

## Voting rights and political participation of non-national immigrants

### Introduction: Voting Rights and Other Political Rights

The right to vote and stand for election is only one out of a range of other political rights, such as the freedom to express political opinions, the right to demonstrate, the right to join or establish a political party or other associations, the right to strike and be active in trade unions or other bodies representing workers and the right to work in the public service.<sup>1</sup> Voting rights are important political rights because they grant access to the formation of political power and influence the laws and policies of the municipality or the country of residence. The right to vote also reflects the recognition of the immigrant as an equal member of the *civitas* (citizenry) entitled to participation in the decision making of the community or the society. Historically, both elements – political power and recognition as a full member of the community – played an important role each time voting rights were extended to new groups: men without land or capital, male workers, women, younger people and nationals of other states. Some of those extensions were the outcome of prolonged social and political action by the persons concerned; other extensions were granted from ‘above’ in the general interest or with special party interests in mind but without long struggle from ‘below’.

### Voting Rights for Non-Nationals: from Exclusion to Inclusion

The traditional view in international law is that political activities of non-nationals [non-citizens] can be restricted. This idea is related to the gradual development and strengthening of nation-states in the 19<sup>th</sup> century: only nationals on the basis of their special exclusive legal relationship with the state could vote and participate in political decision making. Nationals of other states were considered as outsiders and thus excluded. The two World

Wars and the related strong nationalism reinforced this idea. This explains why in the 1950 European Convention on Human Rights (ECHR) there is a special provision (Article 16) stipulating that the provisions on the freedom of expression and the freedom of assembly and association shall not prevent “the High Contracting Parties from imposing restrictions on the political activity of aliens.” Governments thus could curb political speech or writing by non-citizens (foreigners), prohibit membership of political parties and expel foreigners who went on strike or undertook ‘undesired political activities’.

With the closer cooperation of European states and large scale immigration this view became gradually more problematic.<sup>2</sup> The Parliamentary Assembly of the Council of Europe already in 1977 advised to delete Article 16 ECHR.<sup>3</sup> This advice has not been heeded yet, but the provision has become a dead letter. A similar provision was not included in later human rights treaties. But the European and the UN Human Rights Convention guarantee the right to vote and stand for election only for citizens. In 1992 the Council of Europe adopted the Convention on the Participation of Foreigners in Public Life at Local Level.<sup>4</sup> This Convention provides in Article 6 that “every foreign resident” irrespective of his nationality after five years of lawful residence has the right to vote and stand for election in local authority elections under the same conditions as nationals. The convention’s preamble refers to the need to improve integration of immigrants and observes that immigrants generally have the same duties as citizens at the local level. The convention can be seen as an implicit partial amendment of Article 16 ECHR. In March 2014 only five EU Member States had ratified the convention (Denmark, France, Italy, Netherlands and Sweden) and five others had signed (Cyprus, Czech Republic, Lithuania, Slovenia and UK). Italy excluded the provision on municipal voting rights from its ratification. Germany has not signed the convention because of constitutional concerns<sup>5</sup>, but could have followed the example of Italy, accepting the provisions on other political rights.

## Political Rights and Municipal Voting Rights for EU Nationals Living in Another Member State

### Political Rights

The EEC Treaty, signed in 1957, did not provide for political rights for nationals of Member States.<sup>6</sup> On the contrary, the Treaty provided that the rules on the free movement of workers in the EEC Treaty “shall not apply to employment in the public service”. Workers from other Member States were granted equal treatment as regards trade union rights for membership and the right to vote in trade union elections only in 1968. They were entitled to be elected as member of workers’ councils, but could be excluded from post in public law bodies representing workers. The right to be elected as a trade union official was added in 1976. The right to be elected in public law bodies representing workers was acquired only 15 years later.<sup>7</sup>

In 1975 the EEC Court of Justice in one of its first judgments on the free movement of workers decided that the French authorities could not restrict the residence right of an Italian worker just because he had been politically active during the parliamentary elections and had taken part in a demonstration in 1968.<sup>8</sup> Political activities of foreigners were considered as negative if not dangerous at that time.

After 1980, the remit of the exclusion of nationals of other Member States in the public service was considerably reduced due to persistent action of the Commission and a gradual development of the case-law of the Court, eventually restricting the exclusion of nationals of other EU Member States solely to posts involving the direct or indirect participation in the exercise of public law powers and duties designed to safeguard the general interest of the State and other public authorities, demanding a special relationship of allegiance to the State.<sup>9</sup>

### Municipal Voting Rights

In the mid-1970s, several European institutions began considering granting local voting rights to nationals of other Member States who made use of their free movement rights and were resident in another Member State. The two main ideas driving these discussions were the wish to introduce a European citizenship and Italy’s desire to reinforce the position of its nationals working and living in other Member States. The first report on European citizenship of the European Parliament was written in 1977 by an Italian member.<sup>10</sup> It was only in 1992, however, when the Member States agreed to create the EU citizenship granting all nationals of the Member States the additional status of citizen of the Union in the Maastricht Treaty. That treaty also granted Union citizens living in another Member State the right to vote and stand for election on the local level under the same conditions as the nationals of the country of residence.

Detailed arrangements for the exercise of these voting rights are laid down in the EC Directive 94/80 adopted in 1994.<sup>11</sup> The directive provides that Member States apply to

nationals of other Member States the same residence requirements for voting and standing for municipal elections that apply for nationals of their own state.

The Lisbon Treaty that entered into force in 2009 confirmed the voting rights in Article 20 of the Treaty on the Functioning of the European Union in the catalogue of rights of EU citizens. Article 20(2) provides that citizens of the Union shall enjoy “the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State.” An almost identical guarantee is provided in Article 40 of the EU Charter of Fundamental Rights.

Equal voting rights implies full equality not only on the day of the election but also in the preparation of the lists of candidates by the parties and other political activities relating to the elections such as the right to be member of or found a political party. The German rule in the Law on Political Parties that non-citizens may not constitute the majority of the membership of a political party or its board<sup>12</sup> is hardly compatible with the principle of equal treatment of Union citizens of other Member States. In April 2014 the European Commission started formal infringement procedures against the Czech Republic, Latvia and Poland because these Member States restrict the right of nationals of other Member States to become member of a political party or to found a political party.

### Do EU Nationals Actually Use Their Right to Vote?

Few hard data are available on the actual use of voting rights by EU nationals living in another EU member state. Elections are secret. The nationality of those who actually vote is not registered. Exit polls, the level of registration on the electoral rolls and the number of non-nationals elected as councilors may provide an indication. Reports commissioned by the European Commission on the exercise of local voting rights by EU nationals in the late 1990s and early 2000s came to the conclusion that little use was made of the voting rights in municipal elections in other Member States.<sup>13</sup> Commentators such as UK law professors, among others, blamed the potential voters who, supposedly, had a limited political horizon or saw their primary interest with their state of origin.<sup>14</sup> Little attention was paid to the possibility that administrative barriers in Member States requiring individual application for registration as a voter may be a major cause of low participation in those Member States. According to the European Commission at the end of 2010 there were eight million Union citizens of voting age living in another Member State. In 14 Member States registration on the electoral rolls is automatic with the registration of the residence in the municipality. In Spain, where a separate registration on the electoral rolls is still required, more than 50 percent of the non-national EU residents applied for registration on the electoral rolls after the authorities had sent them a personal letter on this issue. A considerable part of EU migrants appeared to be interested in their voting rights, once the information and administrative barriers had been overcome. In some Mem-

ber States that still require individual application for registration, such as Cyprus, Greece, Italy and Portugal the proportion of registered non-national EU citizens is only ten percent or less. In Belgium their share was somewhat higher 18 percent in 2012. In the same year the European Commission reported that in France one third of the nationals of other EU states who stood for election were elected and one in five in Sweden. In Austria, Luxembourg and Spain a significant number of non-national EU citizens were elected as member of a municipal council.<sup>15</sup>

## Voting Rights for Nationals of Non-EU States

### Limited Impact of the EU

The European Union has the power to make rules on voting rights for EU nationals and on migration, residence, and asylum of third-country nationals in Member States. However, the EU has no legal authority to make binding rules on the voting rights of third-country nationals residing in the Member States. EU bodies may discuss the way certain political rights are structured in Member States' national laws. Such discussions could result in recommendations, not in binding EU rules. EU institutions could promote legislation introducing or extending such rights to third-country nationals. Thus, the European Union can encourage but not legally oblige Member States to amend their national laws regarding voting rights of third-country nationals.

In 2003, the Council of Ministers adopted a directive on the status of long-term resident nationals from countries outside the EU, 'third-country nationals' in the legal jargon.<sup>16</sup> This directive codifies the *denizen* status — a status in which long-term resident non-nationals have some but not all the rights granted to citizens — in EC law. The directive grants a secure residence right, equal treatment, and under certain conditions mobility within the European Union to third-country nationals after five years of lawful residence in a Member State. It enumerates a long catalogue of matters where long-term residents shall enjoy equal treatment with nationals, but does not deal with voting rights. This illustrates that the EU Treaties do not provide a legal basis for obliging Member States to grant voting rights or other political rights to resident third-country nationals.

### Granting Voting Rights to EU Nationals and Its Impact on Voting Rights for Non-EU Nationals

The granting of municipal voting rights to resident nationals of other Member States as a fundamental right and an expression of the principle of equal treatment may have a wider impact. In several Member States (e.g. Belgium, Luxembourg, Netherlands and Slovenia) the prospect of or the actual obligation to grant voting rights to nationals of other Member States paved the way for extension of municipal voting rights to residents of non-EU countries.

A similar development occurred in the Nordic countries already during the 1970s and 1980s: voting rights were first granted to nationals of other Nordic countries and later on to all non-nationals with several years of residence in the country.

The 1992 Treaty of Maastricht obliged several Member States, e.g. Austria, Belgium, Germany and France, to amend their constitution to allow for nationals of other Member States to vote in municipal elections.<sup>17</sup> Those countries at that time had to make a political choice: restrict the amendment to EU nationals or use the occasion to open in their constitution the possibility to extend local voting rights to immigrants from third countries as well. Austria, Germany, France and, before accession, Poland choose the first restrictive option. In Germany, the debate continued during most of the 1980s but came to halt in 1990 when the Constitutional Court declared the local voting-rights legislation of certain *Länder* unconstitutional. The court argued that the constitutional clause granting voting rights to the German people had to be interpreted as covering only persons with German nationality.<sup>18</sup> In Austria the Constitutional Court handed down a similar judgment in 2004.<sup>19</sup>

Belgium chose for the other option: after a long political battle, the required constitutional amendment entered into force only in 1999, but it opened the possibility to grant the voting right to non-EU nationals as well.<sup>20</sup> In Denmark, Finland, Ireland, the Netherlands, Spain, Sweden and the UK the constitutional law did already allow for the participation of non-nationals in municipal elections. Spain, primarily with a view to reinforce the position of Spanish emigrants abroad, introduced in its 1978 constitution the possibility to grant voting rights to non-citizens on the basis of a treaty and on the condition of reciprocity, i.e. only if Spanish citizens resident in the other country are entitled to vote in municipal elections in that country. The municipal voting right was granted to nationals of other Member States on the basis of this pre-existing constitutional provision. A provision that applies to non-EU nationals as well. The Netherlands followed the example of the Nordic states by introducing a provision during the constitutional revision of 1983 in view of the discussions on extension of voting rights to nationals of other EEC countries but the revision covered all non-national residents.

In the EU Directive 94/80 adopted in 1994 an exception was made for Luxembourg because almost one third of the population of voting age were nationals of other EU states. Luxembourg first introduced long residence requirements (six years for the right to vote and twelve years for the right to be elected) as a barrier for participation. But after the first municipal elections where nationals of other Member States could vote in 1999, it reduced the residence requirement to five years both for the right to vote and to stand for election. Fears for "polarization between lists of national and non-national candidates", used as justification for the exception in 1994, apparently, were overcome. Moreover, Luxembourg in 2003 granted voting rights to nationals of non-EU countries with five years of residence in Luxembourg.

**Table 1: Municipal Voting Rights for Third Country Nationals (TCNs) in the EU Member States**

EU Member State	Municipal Voting Rights for (some) TCNs	Right of TCNs to stand as candidates in municipal elections
Austria	NO	
Belgium	YES	
Bulgaria	NO	
Croatia	NO	
Cyprus	NO	
Czech Republic	NO	
Denmark	YES	
Estonia	NO	YES
Finland	YES	
France	NO	
Germany	NO	
Greece	NO	
Hungary	NO	YES
Ireland	YES	
Italy	NO	
Latvia	NO	
Lithuania	NO	YES
Luxembourg	YES	
Malta	NO	
Netherlands	YES	
Poland	NO	
Portugal	YES	
Romania	NO	
Slovakia	YES	
Slovenia	NO	YES
Spain	YES	
Sweden	YES	
United Kingdom	YES	

**Which EU Member States Grant Voting Rights to Third-Country Nationals?**

A majority of 15 of the 28 EU Member States allow some categories of resident third-country nationals to participate in local elections. These states are Belgium, Denmark, Estonia, Finland, Hungary, Ireland, Lithuania, Luxembourg, the Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. Four of these states do not allow third-country nationals to stand as candidates in municipal elections: Estonia, Hungary, Lithuania and Slovenia. Six EU Member States extend voting rights to certain categories of non-nationals (EU nationals and third-country nationals) to elections for regional representative bodies as well: Denmark, Hungary, Portugal, Slovakia, Sweden and the United Kingdom. The 13 EU Member States that exclude third-country nationals from voting in local elections are Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, France, Germany, Greece, Italy, Latvia, Malta, Poland and Romania.

**Conditions for Voting**

Member States that have granted voting rights to third-country nationals use four kinds of conditions to restrict that right: duration of residence, registration or application, a specific residence status or reciprocity. Some states apply several of these conditions. For example, Belgium requires five years of residence and registration. Portugal requires residency, reciprocity and registration.

The *duration of residence* required before a third-country national is entitled to vote varies between three years in Denmark, Estonia, Portugal, and Sweden, four years in Finland and five years in Belgium, Luxembourg, and the Netherlands. In Ireland and the United Kingdom the general residence requirement applies for nationals and non-nationals.

Five states, Estonia, Hungary, Lithuania, Slovakia, and Slovenia grant voting rights only to third-country nationals who have a *permanent residence permit or long-term residence status*. This condition may severely limit the number of third-country nationals who can vote, because the required status is granted infrequently or only to specific categories of immigrants (e.g. co-ethnics) and, generally, only after five or more years of lawful residence.

Several Member States require non-national voters to register with the local authorities. In Ireland, the Netherlands, the Nordic states and the United Kingdom, a simple *registration*, comparable to the registration nationals are required to perform when moving to a new address, is sufficient. The registration process itself can become a major obstacle for non-nationals who want to exercise their voting rights. Belgium requires non-citizens to file an application for registration and to sign a declaration pledging respect to the Belgian Constitution and legislation.

The Czech Republic, Malta, Portugal, and Spain apply the *reciprocity* condition. In practice, this condition results in far-reaching restriction or de-facto non-existence of voting rights. The Czech Republic and Malta have a reciprocity condition in their constitution. Since no agreements with

third countries have been concluded third-country nationals do not have voting rights in those two Member States. Portugal has concluded bilateral agreements on reciprocal voting rights with more than ten countries outside the European Union. Spain has concluded bilateral agreements with several countries in South America and with Norway. In Spain, a special ambassador was appointed with the task to negotiate similar agreements with other countries outside the EU.<sup>21</sup> This approach not only requires quite some diplomatic activity, but the right to vote of residents will depend on the willingness of governments in the country of origin to conclude an agreement. Undemocratic countries may not be inclined to conclude such agreements. The result is that only resident immigrants from certain third-countries will have the right to vote and others (often the majority) will be excluded and probably perceive that exclusion as unjustified.

### Arguments For and Against Extending Voting Rights to Non-National Residents

Granting voting rights to non-national residents is a highly visible commitment to the public inclusion and equal treatment of immigrants. Within states, however, opinions vary on how much immigrant inclusion is desirable and which values are essential to the state's identity. The main arguments used in *favor* of extending voting rights to resident non-nationals are:

- “No taxation without representation.” All members of the community who regularly pay taxes need to be represented in government bodies that decide how public funds are spent and on rules binding all residents.
- Equal treatment of residents of the country. The longer non-nationals are living in a community, the more difficult it is to justify their exclusion from the public decision-making process.
- Granting voting rights stimulates the political participation of immigrants and thus their integration in the host society.
- Immigrants are permanent members of society. Providing voting rights sends an important symbolic message to the majority of the population that long-term resident immigrants are staying and that they are perceived as (future) co-citizens.
- Pathway to citizenship. The right to vote in local elections encourages non-nationals to naturalize so that they can also vote in national elections and access public-service jobs.

The main arguments *opponents* give for not allowing non-nationals to vote are:

- Voting rights should be an earned privilege. Voting rights are per definition linked to nationality; only full citizens should participate in political decision making.

- Prevent foreign influence. Governments of the countries of origin may try to influence the political process through their nationals.
- Prevent ethnic parties. If certain immigrant groups establish their own political parties this may weaken existing parties.
- Immigrants should not be allowed to disturb existing power relations. Allowing non-nationals to vote could upset the current balance of power since some parties will benefit more from the immigrant vote than others.
- The domino effect. Once local voting rights are granted, the argument for withholding voting rights in national elections becomes weaker. Some argue that national voting rights could create conflicting loyalties.
- Granting voting rights diminishes immigrants' interest in naturalizing. Naturalization should be encouraged rather than granting voting rights.

Some of these counter arguments have a long history. In the past, they were used to keep workers, women, and young citizens from voting.

How someone defines a community or a state will often influence how that person views voting rights for non-nationals. Proponents tend to have a liberal view and an open image of the state. Opponents tend to have a communitarian perspective on the state: only the present members (“citizens”) should decide who belongs to the community. This perspective corresponds to a more closed, defensive or even ethnically homogenous image of the nation-state.

In the introduction we observed that ideas about the desirability of political participation of non-citizens in Europe changed over time. Ideological arguments for and against local voting rights can only be tested in debate. Empirical arguments about the effects of extending voting grants will be discussed in the last part of this paper.

### When Were Municipal Voting Rights Granted?

In the UK the voting rights are related to the establishment of the Commonwealth that predates the Second World War. In Ireland the municipal voting right was granted to non-national residents in 1963. Among the five states of the Nordic Union (Denmark, Finland, Iceland, Norway, and Sweden) a regional consensus on this issue developed during the 1970s and 1980s. After some years, granting voting rights only to Nordic citizens led to voting rights for all non-nationals. The Nordic experience also shows that harmonizing voting rights does not require states to adopt binding international laws. Informal consensus can work. This development predates the granting of voting rights to EU nationals living in other Member States that occurred in the 1990s. The relevant provision in the Spanish constitution was introduced in 1978. The Netherlands granted voting rights to non-national residents in 1985 after room for this extension had been created in the 1983 general revision of the constitution, prior to the ratification of the Maas-

tricht Treaty. Lithuania, Slovenia and Slovakia granted voting rights to non-EU residents in 2002 and therefore did so *before* their accession to the EU, Luxemburg in 2003 and Belgium in 2004.

## Naturalization as Alternative For Extending Voting Rights?

In several European states (e.g., Germany, Belgium, and the Netherlands) the debate on local voting rights has been linked to the debate on naturalization. The German Constitutional Court, in its ruling in 1990 on this issue, explicitly hinted that the government should make it easier for immigrants to naturalize instead of giving them the right to vote in local elections.<sup>22</sup> The German Nationality Act, which came into force in 2000, can be considered a belated realization of the court's suggestion: it introduced *ius soli* acquisition of Germany nationality by the children of settled immigrants and allowed dual nationality for some immigrants (e.g., nationals of other EU Member States). The reappearance of the issue of voting rights for non-citizens on the political agenda in Germany around 2008 may well be related to the limited effect of the 2000 amendments of the nationality law for the acquisition of nationality by first generation immigrants. The number of persons naturalized has gradually diminished from almost 190,000 in 2000 to 95,000 in 2008.<sup>23</sup> This may partly be due to the considerable raise in the fees for naturalization in 2000 and to the introduction of the uniform formalized language and naturalization tests.<sup>24</sup>

In Belgium and the Netherlands similar trade-offs have been made between nationality law and voting rights. After Belgium liberalized its naturalization legislation in 2001, the debate on local voting rights abated.<sup>25</sup> In the Netherlands, the Social Democrats (PvdA) and the Christian Democrats (CDA), coalition partners in Parliament, reached a political compromise in the early 1990s. They decided to liberalize naturalization rules, which meant accepting dual citizenship, instead of granting non-nationals the right to vote in provincial and national elections, a policy favored by the Social Democrats but strongly opposed by the Christian Democrats.

## What Are the Effects of Granting Voting Rights to Non-National Residents?

### Actual Use of Voting Rights

Empirical data on the number of non-national or immigrant voters who exercise their voting rights are available on the basis of exit-polls for some cities in Member States (Denmark, Finland, the Netherlands, and Sweden). Data on the number of registered non-national voters are available for three other countries (Belgium, Ireland, and Luxembourg). From these data it appears that, generally, non-national voters have lower *participation rates* in local elections than citizens. However, lower participation is not necessarily an expression of less interest or different political traditions. It

may just be the result of bureaucratic hurdles such as strict registration requirements that keep immigrant voters from casting their ballot.

Participation rates vary over time, between cities, and between immigrant groups. At times, certain immigrant groups have turned out in proportionally higher numbers than the general population. For instance, Turkish immigrants in Denmark and the Netherlands, generally, have higher participation rates than other immigrant groups. It appears that local political circumstances influence non-national voters' participation rates and voting patterns. Large numbers of immigrants have used their voting rights. In the relevant countries parties across the political spectrum are actively looking for suitable candidates from immigrant groups in order to attract the immigrant vote. The number of municipal councilors who are non-nationals or are of immigrant origin have clearly increased over time. In Denmark, the number of councilors with third-country backgrounds increased from three in 1981 to 51 in 2001. In Luxembourg, 189 (i.e. six percent) of the candidates in the 2005 elections were non-nationals; 14 were elected.<sup>26</sup> More than 300 non-Dutch councilors (four percent of the total) were elected in the Netherlands' 2006 municipal elections, including 157 of Turkish origin and 66 of Moroccan origin. In Sweden, the foreign born, either naturalized or non-nationals, held seven percent of the municipal council seats in 2002, twice as many as ten years earlier.<sup>27</sup> Even the openly anti-immigrant parties, such as Geert Wilders' Partij voor de Vrijheid (Party for Freedom) in the Netherlands, make sure they have candidates of immigrant origin on their lists.

### Voting Rights and Integration

Whether granting voting rights helps immigrants integrate largely depends on how integration is defined. If integration means the level of participation of immigrants in the host society's central institutions (e.g., the labor market, schools, and religious, military, or political institutions), then extending voting rights to immigrants enhances their integration. If one defines integration in normative or emotional terms and cares more about immigrant attitudes than immigrant behavior, the decisive question may be: Have immigrants become more like us? In that perspective those who vote for candidates of their own immigrant group may be perceived as not sufficiently integrated. Of course, this voting behavior could also be seen as the perfect expression of an essential element of democracy: every individual can vote for the representative that in his or her personal view will best understand and represent voters' interests.

It appears from empirical research that having voting rights encourages immigrants to get involved in other political activities. They are more likely to join political parties, trade unions, and other (community) associations than immigrants without voting rights.<sup>28</sup>

### Immigrant Political Parties

The fear that immigrants would establish their own parties has turned out to be largely unfounded. In the Netherlands,

some immigrant parties or lists participate in each municipal election, but they rarely obtain enough votes for a seat in the municipal council. At the 2014 election a party established by young Moroccan Dutch, presented as a Muslim party, received two of the 45 seats in the municipal council of Rotterdam. The leader of this party had been a city councilor for the Green Party before. Most immigrant politicians and voters apparently see their path to political power through participating in traditional parties or voting for those parties. Ireland presents a striking example. Before the 2004 elections NGOs started a campaign stimulating immigrants to enroll in the Electoral Register, several parties fielded non-EU candidates and a group of 60 asylum seekers founded in their community a local branch of *Fianna Fáil*, Ireland's largest political party.<sup>29</sup>

In most countries, immigrants have different countries of origin and religions, and not all belong to the same social class. This heterogeneity severely reduces the chances of immigrant parties, even in countries with a system of proportional representation. Countries with an electoral system less favorable to small parties (where the candidate with the highest number of votes wins or a threshold applies), provide an even greater incentive for immigrant voters to vote for and participate in existing political parties. Special immigrant parties under such systems only rarely win a seat in the municipal council.

### **Influence of Foreign Governments**

Governments of immigrant-origin countries have rarely tried to openly influence the way their nationals or co-ethnics vote. The exceptions have received quite critical press attention, such as Moroccan King Hassan's attempt in 1986 to influence Moroccan nationals in the Netherlands. The king advised them to abstain from voting in the Netherlands' first municipal elections that allowed non-nationals to participate ("You cannot walk behind two flags"). It was also the first time a large number of Moroccan nationals could vote in a European country. The king's call contributed to a low turnout of Moroccan voters. In later years, King Hassan changed his mind and advised Moroccan immigrants in Europe to use their democratic rights.

### **Voting Rights and Naturalization**

None of the EU countries with local voting rights have seen naturalization numbers decline. In the Netherlands, the annual number of naturalizations increased from 20,000 in 1986 to 80,000 in 1996, the decade *after* the country granted municipal voting rights. Most probably, other variables determine the decision to naturalize. These include the loss or the obligation to give up the original nationality, high fees, difficult language and integration tests, emotional ties to the country of origin, or the loss of property and inheritance rights in that country. Immigrants weigh such barriers and disadvantages against citizenship's perceived advantages, such as visa-free travel, free movement in the European Union, full voting rights, and access to public-service jobs reserved for nationals.

In an early 1990s study on why immigrants in the Netherlands decided to naturalize, two-thirds of those interviewed said that a secure legal status and full voting rights factored into their decision. Only visa-free travel was mentioned more often.<sup>30</sup> Local voting rights, apparently, are not a barrier, but rather function as an incentive to naturalize.

### **Immigrant Political Power Becomes Visible**

Immigrant voters may make the difference. During the Dutch municipal elections of March 2006, immigrant voters turned out in large numbers to express their discontent with the centre-right government's anti-immigrant policies. Press reports and empirical research indicate that the Social Democratic Party won the local elections in Amsterdam and Rotterdam mainly because of immigrant voters, both naturalized and long-term resident non-nationals.

The relevance of immigrant voters also became clear in the January 2008 elections in the German Land Hessen. The Christian Democrat leader Roland Koch (CDU) openly played on anti-immigrant sentiments in the final phase of his campaign. His party lost twelve percent of the votes and their overall majority, beating the Social Democratic Party (SPD) by a margin of only 3,500 votes. The eligible Turkish-German electorate in Hessen, estimated at 70,000, could well have decided the outcome.<sup>31</sup>

In both countries, leaders of traditional parties became aware that while anti-immigrant agendas will attract some voters, they cannot discount the importance of immigrant voters either. In the Netherlands, immigrants make up between ten and 15 percent of the electorate; the percentage may be even higher in major cities. In cases where the major parties are almost similar in size, the immigrant vote may decide elections. The outcome of the 2006 Dutch municipal elections could be considered proof that granting local voting rights has contributed to immigrants' political integration. For those who worry about including immigrants in society, this development may well confirm their worst fears.

### **Recent Developments in Some EU Member States**

All EU countries that granted municipal voting rights to non-EU citizens did so more than a decade ago. In Greece a law granting ethnic Greek returnees, long-term resident third-country nationals, refugees, stateless persons and parents of Greek citizens after five years of lawful residence voting rights in municipal elections was adopted under a social-democratic government in 2010. However, the Greek State Council struck down that law as unconstitutional in 2013 and in 2014 the law was removed from the books. In the 1980s the French President Mitterand repeatedly promised to introduce local voting rights, but he never put forward a proposal for the required constitutional amendment. In 2011 the left-wing majority in the French Senate voted for a bill granting municipal voting rights to non-EU residents. But the centre-right government, who had a majority in the National Assembly blocked this proposal.<sup>32</sup> President Hollande promised to extend municipal

voting rights to non-EU residents during his election campaign. In 2013 he announced that the relevant bill would be introduced after the municipal elections in 2014. But the ruling coalition lacks thirty votes for the three fifth majority to get the required constitutional amendment adopted in the Senate.<sup>33</sup>

Since the German Constitutional Court struck down the initiative of the *Länder* Schleswig-Holstein and Hamburg to grant municipal voting rights to third country nationals in 1990, there have been numerous attempts by cities, *Länder*, political parties and civil society organizations to push for constitutional arrangements that would allow the introduction of such rights. So far all of these attempts have been without success. Prior to the Bundestag elections in 2013, with the exception of the Christian Democratic Union (CDU) and her sister party the Bavarian Christian Social Union (CSU), all political parties that are currently represented in the national parliament in their electoral platforms had promised to support municipal voting rights for non-EU nationals. The coalition agreement of the currently ruling grand coalition of CDU/CSU and Social Democrats (SPD) does not mention this issue and thus does not place it on the political agenda for the legislative period (2013-2017).

In Italy a provision granting municipal voting rights to third-country nationals with a permanent residence permit was included in the 1998 Immigration Act, but the required amendment of the Italian Constitution was never adopted. The issue returns to the political agenda in Italy from time to time. In the 2012 coalition agreement of the current Dutch government it was agreed that the residence requirement for the municipal voting rights of non-EU residents would be extended from five to seven years. No bill to realize this plan had been introduced by March 2014. The Netherlands would have to renounce the 1992 Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level in order to realize this intention.

## Conclusions

Four large Member States (Germany, France, Italy and Poland) and most of the Member States in Central or Eastern Europe that acceded to the EU in 2004 and 2007 have not (yet) granted voting rights to non-EU residents. The result is that Portugal and Spain are the only Southern EU Member States that have granted voting rights to residents from a selected group of countries outside the EU, mainly to nationals from their former colonies or on the basis of reciprocity. In the political debate in several Member States extending voting rights to non-citizen residents and facilitation of the acquisition of the nationality by birth or by naturalization were presented as alternatives. However, it appears that, generally, the EU Member States that granted voting rights, in practice also allow immigrants to acquire the nationality more easily than the Member States that exclude third-country national residents from voting in municipal elections. This indicates that both issues (voting

rights and nationality law) apparently are related to dominant ideas about state nationhood and constitutional arrangements.

Extending voting rights is a low-cost measure. Sharing political power with an additional group may be symbolically painful, but in reality, power-sharing only marginally reduces the political power of old voters. None of the 15 EU states that granted local voting rights to non-national residents has abolished this right because of its presumed or real negative effects. Since 1988, the anti-immigrant Danish Peoples Party has pleaded repeatedly for restricting existing voting rights for non-national residents, granted in Denmark in 1981. But the party has never received support from any other political party.<sup>34</sup> Once local voting rights are granted, these rights never appear as a source of serious conflict. Apparently, most politicians in the countries concerned consider that the advantages outweigh any disadvantage.

## Notes

<sup>1</sup> This brief is partly based on three earlier publications of the same author: Groenendijk (2008), Groenendijk (2011) and Groenendijk (2014).

<sup>2</sup> Frowein and Peukert (1997), p. 487.

<sup>3</sup> Parl. Ass. Recommendation 799(1977) on the political rights of aliens, Recommendation 903(1980) on the right of aliens to vote and stand in local authorities elections and Recommendation 951(1982) on voting rights of nationals of Council of Europe Member States; cfr. the limited Recommendation R(81)18 concerning participation at municipal level adopted by the Committee of Ministers on 6 November 1981.

<sup>4</sup> ETS No. 144 adopted at 5 February 1992.

<sup>5</sup> <http://dip21.bundestag.de/dip21/btd/16/028/1602882.pdf>

<sup>6</sup> For the early decades see van den Berghe (1982), chapters 1, 2 and 8.

<sup>7</sup> ECJ 4 July 1991, C-213/90 (ASTI I), [1991] ECR I-3507 and CJEU 18 May 1994, C-118/92 (ASTI II) [1994] ECR I-1891.

<sup>8</sup> ECJ 28.10.1975, 36/75, (Rutili), [1975] ECR, p. 1219.

<sup>9</sup> CJEU 30 September 2003 C-405/01 (Colegio de Oficiales) [2003] ECR I-10391 and CJEU 29 October 1987 C-114/87 (Commission v Spain) [1987] ECR I-6717.

<sup>10</sup> See the report of the European Parliament of 25 October 1977, PE 45.833 def, written mainly by MEP Scelba and the European Commission Bulletin supplement 7/75 "To a European citizenship".

<sup>11</sup> OJ 1994 L 368/38; for the Commission's proposal see OJ 1994 C 105.

<sup>12</sup> Par. 2(3)(1) Parteiengesetz.

<sup>13</sup> COM(2001)506 and COM(2002)260.

<sup>14</sup> Chalmers et al. (2006), p. 575.

<sup>15</sup> COM(2012)99.

<sup>16</sup> Council Directive of 25 November 2003 concerning the status of third-country nationals who are long-term residents, EC Official Journal 2004 L 16, pp. 44-53.

<sup>17</sup> Art. 8 of the Belgian Constitution, Art. 28(1) of the German Constitution, Art. 3 of the French Constitution and Conseil Constitutionnel 9 April 1992, Decision No. 92-308 par. 21-37.



- <sup>18</sup>Judgment of 13 October 1990, BVerfGE 83, 37.
- <sup>19</sup>Verfassungsgerichtshof 30 June 2004, C 218/03.
- <sup>20</sup>Act of 18 December 1998 adopted after the judgment of the CJEU of 9 July 1998 in case C-323/97, Commission/Belgium [1998] ECR I-4281; see Jacobs (1999).
- <sup>21</sup>Migration News Sheet (September 2008), p. 27.
- <sup>22</sup>Judgment of 13 October 1990, BVerfGE 83, 37.
- <sup>23</sup>Bundesamt für Migration und Flüchtlinge (2010), p. 223.
- <sup>24</sup>van Oers (2014), p. 237.
- <sup>25</sup>Jacobs (1999), pp. 649-663, Jacobs (2007).
- <sup>26</sup>Dubajic (2007), pp. 129-140.
- <sup>27</sup>Soininen (2007).
- <sup>28</sup>Giugni (2007).
- <sup>29</sup>Éinrí (2007).
- <sup>30</sup>van den Bedem (1993).
- <sup>31</sup>Migration und Bevölkerung (February/March 2008), p. 2.
- <sup>32</sup>Migration News Sheet (January 2012), p.27 and (April 2012), p. 28.
- <sup>33</sup>Migration News Sheet (June 2013), p. 23.
- <sup>34</sup>Oostergaard-Nielsen (2007).
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