an ideology: it is also a systematic and routine practice that seeks to maintain a power structure.

Introduction

Racism and denial of rights

Racism manifests itself in institutional relationships and also in daily life; it is produced and reproduced constantly. It is structural, deeply rooted in a past of slavery, plunder, usurpation, domination and exploitation within the context of colonial modernity [1].

Racism is present in many aspects and areas of many people's lives, and always constitutes the infringement and/or restriction of a right, including the right to be recognised as equal to others, the right to dignity, the right to access and/or exercise other rights such as

employment rights, the right to housing, the right to live with one's family, and more. It is also an infringement of political and participatory rights, such as the right to vote and stand for elected office.

Infringement of the political rights of the foreign population

[\[2\]](#)

Civil and political rights are fundamental rights, and therefore play a key role in the comprehensive personal development of the individual. They are also closely related to the development of a sense of belonging, of forming part of a political and social community, and have a political and transformative content, which, in turn, impacts on the individual's willingness to involve themselves in collective activities.

The principles of equality and non-discrimination exist, and are codified in various constitutional, national and state declarations and in treaties on human rights. However, there are some rights that have been expressly excluded for those who are of a different nationality. We cannot speak of the universality of human rights when there are certain rights that can only be exercised by those who are nationals of a particular state (or who meet all of the requirements established by the state for recognising this right on a temporary and contingent basis).

The right to vote, to stand for elected office, to hold certain public positions and to enter and remain within a country are all conditioned by two factors: political status by virtue of forming part of a particular local community, and membership of a particular state. Historically, these rights have been considered inherent to the concept of nationality. Moreover, the interchangeable use (one might even say the intentional use) of the concepts of "nationality" and "citizenship" have resulted in the linking of nationality, i.e. membership of a particular state, to the rights that denote political status.

Democratic weaknesses

Denial of a right on the part of a state is evidence of its democratic weakness. The infringement of a fundamental right, such as the right to vote, on the basis of an individual's nationality is evidence of institutional racism.

Linking the concept of citizenship to nationality bears little relation to the reality of the current socio-political context, especially when fundamental rights are involved. It is true that citizenship cannot be reduced to the right to vote alone, as there are other explicit and implicit rights and recognitions that are also essential: however, it is clear that one cannot speak of citizenship without universal suffrage (the right to the vote and to stand for elected office) in all elections.

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Although there are mechanisms that allow foreign nationals to participate in some political spheres, especially municipal elections, these measures are only partial and could be made into tools for segregation: for example, when the participation of foreign nationals is encouraged solely in relation to issues and/or policies concerning immigration. Possession of a particular nationality is simply another facet of an individual's identity, in the same way that an individual may be younger or older, live in the city or in the countryside, etc. Consequently, their participation must be both individual (i.e. every person should have this right) and universal (i.e. applicable to all of the areas that affect their life). Although the different forms taken by participatory democracy represent a strengthening of political rights, they cannot replace the right to vote and to stand for elected office.

Another consequence of the denial of foreign nationals' right to vote is the emergence of racist parties, ideas and proposals in election campaigns, in which foreign nationals are turned into scapegoats for those seeking to win and/or retain votes. This leads to other situations that are extremely serious in nature, such as the normalisation of racist positions that threaten the principles of equality and non-discrimination.

Diagnosis

Some data [\[3\]](#)

Catalonia is home to 7.5 million people, of whom more than 1.2 million are foreign nationals. The ten most common foreign nationalities in Catalonia are Moroccan (213,000 people, or 19.29% of the foreign population and 2.91% of the total population); Romanian (90,179 people, or 7.78% of the foreign population and 1.17% of the total population); Chinese (62,000 people, or 5.36% of the foreign population and 0.81% of the total population); Italian (61,000 people, or 5.31% of the foreign population and 0.8% of the total population); Pakistani (45,000 people, or 4.24% of the foreign population and 0.64% of the total population); Honduran (3.54% of the foreign population and 0.54% of the total population); French (3.54% of the foreign population and 0.54% of the total population); Colombian (2.98% of the foreign population and 0.45% of the total population); Bolivian (2.55% of the foreign population and 0.39% of the total population) and Indian (2.27% of the foreign population and 0.34% of the total population).

Foreign nationals in Spain, like those in the majority of its neighbouring countries, are subject to the Spanish Immigration Act, which, along with other regulations and stipulations, serves to legitimise different forms of discrimination and racism. In the most recent national election, which took place last November, 15% of the people living in Catalonia were unable to vote owing to their status as foreign nationals, and as a result their right to universal suffrage was not recognised. In some municipalities and districts

this percentage was as high as 30%. In Spain as a whole, some 3.5 million people were unable to vote.

Regulatory framework

For foreign nationals in Spain, the right to political participation has been denied, or in some cases applied unequally. The same situation can be found in the majority of its neighbouring countries.

Article 13.2 of the Spanish Constitution states that “only Spaniards shall be entitled to the rights recognised in Article 23. Citizens have the right to participate in public affairs, directly or through representatives freely elected in periodic elections by universal suffrage. They likewise have the right to access on equal terms to public office, in accordance with the requirements determined by law), except in cases which may be established by treaty or by law concerning the right to vote and the right to be elected in municipal elections, in accordance with the principle of reciprocity”.

The majority of the most common foreign nationalities in Catalonia, such as Moroccan, Romanian and Chinese, are denied even the possibility of political participation in municipal elections

The Constitution allows for the possibility that, in accordance with the principle of reciprocity, treaties may be signed or laws passed to grant the right to vote and the right to stand for election. This possibility is now becoming a reality, and has been for some years; as a result of which foreign nationals from other countries in the European Union (in accordance with Article 202.b of the Treaty on the Functioning of the European Union) and certain countries outside the European Union (specifically, Bolivia, Cape Verde, Chile, Colombia, Ecuador, Iceland, Norway, New Zealand, Paraguay, Peru, South Korea, and Trinidad and Tobago, provided they hold a valid residence permit and have resided in Spain for the amount of time specified in the corresponding bilateral agreement) are able to vote, although not to stand for election, in municipal elections. At this juncture it would be pertinent to remind ourselves of the most common foreign nationalities living in Catalonia, as detailed above. As we can see, the majority of the most common nationalities are denied even the aforementioned possibility of political participation [4].

Other regulatory texts make it clear, to a greater or lesser extent, that the right to vote is restricted for those who are not nationals of the country in which they live:

Article 16 of the European Convention on Human Rights (1950), with regard to restrictions on political activity for foreign nationals, states that nothing in Articles 10 (Freedom of Expression), 11 (Freedom of Assembly and Association) and 14 (Prohibition of Discrimination) shall be regarded as preventing the High Contracting Parties from

imposing restrictions on the political activity of aliens.

Although Article 25 of the International Covenant on Civil and Political Rights (1966) includes the right to political participation, its wording implies a restriction with the reference to “in his country”:

- *Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:*
 - *To take part in the conduct of public affairs, directly or through freely chosen representatives.*
 - *To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.*
 - *To have access, on general terms of equality, to public service in his country.*

Article 21 of the Universal Declaration of Human Rights (1948) also includes the right to political participation for all, although once again the wording serves to restrict this right:

1. *Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*
2. *Everyone has the right to equal access to public service in his country.*
3. *The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*

Essentially, foreign nationals are not granted the right to political participation on the basis of their status as human beings or owing to their presence within a particular political community (i.e. as citizens): rather, this right is granted on the basis of their membership of a particular state, or in other words their possession of a particular nationality.

What is happening in Europe?

All of the member states of the European Union talk about nationality, rather than citizenship, in relation to civil and political rights. This represents a democratic weakness in terms of the guaranteeing of rights, if we consider that of the 500 million people who live in Europe, more than 70 million are not nationals of the country in which they live. It is also worth examining the naturalisation processes for the EU's member states. While foreigners are generally required to demonstrate an average of five years of continued legal residence, in Spain the average is 10 years, although there are significant differences depending on one's country of origin.

The European Union, in terms of a union of European citizens with political and economic rights, only came into being with the Maastricht Treaty in 1992: prior to its signing, there was only the European Economic Community. Currently, the right of European Union

citizens to political participation is limited to municipal and European Parliament elections, and among member states there are certain differences regarding the recognition of reciprocity for particular foreign nationalities, and therefore their right to vote in municipal elections. For example, Belgium, Denmark and the Netherlands recognise the right of all foreign residents to vote.

Where do we go from here?

A recently missed opportunity

In my opinion, it would be useful to consider the social and political context in Catalonia over the last 15 years, particularly in relation to the rolling back of political rights: not only because it reveals the denial of rights (in this instance the people's right to decide their future and to self-determination), but also because, during this period, many different proposals to strengthen participation and democracy in Catalonia have been put forward, yet have lacked the understanding, will and/or ability to achieve genuine democratic transformation.

One such example is the Popular Consultations (Excluding Referendums) and Engagement in Other Mechanisms of Citizen Participation Act (*Llei de Consultes populars no referendàries i per participar en els altres mecanismes de participació ciutadana*), which was passed on 19 September 2014. Beyond the unjustifiable obstacles that it encountered, the act did not establish the right to vote for everyone living in Catalonia, and excluded non-EU foreign nationals from voting in popular consultations and other forms of political participation: "The right to vote in popular consultations (excluding referendums) and to engage in other mechanisms of citizen participation shall be granted to those who have not had their political rights removed, are over 16 years of age, are considered, for political purposes, to be Catalan in accordance with the Statute of Autonomy for Catalonia (or are citizens of an EU Member State other than Spain or citizens of Iceland, Liechtenstein, Norway or Switzerland) and are duly registered as residents of a municipality in Catalonia". The political status of "Catalan" includes people who live outside Catalonia and are included in the register of Catalans living abroad; citizens of EU Member States who have lived continuously in Catalonia for at least one year; and people from countries outside the EU who can prove they have lived continuously in Catalonia for at least three years. Various associations and groups, including SOS Racisme Catalunya [5], have criticised this law and filed official complaints against the discrimination it represents.

In the same way that the right of a people to decide their future is inalienable, and to deny it is to attack the very basis of democracy, denying a particular group the right to political participation is also an attack on the most fundamental democratic principles, as occurred in times past with the denial of women's right to vote

The situation regarding the right of the people of Catalonia to decide their future has been (and continues to be) an opportunity to strengthen democratic values: however, such values mean little if they are not universal. In the same way that the right of a people to decide their future is inalienable, and to deny it is to attack the very basis of democracy, denying a particular group the right to political participation is also an attack on the most fundamental democratic principles, as occurred in times past with the denial of women's right to vote.

Above, I cited the Popular Consultations Act because I believe it exemplifies the need for change to also take place on a smaller scale. If the aim is to strengthen democracy and political participation, in this instance by giving the people of Catalonia a mechanism to allow them to decide on their relationship with the Spanish state, then there must also be a law to guarantee political participation for everyone living in Catalonia. No excuses! The Popular Consultations Act represents a missed opportunity to take genuine step forward in the strengthening of political and participatory rights, by extending the vote to foreign nationals living in Catalonia.

Proposals for extending the right to vote to everyone living in Catalonia

The right to vote is an inherent individual right, and it is therefore vital to remove the link between nationality and the right to vote and to stand for election. Article 25 of the International Covenant on Civil and Political Rights must be interpreted as meaning that "citizens" refers to and includes everyone living in a particular state, regardless of their nationality.

At the national level, Article 13.2 of the Spanish Constitution must be rewritten in order to recognise the right to universal suffrage for everyone residing in Spain.

Additionally, we could also facilitate and simplify the process of naturalisation, which is long, costly (in financial as well as emotional terms) and filled with obstacles. I advocate this measure more from a practical standpoint than for reasons of political coherence, as I believe it is an anomaly and a democratic weakness for rights -which are inherent to the human condition- to be denied by a country on the basis of nationality.

As such, it is vital that we reformulate the concept of citizenship and link it to residence rather than nationality. An individual's status as resident could be recognised by registering as a resident of the municipality.

The right to vote is an inherent individual right. We have to remove the link between nationality and the right to vote and to stand for election; it is vital that we reformulate the concept of citizenship linking it to residence rather than nationality

From the perspective of citizenship and social progress, we must “de-normalise” the fact that foreign nationals cannot vote. We must create a sense of urgency regarding the need to change the legislation in order to enable everyone living in a particular country to vote and stand for election in all forms of democratic proceedings.

Beyond the right to vote and the right to universal suffrage, and in line with the idea that there are other forms of political participation, it should also be noted that public administrations –and especially local authorities– could play an important role in fomenting political participation on the part of foreign nationals who reside within their jurisdiction: first and foremost by recognising that said foreign nationals have a part to play as members of a social and political community. In order to feel part of a community, it is essential to feel recognised by others as a political subject, as an individual who has rights. Local authorities need to make every effort to ensure that electoral participation is representative of the diversity of its citizenry.

For some time now, various initiatives [6] have campaigned to recognise the right for everyone to vote. Once again, I must cite SOS Racisme Catalunya, which understands that this right must be made a national priority, and that every step that is made in this direction increases the possibility of creating a fairer, more democratic society. The lack of action in relation to this proposal and the failure to recognise the right to vote are evidence of institutional racism.

REFERENCES

- 1 — I have used one of the most recent definitions of racism as defined by SOS Racisme Catalunya.
- 2 — This section is based on the article “El dret a vot de les persones estrangeres està expressament exclòs de la normativa” (“Foreign Nationals’ Right to Vote is Expressly Excluded from the Regulations”) by Karlos Kastilla; also the 2018 report by SOS Racisme Catalunya titled *Invisibles, l’etat del racisme a Catalunya (Invisible: the State of Racism in Catalonia)*, by Pol-len Edicions, Barcelona, 2019. The article is based on the author’s own doctoral thesis, *¿Detención por motivos migratorios? Respuestas desde los derechos humanos para España y México (Arrested for Being an Immigrant? Responses from a Human Rights Perspective for Spain and Mexico)*. Tirant lo Blanch, Mexico-Valencia, 2018.
- 3 — Data from IDESCAT, 1 January 2020.

- 4 — In addition to being nationals of the countries listed, in order to vote in municipal elections, foreigners must meet the following additional requirements:
- EU citizens: Must be aged 18 or over and registered as a resident of the municipality.
 - Citizens of other countries with a reciprocal agreement: Must be aged 18 or over, registered as a resident of the municipality, possess a Spanish residence permit, and have been legally resident in Spain for the amount of time specified in the corresponding agreement: three years in the case of Norway and five years for all other non-EU countries. If the foreign national is unable to demonstrate the amount of time they have been legally resident, they must request a certificate of residence from the local offices of the National Police and present a photocopy of their Foreigner's Identity Card (TIE).
- Additionally, the Electoral Census Office will send a letter to foreign nationals who have the right to vote: once they have received this letter and verified their information, they must sign the application form and send it to the regional headquarters of the Electoral Census Office.
- 5 — For further information on this topic, have a look at the article published on SOS Racisme Catalunya's [website](#).
- 6 — Recent examples include the '[Voting Is a Right](#)' campaign and the '[Votes for Everyone](#)' platform, among many others.



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