

Cosmopolitanism and voting right: the participation of all (and only) affected people in the elections

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According to an important school of thought, in an ideal democracy, the right to participate in elections should be granted to all persons who are affected by the law, or at least to all persons who are subjected to the law. This thesis, advocated by authors such as Hans Kelsen, is based on a liberal and cosmopolitan argument. With regard to the practical granting of the right to vote, it implies, in particular, that the criterion of residence should take primacy over that of nationality.

However, the election laws of many states still deny foreigners the right to vote while they are subjected to the law. There is also a trend towards allowing expatriate citizens to retain the right to vote while they are less or even not subjected to law anymore. Recent legal developments in Chile and the United Kingdom, among other countries, confirm this trend.

The contribution aims not only at providing an overview of the applicable rules on this issue from a comparative law perspective, but also at analysing these rules in relation to the democratic ideal mentioned above and to relevant national and international case law.

In conclusion, we will examine whether the evolution towards a more fractured world is leading to the questioning of certain identity paradigms, in the form of a national preference less favourable to cosmopolitanism, which would be reflected in the legal configuration of voting rights.