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Political participation and voting rights of foreign residents in France: a policy brief.

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The issue of voting rights for foreign residents is not very new in western democracies, and it is still on the agenda in several European countries. In France, it has been a controversial debate for more than 30 years. This paper aims to set out the main stakes of this debate in France, where not only the place and the status of immigrants are debated, but also, and perhaps more importantly, the main definition of democracy in France is at stake.

During the 70s, the issue of immigration was one of the most crucial topics for social struggles and it began to re-emerge as a political problem. The growing immigrant working class got involved in massive strikes in the industry, and the specific issues of immigrant status in the economy and in the society, including the issue of political rights, began to be questioned beginning in the early 1970s.

As others countries in Europe were implementing various means of political integration of foreign workers (like local voting rights in Ireland and Sweden, or consultative councils at a local level in Belgium or Germany), French leftist parties and human rights organizations began to discuss the possibility of extending voting rights to foreign residents. At the beginning of the 70s, the most important argument was the claim for equality between foreigners and French people. Echoing to the founding slogans of the French revolution, a universal conception of equality suggested that there should be no difference between foreigners and nationals in the access to the political scene, and that an extensive conception of the citizen should override the national restrictions. In addition, during the decade, in particular during the 80s, the topic of “integration” of foreign residents emerged as one the main policies, on a national and local level. As voting rights seemed to be attributes of national sovereignty, it appeared to be difficult to extend voting rights to non-national residents. Therefore, a theoretical and political work of disconnection of local citizenship from national – sovereign – elections aimed to advance through recognition of local suffrage for foreign residents. The majority of European countries have now advanced in that way, but France still resists extending local voting rights to non-European residents. In France, only EU Citizens have been granted voting rights to municipal and European Parliament elections, thanks to the Treaty of Maastricht. Although current president Sarkozy has personally approved the idea of local voting rights to non-European people, as former President Mitterrand did in the early 80s, he claims that public opinion would oppose such a reform, rendering its implementation impossible... Thus, it seems that more than 30 years after the emergence of the debate, the idea of providing voting rights to foreign residents is still controversial.

Theoretical issues

The issue of extending voting rights to foreign residents is often construed as a problem of “integration” of foreigners whose stay in France has extended over a long period. In this

perspective, foreign people are mainly seen as “aliens”, and the minorities are viewed primarily through their difference with the majorities.

What are the main issues in a theoretical point of view? The debate on voting rights for foreign residents has been the source of the theoretical work of disconnection of the two concepts of nationality (*nationalité*) and citizenship (*citoyenneté*).

In the French context, and considering that the problem is to grant (or not to grant) voting rights to some categories of individuals, nationality has to be defined as a juridical status. It is a relationship between a person and a State. Nationality affords the State jurisdiction over the person, and affords the person the protection of the State. For each person, it means rights and duties. There is also a cultural / ethnic dimension of the concept (nationhood), an aspect linked with identity, in that nationality is not only an individual condition but also a collective link between those people possessing the same nationality. But voting rights depend only on the juridical fact of possessing (or not) a nationality, and not necessarily on cultural habits or ethnic criteria.

In contrast, the concept of citizenship is defined quite differently, not as a juridical status, but as a political concept. However, in many countries, and especially in English speaking countries, citizenship is often defined as a branch of nationality, or even as nationality itself (juridical status of a person within a State). A consistent conception of citizenship cannot be limited to a juridical definition of rights and duties, and may consider the merely political dimension of citizenship, encompassing for example the active membership within the political community.

In France, both categories (*nationalité / citoyenneté*) are used in the political debate (on voting rights for foreign residents), and they are *objects* of the debate itself.

So, two conceptions of the political community are at stake.

Opponents to voting rights for foreign residents defined the right to vote as the essence of citizenship, and for them nationality is citizenship (of the Nation State in the case of France for example). This conception is coherent with the logic of sovereignty, because in reality, nationality is one of the mere criteria of this principle. Every sovereign State defines itself within geographical boundaries and human boundaries. Traditionally, under international law and conflict of laws principles, it is the right of each State to determine who its nationals are. In this logic, voting rights can only be granted to those possessing the nationality of the State, and if foreigners want to vote, they have to apply for naturalization. In France, nationality law is traditionally *said* more open than in other countries (“*ius soli*”, the possibility to apply for naturalization after a minimum period of 5 years residence, dual nationality permitted, ...) although the facts are quite different. It is not so easy to get naturalized and some country origins require renunciation of their prior nationality. Beyond juridical and instrumental issues, nationality also has an affective dimension and some people don't want to lose their original nationality. If they don't want (or cannot) apply to naturalization, this doesn't mean that they are not concerned with political issues in their country of residence.

In France, advocates of voting rights for foreign residents aim to disconnect both concepts of nationality and citizenship, considering that nationality is only the status of a person within the State (and a part of individual and collective identity) and citizenship the effective participation in the city politics. They generally support the alternative concept of

“citoyenneté de résidence” (“resident citizenship”), in which citizenship is composed of being in a place, being submitted to the laws of this place and paying taxes. Their position is coherent with a consistent definition of democracy, from an active conception of politics. Therefore the issue of voting rights for foreign residents may be construed theoretically as a crux of contradictions between the principles of sovereignty and those of democracy.

But a median way has been emerging for a long time, trying to combine both logics of sovereignty and democracy. Inspired by the experience of other countries, advocates of voting rights for foreign residents often limit such a proposition to local elections only. This limitation would have the advantage of preserving sovereignty (national elections would still be restricted to nationals) and also of being more acceptable in public opinion. And theoretically, this tactic manages to conceive a new consistent local citizenship (integrating “all” residents) and to preserve a consistent nationality (for national stakes).

So, in contrast with many English speaking countries, where voting rights for foreign residents are advocated as *“non-citizen voting”* (disconnection between the right to vote and the so-called “citizenship”), in France, voting rights for foreign residents are generally advocated as *“citoyenneté de résidence”* (disconnection between citizenship and nationality).

European Citizenship, immigration and postcolonial issues

In France (and also in other countries), the introduction of the European citizenship has practically dissociated voting rights (and therefore, citizenship) and nationality. At the end of the last century, for the first time, foreigners (non-French European citizens) were granted the right to vote (and to be elected) at some elections in France.

Every person holding a nationality of a Member State is a citizen of the European Union. The citizenship of the Union was established by the Maastricht Treaty in 1992. Citizens of the Union enjoy rights conferred by the European Community Treaty and are subject to duties imposed thereby.

The importance of citizenship of the Union lies in the fact that the citizens of the Union have genuine rights under Community law. The core rights conferred by citizenship under the EC Treaty are the freedom of movement and the right of residence within the territory of the Member States; the right to diplomatic and consular protection; the right of petition to the European Parliament; the right to refer to the Ombudsman and, last but not least, the right to vote and stand as a candidate at elections to the European Parliament and at municipal elections in the Member State of residence.

The dissociation between (European) citizenship and nationality is not theoretically total, and as it is often said, the EU citizenship “complements” nationality of the Member States and “does not replace it”. But practically, it is real. Foreigners have been granted voting rights. And in a few countries, and especially in France, the emergence of European citizenship has transformed the stakes and the elements of the debate on voting rights of foreign residents. Beyond the traditional boundary between nationals and foreigners, another boundary has emerged among foreigners, between European citizens (with voting rights) and the other foreigners (without voting rights).

Although the European integration has its own logic, the different statuses for voting rights between categories of foreigners are often perceived as discrimination (between European

people and the others). The fact that some settled foreign residents cannot be granted voting rights in their city, in which they have been living sometimes for a very long time, while recent European resident can vote and be elected to municipal council is part of the debate.

In France especially, this issue is linked with postcolonial issues, as a very significant part of non-European immigrants are from former French colonies. Therefore, just as the French colonial empire had invented in the colonies a kind of “nationality *without* citizenship” (natives were submitted to the allegiance to French laws, taxes and military service but were generally not granted rights of citizens such as voting rights), native descendants in France now require “citizenship *without* nationality” and perceive the current exclusion as a colonial legacy.

Constitution and Law issues

The constitutional aspects of the issue in France are quite clear now. Until 1992, there were some doubts regarding the interpretation of the Constitution. The franchise was not explicitly defined, and voting rights were globally conceived as an instrument of the national sovereignty (article 3). However, especially for local elections, the compatibility with the constitution of extending voting rights to foreign residents was questioned. In 1992, the ratification of the Maastricht Treaty (and especially, the provision of the right to vote and to stand as candidate in municipal elections for European citizens) led the French Constitutional Council (*Conseil constitutionnel*) to clarify its position on the topic. The Constitutional Council judged that there was incompatibility between the Constitution and voting rights of foreigners, even for municipal elections. The reason was not a *direct* implication of the sovereignty in municipal elections, but rather an *indirect* implication, as municipal councillors are electors to the Senate. So the Constitutional Council declared that the Constitution had to be amended. The amendment could have been a chance to provide the extension of municipal voting rights to all categories of foreigners (not only the European citizens) but it eventually was not the case. On the contrary, the final amendment was very restrictive and every future extension would require another amendment.

As the ratification of the Maastricht Treaty was controversial and required a trans-party agreement (part of both left and right were against the Maastricht Treaty in general and the final result of the referendum was very tight), leftist President Mitterrand secured rightist support in particular by redacting a very restrictive amendment about voting rights. The possibility of a future extension of voting rights to non-European foreigners was explicitly denied.

Voting rights (and the right to stand as candidate) of European citizens to municipal elections have been introduced by a specific article 88-3 (in a chapter on the European Union):

ARTICLE 88-3. Subject to reciprocity and in accordance with the terms of the Treaty on European Union signed on 7 February 1992, the right to vote and stand as a candidate in municipal elections shall be granted only to citizens of the Union residing in France. Such citizens shall neither hold the office of Mayor or Deputy Mayor nor participate in the designation of Senate electors or in the election of Senators. An Institutional Act passed in identical terms by the two Houses shall determine the manner of implementation of this article.

There are several explicit restrictions: reference to “*reciprocity*” and to “*the terms of the Treaty...*”; “*shall be granted*” (instead of “*are granted*” for example); “*only*” (to citizens...); prohibition to hold offices and to participate in the process of the election of Senators; and necessity of an “*Institutional Act...*” (“*loi organique*”), and not a simple Bill (“*loi ordinaire*”).

Although the Maastricht Treaty was ratified and the Constitution was amended in 1992, the subsequent process of implementation of municipal voting rights to European Citizens was very long. The general municipal elections in 1995 were held without participation of European citizens and these citizens had to wait until the following elections in 2001.

This very long process shows how the extension of voting rights to foreigners is controversial in France, even in the case of the European integration.

For the future, there is no doubt that any further extension would require another revision of the Constitution. The only exception is perhaps for the election to the European Parliament. For these elections, European law doesn't prohibit the extension of voting rights to non European Citizens, and it seems that there is neither prohibition in the French Constitution. But this proposition is almost never discussed in France.

So, the extension of voting rights to foreign residents in France would generally require a revision of the Constitution, and, therefore (article 89 of the Constitution), it would require the agreement of the President of the Republic, a majority in both National Assembly and Senate, and a majority in a general referendum or a 2/3 majority in the Parliament.

Does this mean that any revision is impossible? Not at all. The Constitution has been revised 19 times since 1992. So the constitutional issue is not really a juridical problem, it is rather a political problem. The problem is to gather a political consensus, or at least, a political majority.

Political Scenarios

The issue of voting rights for foreign residents has been on the agenda for more than 30 years in France. It is still controversial, although the polls on the topic have shown for a few years that the proposition generally gathers a majority in the opinion. The fact that European citizens have been granted voting rights has definitely changed the stakes and the elements of the issue. The new “discrimination” implemented by this new boundary between European foreigners and the others will probably be hard to defend in the future. As the progress of the issue has come yet from the European integration, it is possible to imagine another kind of progress from the European context. There is a congruent policy in the European institutions to support the extension of voting rights (at least for local elections). The European Commission and the European Parliament advocate the idea that such an extension would be a valuable measure in the policies of integration of long-term resident foreigners. Third-countries nationals would become a kind of European “*Denizens*” (before becoming perhaps in the future European citizens). And the Convention on the Participation of Foreigners in Public Life at Local Level (CETS No. 144), drawn up within the Council of Europe by the Steering Committee on Local and Regional Authorities (also in 1992), exhorts the Member States to encourage participation in local life by foreign residents, and proposes in particular to provide the right of foreign residents to vote and stand as candidates in local authority elections. Within a great diversity of situations, voting rights to foreign residents are now a reality in a majority of the European countries. France appears to be *behind* the general

process in Europe. Many other countries, much more recent in the European Union, have advanced more quickly than France which often defines itself as an old country of immigration and a so-called “*pays des droits de l’homme*” (country of human rights). Although the topic of sovereignty is quite consistent, the persistence of the exclusion of long-term resident foreigners in France seems to be an anomaly in the European context.

The issue does not only depend on the European context, but is clearly also a problem of politics. On one hand, the issue of immigration in general, and the issue of voting rights in particular, have been politically used by all actors in the political debates. All the leftists and center-right parties now support the proposition of voting rights to foreign residents, at least for local elections. So do some rightist politicians, and notably current President Sarkozy. Thus there seems to be a political majority for the proposition. The fact that politicians use foreigners as *objects* of the debate, without recognizing their status of *subjects* (actors?) probably reveals how democracy is at stake in the issue. It is not only a question of integration (of individuals or minorities within the global majority) but more deeply, a question of the entire democratic model. Thinking the political community within the principle of sovereignty has restricted citizenship to a weak juridical or cultural status (nationality). The issue of voting rights perhaps reveals itself as the crux of the contradictions between the principles of sovereignty and those of democracy.